

Date of issuance: February 25, 2020

**Sanctions Board Decision No. 125
(Sanctions Case No. 477)**

**IDA Credit No. 3831-DRC
Democratic Republic of Congo**

Decision of the World Bank Group¹ Sanctions Board imposing a sanction of debarment on the respondent individual in Sanctions Case No. 477 (the “Respondent”), together with certain Affiliates,² for a period of ineligibility of five (5) years and six (6) months beginning from the date of this decision. This sanction is imposed on the Respondent for a corrupt practice.

I. INTRODUCTION

1. The Sanctions Board convened in December 2019 as a panel composed of John R. Murphy (Chair), Olufunke Adekoya, and Rabab Yasseen to review this case. Neither the Respondent nor the World Bank Group’s Integrity Vice Presidency (“INT”) requested a hearing in this matter. Nor did the Chair decide, in his discretion, to convene a hearing. Accordingly, the Sanctions Board deliberated and reached its decision based on the written record.³

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 Respondent on March 28, 2019 (the “Notice”), appending the Statement of Accusations and Evidence (the “SAE”) submitted by INT to the SDO (undated);
- ii. Explanation submitted by the Respondent to the SDO on April 30, 2019 (the “Explanation”);

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 sanction imposed by this decision applies only to those Affiliates that are directly or indirectly controlled by the Respondent. See infra Paragraph 49.

³ See Sanctions Procedures at Section III.A, sub-paragraph 6.01.

- iii. Response submitted by the Respondent to the Secretary to the Sanctions Board on August 19, 2019 (the “Response”);
- iv. Reply submitted by INT to the Secretary to the Sanctions Board on September 17, 2019 (the “Reply”);
- v. Additional submission filed by the Respondent with the Secretary to the Sanctions Board on October 9, 2019 (the “Additional Submission”); and
- vi. Comments on the Additional Submission filed by INT with the Secretary to the Sanctions Board on October 15, 2019 (“INT’s Comments”).

3. On March 28, 2019, pursuant to Section III.A, sub-paragraphs 4.01 and 4.02 of the Sanctions Procedures, the SDO issued the Notice and temporarily suspended the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, from eligibility⁴ with respect to any Bank-Financed Projects,⁵ pending the final outcome of these sanctions proceedings. The Notice specified that the temporary suspension would apply across the operations of the World Bank Group. In addition, pursuant to Section III.A, sub-paragraphs 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the SDO recommended in the Notice the sanction of debarment with conditional release for the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent. The SDO recommended a minimum period of ineligibility of four (4) years and three (3) months, after which period the Respondent 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 World Bank Group’s Integrity Compliance Officer that (i) he has taken appropriate remedial measures to address the sanctionable practice for which the Respondent has been sanctioned; (ii) he has completed training and/or other educational programs that demonstrate a continuing commitment to personal integrity and business ethics; and (iii) any entity that is an Affiliate directly or indirectly controlled by the Respondent has adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank.

II. GENERAL BACKGROUND

4. This case arises in the context of the Southern African Power Market Project Phase I (the “Project”) in the Democratic Republic of Congo (the “Borrower”) that sought to develop an efficient regional power market in the Southern African Development Community to create conditions for accelerated investments in the power sector, increase competition, and foster regional economic integration. On January 21, 2004, IDA and the Borrower entered into a development credit agreement (the “Credit Agreement”) for the approximate equivalent of

⁴ 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.

⁵ 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).

US\$178.6 million to support the Project. On the same day, IDA entered into a project agreement (the “Project Agreement”) with the Project’s implementation unit (the “PIU”) setting out, *inter alia*, terms for the execution of the Project. The Project became effective on May 17, 2004, and closed on September 30, 2016.

5. On December 13, 2004, the PIU entered into two Bank-financed consultant service agreements (the “Consultant Agreements”) with a firm (the “Consultant”) for the latter to render various services relating to the Project, including the conduct of feasibility studies, the development of technical specifications, and the provision of assistance to the PIU during the tender process. The Respondent, who was employed as an engineer with the Consultant at that time, was named the “Project Manager” under each of the Consultant Agreements.

6. In May 2010, the entity established by the Borrower to handle the procurement and financial management of the country’s projects issued bidding documents for a contract for the Rehabilitation of the Existing [Project] Corridor Overhead Lines (the “Contract”). The Contract was ultimately awarded to a firm (the “Winning Bidder”), which named one insulator manufacturer (the “Manufacturer”) in its bid to supply glass insulators for the Contract. The PIU and the Winning Bidder signed the Contract in February 2012.

7. INT alleges that the Respondent engaged in a corrupt practice by soliciting a payment from the Manufacturer in exchange for influencing the tender process for the Contract to favor the Manufacturer as insulator supplier.

III. APPLICABLE STANDARDS OF REVIEW

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

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

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

11. *Applicable definition of corrupt practice:* The Credit Agreement stated that consultants’ services shall be governed by the provisions of the Project Agreement. The Project Agreement, in turn, provided that the World Bank’s Guidelines: Selection and Employment of Consultants by World Bank Borrowers (January 1997, revised September 1997, January 1999, and May 2002) (the “May 2002 Consultant Guidelines”) would govern the procurement of consultants’ services.

The Consultant Agreements contained a non-standard definition of “corrupt practice” (i.e., a definition different from those appearing in any version of the potentially applicable Guidelines) and did not refer to World Bank Group sanctions. The Sanctions Board does not consider the deviations in the definition of corrupt practice under the Consultant Agreements to be material under the circumstances so as to indicate an intentional departure from the May 2002 Consultant Guidelines.⁶ As the Consultant Agreements incorporate a definition of corrupt practice in accordance with the same version of the Guidelines referenced in the Project Agreement, and taking into account that the Sanctions Board has in the past considered as applicable a definition appearing in a contract that did not refer to World Bank Group sanctions,⁷ the Sanctions Board determines that the alleged corrupt practice in this case has the meaning set forth in the May 2002 Consultant Guidelines. Paragraph 1.25(a)(i) of these Guidelines defines “corrupt practice” as “the offering, giving, receiving, or soliciting any thing of value to influence the action of a public official in the selection process or in contract execution.” Although the May 2002 Consultant Guidelines do not define the scope of the term “public official,” subsequent versions of the World Bank’s Consultant Guidelines include a footnote stating that the term includes “employees of other organizations taking or reviewing procurement or selection decisions.”⁸ The Sanctions Board has previously held that this footnote serves as a clarification of the pre-existing standard rather than an amendment.⁹ Accordingly, the Sanctions Board determines that an employee of an organization taking or reviewing procurement or selection process decisions may be deemed a “public official” under the May 2002 Consultant Guidelines.

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT’s Principal Contentions in the SAE

12. INT alleges that the Respondent solicited a commission payment from the Manufacturer in the amount of 10% – later reduced to 6.5% – of the Manufacturer’s purchase order value. INT asserts that, in exchange for this commission, the Respondent (i) drafted technical specifications in the bidding documents for the Contract to restrict competition in favor of the Manufacturer’s insulators, and (ii) selected the Manufacturer’s holding company (the “Holding Company”) to conduct laboratory tests that determined the number of insulators to be replaced and supplied under the Contract. According to INT, the Manufacturer paid the Respondent’s commission through an intermediary company (the “Intermediary”). INT requests that aggravation be applied on the basis of the Respondent’s use of sophisticated means, his central role in the misconduct, and the harm caused to the Project. INT further contends that, although the Respondent agreed to be interviewed

⁶ See Sanctions Board Decision No. 92 (2017) at para. 78.

⁷ Sanctions Board Decision No. 100 (2017) at para. 12.

⁸ See, e.g., the World Bank’s Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004) at p. 12, n. 15; the World Bank’s Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004, revised October 1, 2006) at p. 8, n. 17.

⁹ Sanctions Board Decision No. 66 (2014) at para. 25.

by INT and responded to the show-cause letter, he failed to show the type of candor and cooperation that would warrant mitigation.

B. The Respondent’s Principal Contentions in His Explanation and Response

13. The Respondent denies soliciting or receiving any commission from the Manufacturer. While the Respondent recognizes that he relied on the Manufacturer during the development of the technical specifications, he claims that he did so not because of any intent to earn a commission, but because of immense pressure and time constraints. The Respondent asserts that he had acted “directly against the interest” of the Manufacturer when he advocated for another bidder (the “Competitor”) that had named two insulator manufacturers – including the Manufacturer – in its bid. According to the Respondent, the eventual selection of the Winning Bidder and, consequently, the use of the Manufacturer’s insulators were beyond his control. Further, the Respondent contends that he, along with the PIU and the Bank, decided to use the laboratories of the Holding Company to conduct the tests that determined the condition of the existing insulators after assessing the company to be the “most experienced and cost-effective option.” Finally, the Respondent opposes INT’s request for aggravation and submits that mitigation is warranted for his cooperation with INT’s investigation, his acceptance of responsibility, the period of temporary suspension already served, the passage of time, the disproportionality of the recommended sanction vis-à-vis the sanctions imposed on the Consultant and the Manufacturer, and his personal hardship and adverse financial consequences.

C. INT’s Principal Contentions in the Reply

14. INT asserts that the SAE already addresses most of the Respondent’s arguments. With respect to the Respondent’s claim that he had acted against the interest of the Manufacturer by advocating for the Competitor, INT contends, *inter alia*, that (i) all the bidders, including the Competitor, proposed the Manufacturer as an insulator manufacturer; and (ii) there is nothing in the bid evaluation report suggesting that the Competitor preferred, let alone selected, the other insulator manufacturer that it named in its bid. In addition to the sanctioning factors argued in the SAE, INT submits that (i) the Respondent’s “implausible denials in the Response” reflect a lack of candor that warrants aggravation; (ii) the content, scope, and timing of the Respondent’s “concessions” do not deserve mitigating credit; and (iii) the Sanctions Board does not consider professional or personal hardships, and sanctions resulting from settlements in assessing the applicable sanction in this case.

D. The Respondent’s Principal Contentions in His Additional Submission

15. At the Sanctions Board Chair’s instruction, the Respondent was requested to clarify whether he is contesting both INT’s allegations and the recommended sanction, or only the latter. On October 9, 2019, the Respondent submitted the Additional Submission stating that he is contesting both.

E. INT's Principal Contentions in Its Comments on the Additional Submission

16. Upon the Sanctions Board Chair's invitation, INT filed its Comments on the Additional Submission on October 15, 2019. While INT states that it already addressed the Respondent's arguments in the Reply, it nevertheless notes that the Respondent makes further statements in the Additional Submission that do not align with the record, "make[] no sense," or have "no documentary support."

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

17. The Sanctions Board will first consider whether it is more likely than not that the Respondent engaged in the alleged corrupt practice. The Sanctions Board will then determine what sanction, if any, should be imposed on the Respondent.

A. Evidence of Corrupt Practice

18. In accordance with the definition of "corrupt practice" under the May 2002 Consultant Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondent (i) offered, gave, received, or solicited any thing of value (ii) to influence the action of a public official in the selection process or in contract execution.¹⁰

1. Soliciting any thing of value

19. INT alleges that the Respondent solicited a payment from the Manufacturer in relation to the Contract. Specifically, INT asserts that the Respondent solicited a commission in the amount of 10% – later reduced to 6.5% – of the Manufacturer's purchase order value, and that the Manufacturer paid this commission through the Intermediary. The Sanctions Board notes that INT does not separately allege receipt of the commission. As for the Respondent, he argues that he neither solicited nor received any commission from the Manufacturer.

20. The record supports a finding that it is more likely than not that the Respondent solicited a commission from the Manufacturer. Emails between the Manufacturer's Area Manager for Africa (the "Africa Manager") and Executive Vice President for Sales and Marketing (the "Executive VP") indicate that the Respondent requested a "budget price." While it appears from their correspondence that the Respondent had initially asked for a 20% commission purportedly to accommodate local actors, the Manufacturer's employees agreed to "a 10% commission based on a FOB price." In an email addressed specifically to the Respondent and sent to the email address of the Respondent's wife, the Africa Manager stated that, following his phone conversation with the Respondent, the Africa Manager confirms the agreement to pay the Respondent "a marketing fee of 10%" based on the order value. When confronted with these emails during their interviews, the Africa Manager and the Executive VP each affirmed that the Respondent had asked the Manufacturer for a commission. While the Africa Manager was unsure as to the ultimate recipient

¹⁰ May 2002 Consultant Guidelines at para. 1.25(a)(i).

of the solicited commission, the Executive VP expressed certainty that it was meant for the Respondent, and was not to be passed directly or indirectly to any other public officials.

21. With respect to INT's assertion that the Manufacturer paid the Respondent's commission through the Intermediary, documentary evidence indicates that the Manufacturer and the Intermediary entered into an agency relationship, and that the Manufacturer made bank transfers to the Intermediary. Further, the Executive VP stated during his interview that the Intermediary was "used as a vehicle" to give the Respondent his commission and conceal the corresponding payments. However, the totality of the evidence is not sufficient to support a finding that the Respondent more likely than not engaged the Intermediary to receive and conceal the commission he solicited from the Manufacturer, much less that the Intermediary passed on the payments it received from the Manufacturer to the Respondent. In any event, the Sanctions Board considers that the record as a whole, including the evidence discussed in Paragraph 20, is sufficient to establish the Respondent's solicitation so as to satisfy the first element of corrupt practice.

22. The Respondent maintains that he did not solicit or receive any commission from the Manufacturer, and asserts that there is no direct evidence showing his involvement in the alleged corrupt arrangement. The Sanctions Board finds the Respondent's arguments unconvincing. Apart from the fact that INT does not allege receipt, the first element of corrupt practice requires only that the Respondent solicited a thing of value, and not that he actually receive the commission he solicited.¹¹ Further, while most of the emails discussed in Paragraph 20 did not originate from, address, or copy the Respondent, the language of those emails indicates that the Manufacturer's employees were acting in response to the Respondent's solicitation. The Respondent has not advanced any evidence to rebut the implications of any of these emails, including, notably, the email that the Africa Manager specifically addressed to the Respondent and sent to the email address of the Respondent's wife that contained unambiguous information about the corrupt arrangement with the Manufacturer. The Respondent has instead relied on uncorroborated assertions.¹² Applying the evidentiary standard prescribed by the Sanctions Procedures, the Sanctions Board finds that it is more likely than not that the Respondent solicited a thing of value from the Manufacturer.

2. To influence the action of a public official in the selection process or in contract execution

23. INT alleges that the Respondent solicited a payment from the Manufacturer in exchange for influencing the tender process for the Contract in favor of the Manufacturer. Specifically, INT asserts that, during the same period when the Respondent solicited a commission from the Manufacturer, the Respondent designed the technical specifications in close coordination with the

¹¹ Sanctions Board Decision No. 63 (2014) at para. 59 (finding that the first element of corrupt practices requires only that the respondents have offered or given something of value, not that the earmarked funds were ultimately disbursed).

¹² See Sanctions Board Decision No. 121 (2019) at para. 22 (reaching a finding that the respondent entered into a collusive arrangement with a firm and the project implementation unit on the basis of emails exchanged among employees of the firm, and on the respondent's failure to advance any evidence to rebut the implications of those emails).

Manufacturer, and selected the Holding Company to conduct the insulator testing to determine the number of insulators to be replaced under the Contract. The Respondent argues that his “close contacts” with the Manufacturer during the development of the technical specifications were not motivated by corrupt intent, but rather “borne out of the immense pressure he was under to complete the project as quickly as possible.”

24. Based on the definition under the May 2002 Consultant Guidelines, the second element of corrupt practice requires an analysis of whether the Respondent, as a public official taking or reviewing selection or procurement process decisions, solicited a commission to influence his own behavior in the execution of the Bank-financed Consultant Agreements. An inference of corrupt intent may be drawn from evidence that the Respondent solicited a thing of value from a third party potentially interested in a procurement or selection process, in which he played a significant role as the Project Manager pursuant to the Bank-financed Consultant Agreements.¹³

25. *Designing technical specifications in coordination with the Manufacturer:* The Respondent acknowledges that he drafted the technical specifications in the bidding documents for the Contract in close coordination with the Manufacturer. During INT’s interview with the Respondent, the Respondent confirmed that he directly copied certain parts of the technical specifications, which he requested and received from the Africa Manager. Contemporaneous documentary evidence supports the Respondent’s statements. For example, emails between the Respondent and the Africa Manager from January to February 2010 indicate the following: (i) the Respondent requested from the Manufacturer technical specifications to be incorporated into the bidding documents; (ii) the Africa Manager sent the Respondent drawings, schedules, and specifications of the Manufacturer’s insulators; (iii) the Respondent prompted the Africa Manager to clarify the Manufacturer’s insulators vis-à-vis generic insulators; (iv) the Africa Manager provided the requested clarification, and reminded the Respondent to use generic designations and not to show the reference numbers of the Manufacturer’s insulators in the bidding documents; and (v) the Respondent asked the Africa Manager to “check the final version” of the technical specifications, which the Africa Manager then reviewed and approved. A comparison between the bidding documents for the Contract and the documents sent by the Africa Manager in these emails reveal that the technical descriptions, characteristics, and definitions are largely identical.

26. *Engaging the Holding Company to conduct testing:* The Respondent explained during his interview with INT that he effectively had the sole discretion to select the laboratory that would conduct the insulator testing, as the PIU simply acquiesced in his proposal. Although the Respondent stated that his selection of the Holding Company was made on a purely objective basis, documentary evidence indicates the contrary.

27. First, the selection of the Holding Company reveals a conflict of interest, considering that its findings would determine – and did determine – the volume of insulators that the Manufacturer may potentially provide under the Contract. Indeed, the official report of the insulator testing reflected both the logos of the Holding Company and the Manufacturer, and was signed by the Manufacturer’s Scientific Director (the “Scientific Director”). After the release of this report, the Borrower’s Ministry of Finance requested additional financing from the World Bank, as the initial

¹³ Sanctions Board Decision No. 78 (2015) at paras. 65-66.

estimate of US\$22.36 million for the rehabilitation of the existing power lines ballooned to US\$144 million on account of the Holding Company's recommendation to replace all insulators.

28. Second, evidence shows that the Respondent was aware of this conflict of interest. Before contacting the Holding Company, the Respondent reached out to an independent laboratory that did not manufacture insulators (the "Independent Laboratory"). Rather than avoiding a known conflict of interest, the Respondent wrote to an employee of the Consultant explaining that, while the Respondent had initially wanted the Independent Laboratory to conduct the tests, he realized that the Manufacturer "knows perhaps more and would even be more committed, obviously with an ulterior motive." This "ulterior motive" is further reflected in several emails among employees of the Manufacturer. For instance, before the conduct of the insulator testing and prior to knowing the extent of the necessary insulator replacement, the Africa Manager sent an email to the Executive VP stating that the Respondent "confirms the quantity of 700000 insulators," and "would like the tests, which would help him justify his choice to the [Bank], to be conducted as quickly as possible." In the same email, the Africa Manager added, "[i]f all goes well, [the Manufacturer] should be the only ones capable of meeting the performance certificate requirements."

29. Finally, evidence suggests that the Respondent took steps to conceal this conflict of interest. For example, the Respondent sent an email to the Scientific Director stating that it would be "extremely desirable" to have an independent expert witness the testing "to avoid any possibl[e] doubt in the results." In an email to the Manufacturer's employees, the Scientific Director provided a summary of the insulator testing that was carried out in the presence of the Respondent and three PIU engineers. In the same email, the Scientific Director stated: "I think that we have people in love with [the Manufacturer]." The Executive VP replied to this email remarking, "[m]ission accomplished."

30. Considering the above evidence, the record supports a finding that the Respondent used his position of authority over the Project and the Contract, and provided favorable treatment to the Manufacturer in exchange for the commission that he solicited. Because INT has met its evidentiary burden, the burden of proof shifts to the Respondent to demonstrate that it is not more likely than not that he acted with the intent to influence his own actions in the execution of the Consultant Agreements. In denying that he had corrupt intent, the Respondent claims that he had acted "directly against the interest" of the Manufacturer by advocating for the Competitor instead of the Winning Bidder. The Respondent further contends that his decision to engage the Holding Company to conduct laboratory tests was made in coordination with the PIU and the Bank, and on the basis that the company was the "most experienced and cost-effective option." The Sanctions Board does not find these arguments persuasive. First, even if the Respondent had indeed advocated for the Competitor, the Competitor named the Manufacturer and another insulator manufacturer in its bid for the Contract. There is no evidence showing that the Competitor was inclined to use the other insulator manufacturer over the Manufacturer. Second, the Respondent did not advance evidence indicating that the selection of the Holding Company to conduct the testing was made in coordination with the PIU and the Bank. To the contrary, as discussed in Paragraph 26, the Respondent himself explained during his interview that the selection of the Holding Company was his sole decision, with which the PIU passively agreed. Even assuming that the Respondent did coordinate with the PIU and the Bank in choosing the Holding Company, it

need not be established that the selection of the Holding Company to conduct the insulator testing was based on the Respondent's decision alone. What simply needs to be shown – and what the record in fact shows – is that the Respondent intended to influence his own behavior.

31. For all the reasons discussed above, and considering the totality of the evidence in the record, the Sanctions Board finds that it is more likely than not that when the Respondent solicited a commission from the Manufacturer, he acted with intent to influence his own actions in the execution of the Consultant Agreements.

B. Sanctioning Analysis

1. General framework for determination of sanctions

32. 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.

33. 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.¹⁴ 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.¹⁵

34. 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.

35. 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.

¹⁴ See, e.g., Sanctions Board Decision No. 40 (2010) at para. 28.

¹⁵ See Sanctions Board Decision No. 44 (2011) at para. 56.

2. Factors considered in the present case

a. Severity of the misconduct

36. 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 sophisticated means and central role in the misconduct as examples of severity.

37. *Sophisticated means*: Section IV.A.2 of the Sanctioning Guidelines states that this factor may include “the complexity of the misconduct (e.g., degree of planning, diversity of techniques applied, level of concealment); the number and type of people or organizations involved; whether the scheme was developed or lasted over a long period of time; [and] if more than one jurisdiction was involved.” INT asserts that aggravation is warranted for the Respondent’s (i) manipulation of technical specifications, (ii) use of the Holding Company to conduct the testing that determined the scope of the Contract, and (iii) concealment of bribe payments through the use of the Intermediary. The Respondent argues that he did not employ sophisticated means, as (i) he did not “intentionally manipulate” the technical specifications to favor the Manufacturer; (ii) the decision to have the Holding Company conduct testing was made with knowledge of the PIU and the Bank; and (iii) he did not receive the alleged bribe payments. As discussed in Paragraph 21, the Sanctions Board cannot conclude based on the available evidence that the Respondent used the Intermediary to receive and conceal the commission he solicited from the Manufacturer. Nevertheless, the Respondent employed a variety of other tactics, including the manipulation of technical specifications and the concealment of the Holding Company’s conflict of interest, that reveals a level of forethought and planning warranting aggravation.¹⁶

38. *Central role in the misconduct*: Section IV.A.3 of the Sanctioning Guidelines states that this factor may apply to a respondent who acted as the “organizer, leader, planner, or prime mover in a group of 2 or more.” The Sanctions Board has applied aggravation where the respondent led or initiated a misconduct executed by two or more people,¹⁷ and has declined to apply aggravation where the record does not demonstrate that the respondent was the leader or prime mover in the

¹⁶ See, e.g., Sanctions Board Decision No. 95 (2017) at para. 40 (applying aggravation where the corrupt misconduct used a variety of tactics, including receipt of confidential bid information from a public official, use of an alias by the public official, and the use of an intermediary to make a payment to a public official’s bank account); Sanctions Board Decision No. 118 (2019) at para. 83 (applying aggravation where the misconduct involved a variety of tactics, including the manipulation of technical specifications for the contract, formulation of the PIU’s responses to competitor inquiries, solicitation of bribe payments for a public official, and use of a company affiliated with the individual respondent to receive solicited funds).

¹⁷ See, e.g., Sanctions Board Decision No. 72 (2014) at para. 57 (applying aggravation for an individual respondent’s central role in the misconduct where the record reveals that he served as the respondents’ main interlocutor with the agent, took the lead in negotiating the commissions to be paid, signed the agency agreements on behalf of one of the respondent entities, and signed the fraudulent bids); Sanctions Board Decision No. 78 (2015) at para. 76 (applying aggravation with respect to the individual respondent, who initiated the corrupt scheme by soliciting employment for her daughter).

misconduct.¹⁸ In this case, INT asserts that the Respondent initiated the corrupt arrangement, and operated independently and without supervision or oversight from the Consultant. The Respondent argues that he sought guidance from the Manufacturer only with respect to technical information necessary to develop bid specifications, and not to initiate any corrupt arrangement. Considering the evidence discussed in Paragraphs 20 and 25-29, the record shows that the Respondent, as Project Manager, had substantial responsibility under the Project and over the procurement process for the Contract, and he specifically used his position of authority to draft technical specifications in the bidding documents and push for the selection of the Holding Company in order to favor the Manufacturer. Being the prime mover in the corrupt arrangement, the Sanctions Board applies aggravation under this factor.

b. Magnitude of harm

39. *Degree of harm to the Project:* Section III.A, sub-paragraph 9.02(b) of the Sanctions Procedures requires the Sanctions Board to consider the magnitude of the harm caused by the misconduct. The Sanctions Board has applied aggravation where the misconduct resulted in financial harm,¹⁹ or exposed the Bank or member country to serious operational and reputational risks.²⁰ Here, INT argues that aggravation should be applied on the grounds that the Respondent's conduct exposed the Borrower to operational, reputational, and financial harm. The Respondent contends that no harm was caused, arguing instead that the replacement of insulators rendered the Project successful, and that "any restrictions on competition or higher prices" resulted from the disqualification of another bid and not from his conduct. The Sanctions Board finds that the conflict of interest inherent in engaging the Holding Company to conduct the laboratory tests that determined the extent of the insulator replacement exposed the Borrower and the Bank to serious operational and reputational risks. Further, the Sanctions Board finds it more likely than not that the Respondent's conduct restricted competition for insulator suppliers and caused financial harm to the extent that his solicited commission factored into the pricing of the insulators. Accordingly, the Sanctions Board applies aggravation on this ground.

c. Cooperation

40. Section III.A, sub-paragraph 9.02(e) of the Sanctions Procedures provides for mitigation where a respondent "cooperated in the investigation or resolution of the case." Sections V.C. of the Sanctioning Guidelines identifies a respondent's assistance with INT's investigation, and admission or acceptance of guilt or responsibility as examples of cooperation.

41. *Assistance and/or ongoing cooperation:* 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.1 of the Sanctioning Guidelines provides that mitigation

¹⁸ See, e.g., Sanctions Board Decision No. 85 (2016) at para. 40 (declining aggravation where INT failed to carry its burden to prove that the respondent solicited its joint venture partner to pay for the trip offered to a public official, and that the record showed that the employees of both the respondent and the joint venture partner actively coordinated with each other to plan the trip).

¹⁹ See, e.g., Sanctions Board Decision No. 53 (2012) at para. 56; Sanctions Board Decision No. 98 (2017) at para. 61.

²⁰ See, e.g., Sanctions Board Decision No. 45 (2011) at para. 63; Sanctions Board Decision No. 65 (2014) at para. 75.

may be appropriate for assistance and/or ongoing cooperation “[b]ased on INT’s representation that the respondent has provided substantial assistance in an investigation,” with consideration of the “truthfulness, completeness, reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of assistance.” In this case, the Respondent requests mitigating credit for allowing INT to interview him twice and cooperating with the Consultant’s internal investigation. INT argues that, despite agreeing to two interviews, responding to the show-cause letter, and providing statements to the Consultant’s internal investigators, the Respondent does not deserve mitigation for his implausible denials and assertions. Although the record reflects the Respondent’s participation in two interviews conducted by INT and his response to INT’s show-cause letter, the Sanctions Board takes into account the substance of the testimonial evidence he provided during the investigation that appears to have consisted largely of uncorroborated assertions. Accordingly, the Sanctions Board finds partial mitigation warranted for the Respondent’s limited cooperation.²¹

42. *Admission/acceptance of guilt/responsibility*: Section V.C.3 of the Sanctioning Guidelines recognizes cooperation in the form of a respondent’s admission or acceptance of guilt or responsibility, with the condition that early admissions or acceptance should be given more weight than admissions or acceptance coming later in the investigation or sanctions proceedings. In considering whether admissions warrant mitigating credit, the Sanctions Board has looked to the timing and investigative value of admissions, as well as their scope (i.e., whether the admission related only to the conduct alleged or also accepted responsibility).²² In this case, the Respondent requests mitigation for admitting that he “relied heavily” on the Manufacturer and accepting responsibility for not keeping “a safe distance from a potential bidder.” INT opposes any mitigation as the Respondent fails to admit to any sanctionable conduct or accept responsibility. The Sanctions Board finds that the Respondent’s acknowledgment of his close relations with the Manufacturer does not amount to an admission of his corrupt act or acceptance of responsibility for his misconduct. Consistent with precedent,²³ the Sanctions Board declines to apply any mitigation in this case where the Respondent neither admitted the corrupt scheme nor accepted responsibility for the misconduct.

²¹ See, e.g., Sanctions Board Decision No. 55 (2013) at para. 80; Sanctions Board Decision No. 65 (2014) at para. 80; Sanctions Board Decision No. 90 (2016) at para. 45.

²² See generally, Sanctions Board Decision No. 36 (2010) at para. 41; Sanctions Board Decision No. 41 (2010) at para. 88; Sanctions Board Decision No. 49 (2012) at para. 40; Sanctions Board Decision No. 51 (2012) at para. 54; Sanctions Board Decision No. 52 (2012) at para. 43; Sanctions Board Decision No. 54 (2012) at para. 40; Sanctions Board Decision No. 55 (2013) at para. 82; Sanctions Board Decision No. 56 (2013) at paras. 76-77; Sanctions Board Decision No. 60 (2013) at para. 134; Sanctions Board Decision No. 61 (2013) at para. 47.

²³ See, e.g., Sanctions Board Decision No. 52 (2012) at para. 43 (where the respondent asserted that it was an innocent victim of circumstance and denied any responsibility); Sanctions Case No. 61 (2013) at para. 47 (where the respondents only acknowledged the forgery, but such acknowledgment did not extend to admissions or acceptance of the respondents’ own culpability or responsibility); Sanctions Case No. 92 (2017) at para. 125 (where the respondent acknowledged the inaccuracy of the information that led to an overbilling without any admission as to liability for fraud).

d. Periods of temporary suspension

43. Pursuant to Section III.A, sub-paragraph 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account the period of the Respondent's temporary suspension since the SDO's issuance of the Notice on March 28, 2019.

e. Other considerations

44. 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."

45. *Passage of time:* The Sanctions Board has considered as a mitigating factor the passage of a significant period of time from the commission of the misconduct, or from the Bank's awareness of the potential sanctionable practices, to the initiation of sanctions proceedings.²⁴ This passage of time may affect the weight that the Sanctions Board attaches to the evidence presented, as well as the fairness of the process for respondents.²⁵ The Respondent seeks mitigation for the passage of nine years since the misconduct. INT does not address this factor. The Sanctions Board notes that, at the time that the Notice was issued in March 2019, approximately four years had elapsed since the Bank appears to have first become aware of the possible misconduct, and more than nine years had passed since the commission of the misconduct. Accordingly, the Sanctions Board applies mitigation for the passage of time.

46. *Proportionality:* The Respondent requests mitigation on the ground that the recommended sanction is disproportionate in comparison with the Consultant's 15-month debarment and the Manufacturer's 2-year debarment. INT clarifies that the sanctions imposed on the Consultant and the Manufacturer resulted from settlements, which have no bearing on the sanction in the present case. The Sanctions Board has declined to consider the sanctions agreed with settling parties to bear upon its determination of the contested sanction for a respondent, as the final sanctions in settlements may be shaped by considerations extrinsic to the sanctioned party's relative culpability or responsibility for misconduct.²⁶ Accordingly, the Sanctions Board declines to grant mitigating credit on this ground.

47. *Personal hardship and adverse financial consequences:* The Respondent asserts that he has been "effectively punished by this investigation for much longer" than the period of temporary

²⁴ See, e.g., Sanctions Board Decision No. 50 (2012) at para. 71 (applying mitigation where sanctions proceedings were initiated approximately five years after the Bank's awareness of the potential sanctionable practices); Sanctions Board Decision No. 63 (2014) at para. 116 (applying mitigation to multiple respondents where sanctions proceedings were initiated more than five (and up to nine) years after the misconduct, and more than five (and up to eight) years after the Bank's awareness of the potential sanctionable practices); Sanctions Board Decision No. 68 (2014) at para. 47 (applying mitigation where sanctions proceedings were initiated more than four and a half years after the sanctionable practices had occurred and more than four years after the Bank had become aware of the potential misconduct).

²⁵ See, e.g., Sanctions Board Decision No. 50 (2012) at para. 71; Sanctions Board Decision No. 83 (2015) at para. 102.

²⁶ Sanctions Board Decision No. 56 (2013) at para. 82.

suspension that he has served. He further claims that he has lost his employment with the Consultant as a result of INT's investigation, has been unable to find a job since the Bank has "blocked [his] engagement with two separate contracts," and has suffered from loss of income and reputational damage over the past five years. INT argues that, based on the Sanctions Board's precedent, there is no additional credit granted for professional or other hardships connected to the investigation. The Sanctions Board has previously declined to apply mitigation where the respondent claimed to have suffered financial losses as a result of INT's investigation or sanctions proceedings.²⁷ Further, the Respondent has not shown how his financial losses or reputational damage relate to his culpability or responsibility so as to warrant mitigation under Section III, sub-paragraph 9.02(i) of the Sanctions Procedures. Accordingly, the Sanctions Board declines to grant mitigation on the Respondent's asserted grounds.

48. *Non-cooperation in sanctions proceedings:* INT submits in its Reply that aggravation should be applied for the Respondent's lack of candor. The Sanctions Board observes that the Respondent's submissions in these sanctions proceedings are founded largely on his own statements that remain uncorroborated, lack credibility, and run contrary to substantial evidence in the record. The Sanctions Board notes, in particular, the Respondent's persistent denials of corrupt intent despite overwhelming evidence showing that, in exchange for the commission he solicited, he manipulated technical specifications and engaged the Holding Company despite knowledge of its conflict of interest in order to favor the Manufacturer as an insulator supplier. Consistent with precedent,²⁸ the Sanctions Board finds that the Respondent's conduct demonstrates a lack of candor that warrants aggravation.

C. Determination of Appropriate Sanction

49. Considering the full record and all the factors discussed above, the Sanctions Board determines that the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, shall be, and hereby declares that he is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;²⁹ (ii) be a

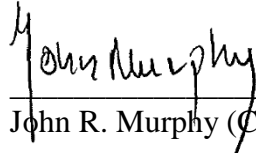
²⁷ Sanctions Board Decision No. 56 (2013) at para. 86 (denying mitigation for a respondent firm's asserted costs in investigating its own misconduct and cooperating with relevant authorities); Sanctions Board Decision No. 86 (2016) at para. 55 (denying mitigation for a respondent's asserted personal hardships and loss of business since the misconduct).

²⁸ See, e.g., Sanctions Board Decision No. 63 (2014) at para. 121; Sanctions Board Decision No. 71 (2014) at para. 107; Sanctions Board Decision No. 87 (2016) at para. 152; Sanctions Board Decision No. 90 (2016) at para. 48.

²⁹ 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.

nominated sub-contractor, consultant, manufacturer or supplier, or service provider³⁰ of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any Bank-Financed Projects for a period of five (5) years and six (6) months beginning from the date of this decision. The ineligibility shall extend across the operations of the World Bank Group. This sanction is imposed on the Respondent for a corrupt practice as defined in Paragraph 1.25(a)(i) of the May 2002 Consultant Guidelines.

50. The Bank will also provide notice of these declarations of ineligibility to the other multilateral development banks (“MDBs”) that are party to the Agreement for Mutual Enforcement of Debarment Decisions (the “Cross-Debarment Agreement”) so that they may determine whether to enforce the declarations of ineligibility with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and procedures.³¹



John R. Murphy (Chair)

On behalf of the
World Bank Group Sanctions Board

John R. Murphy
Olufunke Adekoya
Rabab Yasseen

³⁰ 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.

³¹ 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.