

Date of issuance: June 13, 2018

**Sanctions Board Decision No. 112  
(Sanctions Case No. 454)**

**IDA Credit No. 4869-UZ  
Uzbekistan**

**Decision of the World Bank Group<sup>1</sup> Sanctions Board imposing (i) a sanction of debarment with conditional release on a respondent entity in Sanctions Case No. 454 (the “First Respondent Firm”), together with certain Affiliates,<sup>2</sup> for a minimum period of four (4) years and nine (9) months beginning from the date of this decision; and (ii) a sanction of debarment with conditional release on a second respondent entity in Sanctions Case No. 454 (the “Second Respondent Firm”), together with certain Affiliates, for a minimum period of four (4) years and nine (9) months, also beginning from the date of this decision. These sanctions are imposed on the First Respondent Firm and the Second Respondent Firm (together, the “Respondents”) for fraudulent and collusive practices.**

**I. INTRODUCTION**

1. The Sanctions Board met in panel sessions in March and May 2018, 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 March 16, 2018, following requests from the First Respondent Firm and the World Bank Group’s Integrity Vice Presidency (“INT”), and in accordance with Section III.A, paragraph 6 of the Sanctions Procedures. INT participated in the hearing through its representatives, all attending in person. The Respondents were each represented by outside counsel, all attending 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 III.A, sub-paragraph 8.02(a) of the Sanctions Procedures, the written record for the Sanctions Board’s consideration included the following:

- i. Notice of Sanctions Proceedings issued by the World Bank’s Suspension and Debarment Officer (the “SDO”) to the Respondents on March 8, 2017 (the “Notice”),

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<sup>1</sup> In accordance with Section II(y) of the World Bank Procedure: Sanctions Proceedings and Settlements in Bank Financed Projects, issued by the World Bank 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 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 II(x).

<sup>2</sup> Section II(a) of the Sanctions Procedures defines “Affiliates” as “any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank.” The sanctions imposed by this decision apply only to those Affiliates that are directly or indirectly controlled by either of the Respondents. See *infra* Paragraph 58.

- appending the Statement of Accusations and Evidence (the “SAE”) presented to the SDO by INT, dated October 6, 2016;
- ii. Explanations submitted by each of the Respondents to the World Bank’s Alternate Suspension and Debarment Officer (the “Alternate SDO”) <sup>3</sup> on June 13, 2017;
  - iii. Responses submitted by each of the Respondents to the Secretary to the Sanctions Board on August 15, 2017;
  - iv. Reply submitted by INT to the Secretary to the Sanctions Board on October 6, 2017 (the “Reply”);
  - v. Corrections and revisions to evidence submitted by INT in May 2017, February 2018, and March 2018; and
  - vi. Post-hearing submissions filed by the parties in April 2018.

4. Pursuant to Section III.A, paragraph 2 of the Sanctions Procedures, which provides for early temporary suspension prior to sanctions proceedings in certain circumstances, the SDO temporarily suspended the First Respondent Firm on October 7, 2015, and the Second Respondent Firm on October 19, 2015, from eligibility<sup>4</sup> with respect to any Bank-Financed Projects.<sup>5</sup> The temporary suspensions applied across the operations of the World Bank Group and also extended to any entity that is an Affiliate directly or indirectly controlled by either of the Respondents. On October 7, 2016, the SDO informed the parties and the Sanctions Board that INT had submitted the SAE and the Respondents’ temporary suspensions were therefore automatically extended, pending the final outcome of these sanctions proceedings pursuant to Section III.A, sub-paragraphs 2.04(b) and 4.02 of the Sanctions Procedures.

5. On March 8, 2017, pursuant to Section III.A, sub-paragraphs 4.01, 9.01, and 9.04 of the Sanctions Procedures, the SDO issued the Notice and recommended debarment with conditional release for each of the Respondents, together with any entity that is an Affiliate directly or indirectly controlled by either of the Respondents. For the First Respondent Firm, the SDO recommended a minimum period of ineligibility of three (3) years and eleven (11) months, after which period it 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 an effective integrity compliance program in a manner satisfactory to the Bank. For the Second Respondent Firm, the SDO recommended a minimum period of ineligibility of four (4) years, after which period it may be

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<sup>3</sup> See World Bank Directive: Sanctions for Fraud and Corruption in Bank Financed Projects, issued by the World Bank on June 28, 2016, at Section III.A, sub-paragraph 2(ii).

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

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

released from ineligibility only if it has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, demonstrated to 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 an effective integrity compliance program in a manner satisfactory to the Bank.

## **II. GENERAL BACKGROUND**

6. This case arises in the context of the Syrdarya Water Supply Project (the “Project”) in Uzbekistan. The Project sought to improve public water supply services in select districts of the Syrdarya region. On September 16, 2011, IDA and the Republic of Uzbekistan (the “Borrower”) entered into a financing agreement (the “Financing Agreement”) to provide the equivalent of approximately US\$88 million for the Project. The Project became effective on January 14, 2012, and is expected to close on June 30, 2019.

7. The Financing Agreement identified a government agency as responsible for Project coordination (the “PCU”) and tasked a specific unit within that agency with implementation of the Project (the “PIU”). On June 26, 2014, the PCU issued an invitation for bids (the “IFB”) and bidding documents (the “Bidding Documents”) for a contract to complete certain construction works under the Project (the “Contract”). On August 19, 2014, the Respondents submitted their respective bids (the “Bids”) to the PCU. On the same day, the First Respondent Firm reportedly submitted a correction of its bid, which was accepted by the PCU. The PIU issued its bid evaluation report in September 2014, recommending award of the Contract to the Second Respondent Firm. The Contract was signed on November 20, 2014, valued at the equivalent of approximately US\$10 million.

8. INT alleges that the Respondents engaged in fraudulent practices with respect to educational credentials included in their Bids on the Contract. INT also alleges that the Respondents engaged in collusive practices by jointly preparing their Bids with knowledge of each other’s prices.

## **III. APPLICABLE STANDARDS OF REVIEW**

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

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

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

12. *Applicable definitions of fraudulent and collusive practices:* The Financing Agreement provided that the World Bank's Guidelines: Procurement under IBRD Loans and IDA Credits (May 2004, revised October 1, 2006, and May 1, 2010) would govern procurement under the Project. However, the IFB and the Bidding Documents identified the World Bank's Guidelines: Procurement of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits and Grants by World Bank Borrowers (January 2011) (the "January 2011 Procurement Guidelines") as applicable, and included definitions of "fraudulent practice" and "collusive practice" that appear in the same Guidelines. Consistent with the Bank's legal framework applicable to sanctions, as well as considerations of equity, the standards applicable in the event of such a conflict shall be those agreed between the borrowing or recipient country and the respondent as governing the particular contract at issue, rather than the standards agreed between the borrowing or recipient country and the Bank.<sup>6</sup> Therefore, the alleged fraudulent and collusive practices in this case have the meanings set forth in the January 2011 Procurement Guidelines.

- i. Paragraph 1.16(a)(ii) of these Guidelines defines the term "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." For the purpose of this definition, the term "party" refers to a public official; the terms "benefit" and "obligation" relate to the procurement process or contract execution; and the "act or omission" is intended to influence the procurement process or contract execution.<sup>7</sup>
- ii. Paragraph 1.16(a)(iii) of these 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." For the purpose of this definition, the term "parties" refers to participants in the procurement process (including public officials) who attempt to simulate competition or to establish bid prices at artificial, non-competitive levels; or who are privy to each other's bid prices or other conditions.<sup>8</sup>

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

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

13. INT alleges that the Respondents engaged in fraudulent and collusive practices. In its allegations of fraudulent practices, INT asserts that each of the Respondents knowingly or recklessly misrepresented the educational credentials of dozens of proposed personnel who were listed in required portions of the Respondents' respective Bids on the Contract. With respect to its allegations of collusion, INT argues that the Respondents jointly prepared their Bids with knowledge of one another's bid prices so as to simulate competition while improving the Second Respondent Firm's chances of selection. INT states that multiplicity of sanctionable practices warrants aggravation for both Respondents. INT argues that additional aggravation should be applied to the First Respondent

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<sup>6</sup> See Sanctions Board Decision No. 59 (2013) at para. 11.

<sup>7</sup> January 2011 Procurement Guidelines at Paragraph 1.16(a)(ii), n.21.

<sup>8</sup> January 2011 Procurement Guidelines at Paragraph 1.16(a)(iii), n.22.

Firm for attempted destruction of certain incriminating documents. INT does not identify any potential mitigating factors.

**B. The First Respondent Firm's Principal Contentions in Its Explanation and Response**

14. The First Respondent Firm denies INT's allegation of fraudulent conduct and argues that INT's evidence is insufficient and "tainted." The First Respondent Firm refers to the alleged misrepresentations in its bid ("Bid-1") as "inaccuracies" but submits that these were unintended, properly corrected when the First Respondent Firm revised Bid-1, and did not satisfy any explicit bidding requirement. The First Respondent Firm also denies having engaged in collusion with the Second Respondent Firm and argues that INT's allegation improperly relies on "speculative circumstantial" evidence reflecting merely a former affiliation between the Respondents. The First Respondent Firm requests mitigation for cooperation, voluntary corrective actions, status as designated loser, and period of temporary suspension.

**C. The Second Respondent Firm's Principal Contentions in Its Explanation and Response**

15. The Second Respondent Firm concedes that certain educational records included in its bid ("Bid-2") were misstated, but argues that INT's evidence is nevertheless not sufficient for a finding of fraudulent conduct. Specifically, the Second Respondent Firm submits that it bore no responsibility for verification of educational claims of proposed employees in Bid-2 and that these misstatements did not serve to benefit the Second Respondent Firm, as they were not "material to any aspect of the procurement." With respect to the allegation of collusion, the Second Respondent Firm also denies liability, asserting that no information was exchanged between the Respondents prior to bid submission and that the Second Respondent Firm competed fairly for the Contract.

**D. INT's Principal Contentions in the Reply**

16. In regard to allegations of collusion, INT argues that circumstantial evidence in the record reflects "exceptionally abnormal" behavior by the Respondents and "illicit cooperation" between the two companies. In particular, INT furnishes a comparative analysis of the two Bids, highlighting commonalities and patterns in methodology statements, pricing sections, bid guarantees, and descriptions of proposed staff. With respect to allegations of fraudulent conduct, INT asserts that none of the Respondents' presented defenses are exculpatory. INT submits that evidence of collusion also supports INT's position that the misrepresentations in the Bids were made knowingly. With respect to the First Respondent Firm, INT opposes any mitigation for cooperation, supports only minor credit for its compliance program, and possibly some credit for its asserted correction of Bid-1. INT also supports some mitigating credit for both Respondents' periods of temporary suspension.

**E. Presentations at the Hearing**

17. INT reiterated its allegations against the Respondents and argued that the fraudulent misrepresentations in Bid-1 and Bid-2 were made knowingly, in light of the Respondents' conflicting explanations and evidence of the Respondents' alleged collusion. With respect to

collusion, INT argued that Bid-1 and Bid-2 contained an unusual number of similarities and were prepared together. Each of the Respondents described the use of “templates” or like documents in Bid-1 and Bid-2, and the First Respondent Firm stated that, although the Bids were not “hermetically sealed” from one another, this conduct was not improper. The Respondents argued broadly that INT’s evidence of misconduct was insufficient under the applicable definitions of the alleged sanctionable practices. In response to questions from the Sanctions Board, the Respondents stated that they were unable to provide additional or alternative documentary evidence relating to the bidding process for the Contract; or to otherwise clarify precisely how Bid-1 and Bid-2 were prepared, reviewed, and/or revised. Both of the Respondents argued that the weight of INT’s evidence is reduced by bias among the PCU/PIU decision makers against the Respondents.

#### **F. Parties’ Post-Hearing Submissions**

18. On March 20, 2018, the Sanctions Board requested that the Respondents reply to an issue identified in the SAE and again at the hearing: the fact that a careful comparison of Bid-1 to Bid-2 reveals a series of consecutive pages with parallel near-identical employment summaries for proposed staff with different names on the forms in the respective Bids – only the names and other identifying information differ. The Sanctions Board expressed that this type of replication would appear unlikely in a situation where the Respondents prepared Bid-1 and Bid-2 independently, and invited the Respondents to identify any circumstances under which this replication between tender materials could have happened as a result of a mistake or oversight, as opposed to reflecting an instance of knowing falsification. In their respective submissions on April 17, 2018, the Respondents stated that they were unable to provide any additional information about how the Bids were prepared, asserting, *inter alia*, that key staff were no longer available or inclined to comment, and that these questions were raised late in these sanctions proceedings. In an authorized response filed on April 24, 2018, INT argued that the replication of select content between the Bids was not random and that the Respondents had ample notice and opportunity to address this issue in prior submissions. INT additionally identified 101 pairs of personnel records with overlapping information between the two Bids to illustrate the scope of replication.

#### **V. THE SANCTIONS BOARD’S ANALYSIS AND CONCLUSIONS**

19. First, the Sanctions Board will review preliminary procedural motions and determinations made in the course of these sanctions proceedings. The Sanctions Board will then consider the merits of the case and determine (i) whether it is more likely than not that the Respondents engaged in the alleged sanctionable practices<sup>9</sup> and (ii) what sanctions, if any, should be imposed on the Respondents.

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<sup>9</sup> Given that INT’s allegations of fraud against the Respondents appear to rely at least in part on its allegations of collusion, the Sanctions Board reviews the allegations of collusive practices first and allegations of fraudulent practices second.

**A. Preliminary issues****1. Determination on distribution of materials**

20. On April 28, 2017, the Second Respondent Firm requested distribution of all filings by the parties and all responses to such filings “as a matter of routine.” The Sanctions Board Chair determined, in his discretion, to consider this request pursuant to Section III.A, sub-paragraph 5.04(b). On October 4, 2017, following receipt of comments from all parties in support of distribution, the Sanctions Board approved the distribution of materials as requested.

**2. Revisions of evidence**

21. *First Tier of Review:* The record reflects that, in May 2017, when the case was under consideration of the Alternate SDO, the First Respondent Firm requested the Alternate SDO to provide certain pages that appeared to be missing from several SAE exhibits. The Alternate SDO informed the First Respondent Firm that these pages did not appear in the original record and suggested that the First Respondent Firm contact INT. In response, INT furnished certain additional evidence to the Alternate SDO and the First Respondent Firm, and clarified certain page numbering errors. The Second Respondent Firm received copies of this correspondence and the additional evidence from the Sanctions Board Secretariat on October 4, 2017, pursuant to the Sanctions Board’s above determination on the Second Respondent Firm’s request to distribute documents.

22. *Second Tier of Review:* On February 12, 2018, the Sanctions Board Secretariat invited INT to clarify and/or correct several exhibits that contained discrepancies and/or untranslated documents, including by identifying the individual components of several large unsorted SAE exhibits. On February 15, 2018, INT submitted corrections and additional translations with respect to eight SAE exhibits, with copy to both Respondents. On February 23, 2018, these revisions were admitted into the record at the discretion of the Sanctions Board Chair. However, with respect to some of the documents, INT declined to identify them or initially provide the translations, arguing that INT did not generate these documents and “did not rely on these documents in its SAE.” INT did ultimately obtain and provide the translations. On March 9, 2018, these additional revisions were admitted into the record at the discretion of the Sanctions Board Chair. On March 15, 2018, INT requested permission to submit additional evidence relating to the Second Respondent Firm’s reports of potential misconduct by other parties in relation to the Project. Noting the affirmed absence of objections from either of the Respondents, the Sanctions Board Chair admitted this evidence into the record, at his discretion, on the same day.

23. In light of the multiple revisions to the record in this case, the Sanctions Board notes INT’s obligations, as articulated in the Sanctions Procedures, to furnish all relevant and potentially exculpatory/mitigating evidence<sup>10</sup> and to provide translations as required.<sup>11</sup> The Sanctions Board refers in particular to INT’s initial omission to identify, describe, or translate certain documents included in the record. The party submitting documents into the record for the Sanctions Board’s review is expected to understand, and be able to articulate, the nature and relevance of these

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<sup>10</sup> Sanctions Procedures at Section III.A, sub-paragraph 3.02 (“Disclosures of Exculpatory or Mitigating Evidence”).

<sup>11</sup> Sanctions Procedures at Section III.A, sub-paragraph 5.02 (“Formal Requirements for Written Submissions”).

documents. In addition, the fact that certain evidence was obtained by INT from a respondent entity does not remove INT's obligation, as a party to a sanctions proceeding, to comply with formal requirements for written submissions set out at Section III.A, sub-paragraph 5.02(a) of the Sanctions Procedures.

**B. Evidence of Collusive Practices**

24. In accordance with the definition of "collusive practice" under the January 2011 Procurement Guidelines, INT bears the initial burden to show that it is more likely than not that each of the Respondents participated in an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party. Consistent with the definition of "parties" in the January 2011 Procurement Guidelines, INT also has the burden of showing that each of the Respondents was a participant in the procurement process that attempted to simulate competition or to establish bid prices at artificial, non-competitive levels; or that was privy to the other's bid prices or other conditions.

25. INT alleges that the Bids were prepared together and that the Respondents thus engaged in a collusive arrangement designed to achieve an improper purpose by being privy to each other's pricing information while simulating a competitive bidding process for the Contract. The Respondents, in their submissions, deny that the record supports a finding of collusion. The First Respondent Firm argues that, although templates of bid-related documents may have been shared between the firms and the Bids were not "hermetically sealed," this conduct was not improper. The Second Respondent Firm submits that commonalities between Bid-1 and Bid-2 are explained by the fact that (i) the Respondents used to be owned by close relatives and operated closely; (ii) the Second Respondent Firm's current owner purchased the Second Respondent Firm from the previous owner and used existing internal documentation and templates, which resembled those of the First Respondent Firm; and (iii) the Respondents may have used the same supplier for pipe.

26. The evidence in this case reflects almost-identical methodology descriptions in Bid-1 and Bid-2, price matches and price differences between the Bids that appear to be non-random, and a significant number of personnel forms that appear to have been copied from one Bid to another with only the names revised.

- (i) *Methodology statements*: Bid-1 and Bid-2 each included methodology statements of identical structure and near-identical content. Excerpts of other bids on the Contract that INT included in the record reflect no such commonalities in methodology. The Sanctions Board does not find the Respondents' defenses on this point persuasive. A bidder's methodology statement is typically tied to the requirements of that specific contract, and is not a template document used in different bids on various projects. In any event, neither of the Respondents supported this argument with evidence or identified a common "template" assertedly used by both companies.
- (ii) *Bid prices*: The record reveals price differences in whole-dollar amounts, and identical prices for several items. The price differences at issue (e.g., US\$10,424.21 versus US\$9,424.21; or US\$11,914.05 versus US\$10,914.05) extending to more than 100 items throughout each of the Bids do not appear to be random. Excerpts of other bids on the Contract reflect no such commonalities in pricing structures. The Second



Respondent Firm's suggestion that matching prices between the Bids may be due to a common supplier are not supported by any evidence and would not, in any event, fully explain identical prices on competing bids, which would presumably also include a markup specific to each bidder, and which would presumably not extend to items such as office maintenance, as was the case here.

- (iii) *Personnel forms*: A comparison of more than 100 forms describing proposed personnel reveals identical sections of text – both in the descriptions of educational qualifications and past experience – in the forms of different individuals proposed separately in Bid-1 and Bid-2. The Respondents were given multiple opportunities to address this overlap prior to, during, and following the hearing, but have not done so.

27. The Sanctions Board finds the cumulative weight of this evidence sufficient to conclude that Bid-1 and Bid-2 were not prepared independently in a manner consistent with a competitive process. Rather, it is more likely than not that the Respondents' staff participated in an arrangement to share information across bids and were thus privy to one another's bid prices and other conditions. Contrary to the First Respondent Firm's argument that the Bids cannot be expected to be "hermetically sealed," the Sanctions Board observes that a competitive process presumes that the competing bidders – regardless of any past affiliation – prepare their bids independently and take steps to guard that information from actual and potential competitors. A breach of this expectation is, by its nature, improper. The Sanctions Board finds that it is more likely than not that the Respondents engaged in a collusive arrangement, which took place during a procurement process explicitly designed to be competitive, to achieve an improper purpose under the applicable definition of collusion.

### **C. Evidence of Fraudulent Practices**

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

#### **1. Misrepresentation**

29. INT alleges that the Respondents made false statements with respect to the educational qualifications of proposed personnel within each of the Bids. INT asserts misrepresentations in dozens of personnel records included in each Bid, and submits that statements from educational institutions listed in the Bids support this allegation. The First Respondent Firm asserts that, although some incorrect documents were indeed submitted initially in Bid-1, that submission was corrected and replaced with updated forms in compliance with rules of bidding. At the same time, the First Respondent Firm appears to assail the weight of INT's evidence of misrepresentation and provides evidence that some of the records that INT had identified as false were in fact accurate. The Second Respondent Firm states, as its primary defense, that INT has not shown that INT's copy of Bid-2 is a genuine document that was in fact submitted to the PCU. At the same time, the Second Respondent Firm does not provide an internal copy of its bid for the Contract, concedes that the records identified by INT in its allegations do include mistakes and inaccuracies, declines to

comment on the specific misrepresentations alleged by INT, and joins the First Respondent Firm's criticisms of the quality of INT's inculpatory evidence.

30. In past decisions finding that respondents submitted false information or made a false statement, the Sanctions Board has considered copies of contemporaneous correspondence reflecting the falsity of information at issue,<sup>12</sup> the respondents' own acknowledgments,<sup>13</sup> indicia of falsity in the documents themselves,<sup>14</sup> and statements by third parties that were named in or supposedly issuing the alleged fraudulent documents.<sup>15</sup>

31. In the present case, the Sanctions Board considers three types of evidence to support a finding of misrepresentation: (i) statements by educational institutions assertedly issuing the diplomas listed in Bid-1 and Bid-2; (ii) indicia of falsity in the documents themselves; and (iii) the Respondents' admissions that Bid-1 and Bid-2 contained errors with respect to educational credentials. First, the record includes correspondence from two educational institutions denying the educational credentials claimed with respect to several proposed staff identified in Bid-1 and Bid-2. The Respondents claim that INT's inquiries to these institutions were imprecise and the First Respondent Firm provides evidence of several diploma records that, after being rejected in response to INT's inquiry, were accepted as valid by one institution upon the First Respondent Firm's follow-up request. A review of the record does reveal apparent typographical errors both in INT's inquiries to the institutions and in the institutions' responses to INT, but these errors do not extend to all personnel forms included in INT's allegations. Second, the personnel forms contain indicia of falsity: some diploma numbers appear on multiple different personnel forms and blocks of text appear to have been copied from one personnel form to another.<sup>16</sup> Third, in correspondence during the investigation, both Respondents admitted that the education descriptions in Bid-1 and Bid-2 included erroneous information, and the First Respondent Firm asserts that it submitted to the PCU a correction of those errors in Bid-1.

32. In light of this evidence, the Sanctions Board finds that it is more likely than not that Bid-1 and Bid-2 each contained at least one misrepresentation with respect to the educational credentials of proposed personnel.

## 2. Made knowingly or recklessly

33. INT submits that the Respondents acted knowingly or at least recklessly. Both Respondents argue that their staff did not knowingly misrepresent information in the Bids and state that the employees also did not act recklessly under the applicable definition of fraudulent practice. The Sanctions Procedures recognize the Sanctions Board's discretion to infer knowledge on the part of

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<sup>12</sup> Sanctions Board Decision No. 81 (2015) at para. 38.

<sup>13</sup> See, e.g., *id.*

<sup>14</sup> See, e.g., Sanctions Board Decision No. 69 (2014) at paras. 19-20.

<sup>15</sup> See, e.g., Sanctions Board Decision No. 82 (2015) at para. 28.

<sup>16</sup> See *supra* Paragraph 26.

a respondent from circumstantial evidence; and state broadly that any kind of evidence may form the basis of conclusions reached by the Sanctions Board.<sup>17</sup>

34. The Sanctions Board has previously inferred knowledge in a case of alleged fraud where the type of misrepresentation at issue could not have been made without the knowledge of the respondent's staff.<sup>18</sup> In assessing recklessness, the Sanctions Board has considered whether circumstantial evidence indicates that a respondent was, or should have been, aware of a substantial risk – such as harm to the integrity of the World Bank's procurement process due to false or misleading bid documents – but nevertheless failed to act to mitigate that risk.<sup>19</sup> Where circumstantial evidence is insufficient to infer subjective awareness of risk, the Sanctions Board has measured a respondent's conduct against the common "due care" standard of the degree of care that the proverbial "reasonable person" would exercise under the circumstances.<sup>20</sup> In other words, the question is whether the respondent knew or should have known of the substantial risk presented.<sup>21</sup> In determining whether a respondent was aware or, based on apparent red flags, should have been aware of a specific substantial risk that a document is inauthentic, the Sanctions Board has considered, inter alia, whether any specific indicia of falsity were apparent with respect to the document,<sup>22</sup> and whether a responsible individual made any effort to control or supervise the bid preparation process.<sup>23</sup> In the event that the Sanctions Board finds that it is more likely than not that a respondent was or should have been aware of a substantial risk, the Sanctions Board may consider whether the record shows that the respondent took precautions that were commensurate with the risk involved.<sup>24</sup>

35. In the present case, the Bids included near-identical background information for different personnel that appeared in each of the Bids. INT identified this overlap in the SAE and again at the hearing; the Respondents did not address this matter in their initial written or oral submissions. The Sanctions Board gave the Respondents an additional opportunity – and almost one month – to comment on this issue after the hearing; each of the Respondents briefly stated that it was unable to provide additional information. This record does not reveal any circumstances under which the replication of documents between the tender materials could have happened as a result of error or oversight. Instead, the record appears consistent with INT's version of events, under which the staff of one of the Respondents deliberately copied text from personnel forms in one of the Bids into the forms for different personnel in the other bid. In addition, the record reveals that neither of the Respondents maintained an adequate system to oversee and authenticate documents included in the Bids, that both of the Respondents acknowledged that information received from prospective

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<sup>17</sup> Sanctions Procedures at Section III.A, sub-paragraph 7.01.

<sup>18</sup> Sanctions Board Decision No. 69 (2014) at para. 22.

<sup>19</sup> See, e.g., Sanctions Board Decision No. 51 (2012) at para. 33.

<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> See, e.g., Sanctions Board Decision No. 61 (2013) at para. 25.

<sup>23</sup> See, e.g., Sanctions Board Decision No. 98 (2017) at paras. 46-47.

<sup>24</sup> See, e.g., Sanctions Board Decision No. 79 (2015) at para. 29.

personnel may be false, and that neither of the Respondents implemented adequate measures to mitigate the risk of misrepresentation in its bid on the Contract.

36. In these circumstances, the Sanctions Board finds that it is more likely than not that the staff of both Respondents acted knowingly or recklessly in introducing misrepresentations in Bid-1 and Bid-2.

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

37. INT argues that the Respondents' misrepresentations were responsive to a tender requirement and proactively sought to make the Bids more competitive by proposing a high number of key personnel. The Respondents submit that the misrepresentations were not in fact responsive to a specific tender requirement because educational credentials of proposed staff were not a required bid component and not part of bid evaluation. Furthermore, the First Respondent Firm argues that it could not have sought a benefit via the misrepresentations, as it filed a timely correction of Bid-1.

38. *Responsiveness to a tender requirement:* In previous cases, the Sanctions Board has found the element of intent to have been met where the record revealed that the respondent had made a misrepresentation in response to a specific bid requirement “[i]rrespective of the bid requirement’s actual significance, and the subjective assessment thereof by a bidder.”<sup>25</sup> In the present case, the record shows that the Bidding Documents required bidders to identify key personnel in certain categories of work. The Bidding Documents also required that bidders “provide details of the proposed personnel and their experience records” via, *inter alia*, the standard forms that both Respondents included in the Bids. These standard forms included the field titled “Professional qualifications,” which each of the Respondents consistently used to identify the education credentials of proposed key personnel.

39. *Asserted correction of Bid-1:* In a past case where a respondent claimed to have taken steps to correct a misrepresentation, the Sanctions Board considered whether the circumstances of that correction reflected the absence of intent to influence the selection process in that case.<sup>26</sup> In the present case, the First Respondent Firm provides copies of correspondence with the PCU that refer to a revision of Bid-1 and substitution of forms describing proposed personnel. When questioned at the hearing, the First Respondent Firm explained that the correction was prompted by an internal discovery that no resumes were retained for the personnel originally proposed in Bid-1. INT argues that this version of events is not credible. The Sanctions Board notes that the timing of the revision does not appear improper – the Bidding Documents explicitly permitted modification and substitution of bids – but the assertion of a same-day withdrawal and correction of such a large component of Bid-1 (almost 200 pages describing more than 100 individuals) is striking. Several considerations appear to further harm the credibility of the First Respondent Firm’s account: the tender evaluation report does not mention any correction of Bid-1; the record does not reveal whether the asserted revision actually corrected any of the misrepresentations at issue; and the claim that the correction was prompted by a document retention failure contradicts the First Respondent

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<sup>25</sup> See, e.g., Sanctions Board Decision No. 91 (2016) at paras. 30-31.

<sup>26</sup> Sanctions Board Decision No. 81 (2015) at para. 43.

Firm's inability to furnish other documentary evidence that would presumably accompany the corrected Bid-1. The Sanctions Board therefore does not find the evidence to support a conclusion that the First Respondent Firm acted without intent to influence the procurement process for the Contract.

40. In these circumstances, the Sanctions Board finds that it is more likely than not that the Respondents' misrepresentations of personnel education credentials in Bid-1 and Bid-2 were made with the intent to render the Bids technically responsive and competitive; and that the First Respondent Firm's asserted correction of Bid-1 is not exculpatory on this point.

#### **D. The Respondents' Liability for the Acts of Their Employees**

41. 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.<sup>27</sup> In the present case, the record supports a finding that employees of each of the Respondents engaged in the collusive and fraudulent practices in accordance with the scopes of their duties and with the purpose of serving the interests of the Respondents. Neither of the Respondents contests that it should be liable based on the actions of its employees. Moreover, neither of the Respondents presents, and the record does not provide any basis for, a rogue employee defense. Thus, the Sanctions Board finds each of the Respondents liable for the collusive and fraudulent practices carried out by its employees.

#### **E. Sanctioning Analysis**

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

42. 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(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 III.A, sub-paragraph 9.01. The range of sanctions set out in sub-paragraph 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 III.A, sub-paragraph 8.01(b) of the Sanctions Procedures, the Sanctions Board is not bound by the SDO's recommendations.

43. As reflected in Sanctions Board precedent, the Sanctions Board considers the totality of the circumstances and all potential aggravating and mitigating factors to determine an appropriate sanction.<sup>28</sup> The choice of sanction is not a mechanistic determination, but rather a case-by-case analysis tailored to the specific facts and circumstances presented in each case.<sup>29</sup>

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<sup>27</sup> See, e.g., Sanctions Board Decision No. 98 (2017) at paras. 50-51.

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

<sup>29</sup> Sanctions Board Decision No. 44 (2011) at para. 56.

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

45. Should the Sanctions Board impose 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

46. As the Sanctions Board finds that the Respondents engaged in collusive and fraudulent practices, the Sanctions Board considers Section III of the Sanctioning Guidelines regarding “Cumulative Misconduct” (emphasis in original):

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) . . . , 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.

47. 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 of misconduct.<sup>30</sup> In contrast, the Sanctions Board has previously held that plurality of sanctionable practices warrants aggravation, rather than multiplication, where the respondent engaged in interrelated, albeit different, sanctionable practices.<sup>31</sup> INT states that the Respondents’ engagement in both fraudulent and collusive practices warrants aggravation. The record in this case reflects that – while the Respondents’ misconduct related to the same Project and Contract – the fraudulent practices relating to the Respondents’ proposed personnel were more than merely a means of furthering the collusive practices in this case, and vice versa. Accordingly, the Sanctions Board concludes that the plurality of the Respondents’ sanctionable practices warrants multiplication, rather than aggravation, of the base sanction for each of the Respondents.

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<sup>30</sup> See, e.g., Sanctions Board Decision No. 102 (2017) at para. 66 (applying cumulative sanctions where the respondent engaged in distinct corrupt and fraudulent practices).

<sup>31</sup> See, e.g., Sanctions Board Decision No. 60 (2013) at para. 143 (applying aggravation where the various sanctionable practices for which the respondents were found liable were closely interrelated and the fraudulent practices were intended to conceal a corrupt agreement, the investigation of which was later obstructed).

3. Factors considered in the present case

a. Severity of the misconduct

48. *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 in determining the appropriate sanction. As one example of severity, Section IV.A of the Sanctioning Guidelines identifies sophisticated means of misconduct and states that this factor includes “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 respondent’s conduct reflected “considerable forethought and planning.”<sup>32</sup> In this case, the record reflects a collusive scheme that included duplication of a large volume of documents central to the Respondents’ Bids, with targeted revisions in these documents so as to lend them the appearance of authenticity. For instance, the Sanctions Board notes that identifying information (e.g., names, diploma numbers) of otherwise duplicate personnel forms between the Bids was revised, as were the section titles in the Bids’ respective methodology statements. In these circumstances, the Sanctions Board finds that aggravation is warranted for each of the Respondents under this factor.

b. Interference in the Bank’s investigation

49. *Interference with investigative process*: Section III.A, sub-paragraph 9.02(c) of the Sanctions Procedures requires that “interference by the sanctioned party in the Bank’s investigation” be considered in determining a sanction. Section IV.C of the Sanctioning Guidelines describes interference with an investigation as interference with the investigative process or intimidation of, or payment to, a witness. Interference with the investigative process includes “[d]eliberately destroying . . . or concealing evidence material to the investigation.”<sup>33</sup> INT asserts that aggravation should apply for the First Respondent Firm’s “attempts to delete incriminating documents prior to INT’s audit.” The First Respondent Firm submits that INT’s evidence of interference is inadequate and illegible. The Sanctions Board has declined to apply aggravation under this factor where the record did not include sufficient evidence that respondents instructed or participated in any deliberate destruction or concealment of evidence.<sup>34</sup> In the present case, INT relies on two types of evidence: (i) screenshots of “shortcuts” on a staff member’s computer that did not lead to any document; and (ii) reported statements from some staff of the First Respondent Firm that they received instructions to delete the files. The Sanctions Board notes the contested nature of these statements and absence of supporting contemporaneous evidence. In these circumstances, and noting that an employee of the First Respondent Firm provided INT with the requested documents later on the same day, the Sanctions Board declines to apply any aggravation.

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<sup>32</sup> Sanctions Board Decision No. 69 (2014) at para. 33 (applying aggravation for sophisticated means where the respondent forged three different types of official business documents, which were clearly drafted in an effort to avoid detection).

<sup>33</sup> Section IV.C.1 of the Sanctioning Guidelines.

<sup>34</sup> See, e.g., Sanctions Board Decision No. 88 (2016) at para. 49.

c. Voluntary corrective action

50. Section III.A, sub-paragraph 9.02(e) of the Sanctions Procedures provides for mitigation where the 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.<sup>35</sup>

51. *Cessation of misconduct*: Section V.B.1 of the Sanctioning Guidelines states that mitigation may be appropriate where a respondent ceases to engage in misconduct. INT states that mitigating credit may be considered for the First Respondent Firm's asserted revision of Bid-1. The Sanctions Board has declined mitigation where a respondent's asserted corrective action did not provide accurate information following the initial misrepresentation.<sup>36</sup> The record in the present case does not reflect with precision the information that the First Respondent Firm assertedly provided in its revision of Bid-1. In light of the full scope of evidence on this point, as also discussed at Paragraph 39 above, the Sanctions Board declines to apply any mitigation.

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 Sanctions Board has previously granted mitigation on this ground upon a finding that a respondent's asserted compliance measures appeared to address the type of misconduct at issue<sup>37</sup> and/or at least some of the elements set out in the World Bank Group's Integrity Compliance Guidelines (the "Integrity Compliance Guidelines").<sup>38</sup> The First Respondent Firm requests mitigation on this basis. INT submits that any credit on this basis should be minor. The record in this case contains copies of the First Respondent Firm's Anti-Corruption Policy and Corporate Ethics Code, but its provisions do not relate to the types of fraudulent and collusive conduct found in the present case. In these circumstances, the Sanctions Board declines to apply any mitigation.

d. Cooperation

53. *Assistance and/or ongoing cooperation*: Section III.A, sub-paragraph 9.02(e) of the Sanctions Procedures provides for mitigation where a respondent "cooperated in the investigation or resolution of the case." Section V.C.1 of the Sanctioning Guidelines provides that mitigation may be appropriate for assistance and/or ongoing cooperation, "[b]ased on INT's representation that the respondent has provided substantial assistance in an investigation," with consideration of the "truthfulness, completeness, [and] reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of assistance." In past cases, the Sanctions Board has granted

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<sup>35</sup> Sanctions Board Decision No. 45 (2011) at para. 72.

<sup>36</sup> Sanctions Board Decision No. 91 (2016) at para. 40 (where the misconduct involved a misrepresentation regarding commissions paid to an agent, the Sanctions Board declined to apply mitigation for the severance of the respondent's relationship with the agent).

<sup>37</sup> See, e.g., Sanctions Board Decision No. 71 (2014) at para. 94.

<sup>38</sup> See, e.g., Sanctions Board Decision No. 56 (2013) at para. 69.



mitigation where the respondent's staff replied to INT's show-cause letter, met with INT on several occasions, and/or provided relevant information and documentation.<sup>39</sup> The First Respondent Firm requests mitigation on this basis, noting that it reported to INT suspected misconduct committed by other individuals. INT opposes and states that information provided by the First Respondent Firm was "not actionable." The record reflects audits of both Respondents, multiple interviews and correspondence between staff of each of the Respondents and INT, and the Respondents' discussion with INT of other possible misconduct by third parties. The Sanctions Board finds that the Respondents' conduct during INT's investigation with respect to allegations made against the Respondents warrants mitigation.

e. Periods of temporary suspension

54. Pursuant to Section III.A, sub-paragraph 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account that the First Respondent Firm has been temporarily suspended since October 7, 2015, and the Second Respondent Firm since October 19, 2015, pursuant to Section III.A, paragraph 2 of the Sanctions Procedures, which provides for early temporary suspension by the SDO prior to sanctions proceedings.

f. Other considerations

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

56. *Status as designated loser*: The First Respondent Firm requests mitigation under this factor, noting that it was not awarded the Contract. In one past case of alleged collusion, the Sanctions Board took into account a colluding bidder's status as a designated loser.<sup>40</sup> However, that case was decided under an earlier version of the Sanctions Procedures that did not explicitly require a link between a sanctioning factor and the sanctioned party's culpability or responsibility in relation to the sanctionable practice alleged – as is required under the Sanctions Procedures applicable in this case. Accordingly, the Sanctions Board declines to apply mitigation under this factor.

57. *Bias among selection officials under the Project*: The Respondents request that the Sanctions Board take into account possible bias among INT's sources of information at the PIU and/or the PCU who may have conspired to harm the Respondents by providing INT with false evidence. The Sanctions Board notes that the Respondents' assertion is generalized and not accompanied by direct evidence of bias or retaliation. Furthermore, INT's evidence at issue is copies of the Respondents' own submissions, which each of the Respondents may be expected to keep on file, especially if – as is the case with the Second Respondent Firm – it was awarded the Contract. However, neither of the Respondents furnished any such evidence in the present case. The Sanctions Board declines to apply any mitigation on this basis.

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<sup>39</sup> See, e.g., Sanctions Board Decision No. 92 (2017) at para. 122.

<sup>40</sup> Sanctions Board Decision No. 4 (2009) at para. 12.

**F. Determinations of Appropriate Sanctions**

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

- (i) the First Respondent Firm, together with any entity that is an Affiliate directly or indirectly controlled by the First Respondent Firm, 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;<sup>41</sup> (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider<sup>42</sup> of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any Bank-Financed Projects, provided, however, that after a minimum period of ineligibility of four (4) years and nine (9) months beginning from the date of this decision, the First Respondent Firm may be released from ineligibility only if it has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, adopted and implemented an effective integrity compliance program in a manner satisfactory to the World Bank Group. This sanction is imposed on the First Respondent Firm for fraudulent and collusive practices as defined in Paragraph 1.16(a)(ii) and Paragraph 1.16(a)(iii) of the January 2011 Procurement Guidelines.
- (ii) the Second Respondent Firm, together with any entity that is an Affiliate directly or indirectly controlled by the Second Respondent Firm, 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;<sup>43</sup> (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider<sup>44</sup> of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any Bank-Financed Projects, provided, however, that after a minimum period of ineligibility of four (4) years and nine (9) months beginning from the date of this decision, the Second Respondent Firm may be released from ineligibility only if it has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures,

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<sup>41</sup> A respondent's ineligibility to be awarded a contract includes, without limitation (i) applying for pre-qualification, expressing interest in a consultancy, and bidding, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract. Sanctions Procedures at Section III.A, sub-paragraph 9.01(c)(i), n.14.

<sup>42</sup> A nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider (different names are used depending on the particular bidding document) is one which has been: (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower. Sanctions Procedures at Section III.A, sub-paragraph 9.01(c)(ii), n.15.

<sup>43</sup> See supra n.41.

<sup>44</sup> See supra n.42.

adopted and implemented an effective integrity compliance program in a manner satisfactory to the World Bank Group. This sanction is imposed on the Second Respondent Firm for fraudulent and collusive practices as defined in Paragraph 1.16(a)(ii) and Paragraph 1.16(a)(iii) of the January 2011 Procurement Guidelines.

59. The Respondents' ineligibility shall extend across the operations of the World Bank Group. The Bank will also provide notice of these declarations 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 declarations of ineligibility with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and procedures.<sup>45</sup>



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J. James Spinner (Chair)

On behalf of the  
World Bank Group Sanctions Board

J. James Spinner  
Ellen Gracie Northfleet  
Catherine O'Regan

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<sup>45</sup> At present, the MDBs that are party to the Cross-Debarment Agreement are the African Development Bank Group, the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank Group, and the World Bank Group. The Cross-Debarment Agreement provides that, subject to the prerequisite conditions set forth in the Cross-Debarment Agreement, unless a participating MDB (i) believes that any of the prerequisite conditions set forth in the Cross-Debarment Agreement have not been met or (ii) decides to exercise its rights under the "opt out" clause set forth in the Cross-Debarment Agreement, each participating MDB will promptly enforce the debarment decisions of the other participating MDBs. More information about the Cross-Debarment Agreement is available on the Bank's external website (<http://go.worldbank.org/B699B73Q00>).