

Date of issuance: December 6, 2021

Sanctions Board Decision No. 135
(Sanctions Case No. 658)

IDA Credit No. 5083-VN
Socialist Republic of Vietnam

Decision of the World Bank Group¹ Sanctions Board imposing a sanction of debarment with conditional release on the respondent entity in Sanctions Case No. 658 (the “Respondent”), together with certain Affiliates,² with a minimum period of ineligibility of six (6) years and six (6) months beginning from the date of this decision. This sanction is imposed on the Respondent for fraudulent and obstructive practices.

I. INTRODUCTION

1. The Sanctions Board convened in August 2021 as a panel composed of John R. Murphy (Chair), Maria Vicien Milburn, and Eduardo Zuleta to review this case. Neither the Respondent nor the World Bank Group’s Integrity Vice Presidency (“INT”) presented a timely request for a hearing in this matter.³ Nor did the Chair decide, in his discretion, to convene a hearing.⁴ Accordingly, the Sanctions Board deliberated and reached its decision based on the written record.⁵

2. In accordance with Section III.A, sub-paragraph 8.02(a) of the Sanctions Procedures, the written record for the Sanctions Board’s consideration included the following:

¹ In accordance with Section II(y) of the World Bank Procedure: Sanctions Proceedings and Settlements in Bank Financed Projects, issued on June 28, 2016 (the “Sanctions Procedures”), the term “World Bank Group” means, collectively, the International Bank for Reconstruction and Development (“IBRD”), the International Development Association (“IDA”), the International Finance Corporation (“IFC”), and the Multilateral Investment Guarantee Agency (“MIGA”). The term “World Bank Group” includes Bank Guarantee Projects and Bank Carbon Finance Projects but does not include the International Centre for Settlement of Investment Disputes (“ICSID”). As in the Sanctions Procedures, the terms “World Bank” and “Bank” are here used interchangeably to refer to both IBRD and IDA. See Sanctions Procedures at Section II(x).

² Section II(a) of the Sanctions Procedures defines “Affiliate” as “any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank.” The sanction imposed by this decision applies only to those Affiliates that are directly or indirectly controlled by the Respondent. See infra Paragraphs 40, 48.

³ The Respondent presented a belated request for a hearing in a submission filed after the deadline for the Response, inconsistent with Section III.A, sub-paragraph 6.01 of the Sanctions Procedures.

⁴ The Chair initially decided to convene a hearing in his discretion, consistent with Section III.A, sub-paragraph 6.01 of the Sanctions Procedures. However, the Chair ultimately reversed this determination because the Respondent, repeatedly and without good cause, failed to confirm its availability and intent to participate in the scheduled oral proceedings.

⁵ See Sanctions Procedures at Section III.A, sub-paragraph 6.01.

- i. Notice of Sanctions Proceedings issued by the World Bank’s Suspension and Debarment Officer (the “SDO”) to the Respondent on January 29, 2021 (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 March 1, 2021, together with supplemental information filed on March 23, 2021 (the “Explanation”);
- iii. Response submitted by the Respondent to the Secretary to the Sanctions Board on April 21, 2021, together with supplemental translations filed on April 30, 2021 (the “Response”); and
- iv. Reply submitted by INT to the Secretary to the Sanctions Board on May 17, 2021 (the “Reply”).

II. PROCEDURAL HISTORY AT THE FIRST TIER

3. *Issuance of Notice and temporary suspension:* On January 29, 2021, 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 eligibility⁶ with respect to any Bank-Financed Projects,⁷ 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.

4. *SDO’s recommendations:* 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 six (6) years and seven (7) months, after which period the Respondent 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 that it has (i) taken appropriate remedial measures to address the sanctionable practices for which the Respondent has been sanctioned and (ii) adopted and implemented integrity compliance measures in a manner satisfactory to the Bank. The SDO applied aggravation for the sophistication and duration of the misconduct, and limited mitigation for the Respondent’s cooperation. The Respondent subsequently submitted an Explanation to contest the SDO’s findings of liability and request termination of sanctions proceedings or a less severe sanction. The SDO declined to revise his recommendations.

⁶ 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.

⁷ The term “Bank-Financed Projects” encompasses an investment project or a program for results operation, for which IBRD or IDA (as the case may be), whether acting for its own account or in the capacity as administrator of trust funds funded by donors, has provided financing in the form of a loan, credit or grant and governed by the Bank’s Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines. See Sanctions Procedures at Section II(e).

5. *Submission of Response and referral to Sanctions Board:* The Respondent submitted the Response to the Sanctions Board in a timely manner and consistent with the applicable Sanctions Procedures. This case is thus referred to the Sanctions Board for its review and final decision.⁸

III. GENERAL BACKGROUND

6. This case arises in the context of the Mekong Delta Region Urban Upgrading Project (the “Project”), which sought to improve infrastructure services in low-income areas of certain cities in the Socialist Republic of Vietnam (the “Recipient”). On May 11, 2012, IDA and the Recipient entered into a financing agreement to provide an amount equivalent to Special Drawing Rights (“SDR”) 188.3 million (approximately US\$ 292 million at the time of signature) to support the Project (the “Financing Agreement”). The Financing Agreement provided for the implementation of the Project by several project management units at the local level, each under a steering committee in its respective province, and all under a central project coordination unit maintained by the Recipient’s Ministry of Construction. The Project became effective on August 9, 2012, and closed on December 28, 2018.

7. On March 5, 2013, the project management unit of My Tho City (the “PMU”) issued bidding documents (the “Bidding Documents”) for a contract governing the construction of three primary schools (the “Contract”). The Respondent submitted a bid for the Contract on April 16, 2013 (the “Bid”); was recommended as the winner on July 8, 2013; and entered into the Contract with the PMU on August 6, 2013.

8. INT alleges that the Respondent engaged in a fraudulent practice by knowingly failing to disclose certain subcontractors to the PMU during the implementation of the Contract. In addition, INT alleges that the Respondent engaged in an obstructive practice by impeding INT’s investigation, including by making false statements and submitting forged documents to the investigators.

IV. APPLICABLE STANDARDS OF REVIEW

9. *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.

10. *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.

⁸ Sanctions Procedures at Section III.A, Paragraph 5.

11. *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.

12. *Applicable definitions of fraudulent and obstructive practices:* The Financing Agreement provided that the World Bank's Guidelines: Procurement under IBRD Loans and IDA Credits (May 2004, revised October 1, 2006, and May 1, 2010) (the "May 2010 Procurement Guidelines") would apply to the procurement of works under the Project. The Bidding Documents and Contract contained definitions of sanctionable practices consistent with this same version of the Guidelines, albeit without the relevant footnotes. The Sanctions Board does not consider such deviations to be material under the circumstances so as to indicate an intentional departure from the framework adopted in the Financing Agreement.⁹ Accordingly, the alleged fraudulent and obstructive practices in this case have the meanings set forth in the May 2010 Procurement Guidelines. Paragraph 1.14(a)(ii) of these Guidelines defines a "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 prequalification process, the procurement process, or contract execution; and the "act or omission" is intended to influence the procurement process or contract execution.¹⁰ Paragraph 1.14(a)(v) of these Guidelines defines "obstructive practice" to include "deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation."

V. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

13. *Fraud allegation:* INT alleges that the Respondent engaged in a misrepresentation by omission. Specifically, INT argues that the Bidding Documents and Contract expressly prohibited the Respondent from subcontracting work in excess of 20% of the value of the Contract, and required the Respondent to submit any potential subcontractors for the PMU's approval. According to INT, these provisions implied an obligation for the Respondent to disclose its use of subcontractors to the PMU during the implementation of the Contract. INT submits that the Respondent knowingly breached this obligation by engaging at least three¹¹ subcontractors (respectively, "Company A," "Company B," and "Company C"; collectively, the "Relevant Companies"), in excess of the Contract's limits, and without prior notice to, or approval from, the PMU.

14. *Obstruction allegation:* INT alleges that the Respondent's staff acted to impede INT's investigation by misrepresenting the nature of the Respondent's association with Company A and

⁹ Cf., e.g., Sanctions Board Decision No. 92 (2017) at para. 78; Sanctions Board Decision No. 125 (2020) at para. 11.

¹⁰ May 2010 Procurement Guidelines, para. 1.14(a)(ii), n.20.

¹¹ INT submits that the Respondent engaged additional subcontractors later in the life of the Contract. However, INT concedes that "[t]he PMU may have been aware of, and possibly involved in, these later subcontracts."

one of Company A's executive officers (the "Executive Officer"). According to INT, the Respondent's representatives (i) falsely stated to INT's investigators that the Respondent had employed the Executive Officer directly in his individual capacity, as opposed to using Company A as a subcontractor; (ii) submitted forged employment records to support these statements; and (iii) attempted to induce the Executive Officer to falsify additional documents to be provided to INT.

15. *Sanctioning factors:* INT maintains that aggravation is warranted for the sophistication of the alleged fraudulent practice, and that any mitigation for the Respondent's cooperation should be offset by the Respondent's alleged obstructive practice and lack of candor.

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

16. *Fraud allegation:* The Respondent contests the alleged fraudulent practice. According to the Respondent, the PMU had prior knowledge that the Respondent would engage subcontractors and in fact instructed the Respondent to use specific firms for such purposes. The Respondent also asserts that its assignment of work to its subcontractors "was done publicly" and that all local authorities were aware of it – including the PMU and the consultant company supervising the implementation of the Contract (the "Supervision Consultant"). In addition, the Respondent argues that INT failed to pursue certain investigative leads and interview purportedly relevant witnesses.

17. *Obstruction allegation:* The Respondent generally disputes the allegation and challenges the Executive Officer's credibility.

C. INT's Principal Contentions in the Reply

18. INT reiterates its allegations and contends that the Respondent's assertions are unsupported by evidence.

VI. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

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

A. Evidence of Fraudulent Practice

20. In accordance with the definition of "fraudulent practice" under the May 2010 Procurement Guidelines, INT bears the initial burden to prove that it is more likely than not that the Respondent (i) engaged in an act or omission, including a misrepresentation, (ii) that knowingly or recklessly misled, or attempted to mislead, a party (iii) to obtain a financial or other benefit or to avoid an obligation.

1. Act or omission, including a misrepresentation

21. INT contends that the Respondent engaged in a misrepresentation by failing to disclose its use of the Relevant Companies as subcontractors during the implementation of the Contract. The Respondent disputes the allegation, asserting, *inter alia*, that the PMU verbally “appointed the suppliers of materials, equipment and manpower” prior to signing the Contract and that the Respondent only hired subcontractors as directed by the PMU.

22. The Sanctions Board concludes that the totality of the evidence supports INT’s *prima facie* arguments. Contrary to express provisions under the Contract, the Respondent engaged the Relevant Companies as subcontractors without seeking or obtaining the PMU’s authorization. Specifically, the record reflects the following:

- i. *Obligations under the Contract*: Excerpts of the Contract show that the Respondent was expressly required to obtain the PMU’s approval to engage subcontractors for any scope for work,¹² and that in any event “[t]he subcontracting quantities shall not exceed[] 20% of Contract value.”
- ii. *Subcontracting of the Relevant Companies*: Documentary and testimonial evidence reveals that, after signing the Contract, the Respondent subcontracted the Relevant Companies to deliver approximately 84% of the value of the Contract.¹³ This evidence includes, for example: (a) the Respondent’s subcontractor agreements with Company A and Company C; (b) invoices submitted to the Respondent by Company B and Company C; (c) letters to the PMU from Company A, Company B, and Company C, requesting assistance in settling payments due from the Respondent for goods and services provided in connection with the Contract; (d) statements to INT from the Executive Officer (on behalf of Company A) and a representative of Company B, corroborating the alleged subcontractor relationships between their respective entities and the Respondent; and (e) statements to INT from the Respondent’s Chairman, acknowledging that

¹² The Contract defined “subcontractor” as “an individual or organization who has a contract with the Contractor to carry out a part of the work in the Contract, including the works on the Site” and provided that the “Contractor may subcontract with the approval of the Project Manager.” The “Project Manager” was identified as the Deputy Director of the People’s Committee of My Tho City (the “Project Owner”), which was represented under the Contract by the PMU.

¹³ The record indicates that (i) the Contract was priced at Vietnamese Dong (“VND”) 18,413,951,000; (ii) the Respondent’s subcontract with Company A was priced at VND 5,523,750,000 (approximately 30 percent of the value of the Contract); (iii) the Respondent’s subcontract with Company B was priced at approximately VND 5,684,800,000 (approximately 31 percent of the value of the Contract); and (iv) the Respondent’s two subcontracts with Company C were respectively priced at VND 1,894,079,045 and VND 2,309,418,019 (together, approximately 23 percent of the value of the Contract).



the Relevant Companies supplied materials and manpower in connection with the Contract.¹⁴

- iii. *Lack of PMU approval:* Witness statements and circumstantial evidence indicate that the Respondent proceeded with subcontracting the Relevant Companies without the PMU's knowledge and approval. In particular, the PMU represented in a letter to the Bank that the Respondent "did not inform the PMU about any subcontractor during the construction of [the Contract]." A representative of the Supervision Consultant similarly stated to INT that the Respondent "never reported to him that it subcontracted its work to third parties," and that he believed that the entities present on site were involved in the Contract as suppliers. Consistent with such testimony, the record contains requests for payment and value added tax invoices from the Respondent to the PMU, where the Relevant Companies were either omitted or mischaracterized as suppliers.

23. The Respondent did not satisfactorily rebut the evidence and conclusions above. Specifically, the Respondent asserts that its staff only hired subcontractors designated by the PMU, and complains that INT failed to investigate this theory and interview purportedly relevant witnesses. The Sanctions Board finds such arguments unpersuasive. First, the Respondent's assertions stand wholly uncorroborated and in fact are contradicted by the record. Apart from the PMU's explicit denials, none of the several witnesses interviewed by INT – including the Respondent's own staff – alluded to any sort of direction from the PMU regarding subcontractors. To the contrary, representatives of Company A and Company B stated to INT that they had personally contacted the Respondent out of their own initiative and directly offered their subcontracting services under the Contract. Second, as determined in previous cases, the Sanctions Procedures do not require INT to interview all potentially relevant witnesses or pursue all leads before initiating sanctions proceedings; and respondents are not entitled to demand that INT obtain and provide information that is not in INT's possession.¹⁵ In any event, it should be noted that the Chair invited the Respondent to submit witness affidavits to substantiate its own defense, and that the Respondent failed to do so.¹⁶

24. The Sanctions Board also observes that, during INT's investigation, the Respondent presented two factual defenses, which were not explicitly raised in the current proceedings. In the interest of completeness, the Sanctions Board notes that neither is supported by the record. First, during an interview with INT, the Respondent's Chairman stated that the Respondent disclosed its subcontractors to the PMU by mentioning "the names of different suppliers" of materials and labor

¹⁴ While the Respondent's Chairman denied that the Respondent used Company A as a subcontractor, he acknowledged that the Respondent assigned the construction of a school under the Contract to "[the Executive Officer's] team."

¹⁵ INT has the discretion to decide its own investigative process, subject only to an obligation to disclose all exculpatory evidence in its actual custody and control. See, e.g., Sanctions Board Decision No. 96 (2017) at para. 46.

¹⁶ As the Sanctions Board has previously observed, an assertion must have an evidentiary basis, or it remains a mere assertion and not a substantiated fact. See, e.g., Sanctions Board Decision No. 61 (2013) at para. 41; Sanctions Board Decision No. 63 (2014) at para. 50; Sanctions Board Decision No. 115 (2019) at para. 46.

in the relevant payment requests; that the PMU made the payments accordingly; and that this process constituted “the approval from the PMU.” The Respondent’s Chairman later asserted that the Respondent also provided copies of the relevant contracts to the PMU and that it was “up to the PMU to interpret whether it is a subcontract or not.” This account of events remains uncorroborated, was refuted by the PMU, and is presently contradicted by the Respondent’s own narrative that the PMU directed the Respondent to engage particular subcontractors. Second, in its submissions to INT, the Respondent disputed the factual allegation that it had used Company A as a subcontractor,¹⁷ advancing supporting documents that INT contends are inauthentic (see Section VI.B below). The Sanctions Board reiterates that the evidence examined in Paragraph 22 sufficiently demonstrates that the Respondent subcontracted all three of the Relevant Companies. In any case, even if the Sanctions Board had accepted the Respondent’s defense with respect to Company A, this would not preclude a finding of fraudulent practice with respect to Company B and Company C.

25. In light of the above, the Sanctions Board concludes that it is more likely than not that the Respondent’s representatives subcontracted the Relevant Companies without the PMU’s knowledge and authorization, thereby engaging in an “act” within the meaning of the applicable definition. This finding obviates the need to consider whether such conduct constituted a “misrepresentation” in the terms alleged by INT.

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

26. INT argues that the Respondent knowingly misled the PMU, including by mischaracterizing the Relevant Companies as suppliers and instructing Company A’s employees to pose as the Respondent’s staff. The Respondent does not directly address this element of the allegation but appears to contend that its staff neither misled, nor attempted to mislead, the PMU.

27. 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.¹⁸ In past cases involving fraud allegations, the Sanctions Board has inferred knowledge where respondents took specific steps to conceal facts subject to a disclosure requirement.¹⁹ Similar circumstances are present here. The record reveals the following: (i) the Respondent either failed to disclose or mischaracterized the Relevant Companies as suppliers in its requests for payment and invoices submitted to the PMU; (ii) consistent with such misleading documentation, a representative of the

¹⁷ For example, in its reply to INT’s show cause letter, the Respondent submitted that it had employed the Executive Officer as staff in his individual capacity, suggesting that INT had misconstrued this relationship as the Respondent’s use of Company A as a subcontractor.

¹⁸ Sanctions Procedures at Section III.A, sub-paragraph 7.01.

¹⁹ See Sanctions Board Decision No. 60 (2013) at paras. 97-99 (finding that the respondents knowingly failed to disclose a payment arrangement with a consultant; noting that the consultancy agreement in question included a provision requiring that the existence of the relationship be kept secret); Sanctions Board Decision No. 114 (2018) at paras. 36-39 (finding that the respondents knowingly failed to disclose an associated consultant; noting that the respondents deliberately acted to conceal the involvement of the associated consultant, including by removing its name from the draft proposal one week prior to submission).

Supervision Consultant stated to INT that he believed that the entities present on site were involved in the Contract as suppliers, as opposed to subcontractors; (iii) the Executive Officer stated to INT that the Respondent instructed his team to represent to the PMU that Company A “belonged” to the Respondent because the Respondent “couldn’t subcontract the work to anyone”; and (iv) the PMU represented to the Bank that the Respondent never reported the use of any subcontractors during the implementation of the Contract. As a whole, this evidence indicates that the Respondent’s staff made concerted efforts to conceal or disguise the true nature of the Respondent’s association with the Relevant Companies, reflecting a knowing intent to mislead the PMU.

28. In its defense, the Respondent argues that the PMU knew or must have known of the Respondent’s use of subcontractors because (i) the PMU verbally “appointed the suppliers of materials, equipment and manpower” for the Contract; (ii) the Respondent’s assignment of work to subcontractors “was done publicly” and “all local authorities were aware” of it; (iii) the PMU was responsible for approving payments and monitoring the implementation of the Contract, including by supervising “construction records, procedures and quality;” and (iv) the PMU participated in the resolution of contractual disputes between the Respondent and its subcontractors, including the Relevant Companies. The Sanctions Board is not persuaded by these arguments. First, as examined in Paragraph 23, there is no evidence that the PMU directed the Respondent to engage any particular subcontractors, and testimonies provided by the Respondent’s own staff contradict this assertion. Second, the claim that the Respondent’s subcontracts were public and widely known stands uncorroborated and, even if considered to be true, would not belie the Sanctions Board’s findings in Paragraph 27 that the Respondent’s staff misled the PMU. Third, the PMU’s approval of payments does not imply the PMU’s knowledge of the Relevant Companies’ actual role under the Contract, especially considering that such payments were based on misleading financial documents. Fourth, while it is true that the PMU attempted to mediate disputes between the Respondent and the Relevant Companies, documentary evidence shows that such negotiations did not begin until April 2016 – several months after the subcontract agreements at issue had been executed and at least partially performed. Accordingly, these circumstances do not suggest that the PMU was aware of the Relevant Companies prior to their engagement or use under the Contract.

29. For the reasons above, the Sanctions Board finds that it is more likely than not that the Respondent’s representatives knowingly misled the PMU by using the Relevant Companies as subcontractors without authorization.

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

30. INT contends that the Respondent misled the PMU in order to perform the Contract “with an impermissible amount of subcontracting.” The Respondent does not specifically address this element of the fraud allegation. In the past, the Sanctions Board has inferred the intent to avoid an obligation where the record suggested that a respondent’s misrepresentations were made to create a false appearance of compliance with contractual requirements.²⁰ Similarly, here, the Respondent’s misleading conduct was directly related to clear contractual stipulations. As

²⁰ See Sanctions Board Decision No. 86 (2016) at para. 40.

examined in Paragraph 22, the Contract required the Respondent to obtain the PMU's authorization to subcontract any part of the work to other entities, and limited the overall subcontracted quantities to 20% of the value of the Contract. Contrary to these provisions, per the above findings, the Respondent's staff subcontracted approximately 84% of the total value of the Contract to the Relevant Companies,²¹ while also acting to conceal such arrangements from the PMU. These circumstances support a finding that it is more likely than not that the Respondent's representatives misled the PMU in order to avoid the obligation to comply with the applicable subcontracting requirements. Accordingly, the Sanctions Board finds that the third element of fraudulent practice has been sufficiently established.

B. Evidence of Obstructive Practice

31. In accordance with the definition of "obstructive practice" under the May 2010 Procurement Guidelines, INT bears the initial burden to prove that it is more likely than not that the Respondent deliberately acted to destroy, falsify, alter, or conceal material evidence, or made false statements to investigators in order to materially impede a Bank investigation. INT alleges that the Respondent's staff engaged in an obstructive practice by deliberately making false statements to investigators, submitting forged evidence, and attempting to induce a witness to falsify additional records. The Respondent disputes the allegation.

32. The record shows that, during separate interviews, INT questioned the Respondent's Chairman and Assistant to Chairman on the Respondent's relationship with the Relevant Companies. In this context, the investigators specifically referenced an agreement between the Respondent and Company A – which was represented by the Executive Officer – for the provision of materials, equipment, and labor under the Contract (the "Assignment Contract"). Facing this evidence, the Respondent's Chairman and Assistant to Chairman denied that the Respondent had used Company A as a subcontractor, and instead claimed that the Executive Officer was acting in his individual capacity as an employee of the Respondent. When INT inquired as to why the Assignment Contract was necessary for the Respondent to allocate work to its own staff, the Respondent's Chairman appeared to evade the question and failed to provide an answer. For his part, the Respondent's Assistant to Chairman stated that the Assignment Contract was in fact a "job allocation" instrument used to ensure that the in-house team led by the Executive Officer would "take responsibility" for the work. The Respondent's Assistant to Chairman also represented that this was the only instance of such an arrangement between the Respondent and an employee, and agreed to share a copy of the Executive Officer's employment contract (the "Employment Contract") to support his statements to INT. Subsequently, the Respondent provided the investigators with a set of electronic files described as the Executive Officer's "labor profile" – including the Employment Contract, a resignation letter, a termination agreement, and a "voluntary separation" decision approved by the Respondent's management. When INT sought to verify this information, the Executive Officer repeatedly denied having been employed by the Respondent. Specifically, during several interviews with INT, the Executive Officer stated that: (i) he had never worked for the Respondent prior to the Respondent's subcontracting of Company A; (ii) he had not signed the Employment Contract, and believed that his signature on this document had been forged; (iii) the only document he had ever signed relating to the Respondent was the Assignment

²¹ See *supra* n.13.

Contract; and (iv) the Respondent's Chairman had called him and asked him to sign an employment contract and other documents to be provided to the World Bank, in exchange for the release of outstanding payments. This notwithstanding, approximately three months after the Executive Officer's last interview with INT, the Respondent and the Executive Officer entered into a debt agreement (the "Debt Agreement") to settle amounts owed by the Respondent under both the Employment Contract and the Assignment Contract.

33. The Sanctions Board concludes that the totality of the evidence supports INT's prima facie case of obstruction. The record sufficiently demonstrates that the Respondent used Company A as a third-party subcontractor (see Paragraphs 22-24), and that the Assignment Contract did in fact constitute a subcontract agreement. In these circumstances, the Sanctions Board finds it unlikely that the Executive Officer was simultaneously acting as the Respondent's employee. The clarifications offered by the Respondent's Assistant to Chairman during his interview are particularly unconvincing and, at any rate, less credible than the Executive Officer's account of events. The Sanctions Board finds the Executive Officer's testimony to be generally reliable, as it is consistent with other evidence in the record – including the Assignment Contract and the aforementioned request for financial assistance submitted by Company A to the PMU. The Sanctions Board acknowledges that the Debt Agreement references the Employment Contract, which may appear to contradict the Executive Officer's testimony and support an employment relationship between the Executive Officer and the Respondent. However, on balance, the Sanctions Board accords more weight to the Executive Officer's contemporaneous statements to INT – including with respect to the Respondent's attempt to induce the Executive Officer's conduct in exchange for the release of outstanding payments.

34. The Respondent fails to satisfactorily rebut the evidence and conclusions above. In the present proceedings, the Respondent generally challenges the Executive Officer's credibility. In its reply to INT's show cause letter, the Respondent maintained that the Executive Officer had misled INT in order to "force" the Respondent to release amounts held by the Respondent as a warranty bond – presumably, under the Assignment Contract. The Sanctions Board finds that this defense is untenable. The Executive Officer held no leverage in this relationship, as it was the Respondent who possessed and controlled the funds at issue. It would be unreasonable to assume that, in order to induce the Respondent to make payments in his favor, the Executive Officer would deliberately harm the Respondent's interests by making false representations to INT. In these circumstances, it is more credible that the Respondent sought to influence the Executive Officer's behavior – as represented by the Executive Officer in his testimony – and not vice versa.

35. Considering the above, the Sanctions Board finds that it is more likely than not that the Respondent's staff engaged in an obstructive practice by making false statements to INT, submitting forged documentation, and attempting to induce a witness to falsify additional evidence, in order to materially impede a Bank investigation.

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

36. 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

in part, by the intent of serving their employer.²² Here, the record supports a finding that the Respondent's representatives engaged in sanctionable practices in accordance with the scope of their duties and with the purpose of serving the interests of the Respondent. As examined above, evidence shows that the Respondent's staff misled the PMU in order to enable the Respondent to avoid its obligations under the Contract, and specifically acted to impede INT's investigation of the Respondent's conduct. There is no indication in the record that any employees acted for any purpose other than serving the Respondent. Moreover, the Respondent does not present, and the record does not provide any basis for, a rogue-employee defense. Thus, the Sanctions Board finds the Respondent liable for the misconduct carried out by its employees.

D. Sanctioning Analysis

1. General framework for determination of sanctions

37. 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.

38. As reflected in Sanctions Board precedent, the Sanctions Board considers the totality of the circumstances and all potential aggravating and mitigating factors to determine an appropriate sanction.²³ The choice of sanction is not a mechanistic determination, but rather a case-by-case analysis tailored to the specific facts and circumstances presented in each case.²⁴

39. 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.

²² See, e.g., Sanctions Board Decision No. 55 (2013) at paras. 51-52, 55; Sanctions Board Decision No. 61 (2013) at para. 30.

²³ See, e.g., Sanctions Board Decision No. 40 (2010) at para. 28.

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

40. 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

41. As the Sanctions Board finds that the Respondent 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)

42. 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.²⁵ By contrast, the Sanctions Board applied aggravation rather than a separate sanction for multiple sanctionable practices where the counts of misconduct were closely interrelated.²⁶ In the present case, the Sanctions Board concludes that the Respondent’s fraudulent and obstructive practices are factually distinct and must be considered separately. These sanctionable practices arose from different circumstances, occurred several years apart, did not involve continuous acts, and comprised independent elements of liability and intent. While the Respondent’s obstruction did impact INT’s investigation, it was not merely a means of furthering the fraud.²⁷ Accordingly, the plurality of sanctionable practices warrants multiplication, rather than aggravation, of the base sanction imposed on the Respondent.

3. Factors considered in the present case

a. Severity of the misconduct

43. 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.

²⁵ See, e.g., Sanctions Board Decision No. 87 (2016) at para. 151; Sanctions Board Decision No. 118 (2019) at para. 80.

²⁶ See, e.g., Sanctions Board Decision No. 60 (2013) at para. 143; Sanctions Board Decision No. 115 (2019) at para. 63.

²⁷ Cf. Sanctions Board Decision No. 118 (2019) at para. 80 (finding that “[e]ach count of misconduct was factually distinct from, and not merely a means of furthering the other counts of misconduct,” where the respondent firm engaged in collusive, corrupt, and obstructive practices).

Section IV.A of the Sanctioning Guidelines identifies various examples of severity that may merit aggravation.

44. *Sophisticated means*: Section IV.A.2 of the Sanctioning Guidelines states that aggravation may be warranted for sophisticated means based on, *inter alia*, “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.” The Sanctions Board has previously applied aggravation on this basis where the misconduct comprised “a variety of tactics,” “diversity of techniques,” or “considerable forethought and planning.”²⁸ Here, INT argues that the Respondent “used diverse techniques to conceal its subcontracting,” so as to constitute “sophisticated means” under the Sanctioning Guidelines. The Respondent does not address this sanctioning factor. The record shows that the Respondent acted with considerable forethought and planning in carrying out and concealing its fraudulent practice, by submitting misleading invoices to the PMU and instructing a subcontractor’s team to posture as the Respondent’s employees (see Paragraph 27); and also in obstructing INT’s investigation, by preparing and submitting falsified evidence and attempting to induce a witness to fabricate additional documents (see Paragraphs 32-33). In these circumstances, the Sanctions Board finds that aggravation is warranted.

45. *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, 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.²⁹ In the present case, the parties do not address this sanctioning factor. Nevertheless, the record shows that certain members of the Respondent’s senior management were directly involved in the fraudulent and obstructive practices at issue. For example: (i) the Respondent’s Chairman personally signed at least three of the undisclosed subcontracting agreements; (ii) the Respondent’s Chairman, Director General, and Vice Director personally signed the aforementioned payment requests and invoices that failed to identify the Relevant Companies or mischaracterized them as suppliers; and (iii) the Respondent’s Chairman personally made false statements to INT’s investigators. Accordingly, the Sanctions Board finds sufficient basis to aggravate the Respondent’s sanction.

b. Cooperation

46. *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

²⁸ See, e.g., Sanctions Board Decision No. 69 (2014) at para. 33 (where the respondent forged three different types of official business documents, which were clearly drafted in an effort to avoid detection, including through the use of an inauthentic embassy stamp and forged signatures and seals); Sanctions Board Decision No. 97 (2017) at para. 70 (where the respondent prepared a diverse set of forged and false documents purporting to reflect multiple transactions that never took place); Sanctions Board Decision No. 98 (2017) at para. 58 (where the fraudulent conduct involved two types of detailed official business documents, which included letterhead images, signatures, and seals, and were responsive to specific value requirements under the contract).

²⁹ See, e.g., Sanctions Board Decision No. 66 (2014) at para. 36; Sanctions Board Decision No. 78 (2015) at para. 77.

or resolution of the case.” 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*.” In the past, the Sanctions Board has consistently granted mitigation for cooperation where respondents met with INT on several occasions and provided relevant information and documentation,³⁰ or replied to INT’s show-cause letter and follow-up inquiries.³¹ However, the Sanctions Board has declined to apply any credit where the respondent obstructed INT’s investigation by omitting material evidence³² or failing to comply with INT’s document requests.³³ Here, while INT concedes that the Respondent provided documents and made staff available for interviews, INT also argues that any mitigation for such cooperation should be offset by the Respondent’s obstruction and general lack of candor. The Respondent does not address this sanctioning factor. In light of the above finding of obstructive practice, and consistent with precedent, the Sanctions Board applies no mitigating credit for the Respondent’s cooperation.

c. Period of temporary suspension

47. 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 January 29, 2021.

E. Determination of Appropriate Sanctions

48. 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 it is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;³⁴ (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider³⁵ of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of

³⁰ Sanctions Board Decision No. 53 (2012) at para. 58.

³¹ See, e.g., Sanctions Board Decision No. 37 (2010) at para. 45; Sanctions Board Decision No. 51 (2012) at para. 54; Sanctions Board Decision No. 52 (2012) at para. 42.

³² Sanctions Board Decision No. 110 (2018) at paras. 41-42.

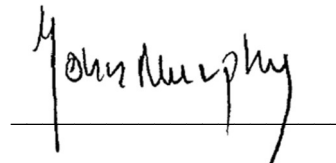
³³ Sanctions Board Decision No. 118 (2019) at paras. 86-87.

³⁴ 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.

³⁵ 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.

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) years and six (6) months, beginning from the date of this decision, the Respondent 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 Respondent for fraudulent and obstructive practices as defined in Paragraph 1.14(a)(ii) and Paragraph 1.14(a)(v), respectively, of the May 2010 Procurement Guidelines.

49. The Respondent's ineligibility shall extend across the operations of the World Bank Group. The Bank will also provide notice of this declaration of ineligibility to the other multilateral development banks ("MDBs") that are party to the Agreement for Mutual Enforcement of Debarment Decisions (the "Cross-Debarment Agreement") so that they may determine whether to enforce this declaration of ineligibility with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and procedures.³⁶



John R. Murphy (Chair)

On behalf of the
World Bank Group Sanctions Board

John R. Murphy
Maria Vicien Milburn
Eduardo Zuleta

³⁶ 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)").