THE WORLD BANK GROUP
SANCTIONS BOARD

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Sanctions Board Decision No. 130
(Sanctions Cases No. 680 and No. 681)

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Federal Republic of Nigeria

Decision of the World Bank Group[1] Sanctions Board imposing sanctions of debarment with conditional release on the respondents in Sanctions Cases No. 680 and No. 681 (the "Respondents"), together with certain Affiliates,[2] with minimum periods of ineligibility of four (4) years and three (3) months for the respondent entity in Sanctions Case No. 680 (the "First Respondent Firm"); six (6) months for each of the individual respondents in Sanctions Case No. 680 (the "Respondent Managing Director" and the "Respondent Executive Director"); and six (6) months for the respondent entity in Sanctions Case No. 681 (the "Second Respondent Firm"), beginning from the date of this decision. These sanctions are imposed on the First Respondent Firm for fraudulent and collusive practices; and on the Respondent Managing Director, the Respondent Executive Director, and the Second Respondent Firm for collusive practices.

I. INTRODUCTION

1. The Sanctions Board convened in October and November 2020 as a panel composed of Cavinder Bull (Panel Chair), Mark Kantor, and Maria Vicien Milburn to review Sanctions Cases No. 680 and No. 681 (the "Cases"). Considering that the First Respondent Firm and the Second Respondent Firm (the "Respondent Firms") requested that the Cases be heard and decided together; that the Respondent Managing Director and the Respondent Executive Director (the "Individual Respondents") expressly consented to this request; that the World Bank Group's Integrity Vice Presidency ("INT") raised no objections; and that all the Respondents are

[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 any of the Respondents. See infra Paragraphs 80, 97, 98.

represented by the same counsel, the Sanctions Board combined the records of the Cases for review, consistent with Section III.A, sub-paragraph 5.04(b) of the Sanctions Procedures. In addition, a joint hearing was held on October 1, 2020, at the requests of the Respondents and INT, and pursuant to Section III.A, sub-paragraph 6 of the Sanctions Procedures. Due to the COVID-19 pandemic, the Sanctions Board Chair determined that oral proceedings would be conducted virtually. Accordingly, INT and the Respondents participated in the hearing through their respective representatives attending via video conference from locations in the United States, Canada, and France. 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:

i. Notice of Sanctions Proceedings issued by the World Bank's Suspension and Debarment Officer (the "SDO") to the First Respondent Firm and the Individual Respondents on March 6, 2020 (the "Case 680 Notice"), appending the Statement of Accusations and Evidence (the "Case 680 SAE") submitted by INT to the SDO (undated);

ii. Explanation submitted by the First Respondent Firm and the Individual Respondents to the SDO on April 9, 2020 (the "Explanation");

iii. Notice of Sanctions Proceedings issued by the SDO to the Second Respondent Firm on May 7, 2020 (the "Case 681 Notice"),[3] appending the Statement of Accusations and Evidence (the "Case 681 SAE")[4] submitted by INT to the SDO (undated);

iv. Response submitted by the First Respondent Firm and the Individual Respondents to the Secretary to the Sanctions Board on June 8, 2020 (the "Response");[5]

v. Reply submitted by INT to the Secretary to the Sanctions Board on July 22, 2020 (the "Reply");[6]

vi. Additional submissions filed by the Respondents with the Secretary to the Sanctions Board on September 4, 2020, and September 18, 2020 (the "Respondents' Additional Submissions");

[3] Together with the Case 680 Notice, hereinafter referred to as the "Notices."

[4] Together with the Case 680 SAE, hereinafter referred to as the "SAEs."

[5] The Second Respondent Firm relied on the same Response, pursuant to a request filed by the Second Respondent Firm with the Secretary to the Sanctions Board on July 30, 2020, and granted by the Panel Chair on August 20, 2020. The Second Respondent Firm did not file an Explanation.

[6] INT relied on the same Reply for both Cases, pursuant to a submission filed with the Secretary to the Sanctions Board on August 10, 2020, and accepted by the Panel Chair on August 20, 2020.

vii. Comments submitted by INT to the Secretary to the Sanctions Board on September 25, 2020 ("INT's Comments");

viii. Post-hearing submission filed by INT with the Secretary to the Sanctions Board on October 20, 2020 ("INT's Post-Hearing Submission"); and

ix. Post-hearing submission filed by the Respondents with the Secretary to the Sanctions Board on October 27, 2020 (the "Respondents' Post-Hearing Submission").[7]

3. In accordance with Section III.A, sub-paragraphs 4.01 and 4.02 of the Sanctions Procedures, the SDO issued the Notices and temporarily suspended each of the Respondents,[8] together with certain specified Affiliates[9] and any entity that is an Affiliate directly or indirectly controlled by any of the Respondents, from eligibility[10] with respect to any Bank-Financed Projects,[11] pending the final outcome of these sanctions proceedings. The Notices stated that the temporary suspensions would apply across the operations of the World Bank Group. In addition, under Section III.A, sub-paragraphs 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the SDO recommended in the Notices the sanctions of debarment with conditional release for each of the Respondents, together with any entity that is an Affiliate directly or indirectly controlled by any of the Respondents.[12] The SDO recommended minimum periods of ineligibility of seven (7) years and four (4) months for the First Respondent Firm; two (2) years and eight (8) months for the Second Respondent Firm; five (5) years and four (4) months for the Respondent Managing Director; and two (2) years and eight (8) months for the Respondent Executive Director. The SDO recommended that after these periods: (a) each of the Respondent Firms 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 it has been sanctioned and (ii) adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank; and (b) each of the Individual Respondents may be released from ineligibility only if he has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, demonstrated to the ICO that he has (i) taken appropriate remedial measures

[7] Together with INT's Post-Hearing Submission, hereinafter referred to as the "Post-Hearing Submissions."

[8] Effective March 6, 2020, for the First Respondent Firm and the Individual Respondents; and May 7, 2020, for the Second Respondent Firm.

[9] The Case 680 Notice identified six entities – including the Second Respondent Firm – as Affiliates controlled by the Individual Respondents.

[10] 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.

[11] 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).

[12] This includes the specified Affiliates identified as controlled by the Individual Respondents in the Case 680 Notice.

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.

II. GENERAL BACKGROUND

4. The Cases arise in the context of the Nigeria Erosion and Watershed Management Project (the "Project"), which seeks to reduce vulnerability to soil erosion in targeted sub-watersheds in the Federal Republic of Nigeria (the "Recipient"). IDA and the Recipient entered into three financing agreements to support the Project: (i) an agreement to provide an amount equivalent to Special Drawing Rights ("SDR") 321.4 million (approximately US$500 million), dated April 16, 2013 ("Financing Agreement 1"); (ii) an agreement to provide additional credit in an amount equivalent to SDR 208.7 million (approximately US$300 million), dated February 12, 2019 ("Financing Agreement 2"); and (iii) an agreement to provide a Scale-up Facility additional credit in the amount of US$100 million, dated February 12, 2019 ("Financing Agreement 3") (collectively, the "Financing Agreements"). In addition, IBRD, acting as an Implementing Agency of the Global Environment Facility (the "GEF") and its Special Climate Change Fund ("SCCF"), entered into grant agreements with the Recipient on April 16, 2013, to provide an additional US$3.96 million from the GEF and US$4.63 million from the SCCF towards the financing of the Project.[13] The Financing Agreements provide for the implementation of the Project by several project management units at the Recipient's federal and state levels (each, individually, a "PMU"). The Project became effective on September 16, 2013, and is scheduled to close on June 30, 2021.

5. As part of the implementation of the Project, two state PMUs published bidding documents (the "Bidding Documents") for the procurement of six construction contracts (the "Contracts") in three separate tenders (respectively, the "First Tender," "Second Tender," and "Third Tender;" collectively, the "Tenders"). The First Tender included four distinct contracts ("Contracts 1-4") and was issued on September 6, 2013. The Second Tender included one contract ("Contract 5") and was issued on October 28, 2013. The Third Tender included one contract ("Contract 6") and was issued on April 11, 2014. The First Respondent Firm participated in all three Tenders and submitted bids for each of the six Contracts.[14] It was ultimately awarded Contracts 4-6.[15] The Second Respondent Firm participated in the First Tender and submitted bids for Contracts 1-4.[16] It was ultimately awarded none of the Contracts.

[13] While Financing Agreement 1 and the Project Appraisal Document reference GEF and SCCF grant agreements, the record does not include copies of such grant agreements.

[14] The First Respondent Firm submitted bids for: (i) Contracts 1-4 (First Tender) on October 10, 2013; (ii) Contract 5 (Second Tender) on November 19, 2013; and (iii) Contract 6 (Third Tender) on April 30, 2014.

[15] The First Respondent Firm signed: (i) Contract 4 on June 2, 2014; (ii) Contract 5 on May 13, 2014; and (iii) Contract 6 on March 12, 2015.

[16] The Second Respondent Firm submitted bids for Contracts 1-4 (First Tender) on October 10, 2013.

6. INT alleges that: (i) the First Respondent Firm engaged in fraudulent practices by misrepresenting its work experience in its bids for Contracts 1-6; (ii) all the Respondents engaged in collusive practices by coordinating the preparation and submission of the Respondent Firms' respective bids for Contracts 1-4; and (iii) the First Respondent Firm and the Respondent Managing Director engaged in corrupt practices by making a payment to influence improperly the procurement and/or implementation of Contracts 4 or 6.

III. APPLICABLE STANDARDS OF REVIEW

7. *Standard of proof*: Pursuant to Section III.A, sub-paragraph 8.02(b)(i) of the Sanctions Procedures, the Sanctions Board determines whether the evidence presented by INT, as contested by a respondent, supports the conclusion that it is "more likely than not" that the respondent engaged in a sanctionable practice. Section III.A, sub-paragraph 8.02(b)(i) defines "more likely than not" to mean that, upon consideration of all the relevant evidence, a preponderance of the evidence supports a finding that the respondent engaged in a sanctionable practice.

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

9. *Evidence*: As set forth in Section III.A, sub-paragraph 7.01 of the Sanctions Procedures, formal rules of evidence do not apply; and the Sanctions Board has discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered.

10. *Applicable definitions of sanctionable practices*: Financing Agreement 1 provided that the World Bank's Guidelines: Procurement of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits and Grants by World Bank Borrowers (January 2011) (the "January 2011 Procurement Guidelines") would apply to the procurement of works under the Project. The Bidding Documents and Contracts 4-6 presented materially non-standard definitions of sanctionable practices (i.e., definitions that are materially different from those appearing in any version of the potentially applicable Guidelines)[17] and did not expressly refer to World Bank Group sanctions. The Sanctions Board notes that Financing Agreements 2 and 3 were executed after the alleged misconduct and in any event did not amend the clauses in question under Financing Agreement 1. Accordingly, this decision must address the apparent conflict between the provisions in Financing Agreement 1, the Bidding Documents, and Contracts 4-6.[18] Considering the views of the World Bank's Legal Vice Presidency ("LEG"), as contemplated in Section III.A, sub-paragraph 1.02(c) of the Sanctions Procedures,[19] the Sanctions Board concludes that the materially non-standard provisions in the Bidding Documents and Contracts 4-6 are not binding on the Bank, and that the fraudulent, collusive, and corrupt practices alleged in the present Cases

[17] Cf., e.g., Sanctions Board Decision No. 92 (2017) at para. 78; Sanctions Board Decision No. 125 (2020) at para. 11.

[18] Cf. Sanctions Board Decision No. 119 (2019) at para. 10.

[19] See Sanctions Board Decision No. 87 (2016) para. 16.

are therefore defined by the January 2011 Procurement Guidelines. This notwithstanding, taking into account the unique facts herein, as well as considerations of fairness, the Sanctions Board will also review INT's accusations under the definitions contained in the Bidding Documents or Contracts 4-6, as appropriate.[20] The corresponding applicable standards are specified below in the Sanctions Board's analysis of each allegation (Section V).

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAEs

11. *Fraud allegation*: INT alleges that the First Respondent Firm misrepresented its work experience in its bids for each of the six Contracts, in order to meet the qualification requirements under the Tenders. Specifically, INT asserts that the First Respondent Firm: (i) falsely claimed to have performed certain erosion control contracts for a state-level government agency (the "Prior Works") in its bids for Contracts 1-6; and (ii) submitted forged provisional award and completion certificate letters in support of this purported experience as part of its bids for Contracts 1, 2, 4, and 5. INT maintains that, in reality, the Prior Works were executed by the Second Respondent Firm.

12. *Collusion allegation*: INT submits that the Individual Respondents own and manage the Respondent Firms, which operate closely together and share the same office space, personnel, and equipment. INT alleges that the Respondents entered into an arrangement to coordinate the preparation, pricing, and submission of the Respondent Firms' respective bids for Contracts 1-4, in order to influence the procurement process in the First Tender.

13. *Corruption allegation*: INT alleges that the First Respondent Firm and the Respondent Managing Director made a payment of Nigerian Naira ("NGN") 3,441,580 (approximately US$17,268) (the "Payment") to an individual who had previously acted as a procurement officer under the Project and signed Contracts 4 and 6 as a witness on behalf of the relevant PMU (the "Former Procurement Officer"). INT argues that the Payment had the purpose of influencing improperly the procurement and/or implementation of Contracts 4 or 6.

14. *Sanctioning factors*: INT submits that aggravation is warranted for the Respondent Firms based on the involvement of senior management in the alleged misconduct; and that mitigation is justified for all Respondents based on their cooperation and voluntary restraint. INT contends that the plurality of sanctionable practices allegedly committed by the First Respondent Firm and the Respondent Managing Director warrants multiplication, rather than aggravation, of their respective base sanctions.

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

15. *Preliminary matters*: The Respondents argue that the Bank has no legal or contractual grounds to audit or sanction them; and request that the Sanctions Board terminate these proceedings based on lack of jurisdiction or "considerations of equity." In addition, the

[20] Cf. Sanctions Board Decision No. 124 (2020) at para. 10.

Respondents assert that the Bidding Documents and Contracts 4-6 did not provide sufficient notice of the sanctions system's authority over the Respondents, and that the Bank engaged in "manifest error" by failing to address its jurisdiction during INT's investigation or in the present proceedings.

16. *Fraud allegation*: The Respondents contend that the alleged conduct did not amount to fraudulent practices. Specifically, the Respondents argue that the misrepresentations at issue did not influence the outcome of the Tenders or cause a detriment to the Recipient.

17. *Collusion allegation*: The Respondents maintain that the alleged scheme did not constitute collusive practices. In particular, the Respondents assert that they lacked the requisite intent and that their conduct did not impact the results of the procurement process or have any anti-competitive effect.

18. *Corruption allegation*: The Respondents dispute the allegation of corruption but concede that the Payment was made. According to the Respondents, the First Respondent Firm compensated the Former Procurement Officer for legitimate services under a consulting agreement that was signed after the Former Procurement Officer had retired from his position under the Project (the "Consulting Agreement").

19. *Sanctioning factors*: The Respondents oppose any aggravation and request mitigation based on their asserted cooperation with INT's investigation; voluntary restraint; effective compliance program; internal action against a responsible individual; and absence of a history of misconduct.

20. *Scope of sanctions*: The Respondents argue that the Individual Respondents' controlled Affiliates should be exempted from sanction or, at most, subjected to conditional non-debarment, because these entities were not involved in the alleged misconduct and because there is no controlling relationship between these entities and the First Respondent Firm.

C. INT's Principal Contentions in the Reply

21. *Preliminary matters*: INT argues that the Bank's authority to sanction the Respondents was established by, inter alia, the Financing Agreements, and does not depend on any provisions in the Bidding Documents or Contracts 4-6. In addition, INT submits that the Bank's audit rights were implied in the Bidding Documents and Contracts 4-6, and that the Respondents willingly complied with INT's audit request.

22. *Fraud allegation*: INT contends that the Recipient suffered detriment by the very fact of contracting with the First Respondent Firm, a company that allegedly made false statements and used forged documents in its bids to win the Contracts.

23. *Collusion allegation*: INT asserts that the alleged arrangement was designed to establish prices artificially and improve the chances of one of the Respondent Firms winning Contracts 1-4.

24. *Corruption allegation*: INT questions the legitimacy of the Consulting Agreement and maintains that the circumstances of the Payment, including its timing, indicate corrupt intent.

25. *Sanctioning factors*: INT opposes any mitigation based on the Respondent Firms' asserted compliance programs and disciplinary action; and requests additional aggravation for the severity of the First Respondent Firm's alleged misrepresentations, and for the First Respondent Firm's and the Individual Respondents' lack of candor in these proceedings.

D. The Respondents' Additional Submissions

26. Pursuant to Section III.A, sub-paragraph 5.01(c) of the Sanctions Procedures, the Panel Chair authorized the Respondents to file Additional Submissions relating to the corruption allegation. Based on supplemental evidence, the Respondents reiterate the assertion that the Payment constituted compensation for legitimate services.

E. INT's Comments

27. Upon the Panel Chair's invitation, INT filed its Comments in response to the Respondents' Additional Submissions. INT asserts inconsistencies in the Respondents' supplemental evidence and reiterates that the Respondents have failed to present a credible justification for the Payment.

F. Presentations at the Joint Hearing

28. *Preliminary matters*: At the hearing, INT reasserted the Bank's authority to audit and sanction the Respondents and opposed the termination of these proceedings based on considerations of equity. The Respondents asserted that their cooperation with INT's audit was voluntary but did not constitute a waiver of their right to challenge the Bank's jurisdiction.

29. *Fraud allegation*: INT submitted that the First Respondent Firm's staff made the alleged misrepresentations knowingly. The Respondents conceded that the Prior Works were implemented by the Second Respondent Firm and that the First Respondent Firm's related performance documents were inauthentic.

30. *Collusion allegation*: INT argued that the Respondent Firms participated in the First Tender as two separate bidders in order to simulate competition. The Respondents contended that the alleged arrangement cannot constitute collusion because the Respondent Firms are affiliated entities with the same "directing mind and control," and thus colluding with one another would be akin to colluding with oneself.

31. *Corruption allegation*: INT asserted that the alleged conduct amounts to corruption even if the Consulting Agreement is found to be legitimate, because an employment opportunity is a thing of value in and of itself. INT represented that it did not seek to interview the Former Procurement Officer as part of its investigation. The Respondents maintained that all interactions with the Former Procurement Officer were conducted orally, and that there is no written record of the services provided under the Consulting Agreement.

32. *Sanctioning factors*: The Respondents requested leniency in light of the COVID-19 crisis and the expected adverse consequences of debarment.

33. *Scope of sanctions*: INT argued that any sanctions imposed on the Individual Respondents

must apply to their controlled Affiliates in order to prevent evasion and ensure that adequate compliance standards are implemented across the entire corporate group. The Respondents appeared to suggest that the risk of evasion is low because the Affiliates in question would not qualify to bid on Bank-financed contracts.

G. Post-Hearing Submissions

34. Upon the Panel Chair's invitation, the parties filed their respective Post-Hearing Submissions. INT provides additional background and evidence on the Bank's review of the PMUs' recommendations to award Contracts 4-6 to the First Respondent Firm. Based on INT's supplemental materials, the Respondents observe that the Bank appears to have reviewed the relevant bid evaluation reports for accuracy and compliance with bidding requirements.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

35. The Sanctions Board will first address the joinder of the Cases and the jurisdictional and due process challenges raised by the Respondents in the course of these sanctions proceedings. The Sanctions Board will then consider whether it is more likely than not that the alleged sanctionable practices occurred and, if so, which of the Respondents may be held liable for each count of misconduct. Finally, the Sanctions Board will determine what sanctions, if any, should be imposed on each of the Respondents.

A. Preliminary Matters

1. Joinder and distribution of materials

36. As noted in Paragraph 1 above, the Sanctions Board combined the records of the Cases for review, consistent with Section III.A, sub-paragraph 5.04(b) of the Sanctions Procedures. In reaching this determination, the Sanctions Board considered that the Respondent Firms requested that the Cases be heard and decided together; that the Individual Respondents expressly consented to this request; that INT raised no objections; and that all the Respondents are represented by the same counsel.

2. Jurisdiction over the Respondents

37. The Respondents assert that the Bank does not have authority to audit or sanction them; and request that the Sanctions Board terminate these proceedings based on absence of jurisdiction or, alternatively, considerations of equity. At the outset, it should be noted that these proceedings only require jurisdiction to sanction. Therefore, the Sanctions Board will address the Respondents' contentions on the Bank's right to audit them as a due process matter instead (see Paragraph 44). As for the pertinent jurisdictional challenge, the Sanctions Board finds the Respondents' arguments to be unfounded, for the reasons detailed below.

38. *Jurisdiction*: The Respondents contend that the Bank lacks jurisdiction in the Cases because: (i) the Financing Agreements did not provide a basis for the Bank's authority; (ii) even if that were the case, under the doctrine of privity of contract, the Financing Agreements did not bind the Respondents; (iii) the Bidding Documents and Contracts 4-6 did not reference the

Financing Agreements, the Bank's Guidelines, or the Bank's rights to audit or sanction the Respondents; and (iv) the Bidding Documents and Contracts 4-6 represented that only the Recipient and the PMUs would exercise such powers over the Respondents. INT argues, inter alia, that the Financing Agreements established the Bank's jurisdiction over the Respondents, and that the Bidding Documents added contractual rights for the Recipient without prejudice to the World Bank Group's sanctions system.

39. The record reveals the following: (i) Financing Agreement 1 expressly stated that the January 2011 Procurement Guidelines would apply to procurement under the Project; (ii) Financing Agreements 2 and 3 were executed after the alleged misconduct and did not amend the clauses in question in Financing Agreement 1; (iii) the Bidding Documents incorporated the Specific Procurement Notice (Invitation to Tender) for each of the Tenders (the "Specific Procurement Notices"), generally referencing the application of the Bank's procurement rules; and (iv) the Bidding Documents and Contracts 4-6 provided for the Recipient's right to impose sanctions, without excluding or specifically referring to the World Bank Group' sanctions system. In the past, the Sanctions Board has consistently exercised jurisdiction based on the financing agreements underpinning a Bank-financed project – including in cases where the contract at issue did not refer to World Bank Group sanctions.[21] The Sanctions Board has also repeatedly held that the Bank does not need privity of contract with a respondent in order to impose sanctions.[22] Indeed, pursuant to guidance issued by LEG, the Bank's right to sanction is established through the application of its Procurement, Consultant, or Anti-Corruption Guidelines to the project where a sanctionable practice allegedly took place.[23] This application typically occurs through the incorporation by reference of these Guidelines into the loan or other agreements governing the project.[24] Where this incorporation is present, the Bank's jurisdiction does not depend on, and is not affected by, the inclusion of any provisions in the related biddings documents, contracts, or subsidiary agreements; nor does it require the consent of any third parties.[25] Accordingly, in the current Cases, the Sanctions Board finds that the Bank's jurisdiction was duly established through the incorporation by reference of the January 2011 Procurement Guidelines into Financing Agreement 1 – irrespective of subsequent provisions in the Bidding Documents or Contracts 4-6, and independent of the Respondents' consent.

40. *Considerations of equity*: The Respondents contend that even if the Financing Agreements confer jurisdiction to the Bank, the Sanctions Board should terminate these proceedings as a matter of equity. Specifically, the Respondents request that the Sanctions Board accept the

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[21] See, e.g., Sanctions Board Decision No. 100 (2017) at para. 12 (where the contract in question contained a definition of "fraudulent practice" identical to a definition issued by the Bank but "did not refer to World Bank Group sanctions"); Sanctions Board Decision No. 125 (2020) at para. 11 (where the contract in question contained a non-standard definition of "corrupt practice" and did not refer to World Bank Group sanctions).

[22] See, e.g., Sanctions Board Decision No. 64 (2014) at para. 28; Sanctions Board Decision No. 81 (2015) at paras. 28–29.

[23] See Advisory Opinion on Certain Issues Arising in Connection with Recent Sanctions Cases, No. 2010/1 (LEG, November 15, 2010) ("Advisory Opinion") at para. 32.

[24] See id. See also, e.g., Sanctions Board Decision No. 59 (2013) at para. 11; Sanctions Board Decision No. 72 (2014) at para. 15; Sanctions Board Decision No. 87 (2016) at paras. 16–17, 55–56.

[25] See Advisory Opinion at paras. 32, 33, 35.

standards agreed between the Respondents and the Recipient under the Bidding Documents and Contracts 4-6, in order to allow the Recipient – not the Bank – to exercise its authority to impose sanctions under the Project. The Sanctions Board is not persuaded by the Respondents' arguments. First, although the Bidding Documents and Contracts 4-6 did not expressly refer to the World Bank Group's sanctions system, these documents did not vest exclusive rights in the Recipient or in any way contradict the Bank's authority under Financing Agreement 1. Thus, there is no conflict of rules in the terms postulated by the Respondents. Second, even if that were the case, the relief sought by the Respondents finds no support in the sanctions framework. While it is true that "the standards agreed to between the borrower and a respondent" may be considered to prevail over the loan agreements in certain circumstances,[26] this equitable approach does not apply to the Bank's unilateral exercise of jurisdiction. Accordingly, the Sanctions Board has always asserted its authority where there was a basis for doing so. Third, the conduct of the present proceedings under the World Bank Group's rules does not prejudice any concurrent criminal, civil, or administrative proceedings in any national jurisdiction. Therefore, whether the Recipient will exercise its own power to sanction the Respondents is a matter for consideration of the relevant domestic authorities, not the Sanctions Board.

41. On this basis, the Sanctions Board finds that the Bank has jurisdiction over the Respondents and asserts its authority to consider the Cases.

3. Procedural matters

42. The Respondents argue that the Bank committed the following due process violations: (i) the Respondents were not given sufficient notice in the Tenders of the Bank's sanctions regime; (ii) INT conducted an audit and inspection of the Respondent Firms without a legal or contractual basis for doing so; and (iii) the Bank engaged in "manifest error" by failing to address its jurisdiction during INT's investigation or the present proceedings. For the reasons discussed below, the Sanctions Board finds no unfairness or fundamental procedural flaw that affected the Respondents' ability to mount a meaningful response to INT's allegations.

43. *Sufficient notice*: The Respondents argue lack of prior notice of the Bank's sanctions regime, asserting that the Bidding Documents and Contracts 4-6 did not reference the Financing Agreements, the Bank's Guidelines, or the Bank's rights to audit or sanction under the Project. INT contends that it is "not uncommon" for bidding documents to lack any reference to the Bank's rules on fraud and corruption, and that "[p]rinciples of fairness notwithstanding . . . notions of ignorance are not acceptable grounds for overriding the Bank's own written law." In a past case, the Sanctions Board found that the respondents received sufficient notice of the Bank's jurisdiction where the bidding documents included the main aspects of the governing sanctions framework.[27] Here, the record reveals the following: (i) the Specific Procurement Notices described the Bank's financing of the Project and referenced the application of the Bank's procurement rules to the Tenders; (ii) the Bidding Documents incorporated the Specific Procurement Notices verbatim and

[26] See, e.g., Sanctions Board Decision No. 59 (2013) at para. 11 (applying the definitions of sanctionable practices agreed between the borrower and the respondent, rather than those agreed between the borrower and the Bank).

[27] Sanctions Board Decision No. 90 (2016) at para. 21 (noting that the biding documents "included the applicable definitions of sanctionable practices and referenced the Bank's ability to sanction firms and individuals, and to conduct audits for purposes of sanctions proceedings").

included non-standard definitions of sanctionable practices; and (iii) Contracts 4-6 bore the World Bank Group's logo, stated that the Project is "World Bank assisted," and included non-standard definitions of sanctionable practices. This evidence shows that the Respondents were informed of the Bank's involvement in the Project; the application of the Bank's procurement rules; and the types of misconduct prohibited by the World Bank Group – albeit under nonconforming definitions – prior to their participation in the Tenders and signature of Contracts 4-6. In these circumstances, the Sanctions Board finds that the Respondents received sufficient notice of the Bank's jurisdiction over the Project and the main aspects of the applicable framework, resulting in no fundamental unfairness in these proceedings.

44. *Conduct of INT's audit*: The Respondents argue that INT did not have authority to audit and inspect the Respondent Firms under the Financing Agreements, Bidding Documents, or Contracts 4-6. INT maintains that: (i) while the Bank's audit rights were not expressly included in the Bidding Documents and Contracts 4-6, such rights "should be inferred" from the Financing Agreements; and (ii) in any event, the Respondents willingly complied with INT's audit request, thereby rendering any subsequent complaints moot. Contrary to INT's primary argument, the Bank's audit and inspection rights cannot be established by inference; in order to create such authority, the audited party must agree to the corresponding obligation to provide documents and cooperate.[28] There is no requirement, however, that this agreement be formalized under a written contract. Here, INT sent an audit letter to the First Respondent Firm citing the relevant provisions in Contracts 4 and 5 as the foundation for its request. As the parties observe, the Bidding Documents and Contracts 4 and 5 granted audit rights to the relevant PMUs only – without any reference to the Bank. The Respondents were on notice of INT's asserted basis and could have objected to the inspection then. Nevertheless, the Respondents agreed to cooperate, and INT conducted and completed its review based on the Respondents' consent. The Respondents do not assert, and the record does not suggest, that INT engaged in any coercion or made the audit request in bad faith. In these circumstances, the Sanctions Board finds no offense to principles of fairness and due process in the conduct of INT's audit.

45. *Asserted procedural flaws*: The Respondents argue that the Bank failed to address its jurisdiction in the Notices, SAEs, or any other communication from INT, thereby engaging in "manifest error." In contrast to such contentions, the record shows that the Bank repeatedly asserted the basis for its authority during INT's investigation and the present proceedings. In particular, INT's show-cause letters and the SAEs expressly stated that the Project is governed by the January 2011 Procurement Guidelines; and the Notices referenced and appended the SAEs. Accordingly, the Sanctions Board finds the Respondents' procedural objections to be unfounded.

B. Evidence of Fraudulent Practices

46. As addressed in Paragraph 10, INT bears the initial burden to prove that it is more likely than not that the First Respondent Firm engaged in fraudulent practices as defined under the

[28] See Advisory Opinion at para. 34.

January 2011 Procurement Guidelines.[29] Nonetheless, taking into account the specific facts herein, as well as considerations of fairness, and noting that the accusations in question relate to the procurement process in each of the Tenders, the Sanctions Board will also review the record against the non-standard definitions of "fraudulent practice" set forth in the Bidding Documents. Accordingly, the Sanctions Board will determine whether it is more likely than not that the First Respondent Firm (i) engaged in a misrepresentation (ii) that knowingly or recklessly misled, or attempted to mislead, a party (iii) in order to influence the procurement process and obtain a financial benefit (iv) to the detriment of the Recipient.

1. Misrepresentation

47. INT alleges that the First Respondent Firm engaged in misrepresentations by (i) falsely claiming to have performed the Prior Works in its bids for Contracts 1-6 and (ii) submitting forged provisional award and completion certificate letters in support of this purported experience as part of its bids for Contracts 1, 2, 4, and 5. The Respondents do not dispute this element of the fraud allegation.

48. In past decisions finding that respondents submitted forged documents or made false statements, including with respect to work experience, the Sanctions Board considered various factors as indicative of a misrepresentation: contemporaneous evidence reflecting the falsity of information at issue;[30] indicia of forgery in the documents themselves;[31] statements by third parties that were named in or supposedly issued the alleged fraudulent documents;[32] and the respondents' own admissions.[33] Here, the Sanctions Board observes numerous indicia of falsity in the experience documents submitted by the First Respondent Firm. For example, certain letters certify the completion of different works but bear the same dates, reference numbers, and contract amounts; others are nearly identical copies of letters submitted by the Second Respondent Firm with its own bids in support of the same experience. In addition, the Respondents repeatedly acknowledged that the Prior Works were executed by the Second Respondent Firm and that the experience documents submitted by the First Respondent Firm were inauthentic – including during the Individual Respondents' interviews with INT, in the First Respondent Firm's response to the show-cause letter, and at the joint hearing.

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[29] The January 2011 Procurement Guidelines define "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 explains 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. See January 2011 Procurement Guidelines at para. 1.16(a)(ii); n.21.

[30] See, e.g., Sanctions Board Decision No. 81 (2015) at para. 38.

[31] See, e.g., Sanctions Board Decision No. 74 (2014) at para. 26; Sanctions Board Decision No. 97 (2017) at para. 42; Sanctions Board Decision No. 99 (2017) at paras. 19-20.

[32] See, e.g., Sanctions Board Decision No. 112 (2018) at para. 31.

[33] See, e.g., Sanctions Board Decision No. 74 (2014) at para. 26; Sanctions Board Decision No. 97 (2017) at para. 42; Sanctions Board Decision No. 99 (2017) at paras. 19-20; Sanctions Board Decision No. 112 (2018) at para. 31.

49. On the basis of this record, the Sanctions Board finds that it is more likely than not that the First Respondent Firm's representatives made the alleged misrepresentations.

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

50. INT contends that the First Respondent Firm's staff acted with a knowing intent to mislead. The Respondents assert that the misrepresentations at issue were made by a former employee without the participation, approval, or knowledge of the Individual Respondents.

51. The Sanctions Procedures recognize the Sanctions Board's discretion to infer knowledge on the part of a respondent from circumstantial evidence; and state broadly that any kind of evidence may form the basis of conclusions reached by the Sanctions Board.[34] In the past, the Sanctions Board found sufficient evidence of knowledge where a respondent admitted that one or more of its representatives acted knowingly by personally fabricating documents;[35] and where the misrepresentations related to the respondent's own past experience and were therefore too significant to have been made in error or through reckless oversight.[36] Here, the record shows, and the Respondents do not dispute, that the same staff prepared the Respondent Firms' respective bids; that both companies conflictingly claimed to have performed the Prior Works; and that the First Respondent Firm's representations about its own work history were untrue and supported by inauthentic documents. Furthermore, the Respondents concede that at least one employee was directly responsible for forging the documentation in question. Consistent with precedent, these circumstances and factual admissions are sufficient for a finding of knowledge.

52. For the reasons above, the Sanctions Board finds that it is more likely than not that the First Respondent Firm's staff made misrepresentations that knowingly misled the PMUs.

3. To influence the procurement process and obtain a financial benefit

53. INT argues that the First Respondent Firm falsely claimed to have performed the Prior Works in order to satisfy the specifications of the Contracts. The Respondents submit that the First Respondent Firm would have met the prequalification requirements irrespective of these misrepresentations, and that INT failed to prove any distortion to the selection process.

54. The Sanctions Board has consistently found sufficient evidence of intent to influence the selection process, or to obtain a benefit or to avoid an obligation, where misrepresentations

[34] Sanctions Procedures at Section III.A, sub-paragraph 7.01.

[35] See, e.g., Sanctions Board Decision No. 116 (2019) at para. 18 (where a respondent submitted that two junior employees had personally fabricated certain bid certificates; that these documents were later unknowingly presented to the procurement agency by a senior manager; and that said junior employees were subsequently terminated as a disciplinary measure).

[36] See, e.g., Sanctions Board Decision No. 69 (2014) at para. 22; Sanctions Board Decision No. 124 (2020) at para. 26; Sanctions Board Decision No. 126 (2020) at para. 36.

regarding a respondent's work history were made in response to a tender requirement.[37] In the current Cases, the Bidding Documents instructed bidders to demonstrate at least ten years of general experience in construction works, as well as the recent completion of one similar contract. Considering that the Prior Works were directly responsive to these stipulations, the Sanctions Board infers an intent to bolster the First Respondent Firm's chances of qualifying for, and securing, the Contracts. Contrary to the Respondents' arguments, it is irrelevant in this scenario whether the First Respondent Firm would have met the prequalification criteria without the misrepresentations at issue. As the Sanctions Board has previously observed, where a respondent falsifies its work record in response to a specific requirement, the respondent's intent to obtain the contract may be inferred even if the claimed experience is ultimately immaterial to the selection process.[38]

55. In these circumstances, the Sanctions Board finds that it is more likely than not that the First Respondent Firm's staff engaged in misrepresentations in order to influence the Tenders and obtain a financial benefit, i.e., the Contracts.

4. To the detriment of the Recipient

56. INT submits that the Recipient suffered detriment by contracting with a company that used misrepresentations in its bids. The Respondents submit that INT failed to prove any actual harm, such as an impact on the outcome of the Tenders or an inferior level of performance.

57. In previous cases, the Sanctions Board found sufficient evidence of detriment to the borrower, for example, where a respondent's misrepresentations served to distort the procurement process;[39] caused the borrower to expend resources to review and evaluate an invalid bid;[40] or caused the borrower to contract with a company willing to engage in wrongdoing.[41] Here, the First Respondent Firm's bids for Contracts 1-6 admittedly included false statements and forged documentation. Whether or not these misrepresentations were material to the outcome of the Tenders, the First Respondent Firm's conduct caused intangible harm by impairing the integrity of each selection process. Furthermore, the First Respondent Firm was ultimately awarded Contracts 4-6 based on bids containing false information. Regardless of the quality of the First Respondent Firm's eventual performance, the Recipient was misled into contracting with a bidder that knowingly engaged in unethical behavior. Consistent with precedent, this fact constitutes a

[37] See, e.g., Sanctions Board Decision No. 69 (2014) at para. 23 (finding that the respondent submitted forged experience certificates in order to "to avoid disqualification, bolster its apparent experience and competitiveness, and win the tender," where the bidding documents required a minimum level of experience and instructed bidders to submit specific documents to support their stated experience).

[38] See, e.g., Sanctions Board Decision No. 71 (2014) at para. 76; Sanctions Board Decision No. 99 (2017) at paras. 24-25; Sanctions Board Decision No. 124 (2020) at para. 29.

[39] See, e.g., Sanctions Board Decision No. 49 (2012) at para. 28 (noting that "the deliberate use of forged documents to support the [b]id distorted the procurement process insofar as [r]espondent was not promptly disqualified, even though it failed to provide the requisite manufacturer's authorizations and the [b]id was thus invalid").

[40] See, e.g., Sanctions Board Decision No. 49 (2012) at para. 28; Sanctions Board Decision No. 67 (2014) at para. 29; Sanctions Board Decision No. 73 (2014) at para. 34.

[41] See Sanctions Board Decision No. 47 (2012) at para. 29; Sanctions Board Decision No. 88 (2016) at paras. 39–41.

detriment in and of itself.

58. On this basis, the Sanctions Board finds that it is more likely than not that the misrepresentations at issue were made to the detriment of the Recipient.

C. Evidence of Collusive Practices

59. As addressed in Paragraph 10, INT bears the initial burden to prove that it is more likely than not that the Respondents engaged in collusive practices as defined under the January 2011 Procurement Guidelines.[42] Nonetheless, taking into account the specific facts herein, as well as considerations of fairness, and noting that the accusations in question relate to the procurement process in the First Tender, the Sanctions Board will also review the record against the non-standard definition of "collusive practice" set forth in the Bidding Documents. Accordingly, the Sanctions Board will determine whether it is more likely than not that the First Respondent Firm (i) engaged in a scheme or arrangement between two or more parties or tenderers (ii) designed to achieve an improper purpose and establish bid prices at artificial, non-competitive levels, thereby depriving the Recipient of the benefits of free and open competition.

1. Arrangement between two or more parties or tenderers

60. INT submits that the Respondents entered into an arrangement to coordinate the preparation and submission of the Respondent Firms' respective bids for Contracts 1-4. The Respondents argue that the alleged scheme does not satisfy the definition of collusive practice because the Respondent Firms are affiliated entities.

61. In the past, the Sanctions Board found that the first element of collusive practice was established where two purportedly competing bidders coordinated the preparation and pricing of their respective bids.[43] Similarly, here, the record supports a finding that the Respondents engaged in an arrangement whereby the Respondent Firms prepared and priced their bids together, with the direct participation of the Individual Respondents. During interviews with INT, the Individual Respondents and other employees stated that the Respondent Firms share the same office space, personnel, and equipment; that the Individual Respondents are personally involved in procurement activities for both Respondent Firms; that the same staff conducted market surveys for both Respondent Firms and prepared, coordinated, and priced their respective bids for Contracts 1-4; and that the Respondent Firms' bid prices for Contracts 1-4 were approved by the Respondent Managing Director. This testimony is corroborated by documentary evidence. Notably, the Respondent Firms' bids contain numerous similarities that indicate close coordination – including

[42] The January 2011 Procurement Guidelines define "collusive practice" as "an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party." A footnote to this definition explains that the term "parties" "refers to participants in the procurement process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish bid prices at artificial, non-competitive levels, or are privy to each other's bid prices or other conditions." See January 2011 Procurement Guidelines at para. 1.16(a)(iii); n.22.

[43] See, e.g., Sanctions Board Decision No. 45 (2011) at paras. 30-48; Sanctions Board Decision No. 87 (2016) at paras. 75–77; Sanctions Board Decision No. 112 (2018) at paras. 24-27.

the same proposed set of equipment for the works and identical or nearly identical line item prices and final prices. In addition, the First Respondent Firm's bids bear the Respondent Managing Director's signature, and the Second Respondent Firm's bids bear the Respondent Executive Directors' authorized signature, which further demonstrates the Individual Respondents' personal involvement in the scheme.

62. The Respondents do not dispute the above findings of fact; instead, their defense relies on the theory that affiliated companies cannot collude with one another because this would be akin to colluding with oneself. The Sanctions Board is not persuaded by this argument. The relevant legal standards only require that INT establish an arrangement between two or more "parties" or "tenderers," regardless of their ownership structure. Here, there is no question that the Respondent Firms acted as independent parties and tenderers for the purposes of this bidding process. The evidence shows, and the Respondents themselves acknowledge, that the Respondent Firms are legally registered as two separate entities and, as such, submitted competing bids in the First Tender. In these circumstances, the fact that the Respondent Firms are affiliated and operate closely together does not preclude a finding of collusion.

63. In light of the above, and considering the totality of the evidence, the Sanctions Board finds that it is more likely than not that the Respondents engaged in an arrangement within the meaning of the first element of collusive practice.

2. Designed to achieve an improper purpose and establish bid prices at artificial, non-competitive levels, thereby depriving the Recipient of the benefits of free and open competition

64. INT argues that the Respondents' arrangement was designed to fix the Respondent Firms' respective bid prices and influence the First Tender in their favor, thereby reducing open competition. The Respondents deny any impropriety and contend that their actions could not have reasonably affected the procurement process.

65. The Sanctions Board has consistently found the second element of collusive practice satisfied where the record showed identical pricing and other evidence of shared bid preparation and efforts to stifle competition.[44] The same circumstances are present here. As addressed in Paragraph 61, documentary and testimonial evidence reveals that the Respondents secretly coordinated the preparation and pricing of the Respondent Firms' bids, while overtly presenting these companies as genuine competitors to the PMU. Furthermore, during an interview with INT, the Respondent Managing Director acknowledged that the Respondents' intent in "pricing the two companies the same" was to improve the Respondent Firms' chances of securing multiple lots in the First Tender. Specifically, he stated that "maybe the intention was that if, assuming, you know, [the PMU] wanted to award one lot per company, you know, then maybe . . . I would have got one on [the First Respondent Firm], and then on another lot, I would have got it on [the Second Respondent Firm]."

[44] See, e.g., Sanctions Board Decision No. 45 (2011) at para. 51; Sanctions Board Decision No. 87 (2016) at paras. 80-81; Sanctions Board No. 112 (2018) at paras. 24-27.

66. In contesting this evidence, the Respondents assert that the Respondent Managing Director's explanations to INT constituted plain speculation about the purpose of the scheme. In addition, the Respondents maintain that INT has failed to prove that the offering of "near identical prices" had any artificial or non-competitive effect, or that the submission of separate bids by the Respondent Firms actually improved their chances of winning or otherwise impacted the outcome of the First Tender. The Sanctions Board is not convinced by these arguments. First, the Respondent Managing Director's statements about his own prior intent and actions cannot be credibly dismissed as mere conjecture. Second, where price levels factor into collusive intent, what is ultimately at issue is the nature of the pricing process, not the final value of the offer.[45] Under these standards, the Respondent Firms' bid prices were inherently artificial and non-competitive – not because their numerical value was similar, but because they were deliberately established as such by the Respondents with the purpose of influencing the selection process. Third, it is immaterial in this context whether the scheme effectively altered the results of the tender or benefited the Respondents in any way. As the Sanctions Board has previously observed, where the requisite intent has been proved, a finding of collusive practice does not require a showing that the desired outcome actually materialized.[46]

67. On this basis, the Sanctions Board finds that it is more likely than not that the Respondents' arrangement was designed to achieve the improper purpose to influence the First Tender and establish bid prices at artificial, non-competitive levels, thereby depriving the Recipient of the benefits of free and open competition.

D. Evidence of Corrupt Practices

68. As addressed in Paragraph 10, INT bears the initial burden to prove that it is more likely than not that the First Respondent Firm and the Respondent Managing Director engaged in corrupt practices as defined under the January 2011 Procurement Guidelines.[47] Nonetheless, taking into account the specific facts herein, as well as considerations of fairness, and noting that the accusations in question relate to the procurement process and implementation of Contracts 4 and 6, the Sanctions Board will also review the record against the non-standard definitions of "corrupt practice" set forth in the Bidding Documents and Contracts 4 and 6. Accordingly, the Sanctions Board will determine whether it is more likely than not that the First Respondent Firm and the Respondent Managing Director (i) offered or gave anything of value (ii) to induce or influence

[45] See, e.g., Sanctions Board Decision No. 45 (2011) at para. 51 (finding that where the applicable Guidelines define collusion in terms of pricing at "artificial, non-competitive levels," the relevant "inquiry goes to the nature of the pricing, not the simple quantitative level of the prices").

[46] See, e.g., Sanctions Board Decision No. 87 (2016) at para. 81; Sanctions Board Decision No. 113 (2018) at para. 30; Sanctions Board Decision No. 115 (2019) at para. 42.

[47] The January 2011 Procurement Guidelines define "corrupt practice" as "the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party." A footnote to this definition explains that "another party" refers to a public official acting in relation to the procurement process or contract execution; and that "public official" includes World Bank staff and employees of other organizations taking or reviewing procurement decisions. See January 2011 Procurement Guidelines at para. 1.16(a)(i); n.20.

improperly the actions of a public official in relation to the procurement process or contract execution.

1. Offering or giving anything of value

69. INT alleges that the First Respondent Firm and the Respondent Managing Director made the Payment to the Former Procurement Officer. INT also submits that if the Consulting Agreement is found to be legitimate, the corresponding employment opportunity constitutes a thing of value per se. The Respondents do not dispute this element of the corruption allegation.

70. In assessing whether anything of value was given, the Sanctions Board has considered the full scope of available evidence and arguments, including bank records reflecting specific transactions, corporate/personal records of receipts and payments, other internal business records, copies of correspondence, and admissions or detailed testimony of relevant individuals.[48] In the current Cases, the record includes financial documentation showing that the First Respondent Firm made the Payment, i.e., a transfer of NGN 3,441,580 (approximately US$17,268) to the Former Procurement Officer, through a check that was signed and annotated by the Respondent Managing Director with specific instructions to the bank. Moreover, the Respondents repeatedly acknowledged that the Payment was made – including in written statements to INT, in the Response, and at the joint hearing. The Respondents also assert that the First Respondent Firm employed the Former Procurement Officer under the Consulting Agreement, which the Sanctions Board observes would constitute an admission to giving a thing of value in and of itself.[49]

71. In light of the above, the Sanctions Board finds that it is more likely than not that the First Respondent Firm and the Respondent Managing Director gave a thing of value to the Former Procurement Officer.

2. To induce or influence improperly the actions of a public official

72. INT alleges that the Payment was made in order to influence the procurement and/or execution of Contracts 4 or 6 in the First Respondent Firm's favor. According to INT, the circumstances of the Payment indicate corrupt intent. The Respondents maintain that the Payment constituted compensation for legitimate services under the Consulting Agreement.

73. At first consideration, the Sanctions Board observes that the circumstances surrounding the Payment and the Consulting Agreement raise serious red flags. The record reveals, for example,

[48] See, e.g., Sanctions Board Decision No. 60 (2013) at paras. 66–69; Sanctions Board Decision No. 63 (2014) at paras. 56, 58; Sanctions Board Decision No. 70 (2014) at para. 21; Sanctions Board Decision No. 72 (2014) at para. 43; Sanctions Board Decision No. 78 (2015) at paras. 53–54; Sanctions Board Decision No. 87 (2016) at paras. 91–93, 100–101, 107–108; Sanctions Board Decision No. 92 (2017) at paras. 81-82, 87–88; Sanctions Board Decision No. 93 (2017) at paras. 40–43, 49–51, 58–60; Sanctions Board Decision No. 94 (2017) at paras. 24–25; Sanctions Board Decision No. 95 (2017) at paras. 22–23; Sanctions Board Decision No. 102 (2017) at paras. 35–37, 43–45; Sanctions Board Decision No. 108 (2018) at paras. 31–33, 39–40; Sanctions Board Decision No. 109 (2018) at paras. 26–29; Sanctions Board Decision No. 110 (2018) at paras. 22–23.

[49] Cf., e.g., Sanctions Board Decision No. 78 (2015) at paras. 53–54 (finding that a paid internship and subsequent full-time employment opportunity constituted a "thing of value" under the first element of corrupt practice).

that: (i) prior to his retirement as a public official, the Former Procurement Officer represented the PMU in connection with the First and Third Tenders, including by signing Contracts 4 and 6 as a witness; (ii) the Payment was made one week after the First Respondent Firm received a direct deposit of NGN 172,079,569.92 (US$867,992.79) from the World Bank under Contract 4, and two months after the First Respondent Firm received a direct deposit of NGN 463,336,030.08 (US$2,334,186.54) from the World Bank under Contract 6; (iii) the Consulting Agreement was purportedly executed on the same day that the First Respondent Firm received the aforementioned payment from the World Bank under Contract 4; (iv) the Consulting Agreement was signed not by the First Respondent Firm, but by a different entity controlled by the Individual Respondents; (v) the Consulting Agreement did not specify the time or manner of payment, the length of the engagement, or the Former Procurement Officer's hourly rate – even though the price reflects a precise figure (NGN 3,441,580); and (vi) the Respondents failed to present any work product or other contemporaneous supporting documentation for the purported consulting services.

74. On balance, however, the Sanctions Board concludes that INT has not met its initial burden of proof to establish this element of the corruption allegation. In particular, it is concerning that INT did not seek to interview the Former Procurement Officer or directly question the Respondents about the Payment at any point in its investigation. In justifying such decisions, INT represented that: (i) it only became aware of the Payment after the on-site visit had been completed; (ii) interviewing the Former Procurement Officer after INT's inspection would have posed logistical challenges; (iii) the Bank does not have jurisdiction to compel the Former Procurement Officer's testimony; (iv) the Respondents had an opportunity to address and clarify the Payment in their response to the show-cause letter; and (v) the direct and circumstantial evidence available – including an affidavit from the Former Procurement Officer – sufficiently demonstrate corrupt intent. Nevertheless, it remains unclear why there was no attempt whatsoever to obtain the Former Procurement Officer's cooperation, and why his interview could not have been conducted remotely. Given the Former Procurement Officer's central involvement in the underlying facts, his account of events would have been material in confirming or clarifying the aforementioned red flags. Accordingly, INT's failure to at least pursue his testimony raises questions as to the sufficiency of the evidence in the record.[50] Similarly, INT's initial case is weakened by the fact that INT took no steps to re-interview the Respondent Managing Director and the Respondents' relevant personnel after the Payment was uncovered.

75. For the reasons above, the Sanctions Board finds the record, on balance, insufficient to show that it is more likely than not that the First Respondent Firm and the Respondent Managing Director intended to induce or influence improperly the actions of a public official.

E. The Respondent Firms' Liability for the Acts of Their Employees

76. The Sanctions Board has consistently found that an employer can 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

[50] Cf. Sanctions Board Decision No. 81 (2015) at para. 33 (noting that while the Sanctions Procedures do not require INT to interview all potentially relevant witnesses or obtain any information that is not in its possession, an obvious gap in INT's investigation may raise questions about the sufficiency of the evidence in the record).

in part, by the intent of serving their employer.[51] In the present Cases, the record supports a finding that the Respondent Firms' representatives engaged in sanctionable practices in accordance with the scope of their respective duties and with the purpose of serving the interests of each company. For instance, evidence shows that the Respondent Firms' shared staff prepared bids containing misrepresentations on behalf of the First Respondent Firm, and that the Individual Respondents were directly involved in the Respondent Firms' collusive practices. There is no indication in the record that any employees, including the Individual Respondents, acted for any purpose other than serving the Respondent Firms. Moreover, the Respondents do not present, and the record does not provide any basis for, a rogue-employee defense. Thus, the Sanctions Board finds each of the Respondent Firms liable for the misconduct carried out by their employees.

F. Sanctioning Analysis

1. General framework for determination of sanctions

77. 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(ii) 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: (a) reprimand, (b) conditional non-debarment, (c) debarment, (d) debarment with conditional release, and (e) restitution. As stated in Section III.A, sub-paragraph 8.01(ii) of the Sanctions Procedures, the Sanctions Board is not bound by the SDO's recommendations.

78. 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.[52] 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.[53]

79. The Sanctions Board is required to consider the types of factors set forth in Section III.A, sub-paragraph 9.02 of the Sanctions Procedures, which provides a non-exhaustive list of considerations. In addition, the Sanctions Board refers to the factors and principles set out in the World Bank Sanctioning Guidelines (the "Sanctioning Guidelines"). While the Sanctioning Guidelines themselves state that they are not intended to be prescriptive in nature, they provide guidance as to the types of considerations potentially relevant to a sanctions determination. The Sanctioning Guidelines further suggest potentially applicable ranges of increases or decreases from a proposed base sanction of debarment with the possibility of conditional release after a minimum period of three years.

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

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

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

80. 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

81. As the Sanctions Board finds that the First 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)

82. 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 should be applied to each distinct count.[54] By contrast, the Sanctions Board has applied aggravation rather than a separate sanction for multiple sanctionable practices where the counts of misconduct were closely interrelated.[55] The record in the Cases reflects that the First Respondent Firm engaged in fraudulent and collusive practices. The Sanctions Board concludes that these counts of misconduct were factually interconnected, with the First Respondent Firm's fraudulent misrepresentations serving, at least in part, to further the Respondents' collusive arrangement. Accordingly, the plurality of the First Respondent Firm's sanctionable practices warrants aggravation, rather than multiplication, of the base sanction.

3. Factors considered in the present case

a. Severity of the misconduct

83. 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 various examples of severity that may merit aggravation.

84. *Management's role*: 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,

[54] See, e.g., Sanctions Board Decision No. 87 (2016) at para. 151; Sanctions Board Decision No. 118 (2019) at para. 80.

[55] See, e.g., Sanctions Board Decision No. 60 (2013) at para. 143; Sanctions Board Decision No. 115 (2019) at para. 63.

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.[56] The Sanctions Board notes its earlier finding that the Individual Respondents – who undisputedly hold senior positions in the Respondent Firms – participated in the collusive practices at issue (see Paragraphs 59-67 above). In these circumstances, the Sanctions Board finds sufficient basis to aggravate the sanctions of each of the Respondent Firms.

85. *Mode of the misconduct*: Section IV.A of the Sanctioning Guidelines suggests that the specific manner of misconduct (pattern, sophistication) can render that misconduct more "severe" for purposes of sanctioning analysis. The Sanctions Board has previously applied aggravation for conduct found to be particularly severe,[57] egregious,[58] or sophisticated.[59] Here, INT argues that the First Respondent Firm's submission of multiple misrepresentations and forged documents in six bids across three Tenders constitutes severe conduct warranting aggravation. The Respondents do not address this sanctioning factor. The Sanctions Board concludes that the First Respondent Firm's mode and pattern of misconduct are sufficiently severe as to justify aggravation.

b. Voluntary corrective action

86. Section III.A, sub-paragraph 9.02(e) of the Sanctions Procedures provides for mitigation where the 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.[60]

87. *Internal action against responsible individuals*: 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 record was insufficient to demonstrate that the respondent took timely and appropriate disciplinary action in response to the misconduct.[61] In the current Cases, the Respondents submit that the First Respondent Firm merits mitigation for having terminated the employee responsible for the

[56] See, e.g., Sanctions Board Decision No. 66 (2014) at para. 36; Sanctions Board Decision No. 78 (2015) at para. 77.

[57] See, e.g., Sanctions Board Decision No. 122 (2020) at para. 31; Sanctions Board Decision No. 126 (2020) at para. 47.

[58] See, e.g., Sanctions Board Decision No. 41 (2010) at para. 88.

[59] See, e.g., Sanctions Board Decision No. 77 (2015) at para. 49.

[60] See, e.g., Sanctions Board Decision No. 106 (2017) at para. 39.

[61] See, e.g., Sanctions Board Decision No. 44 (2011) at paras. 71-72; Sanctions Board Decision No. 56 (2013) at paras. 65-66; Sanctions Board Decision No. 106 (2017) at para. 41.

misrepresentations at issue. INT does not specifically address this sanctioning factor. The Sanctions Board finds that the Respondents' factual claims lack any evidentiary support and, therefore, are not persuasive. In any event, considering that no internal action was taken with respect to management, the First Respondent Firm's purported disciplinary measures would not have constituted an adequate response to the misconduct in these particular circumstances. Accordingly, no mitigation is warranted on this basis.

88. *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 previously declined to apply mitigation where the record contained no evidence that the respondent had in fact implemented compliance measures;[62] or where the evidence did not demonstrate the type of measures that would prevent or address the misconduct at issue.[63] Here, the Respondents submit that the Respondent Firms merit mitigation for having instituted a growing compliance program that includes an employee handbook, a compliance checklist for bid submission, and a dedicated legal and compliance department. INT opposes any mitigation on this basis, arguing that the Respondents failed to prove the existence or effectiveness of the asserted integrity measures. Indeed, there is no evidence that the Respondent Firms have established a compliance function or implemented any integrity policies or procedures. The only documents in the record are the aforementioned handbook and checklist, which neither address the types of misconduct at issue, nor in any way suggest a genuine effort to reform the Respondent Firms' practices. In these circumstances, the Sanctions Board declines to afford any mitigation under this sanctioning factor.

c. Cooperation

89. Section III.A, sub-paragraph 9.02(e) of the Sanctions Procedures provides for mitigation where a respondent "cooperated in the investigation or resolution of the case." Section V.C of the Sanctioning Guidelines identifies a respondent's assistance with INT's investigation and voluntary restraint from bidding on Bank-financed tenders as examples of cooperation.

90. *Assistance and/or ongoing cooperation*: Section V.C.1 of the Sanctioning Guidelines provides that mitigation may be appropriate for assistance with INT's investigation or ongoing cooperation, "[b]ased on INT's representation that the respondent has provided substantial assistance" as well as "the truthfulness, completeness, [and] reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of assistance." According to INT, the Respondents substantially cooperated with INT's investigation, including by providing documents; making staff available for interviews; responding to the show-cause letters; and reporting misconduct potentially committed by competitors. The Respondents request additional credit because they cooperated with INT in spite of their belief that the Bank lacked jurisdiction to audit them. The Sanctions Board notes that the Respondents' asserted belief is not a relevant factor in this analysis. This notwithstanding, based on the totality of the evidence and INT's representations, the Sanctions Board finds that the Respondents' cooperation justifies mitigation.

[62] See, e.g., Sanctions Board Decision No. 45 (2011) at para. 74; Sanctions Board Decision No. 85 (2016) at para. 44.

[63] See, e.g., Sanctions Board Decision No. 65 (2014) at para. 77; Sanctions Board Decision No. 69 (2014) at para. 39.

91. *Voluntary restraint*: Section V.C.4 of the Sanctioning Guidelines identifies a respondent's voluntary restraint from bidding on Bank-financed tenders pending the outcome of an investigation as a form of assistance and/or cooperation. In past cases, the Sanctions Board's decision to apply or deny mitigation on these grounds has depended on whether or not the asserted restraint was corroborated by relevant evidence.[64] Where mitigation was warranted, the Sanctions Board has considered the restraint period up to the point when the respondent's temporary suspension commenced.[65] In the current Cases, the parties agree that the Respondents have refrained from bidding on Bank-financed contracts since December 2018. Accordingly, the Sanctions Board applies mitigation considering the period between the date identified by the parties and the beginning of the Respondents' respective temporary suspensions.

d. Period of temporary suspension

92. Pursuant to Section III.A, sub-paragraph 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account the Respondents' periods of temporary suspension. The First Respondent Firm and the Individual Respondents have been suspended since the issuance of the Case 680 Notice on March 6, 2020, and the Second Respondent Firm has been suspended since the issuance of the Case 681 Notice on May 7, 2020.

e. Other considerations

93. 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."

94. *Lack of candor*: The Sanctions Board has previously applied aggravation where the record reflected a respondent's persistent and implausible denials of responsibility or knowledge of the misconduct, including arguments predicated on an uncorroborated version of events.[66] Here, INT submits that the First Respondent Firm's and the Individual Respondents' repeated denials of responsibility for the fraudulent practices at issue are inconsistent, implausible, and contradicted by evidence, thereby warranting aggravation for lack of candor. The Respondents do not address this sanctioning factor. The record reveals that since the early stages of INT's investigation, the Respondents made certain factual concessions and acknowledged that the misrepresentations took place. While it is true that the First Respondent Firm and the Individual Respondents did not admit to wrongdoing, the Sanctions Board finds that their denials of responsibility were reasonably presented in the usual course of argument and defense. In these circumstances, aggravation is not justified.

95. *Absence of a history of misconduct*: Without expressly requesting mitigation, the Respondents submit that the Individual Respondents have not been previously sanctioned by the

[64] See, e.g., Sanctions Board Decision No. 73 (2014) at para. 50; Sanctions Board Decision No. 79 (2015) at para. 51; Sanctions Board Decision No. 102 (2017) at para. 80.

[65] See, e.g., Sanctions Board Decision No. 56 (2013) at para. 79.

[66] See, e.g., Sanctions Board Decision No. 61 (2013) at para. 51; Sanctions Board Decision No. 63 (2014) at para. 121; Sanctions Board Decision No. 71 (2014) at para. 107; Sanctions Board Decision No. 77 (2015) at para. 59.

Bank. Pursuant to longstanding Sanctions Board precedent, the absence of aggravating circumstances (such as a history of adjudicated misconduct) is a neutral factor not deserving of mitigating credit.[67] Accordingly, the Sanctions Board declines to apply mitigation on this basis.

96. *Adverse consequences of debarment*: The Respondents argue that their business has been suffering as a result of the COVID-19 pandemic and that the Recipient's domestic market would be negatively affected if the Respondents were declared ineligible for an extended period of time. The Sanctions Board has consistently declined to consider the adverse consequences of a sanction as grounds for mitigation,[68] including where the respondent asserted an impact beyond its individual business.[69] Similarly, here, the Sanctions Board finds that no mitigation is warranted.

97. *Scope of sanctions*: Under the sanctions framework, any sanction imposed on a respondent shall apply to all entities controlled by that respondent, unless that respondent demonstrates that: (i) those entities are free of responsibility for the misconduct; (ii) sanctioning those entities would be disproportional; and (iii) sanctioning those entities is not reasonably necessary to prevent evasion.[70] In the present Cases, the Respondents plead for leniency on behalf of the Individual Respondents' controlled Affiliates. As a basis for this request, inter alia, the Respondents assert that these entities were not involved in the misconduct at issue, and suggest that the risk of evasion is low because these entities would not qualify to bid on Bank-financed contracts. The Sanctions Board is unpersuaded by these arguments, which fall short of the aforementioned criteria. Accordingly, the sanctions imposed by this decision shall apply to those Affiliates that are directly or indirectly controlled by any of the Respondents.[71]

G. Determination of Appropriate Sanctions

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

i. the First Respondent Firm, together with any entity that is an Affiliate directly or indirectly controlled by the First Respondent Firm, shall be, and hereby declares that it is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;[72] (ii) be a nominated sub-contractor,

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[67] See, e.g., Sanctions Board Decision No. 85 (2016) at para. 50; Sanctions Board Decision No. 122 (2020) at para. 36.

[68] See, e.g., Sanctions Board Decision No. 98 (2017) at para. 72; Sanctions Board Decision No. 126 (2020) at para. 58.

[69] See, e.g., Sanctions Board Decision No. 61 (2013) at para. 50; Sanctions Board Decision No. 106 (2017) at para. 49; Sanctions Board Decision No. 114 (2018) at para. 66.

[70] Sanctions Procedures, Section III.A, sub-paragraph 9.04(b); The World Bank Groups Sanctions Regime: Information Note (November 2011) ("Information Note") at p. 21.

[71] This includes the specified Affiliates identified as controlled by the Individual Respondents in the Case 680 Notice.

[72] 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.

consultant, manufacturer or supplier, or service provider[73] 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 four (4) years and three (3) months, beginning from the date of this decision, the First Respondent Firm may be released from ineligibility only if it has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, adopted and implemented an effective integrity compliance program in a manner satisfactory to the World Bank Group. This sanction is imposed on the First Respondent Firm for fraudulent and collusive practices as defined in Paragraph 1.16(a)(ii) and Paragraph 1.16(a)(iii), respectively, of the January 2011 Procurement Guidelines.

ii. the Respondent Managing Director and the Respondent Executive Director, together with any entity that is an Affiliate directly or indirectly controlled by either of these Individual Respondents, shall be, and hereby declares that they are, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;[74] (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider[75] 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 six (6) months beginning from the date of this decision, each of these Individual Respondents may be released from ineligibility only if he has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, taken appropriate remedial measures to address the sanctionable practices for which he has been sanctioned, including by completing training and/or other educational programs that demonstrate a continuing commitment to personal integrity and business ethics, and by adopting and implementing 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 World Bank Group. This sanction is imposed on the Respondent Managing Director and the Respondent Executive Director for collusive practices as defined in Paragraph 1.16(a)(iii) of the January 2011 Procurement Guidelines.

iii. the Second Respondent Firm, together with any entity that is an Affiliate directly or indirectly controlled by the Second Respondent Firm, shall be, and hereby declares that it is, ineligible to (i) be awarded or otherwise benefit from a Bank-

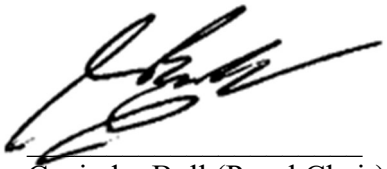
[73] A nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider (different names are used depending on the particular bidding document) is one which has been: (i) included by the bidder in its pre-qualification application or bid because it brings 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.

[74] See supra n.72.

[75] See supra n.73.

financed contract, financially or in any other manner;[76] (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider[77] 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 six (6) months beginning from the date of this decision, the Second Respondent Firm may be released from ineligibility only if it has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, adopted and implemented an effective integrity compliance program in a manner satisfactory to the World Bank Group. This sanction is imposed on the Second Respondent Firm for collusive practices as defined in Paragraph 1.16(a)(iii) of the January 2011 Procurement Guidelines.

99. The Respondents' ineligibility shall extend across the operations of the World Bank Group. The Bank will also provide notice of the declaration of ineligibility of the First Respondent Firm to the other multilateral development banks ("MDBs") that are party to the Agreement for Mutual Enforcement of Debarment Decisions (the "Cross-Debarment Agreement") so that they may determine whether to enforce the declaration of ineligibility of the First Respondent Firm with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and procedures.[78]



Cavinder Bull (Panel Chair)

On behalf of the
World Bank Group Sanctions Board

Cavinder Bull
Mark Kantor
Maria Vicien Milburn

[76] See supra n.72.

[77] See supra n.73.

[78] 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 https://www.worldbank.org/en/about/unit/sanctions-system/sanctions-board#3 (see "Background and Reference Documents" section, item titled "Agreement for Mutual Enforcement of Debarment Decisions (April 9, 2010)").