



Date of issuance: November 29, 2021

**Sanctions Board Decision No. 134  
(Sanctions Case No. 620)**

**IDA Credit No. 4779-VN  
IDA Credit No. 5233-VN  
Vietnam**

**Decision of the World Bank Group<sup>1</sup> Sanctions Board imposing (i) a sanction of debarment with conditional release on the first respondent entity in Sanctions Case No. 620 (“Respondent Firm 1”), together with certain Affiliates,<sup>2</sup> with a minimum period of ineligibility of six (6) years beginning from the date of this decision; and (ii) a sanction of debarment with conditional release on the second respondent entity in Sanctions Case No. 620 (“Respondent Firm 2”), together with certain Affiliates, with a minimum period of ineligibility of six (6) years beginning from the date of this decision. These sanctions are imposed on Respondent Firm 1 for fraudulent and obstructive practices, and on Respondent Firm 2 for fraudulent practices.**

**I. INTRODUCTION**

1. The Sanctions Board convened as a panel composed of John R. Murphy (Chair), Rabab Yasseen, and Eduardo Zuleta to review this case. A hearing was held on October 5, 2021, at the requests of Respondent Firm 1 and Respondent Firm 2 (together, the “Respondents”) and pursuant to Section III.A, sub-paragraph 6 of the Sanctions Procedures. Due to the ongoing COVID-19 pandemic, the Sanctions Board Chair determined that oral proceedings would be conducted virtually. Accordingly, the World Bank Group’s Integrity Vice Presidency (“INT”) and the Respondents participated in the hearing through their respective representatives attending via video conference from locations in the United States, Spain, and the United Kingdom. Respondent Firm 1 was represented by its Chief Executive Officer (the “CEO”) and external counsel. Respondent Firm 2 was represented by a former executive officer and external counsel. The Sanctions Board deliberated and reached its decision based on the written record and the arguments presented at the hearing.

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<sup>1</sup> 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).

<sup>2</sup> Section II(a) of the Sanctions Procedures defines “Affiliate” as “any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank.” The sanctions imposed by this decision apply only to those Affiliates that are directly or indirectly controlled by either of the Respondents. See infra Paragraphs 64, 88.



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 Respondents on June 2, 2020 (the “Notice”), appending the Statement of Accusations and Evidence (the “SAE”) submitted by INT to the SDO (undated);
  - ii. Explanations submitted by the Respondents on January 4, 2021 (each, individually, an “Explanation”) to the SDO;
  - iii. Responses submitted by the Respondents on March 2, 2021 (each, individually, a “Response”) to the Secretary to the Sanctions Board; and
  - iv. Reply submitted by INT to the Secretary to the Sanctions Board on April 28, 2021 (the “Reply”).

## **II. PROCEDURAL HISTORY AT THE FIRST TIER**

3. *Issuance of Notice and temporary suspensions:* On June 2, 2020, 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 Respondents, together with any entity that is an Affiliate directly or indirectly controlled by either Respondent, from eligibility<sup>3</sup> with respect to any Bank-Financed Projects,<sup>4</sup> pending the final outcome of these sanctions proceedings. The Notice specified that the temporary suspensions would apply across the operations of the World Bank Group.

4. *SDO’s initial 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 debarment with conditional release for each of the Respondents, together with any entity that is an Affiliate directly or indirectly controlled by either of the Respondents.

- i. For Respondent Firm 1, the SDO recommended a minimum period of ineligibility of six (6) years, after which period Respondent Firm 1 may be released from ineligibility only if it has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, demonstrated to the World Bank Group’s Integrity Compliance Officer (the “ICO”) that it has (i) taken appropriate remedial measures to address the sanctionable practices for which Respondent Firm 1 has been sanctioned and (ii) adopted and implemented an effective integrity compliance

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<sup>3</sup> 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.

<sup>4</sup> 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).



program in a manner satisfactory to the Bank. The SDO did not identify any applicable aggravating or mitigating factors.

- ii. For Respondent Firm 2, the SDO recommended a minimum period of ineligibility of three (3) years, after which period Respondent Firm 2 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 ICO that it has (i) taken appropriate remedial measures to address the sanctionable practices for which Respondent Firm 2 has been sanctioned and (ii) adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank. The SDO did not identify any applicable aggravating or mitigating factors.

5. *SDO's final recommendations:* Each of the Respondents submitted an Explanation to contest the SDO's finding of liability and request termination of sanctions proceedings or a less severe sanction. Following his review of the Respondents' respective Explanations, the SDO determined that additional mitigating factors were applicable in each instance and revised his recommendations. For Respondent Firm 1, the SDO applied additional mitigation for a compliance program, voluntary corrective action, cooperation, and passage of time; and revised his initial recommendation to debarment with conditional release after a minimum period of ineligibility of four (4) years and two (2) months. For Respondent Firm 2, the SDO applied additional mitigation for passage of time and revised his initial recommendation to debarment with conditional release after a minimum period of ineligibility of two (2) years and ten (10) months.

6. *Submission of Responses and referral to Sanctions Board:* Both Respondents submitted Responses to the Sanctions Board in a timely manner and consistent with the applicable Sanctions Procedures, which referred these proceedings to the Sanctions Board for review and final decision.<sup>5</sup>

### **III. GENERAL BACKGROUND**

7. This case arises in the context of the Project Preparation Technical Assistance Facility Project ("Project 1") in the Socialist Republic of Vietnam ("Vietnam" or the "Borrower"), which sought to increase Vietnam's capacity to plan and prepare public investments. This case additionally involves the Da Nang Sustainable City Development Project ("Project 2"), also in Vietnam, which aimed to expand local access to: improved drainage, wastewater collection and treatment services, the arterial road network, and public transport. On July 15, 2010, IDA and the Borrower entered into a financing agreement ("Financing Agreement 1") to provide the equivalent of approximately US\$99.6 million for Project 1. Project 1 became effective on October 13, 2010, and closed on October 31, 2017.<sup>6</sup> On April 30, 2013, IDA and the Borrower entered into an additional financing agreement ("Financing Agreement 2") to provide the equivalent of

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<sup>5</sup> Sanctions Procedures at Section III.A, Paragraph 5.

<sup>6</sup> <http://operationsportal.worldbank.org/secure/P118610/home>.



approximately US\$202.5 million for Project 2. Project 2 became effective on July 29, 2013, and closed on June 30, 2021.<sup>7</sup>

8. Project 1 and Project 2 (together, the “Projects”) financed various contracts in Vietnam, including three at issue in this case: a two-part contract package for consulting services to facilitate development of a new bus transit system (“Package 2.1”), and a single contract for management and supervision of transit infrastructure development (“Contract 3.3”). Project 1 supplied financing for the first contract under Package 2.1. Project 2 supplied financing for the second contract under Package 2.1 and Contract 3.3. The selection process for Package 2.1 was administered by a dedicated project implementation unit within Vietnam’s Department of Transportation (the “PIU”). Respondent Firm 1 participated in joint ventures that competed for, and won, all three contracts,<sup>8</sup> which were signed between April and November of 2014. Respondent Firm 2 was named, in each of these contracts, as a sub-contractor and/or an authorized representative of Respondent Firm 1.

9. INT alleges that both Respondents engaged in fraudulent practices by misrepresenting the experience of key experts proposed for the Package 2.1 contracts. INT further alleges that Respondent Firm 1 engaged in obstructive practices by impeding a Bank audit relating to the contracts under Package 2.1 and Contract 3.3 and by concealing evidence.

#### **IV. APPLICABLE STANDARDS OF REVIEW**

10. *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.

11. *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.

12. *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.

13. *Applicable definitions of fraudulent and obstructive practices:* The Financing Agreements state respectively that each Project should be carried out in accordance with the Bank’s 2011 Anti-

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<sup>7</sup> <http://operationsportal.worldbank.org/secure/P123384/home>.

<sup>8</sup> The record occasionally refers to Package 2.1 as “Contract 2.1” and to the two contracts under Package 2.1 as “Part 1 of the Contract” and “Part 2 of the Contract.” For clarity, and noting that the different parts required separate competition and separate agreements, this decision refers to “Part 1” and “Part 2” as separate contracts.



Corruption Guidelines and that selection of consultants under Project 1 and Project 2 should follow, respectively, the version of the Bank’s Consultant Guidelines last revised in May 2010 (the “May 2010 Consultant Guidelines”) or January 2011 (the “January 2011 Consultant Guidelines”). The request for proposals issued for Package 2.1 (the “RFP”) and the language of Contract 3.3 each affirm that selection and execution of contracts shall proceed in accordance with the January 2011 Consultant Guidelines and define fraudulent and obstructive practices in accordance with the same Guidelines. The question, therefore, is whether the Sanctions Board should apply the May 2010 Consultant Guidelines (per the Financing Agreement for Project 1) or the January 2011 Consultant Guidelines (per the Financing Agreement for Project 2,<sup>9</sup> the RFP, and the language of Contract 3.3).

14. Pursuant to the Bank’s legal framework applicable to sanctions, as well as considerations of equity, the applicable standards in the event of such a conflict shall be those agreed between the borrowing or recipient country and the respondent as governing the contract at issue, rather than the standards agreed between the borrowing or recipient country and the Bank.<sup>10</sup> Therefore, the alleged sanctionable practices in this case have the meaning set forth in the January 2011 Consultant Guidelines. The applicable definitions of fraudulent and obstructive practices are set out below in the Sanctions Board’s analysis of each of INT’s allegations (Section VI).

## **V. PRINCIPAL CONTENTIONS OF THE PARTIES**

### **A. INT’s Principal Contentions in the SAE**

15. *Fraud allegations:* INT alleges that the proposals for both contracts under Package 2.1 misrepresented the experience of two key experts. INT argues that both Respondents were involved in the preparation of these proposals and attributes the knowing insertion of these false claims to staff of Respondent Firm 2. INT argues that Respondent Firm 1 is also liable for the fraud, either because it should be held culpable for the knowing actions of Respondent Firm 2 taken on its behalf, or because the staff of Respondent Firm 1 recklessly approved the false documents for submission to the PIU without taking steps to validate the materials.

16. *Obstruction allegation:* INT alleges that representatives of Respondent Firm 1 engaged in obstructive conduct by materially impeding the exercise of the Bank’s inspection and audit rights and deliberately concealing evidence material to INT’s investigation.

17. *Sanctioning factors:* INT submits that any potential grounds for mitigation, such as cooperation or a corporate integrity compliance program, are either outweighed by the obstructive conduct of Respondent Firm 1 or otherwise not supported by sufficient evidence. INT does not propose aggravation.

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<sup>9</sup> The Financing Agreement for Project 2 sets out an exception on this point, noting that certain activities transferred from an earlier infrastructure project are governed by the May 2010 Consultant Guidelines. The parties do not suggest, and the record does not otherwise suggest, that consulting activities at issue in this case fell under this exception.

<sup>10</sup> See Sanctions Board Decision No. 59 (2013) at para. 11.



**B. Principal Contentions in the Explanation and Response of Respondent Firm 1**

18. Respondent Firm 1 does not contest INT’s assertions that the proposals contained false claims, or that Respondent Firm 2 was involved in the preparation of both proposals. However, Respondent Firm 1 argues that it should not be held liable for any fraudulent conduct, because it neither knew of the misconduct nor exerted sufficient control over Respondent Firm 2 so as to be held liable vicariously. Respondent Firm 1 focuses much of its defense on the assertions that Respondent Firm 2 is not its affiliate or controlled entity, and that the conduct at issue is attributable only to the individual who co-owned, managed, and controlled Respondent Firm 2 (the “Manager”). Similarly, Respondent Firm 1 denies that its direct employees engaged in any obstructive conduct and refutes responsibility for any possible obstruction by staff of Respondent Firm 2. Specifically, Respondent Firm 1 asserts that it did not refuse the audit, but rather was unable to locate or produce some of the documents requested because most were in possession of the Manager.

19. Respondent Firm 1 requests that, in the event of a finding of liability, the Sanctions Board should recognize the following mitigating factors: significant corporate changes, cooperation with INT’s investigation, minor role in the misconduct, implementation of a corporate compliance program, passage of time, period of temporary suspension, and lack of history of misconduct.

**C. Principal Contentions in the Explanation and Response of Respondent Firm 2**

20. Respondent Firm 2 does not contest that the proposals contained false statements but argues that the company should not be held liable for the “surreptitious” misconduct of former staff. Specifically, Respondent Firm 2 argues that its management (then located in Spain) was neither directly aware of the misrepresentations nor did it recklessly fail to act. Respondent Firm 2 describes a process whereby – as INT alleges – the Manager worked on the proposals together with an assistant, but argues that this conduct was private, constituted actions of “rogue” employees, and did not serve Respondent Firm 2.

21. Respondent Firm 2 requests that, in the event of a finding of liability, the Sanctions Board should recognize the following mitigating factors: voluntary corrective actions; planned integrity compliance measures, cooperation with INT’s investigation, passage of time, period of temporary suspension, and the lack of aggravating circumstances.

**D. INT’s Principal Contentions in the Reply**

22. INT contends that both Respondents should be held liable for the actions of their staff and that the two companies were not only affiliates but operated “hand-in-glove.” INT additionally argues that the Respondents’ formal pleadings after issuance of the Notice depart from their arguments made earlier in the investigation and do not accurately portray the relationships between various staff connected to the alleged misconduct.

23. *Fraud allegations:* INT notes that the Respondents do not contest the alleged misrepresentations and submits that the Vietnam-based employees of Respondent Firm 2 who prepared the documents at issue acted in the interest of their employer and within the scope of their





official duties, albeit without supervision from others at the firm. INT also argues that Respondent Firm 1 is closely connected to the misconduct, as it had created Respondent Firm 2 to take advantage of a market opportunity in Vietnam, delegated broad responsibilities to Respondent Firm 2 for this purpose, and ultimately stood to benefit from the fraudulent conduct as a beneficiary of the contracts under Package 2.1. INT submits that Respondent Firm 1 is liable for the fraud either under the theory of respondeat superior or for the direct reckless involvement of its own staff who failed to authenticate documents submitted in the proposals.

24. *Obstruction allegation:* INT explains that Respondent Firm 1 (through its then-President) broadly delegated the responsibility to respond to INT’s audit to two individuals (the “Audit Representatives”) who then acted without supervision. INT argues that this supervisory failure is not exculpatory for Respondent Firm 1, and neither is the asserted failure to keep records in the direct possession of the company. Although the two relevant individuals were a current and a former employee of Respondent Firm 2 at the time of the audit, INT clarifies that it does not accuse Respondent Firm 2 of obstruction. INT argues that a connection between the two Respondents is not required for a finding of liability against Respondent Firm 1 in this instance, because Respondent Firm 1 was the only recipient of INT’s audit request, and because it was a representative of Respondent Firm 1 who delegated compliance with this request to specific individuals.

25. *Sanction against Respondent Firm 1:* INT agrees that some mitigation may be warranted for the corporate changes since the alleged misconduct, cooperation with INT’s investigation, the company’s integrity compliance program, passage of time since the misconduct, and the period of temporary suspension with respect to Respondent Firm 1. INT opposes any mitigating credit for minor role in the misconduct or absence of a history of misconduct.

26. *Sanction against Respondent Firm 2:* INT agrees that some mitigation may be warranted for the passage of time since the misconduct and the period of temporary suspension with respect to Respondent Firm 2. INT opposes any mitigating credit for the claimed corrective actions, cessation of misconduct, compliance measures, or absence of a history of misconduct. INT does not express a firm position on credit for cooperation but notes that obstructive actions taken by the current and former staff of Respondent Firm 2 on behalf of Respondent Firm 1 should significantly diminish any mitigation for cooperation that Respondent Firm 2 may receive.

#### **E. Presentations at the Hearing**

27. During the hearing, INT described the case as one of a parent and affiliate seeking to evade responsibility from misconduct from which they both benefited. INT asserted that liability of Respondent Firm 1 arises from the conduct of its direct employees and from the fact that Respondent Firm 1 created, relied on, and authorized Respondent Firm 2 and its staff in relevant respects. In the alternative, INT argued that Respondent Firm 1 is liable for the reckless conduct of its own direct employees (especially its then-Vice President and then-President) in signing bid documents, for failing to supervise the Manager or her assistant during proposal preparation, and failing to supervise the Audit Representatives during the audit. INT added that the alleged obstruction may have prevented discovery of more direct involvement of Respondent Firm 1 in the fraudulent conduct. Furthermore, INT argued that Respondent Firm 2 is culpable for the actions



of its then-employees because they served the company's interests as a potential sub-consultant, and because Respondent Firm 2 has not proven any internal control reasonably sufficient to prevent or detect the misconduct.

28. Respondent Firm 2 did not contest the alleged misrepresentations but noted that INT attributed all relevant fraudulent conduct to two staff – the Manager and her then-assistant. Respondent Firm 2 submitted that the Manager “orchestrated” the misconduct and “operated autonomously and independently” while doing so. Respondent Firm 2 then argued that, without the direct participation of the company, the fraud and benefit on their own should not lead to a finding of liability. The company referred to various potentially mitigating circumstances, including a commitment to apply ethics-related measures and openness to suggestions from the World Bank on this point. In conclusion, Respondent Firm 2 stated that it also suffered harm from the misconduct and requested that the World Bank Group impose, at most, a sanction of conditional non-debarment, as the sanction requested by INT (debarment with conditional release) would constitute a “death knell” for the firm.

29. Respondent Firm 1 argued that none of its direct staff were involved in or were aware of the fraudulent misconduct. The company stated that staff of Respondent Firm 2, an independent entity outside of the control of Respondent Firm 1, are responsible for any and all of the fraudulent actions alleged; and that a key player – the Manager – was not acting under the approval or authorization of Respondent Firm 1. Respondent Firm 1 proposed a standard for a finding of recklessness that would require proof of a “shocking indifference to substantial risk” – and argued that this did not fit the facts of the present case. Instead, Respondent Firm 1 asserted that its staff had prepared the CVs correctly and had not anticipated that the documents would be falsified by Respondent Firm 2 prior to submission of the bids. Respondent Firm 1 also argued that winning the contracts under Package 2.1 carried more benefit to Respondent Firm 2, which had been trying to “get off the ground” as a business and which had simply partnered with Respondent Firm 1 for this purpose. With respect to allegations of obstruction, Respondent Firm 1 argued again that none of its direct staff were involved but acknowledged that the Audit Representatives did not cooperate with the INT investigators. The company argued that the Audit Representatives acted within the course and scope of their duties but contrary to explicit instructions, the latter factor exculpating Respondent Firm 1.

30. The Sanctions Board questioned all parties regarding the impact of the fraud on the Bank-financed selection process at issue, level of management responsibility to review bidding documents before submission, and possibility of various types of sanctions against responsible parties. In the course of these discussions, both Respondents acknowledged that the misrepresentations were serious, although Respondent Firm 1 did not readily concede that the misstatements strongly impacted the selection process. Respondent Firm 1 disagreed that its then-Vice President was culpable for any the misrepresentations. Specifically, counsel asserted that, notwithstanding the fact that the Vice President had signed documents attesting to accuracy of various bid contents, the seniority of his position meant that he could not be expected to personally review and authenticate – or directly seek the authentication of – CVs of proposed key experts. Both companies requested that, if any sanction should be applied, it be a conditional non-debarment or letter of reprimand, and Respondent Firm 1 disagreed that a sanction against the firm should or could require disciplinary action against staff not named as respondent in this case.





Respondent Firm 2 asked that any sanction reflect the fact that the Manager, who is culpable for both the alleged fraud and alleged obstruction, is not the subject of any sanctions proceedings.

31. INT agreed that corporate changes asserted by Respondent Firm 1 may have mitigating value but argued that neither of the Respondents should avoid at least some period of required debarment, given the absence of acknowledged responsibility or controls that connect to the specific integrity risks revealed in this case.

## **VI. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS**

32. The Sanctions Board will first consider whether it is more likely than not that the alleged sanctionable practices occurred, and if so, whether each of the Respondents may be held liable for each of the sanctionable practices. Finally, the Sanctions Board will determine what sanctions, if any, should be imposed on the Respondents.

### **A. Evidence of Fraudulent Practices**

33. The fraud allegations in this case are analyzed in accordance with the definition of “fraudulent practice” under Paragraph 1.23(a)(ii) of the January 2011 Consultant Guidelines. Pursuant to this definition, INT bears the initial burden to prove that it is more likely than not that the Respondents (i) engaged in any act or omission, including misrepresentation, (ii) that knowingly or recklessly misleads, or attempts to mislead, a party (iii) to obtain a financial or other benefit or to avoid an obligation. A footnote to this definition clarifies that the term “party” refers to a public official, the terms “benefit” and “obligation” relate to the selection process or contract execution, and the “act or omission” is intended to influence the selection process or contract execution.<sup>11</sup>

#### **1. Act or omission, including a misrepresentation**

34. INT alleges that the two proposals submitted under Package 2.1 contained information on key experts, which misstated the background of two of these experts and falsely claimed that they had experience under specific projects in Vietnam or elsewhere in Southeast Asia. INT further asserts that these misrepresentations were repeated in the contracts resulting from these proposals. The Respondents do not dispute the alleged misrepresentations in the proposals or the contracts.

35. The record reflects that the two technical proposals submitted under Package 2.1 misstated the experience attributed to two “Key Staff” in their CVs in several instances; these misstatements were repeated in subsequent contract documents. In past decisions finding misrepresentations of work experience or other qualifications, the Sanctions Board relied primarily on written statements from the parties named in or supposedly issuing the allegedly fraudulent documents, as well as the

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<sup>11</sup> January 2011 Consultant Guidelines at para. 1.23(a)(ii), n.20.

respondents' own admissions.<sup>12</sup> The record in this case includes documentary and testimonial evidence directly from the two named experts who denied the accuracy of claims in the proposals and and/or provided an assertedly correct CV for comparison. Both proposed experts denied, to INT, knowing of the false information or endorsing its submission. A further review of the evidence reveals significant inconsistencies and overstatements relating to the experience of the two key experts, even beyond the specific misrepresentations identified by INT in the SAE. For instance, the proposals submitted by the joint venture included apparently invented statements of activities or contributions, overstated the scope or duration of real work reported by the experts, and even misstated such key details as the nationality and language proficiency of a proposed key expert.

36. The record also reflects that these misrepresentations were made by staff of the Respondents. The proposals and contracts under Package 2.1 were all signed by a joint venture of Respondent Firm 1 and a second company (the JV partner is not accused of any misconduct in these sanctions proceedings). The two JV partners concluded a series of increasingly specific agreements prior to contract signing. The most recent in time defined responsibilities related to bidding and identified Respondent Firm 1 as the lead partner. The record reflects that the proposals under Package 2.1 were signed by staff of Respondent Firm 1 on behalf of the JV and identified Respondent Firm 2 as the authorized representative and/or sub-consultant of Respondent Firm 1. Testimonial and documentary evidence in the record reflects the general involvement of team members from both Respondents in the preparation of technical proposals under Package 2.1. Copies of contemporaneous email correspondence reveal that staff of Respondent Firm 2 (particularly its then-Manager) were directly involved in preparation/compilation of CVs to be included in the proposals. During a clarification process that followed the proposals but preceded the contracts, Respondent Firm 2 wrote directly to the PIU and confirmed that it had prepared all updated CVs of proposed key staff.

37. On the basis of this record and noting the absence of contrary arguments or evidence from the Respondents, the Sanctions Board finds that it is more likely than not that staff of Respondent Firm 1 and Respondent Firm 2 engaged in misrepresentations by (i) incorporating false statements regarding qualifications of key experts into the proposals for two contracts under Package 2.1, (ii) submitting these proposals to the PIU for review and consideration, and/or (iii) reiterating the misstatements in contract documents.

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<sup>12</sup> See, e.g., Sanctions Board Decision No. 61 (2013) at paras. 20-21 (finding misrepresentation on the basis of written denials of authenticity by the purported issuers and signatories of the documents at issue, as well as the additional indicia of falsity on the face of the documents and the respondents' tacit acknowledgement that the documents were inauthentic); Sanctions Board Decision No. 69 (2014) at paras. 19-20 (finding that the experience documents were forged and constituted misrepresentations where the record contained written statements from the purported issuers of the experience documents denying their authenticity and asserting various indicia of falsity therein); Sanctions Board Decision No. 99 (2017) at paras. 18-20 (finding that a respondent included false information in his CV and submitted a fraudulent experience certificate, based on written statements by the purported employer and the respondent's own admissions).

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

38. 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.<sup>13</sup> For example, the Sanctions Board has found misrepresentations to have been (more likely than not) knowing where the misstatements were too significant to have been made in error or through reckless oversight.<sup>14</sup> In assessing recklessness, the Sanctions Board considers whether circumstantial evidence indicates that a respondent was, or should have been, aware of a substantial risk but nevertheless failed to act to mitigate that risk.<sup>15</sup> A finding of recklessness has involved, for instance, the inclusion of false supporting proposal documents that were supplied by an unverified partner or vendor and submitted by the respondent in ignorance of their false nature, in spite of red flags.<sup>16</sup>

39. INT argues that the misrepresentations in this case were made knowingly or at least recklessly. INT does not identify any evidence as particularly determinative of the alleged knowing nature of the Respondents’ conduct. With respect to recklessness, INT notes that an executive of Respondent Firm 1 (its then-Vice President) wrote his initials on the proposals and the CV documents prior to submission without any review or verification. The Respondents do not agree with INT’s version of events. Respondent Firm 1 attributes any and all misconduct to staff of Respondent Firm 2 and Respondent Firm 2 in turn attributes the conduct to asserted “rogue employees,” particularly its then-Manager. Further, Respondent Firm 1 argues that its staff were acting at most negligently but certainly not recklessly in signing and submitting the false documents, because: they were at too senior of a level to apply close scrutiny, they had not encountered any evidence of substantial risk, and a system of controls – given the type of misconduct at issue – would not have prevented the false statements in the proposals.

40. *Respondent Firm 2*: The record supports a conclusion that staff of Respondent Firm 2 knowingly included false information in the key expert CVs included with the proposals. First, the Sanctions Board notes that contemporaneous correspondence between the staff of Respondent Firm 2 and the JV partner of Respondent Firm 1 suggests a general practice (by Respondent Firm 2) of revising original CV documents directly and ostensibly without the awareness or approval of the CV owners (i.e., the key experts). Second, the nature of the misrepresentations themselves (detailed revisions of experience entries and addition of invented experience entries in CV documentation) reflects a knowing manner of conduct.

41. *Respondent Firm 1*: The Sanctions Board finds that it is more likely than not that staff of Respondent Firm 1, including its then-Vice president, acted at least recklessly in writing initials on relevant proposal documents, signing the proposals, and submitting them to the PIU. As reflected in the record, Respondent Firm 1 empowered staff of Respondent Firm 2 to prepare the

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<sup>13</sup> World Bank Sanctions Procedures (2016) (the “Sanctions Procedures”) at Section III.A, sub-paragraph 7.01.

<sup>14</sup> Sanctions Board Decision No. 69 (2014) at para. 22.

<sup>15</sup> See, e.g., Sanctions Board Decision No. 51 (2012) at para. 33; Sanctions Board Decision No. 112 (2018) at para. 34.

<sup>16</sup> See, e.g., Sanctions Board Decision No. 61 (2013) at paras. 22-27; Sanctions Board Decision No. 67 (2014) at paras. 20-27.

background information for key experts and claims to be neither aware of the lapses uncovered by INT nor supervising the process. As additionally reflected in the record, the then-Vice President (i) described himself to INT as a “technical” member of the “bid preparation team” who would typically participate in identifying appropriate key staff and (ii) personally signed statements, appended in the bids, to confirm the authenticity of key bid components, including the CVs at issue in this case. When the World Bank or the Borrower under a Bank-Financed project requires certification of certain key claims presented in a bid, the certifier is expected to take responsibility for the truth of such claims. Even if no direct staff of Respondent Firm 1 were aware that the bids contained falsehoods, wholesale delegation of the preparation of key bidding documents to an unsupervised party followed by blind approval of such documents and their submission to the PIU is not an acceptable practice. The absence of any system of verification for key staff backgrounds, paired with delegation to authorized-and-unsupervised staff constitutes conduct more severe than negligence. The fact that Respondent Firm 1 has experience in public procurement (including under Bank-financed tenders) and was ostensibly aware of the bidding requirements, only serves to further inculcate the company.

42. The recipient and target of misrepresentations in the proposals was the PIU – the government agency charged with selecting appropriate consultants and implementing the Projects. The proposals served to convince (and mislead) the PIU to reach a positive assessment of the JV’s qualifications and ability to carry out the work.

43. For these reasons, the Sanctions Board finds that it is more likely than not that the representatives of the Respondent Firm 1 and Respondent Firm 2 attempted to mislead and did mislead a party in a manner that was knowing (Respondent Firm 2) or at least reckless (Respondent Firm 1).

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

44. The Sanctions Board has consistently held that, where the record demonstrates that a misrepresentation was made in response to a tender requirement, the intent to obtain a benefit or avoid an obligation may be inferred.<sup>17</sup> The Sanctions Board has reached this finding “[i]rrespective of the bid requirement’s actual significance.”<sup>18</sup>

45. INT alleges that the misrepresentations were made in order to improve the evaluation of proposals for both contracts under Package 2.1. The Respondents do not comment at length on this component of the fraud allegation, although Respondent Firm 1 submits that the primary beneficiary of the misconduct was the then-Manager of Respondent Firm 2. The evidence with respect to this element of fraud is more than sufficient in the present case. The record reveals that the CVs of key experts were generally an important proposal component responsive to specific tender requirements. The RFP required bidders to identify key experts and to submit information

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<sup>17</sup> See, e.g., Sanctions Board Decision No. 61 (2013) at para. 28; Sanctions Board Decision No. 74 (2014) at para. 29; Sanctions Board Decision No. 83 (2015) at para. 52; Sanctions Board Decision No. 88 (2016) at para. 37; Sanctions Board Decision No. 92 (2017) at para. 72; Sanctions Board Decision No. 99 (2017) at paras. 23-25; Sanctions Board Decision No. 106 (2017) at paras. 25-27.

<sup>18</sup> Sanctions Board Decision No. 99 (2017) at para. 25.

regarding their qualifications. What's more, as detailed below, these requirements were key to the selection process, and the intended result of the misrepresentations materialized.

46. The significant role of the CVs at issue – and the false experience claimed therein – in the evaluation of the JV's proposals is documented in the PIU's technical evaluation report. The misrepresentations ultimately led to the contract wrongly being awarded to the JV of Respondent Firm 1. To note, the technical evaluation criteria weighed the qualifications of proposed key experts at 60 out of 100 points, with 12 points being allocated specifically for relevant experience in Asia Pacific. Despite false representations to the contrary in the bid, neither expert appears to have had experience in Asia Pacific with the result that the bidding JV's score was unjustifiably inflated by 12 points in each technical evaluation. The record reflects that, but for the allocation of these points, the bidding JV would not have reached the minimum threshold in either technical evaluation under Package 2.1 and, accordingly, should have been excluded at this stage. The impact of these misrepresentations was only multiplied during contract review and negotiation, when the bidding JV had to re-confirm the CVs of key experts to ensure their current status and accuracy.

47. In these circumstances, the Sanctions Board finds that it is more likely than not that the misrepresentations at issue in this case served to obtain the financial benefit of Bank-financed contracts and/or to avoid the obligation of accurately disclosing the experience of key staff.

#### **B. Evidence of Obstructive Practice**

48. In accordance with the definition of "obstructive practice" under Paragraph 1.23(a)(v) of the January 2011 Consultant Guidelines, INT bears the initial burden to show that it is more likely than not that Respondent Firm 1 engaged in "deliberately . . . concealing . . . evidence material to the investigation" or in acts "intended to materially impede the exercise of the Bank's inspection and audit rights."

49. INT submits that Respondent Firm 1 violated its obligations to comply with a valid audit request and improperly concealed material evidence. Specifically, INT alleges that the Audit Representatives acted in an obstructive manner by concealing evidence and impeding INT's attempt to audit the books and records of Respondent Firm 1. INT asserts that the Audit Representatives produced a very limited subset of documents requested by INT during the audit and impeded INT's ability to access records that were ostensibly available. Alternatively, INT submits that then-President of Respondent Firm 1 acted recklessly in failing to supervise the Audit Representatives and ensure their cooperation. INT clarifies that, although the Audit Representatives were a current and a former employee of Respondent Firm 2 (the latter being the former Manager), Respondent Firm 2 is not accused of obstruction, because the Audit Representatives were acting with the delegation and on behalf of Respondent Firm 1. INT additionally explains the target areas of the audit and the manner in which this incomplete and selective production of documents impeded their fact-finding efforts. Respondent Firm 1 asserts that it did not refuse the audit, but rather was unable to locate or produce some of the documents requested because most were in possession of the former Manager of Respondent Firm 2. Respondent Firm 1 also denies that its direct employees engaged in any obstructive conduct and contests liability for any possible obstructive conduct of the staff of Respondent Firm 2.





50. The record reveals that INT sought information and documents from several representatives and staff of Respondent Firm 1, both in Spain and in Vietnam, during the period from February to July 2017. INT also sought information that would enable it to reach out to the firm's asserted "independent accountant." INT's inquiries were made to Respondent Firm 1, whose then-President referred INT to the Audit Representatives for follow up. A full review of INT's inquiries during this attempted audit, as well as responses on behalf of Respondent Firm 1, reveals the following:

51. Obstruction by impeding the audit: INT claims that the Audit Representatives impeded INT's audit by "providing INT with inaccurate information about where records were located; confining INT's audit to an empty and largely unused office; and later falsely stating that they had no more responsive records to provide, or else suggesting that INT obtain documents from [the Respondent's] client and auditors." In support, INT furnishes evidence of an operational office in Vietnam that one of the Audit Representatives had claimed was closed or vacated. In addition, INT points to the general incomplete and unforthcoming nature of interactions between the Audit Representatives and INT.

52. In cases of alleged obstruction via impediment to an audit, the Sanctions Board relies on the definition of the Bank's audit rights that apply to the specific contracts or bidding processes at issue.<sup>19</sup> The definitions that appeared in documents relating to this case are set out below:

*RFP*: "Consultant shall permit and shall cause its agents, Experts, Sub-consultants, sub-contractors, services providers, or suppliers to permit the Bank to inspect all accounts, records, and other documents relating to the submission of the Proposal and contract performance (in case of an award), and to have them audited by auditors appointed by the Bank."

*Package 2.1 contracts and Contract 3.3*: "The Consultant shall permit and shall cause its Sub-consultants to permit, the Bank and/or persons appointed by the Bank to inspect the Site and/or all accounts and records relating to the performance of the Contract and the submission of the Proposal to provide the Services, and to have such accounts and records audited by auditors appointed by the Bank if requested by the Bank."

53. The Sanctions Board has generally found sufficient evidence of intent to impede an audit where the applicable documents defined the Bank's right to inspect certain accounts and records, the respondent was notified of INT's plan to conduct an inspection pursuant to that definition, and that respondent's representatives nevertheless refused INT's justified requests. The Sanctions Board has found indefinite postponements and objections paired with failure to comply to constitute effective refusal of the audit.<sup>20</sup> The Sanctions Board has held that INT need not prove that a respondent's refusal was motivated solely or primarily by the wish to impede the Bank's audit rights in order to prove its accusation.<sup>21</sup> Respondent Firm 1 did not in fact permit or cause

<sup>19</sup> Sanctions Board Decision No. 87 (2016) at paras.114– 116; Sanctions Board Decision No. 104 (2017) at para. 28; Sanctions Board Decision No. 118 (2019) at paras. 68– 72.

<sup>20</sup> Sanctions Board Decision No. 87 (2016) at paras. 114– 116.

<sup>21</sup> Sanctions Board Decision No. 60 (2013) at para. 105; Sanctions Board Decision No. 93 (2017) at para. 83; Sanctions Board Decision No. 104 (2017) at para. 28.



others to permit an inspection of “all accounts and records” as required. The Sanctions Board finds the evidence in this case sufficient to show that the Audit Representatives, ostensibly authorized to cooperate with the audit on behalf of Respondent Firm 1, instead impeded the audit in a number of respects. Such impediments included incomplete production of materials (in spite of detailed requests by INT), failure to cooperate candidly and in good faith during the audit-related interviews, and concealment of evidence. The latter is an independent potential basis for sanction<sup>22</sup> and is discussed below in additional detail.

54. Obstruction by concealing evidence: INT alleges that Respondent Firm 1 concealed evidence during INT’s investigation and attempted audit in that it withheld certain evidence and misdirected INT from visiting a physical office in Vietnam, falsely claiming that this office was closed or vacant. Respondent Firm 1 submits broadly that none of its staff concealed or withheld information. At the same time, Respondent Firm 1 concedes that the Audit Representatives either refused to provide materials requested by INT or cooperated in a manner that was “only limited,” but denies that the firm itself is culpable or responsible for this conduct, because the Audit Representatives were not directly employed by Respondent Firm 1.

55. With respect to concealment of evidence, the Sanctions Board has previously found sufficient evidence of misconduct where a respondent intentionally provided a narrower range of internal records than that available and demanded by INT.<sup>23</sup> The record in this case reveals both direct and circumstantial evidence of concealment. First, INT presents undisputed allegations and evidence of an existing office in Vietnam and relevant records therein, that was denied by one of the Audit Representatives and to which INT staff had no access. Second, justifications for non-production of evidence by both the Audit Representatives and direct staff of Respondent Firm 1 – its then-President – have such low credibility as to constitute sufficient circumstantial evidence of concealment. For example, Audit Representatives could not articulate to INT how documents were stored or readily identify the asserted “independent accountant” for the company. Similarly, the then-President of Respondent Firm 1 stated to INT that he received an annual financial report from Respondent Firm 2. However, less than one month later, the Audit Representatives claimed to have no access to such records and asserted that they were in possession of an unspecified independent third party. It is ultimately unclear if these documents were ever produced in full. The Sanctions Board therefore finds INT’s allegation of concealment sufficiently supported by the record.

56. For these reasons, the Sanctions Board concludes that it is more likely than not that the authorized representatives of Respondent Firm 1 engaged in conduct to materially impede the exercise of the Bank’s inspection and audit rights, including through concealment of evidence material to the investigation.

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<sup>22</sup> See January 2011 Consultant Guidelines at para. 1.23(a)(v).

<sup>23</sup> Sanctions Board Decision No. 110 (2018) at paras. 28-30.

### C. Liability of the Respondents for the Acts of Their Employees

57. In past cases, the Sanctions Board has concluded that an employer could be found liable for the acts of its employees under the doctrine of respondeat superior, considering in particular whether the employees acted within the course and scope of their employment, and were motivated, at least in part, by the intent of serving their employer.<sup>24</sup> Where a respondent entity has denied responsibility for the acts of its employees based on a “rogue employee” defense, the Sanctions Board has considered any evidence presented regarding the scope and adequacy of the respondent entity’s controls and supervision at the time of the misconduct.<sup>25</sup> The same standard is applied in the present case.

58. *Respondent Firm 1 – liability for actions of own staff:* The record supports a finding that the staff of Respondent Firm 1 engaged in sanctionable practices in accordance with the scope of their respective duties and with the purpose of serving the interests of the company. With respect to fraudulent conduct, evidence shows that a high-level representative of Respondent Firm 1 – its then-Vice-President – signed proposals containing false information and submitted them to the PIU. There is no indication in the record that this employee acted for any purpose other than serving Respondent Firm 1. With respect to obstructive conduct, the Sanctions Board finds that the direct employee (then-President) of Respondent Firm 1 acted within the course and scope of his employment and was motivated, at least in part, by the intent of serving Respondent Firm 1. Respondent Firm 1 does not present, and the record does not provide any basis for, a “rogue-employee” defense with respect to either individual. The Sanctions Board therefore finds Respondent Firm 1 liable for the sanctionable practices carried out by its direct staff.

59. *Respondent Firm 1 – liability for actions of authorized representatives:* The record supports a finding that current and former staff of Respondent Firm 2 were acting on behalf of Respondent Firm 1 in carrying out the misconduct. With respect to the fraudulent conduct, Respondent Firm 1 acted through Respondent Firm 2 to prepare locally-relevant components of the proposals. The defense of an “independent partner affiliate” is unavailing in this case, where the bid preparation was unsupervised and broadly delegated, and the companies’ finances and business interests appeared deeply intertwined. Indeed, one of the officials of Respondent Firm 1 who responded to INT’s initial inquiry had described the two firms as “the same company.” With respect to the obstructive conduct, the audit request was presented to Respondent Firm 1. The Audit Representatives tasked with responding to that request were thus acting on behalf of Respondent Firm 1. Furthermore, INT sought to keep the President of Respondent Firm 1 informed of its interactions with the Audit Representatives, including when they were engaging in uncooperative and obstructive conduct. No evidence of mechanisms or effective steps to supervise the discharge of their assigned duties is presented. Indeed, the fact that an executive of Respondent Firm 1 was able to directly assign tasks to current and former staff of Respondent Firm 2 at the time of the audit speaks further to the firms’ close relationship and inter-reliance.

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<sup>24</sup> See, e.g., Sanctions Board Decision No. 55 (2013) at paras. 51-52, 55; Sanctions Board Decision No. 61 (2013) at para. 30; Sanctions Board Decision No. 63 (2014) at para. 72.

<sup>25</sup> See, e.g., Sanctions Board Decision No. 48 (2012) at para. 30; Sanctions Board Decision No. 55 (2013) at paras. 53-54.

60. *Respondent Firm 2*: The record supports a finding that the staff of Respondent Firm 2 engaged in sanctionable practices in accordance with the scope of their respective duties and with the purpose of serving the interests of the company. The Sanctions Board notes that Respondent Firm 2 contests liability largely by distancing itself from its former Manager who was centrally involved in preparation of the technical proposals and who has since left the company. Respondent Firm 2 also claims that other staff involved in proposal preparation acted in concert with the Manager, and “surreptitious[ly].” INT argues that the fraudulent conduct of employees of Respondent Firm 2 was within the scope of their work and that Respondent Firm 2 has neither proven any red flags of clandestine behavior, nor demonstrated any meaningful controls or supervision within the company so as to mitigate risk of misconduct in bidding. The record reveals that at least two employees of Respondent Firm 2, including its then-Manager, were directly involved in preparing the key expert portions of the technical proposals and that its then-Manager was a lead player who represented both Respondent Firm 2 and Respondent Firm 1 at that time. The record also does not suggest any motivation for the misrepresentations that is personal to either of the employees and distinguishable from the goal to win the contracts under Package 2.1. Finally, Respondent Firm 2 merely asserts it was unaware of the misconduct; no evidence of control or supervision mechanisms with respect to either the Manager or her colleague is presented. In these circumstances, the Sanctions Board rejects the “rogue employee” defense of Respondent Firm 2 and finds the company liable for the fraudulent conduct of its staff.

#### **D. Sanctioning Analysis**

##### **1. General framework for determination of sanctions**

61. 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: (i) reprimand, (ii) conditional non-debarment, (iii) debarment, (iv) debarment with conditional release, and (v) 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.

62. 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.<sup>26</sup> 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.<sup>27</sup>

63. The Sanctions Board is required, in this case, 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 Group Sanctioning Guidelines (the “Sanctioning Guidelines”). While the Sanctioning Guidelines themselves state that they are not intended to be prescriptive in nature,

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<sup>26</sup> See, e.g., Sanctions Board Decision No. 40 (2010) at para. 28.

<sup>27</sup> See, e.g., Sanctions Board Decision No. 44 (2011) at para. 56.



they provide guidance as to the types of considerations potentially relevant to any sanctioning decision. 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.

64. 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

65. As the Sanctions Board finds that Respondent Firm 1 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)

66. 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,<sup>28</sup> even where all misconduct related to the same project or contract.<sup>29</sup> By contrast, the Sanctions Board applied aggravation rather than a separate sanction for multiple sanctionable practices in a case where the counts of misconduct were closely interrelated, such as where fraud was intended to prevent the discovery of the corrupt practices, the investigation into which was later obstructed.<sup>30</sup> The record in this case reflects that Respondent Firm 1 engaged in (i) fraudulent practices relating to the two proposals and contracts under Package 2.1 and (ii) an obstructive practice in connection with the same documents as well as Contract 3.3. The fraudulent practices under Package 2.1 are interconnected because the misrepresentations relate to the same issue of key expert backgrounds claimed by the bidding JV. This notwithstanding, the obstructive conduct is factually distinct and must be considered separately. The concealment of evidence and impediment of INT’s audit was not limited to the

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<sup>28</sup> See, e.g., Sanctions Board Decision No. 102 (2017) at para. 66 (applying cumulative sanctions where the respondent engaged in distinct corrupt and fraudulent practices).

<sup>29</sup> See, e.g., Sanctions Board Decision No. 87 (2016) at para. 151 (applying cumulative sanctions where the respondents engaged in multiple distinct counts of misconduct, all relating to the same project); Sanctions Board Decision No. 97 (2017) at para. 66 (applying cumulative sanctions where the respondents engaged in fraudulent and corrupt practices relating to the same project and contract).

<sup>30</sup> Sanctions Board Decision No. 60 (2013) at para. 143; Sanctions Board Decision No. 102 (2017) at para. 68.



allegations of fraud or even to the affected selection and contract documents. Accordingly, the Sanctions Board finds that the plurality of sanctionable practices warrants multiplication of the base sanction with respect to the counts of fraud and obstruction.

3. Factors considered in the present case

a. Severity of the misconduct

67. 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 repetition, central role in the misconduct, and management's role in the misconduct as some examples of severity.

68. *Repeated pattern of conduct:* Section IV.A.1 of the Sanctioning Guidelines identifies a repeated pattern of conduct as one potential basis for aggravation. In past cases, the Sanctions Board has applied aggravation under this factor where misconduct related to multiple bids under the same project or where misrepresentations were prompted by different requirements in the same tender.<sup>31</sup> The present case reflects detailed misrepresentations in two proposals under the same package. The misrepresentations in each proposal related to different specific key experts and were made separately from one another. The repeated practice of revising key expert qualifications in proposal documents warrants aggravation for both Respondents, as they are each culpable or responsible for the fraud.

69. *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 respondents led or initiated misconduct that involved two or more persons or entities.<sup>32</sup> The record reflects the uncontested central role of the Manager of Respondent Firm 2 in the fraudulent conduct involving both of the Respondents. For this reason, the Sanctions Board applies aggravation to the sanction of Respondent Firm 2.

70. *Management's role in the misconduct:* Section IV.A.4 of the Sanctioning Guidelines states that this factor may apply “[i]f an individual within high-level personnel of the organization participated in, condoned, or was willfully ignorant of the misconduct.” The Sanctions Board has previously applied aggravation on this basis where members of a respondent entity's senior management personally participated in the misconduct.<sup>33</sup> In the present case, the Manager, who was also a co-owner of Respondent Firm 2, was actively and directly involved in the fraudulent

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<sup>31</sup> See, e.g., Sanctions Board Decision No. 68 (2014) at para. 37.

<sup>32</sup> 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 revealed that he had 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).

<sup>33</sup> See, e.g., Sanctions Board Decision No. 102 (2017) at para. 69.

conduct and preparation of CVs; this is uncontested. Given the Manager's high-level role, the Sanctions Board applies aggravation to the sanction of Respondent Firm 2.

71. *Mode of misconduct*: The Sanctions Board has previously applied aggravation for conduct found to be otherwise particularly severe, egregious, or sophisticated.<sup>34</sup> The record reflects diverse, significant, and detailed background-related misrepresentations for two key expert candidates, which appeared in two proposals and repeated in related contract documents in the context of two Bank-financed projects. The severity of this misconduct is underscored by its significant impact on the selection process.<sup>35</sup> The Sanctions Board finds some aggravation warranted on this basis with respect to Respondent Firm 2, as it was the staff of this company who were most directly involved in the fraud.

b. Interference in the Bank's investigation

72. Section III.A, sub-paragraph 9.02(c) of the Sanctions Procedures requires that "interference by the sanctioned party in the Bank's investigation" be considered in determining a sanction. Section IV.C.1 of the Sanctioning Guidelines describes this factor as including deliberate concealment of evidence material to the investigation. The Sanctions Board has previously applied aggravation where a respondent concealed material evidence by denying INT access to documents requested during the course of an audit.<sup>36</sup> INT alleges that representatives of Respondent Firm 1 deliberately withheld information and concealed evidence during the course of INT's audit. The Sanctions Board has separately assessed this allegation in the context of alleged obstructive practices and concluded that the obstruction of an audit by representatives of Respondent Firm 1 was accomplished through, *inter alia*, concealment of material evidence from INT.<sup>37</sup> The Sanctions Board finds that the sanction of Respondent Firm 1 warrants aggravation on this basis.

c. Minor role in misconduct

73. Section III.A, sub-paragraph 9.02(e) of the Sanctions Procedures provides for mitigation "where the sanctioned party played a minor role in the misconduct." Section V.A of the Sanctioning Guidelines states that mitigation may be warranted where the sanctioned party was a "minor, minimal, or peripheral participant," or where "no individual with decision-making authority participated in, condoned, or was willfully ignorant of the misconduct." The Sanctions Board has applied mitigation where the respondent's participation in the misconduct appeared to be indirect,<sup>38</sup> comparatively passive and limited;<sup>39</sup> or where the respondent's management was not aware of either the actions or the intent of junior employees engaging in misconduct.<sup>40</sup> The

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<sup>34</sup> Sanctions Board Decision No. 122 (2020) at para. 31.

<sup>35</sup> See *supra* Paragraph 45.

<sup>36</sup> Sanctions Board Decision No. 56 (2013) at paras. 61-62.

<sup>37</sup> See *supra* Paragraphs 54-56.

<sup>38</sup> Sanctions Board Decision No. 83 (2015) at para. 88.

<sup>39</sup> Sanctions Board Decision No. 45 (2011) at para. 61.

<sup>40</sup> See, e.g., Sanctions Board Decision No. 116 (2019) at para. 23.



Sanctions Board has noted that a respondent bears the burden to show affirmatively that the record supports mitigation on this basis.<sup>41</sup> Respondent Firm 1 requests mitigation, asserting that it played a peripheral role throughout the selection process and contract implementation, and had no involvement in the misconduct. INT opposes and argues that this claim has already been rebutted during the discussion of culpability and responsibility of Respondent Firm 1 for the actions of various staff. The argument of Respondent Firm 1 does not address evidence that individuals with decision-making authority participated in the misconduct knowingly or at least recklessly.<sup>42</sup> For instance, the Manager was ostensibly authorized to represent Respondent Firm 1 in proposal-related discussions with the JV partner. The then-Vice President who signed and submitted the proposals was empowered to make decisions about the composition and submission of the proposals. Finally, the then-President who delegated compliance with the audit request to the Audit Representatives was authorized to represent Respondent Firm 1 in discussions with INT and held an objectively high-level role. As a result, the Sanctions Board finds that Respondent Firm 1 has not borne its burden of proof and declines to apply any mitigating credit on this basis.

d. Voluntary corrective action

74. Section III.A, sub-paragraph 9.02(e) of the Sanctions Procedures provides for mitigation where the respondent took voluntary corrective action. Section V.B of the Sanctioning Guidelines identifies several examples of voluntary corrective actions that may warrant mitigation, with the timing, scope, and/or quality of those actions to be considered as potential indicia of the respondent's genuine remorse and intention to reform. The Sanctions Board has consistently held that the burden of presenting evidence to substantiate any claimed voluntary corrective action lies with the respondent.<sup>43</sup>

75. *Internal action against responsible individual(s)*: Section V.B.2 of the Sanctioning Guidelines states that mitigation may be warranted where “[m]anagement takes all appropriate measures to address the misconduct engaged in on its behalf, including taking appropriate disciplinary and/or remedial steps with respect to the relevant employee, agent, or representative.” The Sanctioning Guidelines add that “[t]he timing of the action may indicate the degree to which it reflects genuine remorse and intention to reform, or a calculated step to reduce the severity of the [sanction].” The Sanctions Board has previously granted mitigation on this basis where the record included documentary evidence that the respondent had undertaken internal disciplinary action against participants in the misconduct.<sup>44</sup> However, the Sanctions Board has declined to apply mitigating credit where the record did not show that such actions were timely, disciplinary in nature, comprehensive, and relevant to the misconduct at issue.<sup>45</sup> Respondent Firm 2 requests mitigation for the dismissal of its Manager in spite of a “delicate health situation,” and for the fact that the Manager’s assistant during the period of fraudulent conduct is also no longer with the

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<sup>41</sup> See, e.g., Sanctions Board Decision No. 71 (2014) at para. 91.

<sup>42</sup> See *supra* Paragraphs 39-42, 58-60.

<sup>43</sup> See, e.g., Sanctions Board Decision No. 63 (2014) at para. 104

<sup>44</sup> See, e.g., Sanctions Board Decision No. 48 (2012) at para. 44.

<sup>45</sup> See, e.g., Sanctions Board Decision No. 44 (2011) at paras. 71-72; Sanctions Board Decision No. 56 (2013) at paras. 65-67; Sanctions Board Decision No. 106 (2017) at para. 41.



company. INT opposes mitigation. The record also contradicts the assertion of Respondent Firm 2 on multiple points. For instance, the Manager claimed to INT that she left the company of her own volition. In addition, there is no evidence of reprimand or any disciplinary measure against responsible individuals in light of the misconduct at issue. The Sanctions Board thus declines to apply any mitigation.

76. *Cessation of misconduct:* Section V.B.1 of the Sanctioning Guidelines states that cessation of misconduct may warrant mitigation as an example of the respondent’s voluntary corrective action. The Sanctions Board has previously applied mitigation on this basis where the management of a respondent took prompt and meaningful corrective measures to halt the sanctionable practices.<sup>46</sup> Conversely, the Sanctions Board has declined to apply mitigation where the asserted action was not effective or timely.<sup>47</sup> Respondent Firm 2 asserts that, by the time of INT’s inquiry, it had already taken corrective measures and that the misconduct it attributed to the Manager had occurred only once. INT opposes and describes any cessation as “coincidental” and not due to any “desire to reform. The Sanctions Board notes that Respondent Firm 2 does not articulate what corrective measures prior to INT’s inquiry are claimed to have led to a cessation of the misconduct. In these circumstances, the Sanctions Board does not find any credible basis for the claimed cessation of misconduct and declines to apply any mitigation.

77. *Effective compliance program:* Section V.B.3 of the Sanctioning Guidelines states that mitigation may be appropriate where the record shows a respondent’s “[e]stablishment or improvement, and implementation of a corporate compliance program.” The Sanctions Board has granted mitigation where the respondent’s asserted measures appeared to address the type of misconduct at issue ,and/or at least some of the elements set out in the World Bank Group’s Integrity Compliance Guidelines.<sup>48</sup> Conversely, the Sanctions Board has declined mitigation where the record contained no evidence that the respondent had in fact implemented compliance measures.<sup>49</sup> Both respondents request mitigation for their asserted corporate compliance programs.

- i. Respondent Firm 1 asserts that it has conducted a risk assessment, implemented a new ethics program, and is now owned by a larger company with added ethics-related obligations. INT supports limited mitigation but claims that evidence of implementation is sparse.

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<sup>46</sup> See, e.g., Sanctions Board Decision No. 63 (2014) at para. 105.

<sup>47</sup> See, e.g., Sanctions Board Decision No. 67 (2014) at para. 39.

<sup>48</sup> See, e.g., Sanctions Board Decision No. 56 (2013) at para. 69 (finding that the asserted compliance measures addressed, at least in part, some of the elements suggested in the Integrity Compliance Guidelines); Sanctions Board Decision No. 71 (2014) at para. 94 (finding that the asserted compliance measures appeared to address most of the principles set out in the Integrity Compliance Guidelines).

<sup>49</sup> See, e.g., Sanctions Board Decision No. 45 (2011) at para. 74 (finding no basis to apply mitigation for the respondent’s asserted willingness to pursue corporate measures, absent evidence of actual implementation); Sanctions Board Decision No. 85 (2016) at para. 44 (declining to apply mitigation where the record does not contain evidence of the respondent’s asserted anti-bribery policy and related internal rules).



- ii. Respondent Firm 2 also requests mitigation, citing membership in a professional association and its decision to adopt the code of ethics devised by Respondent Firm 1. INT opposes, citing no evidence of implementation.

78. In assessing this factor, the Sanctions Board considered the timing of the asserted measures, the nexus between corrective measures and the misconduct, and any available evidence of implementation. The program, titled “Criminal Prevention Plan,” is dated in January 2020 and focuses on prevention of criminal activity. In discussing countermeasures against fraud or bribery, the program outline describes basic compliance with internal codes. Additionally, this plan is not accompanied by evidence of implementation; neither are the asserted compliance measures of Respondent Firm 2. Although Respondent Firm 2 invites World Bank assistance and guidance on establishing such a program, the Sanctions Board notes that the ICO’s guidelines for integrity compliance programs are summarized in a public document,<sup>50</sup> which could have provided an excellent starting point for Respondent Firm 2; yet appears to not have been used. Taking all facts into account, the Sanctions Board declines to apply mitigating credit on this basis to either Respondent Firm 1 or Respondent Firm 2 at this time. This finding is without prejudice to any later assessment by the ICO.

e. Cooperation

79. *Assistance and/or ongoing cooperation with investigation:* Section III.A, subparagraph 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 states that cooperation with INT’s investigation may take the form of assistance or ongoing cooperation, as based on INT’s representation that there was “substantial assistance” to an investigation, and considering also “the truthfulness, completeness, [and] reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of assistance.” Both respondents request mitigation on this basis. INT opposes full credit for cooperation and states that the value of cooperation from some staff was limited if not nullified by the obstructive conduct. The Sanctions Board has previously granted mitigation where a respondent replied to INT’s show-cause letter and follow-up inquiries.<sup>51</sup> Conversely, the Sanctions Board has declined mitigation where respondents’ statements to INT were internally inconsistent,<sup>52</sup> “failed to show the type of candor and cooperation as would warrant mitigation,”<sup>53</sup> or otherwise lacked credibility and contradicted previous assertions.<sup>54</sup> The record reveals correspondence and interviews between staff of both Respondents and INT on multiple occasions and over a period of months. However, the Sanctions Board assesses not merely the fact of these communications but also their value to INT’s investigation, noting especially INT’s allegations of obstruction, misleading statements to investigators, interference in the investigation by Respondent Firm 1 and the subsequent lack of

<sup>50</sup> See “Compliance” section at: <https://www.worldbank.org/en/about/unit/integrity-vice-presidency#3>.

<sup>51</sup> 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; Sanctions Board Decision No. 113 (2018) at para. 44.

<sup>52</sup> Sanctions Board Decision No. 61 (2013) at para. 44; Sanctions Board Decision No. 127 (2020) para. 37.

<sup>53</sup> Sanctions Board Decision No. 77 (2015) at para. 54.

<sup>54</sup> Sanctions Board Decision No. 75 (2014) at para. 34.



candor in these sanctions proceedings.<sup>55</sup> The Sanctions Board finds the Respondents' negative conduct in this respect to outweigh the mitigating credit that could have been earned through good faith communication, timely cooperation, and meaningful assistance during INT's investigative work.

f. Periods of temporary suspension

80. Pursuant to Section III.A, sub-paragraph 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account the Respondents' respective periods of temporary suspension. Each of the Respondents has been suspended since the issuance of the Notice on June 2, 2020.

g. Other considerations

81. Under Section III.A, sub-paragraph 9.02(i) of the Sanctions Procedures, the Sanctions Board shall consider "any other factor" that it "reasonably deems relevant to the sanctioned party's culpability or responsibility in relation to the [s]anctionable [p]ractice."

82. *Lack of candor*: The Sanctions Board has previously applied aggravation where the record reflected a respondent's persistent and implausible denials of responsibility or knowledge of the misconduct, including arguments predicated on an uncorroborated version of events.<sup>56</sup> The Sanctions Board notes that a finding of a respondent's lack of candor may be based on written pleadings and/or a respondent's conduct during the hearing. For example, as noted in the Sanctions Procedures, a party's refusal to answer, or failure to answer questions truthfully or credibly during the hearing, may be construed against that party.<sup>57</sup> For the reasons detailed below, the Sanctions Board applies aggravation to the sanctions of both Respondents under this factor.

83. Over the course of these proceedings, the Respondents made repeated implausible denials of the link between a company (Respondent Firm 2) and its co-owner and Manager; or between a company (Respondent Firm 1) and an affiliate that the firm itself had described as an authorized local representative (Respondent Firm 2). The arguments presented often seemed to rely on a misinterpretation or misstatement of INT's allegations<sup>58</sup> and thus did not address relevant contradictory evidence in the record. In addition to these persistent and implausible denials, the Sanctions Board notes the unsupported claim of Respondent Firm 2, made in its pleadings and never explicitly withdrawn, that the company took corrective action against the Manager and dismissed her. In fact, the record directly contradicts this statement, suggesting instead that the Manager left the company of her own volition and received no disciplinary action or even notification of misconduct.

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<sup>55</sup> See *supra* Paragraph 82.

<sup>56</sup> See, e.g., Sanctions Board Decision No. 90 (2016) at para. 48.

<sup>57</sup> Sanctions Procedures at Section III.A, sub-paragraph 6.03(c).

<sup>58</sup> Arguments during the hearing presented by counsel for Respondent Firm 1 focused on whether this company controlled, via the Board of Directors, Respondent Firm 2. This was not INT's argument and a contrary finding would not preclude the possibility of an affiliation between the companies, a delegation of roles, or the responsibility of a principal for the actions of its delegate/agent.

84. Respondent Firm 1 displayed a similar lack of candor during the hearing when it denied that misrepresentations in the CVs impacted the selection process under Package 2.1, until presented with direct quotes from the record. As discussed earlier in this decision, the misrepresentations spoke to key technical requirements regarding experience. The record suggests that, had the CVs been presented in their original accurate form lacking these misrepresentations, the JV could not have received the same technical score. Furthermore, Respondent Firm 1 also relied on an incorrect portrayal of the role of its then-Vice President in the misconduct. During the hearing, counsel presented a version of events where this employee occupied such a high-level position that he could not be expected to review the bid-related documents he was signing, and that an obligation to do so would be untenable in a business environment. However, the record reveals recorded statements of that very then-Vice President who described playing a direct role in the process of preparing a technical proposal, including specifically by identifying appropriate key staff. The record also reveals that the document signed by the then-Vice President was not a general bid submission form, but a narrower certification that attested to the accuracy of key proposal components, including specifically the experience of key experts.

85. *Changes in management/corporate identity:* The Sanctions Board has previously applied some mitigation under this factor where the record showed a corporate restructuring or other changes in management, particularly with respect to individuals involved in the misconduct.<sup>59</sup> The Sanctions Board has declined to apply mitigation where the respondent's asserted reorganization did not reflect changes in ownership, control, or management;<sup>60</sup> or where the corporate changes had no bearing on the respondent's culpability or responsibility for the sanctionable practice at issue.<sup>61</sup> Respondent Firm 1 requests mitigation, claiming significant changes in ownership and corporate culture, a corporate restructuring, and changes to leadership and management; and supplies evidence of the same. Respondent Firm 2 refers to "corporate restructuring" in its arguments but does not articulate further. INT agrees that mitigation is warranted for Respondent Firm 1. The record reveals significant changes within the corporate structure of Respondent Firm 1, primarily in three categories: ownership, scope, and governance. The company is no longer a privately held entity but a 90%+ held subsidiary of another firm. It has acquired other entities, has increased staff and market presence, and is governed by a mostly-different Board of Directors. However, the record does not show changes to the deeper corporate structure of the firm; nor does it explain how its current corporate form – setting aside the asserted ethics codes – changes the identity of the company or the risk of misconduct presented to the Bank. Most concerning, the former Vice-President who was involved in the fraudulent conduct not only remains at the company but appears to have been significantly promoted and now<sup>62</sup> serves as the company's CEO and President of the Board of Directors. As a whole, such changes reflect corporate expansion without meaningful revisions of structure or leadership. Respondent Firm 1 appears to be

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<sup>59</sup> See, e.g., Sanctions Board Decision No. 66 (2014) at para. 49 (equitization, restructuring and change in management; remaining management not involved in misconduct); Sanctions Board Decision No. 98 (2017) at para. 69 (bankruptcy proceedings, subsequent acquisition by a holding company, and resulting changes in leadership and management practices).

<sup>60</sup> See Sanctions Board Decision No. 83 (2015) at para. 104.

<sup>61</sup> See Sanctions Board Decision No. 116 (2019) at para. 33.

<sup>62</sup> As of the date of the hearing.



essentially the same business, albeit with more subsidiaries and held by a larger company. The conduct of Respondent Firm 1 is governed by at least one person connected to the misconduct and clearly the holding company has not imposed measures consistent with a more risk-averse approach, in spite of INT's finding of misconduct. In these circumstances, no mitigation is warranted with respect to Respondent Firm 1. With respect to Respondent Firm 2, the Sanctions Board observes the absence of clear argument or supporting evidence and also declines to apply any mitigation.

86. *Passage of time:* The Sanctions Board has previously considered as a mitigating factor the passage of a significant period of time from the commission of the misconduct or from the Bank's awareness of the potential sanctionable practices, to the initiation of sanctions proceedings.<sup>63</sup> 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.<sup>64</sup> In assessing the extent of mitigation in prior cases, the Sanctions Board has reviewed, *inter alia*, the significance of the delay, the impact of the passage of time on the respondents' ability to conduct an internal investigation and respond to the allegations, and the respondents' own possible contributions to the delay.<sup>65</sup> Both respondents request mitigating credit. INT agrees that some mitigation is appropriate, but denies that this delay harmed the Respondents' abilities to access evidence or mount a meaningful defense. When the Notice was issued in June 2020, almost seven years had passed since the alleged fraud, and almost three years had passed since the alleged obstruction. The period between the Bank's apparent awareness of potential misconduct and the initiation of sanctions proceedings was shorter: just over three years for fraud and just over two years for obstruction. The respondents do not articulate the manner in which the delay resulted in particular harm to their ability to investigate or defend themselves but refer broadly to "the amount of evidence available" and "individuals' ability to recollect events." Noting the supporting position from INT, the Sanctions Board agrees to apply some mitigation with respect to both Respondents' sanctions.

87. *Absence of aggravating circumstances:* Respondent Firm 2 requests mitigation, stating it has no history of misconduct and there was no "harm of any kind." Respondent Firm 1 also requests mitigation for the asserted lack of misconduct history. In numerous past cases, the Sanctions Board has consistently found that the absence of such aggravating factors, even if proven, is a neutral fact that does not warrant mitigation.<sup>66</sup> Consistent with this precedent, the Sanctions Board finds that no mitigation is warranted to either Respondent on this basis in the present case.

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<sup>63</sup> See, e.g., Sanctions Board Decision No. 87 (2016) at para. 154 (applying mitigation where sanctions proceedings were initiated approximately four years after the sanctionable practices had occurred and approximately three years after the Bank had become aware of the potential misconduct).

<sup>64</sup> Sanctions Board Decision No. 38 (2010) at para. 54.

<sup>65</sup> See, e.g., Sanctions Board Decision No. 47 (2012) at para. 56; Sanctions Board Decision No. 87 (2016) at para. 154.

<sup>66</sup> See, e.g., Sanctions Board Decision No. 55 (2013) at paras. 70-72; Sanctions Board Decision No. 71 (2014) at paras. 85-86; Sanctions Board Decision No. 73 (2014) at para. 45; Sanctions Board Decision No. 95 (2017) at para. 55; Sanctions Board Decision No. 106 (2017) at para. 48.

**E. Determination of Appropriate Sanctions**

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

- i. Respondent Firm 1, together with any entity that is an Affiliate directly or indirectly controlled by Respondent Firm 1, 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;<sup>67</sup> (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider<sup>68</sup> of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any Bank-Financed Projects; provided, however, that after a minimum period of ineligibility of six (6) years beginning from the date of this decision, Respondent Firm 1 may be released from ineligibility only if it has, in accordance with Section III.A, subparagraph 9.03 of the Sanctions Procedures, adopted and implemented an effective integrity compliance program in a manner satisfactory to the World Bank Group, including specific measures to diligently document business processes relating to public procurement, ensure the company's ability to comply with audit and inspection requests from the World Bank Group, and ensure that both the preparation of bids/proposals and the execution of contracts complies fully with the current requirements of bids financed by the World Bank Group; and taken appropriate disciplinary action for employees who were involved in fraudulent or obstructive practices. This sanction is imposed on Respondent Firm 1 for fraudulent practices as defined in Paragraph 1.23(a)(ii) and obstructive practices as defined in Paragraph 1.23(a)(v) of the January 2011 Consultant Guidelines; and
- ii. Respondent Firm 2, together with any entity that is an Affiliate directly or indirectly controlled by Respondent Firm 2, 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;<sup>69</sup> (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider<sup>70</sup> of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or

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<sup>67</sup> A respondent's ineligibility to be awarded a contract includes, without limitation (i) applying for prequalification, 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.

<sup>68</sup> 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 prequalification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower. Sanctions Procedures at Section III.A, sub-paragraph 9.01(c)(ii), n.15.

<sup>69</sup> See supra n. 67.

<sup>70</sup> See supra n. 68.



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 beginning from the date of this decision, Respondent Firm 2 may be released from ineligibility only if it has, in accordance with Section III.A, subparagraph 9.03 of the Sanctions Procedures, adopted and implemented an effective integrity compliance program in a manner satisfactory to the World Bank Group, including specific measures to diligently document business processes relating to participation in public procurement, ensure the company's ability to comply with audit and inspection requests from the Bank Group, and ensure that both the preparation of bids/proposals and the execution of contracts complies fully with the current requirements of bids financed by the World Bank Group. This sanction is imposed on Respondent Firm 2 for fraudulent practices as defined in Paragraph 1.23(a)(ii) of the January 2011 Consultant Guidelines.

89. The Respondents' ineligibility shall extend across the operations of the World Bank Group. 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.<sup>71</sup>

John R. Murphy (Chair)

On behalf of the  
World Bank Group Sanctions Board

John R. Murphy  
Rabab Yasseen  
Eduardo Zuleta

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<sup>71</sup> 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/content/dam/documents/sanctions/other-documents/osd/AgreementforMutualEnforcementofDebarmentDecisions\(4.9.2010\).pdf](https://www.worldbank.org/content/dam/documents/sanctions/other-documents/osd/AgreementforMutualEnforcementofDebarmentDecisions(4.9.2010).pdf).