

Date of issuance: June 29, 2022

**Sanctions Board Decision No. 137**  
**(Sanctions Case No. 610)**

**IDA Credit No. 5587-KE**  
**SCF-SREP Grant No. TF0A0579**  
**Republic of Kenya**

**Decision of the World Bank Group<sup>1</sup> Sanctions Board imposing sanctions of debarment with conditional release on the respondents in Sanctions Case No. 610 (the “Respondents”), together with certain Affiliates,<sup>2</sup> with minimum periods of ineligibility of three (3) years for the respondent entity (the “Respondent Firm”), and one (1) year and six (6) months for the respondent individual (the “Respondent Individual”), beginning from the date of this decision. These sanctions are imposed on the Respondent Firm for fraudulent practices and on the Respondent Individual for a fraudulent practice.**

**I. INTRODUCTION**

1. The Sanctions Board convened in June 2022 as a panel composed of John R. Murphy (Panel Chair), Cavinder Bull, and Eduardo Zuleta to review this case. Neither the Respondents nor the World Bank Group’s Integrity Vice Presidency (“INT”) requested a hearing in this matter. Nor did the Panel Chair decide, in his discretion, to convene a hearing. Accordingly, the Sanctions Board deliberated and reached its decision based on the written record.<sup>3</sup>

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 April 29, 2021 (the “Notice”), appending the Statement of Accusations and Evidence (the “SAE”) submitted by INT to the SDO (undated);

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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 used interchangeably here 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 sanction imposed by this decision applies only to those Affiliates that are directly or indirectly controlled by either of the Respondents. See infra Paragraphs 52, 72.

<sup>3</sup> See Sanctions Procedures at Section III.A, sub-paragraph 6.01.



- ii. Explanation submitted by the Respondents to the SDO on May 27, 2021 (the “Explanation”);
- iii. Response submitted by the Respondents to the Secretary to the Sanctions Board on December 2, 2021 (the “Response”); and
- iv. Reply submitted by INT to the Secretary to the Sanctions Board on January 28, 2022, together with a supplemental attachment filed on January 31, 2022 (the “Reply”).

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

3. *Issuance of Notice and temporary suspensions:* On April 29, 2021, pursuant to Section III.A, sub-paragraphs 4.01 and 4.02 of the Sanctions Procedures, the SDO issued the Notice and temporarily suspended the Respondents, together with any entity that is an Affiliate directly or indirectly controlled by either Respondent, from eligibility<sup>4</sup> with respect to any Bank-Financed Projects,<sup>5</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 the sanction of debarment with conditional release for the Respondents, together with any entity that is an Affiliate directly or indirectly controlled by either Respondent.

- i. For the Respondent Firm, the SDO recommended a minimum period of ineligibility of five (5) years and eight (8) months, after which period the Respondent Firm may be released from ineligibility only if it has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, demonstrated to the World Bank Group’s Integrity Compliance Officer (the “ICO”) that the Respondent Firm has (i) taken appropriate remedial measures to address the sanctionable practices for which it has been sanctioned, and (ii) adopted and implemented integrity compliance measures in a manner satisfactory to the Bank. The SDO applied aggravation for the repeated pattern of conduct and management’s role in the misconduct. The SDO applied mitigation for the Respondent Firm’s limited cooperation during the investigation.
- ii. For the Respondent Individual, the SDO recommended a minimum period of ineligibility of five (5) years and eight (8) months, after which period the

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<sup>4</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>5</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).



Respondent Individual may be released from ineligibility only if he has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, demonstrated to the ICO that (i) the Respondent Individual has taken appropriate remedial measures to address the sanctionable practices for which he has been sanctioned; (ii) the Respondent Individual 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 Individual has adopted and implemented integrity compliance measures in a manner satisfactory to the Bank. The SDO applied aggravation for the repeated pattern of conduct and management's role in the misconduct. The SDO applied mitigation for the Respondent Individual's limited cooperation during the investigation.

5. *SDO's final recommendations:* The Respondents jointly submitted an Explanation to contest the SDO's finding of liability and recommended sanctions. Upon review of the Explanation, the SDO made the following revisions:

- i. With respect to the Respondent Firm, the SDO considered additional mitigation for cessation of misconduct/action against the responsible individual, integrity compliance program, voluntary restraint, and cooperation with the investigation. The SDO revised the recommended sanction to a minimum period of ineligibility of two (2) years and eight (8) months.
- ii. With respect to the Respondent Individual, the SDO determined that there was insufficient evidence with respect to the fraud allegations relating to falsified financial statements and past experience claims. The SDO, therefore, withdrew the Notice with respect to these allegations. In addition, the SDO considered additional mitigation for cessation of misconduct/action against the responsible individual, integrity compliance program, voluntary restraint, and cooperation with the investigation. The SDO revised the recommended sanction to a minimum period of ineligibility of one (1) year and two (2) months.

### **III. GENERAL BACKGROUND**

6. This case arises in the context of the Electricity Modernization Project (the "Project") in the Republic of Kenya (the "Recipient"). The Project sought to increase access to electricity, improve reliability of electricity service, and strengthen the financial situation of Kenya Power & Lightning Company Ltd. On June 29, 2015, IDA and the Recipient entered into a financing agreement to provide an amount equivalent to Special Drawing Rights ("SDR") 172.6 million (approximately US\$ 250 million at the time of signature) to support the Project (the "Financing Agreement"). On November 23, 2015, IDA, acting as an Implementing Entity of the Scaling-up Renewable Energy in Low Income Countries under the Strategic Climate Fund, entered into a grant agreement with the Recipient to finance an additional US\$ 7.5 million for the Project (the "Grant Agreement"). The Project became effective on September 17, 2015, and closed on December 31, 2021.



7. On March 2, 2017, the project implementation unit issued bidding documents (the “Bidding Documents”) for the Supply of Line Hardwares, Installation and Commissioning of Extensions of MV Lines, LV Single Phase Lines and Service Cables for Electrification Program (the “Tender”). The Tender was divided into six lots. The Respondent Firm, in a joint venture with another company (together, the “Joint Venture”), submitted bids on all six lots (the “Bids”) on April 20, 2017. The Joint Venture was awarded Lots 3 and 5, and signed the corresponding contracts on November 9, 2017.

8. INT alleges that the Respondents failed to disclose, in at least four Bids, commissions paid or to be paid in connection with the Tender. INT further alleges that the Respondent Firm submitted false financial documents in at least four Bids, and false past experience claims in at least five Bids.

#### **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 definition of fraudulent practice:* The Financing Agreement and the Grant Agreement both reference the World Bank’s Guidelines: Procurement of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits and Grants by World Bank Borrowers (January 2011, revised July 2014) (the “July 2014 Procurement Guidelines”). The Bidding Documents reference the World Bank’s Guidelines: Procurement of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits and Grants by World Bank Borrowers (January 2011) (the “January 2011 Procurement Guidelines”), and set out a definition of “fraudulent practice” consistent with the common definition in the January 2011 and July 2014 Procurement Guidelines. Paragraph 1.16(a)(ii) of each version of these Guidelines defines a “fraudulent practice” as “any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.” A footnote to this definition explains that the term “party” refers to a public official;

the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.<sup>6</sup>

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

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

13. *Fraud allegation 1:* INT alleges that, in the Bids for Lots 2, 4, 5, and 6, the Respondents knowingly or recklessly engaged in a misrepresentation by failing to disclose payments made or to be made to a consultant (the “Consultant”) in connection with the Tender. INT argues that the Respondent Individual signed both the consultancy agreement with the Consultant (the “Consultancy Agreement”) and the Bids stating that no commissions were paid or were to be paid in connection with the Tender.

14. *Fraud allegation 2:* INT alleges that the Respondent Firm knowingly submitted false financial statements in its Bids for Lots 1, 4, 5, and 6.

15. *Fraud allegation 3:* INT alleges that, in the Bids for Lots 1, 2, 4, 5, and 6, the Respondent Firm knowingly submitted documents falsely claiming that the Respondent Firm had prior work experience with three different entities.

16. *Sanctioning factors:* INT asserts that aggravation is warranted for the repetition of fraudulent acts. With respect to mitigating factors, INT contends that the Respondents cooperated by providing documents and replying to follow-up requests, albeit with some of their responses contradicting evidence. In addition, INT submits that the Respondent Firm indicated its plans to implement a compliance program.

### **B. The Respondents’ Principal Contentions in the Explanation and the Response**

17. *Fraud allegation 1:* The Respondents acknowledge that the Bids misrepresented the commissions paid to the Consultant, but assert that the Respondent Individual neither knowingly nor recklessly made these misrepresentations. The Respondents argue that the Consultant had left out information regarding its commissions and that the Respondent Individual relied on a former employee of the Respondent Firm (the “Former Employee”) tasked with checking the Bids for accuracy. The Respondents further assert that the nondisclosure of commissions did not impact the Bids because this information was not part of bid evaluation. The Respondents nevertheless highlight their understanding of the need to preserve the integrity of the bid process, and claim that this was the reason why they voluntarily reported the existence of the Consultant to INT.

18. *Fraud allegation 2:* The Respondent Firm acknowledges that the financial statements included in its Bids were false and that it had never engaged the firm that purportedly performed the audit (the “Auditing Firm”). However, the Respondent Firm contends that it did not knowingly or recklessly submit these false documents. Rather, the Consultant submitted these documents without the Respondent Firm’s knowledge or consent, and the Former Employee neglected his

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<sup>6</sup> January 2011 Procurement Guidelines, para. 1.16(a)(ii), n.21; July 2014 Procurement Guidelines, para. 1.16, n.21.

duty to verify them, contrary to his supervisor's instructions and company policy. The Respondent Firm further argues that it was the Consultant that had a financial incentive to submit these false financial statements.

19. *Fraud allegation 3*: The Respondent Firm acknowledges that the past experience documents included in its Bids were false and submits what it claims to be the authentic documents provided to the Consultant. However, the Respondent Firm argues that it did not knowingly or recklessly submit these false documents. Rather, the Consultant submitted these documents without the Respondent Firm's knowledge or consent, and the Former Employee neglected his duty to verify them, contrary to his supervisor's instructions and company policy. The Respondent Firm further argues that it was the Consultant that had a financial incentive to submit these false past experience documents.

20. *Sanctioning factors*: The Respondents argue that aggravation for repetition does not apply, as the alleged misrepresentations constitute a single course of action. The Respondents further contend that aggravation is not warranted for management's role, considering that the Respondent Individual himself reported the Respondent Firm's relationship with the Consultant to INT. The Respondents request mitigation for minor role, cessation of misconduct, internal action against the responsible individual, effective compliance program, cooperation, internal investigation, admission and acceptance of responsibility, voluntary restraint, passage of time, and project completion.

### **C. INT's Principal Contentions in the Reply**

21. In addition to the allegation in the SAE that the Respondents engaged in misconduct knowingly, INT asserts that the Respondents acted at least recklessly when they made the misrepresentations in the Bids. INT further contends that these misrepresentations were made in response to formal tender requirements and enabled the Joint Venture to qualify for the contracts. With respect to sanctioning factors, INT argues that aggravation is warranted for the Respondent Individual's role in the misconduct. INT also submits that, while the Respondents cooperated in the investigation, some of their documents and statements contradict evidence or remain uncorroborated, and they have not provided copies of the Respondent Firm's financial statements. INT asserts that no mitigation is warranted for the Respondents' voluntary disclosure of the Consultant, their supposed minor role in the misconduct, and their claimed acceptance of responsibility. However, INT submits that some mitigation may be considered for the Respondents' corrective actions against the Consultant and the Former Employee, voluntary restraint, internal compliance policies, and the passage of time.

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

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

**A. Evidence of Fraudulent Practices**

23. In accordance with the definition of “fraudulent practice” under the January 2011 and July 2014 Procurement Guidelines, INT bears the initial burden to prove that it is more likely than not that the Respondents (i) engaged in an act or omission, including a misrepresentation, (ii) that knowingly or recklessly misled, or attempted to mislead, a party (iii) to obtain a financial or other benefit or to avoid an obligation.

1. Fraud allegation 1 against the Respondents: Alleged misrepresentation of commissions paid

a. Act or omission, including a misrepresentation

24. Based on the parties’ statements, there is no dispute that the Respondent Firm hired the Consultant to assist with the Tender; the Respondent Individual signed the Letters of Bid for Lots 2, 4, 5, and 6 that were submitted by the Joint Venture; and these Letters of Bid stated that no commissions were paid or were to be paid in connection with the Tender.

25. The record shows that the Bidding Documents included a Letter of Bid, which required the disclosure of “commissions, gratuities, or fees” paid or to be paid in connection with the bidding process or contract execution. Consistent with the parties’ statements above, documentary evidence demonstrates that the Respondent Firm and the Consultant entered into a Consultancy Agreement, which was signed by the Respondent Individual. Under this Consultancy Agreement, the Consultant was tasked to assist the Respondent Firm with the Tender in exchange for a fixed payment and a success fee. The record further contains evidence indicating that the Consultant issued invoices to, and received payments from, the Respondent Firm for services related to the Tender. Despite this arrangement, the Respondent Individual signed the Joint Venture’s Letters of Bid for Lots 2, 4, 5, and 6 that reflected “N/A” on the space provided for disclosing “commissions, gratuities, or fees” paid or to be paid by bidders with respect to the bidding process or contract execution. On the basis of the Respondents’ own acknowledgments and the evidence in the record, the Sanctions Board concludes that it is more likely than not that the Letters of Bid submitted by the Joint Venture for Lots 2, 4, 5, and 6 contained a misrepresentation with respect to commissions paid or to be paid to the Consultant.

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

26. INT asserts that the Respondent Individual acted knowingly when he signed at least four versions of the two-page Letter of Bid claiming that no commissions were paid despite having signed the Consultancy Agreement. INT argues in the alternative that the Respondent Individual acted recklessly when he failed to conduct meaningful background checks on the Consultant and signed the Letters of Bid without proper review. In their defense, the Respondents maintain that their failure to disclose the Consultant was an “administrative error” rather than a knowing act. The Respondents highlight that the Respondent Individual notified INT of the Consultant’s arrangement with the Respondent Firm during INT’s investigation. The Respondents also assert that the Respondent Individual failed to see the error not only because it appeared in a single line

of text within a voluminous set of documents, but also because he was distracted by his wedding preparations. The Respondents blame the Consultant for the misrepresentation and the Former Employee for his failure to check the accuracy of the documents contrary to his supervisor's instructions and company policy.

27. The Sanctions Procedures recognize the Sanctions Board's discretion to infer knowledge on the part of a respondent from circumstantial evidence; and state broadly that any kind of evidence may form the basis of conclusions reached by the Sanctions Board.<sup>7</sup> For instance, the Sanctions Board has found that respondents acted knowingly when the director of a respondent's predecessor firm negotiated and signed an agreement with a marketing consultant, knew that this agreement established a commission agent relationship, and yet failed to disclose this relationship and the commissions paid.<sup>8</sup> Separately, in assessing recklessness, the Sanctions Board has considered whether circumstantial evidence indicates that a respondent was, or should have been, aware of a substantial risk – such as harm to the integrity of the Bank's procurement process due to false or misleading bid documents – but nevertheless failed to act to mitigate that risk. Thus, in a case where a managing director claimed to have only been peripherally involved in bid review and to have relied on the responsible employees, the Sanctions Board found that he acted recklessly by relying completely on these employees, signing the bid and the agency agreement, and approving substantial payments to the agent despite red flags.<sup>9</sup>

28. In this case, the record supports a finding that the Respondents knowingly engaged in a misrepresentation. The Respondent Individual signed the Consultancy Agreement on December 8, 2016. Two months later, on February 24, 2017, the Respondent Firm made a payment to the Consultant that was described as "Deposit payment for Preparation and submission of Tender." After another two months, on April 20, 2017, the Joint Venture submitted the subject Letters of Bid that repeatedly omitted to disclose this arrangement across four Bids. The proximity in time between the signing of the Consultancy Agreement, the deposit payment, and bid submission supports a finding that the employees of the Respondent Firm, including the Respondent Individual, more likely than not knowingly engaged in the misrepresentation.

29. Alternatively, the Sanctions Board finds sufficient evidence in the record demonstrating the recklessness of the Respondent Individual and other employees of the Respondent Firm. The record contains a document showing that, before signing the Consultancy Agreement, the Respondent Firm assessed the risks of engaging the Consultant and classified it as "medium risk." In this document, the Respondent Firm specifically flagged that the Consultant may make false statements or misrepresentations on behalf of the Respondent Firm. Despite the Respondent Firm's own risk assessment of the Consultant, the Respondents acknowledged in their responses to INT's show-cause letter that, "[d]ue to time constraints, our staff did not review the final document." The Respondents further admitted to the "negligence on the part of its officials during the tendering process as they failed to verify the contents of the final documents" submitted by the Consultant.

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<sup>7</sup> Sanctions Procedures at Section III.A, sub-paragraph 7.01.

<sup>8</sup> Sanctions Board Decision No. 83 (2015) at para. 51.

<sup>9</sup> Sanction Board Decision No. 120 (2019) at paras. 38-39.



In a separate communication sent by the Respondents to INT, the Respondent Individual also acknowledged and expressed regret for his oversight and failure to go through the Bids in detail.

30. Based on the foregoing, the Sanctions Board finds that the Respondents knowingly, or at least recklessly, engaged in a misrepresentation by failing to disclose commissions paid or to be paid to the Consultant.

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

31. INT asserts that the Respondents' misrepresentation was made in response to a request for information required by the Bidding Documents. In their defense, the Respondents argue that their unintentional misrepresentation did not and could not have altered the outcome of the Respondent Firm's Bid. The Sanctions Board has previously found sufficient evidence of intent to obtain a financial or other benefit or to avoid an obligation where the record showed that misrepresentations – including the failure to disclose information – were made in response to a tender requirement.<sup>10</sup> The Sanctions Board has affirmed such inference of intent irrespective of the bid requirement's actual significance or impact, or the subjective assessment thereof by the bidder.<sup>11</sup> As discussed in Paragraph 25, the Bidding Documents required the Joint Venture to disclose any commissions, gratuities, or fees paid or to be paid with respect to the bidding process or contract execution, and the Respondents' misrepresentation was in direct response to this requirement. On the basis of this record, and consistent with precedent, the Sanctions Board finds that it is more likely than not that the Respondents engaged in the misrepresentation with the intent to obtain a benefit.

2. Fraud allegation 2 against the Respondent Firm: Alleged submission of falsified financial statements

a. Act or omission, including a misrepresentation

32. The Bidding Documents required bidders to substantiate their "Financial Situation" through, *inter alia*, audited balance sheets or financial statements demonstrating their eligibility and qualifications to perform the contract. INT asserts that the Respondent Firm submitted false audited financial statements in its Bids for Lots 1, 4, 5, and 6 of the Tender. The Respondent Firm acknowledges that these financial statements are inauthentic.

33. In past decisions finding that respondents submitted false information or made a false statement, the Sanctions Board has considered various factors as indicative of a misrepresentation,

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<sup>10</sup> See, e.g., 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; Sanctions Board Decision No. 114 (2018) at paras. 41-42; Sanctions Board Decision No. 120 (2019) at para. 41; Sanctions Board Decision No. 131 (2021) at para. 28.

<sup>11</sup> See, e.g., Sanctions Board Decision No. 71 (2014) at para.; Sanctions Board Decision No. 90 (2016) at para. 30; Sanctions Board Decision No. 99 (2017) at para. 25; Sanctions Board Decision No. 117 (2019) at para. 24; Sanctions Board Decision No. 122 (2020) at para. 22; Sanctions Board Decision No. 124 (2020) at para. 29; Sanctions Board Decision No. 126 (2020) at para. 37; Sanctions Board Decision No. 128 at para. 34; Sanctions Board Decision No. 130 (2020) at para. 54.

including statements by third parties that were named in or supposedly issued the alleged fraudulent documents,<sup>12</sup> and the respondents' own acknowledgments.<sup>13</sup> Here, the Respondent Firm admits to the falsity of the audited financial statements submitted as part of its Bids for Lots 1, 4, 5, and 6. The Respondent Firm expressly states that it has never dealt with the Auditing Firm that purportedly prepared the Respondent Firm's financial statements. Consistent with the Respondent Firm's own statements, the record contains a communication from the Auditing Firm explicitly stating that the Respondent Firm is not among the Auditing Firm's clients. The Sanctions Board, therefore, finds that it is more likely than not that the audited financials statements submitted by the Joint Venture were falsified, thus constituting a misrepresentation.

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

34. INT asserts that the Respondent Firm knowingly, or at least recklessly, committed the misrepresentation. According to INT, the handwritten initials of the Respondent Individual and the date stamp of the Respondent Firm appear on almost every page of the final Bids, including the false financial statements. The Respondent Firm blames the Consultant for including these false documents despite having been supposedly given the correct ones, and the Former Employee for neglecting to monitor the Consultant's activities contrary to his supervisor's clear instructions. The Respondent Firm further explains that the Respondent Individual could not have reviewed or initialled more than 6,000 pages of the Bids, and that the Respondent Firm had given its date stamp to the Consultant only to facilitate the stamping of all the documents at the Consultant's premises.

35. The record shows that the Consultancy Agreement tasked the Consultant to "[s]ubmit the final tender documents on behalf of [the Respondent Firm] to the contracting agency (after having obtained sign-off of the relevant parts of the tender document by authorized official(s) of [the Respondent Firm])." Consistent with this mandate, the signatures of the Respondent Firm's secretary and two other directors appear on the same pages, as well as those immediately before and after the pages, of the false financial statements that bore the name of the Auditing Firm. Thus, even assuming that the Respondent Individual could not have reviewed or initialled all the pages of the Bids including the financial documents, at least three other employees of the Respondent Firm signed off on the financial statements, which the Respondent Firm claims were different from those it had provided to the Consultant. On this specific point, the Sanctions Board notes that the Respondent Firm has not presented these supposedly authentic audited financial statements, and has not given a convincing reason for its failure to do so. Considering the totality of the evidence in the record, the Sanctions Board finds that it is more likely than not that the Respondent Firm's employees knowingly engaged in a misrepresentation by submitting false financial statements.

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<sup>12</sup> See, e.g., Sanctions Board Decision No. 100 (2017) at para. 32 (statement from the purported issuer of supply invoices presented by the respondent in its payment/reimbursement requests); Sanctions Board Decision No. 112 (2018) at para. 31 (statements from educational institutions named in the respondents' bids).

<sup>13</sup> See, e.g., Sanctions Board Decision No. 77 (2015) at para. 25; Sanctions Board Decision No. 97 (2017) at para. 42.

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

36. As mentioned above, 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>14</sup> As discussed in Paragraphs 32-33, the Respondent Firm submitted false financial statements in response to the Bidding Documents' requirement for bidders to substantiate their financial eligibility and qualifications. The Sanctions Board notes the Respondent Firm's defense that it was the Consultant that had a financial interest in submitting the false financial statements. The Sanctions Board finds no merit in this argument. Even assuming that the Consultant had a financial interest in submitting these false documents, this would not negate the fact that the audited financial statements were submitted to enable the Joint Venture to qualify for and win the contracts. Accordingly, the Sanctions Board finds that it is more likely than not that the Respondent Firm's employees made the misrepresentation in order to obtain a benefit.

3. Fraud allegation 3 against the Respondent Firm: Alleged submission of falsified past experience claims

a. Act or omission, including a misrepresentation

37. INT asserts that, in the Joint Venture's Bids for Lots 1, 2, 4, 5, and 6 of the Tender, the Respondent Firm submitted false experience documents showing past work experience with three different entities. The Respondent Firm acknowledges that these documents are inauthentic.

38. The Bidding Documents established prior experience requirements and obligated bidders to submit documents evidencing that they meet these qualifications, as well as their current commitments. Specifically, the Bidding Documents required (i) experience as contractor, subcontractor, or management contractor for at least the last five years prior to bid submission, and with activity in at least nine months each year; and (ii) either participation in one successfully and substantially completed contract within the last five years that is similar to "Plant and Installation Services" and with a value of US\$ 3-9.5 million, or participation in at least one successfully and substantially completed contract within the last five years that may involve the "supply and installation or Turnkey of MV lines and/or LV lines and/or distribution Transformers 33/.433kV and 11/.433kV."

39. In compliance with these requirements, the Joint Venture's Bids enumerated the Respondent Firm's purported past engagements with different entities as supported by corresponding certificates of completion. However, the Respondent Firm admits to the falsity of certain certificates of completion submitted in the Bids for Lots 1, 2, 4, 5, and 6. The Respondent Firm further states that it has never dealt with any of the three entities that appear on these fraudulent certificates. Consistent with the Respondent Firm's own statements, the record contains

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<sup>14</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.

communications from these three entities, each denying the veracity of the past experience claims and the authenticity of the documents submitted by the Joint Venture. The Sanctions Board, therefore, finds that it is more likely than not that the Respondent Firm submitted false prior work experience documents, thus engaging in a misrepresentation.

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

40. INT argues that the Respondent Firm knowingly, or at least recklessly, committed the misrepresentation. According to INT, the Respondent Individual has been with the Respondent Firm throughout the period covering all the claimed project experience. INT further contends that, contrary to the Respondents' claims that they never reviewed the final Bids, the Respondent Individual's handwritten initials and the Respondent Firm's date stamp appear on almost every page of the Bids. The Respondent Firm blames the Consultant for including these false documents despite having been supposedly given the correct ones, and the Former Employee for neglecting to monitor the Consultant's activities contrary to his supervisor's clear instructions. The Respondent Firm further argues that the Respondent Individual could not have reviewed or initialled more than 6,000 pages of the Bids, and that the Respondent Firm had given its date stamp to the Consultant only to facilitate the stamping of all the documents at the Consultant's premises.

41. The Sanctions Board has previously found respondents to have engaged in a knowing misconduct where the misrepresentations relating to the respondents' own past experience were too substantial to have been made in error or through reckless oversight.<sup>15</sup> In this case, the record shows that Respondent Firm's claims of past engagement with the three entities at issue contained significant misrepresentations and were evidenced by several forged supporting documents. The Sanctions Board finds that the misrepresentations required a level of orchestration that would not have been able to take place without the knowledge of the Respondent Firm's employees.

42. The Sanctions Board notes that the Respondent Firm submitted into the record past experience documents that it asserts to be the authentic documents that it had given to the Consultant. However, it is not readily apparent how these past experience documents, if submitted in lieu of the fraudulent documents, would have met the experience requirements set by the Bidding Documents. Further, even assuming that these documents did meet the bid requirements and that the Respondent Firm did hand these over to the Consultant, the Respondent Firm's employees would still have been reckless in allowing the submission of the Bids without proper review. As discussed in Paragraph 29, the Respondent Firm classified the Consultant as "medium risk" and specifically flagged the possibility that the Consultant may make misrepresentations on behalf of the Respondent Firm. Despite this risk, the Respondent Firm acknowledged that, "[d]ue to time constraints, our staff did not review the final document." The Respondent Firm further admitted to the "negligence on the part of its officials during the tendering process as they failed to verify the contents of the final documents submitted ... by [the Consultant]."

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<sup>15</sup> Sanctions Board Decision No. 69 (2014) at para. 22; Sanctions Board Decision No. 126 (2020) at para. 36.

43. For the foregoing reasons, the Sanctions Board finds that it is more likely than not that the Respondent Firm's employees knowingly, or at least recklessly, engaged in a misrepresentation by submitting false past experience documents.

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

44. The Sanctions Board has previously found that a respondent's submission of forged or misleading documents showing the respondent's past experience were more likely than not intended to showcase the respondent's capacity to perform the necessary tasks and thereby enable it to qualify and win the contract.<sup>16</sup> As discussed in Paragraphs 37-39, the Respondent Firm submitted the false completion certificates in response to the Bidding Documents' requirement to submit past work experience documents showing the bidders' qualifications. The Sanctions Board notes the Respondent Firm's defense that it was the Consultant that had a financial interest in submitting the false documents. The Sanctions Board finds no merit in this argument, which even if true, would not negate the fact that the past experience documents were submitted to enable the Joint Venture to qualify for and win the contracts. Accordingly, the Sanctions Board finds that it is more likely than not that the Respondent Firm's employees made the misrepresentation in order to obtain a benefit.

**B. The Respondent Firms's Liability for the Acts of Its Employees**

45. The Sanctions Board has consistently found that an employer can be found liable for the acts of its employees under the doctrine of respondent 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>17</sup> Where a respondent entity has denied responsibility for the acts of its employees based on a "rogue employee" defense, as in this case, the Sanctions Board considers any evidence presented regarding the scope and adequacy of the respondent entity's controls and supervision at the time of the misconduct.<sup>18</sup> Here, the Respondent Firm argues that the Consultant acted as an independent contractor that was not under the Respondent Firm's control. The Respondent Firm also asserts that the Former Employee was a rogue employee, who failed to closely monitor the Consultant's activities contrary to his supervisor's instructions and company policy.

46. The record supports a finding that the Respondent Firm's employees, including the Respondent Individual, engaged in misconduct in accordance with the scope of their duties and with the purpose of serving the interests of the Respondent Firm. As examined in Paragraphs 28-29, 34-35, and 41-42 above, the record shows that the Respondent Firm's employees knowingly or recklessly made misrepresentations while in the performance of their duties and in the course

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<sup>16</sup> See, e.g., Sanctions Board Decision No. 77 (2015) at para. 37; Sanctions Board Decision No. 79 (2015) at para. 31; Sanctions Board Decision No. 97 (2017) at para. 50; Sanctions Board Decision No. 99 (2017) at para. 24.

<sup>17</sup> See, e.g., Sanctions Board Decision No. 55 (2013) at paras. 51-52, 55; Sanctions Board Decision No. 61 (2013) at para. 30.

<sup>18</sup> See, e.g., Sanctions Board Decision No. 48 (2012) at para. 30; Sanctions Board Decision No. 55 (2013) at paras. 53-54.

of their employment. Nothing in the record suggests that any of these employees acted out of any motive other than to serve the Respondent Firm's interests.

47. With respect to the rogue employee defense, the Sanctions Board notes that the burden of proof lies with the respondent.<sup>19</sup> In this case, the Sanctions Board finds that the Respondents have failed to meet this burden. The record contains an affidavit executed by the Former Employee's supervisor, who claims to have reminded the Former Employee on several occasions to monitor activities relating to the Tender. However, there appears to be no contemporaneous evidence demonstrating adequate controls and supervision. Thus, the Sanctions Board finds that, while the Respondent Firm had some internal controls in place at the time of the misconduct, there is insufficient evidence showing that these controls had been enforced in a meaningful way.

48. In these circumstances, the Sanctions Board finds that the Respondent Firm is responsible for the actions of its employees. Given this conclusion, the Sanctions Board need not consider an alternative theory of liability based on the Consultant's purported culpability for fraud.<sup>20</sup>

### **C. Sanctioning Analysis**

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

49. Where the Sanctions Board determines that it is more likely than not that a respondent engaged in a sanctionable practice, Section III.A, sub-paragraph 8.01(ii) of the Sanctions Procedures requires the Sanctions Board to select and impose one or more appropriate sanctions from the range of possible sanctions identified in Section III.A, sub-paragraph 9.01. The range of sanctions set out in Section III.A, sub-paragraph 9.01 includes: (a) reprimand, (b) conditional non-debarment, (c) debarment, (d) debarment with conditional release, and (e) restitution. As stated in Section III.A, sub-paragraph 8.01(ii) of the Sanctions Procedures, the Sanctions Board is not bound by the SDO's recommendations.

50. 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>21</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>22</sup>

51. The Sanctions Board is required to consider the types of factors set forth in Section III.A, sub-paragraph 9.02 of the Sanctions Procedures, which provides a non-exhaustive list of considerations. In addition, the Sanctions Board refers to the factors and principles set out in the World Bank Sanctioning Guidelines (the "Sanctioning Guidelines"). While the Sanctioning Guidelines themselves state that they are not intended to be prescriptive in nature, they provide

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<sup>19</sup> Sanctions Board Decision No. 126 (2020) at para. 41.

<sup>20</sup> See Sanctions Board Decision No. 68 (2014) at para. 31 (refraining from assessing the respondent's liability under the principles of agency for the broker's forgery of bid securities).

<sup>21</sup> See, e.g., Sanctions Board Decision No. 40 (2010) at para. 28.

<sup>22</sup> See Sanctions Board Decision No. 44 (2011) at para. 56; Sanctions Board Decision No. 51 (2012) at para. 44; Sanctions Board Decision No. 63 (2014) at para. 92; and Sanctions Board Decision No. 65 (2014) at para. 65.

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.

52. 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

53. As the Sanctions Board finds that the Respondent Firm engaged in multiple counts of misconduct, the Sanctions Board considers Section III of the Sanctioning Guidelines regarding “Cumulative Misconduct.” The Sanctioning Guidelines provide in relevant part:

Where the respondent has been found to have engaged [in] factually distinct[] incidences of misconduct (e.g., corrupt practices and collusion in connection with the same tender) or in misconduct in different cases (e.g., in different projects or in contracts under the same project but for which the misconduct occurred at significantly different . . . times), each separate incidence of misconduct may be considered separately and sanctioned on a cumulative basis. In the alternative, the fact that the respondent engaged in multiple incidences of misconduct may be considered an aggravating factor under Section IV.A.1 [“Repeated Pattern of Conduct”] below. (emphasis in original)

54. 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>23</sup> In the present case, however, the Respondent Firm’s failure to disclose the Consultant and the submission of fraudulent documents all relate to the same set of bid submissions for the Tender. Consistent with precedent,<sup>24</sup> the Sanctions Board finds these acts to be so closely interrelated so as to warrant aggravation, rather than multiplication, of the base sanction.

3. Factors considered in the present case

a. Severity of the misconduct

55. 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.

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<sup>23</sup> See, e.g., Sanctions Board Decision No. 87 (2016) at para. 151; Sanctions Board Decision No. 118 (2019) at para. 80.

<sup>24</sup> See, e.g., Sanctions Board Decision No. 60 (2013) at para. 143; Sanctions Board Decision No. 115 (2019) at para. 63.

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

56. *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 where the misconduct related to separate bids, contracts, or projects, over a period of time.<sup>25</sup> By contrast, the Sanctions Board has declined to apply aggravation where the sanctionable conduct was attributed to a “single scheme”<sup>26</sup> or a “single course of action.”<sup>27</sup> INT asserts that the Respondent Firm’s repetitive inclusion of false information on various categories and distinct bid requirements (i.e., agent fees, financial qualifications, and past experience) in four to five different bids warrant aggravation. The Respondent Firm argues that all of its documents were prepared and submitted by the Consultant on the same day and time, related to the same Project, and consisted of similar documents across all Bids. The Sanctions Board finds that aggravation is appropriate in this case where the Respondent Firm’s several false claims and forged documents were in response to three unrelated requirements in the Bidding Documents.

57. *Management’s role:* Section IV.A.4 of the Sanctioning Guidelines states that this factor may apply “[i]f an individual within high-level personnel of the organization participated in, condoned, or was willfully ignorant of the misconduct.” The Sanctions Board has previously applied aggravation on this basis where high-level members of a respondent entity’s management personally participated in the misconduct.<sup>28</sup> Here, INT argues that the participation of the Respondent Individual, as high-level personnel of the Respondent Firm, in the misrepresentation of commissions paid to the Consultant warrants aggravation. The Respondent Firm contends that the Respondent Individual did not participate in the alleged fraud relating to payment of commissions, and that he played only a “peripheral role” as Managing Director. As explained in Paragraphs 28 and 35, the Sanctions Board finds that members of the Respondent Firm’s management, including the Respondent Individual, knowingly misrepresented the Respondent Firm’s relationship with the Consultant and submitted falsely audited financial statements. Given

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<sup>25</sup> See, e.g., Sanctions Board Decision No. 60 (2013) at para. 122 (misrepresentations in nine separate bids relating to different Bank-financed projects and contracts over several years); Sanctions Board Decision No. 72 (2014) at para. 56 (misrepresentations relating to two separate agency agreements in two bids, submitted more than two months apart, in connection with contracts under different projects); Sanctions Board Decision No. 98 (2017) at para. 57 (misrepresentations relating to different bid requirements)

<sup>26</sup> See, e.g., Sanctions Board Decision No. 63 (2014) at para. 97 (declining aggravation for repetition where respondents made multiple corrupt payments pursuant to a single scheme under the same contract).

<sup>27</sup> See, e.g., Sanctions Board Decision No. 79 (2015) at para. 39 (declining aggravation where a respondent included the same false documents in several bid packages under the same project, which bid packages appeared to have been prepared by the respondent in a single course of action before the bids were submitted in two batches in the same week); Sanctions Board Decision No. 117 (2019) at para. 33 (declining aggravation where a respondent twice submitted the same set of false documents that related to the same bidding requirement under two related contracts under the same project); Sanctions Board Decision No. 120 (2019) at para. 50 (declining aggravation for repetition where the respondent submitted a set of several falsified documents in connection with two different bids under the same project).

<sup>28</sup> See, e.g., Sanctions Board Decision No. 66 (2014) at para. 36; Sanctions Board Decision No. 78 (2015) at para. 77.



management's participation in the misconduct, the Sanctions Board finds sufficient basis to aggravate the Respondent Firm's sanction.

b. Minor role

58. 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 declined mitigation where the record indicated the direct involvement of employees with decision-making authority.<sup>29</sup> In this case, the Respondents assert that the Respondent Individual played a peripheral role as Managing Director, the Consultant acted beyond the scope of its authority and without the Respondents' knowledge or instruction, and the Former Employee did not hold a senior position in the company. INT argues that the Respondents did not play a minor or peripheral role in the misconduct, considering the participation of the Respondent Individual, a high-level official with decision-making authority. In light of the Sanctions Board's finding of management participation in the misconduct, the Sanctions Board declines to apply mitigation under this factor.

c. Voluntary corrective action

59. 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.

60. *Cessation of misconduct*: Section V.B.1 of the Sanctioning Guidelines states that mitigation may be appropriate where a respondent ceases to engage in misconduct and the record reflects "genuine remorse and intention to reform." The Sanctions Board has applied mitigation on this basis where the management of a respondent acted promptly and took meaningful corrective measures to halt the sanctionable practices, such as terminating business relationships with other participants in the misconduct and formally revising relevant internal processes.<sup>30</sup> In this case, the Sanctions Board recognizes that the Respondents terminated the Consultancy Agreement, terminated the employment of the Former Employee, and implemented internal reforms. However, the Sanctions Board considers it appropriate to grant mitigation for these actions under Paragraphs 61-62 and 65 as discussed below. The Sanctions Board finds no additional mitigation to be warranted under the specific factor of cessation of misconduct.

61. *Internal action against responsible individual*: Section V.B.2 of the Sanctioning Guidelines states that mitigation may be warranted where "[m]anagement takes all appropriate

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<sup>29</sup> See, e.g., Sanctions Board Decision No. 93 (2017) at para. 100; Sanctions Board Decision No. 95 (2017) at para. 43; Sanctions Board Decision No. 106 (2017) at para. 38; Sanctions Board Decision No. 109 (2019) at para. 45.

<sup>30</sup> See, e.g., Sanctions Board Decision No. 56 (2013) at para. 64; Sanctions Board Decision No. 63 (2014) at para. 105.

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>31</sup> In this case, the Respondents assert that they dismissed the Former Employee for gross misconduct, terminated the contract with the Consultant, and withheld certain payments to the Consultant. INT agrees that some mitigation is warranted for these actions. The record includes documentary evidence that the Respondent Firm issued a show-cause letter to the Former Employee, and eventually dismissed him from service upon a finding of gross negligence. The record also includes documentary evidence that the Respondent Firm terminated the Consultancy Agreement upon finding that the Consultant made certain misrepresentations without the knowledge or consent of the Respondent Firm. The Sanctions Board thus finds mitigation to be warranted under these circumstances.

62. *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>32</sup> Conversely, the Sanctions Board has declined mitigation where the record contained no evidence that the respondent had in fact implemented compliance measures.<sup>33</sup> Here, the Respondents detail in their Response several efforts including, *inter alia*, reviewing the Respondent Firm’s corporate governance, implementing an integrity compliance program, and putting in place financial control policies. While INT agrees that some mitigating credit is warranted, INT asserts that “certain key areas related to the misconduct in this case have not been further addressed or lack detail,” and there is limited evidence of implementation. The record contains evidence of the Respondent Firm’s compliance program and financial management policies, as well as efforts in seeking outside guidance to enhance and implement these protocols. The Sanctions Board finds that the compliance measures presented by the Respondents appear to meet some of the elements set out in the World Bank Group’s Integrity Compliance Guidelines.<sup>34</sup> However, it is not readily apparent how these documents squarely address the type of fraudulent practices at issue, or whether the Respondent Firm has effectively implemented these policies.

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<sup>31</sup> See, e.g., Sanctions Board Decision No. 48 (2012) at para. 44.

<sup>32</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>33</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).

<sup>34</sup> See, e.g., Sanctions Board Decision No. 102 (2017) at para. 74; Sanctions Board Decision No. 109 (2018) at para. 48.

Nevertheless, the Sanctions Board concludes that some mitigation is appropriate under this factor. This finding is made based on the written record before the Sanctions Board, and therefore without prejudice to any future assessment that the ICO may conduct to more fully evaluate the adequacy and implementation of integrity compliance measures taken by the Respondents.

d. Cooperation

63. Section III.A, sub-paragraph 9.02(e) of the Sanctions Procedures provides for mitigation where a respondent “cooperated in the investigation or resolution of the case.” Section V.C of the Sanctioning Guidelines identifies a respondent’s assistance with INT’s investigation, internal investigation, admission and/or acceptance of responsibility, and voluntary restraint as examples of cooperation.

64. *Assistance and/or ongoing cooperation:* Section III.A, sub-paragraph 9.02(e) of the Sanctions Procedures provides for mitigation where a respondent “cooperated in the investigation or resolution of the case.” Section V.C.1 of the Sanctioning Guidelines provides that mitigation may be appropriate for assistance and/or ongoing cooperation, “[b]ased on INT’s representation that the respondent has provided substantial assistance in an investigation,” with consideration of the “truthfulness, completeness, reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of assistance.” The Sanctions Board has granted partial or limited mitigation where there is a separate finding of interference through false statements,<sup>35</sup> or the respondent replied to INT’s show-cause letter, but did not otherwise assist the investigation.<sup>36</sup> Here, the Respondents assert that they have fully cooperated with INT, including by making truthful and timely voluntary disclosures. INT argues that the Respondents cooperated by providing documents and replying to follow-up email requests, but contends that some of the Respondents’ responses either contradicted the evidence or remain uncorroborated. The Sanctions Board acknowledges the Respondents’ cooperation with INT’s investigation, but notes the Respondent Firm’s continued failure, without satisfactory justification, to produce the authentic financial statements it asserts to have given the Consultant. The Sanctions Board thus applies partial mitigation under this factor.

65. *Internal investigation:* Section V.C.2 of the Sanctioning Guidelines refers to cooperation where a respondent has “conducted its own, effective internal investigation of the misconduct and relevant facts . . . and shared results with INT.” In examining this sanctioning factor, the Sanctions Board has considered whether the investigation was conducted thoroughly and impartially by persons with sufficient independence, expertise, and experience; whether the respondent shared its findings with INT during INT’s investigation or as part of the sanctions proceedings; and whether the respondent has demonstrated that it followed up on any investigative findings and recommendations.<sup>37</sup> The Respondents contend that the Respondent Firm had initiated internal investigations that resulted in withholding payments to the Consultant, terminating the contract

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<sup>35</sup> Sanctions Board Decision No. 87 (2016) at para. 144; Sanctions Board Decision No. 92 (2017) at para. 122.

<sup>36</sup> Sanctions Board Decision No. 98 (2017) at para. 66.

<sup>37</sup> See, e.g., Sanctions Board Decision No. 74 (2014) at para. 43; Sanctions Board Decision No. 77 (2015) at para. 56; Sanctions Board Decision No. 83 (2015) at para. 97.

with the Consultant, and dismissing the Former Employee. The Sanctions Board finds sufficient evidence in the record showing that the Respondents exerted efforts to investigate the misconduct that ultimately lead to the dismissal of the Former Employee and the termination of the Consultancy Agreement. On this basis, the Sanctions Board finds mitigation appropriate.

66. *Admission and/or acceptance of responsibility:* Section V.C.3 of the Sanctioning Guidelines recognizes cooperation in the form of a respondent's admission or acceptance of guilt or responsibility, with attention to the scope of any such admission. In considering whether admissions warrant mitigating credit, the Sanctions Board has looked to the timing and investigative value of admissions, as well as their scope (i.e., whether the admission related only to the conduct alleged or also included an acceptance of responsibility).<sup>38</sup> The Sanctions Board has granted partial mitigation where the respondent admitted to certain facts without accepting responsibility for misconduct during the investigation, but fully conceded to the allegations in the written response;<sup>39</sup> or where the respondent explicitly admitted to its employees' misrepresentation and accepted responsibility therefor, but only did so in the response.<sup>40</sup> The Respondents request mitigation for the Respondent Firm's "remorse, admission and affirmative acceptance of responsibility for the inaction of its employees and actions of the [C]onsultant." INT argues that no mitigation is warranted, as the Respondents have not accepted responsibility for any of the misrepresentations. The Sanctions Board notes that the Respondents themselves disclosed the Respondent Firm's relationship with the Consultant during INT's investigation. The Sanctions Board further notes that, during the investigation and these proceedings, the Respondents repeatedly acknowledged their failure to review the final Bids, admitted "to negligence on the part of [the Respondent Firm's] officials during the tendering process," and expressed regret and remorse for the misrepresentations. However, the Sanctions Board finds that the Respondents' statements fell short of fully accepting responsibility, opting instead to put the blame on the Former Employee and the Consultant. Accordingly, the Sanctions Board finds that limited mitigation is appropriate under these circumstances.

67. *Voluntary restraint:* Section V.C.4 of the Sanctioning Guidelines advises that voluntary restraint from bidding on Bank-financed tenders pending the outcome of an investigation may be considered as a form of assistance and/or cooperation. In past cases, the Sanctions Board's decision to apply or deny mitigation on these grounds has depended on whether or not the asserted restraint was corroborated by relevant evidence.<sup>41</sup> The Respondents confirm that they do not have any pending bids for Bank-financed projects and have voluntarily restrained from submitting any bids until the resolution of this case. INT agrees that some mitigation is warranted. The Sanctions Board

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<sup>38</sup> See, e.g., Sanctions Board Decision No. 51 (2012) at para. 54; Sanctions Board Decision No. 52 (2012) at para. 43; Sanctions Board Decision No. 54 (2012) at para. 40; Sanctions Board Decision No. 55 (2013) at para. 82; Sanctions Board Decision No. 56 (2013) at paras. 76-77; Sanctions Board Decision No. 60 (2013) at para. 134; Sanctions Board Decision No. 61 (2013) at para. 47.

<sup>39</sup> Sanctions Board Decision No. 105 (2017) at para. 30 (observing that the respondent (i) during the investigation, admitted to the solicitations in question but did not accept responsibility for any corrupt conduct and (ii) in the Response, conceded that he engaged in the actions alleged by INT).

<sup>40</sup> Sanctions Board Decision No. 120 (2019) at para. 59.

<sup>41</sup> See, e.g., Sanctions Board Decision No. 73 (2014) at para. 50; Sanctions Board Decision No. 79 (2015) at para. 51; Sanctions Board Decision No. 102 (2017) at para. 80.

applies mitigation in this case where the record shows that the Respondent Firm voluntarily restrained from bidding on Bank-financed tenders pending the investigation and these proceedings.

e. Period of temporary suspension

68. Pursuant to Section III.A, sub-paragraph 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account the period of the Respondents' temporary suspensions since the SDO's issuance of the Notice on April 29, 2021.

f. Other considerations

69. *Passage of time:* The Sanctions Board has considered as a mitigating factor the passage of a significant period of time from the commission of the misconduct, or from the Bank's awareness of the potential sanctionable practices, to the initiation of sanctions proceedings.<sup>42</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>43</sup> The Respondents argue that, as of the date of their Response, four years and seven months have elapsed from the Respondent Firm's bid submission. The Respondents also submit that three years and six months have passed since the Respondent Firm received INT's show-cause letter. INT agrees that some mitigation is warranted on this ground. The Sanctions Board notes that, as of the issuance of this decision, more than five years have passed since the Joint Venture submitted its Bids, and more than four years have lapsed since the Bank first appears to have been made aware of potential misconduct. Accordingly, the Sanctions Board finds that mitigation is warranted for the passage of time.

70. *Voluntary disclosure:* Apart from requesting mitigation on the ground of their cooperation, the Respondents separately request mitigation for disclosing the Respondent Firm's relationship with the Consultant before INT even began investigating the payment of commissions. INT argues that no mitigating credit is warranted on this ground, considering that the Respondents disclosed the Consultant in order to avoid responsibility for the misrepresentation in the Bids. The Sanctions Board observes that Section V.C of the Sanctioning Guidelines on assistance and/or ongoing cooperation lists voluntary disclosure as an example showing a respondent's substantial assistance in INT's investigation. Considering that the Sanctions Board already considered the Respondents' disclosure of the Respondent Firm's relationship with the Consultant in Paragraph 64 above, no additional mitigation is warranted on this ground.

71. *Project completion:* The Respondents list their project milestones, and emphasize the Respondent Firm's sufficient capabilities and commitment to delivering project objectives. The Sanctions Board has previously held that delays or incomplete performance in a project as a result of a respondent's misconduct may be considered an aggravating factor. The Sanctions Board has

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<sup>42</sup> 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. 68 (2014) at para. 47 (applying mitigation where sanctions proceedings were initiated more than four and a half years after the misconduct had occurred and more than four years after the Bank had become aware of the potential misconduct).

<sup>43</sup> See, e.g., Sanctions Board Decision No. 50 (2012) at para. 71; Sanctions Board Decision No. 83 (2015) at para. 102.

not generally found completion of contractual obligations a mitigating factor in itself.<sup>44</sup> Thus, the Sanctions Board applies no mitigation on this ground.

#### **D. Determination of Appropriate Sanctions**

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

- i. the Respondent Firm, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent Firm, shall be ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;<sup>45</sup> (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider<sup>46</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 three (3) years beginning from the date of this decision, the Respondent Firm may be released from ineligibility only if it has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, adopted and implemented effective integrity compliance measures in a manner satisfactory to the World Bank Group. This sanction is imposed on the Respondent Firm for fraudulent practices as defined in Paragraph 1.16(a)(ii) of the January 2011 and July 2014 Procurement Guidelines.
- ii. the Respondent Individual, together with any entity that is an Affiliate directly or indirectly controlled by him, shall be ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;<sup>47</sup> (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider<sup>48</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 one (1)

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<sup>44</sup> See, e.g., Sanctions Board Decision No. 53 (2012) at para. 67; Sanctions Board Decision No. 54 (2012) at para. 44.

<sup>45</sup> A respondent's ineligibility to be awarded a contract includes, without limitation (i) applying for pre-qualification, expressing interest in a consultancy, and bidding, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract. Sanctions Procedures at Section III.A, sub-paragraph 9.01(c)(i), n.14.

<sup>46</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 pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower. Sanctions Procedures at Section III.A, sub-paragraph 9.01(c)(ii), n.15.

<sup>47</sup> See supra n.45.

<sup>48</sup> See supra n.46.



year and six (6) months beginning from the date of this decision, the Respondent Individual may be released from ineligibility only if he has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, taken appropriate remedial measures to address the sanctionable practice for which he has been sanctioned, including by completing training and/or other educational programs that demonstrate a continuing commitment to personal integrity and business ethics, and by adopting and implementing effective integrity compliance measures with respect to any entity that is an Affiliate directly or indirectly controlled by him in a manner satisfactory to the World Bank Group. This sanction is imposed on the Respondent Individual for a fraudulent practice as defined in Paragraph 1.16(a)(ii) of the January 2011 and July 2014 Procurement Guidelines.

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

John R. Murphy (Panel Chair)

On behalf of the  
World Bank Group Sanctions Board

John R. Murphy  
Cavinder Bull  
Eduardo Zuleta

<sup>49</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/en/about/unit/sanctions-system/sanctions-board#3> (see "Background and Reference Documents" section, item titled "Agreement for Mutual Enforcement of Debarment Decisions (April 9, 2010)").