THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: October 26, 2017

Sanctions Board Decision No. 100[1]
(Sanctions Case No. 330)

IBRD Loan No. 4764-IN
India

Decision of the World Bank Group[2] Sanctions Board imposing a sanction of debarment with conditional release on the Respondent, together with certain Affiliates,[3] with a minimum period of ineligibility of two (2) years beginning from the date of this decision. This sanction is imposed on the Respondent for a fraudulent practice.

I. INTRODUCTION

1. The Sanctions Board met in a panel session on September 13, 2017, at the World Bank Group's headquarters in Washington, D.C., to review this case. The Sanctions Board was composed of J. James Spinner (Chair), Ellen Gracie Northfleet, and Catherine O'Regan.

2. A hearing was held on the same day at the request of the Respondent and in accordance with Article VI of the Sanctions Procedures. The World Bank Group's Integrity Vice Presidency ("INT") participated in the hearing through its representatives attending in person. The Respondent was represented by its managing director and outside counsel, also attending

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[1] Note from the World Bank's Legal Vice Presidency: On January 7, 2016, the World Bank Sanctions Procedures as adopted April 15, 2012 (the "Sanctions Procedures") were re-adopted and retrofitted as "Bank Procedure: Sanctions Proceedings and Settlements in Bank Financed Projects" (the "2016 Sanctions Procedures"). On June 28, 2016, the 2016 Sanctions Procedures were issued on the Policy and Procedure Repository of the World Bank. At the time of the issuance of the Notice of Sanctions Proceedings (the "Notice") to the respondent entity in Sanctions Case No. 330 (the "Respondent") on March 30, 2016, the applicable procedures made available to the Respondent were the Sanctions Procedures. The so-called "retrofit" of the sanctions framework, initiated in 2014, aimed at codifying and reconstructing the normative architecture of the World Bank's sanctions system. The structure and numbering of the sections and paragraphs under the 2016 Sanctions Procedures was changed, without affecting the content of the rules of the Sanctions Procedures applicable to this case.

[2] In accordance with Section 1.02(a) of 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 the guarantee operations of IBRD and IDA, but does not include the International Centre for the 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 1.01(a), n.1.

[3] Section 1.02(a) of the Sanctions Procedures defines "Affiliates" to include "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.

in person. The Sanctions Board deliberated and reached its decision based on the written record and the arguments presented at the hearing.

3. In accordance with Section 8.02(a) of the Sanctions Procedures, the written record for the Sanctions Board's consideration included the following:

i. Notice issued by the World Bank's Evaluation and Suspension Officer (the "EO")[4] to the Respondent on March 30, 2016, appending the Statement of Accusations and Evidence (the "SAE") presented to the EO by INT, dated December 22, 2015;

ii. Explanation submitted by the Respondent to the EO on August 23, 2016 (the "Explanation");

iii. Response submitted by the Respondent to the Secretary to the Sanctions Board on February 8, 2017 (the "Response");

iv. Reply submitted by INT to the Secretary to the Sanctions Board on April 11, 2017 (the "Reply");

v. Additional evidence submitted by the Respondent to the Secretary to the Sanctions Board on September 3, 2017 (the "Additional Evidence"); and

vi. INT's post-hearing comments on the Additional Evidence, submitted to the Secretary to the Sanctions Board on September 25, 2017.

4. On March 30, 2016, pursuant to Sections 4.01 and 4.02 of the Sanctions Procedures, the EO issued the Notice and temporarily suspended the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, from eligibility[5] with respect to any Bank-Financed Projects,[6] pending the final outcome of these sanctions proceedings. The Notice specified that the temporary suspension would apply across the operations of the World Bank Group. In addition, pursuant to Sections 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the EO recommended in the Notice debarment with conditional release for the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent. The EO recommended a minimum period of ineligibility of three (3) years, after which the Respondent may be released from ineligibility only if it has, in accordance with Section 9.03 of the Sanctions Procedures, demonstrated to the World Bank Group's Integrity

[4] Effective March 31, 2013, the EO's title changed to "IBRD/IDA Suspension and Debarment Officer" ("SDO"). For consistency with the Sanctions Procedures, this decision refers to the former title.

[5] The full scope of ineligibility effected by a temporary suspension is defined in the Sanctions Procedures at Sections 4.02(a) and 9.01(c), read together.

[6] The term "Bank-Financed Projects" encompasses any project or program financed by the Bank and governed by the Bank's Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines. The term "Bank-Financed Projects" includes activities financed through trust funds administered by the Bank to the extent governed by said Guidelines. Sanctions Procedures at Section 1.01(c)(i), n.3.

Compliance Officer that it has (i) taken appropriate remedial measures to address the sanctionable practices for which the Respondent has been sanctioned and (ii) adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank.

5. As provided by Section 5.01(a) of the Sanctions Procedures, a respondent may contest INT's allegations and/or the EO's recommended sanction within 90 days from the date on which the Notice is deemed to have been delivered to that respondent. Absent the Respondent's submission of a written response by the applicable due date[7] in this case, the EO issued a Notice of Uncontested Sanctions Proceedings and debarred the Respondent on October 24, 2016, pursuant to Section 4.04 of the Sanctions Procedures. On January 28, 2017, the Respondent informed the Sanctions Board Secretariat that it wished to contest the sanctions proceedings, requested a retroactive extension of time to file the Response, and set out the basis for its request for a retroactive extension. Upon the Sanctions Board Chair's grant of the Respondent's retroactive extension request on February 2, 2017, the EO removed the Respondent from the public debarment list and reinstated its temporary suspension pending the final outcome of these proceedings.

II. GENERAL BACKGROUND

6. This case arises in the context of the Lucknow-Muzaffarpur National Highway Project (the "Project"), which sought to "enable road users to benefit from an improved journey between Lucknow and Muzaffarpur" in the Republic of India. On November 18, 2005, IBRD entered into a loan agreement with India to provide US$620 million to support the Project (the "Loan Agreement"). On that same day, IBRD entered into a project agreement with the Project's implementation unit (the "PIU") setting out, inter alia, terms for the execution of the Project (the "Project Agreement"). The Project became effective on December 28, 2005, and closed on June 30, 2012.

7. On September 1, 2005, the PIU and the Respondent entered into a contract for works of civil engineering construction under the Project valued at the approximate equivalent of US$73 million (the "Contract"). The Contract provided that the Respondent may claim certain specified advances from the PIU, including materials advances, subject to the Respondent first meeting certain criteria. Pursuant to the Contract, the Respondent's work was overseen by a supervising engineer (the "Engineer"). The Engineer's duties included, inter alia, certifying the contents of the Respondent's Interim Payment Certificates ("IPCs"), which certification was necessary in order for the Respondent to receive materials advance payments from the PIU.

8. INT alleges that the Respondent engaged in fraudulent practices by falsifying expense claims in two of its IPCs and supporting those IPCs with forged documents.

III. APPLICABLE STANDARDS OF REVIEW

9. *Standard of proof*: Pursuant to Section 8.02(b)(i) of the Sanctions Procedures, the Sanctions Board determines whether the evidence presented by INT, as contested by a

[7] The Response was originally due on October 21, 2016.

respondent, supports the conclusion that it is "more likely than not" that the respondent engaged in a sanctionable practice. Section 8.02(b)(i) defines "more likely than not" to mean that, upon consideration of all the relevant evidence, a preponderance of the evidence supports a finding that the respondent engaged in a sanctionable practice.

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

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

12. *Applicable definition of fraudulent practice*: The Project Agreement provided that the World Bank's Guidelines: Procurement under IBRD Loans and IDA Credits (May 2004) (the "May 2004 Procurement Guidelines") would govern procurement for the Project. However, the Contract contained a definition of "fraudulent practice" identical to the definition in the World Bank's Guidelines: Procurement under IBRD Loans and IDA Credits (January 1995, revised January and August 1996, September 1997, and January 1999) (the "January 1999 Procurement Guidelines") – though the Contract did not refer to World Bank Group sanctions. Six days prior to the hearing, at the Sanctions Board Chair's instruction, the Sanctions Board Secretariat advised the parties in writing to be prepared to discuss at the hearing the question of the applicable definition of "fraudulent practice" in this case. Taking into account the parties' comments at the hearing, and in accordance with the Bank's legal framework applicable to sanctions, as well as considerations of equity, the Sanctions Board determines that the applicable definition in this case is the definition agreed between the PIU and the Respondent as governing the Contract.[8] Therefore, the alleged fraudulent practice in this case has the meaning set forth in the Contract which, consistent with Paragraph 1.15(a)(ii) of the January 1999 Procurement Guidelines, defines the term "fraudulent practice" as "a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Borrower." This definition does not include an explicit mens rea requirement such as the "knowing or reckless" standard adopted by the Bank from October 2006 onward.[9] However, the legislative history of the Bank's various definitions of "fraudulent practice" reflects that the October 2006 incorporation of the "knowing or reckless" standard was intended only to make explicit the pre-existing standard for mens rea, not to

[8] See Sanctions Board Decision No. 59 (2013) at para. 11.

[9] See, e.g., Guidelines: Procurement under IBRD Loans and IDA Credits (May 2004, rev. October 2006) at para. 1.14(a)(ii) (defining "fraudulent practice" as "any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation") (emphasis added).

articulate a new limitation.[10] Accordingly, the Sanctions Board has held that the "knowing or reckless" standard may be implied under the pre-October 2006 definitions.[11]

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

13. INT alleges that the Respondent engaged in fraudulent practices during the execution of the Contract by knowingly submitting false expense claims in two of its IPCs, i.e., IPC-9 and IPC-11. INT asserts that the Respondent overstated its claimed steel purchases in its IPC-9 advance request to the Engineer by at least INR8,908,184.27 (US$189,940), and supported the request with false invoices. According to INT, the purported issuer of those invoices (the "Purported Issuer") stated that it never issued ten of them and that another two were falsified duplicates of other invoices. INT further asserts that the Respondent's own records indicate that the Respondent overstated its claimed steel purchases in its IPC-11 advance request to the Engineer by at least INR7,432,486 (US$158,475), as supported with seven false invoices also ostensibly issued by the Purported Issuer. INT argues that the Respondent knowingly made the misrepresentations with the intent to receive advances from the government to which it was not entitled.

14. INT asserts the following as aggravating factors: (i) repeated pattern of conduct, (ii) sophisticated means, and (iii) misrepresentations made during INT's audit. According to INT, no mitigating factors apply to this case.

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

15. The Respondent raises a number of procedural and evidentiary issues. First, the Respondent asserts that the "recommendations to [the] Evaluation Officer are time barred." Second, the Respondent asserts that INT failed to provide certain exculpatory or mitigating evidence regarding the Respondent's purchase of steel from a specified manufacturer (the "Manufacturer"). Third, the Respondent argues that INT's investigation "suffers from the vice of failure of due process" and has prejudiced the Respondent's ability to mount a meaningful defense.

16. In response to INT's fraud allegations, the Respondent argues that none of the invoices submitted with IPC-9 are forged. Rather, the Respondent asserts that it inadvertently attached duplicate copies of ten invoices. According to the Respondent, the IPC-9 materials advance claim was comprised of 13 valid invoices, plus older steel stock for which it had not yet sought an advance. With respect to IPC-11, the Respondent argues that it only claimed steel purchases from the Manufacturer, not the Purported Issuer, and that attaching seven invoices from the Purported Issuer "was inadvertent and is of no consequence but are genuine." In addition, the Respondent contends that INT failed to discharge its initial burden of proof, asserting, inter alia, that "determinations by INT were *ex facie* made on the basis of conjectures and surmises," and

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[10] See Sanctions Board Decision No. 41 (2010) at para. 75.

[11] Id.

that there is no allegation that the "quality of the project" was substandard or that the quantity of steel "could not or has not been used in the project."

17. The Respondent disputes application of aggravating factors and asserts the following as mitigating factors: (i) minor role, (ii) internal action against responsible individual, (iii) compliance program, (iv) assistance and/or ongoing cooperation, (v) internal investigation, (vi) period of temporary suspension served, (vii) passage of time, (viii) absence of aggravating factors, and (ix) failure of due process and INT's bias.

C. INT's Principal Contentions in the Reply

18. INT does not specifically address the Respondent's assertion regarding time-barred claims. Regarding evidence of purchases from the Manufacturer, INT argues that this case involves the Respondent's false purchase claims from the Purported Issuer, and that other purchases from the Manufacturer are irrelevant. With respect to the Respondent's arguments in relation to INT's investigation, INT responds that the arguments are "unsupported, and often factually inaccurate, side matters." In addition, INT argues that the Respondent has attempted to "game the sanctions system" by attempting to improperly obtain a Bank-financed contract. According to INT, following the grant of the Respondent's retroactive extension request and its subsequent removal from the public debarment list, as discussed in Paragraph 5 above, the Respondent sought to have its bid for a Bank-financed contract evaluated by claiming its absence from the debarment list without disclosing its ongoing temporary suspension.

19. In support of its fraud allegations, INT asserts that the Respondent's explanation for its IPC-9 submission is contradicted by IPC-9 itself and is otherwise not compelling. INT further argues that the Respondent has not even attempted to demonstrate that the IPC-11 invoices ostensibly issued by the Purported Issuer are genuine, and that the Respondent deliberately submitted the seven false invoices to demonstrate claimed steel expenditures.

20. INT asserts that the following three aggravating factors apply to this case: (i) sophisticated means, (ii) misrepresentations during INT's audit, and (iii) attempt to improperly obtain a Bank-financed contract.

D. The Respondent's Additional Evidence

21. On September 3, 2017, ten days before the hearing scheduled in this case, the Respondent submitted a memorandum appending the Additional Evidence. In the memorandum, the Respondent requested authorization to submit the Additional Evidence into the record, arguing that certain attached evidence became available to the Respondent following submission of its Response; that these documents are material to the Respondent's defense; and that the documents should be authorized under Section 5.01(c) of the Sanctions Procedures "in the interests of justice, equity and fair play." In addition, the Respondent requested authorization to submit another set of documents appended as part of the Additional Evidence that it acknowledged "pertain[] to the period prior" to submission of the Response. According to the

Respondent, these documents "are necessary to respond to serious allegations made by INT" in the Reply.

E. Presentations at the Hearing

22. Six days prior to the hearing, at the Sanctions Board Chair's instruction, the Sanctions Board Secretariat advised the parties in writing to be prepared to address at the hearing the Respondent's request for authorization to submit the Additional Evidence into the record – noting that the Sanctions Board Chair would plan to make his determination on the request before proceeding to opening presentations. Consistent with this communication, the Sanctions Board Chair invited the parties' views regarding the admissibility of the Additional Evidence at the outset of the hearing. Having considered the parties' statements and the potential materiality of the evidence, the Sanctions Board Chair determined, in consultation with the other members of the Sanctions Board panel, that the Additional Evidence would be admitted into the record; that the parties would be permitted to address the contents of the Additional Evidence at the hearing; and that INT would be permitted to submit written arguments in response to the Additional Evidence after the hearing.

23. In its presentation, INT reiterated its allegation that the Respondent engaged in fraud by claiming and receiving materials advances based on false purchase claims. INT argued that the Purported Issuer's denials of authenticity demonstrate that the IPC-9 claim was false and that the Respondent's own records show that the IPC-11 claim was false. According to INT, the Respondent's fraud was knowing, as the IPCs were supported by forged documents and "forgery never happens through negligence." Regarding sanctions, INT argued that little to no mitigation is warranted for the Respondent's asserted compliance program because the Respondent has not produced sufficient documentary evidence thereof. INT accepted that passage of time is a mitigating factor. In addition, INT argued that documents submitted by the Respondent as part of the Additional Evidence demonstrate that the Respondent was intentionally attempting to improperly obtain a Bank-financed contract.

24. The Respondent conceded that the IPCs in question contained misrepresentations, but argued that the misrepresentations were due to negligence. In his statement, the Respondent's managing director asserted that the documents in question were not forged and that there was no fraudulent intent. The Respondent focused its presentation on sanctioning factors, arguing that the recommended sanction is disproportionate in light of mitigating circumstances. The Respondent disputed application of aggravating factors and set out arguments in support of its request for mitigation for the period of temporary suspension served, passage of time, cooperation, and its compliance program. Regarding its compliance program, the Respondent argued that the documentary evidence it submitted is sufficient and should be assessed against standards for such programs in India and not the United States of America. With respect to the alleged improper attempt to obtain a Bank-financed contract, the Respondent argued that there was no such attempt as it made appropriate disclosures to the Bank.

F. INT's Principal Contentions in Its Post-Hearing Comments on the Additional Evidence

25. Pursuant to the Sanctions Board Chair's determination at the hearing, INT submitted post-hearing comments on the Additional Evidence. In its comments, INT challenges the timeliness of the Respondent's submission of certain evidence that compose the Additional Evidence. In addition, INT argues that, even with the materials now in the record, it remains more likely than not that the Respondent committed a fraudulent practice by submitting false materials advance claims, supported by falsified documents. INT further argues that the Additional Evidence does not rebut the aggravating factors raised by INT, or support additional mitigating credit.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

26. The Sanctions Board will first address the procedural and evidentiary issues raised by the Respondent. The Sanctions Board will then consider whether it is more likely than not that the Respondent engaged in the alleged fraudulent practices. Finally, the Sanctions Board will determine what sanctions, if any, should be imposed on the Respondent.

A. Procedural and Evidentiary Issues

1. Determination on the Respondent's arguments regarding time-barred claims

27. The Respondent asserts in the Explanation that INT's "recommendations" to the EO are time-barred because INT did not commence the proceedings against the Respondent within one year of the Respondent's "reply to the show cause Notice." However, at the hearing, the Respondent conceded that there is no legal basis for this assertion. Indeed, the Respondent's assertion does not have merit in light of the applicable statute of limitations for sanctions cases. Section 4.01(d)(i) of the Sanctions Procedures provides that, for cases brought under the Bank's Procurement or Consultant Guidelines, sanctions proceedings shall be closed if they involve a sanctionable practice "in connection with a contract the execution of which was completed more than ten (10) years prior to the date on which the [SAE] was submitted to the [EO]." Here, the record reflects that INT submitted the SAE to the EO on December 22, 2015, and that the Respondent continued to implement the Contract through at least July 2008 when it submitted IPC-11 to the Engineer – thus revealing that the SAE was submitted within the prescribed statute of limitations.

2. Determination on the Respondent's argument regarding exculpatory or mitigating evidence

28. As noted in Paragraph 15 above, the Respondent asserts that INT failed to provide certain exculpatory or mitigating evidence regarding the Respondent's purchase of steel from the Manufacturer. INT responds that this case involves the Respondent's false purchase claims from the Purported Issuer, and that other purchases from the Manufacturer are irrelevant. Section 3.02 of the Sanctions Procedures provides that "INT shall present all relevant evidence

in INT's possession that would reasonably tend to exculpate the Respondent or mitigate the Respondent's culpability." Considering the parties' arguments and the totality of the record, the Sanctions Board finds that evidence of the Respondent's steel purchases from the Manufacturer is not materially relevant to the allegations raised in this case, and that such evidence does not fall within the scope of Section 3.02. Moreover, it may be expected that evidence of the Respondent's own purchases from the Manufacturer would be in the Respondent's possession. As the Sanctions Board has previously observed, "[t]he sanctions process as designed permits respondents to submit exculpatory evidence that may not have been gathered by INT in its investigation."[12]

3. Determination on the Respondent's arguments regarding INT's investigation

29. The Respondent argues that INT's investigation "suffers from the vice of failure of due process" and has prejudiced the Respondent's ability to mount a meaningful defense. In support of this argument, the Respondent makes a number of assertions, including that INT has not furnished transcripts of its interviews with numerous employees; that INT failed to interview the Respondent's managing director despite his material involvement in the underlying facts at issue; and that two interviewees "confirmed that to the best of their knowledge and belief, the summary record is not correct in material particulars." With respect to the asserted unfurnished transcripts of interviews and INT's asserted failure to interview the Respondent's managing director, the Sanctions Board notes that the sanctions framework provides no right to discovery and does not give the Sanctions Board the mandate to compel INT to seek out evidence.[13] Regarding the records of interview challenged as inaccurate, the Sanctions Board takes into account in determining the appropriate weight to be accorded such evidence that summary records of interview lack the intrinsic accuracy of verbatim transcripts, particularly where – as here – there is no indication that the interviewees were given the opportunity to review the summary to attest as to its basic accuracy.[14] The Sanctions Board thus takes this factor into consideration when weighing the probative value of the records of interview that the Respondent challenges.

30. In light of the above, and considering the record as a whole, the Sanctions Board finds the totality of the evidence sufficient to determine the Respondent's potential liability, and finds no unfairness or fundamental procedural flaw in relation to INT's investigation that affected the Respondent's ability to mount a meaningful response to INT's allegations. In addition, the Sanctions Board notes that it primarily bases its factual findings in the analysis that follows on the documentary evidence in the record, rather than on any of the transcripts or records of interviews.

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[12] Sanctions Board Decision No. 78 (2015) at para. 49.

[13] See Sanctions Procedures at Section 7.03.

[14] See, e.g., Sanctions Board Decision No. 50 (2012) at para. 40; Sanctions Board Decision No. 65 (2014) at para. 34.

B. Evidence of Fraudulent Practices

31. In accordance with the definition of fraudulent practice under the January 1999 Procurement Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondent (i) made a misrepresentation of facts (ii) that was knowing or reckless (iii) in order to influence a procurement process or the execution of a contract (iv) to the detriment of the Borrower.

1. Misrepresentation of facts

32. At the hearing, the Respondent conceded that IPC-9 and IPC-11 contained misrepresentations, admitting that invoices attached to those IPCs were false. Consistent with the Respondent's concession at the hearing, the record supports a finding that the Respondent's employees submitted false steel claims. With respect to IPC-9, the record reveals that the Respondent claimed 17 steel purchases from the Purported Issuer and supported those claims with 17 invoices. However, in a written statement, the Purported Issuer identified ten of the invoices as "false invoice[s]" – stating that nine of the invoices were "never issued by [the Purported Issuer]" and that one of the invoices was issued to the Respondent but that "value/date/amt does not match." In addition, the Purported Issuer identified other invoices as duplicates of authentic invoices. Regarding IPC-11, the Respondent claimed seven steel purchases from the Purported Issuer and attached seven invoices in support of the claims. However, none of the Respondent's accounting records reflects the purchases as set out in IPC-11 and the attached invoices.

33. Considering the Respondent's concession at the hearing and the evidence discussed above, the Sanctions Board finds that employees of the Respondent misrepresented the Respondent's steel purchases in IPC-9 and IPC-11 so as to satisfy the first element of fraudulent practice.

2. Made knowingly or recklessly

34. INT alleges that the Respondent acted knowingly in misrepresenting the Respondent's steel purchases in IPC-9 and IPC-11. 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.[15]

35. The totality of the evidence supports a finding that it is more likely than not that the Respondent's employees knew that the steel purchases claimed in IPC-9 and IPC-11 were false. Under the terms of the Contract, the Respondent was required to maintain contemporary records of its expenses, such as invoices, for review by the Engineer in order to receive payment for any materials advance claims. Considering this record-keeping obligation, it may be expected that the Respondent's employees knew or should have known what expenses the company had and had not incurred, and which invoices it had and had not received. As discussed in Paragraph 32

[15] Sanctions Procedures at Section 7.01.

above, the Purported Issuer identified ten of the invoices attached to IPC-9 as false invoices and others as duplicate invoices. As also discussed above, the Respondent's own records do not reflect the claimed purchases from the Purported Issuer as set out in IPC-11. In addition, each of the seven IPC-11 invoices matches one of the IPC-9 invoices in quantity and/or total price – differing only in invoice number and date. At the hearing, the Respondent conceded that it is improbable that steel quantity in any two invoices would be identical, given the way that steel quantity is measured. Thus, the matching quantities, coupled with the unique invoice numbers, indicates that employees of the Respondent used the false IPC-9 invoices as the basis for creating the IPC-11 invoices.

36. The evidence discussed above is sufficient to support a finding that it is more likely than not that the invoices in question were forged, and that the Respondent's employees therefore knew that they were making misrepresentations when they claimed steel purchases based on those invoices.

3. In order to influence the execution of a contract

37. The Sanctions Board has found evidence of intent to influence the execution of a contract where a misrepresentation was material to a respondent's remuneration under the contract.[16] Here, the Contract provided that the Engineer's certification of the contents of the Respondent's IPCs was necessary in order for the Respondent to receive payment for materials advance claims. Pursuant to this provision of the Contract, the Respondent's employees submitted the IPCs containing misrepresentations to the Engineer for certification. On the basis of this record, the Sanctions Board finds that it is more likely than not that the Respondent's employees misrepresented the Respondent's claimed steel purchases in order to influence the execution of the Contract, i.e., with the intent to facilitate the Respondent's receipt of materials advances. In addition, the Sanctions Board rejects the Respondent's argument that this element has not been established because INT did not prove that any wrongful gain accrued to the Respondent. The applicable definition of fraudulent practice in this case does not require that a respondent wrongfully accrued a benefit.

4. To the detriment of the Borrower

38. The Sanctions Board has previously held in the procurement context that detriment to a borrowing country may include intangible as well as tangible or quantifiable harms, such as where a respondent's use of forged documents served to distort the selection process or caused the borrower to expend resources to review and evaluate an invalid bid.[17] Here, the record reveals that the Respondent's use of the IPCs containing false information caused the PIU to expend resources reviewing the Respondent's fraudulent advance payment requests, resulted in the PIU paying advances to a fraudulent contractor, and exposed the PIU to risk of potential financial harm. The Sanctions Board finds that the element of detriment has been established in these circumstances.

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[16] See, e.g., Sanctions Board Decision No. 83 (2015) at para. 63.

[17] See, e.g., Sanctions Board Decision No. 73 (2014) at para. 34.

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

39. In past cases, the Sanctions Board has concluded that an employer could be found liable for the acts of its employees under the doctrine of respondeat superior, considering in particular whether the employees acted within the course and scope of their employment, and were motivated, at least in part, by the intent of serving their employer.[18]

40. In the present case, the record supports a finding that employees of the Respondent engaged in the fraudulent practice in accordance with the scope of their duties and with the purpose of serving the interests of the Respondent. For instance, the record indicates that the Respondent's project manager submitted IPC-9 and IPC-11 – which included the misrepresentations – to the Engineer for certification. There is no indication in the record that the project manager submitted the IPCs for any purpose other than serving the Respondent, i.e., to facilitate the Respondent's receipt of materials advances. Moreover, the Respondent does not present, and the record does not provide any basis for, a rogue employee defense. Thus, the Sanctions Board finds the Respondent liable for the fraudulent practice carried out by its employees.

D. Sanctioning Analysis

1. General framework for determination of sanctions

41. Where the Sanctions Board determines that it is more likely than not that a respondent engaged in a sanctionable practice, Section 8.01(b) 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 9.01. The range of sanctions set out in Section 9.01 includes: (i) reprimand, (ii) conditional non-debarment, (iii) debarment, (iv) debarment with conditional release, and (v) restitution or remedy. As stated in Section 8.01(b) of the Sanctions Procedures, the Sanctions Board is not bound by the EO's recommendations.

42. 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.[19] 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.[20]

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

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

[19] See Sanctions Board Decision No. 40 (2010) at para. 28.

[20] Sanctions Board Decision No. 44 (2011) at para. 56.

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.

44. Should the Sanctions Board impose a sanction on a respondent, it may also, pursuant to Section 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

45. Section 9.02(a) of the Sanctions Procedures requires the Sanctions Board to consider the severity of the misconduct in determining the appropriate sanction. Section IV.A of the Sanctioning Guidelines identifies a repeated pattern of conduct and sophisticated means as examples of severity.

46. *Repeated pattern of conduct*: In assessing potential aggravation for a repeated pattern of conduct, the Sanctions Board has previously considered the number and variety of false documents submitted,[21] and whether the evidence reflected a single scheme or course of action with respect to the misconduct.[22] The Sanctions Board applies aggravation for repetition in this case, as the record reflects that the Respondent submitted two IPCs containing false information over the course of approximately three months, and attached numerous forged invoices to those IPCs.

47. *Sophisticated means*: Section IV.A.2 of the Sanctioning Guidelines states that this factor may include "the complexity of the misconduct (*e.g.*, degree of planning, diversity of techniques applied, level of concealment); the number and type of people or organizations involved; whether the scheme was developed or lasted over a long period of time; [and] if more than one jurisdiction was involved." In assessing potential aggravation under this factor, the Sanctions Board has previously considered the level of "forethought and planning" evident in the misconduct.[23] The record indicates that the Respondent's employees submitted two false IPCs and supported the IPCs with forged invoices purportedly issued by the same steel manufacturer.

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[21] See, e.g., Sanctions Board Decision No. 68 (2014) at para. 37 (applying aggravation where the respondent submitted forged bid securities, tailored to two separate bids for two Bank-financed contracts under the same project).

[22] See Sanctions Board Decision No. 63 (2014) at para. 97 (declining to apply aggravation where the respondents' corrupt payments were made "pursuant to a single scheme"); Sanctions Board Decision No. 79 (2015) at para. 39 (declining to apply aggravation where the respondent included the same false document in several bid packages for contracts under the same project, which bid packages appear 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).

[23] See Sanctions Board Decision No. 69 (2014) at para. 33 (applying aggravation where the respondent's misrepresentations included different types of forged official documents clearly drafted in an effort to avoid detection); Sanctions Board Decision No. 77 (2015) at para. 49 (applying aggravation where the respondent's deceptive documents were highly detailed).

The Sanctions Board does not find that the fraudulent scheme was so sophisticated or complex as to warrant aggravation on this ground.

b. Interference with investigation

48. Section 9.02(c) of the Sanctions Procedures requires the Sanctions Board to consider any interference by the sanctioned party in the Bank's investigation. Under Section IV.C.1 of the Sanctioning Guidelines, interference with the investigative process includes "making false statements to investigators in order to materially impede a Bank investigation" and "acts intended to materially impede the exercise of the Bank's contractual rights of audit or access to information." INT asserts that the Respondent made misrepresentations to INT during the audit, and supported the misrepresentations with false accounting records. However, INT has not established that the asserted misrepresentations were intended to impede its investigation or audit. Indeed, INT concedes that the Respondent's "alteration of its accounting records is not, itself, an aggravating factor, as INT lacks evidence that the modifications were made to specifically stymie INT's audit and investigation." The Sanctions Board thus finds no basis in the record to support aggravation under this factor.

c. Minor role

49. Section 9.02(e) of the Sanctions Procedures provides for mitigation "where the sanctioned party played a minor role in the misconduct." The Respondent seeks mitigation under this factor. The Sanctions Board has previously observed that "a respondent bears the burden to show affirmatively that no one with decision-making authority participated in, condoned, or was willfully ignorant of the misconduct."[24] The Respondent has not carried this burden, considering in particular that the Respondent fails to point to specific evidence in support of its assertion and acknowledges "the material involvement of the Managing Director . . . in the underlying facts at issue." Accordingly, the Sanctions Board declines to apply mitigation on this basis.

d. Voluntary corrective action

50. Section 9.02(e) of the Sanctions Procedures provides for mitigation where a sanctioned party 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.[25]

51. *Internal action against responsible individual*: Section V.B.2 of the Sanctioning Guidelines states that mitigation may be appropriate where "[m]anagement takes all appropriate measures to address the misconduct engaged in on its behalf, including taking appropriate

[24] Sanctions Board Decision No. 71 (2014) at para. 91.

[25] See, e.g., Sanctions Board Decision No. 63 (2014) at para. 104.

disciplinary and/or remedial steps with respect to the relevant employee, agent, or representative." The Sanctions Board has previously declined to apply mitigation based on internal action against responsible staff where the respondent failed to substantiate its stated measures.[26] In the present case, the Respondent asserts that after it was put on notice of the allegations against it, the Respondent "removed the person from the services of the Company" and that "[o]n recommendations of external committee in another project, proceedings were held and an employee censured for recklessness in January 2017." The Sanctions Board does not find mitigation warranted under this factor, considering in particular that the Respondent does not provide evidence of the removal or censure, and the record does not otherwise provide a basis for determining whether any such actions were in response to the misconduct concerned.

52. *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 Respondent seeks mitigation on this ground, asserting that its counsel in these proceedings has formulated for the Respondent "a comprehensive corporate compliance program and written integrity policy," and that it held a training and education program on the measures. The Sanctions Board has previously granted mitigation on this ground where a respondent's asserted compliance measures appeared to address the types of misconduct at issue and/or at least some of the elements set out in the World Bank Group's Integrity Compliance Guidelines.[27] Conversely, the Sanctions Board has declined to apply mitigation where the record did not reflect implementation of the asserted compliance measures,[28] or where the asserted voluntary corrective actions would not appear to prevent or address the type of misconduct at issue.[29] Here, the only documentary evidence of the Respondent's asserted compliance program is an approximately six-page document titled "Integrity Compliance Program," which does not adequately address the type of misconduct in this case. Consistent with past precedent,[30] the Sanctions Board finds that mitigation is not warranted on this ground.

e. Cooperation

53. Section 9.02(e) of the Sanctions Procedures provides for mitigation where a respondent "cooperated in the investigation or resolution of the case." Sections V.C. of the Sanctioning Guidelines identifies a respondent's assistance with INT's investigation and an internal investigation as examples of cooperation.

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[26] See, e.g., Sanctions Board Decision No. 44 (2011) at paras. 71-72, Sanctions Board Decision No. 95 (2017) at para. 45.

[27] See, e.g., Sanctions Board Decision No. 94 (2017) at para. 46.

[28] See, e.g., Sanctions Board Decision No. 92 (2017) at para. 118.

[29] See, e.g., Sanctions Board Decision No. 90 (2016) at para. 42.

[30] See, e.g., Sanctions Board Decision No. 75 (2014) at para. 31 (declining to apply mitigation where the respondent provided no evidence that the asserted compliance measures were implemented).

54. *Assistance and/or ongoing cooperation*: Section V.C.1 of the Sanctioning Guidelines states that cooperation may take the form of assistance to INT's investigation or ongoing cooperation, with consideration of "INT's representation that the respondent has provided substantial assistance in an investigation," as well as "the truthfulness, completeness, reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of assistance." The Sanctions Board has previously granted mitigation where, for example, a respondent's managers met with INT on several occasions and provided relevant information,[31] or corresponded with INT and made relevant personnel available for interviews.[32] The Respondent seeks mitigation under this factor. The record includes INT's records of interview with numerous employees of the Respondent and documents internal to the Respondent. These documents include inculpatory evidence as relied upon by INT in the SAE. The Sanctions Board finds that some mitigation is warranted for the Respondent in these circumstances.

55. *Internal investigation*: Section V.C.2 of the Sanctioning Guidelines refers to cooperation where a respondent has "conducted its own, effective internal investigation of the misconduct and relevant facts relating to the misconduct for which it is to be sanctioned and shared results with INT." The Sanctions Board has previously declined to apply mitigation under this factor where the respondent did not provide any evidence or details of its asserted internal investigation.[33] In the present case, the Respondent asserts that it "made extensive investigation as to how duplicate Invoices were filed." However, the Respondent did not provide documentation to corroborate its asserted internal investigation. Accordingly, the Sanctions Board declines to apply mitigation on this basis.

f. Period of temporary suspension

56. Pursuant to Section 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account that the Respondent has been temporarily suspended since the EO's issuance of the Notice on March 30, 2016.

g. Other considerations

57. Under Section 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."

58. *Absence of remorse and failure to respect the sanctions process*: The record supports INT's assertion that the Respondent attempted to improperly obtain a Bank-financed contract by claiming its removal from the debarment list without disclosing its temporary suspension. The Sanctions Board carefully considered the Respondent's arguments on this matter, but finds that the Respondent's conduct demonstrates a lack of genuine remorse or acknowledgment of

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[31] Sanctions Board Decision No. 53 (2012) at para. 58.

[32] See Sanctions Board Decision No. 56 (2013) at para. 73; Sanctions Board Decision No. 79 (2015) at para. 48.

[33] See Sanctions Board Decision No. 74 (2014) at para. 43.

the inappropriateness of the fraudulent misconduct at issue in this case. Accordingly, the Sanctions Board finds that some aggravation is warranted for the Respondent on this basis.

59. *Period of debarment already served*: As noted in Paragraph 5 above, the Respondent was publicly debarred from October 24, 2016, to February 2, 2017. Consistent with past precedent,[34] the Sanctions Board considers the period of debarment already served to be a mitigating factor.

60. *Passage of time*: The Sanctions Board has previously considered as a mitigating factor the passage of a significant period of time from the commission of the misconduct, or from the Bank's awareness of the potential sanctionable practices, to the initiation of sanctions proceedings.[35] 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.[36] At the time of the EO's issuance of the Notice in March 2016, approximately eight years had elapsed since the Respondent submitted the IPCs in question. The Sanctions Board finds that mitigation is warranted in these circumstances.

61. *Absence of aggravating factors*: The Respondent seeks mitigation based on the asserted absence of the following aggravating factors: (i) severity of misconduct, (ii) magnitude of harm, (iii) interference with INT's investigation, and (iv) past history of adjudicated misconduct. Consistent with past precedent,[37] the Sanctions Board finds the absence of potential aggravating factors as a neutral fact rather than as grounds for mitigation.

62. *Failure of due process and INT's bias*: The Respondent raises asserted failure of due process in the investigation and INT's purported bias as additional considerations in determining any sanction. While the way in which an investigation is conducted by INT may, in certain circumstances, inform the Sanctions Board's consideration of the credibility, weight, and sufficiency of the evidence in a sanctions case, Section 9.02 of the Sanctions Procedures does not provide for the consideration of INT's conduct in the determination of an appropriate sanction.[38] Moreover, the Sanctions Board notes that the Respondent had numerous

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[34] See Sanctions Board Decision No. 68 (2014) at para. 46; Sanctions Board Decision No. 91 (2016) at para. 48.

[35] See, e.g., Sanctions Board Decision No. 50 (2012) at para. 71 (applying mitigation where sanctions proceedings were initiated approximately five years after the Bank's awareness of the potential sanctionable practices); Sanctions Board Decision No. 63 (2014) at para. 116 (applying mitigation to multiple respondents where sanctions proceedings were initiated more than five (and up to nine) years after the misconduct, and more than five (and up to eight) years after the Bank's awareness of the potential sanctionable practices); Sanctions Board Decision No. 68 (2014) at para. 47 (applying mitigation where sanctions proceedings were initiated more than four and a half years after the sanctionable practices had occurred and more than four years after the Bank had become aware of the potential misconduct).

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

[37] See, e.g., Sanctions Board Decision No. 73 (2014) at para. 45.

[38] See Sanctions Board Decision No. 71 (2014) at para. 104; Sanctions Board Decision No. 87 (2016) at para. 156; Sanctions Board Decision No. 93 (2017) at para. 105.

opportunities to be heard and present arguments and evidence, including by filing an Explanation, Response, and other submissions during the course of these proceedings, and making oral presentations at the hearing. Accordingly, on the record presented, the Sanctions Board does not find that INT's conduct or any other aspect of the proceedings compromised the Respondent's ability to mount a meaningful response to the allegations presented. The Sanctions Board declines to afford any mitigating credit in these circumstances.

E. Determination of Liability and Appropriate Sanction

63. Considering the full record and all the factors discussed above, the Sanctions Board determines that the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, shall be, and hereby declares that it is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;[39] (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider[40] 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 Project, provided, however, that after a minimum period of ineligibility of two (2) years beginning from the date of this decision, the Respondent may be released from ineligibility only if it has, in accordance with Section 9.03 of the Sanctions Procedures, (i) taken appropriate remedial measures to address the sanctionable practice for which the Respondent has been sanctioned and (ii) adopted and implemented an effective integrity compliance program in a manner satisfactory to the World Bank Group. This ineligibility shall extend across the operations of the World Bank Group. This sanction is imposed on the Respondent for a fraudulent practice as defined in Paragraph 1.15(a)(ii) of the January 1999 Procurement Guidelines.

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[39] A respondent's ineligibility to be awarded a contract includes, without limitation (i) applying for prequalification, expressing interest in a consultancy, and bidding, either directly or as a nominated sub-contractor, consultant, manufacturer or supplier, or 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 9.01(c)(i), n.16.

[40] A nominated sub-contractor, consultant, manufacturer or supplier, or 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 9.01(c)(ii), n.17.

64. The Bank will also provide notice of this declaration of ineligibility to the other multilateral development banks ("MDBs") that are party to the Agreement for Mutual Enforcement of Debarment Decisions (the "Cross-Debarment Agreement") so that they may determine whether to enforce the declaration of ineligibility with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and procedures.[41]

J. James Spinner (Chair)

On behalf of the
World Bank Group Sanctions Board

J. James Spinner
Ellen Gracie Northfleet
Catherine O'Regan

[41] 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 external website (http://go.worldbank.org/B699B73Q00).