

Date of issuance: February 22, 2022

Sanctions Board Decision No. 136
(Sanctions Case No. 631)

IBRD Loan No. 4839-RO
Romania

Decision of the World Bank Group¹ Sanctions Board imposing a sanction of debarment on the respondent individual in Sanctions Case No. 631 (the “Respondent”), together with certain Affiliates,² for a period of two (2) years from the date of this decision. This sanction is imposed on the Respondent for corrupt and fraudulent practices.

I. INTRODUCTION

1. In January 2022, the Sanctions Board convened as a panel composed of Rabab Yasseen (Panel Chair), Adedoyin Rhodes-Vivour, and Eduardo Zuleta to review this case. Neither the Respondent nor the World Bank Group’s Integrity Vice Presidency (“INT”) requested a hearing in this matter. Nor did the Panel Chair³ decide, in her discretion, to convene a hearing. Accordingly, the Sanctions Board deliberated and reached its decision based on the written record.⁴

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

- i. Notice of Sanctions Proceedings issued by the World Bank’s Suspension and Debarment Officer (the “SDO”) to the Respondent and the company for which the Respondent served as Managing Director (the “Company”) on March 5, 2021 (the “Notice”), appending the Statement of Accusations and Evidence (the “SAE”) submitted by INT to the SDO (undated);
- ii. Explanation submitted by the Respondent to the SDO on May 6, 2021;

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

² Section II(a) of the Sanctions Procedures defines “Affiliate” as “any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank.” The sanction imposed by this decision applies only to those Affiliates that are directly or indirectly controlled by the Respondent. See infra Paragraph 67.

³ See Sanctions Procedures at Section II(s).

⁴ See Sanctions Procedures at Section III.A, sub-paragraph 6.01.



- iii. Response submitted by the Respondent to the Secretary to the Sanctions Board on July 9, 2021 (the “Response”); and
- iv. Reply submitted by INT to the Secretary to the Sanctions Board on August 9, 2021 (the “Reply”).

II. PROCEDURAL HISTORY AT THE FIRST TIER

3. *Issuance of Notice and temporary suspension:* On March 5, 2021, pursuant to Section III.A, sub-paragraphs 4.01 and 4.02 of the Sanctions Procedures, the SDO issued the Notice and temporarily suspended the Respondent and the Company, together with any entity that is an Affiliate directly or indirectly controlled by either the Respondent or the Company, from eligibility⁵ with respect to any Bank-Financed Projects,⁶ pending the final outcome of these sanctions proceedings. The Notice specified that the temporary suspension would apply across the operations of the World Bank Group.

4. *SDO’s recommendations:* Pursuant to Section III.A, sub-paragraphs 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the SDO recommended in the Notice the sanction of debarment with conditional release for the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent. The SDO recommended a minimum period of ineligibility of six (6) years, after which period the Respondent may be released from ineligibility only if he has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, demonstrated to the World Bank Group’s Integrity Compliance Officer (the “ICO”) that (i) he has taken appropriate remedial measures to address the sanctionable practices for which the Respondent has been sanctioned; (ii) he has completed training and/or other educational programs that demonstrate a continuing commitment to personal integrity and business ethics; and (iii) any entity that is an Affiliate directly or indirectly controlled by the Respondent has adopted and implemented, in a manner satisfactory to the Bank, integrity compliance measures as may be imposed by the ICO to address the sanctionable practices. The SDO took into account the two types of sanctionable misconduct for which he found the Respondent liable. The SDO applied aggravation for the complexity of the corrupt practice and the Respondent’s position within the company. The SDO applied mitigation for the time elapsed since the occurrence of the misconduct and the Bank’s awareness of the misconduct. The Respondent subsequently submitted an Explanation to contest the SDO’s findings of liability. The SDO declined to revise his recommendations.

5. Separately, the SDO recommended in the Notice that the Company be debarred for a minimum period of six (6) years, also subject to conditional release. The Company did not file a

⁵ 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.

⁶ 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).

Response, and the SDO's recommended sanction for the Company went into effect on June 8, 2021, pursuant to the Notice of Uncontested Sanctions Proceedings.

III. GENERAL BACKGROUND

6. This case arises in the context of the Avian Influenza Control and Human Pandemic Preparedness and Response Project (the "Project") in Romania, which seeks to assist Romania in "reducing the threat posed to humans and the poultry sector by [Highly Pathogenic Avian Influenza] and other zoonoses, and preparing for, controlling and responding to influenza pandemics and other infectious disease emergencies in humans." On October 5, 2006, IBRD entered into a loan agreement with Romania to provide EUR 29,600,000 for the Project (the "Loan Agreement"). The Project became effective on March 19, 2007, and closed on December 31, 2010.

7. On January 16, 2009, the project management unit (the "PMU") within Romania's Ministry of Public Health issued bidding documents for the procurement of equipment for the isolation and intensive care units of a national institute and eight hospitals (the "Bidding Documents"). On May 27, 2009, the Company submitted bids for Lots 2, 3, and 6. On October 22, 2009, the PMU recommended the award of Lot 2 to the Company. The Company's bids for Lots 3 and 6 were not successful. On December 18, 2009, the Company and the PMU entered into a contract for Lot 2 for EUR 2,223,138.83 (the "Contract").

8. INT alleges that the Respondent offered and paid a percentage of the Contract to a World Bank consultant involved in the procurement process (the "Procurement Advisor") in order to influence the award of the Contract in the Company's favor. INT further alleges that the Respondent failed to disclose commissions to be paid (and ultimately paid) to a firm (the "Firm"), which INT contends was the Company's agent in connection with the Contract.

IV. APPLICABLE STANDARDS OF REVIEW

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

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

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

12. *Applicable definitions of sanctionable practices:* The Loan Agreement provided that the World Bank’s Guidelines: Procurement under IBRD Loans and IDA Credits (May 2004) (the “May 2004 Procurement Guidelines”) would govern procurement of all goods and works under the Project. The Bidding Documents defined corrupt and fraudulent practices consistent with these Guidelines. Paragraph 1.14(a)(i) of the May 2004 Procurement Guidelines defines the term “corrupt practice” as “the offering, giving, receiving, or soliciting, directly or indirectly, of any thing of value to influence the action of a public official in the procurement process or in contract execution.” A footnote to this definition explains that the term “public official” “[i]ncludes World Bank staff and employees of other organizations taking or reviewing procurement decisions.” This footnote was omitted from the Bidding Documents. Paragraph 1.14(a)(ii) of the May 2004 Procurement Guidelines defines the term “fraudulent practice” as “a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract.” This definition does not include an explicit mens rea requirement such as the “knowing or reckless” standard adopted by the Bank from October 2006 onward.⁷ The Sanctions Board has previously held that the “knowing or reckless” standard may be implied under the pre-October 2006 definitions, however.⁸ This is because the Bank’s legislative history reflects that the October 2006 incorporation of the “knowing or reckless” standard was intended to make explicit the pre-existing standard for mens rea, not to articulate a new limitation.⁹

V. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT’s Principal Contentions in the SAE

13. *Corruption allegation:* INT alleges that the Respondent offered to pay 3% of the value of the Contract to the Procurement Advisor, who conducted the World Bank’s technical evaluation of bids for the Contract and cleared the award of the Contract to the Company. INT contends that the Respondent ultimately paid half of the agreed 3% amount. According to INT, the Respondent made the offer and payment to the Procurement Advisor as a part of an agreement with an intermediary (the “Intermediary”), who served as a middleman to receive the monies for onward payment to the Procurement Advisor. INT submits that the Respondent made the payment in exchange for the Procurement Advisor’s and the Intermediary’s promise to influence the evaluation of the Contract to ensure its award to the Company.

14. *Fraud allegation:* INT alleges that the Company certified in its bid for the Contract that no fees had been paid, or were to be paid, in connection with the Contract. INT contends that, contrary to this certification, the Respondent, on behalf of the Company, had signed an agreement with the Firm (the “Agreement”) and that the Company ultimately paid the Firm EUR 133,380 for the Firm’s agency services in connection with the Contract.

15. *Sanctioning factors:* INT submits that aggravation is warranted for sophisticated means,

⁷ See, e.g., the definition of fraudulent practices set out in Paragraph 1.22(a)(ii) of the World Bank’s Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004, rev. October 2006) (the “October 2006 Consultant Guidelines”): “any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation” (emphasis added).

⁸ See Sanctions Board Decision No. 41 (2010) at para. 75.

⁹ Id.

management's role, repeated denials of misconduct despite evidence thereof, involvement of a public official; and repetition. INT contends that no mitigating factors apply.

B. The Respondent's Principal Contentions in His Explanation and Response¹⁰

16. *Corruption allegation:* The Respondent disputes that he made a corrupt offer or payment, arguing that the payment to the Intermediary was a “one-off payment in order to keep good relations with [the Intermediary] as relevant person active in . . . one of [the Company's] main equipment suppliers at that time.” According to the Respondent, the supplier “was at that time in position to furnish (or not!) [the Company] with Manufacturer Authorizations in other markets, which was in several projects a decisive criteria for eligibility in tenders.” The Respondent contends that he was not aware of any onward payment from the Intermediary to the Procurement Advisor. In addition, the Respondent submits that legal proceedings in a national jurisdiction in relation to these events resulted in not guilty verdicts for himself, the Company, the Intermediary, and the Intermediary's wife.

17. *Fraud allegation:* The Respondent argues that he did not consider the Firm to be a “simple sales agent” requiring disclosure, referring to the Company's broader business relationship with the Firm. The Respondent also raises his not guilty verdict in the national legal proceedings.

18. *Sanctioning factors:* The Respondent does not specifically address sanctioning factors.

C. INT's Principal Contentions in the Reply

19. *Corruption allegation:* INT replies that the evidence presented in the SAE “clearly shows that [the Respondent] agreed to pay, and paid half of, three percent of [the Contract] value to [the Intermediary] and [the Procurement Advisor].” INT contends that the Respondent “has given unconvincing, differing and contradictory explanations for his meeting and interactions with [the Procurement Advisor] and for agreeing to pay . . . [the Procurement Advisor] via [the Intermediary].”

20. *Fraud allegation:* INT argues that, as set out in the SAE, it is clear that the Firm acted as the Company's agent in relation to the Contract. INT further argues that the Firm's status as the Company's agent is not even relevant for these purposes, as the Respondent was required to disclose “any commissions, gratuities, or fees” regardless of who was paid or to be paid.

VI. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

21. The Sanctions Board will first address the evidentiary matter raised in this case. The Sanctions Board will then consider whether it is more likely than not that the Respondent engaged in the alleged corrupt and fraudulent practices. Finally, the Sanctions Board will determine what sanction, if any, should be imposed on the Respondent.

¹⁰ The Respondent's Explanation and Response largely overlap. The Sanctions Board carefully considered both submissions and all other submissions in the record.

A. Evidentiary Matter

22. INT requested to withhold evidence from the Respondent. In the SAE, INT described the evidence in question as a “Strictly Confidential Exhibit” to be withheld from the Respondent “pursuant to the World Bank Staff Rules.” In a memorandum addressed to the SDO dated August 21, 2020, INT referenced Section III.A, sub-paragraphs 5.04(c) and (d) of the Sanctions Procedures “in connection with Staff Rule 2.01” as the basis for its request – arguing that the Exhibit “is considered ‘Confidential Personnel Information’ under the Staff Rules” and may not be shared with the Respondent.

23. On January 14, 2022, having considered the totality of the record in this case, as well as the applicable provisions of the sanctions framework and relevant Sanctions Board precedent,¹¹ and in the interest of fairness to all parties, the Sanctions Board made the following determinations. First, the Sanctions Board determined that INT shall provide the Respondent with those parts of the Strictly Confidential Exhibit upon which INT relies for its case against the Respondent, noting that INT may excise and redact information in the Strictly Confidential Exhibit in its discretion according to Section III.A, sub-paragraph 5.04(d) of the Sanctions Procedures. Second, the Sanctions Board determined that, alternatively, INT may withdraw the Strictly Confidential Exhibit from the record in accordance with Section III.A, sub-paragraph 5.04(c) of the Sanctions Procedures. Finally, the Sanctions Board invited the Respondent to provide written comments on any part of the Exhibit he receives in relation to the Sanctions Board’s determination on the withholding request. Pursuant to the Sanctions Board’s determinations, on January 21, 2022, INT confirmed that it opted to withdraw the Strictly Confidential Exhibit from the record.

24. The above evidentiary matter highlights the conflict between the requirement of full access to evidence as set out in Section III.A, sub-paragraph 5.04(a) of the Sanctions Procedures (with only limited express exceptions to this requirement) and the restriction on the disclosure of Bank personnel information to third parties without authorization of the relevant staff member, as set out in Staff Rule 2.01. As the Sanctions Board has previously observed,¹² the Sanctions Board must follow the sanctions framework, which governs sanctions proceedings and the Sanctions Board’s operations.

B. Evidence of Corrupt Practice

25. In accordance with the definition of “corrupt practice” under the May 2004 Procurement Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondent (i) offered or gave, directly or indirectly, any thing of value (ii) to influence the action of a public official in the procurement process or in contract execution.

¹¹ See, e.g., Sanctions Board Decision No. 71 (2014) at para. 48; Sanctions Board Decision No. 113 (2018) at paras. 21-23.

¹² See Sanctions Board Decision No. 113 (2018) at para. 23.

1. Offering or giving, directly or indirectly, any thing of value

26. INT alleges that the Respondent offered to pay 3% of the value of the Contract, and ultimately paid half of that amount, to the Procurement Advisor through the Intermediary. While the Respondent acknowledges that he made the payment to the Intermediary, he argues that he was unaware of any onward payment to the Procurement Advisor.

27. As the Sanctions Board has previously observed,¹³ the recipient of the thing of value under this first element of the definition of corrupt practices need not be – though may be – the public official who is the intended target of influence under the second element of corrupt practices as discussed below. Accordingly, the first element in this case may be satisfied upon a finding that it is more likely than not that the Respondent offered or gave a thing of value to the Intermediary or to the Procurement Advisor.

28. Consistent with the Respondent's acknowledgement above, documentary evidence in the record supports a finding that the Respondent made a payment to the Intermediary in connection with the Contract. On November 22, 2009, the Intermediary (through his wife's company) sent a letter to the Respondent referring to consulting services in connection with World Bank tenders in Romania and enclosing a cost calculation for 3% of the Contract. On May 5, 2010, the Intermediary (again, through his wife's company) invoiced the Company for 50% of the 3% payment (EUR 33,347) – referencing communication consultancy services for "World Bank invitation to tender, Romania." Evidence shows that, on May 20, 2010, the Company – at the Respondent's instruction – paid the invoice.

29. On the basis of this record, the Sanctions Board finds that it is more likely than not that the Respondent made a payment to the Intermediary. Because "offering" and "giving" are set out as alternative elements of corrupt practice under the applicable definition, the Sanctions Board declines to address INT's separate allegation of an offer.¹⁴

2. To influence the action of a public official in the procurement process

30. INT alleges that the Respondent made the payment in exchange for the Procurement Advisor's and the Intermediary's promise to influence the evaluation of the Contract to ensure its award to the Company. The Respondent argues that the payment to the Intermediary was a "one-off payment in order to keep good relations with [the Intermediary] as relevant person active in . . . one of [the Company's] main equipment suppliers at that time." As noted above, the Respondent contends that he was not aware of any onward payment to the Procurement Advisor.

31. The second element of corrupt practices requires a showing that a respondent, in offering or giving a thing of value to another party under the first element, acted with a purpose to "influence the action of a public official in the procurement process or in contract execution." The focus of this second element is thus on the respondent's purpose and intended target of influence.¹⁵ As discussed earlier, a public official who is the intended target of influence under this

¹³ See Sanctions Board Decision No. 60 (2013) at para. 65; Sanctions Board Decision No. 72 (2014) at para. 43.

¹⁴ Sanctions Board Decision No. 93 (2017) at para. 43.

¹⁵ Sanctions Board Decision No. 60 (2013) at para. 75.

second element need not be – but may be – the same party who received the thing of value under the first element of corrupt practices.¹⁶

32. As an initial matter, the Sanctions Board considers whether the Procurement Advisor was a public official in the procurement process in the sense of the applicable definition. Indeed, the record in this case reflects that the Procurement Advisor acted as a public official in connection with the Contract. Documentary evidence shows that the Procurement Advisor conducted the World Bank’s technical evaluation of bids for the Contract and that he issued his clearance for the recommendation to award the Contract to the Company. The record also indicates that the Respondent was aware of the Procurement Advisor’s role with the Bank. The Respondent acknowledged that he met with the Procurement Advisor in London in September 2009. During his interview with INT, the Respondent stated that the Procurement Advisor introduced himself at the meeting “as [an] independent consultant for medical projects and equipment,” noting that he is “involved in some independent consultant in some projects in the World Bank.” Following their meeting in London, the Procurement Advisor emailed the Respondent draft bidding documents for World Bank projects in Kyrgyz Republic and Romania – thereby signifying his authority and role within the Bank.

33. Significantly, the record supports a finding that the Respondent made the payment to the Intermediary to influence the Procurement Advisor’s action in connection with the Contract. In response to INT’s show-cause-letter, the Respondent stated that “the payment of EUR 33k was done under my instruction to keep a peaceful relation to [the Intermediary], considering the fact, that he was a relevant person in an important manufacturing company and ensuring that [the Procurement Advisor] does not slow down the tender proceedings in Romania” (emphasis added). According to the Respondent himself then, he made the payment, at least in part, so that the Procurement Advisor would not “slow down” the tender process for the Contract.

34. In addition, consistent with past precedent,¹⁷ the Sanctions Board finds that the timing of the Respondent’s payment to the Intermediary (and the Intermediary’s corresponding payments to the Procurement Advisor) constitute circumstantial evidence that further supports a finding that the Respondent acted with corrupt intent. On November 22, 2009, two days after the Procurement Advisor cleared the bid evaluation report (which recommended the Company for the Contract), the Intermediary sent the letter to the Respondent enclosing a cost calculation for 3% of the Contract. On May 5, 2010, approximately 4.5 months after the Company signed the Contract, the Intermediary invoiced the Company for 50% of the 3% payment (EUR 33,347). And on May 20, 2010, the Company paid the invoice. Contemporaneously with the Company’s payment to the Intermediary, the Procurement Advisor sent invoices to the Intermediary – the first one dated May 12, 2010, for EUR 12,700; and the second one dated May 26, 2010, for EUR 17,300. The record includes bank statements showing that the Intermediary made these payments to the Procurement Advisor on June 2, 2010. The Procurement Advisor detailed the payment from the Intermediary in his records – with reference to the Company, the value of the Contract, the 3% figure, and the two-part payment of EUR 12,700 and EUR 17,300.

35. Finally, consistent with the alleged corrupt arrangement to influence the procurement process, and as previously noted, the Procurement Advisor issued his technical clearance for the

¹⁶ Sanctions Board Decision No. 60 (2013) at para. 75.

¹⁷ See e.g., Sanctions Board Decision No. 78 (2015) at para. 57; Sanctions Board Decision No. 108 (2018) at para. 35.

recommendation to award the Contract to the Company, and the Company ultimately won the Contract. As the Sanctions Board has previously observed, evidence that the desired influence actually materialized may bolster a showing of the respondent's intent to influence, even though it is not necessary for a finding of corrupt practices.¹⁸

36. The Sanctions Board is not persuaded by the Respondent's defense based on national legal proceedings that resulted in not guilty verdicts in relation to these events for himself, the Company, the Intermediary, and the Intermediary's wife. This is because national law standards and judgments are not binding on the Bank or the Sanctions Board's proceedings, and the scope of a respondent's liability for purposes of the Bank's administrative sanctions process may not be coextensive with the scope of the respondent's potential liability under national law.¹⁹ Rather, the Sanctions Board applies the standards set out in the sanctions framework, including the Sanctions Board Statute, Sanctions Procedures, and other formal guidelines issued by the World Bank with respect to sanctions matters.²⁰

37. In light of the above, and considering the record as a whole, the Sanctions Board finds that it is more likely than not that the Respondent made the payment to the Intermediary to ensure that the Procurement Advisor would not slow down the procurement process – and that the Respondent thereby acted to influence the actions of a public official in the procurement process for the Contract.

C. Evidence of Fraudulent Practice

38. In accordance with the definition of “fraudulent practice” under the May 2004 Procurement Guidelines, and consistent with the Sanctions Board's interpretation of pre-October 2006 definitions of “fraudulent practice,” INT bears the initial burden to show that it is more likely than not that the Respondent (i) made a misrepresentation or omission of facts (ii) that was knowing or reckless (iii) in order to influence a procurement process or the execution of a contract.

1. Misrepresentation of facts

39. INT alleges that the Company misrepresented in its bid for the Contract that no fees had been paid, or were to be paid, in connection with the Contract – when it had in fact hired the Firm as its agent and paid the Firm EUR 133,380 for its agency services. The Respondent argues that he did not consider the Firm to be a “simple sales agent” requiring disclosure, referring to the Company's broader business relationship with the Firm.

40. On January 16, 2009, the PMU issued the Bidding Documents. The “Bid Submission Form” provided that the bidder shall state whether any “commissions, gratuities, or fees have been paid or are to be paid with respect to the bidding process or execution of the Contract.” The Form then instructed bidders to “insert complete name of each Recipient, its full address, the reason for

¹⁸ See, e.g., Sanctions Board Decision No. 78 (2015) at para. 56; Sanctions Board Decision No. 87 (2016) at para. 104; Sanctions Board Decision No. 103 (2017) at para. 28.

¹⁹ Sanctions Board Decision No. 63 (2014) at para. 53.

²⁰ Id.

which each commission or gratuity was paid and the amount and currency of each such commission or gratuity.”

41. The record reveals that on August 31, 2007, the Company and the Firm entered into the Agreement, which the Respondent signed. This Agreement, titled “Agency Agreement,” provided that the Firm is appointed as the Company’s “sole and exclusive agent in Romania for projects” and that the Firm’s remuneration “shall be by way [of] commission.” In exchange for the commission, *inter alia*, the Firm was to provide “relationship support to [the Company] towards successful signing/execution of the Projects”; and to keep the Company “fully informed of all governmental, commercial and industrial activities and plans, which do or could affect the Project and provide market information to [the Company].” Significantly, on November 5, 2008 – approximately 7 months before the Company submitted its bid for the Contract – the Company and the Firm executed an addendum to the Agreement (the “Addendum”), which the Respondent signed. The Addendum provided, *inter alia*, the following: “Worldbanktender 2009 . . . 5 percent for lot 2” – which is, more likely than not, a reference to a 5% commission for services under the Contract. The record reflects that on August 24, 2010, the Company paid the Firm EUR 133,380.

42. Contrary to its disclosure obligation under the provision discussed in Paragraph 40 above, the Respondent did not disclose the Company’s arrangement with the Firm. On May 27, 2009, the Company submitted its bid for the Contract, which the Respondent signed for the Company. In response to the requirement to disclose whether it had paid, or would pay, commissions, gratuities, or fees with respect to the Contract, the Company stated in its bid: “none.” These facts support a finding that it is more likely than not that the Company’s bid, as signed by the Respondent, contained the misrepresentation alleged by INT.

43. For the following reasons, the Sanctions Board is not convinced by the Respondent’s argument that he did not consider the Firm to be a “simple sales agent” requiring disclosure. First, consistent with its jurisprudence,²¹ the Sanctions Board declines to adopt the narrow reading of the term “agent” implicit in the Respondent’s argument. This is because a key purpose of the disclosure requirement established in the Bidding Documents is to “help reveal and deter potentially corrupt relationships in Bank-Financed Projects.”²² As the Sanctions Board has previously observed, “the risk of corrupt relationships arises not only when a principal-agent relationship exists between a bidder and a third party, but whenever a bidder pays a commission or gratuity to a third party in relation to the contract.”²³ A narrow reading of the term “agent” would be inconsistent with this underlying purpose of the disclosure obligation. In any case, regardless of whether the Firm was an agent, the Respondent still would have been obligated to disclose the Company’s arrangement with, and payment to, the Firm. Under the clear language of the Bidding Documents, the Respondent was obligated to disclose payments to any firm or individual in connection with the Contract. This is because the relevant provision requires bidders to disclose whether any “commissions, gratuities, or fees have been paid or are to be paid with respect to the bidding process or execution of the Contract” – without any qualification as to whom the commissions, gratuities, or fees are to be paid.

²¹ See Sanctions Board Decision No. 131 (2021) at para. 22.

²² Id.

²³ Id.

44. In addition, for the same reasons set out in Paragraph 36 above in relation to the corruption allegation, the Sanctions Board rejects the Respondent's defense based on national legal proceedings with respect to the allegation of fraud.

45. In these circumstances, the Sanctions Board finds the evidence sufficient to support a finding that the Respondent made a misrepresentation in the Company's bid for the Contract.

2. Made knowingly or recklessly

46. INT contends that the Respondent knowingly committed the fraud. As noted above, the Respondent argues that he did not consider the Firm to be an agent requiring disclosure.

47. 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.²⁴ The Sanctions Board has previously found that respondents made a knowing misrepresentation where the director of the respondent's predecessor firm negotiated and signed an agreement with a marketing consultant, knew that the agreement established a commission agent relationship – yet failed to disclose this relationship and the commissions paid despite the firm's obligation to do so.²⁵

48. In the present case, evidence shows that the Respondent signed both the Agreement (pursuant to which the Firm was appointed as the Company's "sole and exclusive agent in Romania") and the Addendum (pursuant to which the Company agreed to pay a five percent commission to the Firm for services under the Contract). Evidence also shows that the Respondent signed the Company's bid for the Contract, which contained the misrepresentation discussed above. The misrepresentation was made in response to the clear disclosure obligation set out in the Bidding Documents. This evidence indicates that the Respondent had actual knowledge of (i) the Company's arrangement with the Firm, (ii) the disclosure obligation set out in the Bidding Documents, and (iii) the misrepresentation made in the Company's bid.

49. On the basis of this record, the Sanctions Board finds that it is more likely than not that the Respondent acted knowingly in making the misrepresentation in the Company's bid for the Contract.

3. In order to influence the procurement process

50. The Sanctions Board has held that misrepresentations sought or served to influence a procurement/selection process where the respondent's false statements or documents rendered the respondent's submission eligible for consideration, made the submission more competitive, or were generally responsive to the requirements of that procurement/selection process.²⁶ Here, the Bidding Documents required bidders to disclose whether any "commissions, gratuities, or fees have been paid or are to be paid with respect to the bidding process or execution of the Contract."

²⁴ Sanctions Procedures at Section III.A, sub-paragraph 7.01.

²⁵ Sanctions Board Decision No. 83 (2015) at para. 51.

²⁶ See, e.g., Sanctions Board Decision No. 49 (2012) at para. 26; Sanctions Board Decision No. 51 (2012) at paras. 40-41, 73; Sanctions Board Decision No. 60 (2013) at paras. 100-101.

In response to the requirement to disclose whether it had paid, or would pay, such sums, the Company's bid, as signed by the Respondent, stated: "none."

51. On the basis of this record, and consistent with past precedent, the Sanctions Board finds that it is more likely than not that the Respondent made the misrepresentation in the bid in order to influence the procurement process for the Contract.

D. Sanctioning Analysis

1. General framework for determination of sanctions

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

53. 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.²⁷ 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.²⁸

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

55. 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.

²⁷ See, e.g., Sanctions Board Decision No. 40 (2010) at para. 28.

²⁸ See Sanctions Board Decision No. 44 (2011) at para. 56.

2. Plurality of sanctionable practices

56. As the Sanctions Board finds that the Respondent engaged in two 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)

57. 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.²⁹ By contrast, the Sanctions Board has applied aggravation rather than a separate sanction for multiple sanctionable practices where the counts of misconduct were closely interrelated.³⁰ The record in this case reflects that the Respondent engaged in a corrupt practice and a fraudulent practice. The specific facts in this case show that these counts of misconduct were interconnected. In particular, the corrupt payment and the fraudulent misrepresentation both related to the same Contract and both were carried out with the objective of securing the Contract for the Company. Accordingly, the plurality of the Respondent’s sanctionable practices warrants aggravation, rather than multiplication, of the base sanction.

3. Factors considered in the present case

a. Severity of the misconduct

58. 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 a repeated pattern of conduct, sophisticated means, management’s role in the misconduct, and involvement of a public official as examples of severity.

59. *Repeated pattern of conduct:* Section IV.A.1 of the Sanctioning Guidelines identifies a repeated pattern of conduct as a potential basis for aggravation. INT argues that the Respondent’s failure to declare the Firm in the Company’s bids for Lots 3 and 6 is an aggravating factor. The Sanctions Board does not accept INT’s arguments. INT concedes that its contentions in relation to Lots 3 and 6 fall outside the statute of limitations as set out in Section III.A., sub-paragraph 4.01(d)

²⁹ See, e.g., Sanctions Board Decision No. 87 (2016) at para. 151; Sanctions Board Decision No. 118 (2019) at para. 80.

³⁰ See, e.g., Sanctions Board Decision No. 60 (2013) at para. 143; Sanctions Board Decision No. 115 (2019) at para. 63.

of the Sanctions Procedures. Considering that INT's allegations regarding the two lots are time-barred, the Sanctions Board declines to apply aggravation on this basis.

60. *Sophisticated means*: Section IV.A.2 of the Sanctioning Guidelines states that this factor may include “the complexity of the misconduct (e.g., degree of planning, diversity of techniques applied, level of concealment); the number and type of people or organizations involved; whether the scheme was developed or lasted over a long period of time; [and] if more than one jurisdiction was involved.” INT contends that aggravation is warranted because the Respondent’s corrupt misconduct included “the use of payment intermediaries and payments to bank accounts in a foreign jurisdiction.” The Sanctions Board applies some aggravation under this factor. In reaching this conclusion, the Sanctions Board considers that the Respondent made the payment to the Intermediary under the guise of fulfilling an invoice for consultancy services. The Sanctions Board also takes note that the consultancy services were purportedly provided by a company owned by the Intermediary’s wife.

61. *Management’s role in 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.” INT argues that aggravation is warranted because the Company’s managing director, the Respondent, was directly involved in the corruption and fraud. Consistent with past precedent,³¹ the Sanctions Board declines to apply aggravation for the Respondent based on his position within the Company.

62. *Involvement of a public official*: Section IV.A.5 of the Sanctioning Guidelines states that this factor may apply “[i]f the respondent conspired with or involved a public official or World Bank staff in the misconduct.” In past cases, the Sanctions Board has found that aggravation was warranted where the respondents, admittedly acting on their own initiative, proactively offered and paid a bribe to a public official.³² In contrast, the Sanctions Board has declined to apply aggravation where the record did not establish that the respondent specifically conspired with or involved a public official in the corrupt scheme³³ or initiated the corrupt arrangement.³⁴ Here, INT submits that the involvement of the Procurement Advisor as a World Bank official is an aggravating factor. However, INT does not allege, and the record does not support a finding, that the Respondents specifically conspired with the Procurement Advisor or initiated the corrupt scheme so as to justify aggravation. Indeed, INT acknowledges that, after the Company submitted its bid for the Contract, “the Respondents were approached by the Intermediary and the Procurement Advisor” with the offer to help the Company win the Contract. The Sanctions Board declines to apply aggravation in these circumstances.

³¹ See, e.g., Sanctions Board Decision No. 86 (2016) at para. 54; Sanctions Board Decision No 108 (2018) at para. 73.

³² See Sanctions Board Decision No. 70 (2014) at para. 33.

³³ See Sanctions Board Decision No. 50 (2012) at para. 62.

³⁴ See Sanctions Board Decision No. 60 (2013) at para. 126.

b. Period of temporary suspension

63. Pursuant to Section III.A, sub-paragraph 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account the period of the Respondent's temporary suspension since the SDO's issuance of the Notice on March 5, 2021.

c. Other considerations

64. 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 Sanctionable Practice."

65. *Lack of candor*: The Sanctions Board has applied aggravation for actions that demonstrate a respondent's lack of candor in sanctions proceedings, such as persistent yet implausible statements contradicting substantial evidence.³⁵ By contrast, the Sanctions Board has declined to apply aggravation where it found that the respondent's denials of responsibility were reasonably made in the usual course of argument and defense.³⁶ Here, INT submits that the Respondent's repeated denials of the improper relationship with the Procurement Advisor through the Intermediary, "despite the documentary evidence proving that the Respondents knew about their role in the procurement, is an aggravating factor." It is true that the Respondent did not admit to wrongdoing and that he repeatedly denied responsibility for misconduct. However, considering basic principles of fairness and due process, the Sanctions Board finds that the Respondent's denials were appropriately and reasonably presented as part of his defense against INT's allegations. In these circumstances, aggravation is not justified.

66. *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.³⁷ 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.³⁸ At the time of the SDO's issuance of the Notice in March 2021, approximately 10 years and 9 months had elapsed since the Company made the corrupt payment to the Intermediary in May 2010; and 11 years and 9 months had elapsed since

³⁵ See, e.g., Sanctions Board Decision No. 71 (2014) at para. 107 (applying aggravation where the respondent presented "an uncorroborated version of events that lacks credibility in order to justify the submission of inauthentic documents with its [b]id," noting that such conduct "could not have taken place without the endorsement of the [r]espondent's management").

³⁶ Sanctions Board Decision No. 130 (2020) at para. 94.

³⁷ See, e.g., Sanctions Board Decision No. 50 (2012) at para. 71 (applying mitigation where sanctions proceedings were initiated approximately five years after the Bank's awareness of the potential sanctionable practices); Sanctions Board Decision No. 63 (2014) at para. 116 (applying mitigation to multiple respondents where sanctions proceedings were initiated more than five (and up to nine) years after the misconduct, and more than five (and up to eight) years after the Bank's awareness of the potential sanctionable practices); Sanctions Board Decision No. 68 (2014) at para. 47 (applying mitigation where sanctions proceedings were initiated more than four and a half years after the sanctionable practices had occurred and more than four years after the Bank had become aware of the potential misconduct); Sanctions Board Decision No. 118 (2019) at para. 90 (applying mitigation where, at the time of the Acting SDO's issuance of the Notice, approximately four years and six months had elapsed since the collusive arrangement was first commenced).

³⁸ See, e.g., Sanctions Board Decision No. 50 (2012) at para. 71; Sanctions Board Decision No. 83 (2015) at para. 102.

the Company submitted the bid containing the misrepresentation in May 2009. While it is not clear when the Bank first became aware of the potential misconduct, the record reflects that INT interviewed the Procurement Advisor as early as April 2011. The Sanctions Board finds that significant mitigation is warranted for the Respondent in these circumstances.

E. Determination of Appropriate Sanction

67. Considering the full record and all the factors discussed above, the Sanctions Board determines that the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, shall be, and hereby declares that he is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;³⁹ (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider⁴⁰ of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any Bank-Financed Projects, for a period of two (2) years. The Respondent's ineligibility shall extend across the operations of the World Bank Group. This sanction is imposed on the Respondent for a corrupt practice as defined in Paragraph 1.14(a)(i) of the May 2004 Procurement Guidelines and for a fraudulent practice as defined in Paragraph 1.14(a)(ii) of the May 2004 Procurement Guidelines.



Rabab Yasseen (Panel Chair)

On behalf of the
World Bank Group Sanctions Board

Rabab Yasseen
Adedoyin Rhodes-Vivour
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³⁹ 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.

⁴⁰ 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.