SANCTIONS BOARD | WORLD BANK GROUP
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Date of issuance: February 29, 2024*

Sanctions Board Decision No. 142
(Sanctions Case No. 760)

IDA Credit No. 5233-VN
Socialist Republic of Viet Nam

Decision of the World Bank Group[1] Sanctions Board imposing a sanction of conditional non-debarment on the respondent entity in Sanctions Case No. 760 (the "Respondent"), together with certain Affiliates.[2] The Respondent must comply with the conditions of non-debarment within three (3) years and nine (9) months from the date of this decision. In case of non-compliance within this prescribed period, the Respondent, together with said Affiliates, shall be automatically placed under debarment with conditional release for a minimum period of one (1) year. This sanction is imposed on the Respondent for corrupt and collusive practices.

I. INTRODUCTION

1. The Sanctions Board met in a plenary session on December 7, 2023, at the World Bank Group's headquarters in Washington, D.C. The Sanctions Board was composed of Maria Vicien Milburn (Chair), Rabab Yasseen, Eduardo Zuleta, Adedoyin Rhodes-Vivour, and Philip Daltrop. A hearing was held on the same day at the request of the Respondent and in accordance with Section III.A, sub-paragraph 6 of the Sanctions Procedures. The World Bank Group's Integrity Vice Presidency ("INT") and the Respondent participated in the hearing through their respective representatives attending in person. The Respondent was represented by a member of senior management and external counsel. 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:

i. Notice of Sanctions Proceedings issued by the World Bank's Suspension and Debarment Officer (the "SDO") to the Respondent on January 6, 2023

* Revised on March 7, 2024. See infra, Corrigendum.

[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 used interchangeably here to refer to both IBRD and IDA. See Sanctions Procedures at Section II(x).

[2] Section II(a) of the Sanctions Procedures defines "Affiliate" as "any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank." The sanction imposed by this decision applies only to those Affiliates that are directly or indirectly controlled by the Respondent. See infra Paragraphs 51 and 64.

(the "Notice"), appending the Statement of Accusations and Evidence (the "SAE") submitted by INT to the SDO (undated);

ii. Explanation submitted by the Respondent to the SDO on April 26, 2023 (the "Explanation");

iii. Response submitted by the Respondent to the Secretary to the Sanctions Board on July 10, 2023 (the "Response"); and

iv. Reply submitted by INT to the Secretary to the Sanctions Board on September 8, 2023 (the "Reply").

II. PROCEDURAL HISTORY

3. *Previous sanctions case*: This is the second sanctions case against the Respondent. The first was Sanctions Case No. 620 involving fraudulent and obstructive practices. The Sanctions Board reviewed and resolved that case, issuing Sanctions Board Decision No. 134 on November 29, 2021. The Sanctions Board imposed a sanction of debarment with conditional release for a minimum period of six (6) years beginning from the date of that decision. The Sanctions Board determined the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, to be ineligible[3] to obtain any Bank-Financed Projects.[4]

4. *Issuance of Notice and the SDO's initial recommendation*: On January 6, 2023, pursuant to Section III.A, sub-paragraphs 4.01 and 4.02 of the Sanctions Procedures, the SDO issued the Notice against the Respondent. Pursuant to Section III.A, sub-paragraphs 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the SDO recommended in the Notice the sanction of debarment with conditional release for the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent. The SDO recommended a minimum period of ineligibility of one (1) year and five (5) months, after which period the Respondent may be released from ineligibility only if it has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, demonstrated to the World Bank Group's Integrity Compliance Officer (the "ICO") that it 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 applied aggravation for the sophisticated means through which the Respondent engaged in the misconduct. The SDO applied mitigation for the Respondent's limited cooperation during the investigation and voluntary corrective actions, and the amount of time that has passed since the misconduct and the Bank's awareness thereof.

[3] Sanctions Procedures at Section III.A, sub-paragraph 9.01(c).

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

5. *SDO's final recommendation*: The Respondent submitted an Explanation to contest the SDO's finding of liability and recommended sanction. Upon review of the Explanation, the SDO applied additional mitigation for the Respondent's minor role. Accordingly, pursuant to Section III.A, sub-paragraph 4.03(a)(ii) of the Sanctions Procedures, the SDO revised the recommended sanction to debarment with conditional release after a minimum period of ineligibility of one (1) year and one (1) month.

III. GENERAL BACKGROUND

6. This case arises in the context of the Da Nang Sustainable City Development Project (the "Project") in the Socialist Republic of Viet Nam. The Project sought to expand access of city residents to improved drainage, wastewater collection and treatment services, the arterial road network, and public transport in selected areas of Da Nang City. On April 30, 2013, Viet Nam entered into a financing agreement with IDA for an amount equivalent to Special Drawing Rights 133.7 million (approximately US$202.5 million at the time of signature) to support the Project. The Project became effective on July 29, 2013, and closed on June 30, 2021.

7. On August 5, 2013, the project management unit established to implement the Project (the "PMU") issued a request for proposals (the "RFP") for the Selection of Consulting Services for the Preparation of Detailed Designs, Bidding Documents, Supervision of Equipment System and Technical Assistance for Operation of Bus Rapid Transit ("BRT") System (the "Contract"). The Contract had two components: the first ("Part 1") entailed the preparation of detailed designs and bidding documents for downstream public transportation contracts (the "Downstream Contracts"); and the second ("Part 2") comprised contract management, on-site supervision of installation and commissioning, procurement support, and technical assistance.

8. In October 2013, a joint venture led by the Respondent, together with its subsidiary in Viet Nam (the "Subsidiary") as one of two subconsultants, submitted financial and technical proposals for Parts 1 and 2 of the Contract. The joint venture successfully obtained the Contract, signing Part 1 in June 2014 and Part 2 in November 2014. To implement the Contract, the Respondent issued a power of attorney to its representative manager in Viet Nam (the "Manager") giving her complete authority in contract execution. The Manager was also a shareholder of the Subsidiary.

9. INT alleges that the Respondent engaged in corrupt or collusive practices when the Manager solicited a payment from one of two potential bidders (the "Bidders") in exchange for allowing them to draft the bidding and other related procurement documents for the Downstream Contracts in their favor.

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 corrupt and collusive practices*: The financing agreement, RFP, and the Contract all refer to, and/or reflect definitions of corrupt and collusive practices in accordance with, the World Bank's Guidelines: Selection and Employment of Consultants under IBRD Loans and IDA Credits and Grants by World Bank Borrowers (January 2011) (the "January 2011 Consultant Guidelines"). The allegations in this case thus have the meaning set forth in the January 2011 Consultant Guidelines. Paragraph 1.23(a)(i) of the January 2011 Consultant Guidelines defines the term "corrupt practice" as "the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party." A footnote to this definition explains that the term "another party" refers to "a public official acting in relation to the selection process or contract execution" and that the term "public official" includes "World Bank staff and employees of other organizations taking or reviewing selection decisions."[5] Paragraph 1.23(a)(iii) of the January 2011 Consultant Guidelines defines the term "collusive practice" as "an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party." A footnote to this definition explains that the term "parties" comprises "participants in the procurement or selection process (including public officials) attempting . . . to simulate competition or to establish contract prices at artificial, non-competitive levels."[6]

V. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

14. *Corruption allegation*: INT alleges that the Manager, acting on behalf of the Respondent and the Subsidiary, solicited from one of the Bidders (the "First Bidder") a percentage of the Downstream Contracts' price. INT claims that this corrupt scheme was reflected in a commercial agency agreement, under which the First Bidder was to pay a consulting company (the "Consulting Company") in exchange for the latter's assistance. According to INT, the Consulting Company and the Respondent had the same business address and five-person board of directors, such that a payment to the Consulting Company constituted a payment to the Respondent. INT further submits that the Manager is considered a public official when she solicited the illicit payment because she was an employee of the Respondent and the Subsidiary that took and reviewed selection decisions

[5] January 2011 Consultant Guidelines at para. 1.23(a)(i), n.19.
[6] January 2011 Consultant Guidelines at para. 1.23(a)(iii), n.21.

by deciding the technical requirements and drafting the bidding documents for the Downstream Contracts.

15. *Collusion allegation*: INT asserts that the Manager shared confidential bidding information with the Bidders and invited them to draft technical specifications and pricing details for the Downstream Contracts, advised the First Bidder on possible bidding partners, and negotiated with the First Bidder on whether the First Bidder would be the contractor and subcontractor for the Downstream Contracts.

16. *Sanctioning factors*: INT contends that aggravation is warranted for the sophistication of sanctionable practices in which the corrupt scheme spanned nearly six months and involved planning, multiple companies and individuals, and tender rigging. INT submits that the Respondent merits mitigation for the passage of time, its period of suspension and debarment, and its corporate reorganization and managerial changes. In addition, INT argues that the Respondent deserves only limited mitigation for its corporate compliance program, considering the lack of clarity as to the policies' application and the absence of any indication that they were adopted out of remorse or intent to reform; and its cooperation, given its interference with INT's inspection and lack of candor.

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

17. *Asserted violation of fundamental fairness*: The Respondent argues that certain principles of fundamental fairness have been violated in this case. First, the Respondent contends that the SAE lacks a clear definition of the charges, thus affecting the Respondent's ability to make a meaningful defense. Specifically, the Respondent asserts that INT's allegations of corruption or collusion are "improperly vague" and fail to explain "why or how the very same facts would constitute two different and separately defined sanctionable practices." Second, the Respondent argues that advancing the present allegations after Sanctions Case No. 620 is unfair, considering that it has already been heavily sanctioned in the previous case mainly because it lacked effective controls to supervise the Manager. The Respondent adds that the lapse of time between Sanctions Case No. 620 and the present case is "unnecessary and unjustified." Third, the Respondent questions why INT settled with almost all the parties directly involved in the alleged misconduct but chose to pursue the Respondent whose direct employees were not involved in the allegations.

18. *Corruption allegation*: The Respondent argues that there is no evidence that the Manager acted on behalf of the Respondent, or that the Respondent was aware of the agreement between the First Bidder and the Consulting Company. The Respondent moreover contends that it should not be held liable for the Consulting Company's actions because the Respondent was undergoing significant corporate changes at the time of the misconduct, as it was transitioning to being majority-owned by a corporate shareholder. As a result, the five individuals who owned the Consulting Company ceased to be the Respondent's majority owners. Further, the Respondent asserts that the Manager cannot be considered a public official because drafting technical requirements and bidding documents occur in "different phases of a procurement process" and are not the same as "taking or reviewing selection decisions." The Respondent further asserts that there is no precedent to support the argument that an employee of a respondent's subsidiary with no known ties to the government could be considered a public official. Separately, the Respondent

asserts that there is no evidence that it would benefit from the agreement between the First Bidder and the Consulting Company.

19. *Collusion allegation*: The Respondent denies being a party to the collusive arrangement. According to the Respondent, all the emails presented by INT involve only the Manager, the team leader for the Contract (the "Team Leader"), and representatives of the Bidders. The Respondent claims that none of its direct employees were involved in or even aware of the scheme.

20. *Sanctioning factors*: The Respondent argues that no aggravation is applicable, considering that the alleged scheme involved only a few companies and individuals, had almost no planning, spanned a short period of time, and was not even consummated. The Respondent requests mitigation for its minor role, if any, in the misconduct; appropriate action against responsible individuals; its compliance program; its cooperation; the passage of time; and its significant corporate changes.

C. INT's Principal Contentions in the Reply

21. *Asserted violation of fundamental fairness*: First, INT clarifies that the Respondent engaged in both corruption and collusion. INT argues that the misconduct is "sanctionable as one integrated sanctionable practice," as the composite acts are "closely interrelated and factually interconnected" and are proven by the same facts and evidence showing the aim to improperly influence the procurement of the Downstream Contracts. Second, INT maintains that it was unable to discover the alleged misconduct in this case during its audit in 2017 – the audit that resulted in the filing of Sanctions Case No. 620 – because the Respondent produced only "a highly limited set of documents." INT submits that, as a result, it did not raise the present allegations during its interviews in 2017 and instead confronted the Respondent about them through show-cause letters in 2019. INT further contends that the Respondent's claim about being sanctioned twice for the same failure to supervise the Manager conflates the Respondent's own misconduct with the bases for its corporate culpability. According to INT, the Respondent's misconduct in Sanctions Case No. 620 is fraud and obstruction, while the allegations in this case relate to the Respondent's corruption or collusion, which the company committed through the Manager. INT argues that the Respondent's failure to properly supervise the Manager "only precludes [the company] from avoiding culpability by claiming that [the Manager] was a rogue employee." Third, INT states that, contrary to the Respondent's claims, INT and the Respondent conducted settlement negotiations, which were ultimately unsuccessful.

22. *Corruption allegation*: INT clarifies that it is not suggesting that the Consulting Company perpetrated the corrupt act. Rather, INT argues that the Respondent committed the corrupt act and used the Consulting Company only as a vehicle to carry out the scheme.

23. *Collusion allegation*: INT argues that the collusive arrangement gave the Bidders an unfair competitive advantage in the procurement, thus resulting in an artificial, non-competitively set contract price. Separately, INT assails the Respondent's argument that none of its direct employees were involved in the collusive scheme by asserting that the Manager served as the Respondent's representative in Viet Nam, possessed a power of attorney to implement the Contract, and acted within the scope of this role when she engaged in the misconduct.

24. *Sanctioning factors*: INT reiterates its arguments in the SAE with respect to sanctioning factors.

D. Presentations at the Hearing

25. At the hearing, INT contended at the outset that it was unable to bring the collusion and corruption claims in Sanctions Case No. 620 because of the Respondent's obstruction during INT's audit in 2017. Specifically, INT asserted that it only discovered the evidence on collusion and corruption in a separate investigation just before it filed Sanctions Case No. 620 with the SDO against the Respondent for fraud and obstruction. INT then focused on three issues. First, INT contended that the Respondent is liable for the Manager and the Team Leader's misconduct. INT submitted that the Manager and the Team Leader executed the Contract on behalf of the Respondent and the Manager acted within the scope of the power of attorney issued by the Respondent. Second, the misconduct was both collusive and corrupt involving an improper arrangement between a public official and two bidders. INT argued that the Respondent's narrow interpretation of the terms "public official" and "taking or reviewing selection decisions" is against the purpose of the Consultant Guidelines, considering that the Manager's conduct had an impact on the procurement process. Third, INT clarified that it filed the two cases separately to protect Bank funds. According to INT, it chose not to delay the filing of Sanctions Case No. 620 to avoid the risk of having the Respondent bid for Bank-Financed Projects while INT was still preparing to file the present case. INT added that, in any event, filing separate cases against the same respondent relating to the same contract is neither new nor a violation of fundamental fairness.

26. For its part, the Respondent asserted that the principles of fundamental fairness were violated in this case and that such circumstances should result in no sanction on the Respondent. The Respondent first argued that INT's allegation of corrupt or collusive practices is "improperly vague" because INT fails to explain why or how the very same facts would constitute two different and separately defined sanctionable practices. The Respondent next submitted that there is no corruption because the applicable Guidelines specify that "public official" includes only World Bank staff and employees of other organizations taking or reviewing selection decisions. The Respondent reasoned that the Manager cannot be considered an employee of another organization, as she was an employee of the entity that was writing the bidding documents. The Respondent moreover asserted that there is no evidence that the Respondent would have benefitted from the supposed corrupt arrangement between the First Bidder and the Consulting Company, which is a different entity from the Respondent. The Respondent then proceeded to argue that it is being "sanctioned twice for the same thing," noting that it has already been sanctioned in Sanctions Case No. 620 for failing to supervise the Manager. Finally, the Respondent emphasized that at the time that Sanctions Case No. 620 was filed, INT already knew everything necessary to bring the present case. According to the Respondent, INT's explanation for rushing Sanctions Case No. 620 has no merit, as there were other ways that INT could have achieved the same goal, including by applying for an early temporary suspension or asking the Respondent to voluntarily restrain from bidding.

VI. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

27. The Sanctions Board will first address the Respondent's allegation that the present case violates the principles of fundamental fairness. The Sanctions Board will then consider whether it

is more likely than not that the alleged sanctionable practices occurred and, if so, whether the Respondent may be held liable for the misconduct. Finally, the Sanctions Board will determine what sanction, if any, should be imposed on the Respondent.

A. Asserted Violation of the Fundamental Fairness Principles

28. The Respondent asserts that certain aspects of the present case are inconsistent with the principles of fundamental fairness. Specifically, the Respondent asserts that (i) INT's allegation of corrupt or collusive practices is "improperly vague," impacting the Respondent's ability to defend itself; (ii) pursuing a second case after Sanctions Case No. 620 relating to the same contract and based on the same reason of lack of control and supervision is "unnecessary and unjustified"; (iii) while INT settled with parties directly involved in the alleged sanctionable practices, it advanced these proceedings against the Respondent whose direct employees were not involved in the misconduct.

29. First, with respect to the way INT presented its allegations, the Sanctions Board does not consider the use of "corrupt or collusive practices" to be so vague as to impact the Respondent's ability to defend itself. Although the SAE could have presented each element of these sanctionable practices in a more clearly delineated manner, the Sanctions Board finds that both the SAE and the Reply articulate all the elements of corrupt and collusive practices, and provide arguments and evidence in support of each allegation. Therefore, the Sanctions Board does not find that the Respondent was prejudiced by the way that INT presented the allegations and evidence in the SAE. On the contrary, as discussed under plurality of sanctionable practices in Paragraphs 52-54 below, the interconnectedness among the circumstances surrounding the alleged corrupt and collusive acts results in a practical outcome that is beneficial to the Respondent.

30. Second, with respect to the filing of the present case after Sanctions Case No. 620, the record shows that the evidence supporting INT's fraud and obstruction allegations in Sanctions Case No. 620 was gathered from INT's investigation of the Respondent in 2017. This investigation led INT to issue a show-cause letter to the Respondent on January 25, 2018, and eventually submit the SAE in Sanctions Case No. 620 to the SDO on August 30, 2019. The evidence supporting INT's corruption and collusion allegations in this case was gathered from INT's investigations into the Bidders in 2019. These investigations prompted INT to issue another show-cause letter to the Respondent on August 29, 2019, and submit the SAE to the SDO in this case in September 2021. The Sanctions Board is concerned about INT's decision to pursue two distinct sanctions cases, considering the temporal overlaps between the investigation in Sanctions Case No. 620 and the investigations in this case.

31. Nevertheless, the Sanctions Board finds that INT's decision to conduct separate proceedings stemmed from the Respondent's limited document production during INT's investigations in 2017 and the fact that the pertinent evidence used in the present proceedings became available only after INT's further audits in 2019. Moreover, the Sanctions Board does not consider the lapse of time from the initial audit in 2017 up to the filing of Sanctions Case No. 620 and the present case as amounting to a procedural deficiency or violation of due process. Rather, INT's choice to proceed with two separate SAEs was an internal procedural decision based on the timing and the availability of evidence. INT has certain discretion regarding internal investigatory

processes and procedures. The Sanctions Board, therefore, deems it more appropriate to consider this matter as a sanctioning factor under passage of time in Paragraph 61 below.

32. The Sanctions Board now turns to the Respondent's argument that being subject to sanctions proceedings in relation to the same contract and based on the same underlying lack of supervision is fundamentally unfair. The Sanctions Board considers that, even if the fraud and obstruction in Sanctions Case No. 620 and the alleged corruption and collusion in the present case equally call into question the adequacy of the Respondent's internal controls and supervision, corruption and collusion are entirely different sanctionable practices. Pursuing the present proceedings, therefore, is not tantamount to the Respondent being sanctioned twice for the same misconduct.

33. Finally, with respect to INT's settlement with other parties, the record shows, and the parties acknowledged during the hearing, that the Respondent and INT were engaged in settlement negotiations. The fact that the negotiations with the Respondent ultimately failed while the negotiations with other parties reached settlements does not on its own indicate unfairness in the manner by which these sanctions proceedings have been pursued against the Respondent.

34. For the foregoing reasons, the Sanctions Board finds that there was no violation of due process or the principles of fundamental fairness that adversely affected the Respondent's ability to defend itself or rendered these proceedings procedurally deficient.

B. Evidence of Corrupt Practice

35. In accordance with the definition of "corrupt practice" under the January 2011 Consultant Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondent (i) offered, gave, received, or solicited, directly or indirectly, anything of value, (ii) to influence improperly the actions of another party.

1. Soliciting, directly, or indirectly, anything of value

36. The record demonstrates, and the parties do not dispute, that the Manager solicited from the First Bidder a percentage of the Downstream Contracts' value in exchange for allowing the Bidders to draft the technical specifications and bidding documents for the Downstream Contracts. For instance, the record contains several emails from February through March 2015 among the Manager, the Team Leader, and a business manager of the First Bidder (the "First Bidder's Business Manager"). These emails indicate, inter alia, that (i) the Manager requested the First Bidder to enter into a commercial services agreement with her own company (the "Manager's Company"); (ii) the Manager requested the First Bidder to pay a percentage of the contract price in exchange for assistance in securing contract award; (iii) the Manager and the First Bidder's Business Manager negotiated the payment from an initial 15% to 10% of the total contract price; and (iv) the Manager eventually named the Consulting Company as the consultant in the commercial services agreement.

37. Although the Respondent does not dispute the Manager's solicitation of an improper payment, it nevertheless challenges INT's claim that a payment to the Consulting Company is a

payment to the Respondent. The Sanctions Board underscores that under the applicable definition of corrupt practice provided in Paragraph 35 above, an allegation of solicitation does not require evidence of payment. The definition only requires proof that the Manager solicited a thing of value and the preceding paragraph details exactly how that is met in this case. Thus, the Sanctions Board need not consider whether any payment to the Consulting Company is functionally equivalent to a payment to the Respondent. For the reasons set out in the preceding paragraph, the Sanctions Board finds that it is more likely than not that the Manager solicited from the First Bidder the payment of a percentage of the total price of the Downstream Contracts.

2. To influence improperly the actions of another party

38. The crux of the Respondent's defense rests on its assertion that there is no public official involved in the scheme. The Respondent argues that the Manager cannot be considered a public official because "deciding technical requirements and writing bidding documents . . . occur in different phases of a procurement process," and are not the same as "taking or reviewing selection decisions." At the hearing, the Respondent added another facet to this argument by claiming that if the Manager who solicited the payment is herself considered a public official, then there is no "another party" to be influenced as prescribed under the second element.

39. Under the January 2011 Consultant Guidelines, the second element of corrupt practice requires an analysis of whether the solicitation in this case was intended "to influence improperly the actions of another party." The Guidelines clarify that the term "another party" refers to "a public official acting in relation to the selection process or contract execution."[7] According to the Guidelines, the term "public official" includes "World Bank staff and employees of other organizations taking or reviewing selection decisions."[8] Based on this definition, the Sanctions Board has previously considered individuals "public officials" in cases in which they were employed under Bank-financed contracts to assist project implementation units in the procurement process, including by conducting feasibility studies, developing technical specifications, assisting in the tender process, and participating in bid evaluation and contract negotiation. Although the final decision to award the relevant contracts did not rest on these individuals, what the Sanctions Board has considered to be decisive in considering them public officials were their functions in relation to, and their impact and influence on, the procurement process.[9] The same applies here.

40. In examining the functions of the Manager in relation to, and her impact and influence on, the procurement process, the Sanctions Board observes that under Part 1 of the Contract, the Respondent undertook to assist the PMU in the preparation of detailed designs and bidding documents for the Downstream Contracts. At that time, not only did the Subsidiary employ the Manager, but the Respondent also issued a power of attorney giving her complete authority to implement the Contract without the Respondent's supervision. Implementing the Contract, in turn, allowed the Manager to control crucial aspects of the procurement process for the Downstream Contracts, including the technical specifications, costs, budget, and other details that were to be included in the bidding documents. As the Respondent acknowledged at the hearing, the

[7] January 2011 Consultant Guidelines at para. 1.23(a)(i), n.19.
[8] Id.
[9] Sanctions Board Decision No. 125 (2020) at paras. 5, 24; Sanctions Board Decision No. 133 (2021) at paras. 5, 28; Sanctions Board Decision No. 139 (2022) at paras. 8, 40.

Manager's responsibilities and conduct "no doubt … affect[ed] the final decision" of procurement. Based on the specific circumstances of this case, the Sanctions Board finds that the Manager is considered a public official under the applicable definition of "corrupt practice."

41. As regards the Respondent's argument that there will be no "another party" to influence if the Manager is herself considered to be a public official, the Sanctions Board echoes its findings in the same cases discussed in Paragraph 39 above. In those cases, the Sanctions Board's analysis turned on the issue of whether the individuals, whom the Sanctions Board considered to be public officials taking or reviewing selection or procurement process decisions, solicited or received payments to influence their own behaviors in the execution of their respective Bank-financed contracts.[10] Indeed, the Sanctions Board has considered several other cases in which the individuals or entities who solicited or received anything of value did so to influence their own actions, rather than those of another party.[11] As the Sanctions Board has consistently held, the recipient of the thing of value under the first element of the definition need not be – though may be – the same individual who is the target of influence under the second element of corrupt practices.[12]

42. Having established that the Manager is a public official, the Sanctions Board now examines whether she solicited a payment to influence her own actions. The Sanctions Board has consistently inferred corrupt intent where a public official solicited a thing of value from a third party potentially interested in a procurement or selection process where the public official played a significant role.[13] Here, the record shows that the Manager used her position of authority over the Contract and provided favorable treatment to the Bidders by sharing confidential bidding information with them and allowing them to effectively tailor the bidding documents in their favor, as discussed in more detail in Paragraph 44 below. The Manager did so in exchange for the payment she solicited from the First Bidder. Accordingly, the Sanctions Board finds that it is more likely than not that the Manager solicited a payment from the First Bidder to influence her own actions in the execution of the Contract.

C. Evidence of Collusive Practice

43. In accordance with the definition of "collusive practice" under the January 2011 Consultant Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondent (i) engaged in an arrangement between two or more parties, (ii) designed to achieve an improper purpose, including to influence improperly the actions of another party.

[10] Sanctions Board Decision No. 125 (2020) at paras. 5, 24; Sanctions Board Decision No. 133 (2021) at paras. 5, 28; Sanctions Board Decision No. 139 (2022) at paras. 8, 40.
[11] Sanctions Board Decision No. 78 (2015) at paras. 65-66; Sanctions Board Decision No. 125 (2020) at paras. 30-31; Sanctions Board Decision No. 133 (2021) at para. 29; Sanctions Board Decision No. 139 (2022) at para. 45.
[12] Sanctions Board Decision No. 60 (2012) at para. 65; Sanctions Board Decision No. 72 (2014) at para. 43; Sanctions Board Decision No. 136 (2022) at para. 27.
[13] Sanctions Board Decision No. 78 (2015) at paras. 65-66; Sanctions Board Decision No. 125 (2020) at para. 24; Sanctions Board Decision No. 133 (2021) at para. 28; Sanctions Board Decision No. 139 (2022) at para. 42.

1. Arrangement between two or more parties

44. The record shows, and the parties do not dispute, that the Manager entered into an arrangement with the Bidders in which the Manager and the Team Leader shared confidential bidding information with the Bidders and invited them to draft technical specifications and pricing details for the Downstream Contracts. For instance, the record contains emails among the Manager, the Team Leader, and the Bidders' representatives demonstrating, inter alia, that (i) the First Bidder's Business Manager was invited to assist with technical specifications; (ii) the Team Leader sent the First Bidder's Business Manager an equipment list and asked to be provided with detailed equipment specifications and prices; (iii) the Team Leader sent the First Bidder's Business Manager a summary of the basic design costs and asked to be provided with cost estimates; (iv) the Manager asked the Bidders' representatives about technical specifications that would fit the Bidder's standards; and (v) the system design for one of the Downstream Contracts was based on the First Bidder's system. On the basis of this record, and consistent with precedent, the Sanctions Board finds that it is more likely than not that the Manager had an arrangement with the Bidders.

2. Designed to achieve an improper purpose, including to influence improperly the actions of another party

45. The record shows, and the parties do not dispute, that the collusive arrangement among the Manager, the Team Leader, and the Bidders was designed to influence improperly the procurement of the Downstream Contracts. The evidence discussed in Paragraph 44 above demonstrates how the arrangement was aimed at giving the Bidders an unfair competitive advantage. In addition, the record also contains correspondence among the Manager, the Team Leader, and the Bidders' representatives showing that the Manager and the Team Leader wanted to design the technical specifications and the bidding documents in a way that would eliminate certain players as potential bidders for the Downstream Contracts. On the basis of this record, and consistent with precedent,[14] the Sanctions Board finds that it is more likely than not that the collusive arrangement was designed to achieve an improper purpose, including to stifle open competition and influence the procurement process of the Downstream Contracts.

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

46. The Sanctions Board has consistently held that an employer can be found liable for the acts of its employees under the doctrine of respondeat superior, considering in particular whether the employees acted within the course and scope of their employment, and were motivated, at least in part, by the intent of serving their employer.[15] Where a respondent entity has denied responsibility for the acts of its employees based on a "rogue employee" defense, the Sanctions Board has

[14] See, e.g., Sanctions Board Decision No. 115 (2019) at paras. 41-43; Sanctions Board Decision No. 139 (2022) at para. 52.

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

considered any evidence presented regarding the scope and adequacy of the respondent entity's controls and supervision at the time of the misconduct.[16]

47. The record demonstrates that the Manager acted on behalf of the Respondent not only within the scope of her employment with the Subsidiary, but also pursuant to a power of attorney that the Respondent issued directly to her. Evidence shows that this power of attorney authorized the Manager to act in the Respondent's stead in all matters relating to the Contract. At the hearing, the Respondent acknowledged that it gave the Manager sweeping authority over the implementation of the Contract without there being any internal controls or supervision over her actions. Further, the record does not show, and the Respondent does not assert, a rogue employee defense. In these circumstances, the Sanctions Board finds the Respondent liable for the acts carried out by the Manager.

E. Sanctioning Analysis

1. General framework for determination of sanctions

48. 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.

49. 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.[17] 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.[18]

50. 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.

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[16] See, e.g., Sanctions Board Decision No. 48 (2012) at para. 30; Sanctions Board Decision No. 55 (2013) at paras. 53-54.

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

[18] 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.

51. 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

52. As the Sanctions Board finds that the Respondent engaged in two counts of misconduct, the Sanctions Board considers Section III of the Sanctioning Guidelines regarding "Cumulative Misconduct." The Sanctioning Guidelines provide in relevant part:

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

53. 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,[19] even where all counts of misconduct relate to the same project or contract.[20] By contrast, the Sanctions Board has applied aggravation where the counts of misconduct were closely interrelated.[21] In its Reply, INT explicitly argues for the application of "one single base sanction of a three-year debarment with conditional release, for either collusion or corruption, appropriately aggravated to reflect its other related misconduct."

54. The Sanctions Board finds that the Respondent engaged in interrelated corruption and collusion arising from the same facts and circumstances. Specifically, as discussed in Paragraphs 36 and 44 above, the Manager colluded with the Bidders and solicited an improper payment from the First Bidder in exchange for allowing them to draft and design the bidding and other relevant documents during the procurement process for the Downstream Contracts. Accordingly, the plurality of sanctionable practices warrants aggravation, rather than multiplication, of the base sanction.

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[19] See, e.g., Sanctions Board Decision No. 87 (2016) at para. 151; Sanctions Board Decision No. 118 (2019) at para. 80; Sanctions Board Decision No. 120 (2019) at para. 48.

[20] See, e.g., Sanctions Board Decision No. 87 (2016) at para. 151 (applying cumulative sanctions where the respondents engaged in multiple distinct counts of misconduct, all relating to the same project); Sanctions Board Decision No. 97 (2017) at para. 66 (applying cumulative sanctions where the respondents engaged in fraudulent and corrupt practices relating to the same project and contract); Sanctions Board Decision No. 120 (2019) at para. 48 (applying cumulative sanctions where the respondent firm engaged in two separate and unrelated fraudulent practices relating to two different contracts under the same project).

[21] See, e.g., Sanctions Board Decision No. 60 (2013) at para. 143 (applying aggravation where the fraud was intended to prevent discovery of the corrupt practices, the investigation into which was later obstructed).

3. Factors considered in the present case

a. Severity of the misconduct

55. *Sophisticated means*: Section III.A, sub-paragraph 9.02(a) of the Sanctions Procedures requires the Sanctions Board to consider the severity of the misconduct, including the use of sophisticated means, in determining the appropriate sanction. Section IV.A.2 of the Sanctioning Guidelines states that this factor may include "the complexity of the misconduct (e.g., degree of planning, diversity of techniques applied, level of concealment); the number and type of people or organizations involved; whether the scheme was developed or lasted over a long period of time; [and] if more than one jurisdiction was involved." The Sanctions Board has previously applied aggravation on this basis where the misconduct comprised "a variety of tactics," "diversity of techniques," or "considerable forethought and planning."[22] INT asserts that, with respect to the corruption allegation, aggravation is warranted because the scheme happened over a period of time and involved planning, multiple companies and individuals, and tender rigging. The Respondent contends that the alleged scheme was not sophisticated, as it involved a few companies and individuals, had almost no planning, lasted for a short period of time, and was not even consummated. As discussed in Paragraphs 36 and 44 above, the misconduct involved the solicitation of an improper payment from the First Bidder concealed through a commercial agency agreement, and the participation of several players to rig the procurement process for the Downstream Contracts in favor of the Bidders. The Sanctions Board finds that the development of this intertwined corrupt and collusive scheme involved significant forethought and planning, and amounted to a level of complexity that warrants the application of aggravation under this factor.

b. Minor role

56. 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 respondent was a "minor, minimal, or peripheral participant or in which no individual with decision-making authority participated in, condoned, or was willfully ignorant of the misconduct." The Sanctions Board has applied mitigation when the respondent lacked direct involvement in the sanctionable practice;[23] the respondent's participation was more passive and limited than that of other

[22] See, e.g., Sanctions Board Decision No. 69 (2014) at para. 33 (where the respondent forged three different types of official business documents, which were clearly drafted in an effort to avoid detections, including through the use of an inauthentic embassy stamp and forged signatures and seals); Sanctions Board Decision No. 87 (2017) at para. 127 (where the collusive scheme reflects a high degree of planning and diversity of techniques including manipulating bid requirements and the procurement process for multiple tenders, improper payments; and targeted public officials); Sanctions Board Decision No. 97 (2017) at para. 70 (where the respondent prepared a diverse set of forged and false documents purporting to reflect multiple transactions that never took place); Sanctions Board Decision No. 98 (2017) at para. 58 (where the fraudulent conduct involved two types of detailed official business documents, which included letterhead images, signatures, and seals, and were responsive to specific value requirements under the contract).

[23] Sanctions Board Decision No. 83 (2015) at para. 88.

participants;[24] the respondent did not prompt, encourage, or develop the misconduct at issue;[25] or the respondent's junior employees engaged in the misconduct without management affirmatively participating or condoning that behavior.[26] Here, the Respondent argues that its participation in implementing the Contract was peripheral, considering that the Manager and the Team Leader were directly involved in contract implementation and in interacting with the Bidders, and none of the Respondent's direct employees or representatives participated in the scheme. The record demonstrates that the Manager acted as an employee of the Respondent's Subsidiary and was authorized through the power of attorney to act as the Respondent's representative with respect to the Contract. However, none of the Respondent's own employees were directly involved in or aware of the misconduct. While the record also shows that the Respondent exercised inadequate supervision and controls to prevent the misconduct, and therefore may be held liable for it, there is no evidence that the Respondent's management affirmatively participated in or condoned the Manager's corrupt and collusive scheme. Consistent with precedent,[27] the Sanctions Board applies mitigation for the Respondent's minor role.

c. Voluntary corrective action

57. 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. A respondent bears the burden of presenting evidence to substantiate any claimed voluntary corrective action.[28]

58. *Internal action against responsible individual(s)*: Section V.B.2 of the Sanctioning Guidelines suggest that mitigation may be justified when a respondent's management takes "appropriate disciplinary and/or remedial steps with respect to the relevant employee, agent, or representative." The Sanctions Board has applied mitigation when the record included documentary evidence that the respondent undertook internal disciplinary action against participants involved in the misconduct, including demotions, reprimands, withholding of bonuses, termination of consultancy agreements, and provisional measures.[29] Conversely, the Sanctions Board has declined to apply mitigation when a respondent did not specify or offer evidence that the claimed disciplinary actions took place, were implemented in a timely manner, were taken in response to the sanctionable conduct at issue, or were meaningful and proportionate to the

[24] Sanctions Board Decision No. 45 (2011) at para. 61.
[25] Sanctions Board Decision No. 60 (2013) at para. 128; Sanctions Board Decision No. 66 (2014) at para. 37; Sanctions Board Decision No. 139 (2022) at para. 60.
[26] Sanctions Board Decision No. 46 (2012) at para. 37; Sanctions Board Decision No. 116 (2019) at para. 23.
[27] Sanctions Board Decision No. 83 (2015) at para. 88.
[28] See, e.g., Sanctions Board Decision No. 45 (2011) at para. 72; Sanctions Board Decision No. 60 (2013) at para. 129; Sanctions Board Decision No. 67 (2014) at para. 38; Sanctions Board Decision No. 71 (2014) at para. 92; Sanctions Board Decision No. 106 (2017) at para. 39; Sanctions Board Decision No. 123 (2020) at para. 35; Sanctions Board Decision No. 126 (2020) at para. 48.
[29] See, e.g., Sanctions Board Decision No. 2 (2008) at para. 7; Sanctions Board Decision No. 46 (2012) at para. 39; Sanctions Board Decision No. 48 (2012) at para. 44; Sanctions Board Decision No. 63 (2014) at para. 106; Sanctions Board Decision No. 137 (2022) at para. 61.

misconduct.[30] In this case, the Respondent acknowledges that it initiated action against relevant – but unidentified – individuals only recently, considering that the individuals involved in misconduct have long left the company. The Respondent asserts that it has sent the relevant individuals two demand letters but is still evaluating whether there are sufficient grounds to pursue legal action against them. At the hearing, the Respondent explained that there is no other possible internal action left but to pursue legal action against the Consulting Company that the Respondent claims is currently ongoing. The record contains evidence that the Respondent's demand letters against the Consulting Company were only sent two months after the Notice was issued. The Respondent has not provided evidence of the supposed letters against any other individuals involved in the misconduct or the proceedings initiated against the Consulting Company. Considering the Respondent's belated internal action and its failure to present satisfactory evidence thereof,[31] the Sanctions Board declines to apply mitigation under this factor.

59. *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.[32] Here, INT asserts that the Respondent's enhanced corporate compliance program warrants limited mitigation because evidence of the program's application is unclear and it does not appear to have been adopted out of remorse or any intent to reform. The Respondent submits that it has been strengthening its compliance culture, including by implementing its Code of Ethics and Penal Prevention Plan, developing a compliance program based on a risk assessment, appointing a compliance officer and establishing an integrity compliance committee, and requiring employees to participate in risk-based annual compliance training. The Respondent further emphasizes that it is already collaborating with the ICO pursuant to Sanctions Board Decision No. 134. The Sanctions Board finds that the Respondent's compliance measures appear to meet some of the elements set out in the World Bank Group's Integrity Compliance Guidelines. The Sanctions Board notes, in particular, that the Respondent's compliance program contains references to prohibiting bribery and other types of improper payments, monitoring the ethical behavior of business partners, and promoting fair competition. Given the enhancements to the Respondent's compliance program as presented, as well as the Respondent's ongoing engagements with the ICO to further develop appropriate compliance measures, the Sanctions Board concludes that mitigation is appropriate under this factor. This finding is made on the basis of the written record before the Sanctions Board, and therefore without

[30] See, e.g., Sanctions Board Decision No. 44 (2011) at paras. 71-72; Sanctions Board Decision No. 49 (2012) at para. 38; Sanctions Board Decision No. 55 (2013) at para. 77; Sanctions Board Decision No. 74 (2014) at para. 40; Sanctions Board Decision No. 83 (2015) at para. 91; Sanctions Board Decision No. 102 (2017) at para. 73; Sanctions Board Decision No. 106 (2017) at para. 41; Sanctions Board Decision No. 116 (2019) at para. 25; Sanctions Board Decision No. 130 (2020) at para. 87.

[31] Sanctions Board Decision No. 44 (2011) at para. 72; Sanctions Board Decision No. 56 (2013) at paras. 65-67; Sanctions Board Decision No. 106 (2017) at para. 41; Sanctions Board Decision No. 116 (2019) at para. 25; Sanctions Board Decision No. 123 (2020) at para. 36.

[32] 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).

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 Respondent.

d. Cooperation

60. 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." In this case, INT submits that the Respondent's cooperation warrants limited mitigation because although the Respondent provided INT with some documents and made some staff members available for interviews, the Respondent interfered with the investigation and its conduct lacked candor. The Respondent requests full mitigating credit on the grounds that it replied to INT's show-cause letter in a timely manner, provided INT with relevant documents, and made staff available for interviews. The Respondent underscores that it could not have provided any more information beyond what it had given INT as the Respondent had no access to documents retained by the Manager. At the hearing, the Sanctions Board asked the parties to detail the extent of the Respondent's cooperation with INT's investigation into the present case and separate from INT's investigation in Sanctions Case No. 620. The parties agreed that INT sent the Respondent one show-cause letter with respect to the allegations in this case, the Respondent replied to this show-cause letter, and INT did not take any further investigative steps that would have elicited any kind of cooperation from the Respondent. On the basis of these facts and taking into account INT's representation that the Respondent deserves some mitigation, the Sanctions Board applies some mitigation under this factor.

e. Other considerations

61. *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.[33] 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.[34] Although INT submits that the passage of time is a mitigating factor in this case, it notes that the passage of time did not adversely impact the Respondent's access to evidence or its ability to mount a meaningful defense because INT's investigations occurred while the Respondent's contracts were either ongoing or had only recently concluded. The Respondent contends that the lapse of a substantial amount of time from the alleged misconduct and from the time when INT appears to have begun its investigations until the initiation of these proceedings has affected the evidence available to the Respondent. It has also affected the

[33] 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).

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

ability of individuals to remember details of the relevant procurement processes. The Sanctions Board considers that significant mitigation is warranted in this case given that almost a decade has already passed since the misconduct occurred.

62. *Changes in management or corporate identity*: The Sanctions Board has previously applied mitigation when the record demonstrated a corporate restructuring or other changes in the respondent's management, particularly with respect to the individuals involved in the misconduct.[35] Here, the Respondent asserts that it has undergone substantial changes, including changes in the shareholder composition, corporate structure, and leadership. The Respondent explains that only two out of its 12 Spanish subsidiaries and three out of its 15 international subsidiaries were part of the corporate structure that existed at the time of the misconduct. The Respondent argues that, as a result, any sanction meted out would mostly affect subsidiaries and employees that bear no responsibility to the misconduct. INT agrees that the Respondent deserves mitigation for its corporate reorganizations and managerial changes, including its new corporate ownership and larger corporate structure. However, INT observes that the Sanctions Board articulated concerns in its decision in Sanctions Case No. 620 (Sanctions Board Decision No. 134) about the fact that a senior official involved in the misconduct in that case continues to hold a senior management position within the Respondent's corporate structure.

63. Based on the evidence on the record, the Sanctions Board finds that the Respondent's extensive corporate changes since the time of the misconduct warrant significant mitigation. The Sanctions Board ought to stress that the sanctionable practices in this case are egregious and could have been prevented if the Respondent had placed sufficient and robust internal controls throughout its corporate structure. However, the Sanctions Board considers the Respondent, as it presently exists, to be a vastly different corporate entity from what it was at the time of the misconduct. Moreover, unlike in Sanctions Board Decision No. 134, none of the Respondent's current senior management staff or employees had any direct involvement in the corrupt and collusive scheme. The record shows, and the parties agreed at the hearing, that the senior official identified in Sanctions Board Decision No. 134 had no awareness of the misconduct in the present case.

F. Determination of Appropriate Sanctions

64. Considering the full record and all the factors discussed above, the Sanctions Board determines and declares that the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, shall be placed under conditional non-debarment for a period of three (3) years and nine (9) months beginning from the date of this decision. The Sanctions Board underscores that the corruption and collusion in this case were of an egregious nature. Nonetheless, the record demonstrates numerous mitigating circumstances carrying substantial weight. In particular, the Sanctions Board recognizes the Respondent's minor role, its enhancements in its compliance program, the significant passage of time, and – most importantly

[35] See, e.g., Sanctions Board Decision No. 53 (2012) at para. 66; Sanctions Board Decision No. 66 (2014) at para. 49. See also Sanctions Board Decision No. 98 (2017) at para. 69 (applying some mitigation when a respondent firm filed for bankruptcy, was subsequently acquired by a holding company, and underwent changes in leadership and management practices).

– the considerable corporate transformation in the Respondent's structure and management from the time of the misconduct to the present proceedings. The Sanctions Board thus considers the sanction of conditional non-debarment to be fair and proportional, and the conditions stipulated below to be appropriate to promote integrity, accountability, and the objectives of the sanctions system. In accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, the Respondent shall be required to demonstrate within the prescribed period of non-debarment that it has (i) developed and implemented compliance measures designed to prevent, detect, investigate, and remediate the sanctionable practices for which it has been sanctioned, especially with respect to establishing internal controls throughout its corporate structure to prevent corrupt and collusive acts; and (ii) adopted and implemented a mechanism to provide guidance to its corporate group, including its employees, consultants, and other business partners, on its compliance measures in a manner satisfactory to the World Bank Group.

65. In the event that the Respondent fails to comply with these conditions within the prescribed period of non-debarment, the Respondent, together with said Affiliates, shall be automatically declared ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;[36] (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider[37] 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. The Respondent may be released from ineligibility after a minimum period of one (1) year, counted from the expiration of the period of non-debarment, only if it has demonstrated compliance with the conditions originally stipulated for non-debarment in Paragraph 64 above, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures. This ineligibility shall extend across the operations of the World Bank Group.

66. This sanction is imposed on the Respondent for corrupt and collusive practices as defined in Paragraph 1.23(a)(i) and (iii) of the January 2011 Consultant Guidelines.

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

[37] A nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider (different names are used depending on the particular bidding document) is one which has been: (i) included by the bidder in its prequalification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower. Sanctions Procedures at Section III.A, sub-paragraph 9.01(c)(ii), n.15.

Maria Vicien Milburn (Chair)

On behalf of the
World Bank Group Sanctions Board

Maria Vicien Milburn
Rabab Yasseen
Adedoyin Rhodes-Vivour
Eduardo Zuleta
Philip Daltrop

CORRIGENDUM

Date of issuance: March 7, 2024

1. Consistent with the World Bank Group Policy: Statute of the Sanctions Board, Section III.A, paragraph 11, the Sanctions Board Chair determines the correction of Sanctions Board Decision No. 142 (Sanctions Case No. 760) dated February 29, 2024, at the Sanctions Board's own initiative.

2. The Sanctions Board hereby removes extraneous language inadvertently included in Paragraph 65, in order to avoid suggesting eligibility for cross-debarment.* This correction neither alters the Sanctions Board's findings and determinations, nor affects the prescribed period of conditional non-debarment, which began on February 29, 2024.

Maria Vicien Milburn (Chair)

On behalf of the
World Bank Group Sanctions Board

Maria Vicien Milburn
Rabab Yasseen
Adedoyin Rhodes-Vivour
Eduardo Zuleta
Philip Daltrop

* The following sentence was deleted from Paragraph 65: "The Bank will also provide notice of the corresponding 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 the declaration of ineligibility with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and procedures." Footnote 38 to this sentence was also deleted, with the removal of the following language: "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))."