

Date of issuance: June 30, 2023

Sanctions Board Decision No. 141
(Sanctions Case No. 503)

IBRD Loan No. 7807-BR
Municipality of Santos
Federative Republic of Brazil

Decision of the World Bank Group¹ Sanctions Board imposing sanctions of debarment with conditional release on the respondent entity (the “Respondent Firm”) and the respondent individual (the “Respondent Individual”) (together, the “Respondents”) in Sanctions Case No. 503, together with certain Affiliates.² Each of the Respondents is hereby declared ineligible for a minimum period of nine (9) months, beginning from the date of this decision. These sanctions are imposed on the Respondents for fraudulent practices.

I. INTRODUCTION

1. The Sanctions Board convened as a panel composed of Maria Vicien Milburn (Chair), Michael Ostrove, and Adedoyin Rhodes-Vivour to review this case. Consistent with Section III.A, sub-paragraph 6.01 of the Sanctions Procedures, the Chair decided to call a hearing in her discretion. The hearing was held on May 3, 2023, at the World Bank Group’s headquarters in Washington, D.C.³ The World Bank Group’s Integrity Vice Presidency (“INT”) participated in the hearing through its representatives attending in person. The Respondent Individual, representing himself and the Respondent Firm, participated in the hearing via video conference from the World Bank Group’s offices in São Paulo, Brazil. The Sanctions Board deliberated and reached its decision based on the written record and the arguments presented at the hearing.

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

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

² Section II(a) of the Sanctions Procedures defines “Affiliate” as “any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank.” The sanctions imposed by this decision apply only to those Affiliates that are directly or indirectly controlled by either of the Respondents. See infra Paragraphs 67, 85.

³ Ms. Rhodes-Vivour participated in the hearing via video conference from the World Bank Group’s offices in Lagos, Nigeria.

- i. Notice of Sanctions Proceedings issued by the World Bank’s Suspension and Debarment Officer (the “SDO”) to the Respondents on May 18, 2022 (the “Notice”), appending the Statement of Accusations and Evidence (the “SAE”) submitted by INT to the SDO (undated);
- ii. Response submitted by the Respondents to the Secretary to the Sanctions Board on September 23, 2022 (the “Response”);
- iii. Reply submitted by INT to the Secretary to the Sanctions Board on November 23, 2022 (the “Reply”);
- iv. Additional submission filed by the Respondents with the Secretary to the Sanctions Board on December 2, 2022 (the “Respondents’ Additional Submission”);
- v. Post-hearing submission filed by the Respondents with the Secretary to the Sanctions Board on May 11, 2023 (the “Respondents’ Post-Hearing Submission”); and
- vi. Post-hearing submission filed by INT with the Secretary to the Sanctions Board on May 15, 2023 (“INT’s Post-Hearing Submission”).

II. PROCEDURAL HISTORY AT THE FIRST TIER

3. *Issuance of Notice and temporary suspensions:* On May 18, 2022, 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 of the Respondents, from eligibility⁴ with respect to any Bank-Financed Projects,⁵ 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 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 a minimum period of ineligibility of four (4) years and four (4) months for each of the Respondents, together with any entity that is an Affiliate directly or indirectly controlled by either of the Respondents. The SDO recommended that 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

⁴ The full scope of ineligibility effected by a temporary suspension is set out in the Sanctions Procedures at Section III.A, sub-paragraphs 4.02(a) and 9.01(c), read together.

⁵ The term “Bank-Financed Projects” encompasses an investment project or a program for results operation, for which IBRD or IDA (as the case may be), whether acting for its own account or in the capacity as administrator of trust funds funded by donors, has provided financing in the form of a loan, credit or grant and governed by the Bank’s Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines. See Sanctions Procedures at Section II(e).

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, as may be imposed by the ICO to address the sanctionable practices, in a manner satisfactory to the Bank. The SDO recommended that 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, demonstrated to the ICO that (i) he has taken appropriate remedial measures to address the sanctionable practices for which he 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 him has adopted and implemented integrity compliance measures, as may be imposed by the ICO to address the sanctionable practices, in a manner satisfactory to the Bank. The SDO applied aggravation for the Respondents’ repeated pattern of fraudulent practices, management involvement in the misconduct, central role in the misconduct, and harm to the Project. The SDO applied mitigation for the Respondents’ limited cooperation and for the passage of time since the misconduct.

III. GENERAL BACKGROUND

5. This case arises in the context of the Santos Novos Tempos Project (the “Project”) in the Municipality of Santos (the “Borrower”), in the Federative Republic of Brazil. The Project sought to improve public services in certain urban areas and enhance the Borrower’s capacity in local economic development. On February 8, 2010, IBRD entered into a loan agreement with the Borrower to provide US\$44 million to support the Project (the “Loan Agreement”). The Project became effective on April 19, 2010, and closed on June 30, 2015.

6. On December 23, 2010, the Project’s management unit (the “PMU”) issued a Request for Proposals (the “RFP”) for the selection of consultants to supervise the execution of certain construction works (the “Construction Works”) and provide technical assistance to the PMU under the Project. The PMU awarded the corresponding consultant contract (“Contract 1”) to a consortium (the “Consortium”) composed of the Respondent Firm and another company (the “Consortium Partner”). On August 5, 2011, the PMU and the Consortium entered into Contract 1. The Respondent Individual was the Respondent Firm’s Technical Director and the Consortium’s General Coordinator under Contract 1.

7. Contract 1 included several components and compensation structures. Among other services, the Consortium agreed to: (i) prepare detailed engineering designs for the Project, in exchange for a lump-sum payment (the “Executive Designs Component”);⁶ and (ii) supervise the execution of the Construction Works, in exchange for time-based payments (the “Supervision

⁶ The Executive Designs Component consisted of the “elaboration of the detailed engineering designs” for the Project. Under this component, the detailed designs “shall be composed by all the necessary elements for the details that allow the perfect construction work,” including drawings, technical specifications, and calculation sheets. See infra Paragraph 37.

Component”).⁷ The Construction Works encompassed a Project scope financed by the Bank and additional scopes financed separately by other institutions. On September 15, 2012, the PMU issued bidding documents for the scope financed by the Bank (“Contract 2”). On January 22, 2013, the PMU issued a revised version of these bidding documents. On July 18, 2013, the PMU awarded Contract 2 to a contractor. On August 5, 2013, the PMU and this contractor entered into Contract 2.

8. On December 1, 2013, the Bank issued a no-objection letter regarding a proposed agreement to increase the scope of Contract 1 (the “Amendment to Contract 1”). On December 20, 2013, the PMU and the Consortium entered into the Amendment to Contract 1. On October 3, 2014, the PMU cancelled Contract 1.

9. INT alleges that the Respondents engaged in fraudulent practices during the implementation of Contract 1, by misrepresenting certain services rendered by the Consortium in multiple requests for payment (the “Requests for Payment”) submitted to the PMU.

IV. APPLICABLE STANDARDS OF REVIEW

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

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

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

13. *Applicable definitions of fraudulent practice:* The Loan Agreement provides that the World Bank’s Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004, revised October 1, 2006) (the “October 2006 Consultant Guidelines”) govern the selection of consultants under the Project. The RFP refers to the World Bank’s Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004, revised October 1, 2006, and May 1, 2010) (the “May 2010 Consultant Guidelines”) and defines

⁷ The Supervision Component consisted of the “preliminary analysis of the designs, the quality control of the services rendered,” and “indications of changes in the projects” as required or recommended to the Borrower based on “the local situations, better identified during the construction period.” This component included “Planning,” i.e., a “stage that precedes the beginning of the construction work and comprises the collection, consistency, analysis and interpretation of the project elements, besides the planning for the follow up, supervision and inspection of the construction work.” See *infra* Paragraph 37.

“fraudulent practice” pursuant to the common definition in the October 2006 and May 2010 Consultant Guidelines. Contract 1 does not explicitly reference any version of the Guidelines but defines “fraudulent practice” consistent with the RFP. In these circumstances, the allegations in this case have the meaning set forth in the October 2006 and May 2010 Consultant Guidelines. Paragraph 1.22(a)(ii) of each version of these Guidelines defines “fraudulent practice” as “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.” A footnote to this definition explains that the term “party” refers to a public official; the terms “benefit” and “obligation” relate to selection process or contract execution; and the “act or omission” is intended to influence the selection process or contract execution.⁸

V. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT’s Principal Contentions in the SAE

14. *Fraud allegation:* INT alleges that the Respondent Individual, acting on behalf of the Respondent Firm, misrepresented certain services provided by three of the Consortium’s consultants (“Consultant A,” “Consultant B,” and “Consultant C”) in multiple requests for payment and related supporting documents submitted to the PMU. INT maintains that the Respondents made such misrepresentations knowingly, in order to obtain undue compensation under Contract 1. For ease of review and analysis, the alleged misrepresentations may be categorized in three patterns of conduct (“Misrepresentations 1-3”).⁹

15. First, INT contends that Consultants A and B rendered certain lump-sum services under the Executive Designs Component and that the Respondents improperly billed such services under the Supervision Component in order to obtain unwarranted time-based payments (“Misrepresentation 1”). Second, INT argues that the Respondents overstated the number of hours worked by Consultant B (“Misrepresentation 2”). Third, INT contends that the Respondents claimed payments for Consultant C’s services based on an estimated monthly average, thereby overstating her time, and that at least part of such services was performed by individuals other than Consultant C (“Misrepresentation 3”).

16. *Sanctioning factors:* INT submits that aggravation is justified for both Respondents based on the repeated pattern of misconduct, central role in the misconduct, management involvement in the misconduct, harm to the Project, and lack of candor. INT contends that partial mitigation may be warranted in light of the Respondents’ limited cooperation and the passage of time since the misconduct.

⁸ October 2006 Consultant Guidelines at para. 1.22(a)(ii), n.18; May 2010 Consultant Guidelines at para. 1.22(a)(ii), n.18.

⁹ As addressed in Paragraph 69 below, the Sanctions Board finds that these patterns of conduct constituted a single fraudulent scheme.

B. The Respondents' Principal Contentions in the Response

17. *Preliminary matters:* The Respondents appear to assert that the Bank's pursuit of the present proceedings is inconsistent with Contract 1. According to the Respondents, under the applicable contractual provisions on fraud and corruption, any sanctionable practices were to be addressed by the PMU through specific contractual remedies.

18. *Fraud allegation:* The Respondents dispute INT's allegations. Generally, the Respondents contend that their billing practices were supported by Contract 1 and were justified in light of the complexity and the challenges of the Construction Works. Specifically concerning Misrepresentation 1, the Respondents assert that the Executive Designs Component was delivered entirely by a subcontractor of the Consortium (the "Subcontractor"), who was responsible for elaborating the detailed designs. The Respondents maintain that Consultants A and B reviewed and revised the Subcontractor's detailed designs, in addition to performing other services,¹⁰ and that all such activities were properly billed under the Supervision Component. In addition, the Respondents argue that relevant authorities accepted the billing practices in question, as demonstrated by evidence that the PMU agreed, and the Bank did not object, to the Amendment to Contract 1. With respect to Misrepresentation 2, the Respondents deny having overstated the number of hours worked by Consultant B. As for Misrepresentation 3, the Respondents appear to concede that they misrepresented Consultant C's hours, while maintaining that such actions did not constitute "willful misconduct."

19. *Sanctioning factors:* The Respondents oppose any aggravation and request mitigation based on cooperation, admission, voluntary restraint, INT's conduct during the investigation, and other factors relating to contractual implementation and performance.

C. INT's Principal Contentions in the Reply

20. *Preliminary matters:* INT does not address the Respondents' arguments referenced in Paragraph 17 above.¹¹

21. *Fraud allegation:* With respect to Misrepresentation 1, INT contends that the billing practices in question were not supported by Contract 1 and that the Respondents' interpretation of the relevant clauses is unreasonable. INT further argues that the unanticipated complexity of the Construction Works does not justify the Respondents' misconduct; that neither the Bank, nor the PMU, had contemporaneous awareness of the misrepresentation; and that the Amendment to Contract 1 did not retroactively validate the Respondents' improper invoicing. In addition, INT reiterates its earlier arguments pertaining to Misrepresentations 2 and 3.

¹⁰ According to the Respondents, such services included overseeing phases of the Construction Works not financed by the Bank; defining the technical specifications and related bidding requirements for Contract 2; translating bidding documents for Contract 2; and preparing documentation to be filed with Brazilian regulatory authorities.

¹¹ See *infra* Paragraph 24.

22. *Sanctioning factors:* INT submits that the Respondents' voluntary restraint warrants some mitigation and that the sanctions recommended by the SDO remain appropriate. In addition, INT refutes the Respondents' complaints against the conduct of INT's investigation.

D. The Respondents' Principal Contentions in the Additional Submission

23. The Chair, exercising her discretion under Section III.A, sub-paragraph 5.01(c) of the Sanctions Procedures, admitted the Respondents' Additional Submission into the record. In the Additional Submission, the Respondents asserted that the Construction Works posed unforeseen challenges that required all parties involved—including the Bank and the PMU—to adapt to the circumstances. The Respondents also reiterated that Consultant A's and Consultant B's services did not fall under the Executive Designs Component because these individuals did not directly elaborate the detailed designs, but only supervised the Subcontractor's work.

E. Presentations at the Hearing

24. *Preliminary matters:* The Respondents clarified that the arguments referenced in Paragraph 17 are intended not to constitute a jurisdictional challenge, but to provide additional context for their conduct. The Respondents explicitly accepted the Bank's authority to sanction them in the present case.

25. *Fraud allegation:* The Respondents expressly conceded that the Respondent Individual personally reviewed, approved, and submitted the Requests for Payment to the PMU, in his capacity as the Respondent Firm's Technical Director and the Consortium's General Coordinator.

26. With respect to Misrepresentation 1, INT submitted that Consultants A and B provided a variety of services under Contract 1; that some of these services were properly billed as time-based activities; and that the accusations at issue concern exclusively these consultants' contributions to the detailed designs. The Respondents reiterated their position that the Subcontractor alone was responsible for elaborating the detailed designs under the Executive Designs Component, and they specifically argued that these designs could be delivered unfinished or unsuitable for purpose. According to the Respondents, Consultants A and B oversaw the Subcontractor's work under the Supervision Component, by ensuring that the detailed designs were complete and adequate for bidding and construction. The Respondents acknowledged that, under Contract 1, delivering detailed designs was an obligation of the Consortium, not the Subcontractor. The Respondents contended that, prior to the signature of Contract 1, the PMU gave the Consortium verbal authorization to bill for the activities in question under the Supervision Component. The Respondents also argued that, throughout the implementation of Contract 1, the Bank had access to the Consortium's measurement sheets noting the total number of hours worked by each consultant; but they accepted that the Bank did not have access to detailed timesheets describing the services being provided.

27. Concerning Misrepresentation 2, INT pleaded that the Respondents billed for Consultant B's time in a manner that was inconsistent with Consultant B's representations as to her own workload and period of employment, which suggests acts that are knowing or at least reckless. The Respondents argued that such discrepancies may be explained because Consultant B could not recall precise details when she spoke with INT. The Respondents also asserted that,

besides the Consortium's timesheets, they have no contemporaneous evidence to demonstrate Consultant B's actual time commitment and contributions to the Project.

28. As for Misrepresentation 3, the Respondents admitted to knowingly misleading the Bank by misrepresenting Consultant C's time and output; and they accepted full responsibility for this conduct. The Respondent Individual also admitted to personally instructing the Consortium Partner to fabricate evidence to conceal the Respondents' wrongdoing, but he maintained that the PMU was aware of these actions.

29. *Sanctioning factors:* INT provided additional context to justify the passage of time between the alleged misconduct and the filing of the SAE. INT withdrew its earlier request for aggravation based on the Respondents' lack of candor. The Respondents reasserted the position that they cooperated fully with INT's investigation and voluntarily refrained from bidding on Bank-financed contracts.

F. Post-Hearing Submissions

30. Upon the Chair's invitation, consistent with Section III.A, sub-paragraph 5.01(c) of the Sanctions Procedures, the parties filed their respective Post-Hearing Submissions. The Respondents presented additional clarifications and evidence to support mitigation for cooperation and voluntary restraint. INT reiterated its position that the Respondents merit partial mitigation under each of these sanctioning factors.

VI. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

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

A. Evidence of Fraudulent Practices

32. In accordance with the definition of "fraudulent practice" under the October 2006 and May 2010 Consultant Guidelines, INT bears the initial burden to show 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. Act or omission, including a misrepresentation

33. INT contends that the Respondents made various misrepresentations in the Requests for Payment as to certain services rendered under Contract 1 (i.e., Misrepresentations 1-3). INT argues, and the Respondents acknowledge, that the Respondent Individual reviewed, approved, and submitted the Requests for Payment to the PMU, in his capacity as the Respondent Firm's Technical Director and the Consortium's General Coordinator. It is also undisputed that other representatives of the Respondent Firm were involved in the preparation of the Requests for

Payment and relevant supporting documentation. The Respondents deny having engaged in Misrepresentations 1 and 2 but admit to Misrepresentation 3.

34. As detailed below, the record sufficiently demonstrates that Misrepresentations 1-3 took place as alleged, thereby establishing the first element of fraudulent practice.

35. *Misrepresentation 1*: INT argues that, between August 2011 and May 2013, Consultants A and B rendered certain services under the Executive Designs Component, which the Respondents improperly billed under the Supervision Component. Specifically, the services at issue relate to these individuals' contributions to the Consortium's detailed designs for the Project. The Respondents maintain that the Requests for Payment truthfully and accurately classified these services under the Supervision Component.

36. As a factual matter, the record shows, and the parties do not dispute, that Consultants A and B were involved in the completion of the detailed designs for the Project. The Respondents themselves indicate that these consultants provided material input into the detailed designs before they were finalized and delivered to the PMU—including by verifying their quality and completeness; requesting adjustments and corrections from the Subcontractor; and ensuring that the final designs were “clear, correct, and sufficient” for the bidding of the Construction Works. The Respondents' factual description of these consultants' activities is consistent with the Consortium's timesheets and with the testimony of several witnesses—including the Respondent Individual—during interviews with INT.

37. As a legal matter, the parties dispute whether the services in question fell within the Executive Designs Component or the Supervision Component. The Terms of Reference for Contract 1 (the “TOR”) provided, in relevant parts, as follows.

- i. The Executive Designs Component consisted of the “elaboration of the detailed engineering designs” for the Project. The TOR specified that the detailed designs “shall be composed by all the necessary elements for the details that allow the perfect construction work,” including drawings, technical specifications, and calculation sheets.
- ii. The Supervision Component consisted of the “preliminary analysis of the designs, the quality control of the services rendered,” and “indications of changes in the projects” as required or recommended to the Borrower based on “the local situations, better identified during the construction period.” This component included “Planning,” i.e., a “stage that precedes the beginning of the construction work and comprises the collection, consistency, analysis and interpretation of the project elements, besides the planning for the follow up, supervision and inspection of the construction work.”

38. INT maintains that, under the Executive Designs Component, the Consortium agreed to deliver the detailed designs as a complete and final product—one that allowed “the perfect construction work” after all internal revisions and quality control—in exchange for a lump-sum payment. INT argues that, after finalizing and submitting the detailed designs to the PMU, the Consortium was permitted to conduct an additional “preliminary analysis” of these documents

under the Supervision Component, in exchange for time-based compensation. In INT's view, such time-based analysis was justified only after the bidding period and in the context of imminent construction, as the Consortium gathered the requisite knowledge to oversee the Construction Works and considered any necessary amendments to the final designs. Consistent with this interpretation, INT asserts that the services at issue could not constitute supervision within the meaning of the TOR because they were provided prior to the bidding period and as early as two years before construction began.

39. In their defense, the Respondents argue that the Executive Designs Component was limited to the "elaboration" of the detailed designs—a term which, in the Respondents' view, comprised only the Subcontractor's drafting of these documents. According to the Respondents, Consultant A's and Consultant B's review and revision of the designs constituted a "preliminary analysis of the projects" and "quality control of the services" rendered by the Subcontractor, under the planning stage of the Supervision Component. Consistent with this interpretation, the Respondents contended during the hearing that (i) under the Executive Designs Component, the Subcontractor could prepare unfeasible or "unbuildable" designs, for which the Consortium would receive a lump-sum payment; and (ii) under the Supervision Component, the Consortium's own consultants could correct these designs to ensure that they were clear, sufficient for bidding, and suitable for construction, in exchange for time-based compensation.

40. The record supports a conclusion that the services in question fell within the Executive Designs Component. First, as a general matter, lump-sum contracts are used for assignments with an exhaustive scope of services, where payments are linked to, and due on, clearly defined deliverables.¹² Here, under the Executive Designs Component, the Consortium agreed to receive a lump-sum payment in exchange for a set of designs that included all necessary details and were suitable for "perfect construction." This language directly contradicts the Respondents' theory that the Subcontractor could deliver deficient designs that nevertheless satisfied the Executive Designs Component, based on a narrow reading of the term "elaboration." Second, under the Supervision Component, the Consortium was allowed to conduct a time-based "preliminary analysis of the designs" in the "stage that precedes" the construction period. Nothing in the TOR suggests that this activity comprised the Consortium's improvements or corrections to the designs before they were finalized and delivered to the PMU. On the contrary, the context of this analysis as a supervision service presupposes that construction is set to begin on the basis of complete designs. Third, under the Supervision Component, the Consortium was required to oversee the execution of the Construction Works—not the elaboration of the detailed designs. As the Respondents themselves acknowledge, the obligation to complete and deliver fully finished designs was on the Consortium itself—regardless of whether that obligation was performed by an internal team or the Subcontractor. In these circumstances, it would be unreasonable for the Consortium to earn additional time-based compensation for ensuring the quality of its own lump-sum deliverable.

41. Accordingly, the record sufficiently demonstrates that the Requests for Payment presented Consultant A's and Consultant B's relevant services under a false classification.

¹² October 2006 Consultant Guidelines at Paragraph 4.1; May 2010 Consultant Guidelines at Paragraph 4.1.

42. *Misrepresentation 2*: INT submits that the Respondents overstated the number of hours worked by Consultant B between November 2011 and March 2013. According to INT, Consultant B “firmly denied” working under Contract 1 through this entire period, and “conceded” that the Respondents claimed payments for services that she did not perform. The Respondents dispute this allegation, challenging INT’s interpretation of the record. On balance, the totality of the evidence supports INT’s case.

43. The record includes the Consortium’s measurement sheets, which underlie the Requests for Payment to the PMU, as well as internal timesheets attesting Consultant B’s activities and hours logged under Contract 1. These documents indicate that Consultant B worked full-time or nearly full-time from August 2011 through January 2012 and consistently worked a significant number of hours every month from February 2012 through March 2013.¹³ Contrary to INT’s assertions, Consultant B did not expressly refute these representations.¹⁴ However, the Sanctions Board finds that Consultant B’s account of her participation in Contract 1 is still incompatible with the claims made in the Requests for Payment. Although Consultant B provided somewhat conflicting descriptions on this matter during INT’s investigation and in the present proceedings, none of her various statements suggest that she continuously worked on the Project after December 2011—in some months, for 80 hours or more—as reported in the timesheets. For example, during an interview with INT, she did not recount being involved with the Consortium in any capacity after December 2011. Specifically, she maintained that she had served under the Project from August or September 2011 through December 2011. At different points in her interview, she described her hours as “full time” or “very intense” in the beginning (for the “first few” or “first two” or “first three months”) and “normal hours” or “half and half” after that, as she turned to projects managed by another company (the “Consulting Company”). In her subsequent statements, provided in writing, Consultant B characterized her participation in the Project as “sporadic” or “on demand” from January 2012 onwards.¹⁵ The Sanctions Board finds that such descriptions are inconsistent with the continuous schedule and workload reflected in the Requests for Payment. In addition, Consultant B’s overall narrative is corroborated by accounting records provided by the Consulting Company, indicating that Consultant B worked steadily on several other projects between February 2012 and March 2013. As a whole, this evidence supports INT’s allegations.

44. The Respondents do not satisfactorily rebut the conclusions above. In particular, the Respondents fail to present any additional contemporaneous evidence demonstrating that Consultant B worked on the Project through the entire period claimed. Instead, the Respondents

¹³ Specifically, these documents report Consultant B’s time as follows: (i) 128 hours in August 2011; (ii) 168 hours in September 2011; (iii) 132 hours in October 2011; (iv) 160 hours in November 2011; (v) 160 hours in December 2011; and (vi) 160 hours in January 2012; (vii) 40 hours in February 2012; (viii) 84 hours in March 2012; (ix) 80 hours in April 2012; (x) 80 hours in May 2012; (xi) 108 hours in June 2012; (xii) 53 hours in July 2012; (xiii) 60 hours in August 2012; (xiv) 100 hours in September 2012; (xv) 40 hours in October 2012; (xvi) 80 hours in November 2012; (xvii) 76 hours in December 2012; (xviii) 18 hours in January 2013; (xix) 35 hours in February 2013; and (xx) 8 hours in March 2013.

¹⁴ During the hearing, INT acknowledged that certain language in the SAE inaccurately describes Consultant B’s statements.

¹⁵ Specifically, Consultant B sent clarifications to INT by email approximately one month after her interview, and signed a declaration that the Respondents submitted as part of the Response.

challenge INT's reliance on Consultant B's testimony. They contend, *inter alia*, that INT misconstrued Consultant B's statements; that Consultant B could not remember certain details due to the time elapsed since the conduct in question; and that the use of a translator led to misunderstandings during the interview. The Sanctions Board is not persuaded by these arguments. INT interviewed Consultant B in April 2016—only three years after she had purportedly ceased her participation in the Project. The Sanctions Board is unconvinced that, at that point in time, she would have failed to recall her continuous engagement with the Consortium through March 2013. In any event, irrespective of this interview and any asserted misunderstandings, Consultant B's subsequent written statements are equally inconsistent with the Requests for Payment—as noted in Paragraph 43 above. In these circumstances, the record supports a conclusion that the Requests for Payment overstated Consultant B's actual time worked.

45. *Misrepresentation 3*: INT contends that the Requests for Payment misrepresented certain services purportedly performed by Consultant C. INT submits that Consultant C was based in Portugal and worked on Contract 1 as a representative of the Consortium Partner. According to INT, the Respondents billed for Consultant C's time by claiming an estimated monthly average, instead of using an accurate computation of hours worked, and falsely attributed to Consultant C at least one deliverable that was actually prepared by other individuals located in Brazil. The Respondents admit to these accusations. In addition, the record includes testimonial and documentary evidence corroborating INT's case, including admissions from representatives of the Consortium Partner; the Consortium's measurement sheets, which consistently reported the same number of hours (120 hours) for Consultant C between September 2011 and September 2013; and internal email correspondence between the Respondents and the Consortium Partner, indicating that Consultant C was not substantially involved in the Project, and that a deliverable credited to her was prepared by others in Brazil. Accordingly, the record sufficiently establishes that the Requests for Payment claimed compensation for services not performed by Consultant C.

46. For the reasons stated in Paragraphs 35-45 above, the Sanctions Board finds that it is more likely than not that representatives of the Respondent Firm, including the Respondent Individual, engaged in Misrepresentations 1-3.

2. That knowingly or recklessly misleads, or attempts to mislead, a party

47. INT contends that the Respondent Individual made Misrepresentations 1-3 knowingly and that his knowledge is attributable to the Respondent Firm. The Respondents deny acting with the requisite intent with respect to Misrepresentation 1; do not directly address this element of the allegation with respect to Misrepresentation 2; and admit to acting knowingly with respect to Misrepresentation 3.

48. As detailed below, the record sufficiently establishes the second element of fraudulent practice with respect to Misrepresentations 1-3.

49. *Misrepresentation 1*: INT maintains that the Respondent Individual knew that the Requests for Payment were based on a false classification of Consultant A's and Consultant B's services. According to INT, the Respondent Individual was on notice of the proper payment terms because he had prepared the Consortium's proposal, acted as the General Coordinator of the Consortium, and negotiated and signed Contract 1. The Respondents assert that (i) before Contract 1 was signed,

the PMU granted the Consortium verbal authorization to bill for these services under the Supervision Component; and that (ii) the Bank knew of this practice and implicitly accepted it, as demonstrated by the fact that the Bank did not object to the Amendment to Contract 1.

50. 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.¹⁶ In past cases involving misrepresentations, the Sanctions Board has inferred knowledge where respondents asserted alternative interpretations of relevant bidding or contractual terms, and those interpretations were found to be implausible or inconsistent with clear evidence in the record.¹⁷ Similarly, here, the Sanctions Board finds the Respondents’ purported understanding of the TOR to be unreasonable. As addressed in Paragraphs 39-40 above, the Respondents’ position is not only contrary to the plain meaning of the text, but also incompatible with the Consortium’s overall rights and obligations under Contract 1. In these circumstances, the Sanctions Board infers that representatives of the Respondent Firm, including the Respondent Individual, knew that the Consortium’s billing was inconsistent with the TOR and that the Requests for Payment were misleading.

51. The Respondents do not satisfactorily rebut these conclusions. Under the applicable definition of fraudulent practice, whether a respondent “knowingly or recklessly misleads, or attempts to mislead, a party” is to be determined at the time that the misrepresentation was made.¹⁸ Here, the Respondents appear to deny acting with the intent to mislead any concerned parties, on the premise that the Consortium billed for the services in question in a manner authorized by the PMU and accepted by the Bank. However, as detailed below, the record does not show that all relevant authorities knew and understood the basis of such billing at the time that the Requests for Payment were submitted.

52. With respect to the Bank, the record directly contradicts the Respondents’ assertions. First, the Respondents concede that, when the Requests for Payment were submitted and processed, the Bank did not have access to the Consortium’s detailed timesheets—only to measurement sheets noting the total number of hours worked by each consultant. These circumstances indicate that the Bank was not contemporaneously aware of the specific basis of this billing, including the classification of services adopted by the Consortium. Second, while it is true that the Bank issued a no-objection letter regarding the Amendment to Contract 1, this did not constitute an exoneration

¹⁶ Sanctions Procedures at Section III.A, sub-paragraph 7.01.

¹⁷ See, e.g., Sanctions Board Decision No. 83 (2015) at paras. 50-51 (finding knowledge where the respondent’s asserted interpretation of applicable disclosure requirements was inconsistent with evidence including written agreements and invoices); Sanctions Board Decision No. 92 (2017) at paras. 32, 71 (finding knowledge where the respondent’s asserted interpretation of applicable disclosure requirements was inconsistent with evidence including invoices, payment records, and witness statements); and Sanctions Board Decision No. 123 (2020) at para. 21 (finding knowledge where the respondent’s asserted interpretation of applicable disclosure requirements was contradicted by the plain language of the requirements, found no support in the bidding documents, and appeared to be unreasonable).

¹⁸ Cf. Sanctions Board Decision No. 123 (2020) at para. 23 (holding that, for a finding of intent, it is irrelevant whether a misleading document could be amended after the fact, because the respondent’s “employees were aware of the misrepresentation at the time that it was made”).

of the Respondents. Documentary evidence shows that, before this amendment was executed, the Bank conducted an Independent Procurement Review (“IPR”) of Contract 1. The IPR aimed to clarify, *inter alia*, why the Consortium had deployed over 60 percent of the time-based portion of Contract 1 within the first two years of its implementation. The IPR report observed that one of the root causes of this issue was that the Consortium had billed “as one of the program management support activities (contracted under a time-based system), the management of the preparation of the executive projects . . . which makes no sense.” The IPR report also proposed specific measures to address this issue under the Amendment to Contract 1, for example: (i) reducing the number of additional hours by “the exact number of hours consumed [by the Consortium] in work oversight activities . . . without said works having been tendered or contracted,” and (ii) enhancing the PMU’s operational controls over the Consortium, in order to prevent similar impropriety in the future. Contrary to the Respondents’ assertions, this evidence demonstrates that the Bank only learned of these billing practices after the fact and, upon detection, recommended steps to cease and remediate them. Third, even if the Bank had not expressly rejected the Consortium’s position, this would not preclude a finding of fraudulent practice. Under the sanctions framework, the Bank does not carry a burden to identify and object to misconduct while it is being perpetrated by consultants. Rather, the obligation is on consultants to ensure that their conduct is always proper and consistent with all applicable requirements.¹⁹

53. With respect to the PMU, certain evidence demonstrates that at least some public officials at some point condoned the Respondents’ billing practices—though it remains unclear when these individuals became aware of the conduct in question. For example, in the context of the Bank’s IPR, the PMU attempted to retroactively justify the Consortium’s significant use of supervision hours prior to the construction period. In official documents submitted to the Bank in October and November 2013, the PMU presented explanations that are consistent with the Respondents’ assertions in the present proceedings—including with respect to the elaboration of detailed designs. These documents were, however, created after the fact, as part of the PMU’s efforts to secure support for the Amendment to Contract 1. They do not clarify whether the PMU had contemporaneous awareness of these practices.²⁰ Separately, a senior representative of the PMU (the “PMU Coordinator”) stated to INT that he had verbally authorized the Consortium to bill for certain time-based activities prior to the construction period. However, the PMU Coordinator specified that such activities related to the preparation of the technical bidding package for Contract 2. As addressed above in Paragraphs 26 and 36, these are not the services at issue in this case. Moreover, the PMU Coordinator’s statements stand uncorroborated by any contemporaneous written evidence. In these circumstances, and considering the totality of the record, the Sanctions Board is not persuaded that the PMU specifically authorized the Consortium to bill in a manner that was contrary to the TOR.

¹⁹ “It is the Bank’s policy to require that . . . consultants . . . under Bank-financed contracts, observe the highest standard of ethics during the selection and execution of such contracts.” October 2006 Consultant Guidelines at Paragraph 1.22; May 2010 Consultant Guidelines at Paragraph 1.22.

²⁰ Cf. Sanctions Board Decision No. 135 (2021) at para. 28 (finding intent to mislead where the record showed that relevant authorities became aware of the respondent’s misconduct after the fact and attempted to remediate it; observing that circumstances did not suggest that these authorities were aware of the misconduct before it was perpetrated).

54. Accordingly, the record sufficiently demonstrates that Misrepresentation 1 was made with the requisite intent.

55. *Misrepresentation 2*: INT argues that the Respondent Individual knowingly, or at least recklessly, claimed compensation for work not performed by Consultant B. According to INT, the Respondent Individual's knowledge may be inferred, *inter alia*, because he had close operational control over the Consortium and because he was personally involved in the creation, approval, and submission of the Requests for Payment and underlying measurement sheets. The Respondents do not directly address this element of the allegation.

56. In past cases, the Sanctions Board has inferred knowledge where a respondent's misrepresentations were considered too substantial or too structured to have been made without awareness of falsity.²¹ Here, as addressed in Paragraphs 42-44 above, the Respondents were found to have consistently overstated Consultant B's hours for more than one year. The Sanctions Board considers this pattern of conduct too significant and too systematic to have plausibly occurred without the knowledge of any of the Respondent Firm's staff. Specifically concerning the Respondent Individual, the record indicates that he had full visibility and understanding of the Consortium's staffing and daily operations, as he was responsible for coordinating all of the Consortium's activities, served as the focal point for the PMU, managed personnel, and reviewed and approved activity reports and payment documentation. This evidence indicates that, when the Respondent Individual approved and submitted the Requests for Payment, he was personally aware of Consultant B's actual period of employment and the true extent of her contributions to the Project. In these circumstances, the Sanctions Board infers that the Respondent Individual knew and understood that he was providing false information and misleading the relevant authorities. Accordingly, the record supports a conclusion that Misrepresentation 2 was made with the requisite intent.

57. *Misrepresentation 3*: INT contends that the Respondents knowingly claimed compensation for services not performed by Consultant C. The Respondents initially argued that these actions did not constitute "willful misconduct." However, during the hearing, they admitted to knowingly misleading the Bank and accepted full responsibility for this conduct. Irrespective of this admission, the Respondents maintain that the PMU was aware of, and agreed with, the Consortium's billing practices relating to Consultant C.

58. The record includes clear documentary evidence supporting this element of the allegation. For example, contemporaneous emails show that Respondent Individual consistently instructed the Consortium Partner to bill for Consultant C's time based on false information determined by the Respondent Firm—including the number of hours purportedly worked and the description of services attributed to her. Other correspondence reveals that the Respondents took concerted steps

²¹ Sanctions Board Decision No. 69 (2014) at para. 22; Sanctions Board Decision No. 126 (2020) at para. 36; Sanctions Board Decision No. 137 (2022) at para. 41.

to conceal this misrepresentation after the fact, evidencing their consciousness of wrongdoing.²² Specifically, in preparation for the IPR, the Respondent Individual directed the Consortium Partner to fabricate and tamper with records to be presented to the Bank—including by adapting a deliverable that had been falsely credited to Consultant C and by creating backdated timesheets to support invoices issued in her name. In a particularly inculpatory exchange, a representative of the Consortium Partner indicated that the purpose of these instructions was to “take precautions regarding a World Bank audit,” and the Respondent Individual advised him to “delete these messages so we do not characterize having done this ‘after the fact.’” The Sanctions Board observes that certain correspondence also appears to suggest that the PMU was aware of at least part of the conduct at issue. In one email, the Respondent Individual indicated to the Consortium Partner that the “client” was “panicking” because of the IPR; that the client had asked the Consortium to “make changes to the agreement” formed with the Consortium Partner in 2011, by reducing Consultant C’s standard monthly measurements from 120 hours to 80 hours; and that the client had suggested specific changes to the documents being created for the IPR. Irrespective of whether the PMU was also deceived, the totality of the evidence, including the Respondents’ admission, supports a conclusion that Misrepresentation 3 was made with a knowing intent to mislead the Bank.

59. For the reasons above, the Sanctions Board finds that it is more likely than not that representatives of the Respondent Firm, including the Respondent Individual, knowingly misled a party by engaging in Misrepresentations 1-3.

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

60. INT argues that the Respondents engaged in Misrepresentations 1-3 in order to obtain unwarranted payments from the PMU. The Respondents do not specifically address this element of the allegation but accept full responsibility for Misrepresentation 3.

61. The record sufficiently establishes the third element of fraudulent practice with respect to Misrepresentations 1-3. As found in Paragraphs 33-59 above, the Respondents knowingly claimed additional time-based payments for services that were already covered by a predetermined lump-sum amount (Misrepresentation 1) and knowingly claimed compensation for services that were overstated or never rendered (Misrepresentations 2 and 3). Each of these patterns of conduct was carried out through the submission of misleading Requests for Payment and supporting documentation to the PMU, and each of them involved the use of false information that directly

²² In the past, the Sanctions Board has inferred knowledge where respondents took specific steps to conceal their misrepresentations. See Sanctions Board Decision No. 60 (2013) at paras. 97-99 (finding that the respondents knowingly failed to disclose a payment arrangement with a consultant; observing that the consultancy agreement in question included a provision requiring that the existence of the relationship be kept secret); Sanctions Board Decision No. 114 (2018) at para. 37 (finding that the respondents knowingly acted to conceal facts subject to a disclosure requirement, by removing the name of one of the respondents from their proposal).

increased the Consortium's earnings. In such circumstances, it logically ensues that the purpose of these actions was to obtain undue remuneration under Contract 1.²³

62. Accordingly, the Sanctions Board finds that it is more likely than not that representatives of the Respondent Firm, including the Respondent Individual, engaged in Misrepresentations 1-3 in order to obtain a financial benefit under Contract 1.

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

63. The Sanctions Board has consistently found that an employer can be held liable for the acts of its employees under the doctrine of respondeat superior, considering in particular whether the employees acted within the course and scope of their employment, and were motivated, at least in part, by the intent of serving their employer.²⁴ Here, the record supports a finding that the Respondent Firm's representatives engaged in fraudulent practices in accordance with the scope of their duties and with the purpose of serving the interests of the Respondent Firm. As examined above, evidence shows that the Respondent Firm's staff, including the Respondent Individual, knowingly misled relevant authorities in order to obtain a financial benefit for the Consortium. The Respondents also expressly acknowledge that the Respondent Individual was acting in his capacity as the Technical Director of the Respondent Firm and the General Coordinator of the Consortium when he approved and submitted the Requests for Payment to the PMU. Moreover, the Respondent Firm does not present, and the record does not provide any basis for, a rogue-employee defense. Thus, the Sanctions Board finds the Respondent Firm liable for the misconduct carried out by its employees.

C. Sanctioning Analysis

1. General framework for determination of sanctions

64. 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.

65. 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

²³ Cf. Sanctions Board Decision No. 86 (2016) at para. 39 (finding that a misrepresentation was made in order to obtain a financial benefit where the respondent provided false information in monthly reports and advance certificates to obtain remuneration under the contract for work purportedly done, but in fact not rendered, by consultants).

²⁴ See, e.g., Sanctions Board Decision No. 55 (2013) at paras. 51-52, 55; Sanctions Board Decision No. 61 (2013) at para. 30.

sanction.²⁵ 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.²⁶

66. 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.

67. 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. Factors considered in the present case

a. Severity of the misconduct

68. 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 various examples of severity that may merit aggravation.

69. *Repeated pattern of conduct:* Section IV.A.1 of the Sanctioning Guidelines identifies a repeated pattern of conduct as a potential basis for aggravation. In past cases, the Sanctions Board has applied aggravation for repetition where the misconduct related to separate bids, contracts, or projects, over a period of time.²⁷ By contrast, the Sanctions Board has declined to apply aggravation where the sanctionable conduct was attributed to a “single scheme”²⁸ or a “single course of action.”²⁹ Here, INT argues that aggravation is warranted on this basis because the

²⁵ See, e.g., Sanctions Board Decision No. 40 (2010) at para. 28.

²⁶ See Sanctions Board Decision No. 44 (2011) at para. 56.

²⁷ See, e.g., Sanctions Board Decision No. 133 (2021) at para. 37 (where the respondent solicited and received payments from a contractor through two different companies, in relation to different contracts, over the course of more than five years).

²⁸ See, e.g., Sanctions Board Decision No. 63 (2014) at para. 97 (where respondents made multiple corrupt payments pursuant to a single scheme under the same contract).

²⁹ See, e.g., Sanctions Board Decision No. 79 (2015) at para. 39 (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 (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 (where the respondent submitted a set of several falsified documents in connection with two different bids under the same project).

Respondents submitted several misleading Requests for Payment and supporting documentation to the PMU over a period of time. The Respondents dispute the application of this factor. While the record shows that the Respondents engaged in multiple instances of fraudulent payment claims, the Sanctions Board concludes that these actions were closely interrelated, reflecting a single scheme to obtain undue compensation under the same contract. In these circumstances, consistent with precedent, the Sanctions Board declines to apply aggravation.

70. *Central role in the misconduct:* Section IV.A.3 of the Sanctioning Guidelines recommends that this factor may apply to a respondent who acted as the organizer, leader, planner, or prime mover in a group of two or more. Consistent with this definition, the Sanctions Board has applied aggravation where a respondent led or initiated acts of misconduct involving two or more individuals or entities.³⁰ Here, INT submits that aggravation is justified because the Respondent Individual was the organizer, leader, planner, and prime mover of the misconduct. The Respondents dispute the application of this factor, arguing that the Respondent Individual's wrongdoing was limited to Misrepresentation 3. The record supports a conclusion that the Respondent Individual played a central role in this case, *inter alia*, by coordinating the preparation and submission of the Requests for Payment and supporting documents to the PMU, and by personally instructing the Consortium Partner to include false information in invoices and fabricate records to conceal the Respondents' fraudulent actions. On this basis, the Sanctions Board finds that aggravation is warranted for the Respondent Individual.

71. *Management's role in the misconduct:* Section IV.A.4 of the Sanctioning Guidelines recommends aggravation where a high-level employee of the organization participated in, condoned, or was willfully ignorant of the sanctionable practice. Accordingly, the Sanctions Board has applied aggravation where the record showed that senior members of a respondent entity's management personally participated in the misconduct.³¹ In cases finding misconduct by both a respondent entity and a high-ranking respondent individual, the Sanctions Board has generally considered the individual's position as a potential aggravating factor only for the respondent entity, and not for the respondent individual.³² Here, INT contends that aggravation is warranted because the Respondent Individual personally engaged in wrongdoing while holding a managerial position within the Respondent Firm and the Consortium. The Respondents do not specifically address this factor. As examined in Paragraph 63 above, it is undisputed that the Respondent Individual was acting in his capacity as a high-ranking member of the Respondent Firm when he engaged in the conduct at issue. In these circumstances, consistent with precedent, the Sanctions Board finds that aggravation is justified for the Respondent Firm.

³⁰ See, e.g., Sanctions Board Decision No. 60 (2013) at para. 124; Sanctions Board Decision No. 90 (2016) at para. 38; Sanctions Board Decision No. 114 (2018) at para. 56; Sanctions Board Decision No. 115 (2019) at para. 65; Sanctions Board Decision No. 125 (2020) at para. 38; Sanctions Board Decision No. 133 (2021) at para. 39; Sanctions Board Decision No. 134 (2021) at para. 69.

³¹ See, e.g., Sanctions Board Decision No. 66 (2014) at para. 36; Sanctions Board Decision No. 102 (2017) at para. 69; Sanctions Board Decision No. 137 (2022) at para. 57.

³² See, e.g., Sanctions Board Decision No. 86 (2016) at para. 54; Sanctions Board Decision No. 108 (2018) at para. 73. See also Sanctions Board Decision No. 136 (2022) at para. 61 (declining to apply aggravation based on a respondent individual's position as the managing director of a company, although the company itself was not a respondent).

b. Magnitude of harm

72. *Degree of harm to the Project:* Section III.A, sub-paragraph 9.02(b) of the Sanctions Procedures requires the Sanctions Board to consider the magnitude of the harm caused by the misconduct. Section IV.B.2 of the Sanctioning Guidelines identifies the degree of harm to the project through poor contract implementation or delay as an example of such harm. In the past, the Sanctions Board has imposed aggravation where a sanctionable practice directly compromised the procurement or selection process or contract execution, for example, by causing financial loss;³³ exposing the Bank or member country to serious operational and reputational risks;³⁴ or leading to the termination of the contract.³⁵ By contrast, the Sanctions Board has declined to apply aggravation where the record did not establish a causal link between the misconduct and a specific harm asserted by INT.³⁶ Here, INT requests aggravation because the Respondents caused tangible and intangible harm to the Project, including by (i) effecting direct financial loss, corresponding to the overbilled amounts, the cost of the Bank’s IPR, and a substantive price increase under the Amendment to Contract 1 and by (ii) concealing the underlying issues in the implementation of the Construction Works, which deprived the Bank of an opportunity to act early and potentially avoid the cancellation of Contract 1. The Respondents dispute the application of this factor, arguing, *inter alia*, that the price increase was justified by the unanticipated complexity of the Construction Works, which required a substantial expansion to the scope of Contract 1. The Sanctions Board takes into account the cost of the IPR and the financial loss inherent in the Respondents’ overbilling.³⁷ Nevertheless, the Sanctions Board finds that INT has not sufficiently established a causal link between the fraudulent conduct at issue and the contractual price increase—especially in light of the IPR’s recommendation to deduct the overbilled hours from the Amendment to Contract 1. In addition, INT has not persuasively demonstrated the asserted loss of opportunity or justified its application as a sanctioning factor in this case. Accordingly, the Sanctions Board declines to apply aggravation on this basis.

c. Cooperation

73. 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.” As examples of cooperation, Section V.C of the Sanctioning Guidelines identifies a respondent’s assistance with INT’s investigation, admission or acceptance of guilt or responsibility, and voluntary restraint.

74. *Assistance and/or ongoing cooperation:* 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”

³³ See, e.g., Sanctions Board Decision No. 53 (2012) at para. 56; Sanctions Board Decision No. 86 (2016) at para. 49; Sanctions Board Decision No. 98 (2017) at para. 61; Sanctions Board Decision No. 125 (2020) at para. 39.

³⁴ See, e.g., Sanctions Board Decision No. 65 (2014) at para. 75; Sanctions Board Decision No. 69 (2014) at para. 35; Sanctions Board Decision No. 125 (2020) at para. 39.

³⁵ See, e.g., Sanctions Board Decision No. 83 (2015) at para. 86; Sanctions Board Decision No. 86 (2016) at para. 49.

³⁶ See, e.g., Sanctions Board Decision No. 78 (2015) at para. 78; Sanctions Board Decision No. 93 (2017) at para. 99; Sanctions Board Decision No. 94 (2017) at para. 44; Sanctions Board Decision No. 115 (2019) at para. 68.

³⁷ Cf. Sanctions Board Decision No. 53 (2012) at para. 56.

as well as “the truthfulness, completeness, [and] reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of assistance.” The Sanctions Board has consistently granted mitigation for cooperation where respondents met with INT on several occasions and provided relevant information and documentation,³⁸ or replied to INT’s show-cause letter and follow-up inquiries.³⁹ In addition, the degree of mitigation granted by the Sanctions Board has been proportionate to the extent of respondents’ cooperative conduct.⁴⁰ Where respondents were found to have concealed, destroyed, or otherwise failed to produce evidence, the Sanctions Board has declined to grant mitigation for cooperation⁴¹ or, separately, applied aggravation for interference.⁴²

75. In the present case, the record shows that the Respondents assisted INT’s investigation, including by agreeing to interviews, producing certain documents, and replying to INT’s show-cause letter. Nevertheless, INT contends that only partial mitigation is warranted because the Respondents failed to share material evidence—including particularly inculpatory emails that INT eventually obtained by other means—and lacked candor during the investigation. Over the course of these proceedings, the Respondents presented different justifications for the lacunae in their records. In the Response and during the hearing, the Respondents maintained that certain correspondence had been lost prior to INT’s investigation, as a result of damage purportedly sustained to the Respondent Firm’s hard drive in 2015. In their Post-Hearing Submission, the Respondents pleaded that, in reality, these records were discarded due to document retention policies in place since 2013. The Sanctions Board is not persuaded by these assertions. First, the Respondents’ inconsistent explanations undermine the credibility of their position. Second, the Respondents fail to submit contemporaneous evidence to substantiate their account of events, relying instead on present-day witness statements with little probative value. Third, the Respondents have raised these purported technical issues for the first time in the current proceedings. Had the Respondents’ ability to produce documents been legitimately impaired during INT’s investigation, they should have alerted INT at that time, in the interest of complete transparency. In these circumstances, the Sanctions Board finds that the record does not reflect the Respondents’ full cooperation with INT’s investigation. Accordingly, only partial mitigation is appropriate on this basis.

76. *Admission/acceptance of guilt/responsibility*: Section V.C.3 of the Sanctioning Guidelines recognizes cooperation in the form of a respondent’s admission or acceptance of guilt or responsibility, with the condition that early admissions or acceptance should be given more weight than admissions or acceptance coming later in the investigation or sanctions proceedings. In considering whether admissions warrant mitigating credit, the Sanctions Board has looked to the

³⁸ Sanctions Board Decision No. 53 (2012) at para. 58.

³⁹ See, e.g., Sanctions Board Decision No. 37 (2010) at para. 45; Sanctions Board Decision No. 51 (2012) at para. 54; Sanctions Board Decision No. 52 (2012) at para. 42.

⁴⁰ See, e.g., Sanctions Board Decision No. 55 (2013) at para. 80; Sanctions Board Decision No. 67 (2014) at para. 41; Sanctions Board Decision No. 126 (2020) at para. 52; Sanctions Board Decision No. 134 (2021) at para. 79; Sanctions Board Decision No. 137 (2022) at para. 64.

⁴¹ See, e.g., Sanctions Board Decision No. 103 (2017) at para. 38; Sanctions Board Decision No. 118 (2019) at para. 87.

⁴² See, e.g., Sanctions Board Decision No. 106 (2017) at paras. 37, 43.

timing and investigative value of admissions, as well as their scope.⁴³ For example, the Sanctions Board has granted limited mitigation where the respondent admitted to certain facts without accepting responsibility for misconduct during the investigation, but fully conceded to the allegations in the response.⁴⁴ Here, the Respondents request mitigation based on their admission to Misrepresentation 3. The Sanctions Board observes that, during the hearing, the Respondents acknowledged and accepted full responsibility for this aspect of the conduct at issue. However, this admission was belated and limited in scope. Throughout the investigation and most of the current proceedings, while the Respondents conceded the fact that Consultant C's hours had been misrepresented, they continued to deny that this practice constituted "willful misconduct." Moreover, the Respondents did not admit to any elements of Misrepresentations 1 or 2. In these circumstances, the Sanctions Board grants only partial mitigation under this factor.

77. *Voluntary restraint*: Section V.C.4 of the Sanctioning Guidelines identifies a respondent's voluntary restraint from bidding on Bank-financed tenders pending the outcome of an investigation 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.⁴⁵ For example, the Sanctions Board has granted mitigation where respondents provided contemporaneous evidence of a formal company policy or practice,⁴⁶ or proof of withdrawal of bids for Bank-financed contracts pending the outcome of INT's investigation.⁴⁷ Conversely, the Sanctions Board has declined to grant mitigation where respondents claimed but failed to demonstrate a policy or practice of voluntary restraint prior to any temporary suspension from eligibility.⁴⁸ This notwithstanding, the Sanctions Board has granted mitigation in the absence of corroborating evidence, where INT expressly accepted that the respondents had voluntarily restrained during a specific time period.⁴⁹

78. In the present case, the Respondents request mitigation under this factor. However, the Sanctions Board observes that the Respondents have provided conflicting statements as to the precise period of their purported restraint. For example, at different points in the investigation and the current proceedings, the Respondents claimed to have begun cooperating in this manner in 2016, 2017, 2018, and 2019. Such inconsistency hampers the credibility of their position. In addition, the Respondents maintain that they verbally declined several invitations to participate in

⁴³ See, e.g., Sanctions Board Decision No. 99 (2017) at paras. 33-34; Sanctions Board Decision No. 125 (2020) at para. 42.

⁴⁴ See 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).

⁴⁵ See, e.g., 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.

⁴⁶ See, e.g., Sanctions Board Decision No. 83 (2015) at para. 99; Sanctions Board Decision No. 129 (2020) at para. 59; Sanctions Board Decision No. 130 (2020) at para. 91; Sanctions Board Decision No. 137 (2022) at para. 67.

⁴⁷ See, e.g., Sanctions Board Decision No. 102 (2017) at para. 80.

⁴⁸ See, e.g., Sanctions Board Decision No. 44 (2011) at para. 66; Sanctions Board Decision No. 74 (2014) at para. 45; Sanctions Board Decision No. 111 (2018) at paras. 58-59; Sanctions Board Decision No. 116 (2019) at para. 31.

⁴⁹ Sanctions Board Decision No. 130 (2020) at para. 91.

Bank-financed bids, but they fail to present any form of evidence to corroborate these assertions. Nevertheless, INT expressly accepts that the Respondents voluntarily restrained between the beginning of settlement negotiations (July 2018) and the Respondents' respective temporary suspensions (May 2022). In these circumstances, consistent with precedent, the Sanctions Board grants mitigation considering the period undisputed by the parties.

d. Period of temporary suspension

79. Pursuant to Section III.A, sub-paragraph 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account the Respondents' respective periods of temporary suspension, since the SDO's issuance of the Notice on May 18, 2022.

e. Other considerations

80. Under Section III.A, sub-paragraph 9.02(i) of the Sanctions Procedures, the Sanctions Board may consider "any other factor" that it "reasonably deems relevant to the sanctioned party's culpability or responsibility in relation to the Sanctionable Practice."

81. *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.⁵⁰ 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.⁵¹ In assessing the extent of mitigation in prior cases, the Sanctions Board has reviewed, *inter alia*, the significance of the delay, the impact of the passage of time on the respondents' ability to conduct an internal investigation and respond to the allegations, and the respondents' own possible contributions to the delay.⁵²

82. Here, the Sanctions Board observes that the Respondents' fraudulent practices took place between August 2011 and May 2013; that the Bank was on notice of the underlying conduct by the issuance of the IPR report in October 2013; and that the Notice was issued in May 2022. INT acknowledges that this timeline was unusually protracted and that some mitigation is warranted on this basis. As an explanation for this passage of time, INT submits that this case was part of a set of interconnected matters, which required extensive coordination during the investigation of several related companies. INT also observes that the parties in this case engaged in ultimately unsuccessful settlement negotiations for more than one year, which contributed to INT's delay in

⁵⁰ See, e.g., Sanctions Board Decision No. 50 (2012) at para. 71 (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 (where sanctions proceedings were initiated more than five to nine years after the misconduct, and more than five to eight years after the Bank's awareness of the potential sanctionable practices); Sanctions Board Decision No. 68 (2014) at para. 47 (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).

⁵¹ See, e.g., Sanctions Board Decision No. 68 (2014) at para. 47; Sanctions Board Decision No. 102 (2017) at para. 83; Sanctions Board Decision No. 125 (2020) at para. 45; Sanctions Board Decision No. 134 (2021) at para. 86.

⁵² See, e.g., Sanctions Board Decision No. 47 (2012) at para. 56; Sanctions Board Decision No. 87 (2016) at para. 154.

filing the SAE.⁵³ Notwithstanding such justifications, the Sanctions Board is troubled by the substantial time elapsed since the underlying conduct, as such a delay inherently affects the fairness of the process and the Respondents' ability to mount a defense. Accordingly, the Sanctions Board grants considerable mitigation under this sanctioning factor.

83. *Conduct of INT's investigation:* The Respondents request mitigation based on assertions concerning the conduct of INT's investigation. Specifically, the Respondents maintain that INT failed to disclose certain purportedly exculpatory evidence during the investigation and proposed a draft settlement agreement under terms different from what the parties had initially discussed. The Sanctions Board observes that, under the Sanctions Procedures, INT is not required to disclose any exculpatory or mitigating evidence prior to the submission of the SAE.⁵⁴ In addition, the Sanctions Board has consistently declined to apply mitigation based on the conduct of INT's investigation, considering that this factor is not relevant to a respondent's culpability or responsibility in relation to the sanctionable practice at issue.⁵⁵ Similarly, here, the Sanctions Board declines to grant any mitigation on this basis.

84. *Contractual implementation:* The Respondents request mitigation based on various factors relating to the implementation of Contract 1, including: (i) the complexity of Contract 1 and the Construction Works, (ii) successful implementation solutions and other individual contributions offered by Consultant A, and (iii) a purported lack of instructions or specific requirements under Contract 1 as to acceptable billing and time measurement practices. The Sanctions Board has consistently declined to grant mitigation based on arguments pertaining to a respondent's contractual performance or implementation.⁵⁶ Similarly, here, the Sanctions Board finds that the asserted circumstances are not relevant to the Respondents' culpability or responsibility for the misconduct and, thus, do not constitute valid grounds for mitigation.

D. Determination of Appropriate Sanctions

85. 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

⁵³ The Respondents expressly consented to INT's disclosure of information and evidence pertaining to settlement negotiations, in the interest of completeness of the record.

⁵⁴ Sanctions Procedures at Section III.A, sub-paragraph 3.02.

⁵⁵ See, e.g., Sanctions Board Decision No. 97 (2017) at para. 79; Sanctions Board Decision No. 106 (2017) at para. 50; Sanctions Board Decision No. 115 (2019) at para. 71.

⁵⁶ See, e.g., Sanctions Board Decision No. 52 (2012) at para. 46; Sanctions Board Decision No. 53 (2012) at para. 67; Sanctions Board Decision No. 54 (2012) at para. 44; Sanctions Board Decision No. 137 (2022) at para. 71.



manner;⁵⁷ (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider⁵⁸ 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 nine (9) months 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 1.22(a)(ii) of the October 2006 and May 2010 Consultant 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;⁵⁹ (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider⁶⁰ 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 nine (9) 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 fraudulent practices as defined in Paragraph 1.22(a)(ii) of the October 2006 and May 2010 Consultant Guidelines.

⁵⁷ 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.

⁵⁸ 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.

⁵⁹ See *supra* n.57.

⁶⁰ See *supra* n.58.

86. The Respondents' ineligibility shall extend across the operations of the World Bank Group.



Maria Vicien Milburn (Chair)

On behalf of the
World Bank Group Sanctions Board

Maria Vicien Milburn
Michael Ostrove
Adedoyin Rhodes-Vivour