THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: September 9, 2013

Sanctions Board Decision No. 60
(Sanctions Case No. 170)

IDA Credit No. 3979-UZ
IDA Grant No. H124-UZ
Uzbekistan

IDA Grant No. H197-KG
Kyrgyz Republic

IDA Credit No. 4154-ALB
Albania

IBRD Loan No. 4839-RO
Romania

IDA Grant No. H343-TP
Multi-Donor Trust Fund Grant No. TF 091653
Timor-Leste

IDA Credit No. 4470-KH
Cambodia

IDA Credit No. 4432-WS
Samoa

Decision of the World Bank Group[1] Sanctions Board:

i. **imposing a sanction of debarment with conditional release on the two respondent entities (respectively, "Respondent Firm" and "Respondent Firm International") and an individual respondent (the director of the respondent entities, hereinafter referred to as the "Respondent Director") in Sanctions Case No. 170, together with**

[1] In accordance with Section 1.02(a) of the World Bank Sanctions Procedures as adopted April 15, 2012 (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"). For avoidance of doubt, 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.

any entity that is an Affiliate[2] directly or indirectly controlled by any of these Respondents, with a minimum period of ineligibility of one (1) year and six (6) months for Respondent Firm and four (4) years for Respondent Firm International and the Respondent Director, beginning from the date of this decision. These sanctions are imposed on Respondent Firm for corrupt practices, on Respondent Firm International for corrupt, fraudulent, and obstructive practices, and on the Respondent Director for corrupt and obstructive practices.

ii. **imposing a sanction of debarment on an individual respondent in Sanctions Case No. 170 (the commercial manager of Respondent Firm International, hereinafter referred to as the "Respondent Commercial Manager"), together with any entity that is an Affiliate directly or indirectly controlled by the Respondent Commercial Manager, for a period of three (3) years beginning from the date of this decision. This sanction is imposed on the Respondent Commercial Manager for fraudulent and obstructive practices.**

iii. **imposing a sanction of reprimand on an individual respondent in Sanctions Case No. 170 (the co-owner of Respondent Firm, hereinafter referred to as the "Respondent Co-Owner") by means of a formal letter of reprimand to be posted on the World Bank's website for a period of six (6) months beginning from the date of this decision. This sanction is imposed on the Respondent Co-Owner for corrupt practices.**

iv. **finding insufficient evidence to conclude that it is more likely than not that the remaining individual respondent in Sanctions Case No. 170 (the project manager of Respondent Firm International, hereinafter referred to as the "Respondent Project Manager") engaged in the alleged obstructive practices.**

I. INTRODUCTION

1. The Sanctions Board met in a plenary session on December 4, 2012, at the World Bank's headquarters in Washington, D.C., to review this case. The Sanctions Board was composed for this case of L. Yves Fortier (Chair), Marielle Cohen-Branche, Patricia Diaz Dennis, Catherine O'Regan, Denis Robitaille, and Randi Ryterman.

2. A hearing was held following requests from all respondents in Sanctions Case No. 170 (the "Respondents") 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. All four individual Respondents named in the Notice participated in the hearing, either in person or remotely via videoconference. Respondent Firm, Respondent Firm International, the Respondent Director, the Respondent Commercial Manager, and the Respondent Project Manager (together, "Respondent Firm et al.") were

[2] In accordance with Section 1.02(a) of the Sanctions Procedures, the term "Affiliate" means "any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank."

represented by the same outside counsel; and the Respondent Co-Owner was represented by another outside counsel. 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 pleadings as well as other submissions:

i. Notice of Sanctions Proceedings issued by the World Bank's Evaluation and Suspension Officer (the "EO")[3] to the Respondents on May 8, 2012 (the "Notice"), as revised by the EO on July 25, 2012, appending the Statement of Accusations and Evidence (the "SAE") presented to the EO by INT, which INT corrected on October 18, 2012;

ii. Explanations submitted respectively by Respondent Firm et al. and by the Respondent Co-Owner to the EO on July 11, 2012;

iii. Responses submitted respectively by Respondent Firm et al. and by the Respondent Co-Owner to the Secretary to the Sanctions Board on September 17, 2012;

iv. Replies in Support of Notice of Sanctions Proceedings submitted by INT to the Secretary to the Sanctions Board on October 18, 2012, as subsequently revised on November 21, 2012; and

v. Supplemental Responses submitted respectively by Respondent Firm et al. on November 13 and November 26, 2012, and by the Respondent Co-Owner on November 27, 2012.

4. Pursuant to Sections 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the EO originally recommended debarments with conditional release for each of the Respondents, together with Affiliates under their direct or indirect control, with conditions for release specific to each of the Respondents, and minimum periods of ineligibility of one year for the Respondent Project Manager, two years for the Respondent Co-Owner, six years for the Respondent Commercial Manager, seven years for Respondent Firm, and eleven years for Respondent Firm International and the Respondent Director.

5. Upon review of the Respondents' respective Explanations, the EO determined that the Explanation of Respondent Firm et al. supported a finding of additional mitigation for several Respondents, and of insufficient evidence to sustain the initial fraud allegations against the Respondent Project Manager. In accordance with Section 4.03(a)(ii) of the Sanctions Procedures, the EO thus revised the recommended minimum periods of ineligibility to three

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

months for the Respondent Project Manager, five years for the Respondent Commercial Manager, and ten years for Respondent Firm International and the Respondent Director.

6. Effective October 5, 2011, Respondent Firm International and the Respondent Director were temporarily suspended from eligibility to be awarded contracts for Bank-financed or Bank-executed projects and programs governed by the Bank's Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines, or to participate in new activities in connection with such projects and programs under Article II of the World Bank Sanctions Procedures as adopted January 1, 2011, and revised July 8, 2011, which provides for temporary suspension prior to sanctions proceedings.

7. Effective May 8, 2012, the remaining four Respondents in this case, together with any entity that is an Affiliate directly or indirectly controlled by any of them, were temporarily suspended from eligibility to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;[4] (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider[5] 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 project or program financed by the Bank and governed by the Bank's Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines (referred to collectively as "Bank-Financed Projects") pending the final outcome of the sanctions proceedings, pursuant to Section 4.02(a) of the Sanctions Procedures (as adopted April 15, 2012). The previous temporary suspensions of Respondent Firm International and the Respondent Director were extended with the same terms.

8. As a result of the EO's revision of the recommended sanction against the Respondent Project Manager, the temporary suspension of the Respondent Project Manager was terminated as of July 25, 2012, in accordance with Sections 4.02(a) and 4.02(c) of the Sanctions Procedures.

II. GENERAL BACKGROUND

9. The Notice in this case named six respondents: two entities and four individuals. At the time of the alleged misconduct, the first respondent entity, Respondent Firm, was co-owned by the Respondent Director and the Respondent Co-Owner. As the Respondent Director and the Respondent Co-Owner had agreed to wind down Respondent Firm and

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[4] For the avoidance of doubt, the declaration of ineligibility to be awarded a contract will include, without limitation, (i) applying for prequalification, expressing interest in a consultancy, and bidding, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract. See Sanctions Procedures at Section 9.01(c)(i), n.16.

[5] In accordance with the Sanctions Procedures, a nominated sub-contractor, consultant, manufacturer or supplier, or nominated service provider (different names are used depending on the particular bidding document) is one which has been: (i) included by the bidder in its prequalification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower. See Sanctions Procedures at Section 9.01(c)(ii), n.17.

divide the business between them, each established his own new firm. The Respondent Director became the sole owner and director of Respondent Firm International, the second respondent entity in this case. (The Respondent Co-Owner's new firm is not named as a respondent in these proceedings). The Respondent Commercial Manager and the Respondent Project Manager were employed originally by Respondent Firm and subsequently by Respondent Firm International.

10. INT's allegations of misconduct in this case relate to the following health sector projects financed by the World Bank:

i. Uzbekistan Health II Project;

ii. Kyrgyz Republic Health and Social Protection Project;

iii. Albania Health System Modernization Project;

iv. Romania Avian Influenza Control and Human Pandemic Preparedness and Response Project;

v. Timor-Leste Health Sector Strategic Plan Support Project;

vi. Cambodia Second Health Sector Support Project; and

vii. Samoa Health Sector Management Program Support Project.

11. The record reflects that Respondent Firm submitted bids for contracts under the Kyrgyz Republic Health and Social Protection Project, and Respondent Firm International submitted bids for contracts under all seven projects (all relevant contracts are collectively referred to as the "Contracts").

12. INT alleges that Respondent Firm, Respondent Firm International, the Respondent Director, and the Respondent Co-Owner engaged in corrupt practices in connection with the Contracts and an additional tender that INT states it could not identify (the "Unidentified Tender"), by offering and/or paying five percent of the value of each awarded contract to a World Bank consultant involved in the procurement process (the "Procurement Advisor").[6] INT further alleges that Respondent Firm, Respondent Firm International, the Respondent Director, and the Respondent Commercial Manager engaged in fraudulent practices with respect to nine of the bids by failing to disclose the offers and payments to the Procurement Advisor as "commissions, gratuities, or fees." Finally, INT alleges that Respondent Firm International, the Respondent Director, the Respondent Commercial Manager, and the Respondent Project Manager engaged in obstructive practices by deleting email correspondence relevant to INT's investigation.

[6] The Procurement Advisor was not named as a respondent in these sanctions proceedings. The World Bank Group has established separate administrative processes to address allegations of staff misconduct.

III. APPLICABLE STANDARDS OF REVIEW

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

14. 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.

15. For each of the Contracts, the alleged sanctionable practices are defined by the applicable version of the Bank's Procurement Guidelines, as stipulated in the relevant financing agreement and/or bidding documents.

i. For certain contracts, including the contracts for which Respondent Firm submitted a bid, the relevant financing agreements provided that the World Bank's Guidelines for Procurement under IBRD Loans and IDA Credits (May 2004) (the "May 2004 Procurement Guidelines") would apply, and the bidding documents defined sanctionable practices in accordance with the same version of the Guidelines. Therefore, allegations of misconduct relating to these contracts are governed by the May 2004 Procurement Guidelines.

ii. For other contracts, the relevant financing agreements provided that the World Bank's Guidelines for Procurement under IBRD Loans and IDA Credits (October 2006) (the "October 2006 Procurement Guidelines") would apply, and the bidding documents or – in an instance where the bidding documents are absent from the record – the subsequent contract agreement between the borrowing country and Respondent Firm International defined sanctionable practices in accordance with the same version of the Guidelines. Therefore, allegations of misconduct relating to these contracts are governed by the October 2006 Procurement Guidelines.

iii. For the remaining contracts, the relevant financing agreements provided that the May 2004 Procurement Guidelines would apply to the Project, but the bidding documents defined sanctionable practices in accordance with the October 2006 Procurement Guidelines. In accordance with the Bank's legal framework applicable to sanctions, as well as considerations of equity, the applicable standards in the event of such conflict shall be those agreed between the borrowing country and the respondent as governing the particular contract at issue, rather than the standards agreed between the borrowing country and

the Bank.[7] Therefore, allegations of misconduct relating to these contracts are governed by the October 2006 Procurement Guidelines.

16. The applicable definitions of corrupt, fraudulent, and obstructive practices are set out below in the Sanctions Board's analysis of each of INT's related allegations.

17. With regard to the Unidentified Tender, the Sanctions Board considers, as a threshold matter, and before reviewing any related allegation, whether the record contains sufficient evidence to ascertain jurisdiction over this specific count of alleged misconduct, as well as the applicable definition of the alleged misconduct. INT states that it has not been able to relate this allegation to a particular Bank-financed tender or contract. While some elements of the record suggest that the Unidentified Tender may have been issued under one of the aforementioned Bank-Financed Projects, the record is inconclusive. The Sanctions Board concludes that the evidence presented by INT does not provide a basis for the Sanctions Board's jurisdiction over any misconduct relating to the Unidentified Tender, and does not clarify the version of the Bank's Procurement Guidelines that would apply if the Sanctions Board were to exercise jurisdiction. Accordingly, the Sanctions Board will not consider the allegations or evidence concerning the Unidentified Tender.

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

1. Allegations of sanctionable practices

18. INT primarily asserts the following points in support of its allegations of corrupt practices:

i. Respondent Firm, represented by the Respondent Director, entered into an agreement (the "Consultancy Agreement") with the Procurement Advisor, a World Bank consultant involved in the procurement process for the Contracts. The Consultancy Agreement constitutes evidence of a corrupt offer by providing that, subject to contract award, Respondent Firm would pay an amount of five percent of the total contract value to the Procurement Advisor in exchange for his "full support to obtain a contract." Email correspondence reveals that the Procurement Advisor provided confidential information to the Respondents regarding contracts advertised under Bank-Financed Projects.

ii. Financial records demonstrate that Respondent Firm International made payments to the Procurement Advisor, with the Respondent Director's authorization, with respect to nine of the Contracts; and Respondent Firm made payments to the Procurement Advisor, with dual authorization from the Respondent Director and the Respondent Co-Owner, with respect to two of the Contracts.

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

19. INT further asserts that Respondent Firm, Respondent Firm International, the Respondent Director, and the Respondent Commercial Manager engaged in fraudulent practices with respect to nine bids by knowingly omitting to disclose the arrangement with the Procurement Advisor, despite a bid requirement to list "commissions, gratuities, or fees that have been paid or are to be paid with respect to the bidding process or execution of the Contract." INT alleges that such omissions were intended to influence the procurement process by preventing the bids' disqualification.

20. With respect to obstructive practices, INT alleges that, upon the Respondent Director's instructions, the Respondent Project Manager deleted emails showing that Respondent Firm International had received confidential information regarding the tender for contracts under the Timor-Leste Health Sector Strategic Plan Support Project. According to INT, the Respondent Commercial Manager confirmed that emails had been deliberately deleted in anticipation of INT's arrival.

2. Sanctioning factors

21. INT asserts that any sanctions should be subject to aggravating factors due to (i) the duration and repeated pattern of the misconduct, and the multiple jurisdictions involved; (ii) the Respondent Director's involvement in his capacity as director and co-owner of Respondent Firm and as director and owner of Respondent Firm International; (iii) the Respondent Co-Owner's involvement in his capacity as co-owner of Respondent Firm; and (iv) the involvement of World Bank staff in the person of the Procurement Advisor.

22. INT asserts that the Respondents' "eventual admission and cooperation" constitutes a mitigating factor.

B. Principal Contentions of Respondent Firm et al. in Their Joint Explanation and Joint Response

1. Procedural contentions

23. Respondent Firm et al. request that "out of respect for fundamental due process, [the Respondent Co-Owner's] filings . . . not be considered in connection with their cases." Respondent Firm et al. assert that the Respondent Co-Owner has only a limited knowledge of the facts, and that Respondent Firm et al. were denied the opportunity to comment on his Explanation at an earlier stage of the proceedings.

24. Respondent Firm et al. also assert that INT has violated its obligation of due process by misleading them as to the mitigating value of their cooperation, intimidating the Respondent Director, and failing to give sufficient notice to the Respondent Commercial Manager and the Respondent Project Manager that they may be personally subject to sanctions. Respondent Firm et al. also challenge the propriety of INT's decision to redact the Procurement Advisor's name in the pleadings.

2. Contentions regarding the alleged sanctionable practices

25. With respect to INT's corruption allegations, Respondent Firm et al. assert that they were subject to an "extortion scheme" and signed the Consultancy Agreement under duress, because the Procurement Advisor threatened them with "blackballing or disadvantage" if payments were not made. Respondent Firm et al. submit that the Procurement Advisor acted in a private capacity and was not a public official as defined by the Bank's Procurement Guidelines. Respondent Firm et al. also argue that the Procurement Advisor's provision of information to them was unsolicited, and that his review of procurement decisions benefited the World Bank rather than the Respondents because he prevented "objectively incorrect evaluations."

26. In response to the fraud allegations, Respondent Firm et al. argue that they had no duty to disclose in the bids the payment arrangement with the Procurement Advisor, and that the omission caused no harm to the Bank.

27. Respondent Firm et al. contest INT's obstruction allegations on the grounds that the emails in question were immaterial and did not fall within the scope of INT's audit. Respondent Firm et al. refer to the EO's determination, upon review of their Explanation, that "any obstruction . . . was temporary and *de minimis*, and is largely outweighed by the significant cooperation . . . provided to INT."

3. Sanctioning factors

28. Respondent Firm et al. contest the application of the aggravating factors identified by INT, and argue that mitigation should be factored into any sanction based on their extensive cooperation with INT's investigation. In addition, they refer to the absence of financial loss to the Bank, their voluntary restraint from bidding on or accepting new Bank-financed contracts during INT's investigation, and the low level of seniority of the Respondent Project Manager.

C. Principal Contentions of the Respondent Co-Owner in His Explanation and Response

1. Contentions regarding the alleged corrupt practices

29. The Respondent Co-Owner asserts that the Respondent Director and the Respondent Commercial Manager had conflicts of interest in providing testimony against him, and that their interviews with INT cannot serve as a basis to support INT's allegations against him.

30. The Respondent Co-Owner also asserts that he should not be held liable for the alleged misconduct because he was not involved in the Bank-Financed Project in question; has had only limited control over Respondent Firm's activities since the company's split, which predated the alleged payments to the Procurement Advisor; and, subject to these limitations, has sought to undertake due diligence with respect to payments requiring his approval.

31. In addition, the Respondent Co-Owner asserts that (i) INT has not established that the Procurement Advisor was a public official under the Bank's Procurement Guidelines, (ii) there is no evidence of the Respondent Co-Owner's intent to influence the Procurement Advisor, and (iii) the record does not indicate whether and how the Procurement Advisor was

influenced by, or took any action in exchange for, the payment that the Respondent Co-Owner approved.

2. Sanctioning factors

32. The Respondent Co-Owner contests the aggravating factors that INT presented and contends that, if a sanction were to be imposed, a reprimand or a conditional non-debarment would be appropriate. Among other mitigating factors, the Respondent Co-Owner refers to his minor role in the misconduct, his cooperation with the investigation, his voluntary corrective action to prevent any corrupt practices in his new firm, and his temporary suspension since the Notice's issuance on May 8, 2012.

D. INT's Replies

1. Contentions regarding the alleged sanctionable practices

33. With respect to the corruption allegations, INT submitted certain World Bank staff records with its Replies to support its assertion that the Procurement Advisor was a public official holding World Bank appointments relating to the projects at issue. Following the Sanctions Board's determinations on INT's various requests to restrict the Respondents' access to these staff records, as discussed in Paragraphs 54-57 below, INT withdrew the original version of the staff records attached to its Replies, and agreed to the distribution of a revised version. In reply to the extortion claims presented by Respondent Firm et al., INT asserts that the Respondent Director voluntarily initiated the arrangement with the Procurement Advisor, and that Respondent Firm et al. failed to provide any evidence suggesting that they were coerced into the arrangement. Moreover, INT asserts that the Procurement Advisor exerted significant influence in the procurement process to the benefit of Respondent Firm et al. In reply to the Respondent Co-Owner's denial of corrupt practices, INT reiterates that the Respondent Co-Owner stated during INT's interview that he had authorized payments to the Procurement Advisor, despite suspecting that they were intended for bribes.

34. With respect to the fraud allegations, INT contends that Respondent Firm et al., with their claimed experience with Bank-financed contracts, must have had sufficient knowledge of the Bank's procurement rules and procedures and of available means to report misconduct anonymously.

35. With respect to the obstruction allegations, INT submits that the relevant Respondents' "eventual admissions and cooperation did not come about as a result of [the Respondents'] voluntary action," and therefore do not negate their culpability for the initial obstruction of INT's investigation.

2. Sanctioning factors

36. INT asserts that the EO's recommended sanctions already take into account any relevant mitigating factors for each of the Respondents.

E. The Respondents' Supplemental Responses

37. Under Section 5.01(c) of the Sanctions Procedures, the Sanctions Board Chair authorized the Respondents to file Supplemental Responses to address the evidence attached to INT's Replies.

38. In their joint Supplemental Response, Respondent Firm et al. argue that those parts of the submitted staff records that are relevant to the Bank-Financed Projects in question do not prove that the Procurement Advisor held a World Bank appointment, or that any Bank appointment he held was in effect at the time of the alleged misconduct. Respondent Firm et al. further claim that they were not – and could not have been – aware of the Procurement Advisor's alleged status as World Bank staff.

39. In his Supplemental Response, the Respondent Co-Owner also argues that INT's evidence fails to support a finding that the Procurement Advisor held a World Bank appointment with respect to the relevant projects and acted as a public official. The Respondent Co-Owner also attached updated information on his new firm's compliance program, as mentioned in earlier submissions. Noting that these attachments did not appear to respond directly to the evidence that INT had submitted with its Replies, but also taking into consideration their potential relevance to the Sanctions Board's review, the Sanctions Board Chair, as a matter of discretion, admitted the attachments to the Respondent Co-Owner's Supplemental Response into the record.

F. Presentations at the Hearing

40. At the hearing, INT reiterated its allegations that the Respondents had engaged in corrupt practices as well as fraud and obstruction. INT characterized the Procurement Advisor's role in reviewing bid evaluation reports as essential, as the Bank's issuance of a "No Objection" letter to a contract award required his clearance. With reference to the evidence submitted with its Replies, INT reasserted that the Procurement Advisor held an official appointment as a World Bank consultant at the time of the alleged misconduct, and that the transcripts of INT's interviews reveal the Respondents' awareness of this official capacity and consequent motivation to enter voluntarily into the Consultancy Agreement with the Procurement Advisor.

41. Respondent Firm et al. disputed INT's allegations of sanctionable practices on the grounds presented in their written submissions, and reasserted grounds for mitigation. Regarding the corruption allegations, Respondent Firm et al. argued in particular that INT had not met its burden of proof with respect to various elements of corrupt practices, and failed to show that they had benefited from the alleged arrangement. In response to INT's fraud allegations, Respondent Firm et al. reiterated that they had no duty to disclose their payment arrangements with the Procurement Advisor where the disclosure would entail serious risks of retaliation and, in any event, those payments did not relate to the bidding process or contract

execution and therefore did not fall under the scope of the disclosure requirements. In response to INT's obstruction allegations, the Respondent Director admitted that he had ordered the deletion of emails prior to INT's audit, while knowing that INT's investigators were looking for information about the Respondents' interactions with the Procurement Advisor. Counsel for Respondent Firm et al. argued that the audit was not centered on the arrangement with the Procurement Advisor.

42. In a separate presentation, the Respondent Co-Owner reasserted that, while INT alleges that he approved a payment to the Procurement Advisor, he had no knowledge of the beneficiary's identity or the underlying agreement, and was not personally involved in any of the projects in question. The Respondent Co-Owner also reaffirmed his new firm's commitment to integrity and discussed various compliance measures initiated before the issuance of the Notice in this case.

43. All Respondents raised concerns about INT's withdrawal of the evidence originally submitted with INT's Replies, arguing that the information ultimately provided to the Respondents and the Sanctions Board was insufficient to establish the Procurement Advisor's status. INT asserted that applicable staff rules regarding the confidentiality of personnel information prevented INT from disclosing additional evidence of the Procurement Advisor's appointment as a World Bank staff member.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

44. The Sanctions Board will consider first various procedural matters raised by the parties. The Sanctions Board will then consider whether the record supports a finding of sanctionable practices, and if so, which of the Respondents may be held liable for each of the sanctionable practices. Finally, the Sanctions Board will determine what sanctions, if any, should be imposed on each of the Respondents.

A. Procedural Determinations

1. Written submissions or testimony from co-respondents

45. As noted earlier, Respondent Firm et al. request the Sanctions Board not to consider the Respondent Co-Owner's filings in resolving the proceedings against Respondent Firm et al.; and the Respondent Co-Owner requests the Sanctions Board not to consider INT's interviews with the other individual Respondents as a basis to support INT's allegations against him.

46. Each respondent named in a Notice of Sanctions Proceedings may contest the accusations and/or the recommended sanctions against that respondent in accordance with the Sanctions Procedures, and may do so regardless of the actions of other respondents in the same case. While the Sanctions Procedures do not address the possibility of multiple Responses by co-respondents, Section 9.04(b) of the Sanctions Procedures refers to the possibility of independent submissions from certain Affiliates of a respondent, at the Sanctions Board's discretion. This provision recognizes the possibility that parties subject to potential sanctions in the same proceedings may have different positions and interests warranting separate pleadings. At the same time, Section 8.02(a) defines broadly the scope of

the record for the Sanctions Board's consideration in any proceedings to include "the Notice, the Explanation (if any), the Response, the Reply, all other related written submissions of arguments and evidence, and all arguments presented at any hearing before the Sanctions Board." The Sanctions Procedures do not expressly provide for the possibility of excluding one respondent's properly filed pleadings from consideration in regard to other respondents in the same proceedings. In general, the Sanctions Board notes the value of considering all evidence together to facilitate a holistic and efficient analysis of all relevant facts and circumstances.

47. In this case, a single Notice was issued to all of the Respondents, and each of the Respondents received a copy of the written submissions filed by other Respondents. Although Respondent Firm et al. argue that they were denied the opportunity to comment earlier on the Explanation of the Respondent Co-Owner – who they assert has only limited knowledge of the facts – they had the opportunity to address or rebut points made in the Respondent Co-Owner's Explanation when they submitted their joint Response. It is the practice of the Sanctions Board to admit testimony and documentary evidence provided by both INT and respondents, consistent with the Sanctions Procedures, and to determine the weight that should be attached to testimony and documentary evidence in light of all the relevant circumstances. Ordinarily, therefore, testimony or documentary evidence provided by one respondent will be admissible against other respondents. Here, neither Respondent Firm et al. nor the Respondent Co-Owner established that any prejudice would result if this ordinary practice were followed.

48. With respect to the submissions made by both Respondent Firm et al. and the Respondent Co-Owner, the Sanctions Board notes that all parties had an opportunity to address and rebut any allegations made by the other parties. Moreover, the Sanctions Board, consistent with past precedent,[8] has considered the weight to be attached to the testimony and other evidence in light of all the relevant circumstances, including those considerations that the parties have drawn to the Sanctions Board's attention. Accordingly, the requests made by Respondent Firm et al. and the Respondent Co-Owner in this regard are denied.

2. INT's redaction of the Procurement Advisor's name

49. Respondent Firm et al. argue that INT's redaction of the Procurement Advisor's name from INT's pleadings hindered their defense by preventing scrutiny of the Procurement Advisor's identity, status, and role, thereby violating Sections 3.02 ("Disclosures of Exculpatory or Mitigating Evidence") and 5.04(d) ("Redaction of Materials") of the Sanctions Procedures.

50. Under Section 3.02 of the Sanctions Procedures, INT has the duty to present all relevant evidence in its possession "that would reasonably tend to exculpate the Respondent or mitigate the Respondent's culpability." The Sanctions Board finds that Respondent Firm et

[8] See, e.g., Sanctions Board Decision No. 50 (2012) at para. 39 ("The fact that testimony comes from a competitor may discount its value, depending on the circumstances, but will not necessarily preclude its use.").

al. failed to explain, and the record does not disclose, why Section 3.02 has any bearing on the question of the redaction of the Procurement Advisor's name.

51. Under Section 5.04(d) of the Sanctions Procedures, INT has discretion to remove references to World Bank Group staff from evidence presented to a respondent or the Sanctions Board. This provision is not limited to specific types of staff. Nor does it exclude the possibility of redaction where, as here, a staff member is implicated in the alleged misconduct. In view of INT's representations that the Procurement Advisor held appointments as a World Bank consultant during the relevant time period, INT's redactions of the Procurement Advisor's name would fall within INT's initial discretion under Section 5.04(d).

52. Where a respondent challenges a redaction made in terms of Section 5.04(d), the same section provides that the Sanctions Board "shall review the unredacted version of such evidence to determine whether the redacted information is necessary to enable the Respondent to mount a meaningful response to the allegations against it." Here, the Procurement Advisor's name was redacted mainly in email correspondence and other documents that Respondent Firm et al. had provided to INT, as well as in the transcripts of INT's interviews with the individual Respondents, while there were places in the record where the Procurement Advisor's name was not redacted. The Sanctions Board therefore finds, as the Respondents' written submissions confirm, that the Respondents were able to ascertain the name that was redacted, and that accordingly, the redaction did not hinder their defense.

53. Notwithstanding the above finding, the Sanctions Board observes that the method used for INT's redaction in the present case does not reveal that the same name was redacted in all instances, a point that INT confirmed only at the hearing. In the interest of transparency, INT may in the future consider replacing any redacted name with a specific descriptive or defined term or, where applicable, including a representation in the relevant pleadings to clarify that all instances of redaction relate to the same individual.

3. Determinations regarding INT's additional evidence

54. As noted earlier, INT submitted certain World Bank staff records with its Replies to support its assertion that the Procurement Advisor was a public official holding World Bank appointments relating to the projects at issue. Consistent with past precedent,[9] the Sanctions Board clarified that the Sanctions Procedures do not preclude INT's submission of additional evidence with the Reply or require that INT obtain special permission to submit new evidence at that time. Considering the apparent relevance of this evidence, and noting the Respondents' opportunity to respond thereto through Supplemental Responses, the Sanctions Board Chair denied the Respondents' requests that the evidence be excluded from the record.

55. The Sanctions Board also considered INT's various proposals regarding potential restrictions on the Respondents' access to INT's additional evidence. Taking into account the confidentiality of certain types of personnel information included in the staff records

[9] Sanctions Board Decision No. 55 (2013) at para. 28 ("Neither Section 5.01(b) nor any other provision of the Sanctions Procedures prohibits INT from submitting additional evidence with its Reply, or requires INT to seek prior permission to do so, so long as such evidence responds to the arguments and evidence in the Response.").

submitted by INT, the Sanctions Board granted INT's original request that the Respondents' access to the evidence be restricted to in camera review in accordance with Section 5.04(e) of the Sanctions Procedures. After the Sanctions Board had issued this determination, INT requested that the staff records originally attached to the Replies be completely withheld from the Respondents under Section 5.04(c) of the Sanctions Procedures, due to confidentiality concerns arising from INT's further consultation with relevant Bank units; and that a revised version of the attachments, consisting of terms of reference and less detailed personnel information, be made available for the Respondents' in camera review under Section 5.04(e).

56. In considering INT's requests to withhold its original additional evidence from the Respondents, and limit the Respondents' access to the revised additional evidence to in camera review, the Sanctions Board first noted the default presumption of access set out in Section 5.04(a) of the Sanctions Procedures. Section 5.04(a) provides that the parties to sanctions proceedings shall receive "copies of all written submissions and evidence, and any other materials received or issued by the Sanctions Board relating to the [sanctions] proceedings . . . except as otherwise provided in this Section 5.04." With respect to the staff records that INT had originally submitted with the Replies, the Sanctions Board did not accept INT's arguments that the evidence comes within any of the exceptional circumstances listed under Section 5.04(c), and denied INT's request to withhold the evidence from the Respondents. With respect to the revised version of the staff records that INT later proposed to provide for the Respondents' in camera review, the Sanctions Board reviewed the provisions of the World Bank's staff rules cited by INT. The Sanctions Board noted in particular that Staff Rule 2.01 ("Confidentiality of Personnel Information") at Paragraph 5.01(a) permits release of "[b]asic employment data such as name, employment status, employment dates, job title and department" to persons outside the Bank Group. On this basis, the Sanctions Board found no grounds to limit the Respondents to in camera review of the revised additional evidence, and thus denied INT's request.

57. Following the Sanctions Board's determinations on INT's requests, INT elected to withdraw the original version of the staff records under Section 5.04(c), and agreed to the distribution of the revised version of the evidence to all parties.

4. Conduct of INT's investigation

58. Basic principles of fairness require, among other protections, that interviewees be informed in due course of the possible outcome of an investigation, and be provided an opportunity to mount a meaningful response to any allegations against them.

59. Respondent Firm et al. assert that the Respondent Project Manager and the Respondent Commercial Manager were not given sufficient notice that they might be personally subject to sanctions. Although sanctions proceedings are not criminal in character, INT has adopted the beneficial practice of informing interviewees of the nature of the sanctions proceedings at the start of each interview. The transcripts of INT's interviews with the individual Respondents indicate that INT informed the interviewees that the scope of its inquiry encompassed potential misconduct by "suppliers or consultants [or] someone else working for them, like an agent," and that any misconduct would lead to public sanctions. Following the investigation, upon receipt of the Notice, all Respondents had the opportunity to explain their conduct in response to INT's formal accusations against them. On the basis of this record, the Sanctions

Board does not find that the individual Respondents received insufficient notice of the possibility of sanctions.

60. Respondent Firm et al. also assert that INT intimidated the Respondent Director during his interview by making a threatening reference to his family and discouraging him from seeking legal counsel. The use of intimidation is impermissible and may limit or annul the evidentiary weight of an individual's statements or admissions made in that context. Accordingly, INT must take care to avoid conduct that could reasonably be perceived as intimidating. Any suggestion that an interviewee's request to consult a lawyer in itself demonstrates non-cooperation or hinders INT's investigation may also raise concern as to the fairness of the investigation and consequently the reliability or weight of the evidence thus obtained. Considering the transcript of the Respondent Director's interview, together with INT's clarifications of certain aspects of that interview at the hearing, the Sanctions Board finds insufficient evidence that the Respondent Director was subject to inappropriate pressures which could impact the reliability of his interview statements.

5. Determination on motion to dismiss

61. Upon review of the evidence attached to INT's Replies, Respondent Firm et al. requested that the corruption accusations against them be dismissed for lack of evidence, and that this request be adjudicated in limine. The Sanctions Board found that the arguments of Respondent Firm et al. did not justify dismissal of the accusation at that stage of the proceedings. The motion to dismiss was therefore denied, without prejudice to the right of Respondent Firm et al. to present all of their arguments at the hearing.

B. Evidence of Corrupt Practices

62. INT alleges that Respondent Firm, Respondent Firm International, the Respondent Director, and the Respondent Co-Owner engaged in corrupt practices by offering and/or making payments to the Procurement Advisor in exchange for his assistance in obtaining Bank-financed contracts.

63. Paragraph 1.14(a)(i) of the May 2004 Procurement Guidelines defines a corrupt practice as the "offering, giving, receiving, or soliciting, directly or indirectly, of any thing of value to influence the action of a public official in the procurement process or in contract execution" (footnote omitted). Paragraph 1.14(a)(i) of the October 2006 Procurement Guidelines defines a corrupt practice as the "offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party" (footnote omitted).

64. As discussed below, the Sanctions Board concludes on the basis of the totality of the evidence that all elements of corrupt practices under the applicable definitions have been proven with respect to Respondent Firm, Respondent Firm International, the Respondent Director, and the Respondent Co-Owner.

1. Offering or giving a thing of value, directly or indirectly

65. The first element of corrupt practices requires a showing that a respondent offered or gave a thing of value. For clarity, the Sanctions Board notes that the recipient of the thing of value under this first element of the definition need not be – though may be – the same individual who is the intended target of influence under the second element of corrupt practices as discussed below at Paragraphs 75-85. As worded, the applicable definitions of corrupt practices encompass situations where a respondent pays another party, either public or private, to exert influence over a public official acting in the procurement process or contract execution.

a. Whether the Respondents gave a thing of value

66. Financial records provided by Respondent Firm International reveal that Respondent Firm and Respondent Firm International made four and ten bank transfers, respectively, to the same entity (the "Intermediary"), in relation to eleven of the Contracts. The Respondent Commercial Manager informed INT that the Procurement Advisor used the Intermediary to send invoices to, and receive payments from, the Respondents.

67. The Respondent Director admits that, in his capacity as director, he was generally responsible for all activities of Respondent Firm and Respondent Firm International. More specifically, the record contains internal correspondence revealing the Respondent Director's direct involvement in payments to the Procurement Advisor via the Intermediary.

68. The record further indicates that, under certain circumstances, payments of Respondent Firm had to be co-signed by both the Respondent Director and the Respondent Co-Owner. Email correspondence reveals that, in accordance with this requirement, the Respondent Director requested that the Respondent Co-Owner authorize a payment to the Intermediary which was processed a few days later. While the Respondent Co-Owner stated that this was the only payment to the Intermediary that he could recall authorizing, he does not contest that he may have authorized earlier transactions without noticing potential irregularities.

69. On the basis of this record, and considering in particular the financial records provided by Respondent Firm International, the Sanctions Board finds that it is more likely than not that Respondent Firm, Respondent Firm International, the Respondent Director, and the Respondent Co-Owner gave a thing of value to the Procurement Advisor.

b. Whether the Respondents offered a thing of value

70. Based on the Consultancy Agreement and email correspondence provided by Respondent Firm International, INT alleges that Respondent Firm International and the Respondent Director offered to give a thing of value to the Procurement Advisor. Since "offering" and "giving" are envisaged as alternative elements of corrupt practices under the applicable definitions, the Sanctions Board considers this allegation only with respect to the contracts of Respondent Firm International for which the record contains no evidence of payment to the Procurement Advisor.

71. Pursuant to the Consultancy Agreement that the Respondent Director signed on behalf of Respondent Firm, Respondent Firm was to pay the Procurement Advisor "5% of the total value of any Contract signed by [Respondent Firm]." The Respondent Commercial Manager suggested that Respondent Firm International later executed an analogous agreement with the Procurement Advisor, but stated that he could not locate a copy of such agreement. While the Consultancy Agreement referred directly to only two of the Bank-Financed Projects at issue, it also contained a clause providing that it would be extended to "any other project both parties agree to add to this agreement."

72. Moreover, all contracts in question are in a table that Respondent Firm International provided, and which lists all contracts with which the Procurement Advisor was involved. The table specifies the type of assistance that was received with respect to some of the contracts. In addition, email correspondence and transcripts of INT's interviews reveal that the Respondent Director and the Respondent Commercial Manager communicated with the Procurement Advisor regarding tenders prior to the public issuance of the bidding documents and during the procurement processes. On the basis of this record, the Sanctions Board finds that it is more likely than not that the arrangement with the Procurement Advisor also included those contracts for which no evidence of payment is available.

73. While the Respondents do not contest that payments were to be made in connection with the contracts at issue, Respondent Firm et al. assert that the Procurement Advisor forced them into the arrangement and threatened to exclude the Respondents from future contracting opportunities. As an evidentiary matter, and as further discussed in Paragraphs 86-87 below, the record does not contain any evidence that corroborates this claim of extortion, such as contemporaneous communications revealing coercive demands from the Procurement Advisor or the Respondents' reluctance to accede to his demands. As a matter of law, the Bank's legal framework for sanctions does not limit culpability for corrupt practices to instances in which a respondent initiates a corrupt scheme. Rather, the legislative history of the sanctions framework supports an interpretation of the term "offer," as used in the definition of sanctionable practices, that includes both a proactive offer of payment and a promise or commitment to pay a bribe when solicited.

74. Upon review of the record, the Sanctions Board concludes that it is more likely than not that Respondent Firm International and the Respondent Director promised additional payments to the Procurement Advisor, and therefore offered him a thing of value in breach of the applicable Procurement Guidelines.

2. To influence (improperly) the action of a public official in the procurement process or in contract execution

75. The second element of corrupt practices requires a showing that a respondent, in offering or giving a thing of value to another party under the first element, acted with a purpose to (i) "influence the action of a public official in the procurement process or in contract execution" (for matters governed by the May 2004 Procurement Guidelines) or (ii) "influence improperly the actions of another party" (for matters governed by the October 2006 Procurement Guidelines). The focus of this second element is thus on the respondent's purpose and intended target of influence. Despite the differences in wording between the two definitions, explanatory footnotes in both versions of the Procurement

Guidelines make clear that the target of influence is the same under both definitions: public officials acting in relation to the procurement process or contract execution, including "World Bank staff and employees of other organizations taking or reviewing procurement decisions."[10] As noted earlier, a public official who is the intended target of influence under this second element need not be – but may be, as INT alleges here – the same party who received the thing of value under the first element of corrupt practices.

76. INT alleges that Respondent Firm, Respondent Firm International, the Respondent Director, and the Respondent Co-Owner engaged in corrupt practices by seeking to influence the actions of the Procurement Advisor as a public official in his capacity as a World Bank staff member. According to INT, these Respondents made and offered payments to the Procurement Advisor "in exchange for services rendered in obtaining World Bank-financed contracts." The Respondents contend that INT's assertion fails because the Procurement Advisor, the alleged target of influence, was not a public official, but rather a self-described independent consultant. The Sanctions Board will therefore consider whether the record supports INT's assertion that the Procurement Advisor was a public official acting in relation to the procurement process or contract execution, as described under the applicable versions of the Bank's Procurement Guidelines, and whether Respondent Firm, Respondent Firm International, the Respondent Director, and the Respondent Co-Owner sought to influence him (improperly) in this capacity.

a. Whether the Procurement Advisor was a public official

77. The additional evidence that INT submitted with its Replies included terms of reference ("TOR") for the Procurement Advisor, which INT describes as showing that the Procurement Advisor was appointed by the Bank as a short-term consultant ("STC") in the context of a number of Bank-Financed Projects, including the seven projects at issue. INT also provided excerpts of Bank staff rules providing that STCs fall under the definition of Bank staff. In response, the Respondents argue that the TOR do not demonstrate that the Procurement Advisor accepted any appointment as a World Bank staff member, even for the limited number of working days under each of the alleged STC appointments that appeared to relate to some of the Contracts; and that no evidence at all was presented with respect to the remaining Contracts.

78. The Sanctions Board agrees with the Respondents that the evidence presented by INT does not establish that the Procurement Advisor accepted and held an STC position or other Bank staff appointment with respect to each of the Contracts. However, the applicable definitions of corrupt practices do not require evidence that the public official whom a respondent has sought to influence was specifically appointed, or designated, to work on any particular contract. Even without being officially assigned responsibility in a procurement process, a public official may have an actual or perceived role in taking or reviewing procurement decisions, and thus be the target of sanctionable influence. Correspondence and records provided by Respondent Firm International demonstrate, and the parties do not

[10] May 2004 Procurement Guidelines at Section 1.14(a)(i), n.17; October 2006 Procurement Guidelines at Section 1.14(a)(i), n.19.

dispute, that the Procurement Advisor did in fact act in the procurement processes for the Contracts. In addition, correspondence from the Bank's Human Resources Service Delivery Unit, attached to INT's Replies (as revised), confirms that the Procurement Advisor held a World Bank staff appointment as a consultant over a period of several years during which the alleged misconduct took place. On the basis of this record, the Sanctions Board finds that the Procurement Advisor was a Bank staff member, and therefore a public official, acting in the procurement process for the Contracts.

b. Whether the Respondents sought to influence (improperly) the Procurement Advisor

79. While the May 2004 Procurement Guidelines define corrupt practices as any attempt to influence defined public officials, the October 2006 Procurement Guidelines specify that the influence must be "improper." Respondent Firm et al. deny that they sought to improperly influence the Procurement Advisor. The Respondent Co-Owner asserts that he "never tried to influence [the Procurement Advisor]" at all.

80. However, the Respondents' own statements provide direct evidence of their intent "to influence." Respondent Firm et al. assert that they paid the Procurement Advisor "to do his job properly." In addition, the Respondent Director stated to INT that the Procurement Advisor was expected to give the Respondents a "fair evaluation" in the procurement process for contracts under Bank-Financed Projects, but no "extra benefits," in exchange for the payments.

81. It is clear from the verbatim transcript of INT's interview that the Respondent Co-Owner admitted that he had noticed a "clear indication of wrongdoing" when he was asked to approve the payment to the Intermediary, as to which email correspondence reveals he specifically requested clarification; and that he confirmed that he realized that the payment was intended as a bribe. He further stated during his interview, however, that he had decided not to withhold approval of the payment, but rather to "go with the flow," given that this was one of the last projects of Respondent Firm that he would have to work on with the Respondent Director, with whom the Respondent Co-Owner described a contentious relationship. Accordingly, the record supports a finding that the Respondent Co-Owner approved a payment that he knew was intended to influence a public official in the context of the procurement process for the contract at issue. The applicable definition of corrupt practices does not require proof that the Respondent Co-Owner knew the identity of the specific beneficiary of this payment.

82. The Sanctions Board does not accept the defense proffered by Respondent Firm et al. that they paid the Procurement Advisor only to ensure a fair evaluation and avoid unfair treatment, and therefore that they did not seek to exercise improper influence. As demonstrated by relevant international instruments, the concept of "improper influence" is not limited to circumstances in which a public official is induced to act in breach of his or her

duties (e.g., by promoting an unqualified bidder for contract award).[11] On the contrary, the payment or offer of any undue advantage to a public official to act or refrain from acting in connection with his or her official duties may constitute improper influence, regardless of whether the official's act would have been lawful had the payment or offer not been made.

83. Nor is the Sanctions Board persuaded by the statement of Respondent Firm et al. that they were not aware of the Procurement Advisor's official status, since he had introduced himself as an independent expert in his communications with them. The record reveals that they understood the Procurement Advisor's role in the procurement process at the time of their interactions. The transcripts of INT's interviews reflect, for example, that the Respondent Commercial Manager described the procurement process as including Bank-hired consultants who would approve procurement decisions and that, in this context, Respondent Firm welcomed the prospect of engaging with the Procurement Advisor; and that the Respondent Director first mentioned the Procurement Advisor when asked about the involvement of a "World Bank insider." The record thus does not support the contention of Respondent Firm et al. that they were unaware of the Procurement Advisor's official capacity.

84. Respondent Firm et al. also deny that they received help from the Procurement Advisor or that they could rationally have expected to influence him. As the Sanctions Board has previously observed, evidence that the desired influence actually materialized is not necessary for a finding of corrupt practices, even though it may bolster a showing of the respondent's intent to influence.[12] In any event, contrary to the Respondents' contentions, the record supports a finding of actual influence over the Procurement Advisor and consequent benefit to the Respondents. The record reveals that the Procurement Advisor provided early information to the Respondent Director and the Respondent Commercial Manager before and during the procurement process, sought and obtained their opinion on technical specifications for Bank-financed contracts, and intervened in a procurement process in which the Respondents' bid "need[ed] help" according to the Respondent Commercial Manager.

85. Considering the above evidence, the Sanctions Board concludes that Respondent Firm, Respondent Firm International, the Respondent Director, and the Respondent Co-Owner sought to influence the Procurement Advisor, improperly, within the meaning of both the May 2004 and October 2006 Procurement Guidelines.

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[11] See, e.g., Convention of the Organization for Economic Co-operation and Development on Combating Bribery of Foreign Public Officials in International Business Transactions (1997) at Article 1.1 ("in order that the official act or refrain from acting in relation to the performance of official duties"); United Nations Convention against Corruption (2003) at Article 15(a) ("in order that the official act or refrain from acting in the exercise of his or her official duties"); African Union Convention on Preventing and Combating Corruption (2003) at Article 4.1(b) ("in exchange for any act or omission in the performance of his or her public functions").

[12] Sanctions Board Decision No. 50 (2012) at para. 45.

3. Affirmative defense of duress

86. Respondent Firm et al. contest INT's allegations of corrupt practices on the grounds that they were subject to an extortion scheme and acted under duress, with the Consultancy Agreement imposed on them by the Procurement Advisor.

87. Even though the record reflects that the Procurement Advisor made the first contact by telephoning Respondent Firm and offering his services, the Sanctions Board finds insufficient support in the record for this affirmative defense. Interview statements and contemporaneous correspondence reveal that the Respondent Director and the Respondent Commercial Manager invited the Procurement Advisor to travel abroad to meet with them and welcomed the idea of his assistance. The record reveals that they were proactive in seeking his advice and inquiring about the timeline for upcoming tenders. While Respondent Firm et al. claim that they felt obliged to pay the Procurement Advisor even when they were the sole bidder or lowest responsive bidder, they adduced no evidence that such payments were due to threats, implicit or express, or that they made any attempt to terminate their arrangement with the Procurement Advisor. Bare assertions without supporting evidence cannot sustain a claim of coercion.

88. As the Sanctions Board has found all elements of corrupt practices proven under the applicable standards, and found insufficient evidence for an affirmative defense of duress, the Sanctions Board concludes that the record supports a finding of corrupt practices.

C. Evidence of Fraudulent Practices

89. INT alleges that Respondent Firm, Respondent Firm International, the Respondent Director, and the Respondent Commercial Manager engaged in fraudulent practices with respect to nine bids (the "Bids") by omitting to disclose their arrangement with the Procurement Advisor in bid submission forms requiring them to list "commissions, gratuities, or fees that have been paid or are to be paid with respect to the bidding process or execution of the Contract."

90. Paragraph 1.14(a)(ii) of the May 2004 Procurement Guidelines defines a fraudulent practice as "a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract." Paragraph 1.14(a)(ii) of the October 2006 Procurement Guidelines defines a fraudulent practice as "any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation." An explanatory footnote in the October 2006 Procurement Guidelines clarifies that, "[f]or the purpose of these Guidelines, . . . 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."

91. The May 2004 Procurement Guidelines do not include an explicit mens rea requirement such as the "knowing or reckless" standard adopted by the Bank from October 2006 onward. 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 articulate a new limitation.[13] Accordingly, the Sanctions Board has held that the "knowing or reckless" standard may be implied under the pre-October 2006 definitions.[14]

92. As discussed below, the Sanctions Board concludes on the basis of the record that all elements of fraudulent practices have been satisfied with respect to Respondent Firm, Respondent Firm International, the Respondent Director, and the Respondent Commercial Manager.

93. While Respondent Firm et al. also assert that "no harm of any kind was done to the Bank," evidence of harm is not required under the applicable definitions of fraudulent practices, and thus is not addressed below as an element of the sanctionable misconduct. Respondent Firm et al. also argue that they could not be expected to report the Procurement Advisor's involvement in corrupt practices to the Bank, and cannot be faulted for their nondisclosure in view of the "risks and likely costs" to them of divulging the arrangements. However, they fail to provide any details or supporting evidence for their argument and they did not explain, for instance, why they did not avail themselves of any available reporting mechanisms.

1. Misrepresentation or omission of facts

94. For each of the Bids, the Sanctions Board finds sufficient evidence in the record that the Respondents who signed the Bids knew, at the time of the Bids' submission, that the Procurement Advisor would be involved in the bid evaluation process and that any contract award would be subject to the provisions of the Consultancy Agreement. This evidence includes the Consultancy Agreement's reference to one of the Bank-Financed Projects at issue, under which the Respondents later submitted bids; email correspondence between the Respondents and the Procurement Advisor before the publication of bidding documents; and a table provided by Respondent Firm International listing the contracts for which they received advance information in respect of tenders.

95. With respect to the nature of the payments, the Sanctions Board notes that, under the Consultancy Agreement, Respondent Firm was to pay "as remuneration to the [Procurement Advisor] for the performance of its activities under this Agreement an amount of 5% of the total value of any Contract signed by [Respondent Firm]." The record also reveals that the financial records of Respondent Firm International listed payments to the Intermediary as a "commission," and the Respondent Project Manager used the term "commission" in his interview with INT when describing the arrangement with the Procurement Advisor.

96. On the basis of this record, the Sanctions Board finds that it is more likely than not that the failure to disclose the payments to be made to the Procurement Advisor as commissions, gratuities, or fees constituted a misrepresentation or omission of facts.

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

[14] Id.

2. Made knowingly or recklessly

97. The Sanctions Board will now consider whether the relevant Respondents acted knowingly or recklessly in failing to disclose the payment arrangement.

98. INT alleges, and Respondent Firm et al. do not deny, that the Respondent Director and the Respondent Commercial Manager, who signed the Bids, were aware of the arrangement with the Procurement Advisor. Respondent Firm et al. assert, however, that they did not know that they had to disclose the arrangement in the Bids, as they had only a limited knowledge of the Bank's procurement rules. INT contends that the Respondents' experience with Bank-financed contracts should have given them sufficient familiarity with the applicable procurement rules and processes to know that they should disclose the arrangement. Indeed, in his interview, the Respondent Director affirmed that he had marketed the Respondents' experience with the World Bank as a strong selling point to manufacturers. Also, as noted above, the financial records of Respondent Firm International and interview testimony used the term "commission" to characterize payments to the Intermediary for the Procurement Advisor. Finally, the contract with the Procurement Advisor required that it be kept secret. This, in and of itself, is a red flag, particularly when considered with the other evidence in the record.

99. In light of the above, the Sanctions Board finds that it is more likely than not that the relevant Respondents knowingly misrepresented their commitment to pay a commission to the Procurement Advisor in the event of a contract award.

3. In order to influence the procurement process (May 2004) or to obtain a financial or other benefit or avoid an obligation (October 2006)

100. INT alleges that the misrepresentation was motivated by the fact that any disclosure of the arrangement with the Procurement Advisor would have led to the Bids' disqualification and prevented the Respondents from obtaining the Contracts or resultant monetary benefit. Respondent Firm et al. do not contest that the omissions were intended to avoid disqualification for having made or promised improper payments to an individual involved in the procurement process. The relevant bidding documents specifically stated that a proposal would be rejected if the Bank determined that a bidder recommended for the award of a contract had engaged in a sanctionable practice in competing for the contract in question.

101. On this record, the Sanctions Board finds that it is more likely than not that the failure to disclose the Respondents' payment arrangement with the Procurement Advisor was intended to influence the procurement process (e.g., by avoiding a disqualification) and/or to obtain a financial benefit (e.g., a contract award). Accordingly, all elements of fraudulent practices are established under the applicable definitions of the May 2004 and October 2006 Procurement Guidelines.

D. Evidence of Obstructive Practices

102. INT alleges that Respondent Firm International, the Respondent Director, the Respondent Commercial Manager, and the Respondent Project Manager engaged in obstructive practices in the context of INT's investigation regarding the bid of Respondent Firm International under the Timor-Leste Health Sector Strategic Plan Support Project.

103. Paragraph 1.14(a)(v) of the October 2006 Procurement Guidelines defines an obstructive practice as (i) "deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation," or (ii) "acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under [Paragraph 1.14(e) of the October 2006 Procurement Guidelines]."

104. INT asserts that the Respondent Director instructed the Respondent Project Manager to delete emails, and that the Respondent Commercial Manager confirmed that emails had been deliberately deleted prior to INT's arrival. Respondent Firm et al. do not deny that emails were deleted, but deny INT's allegations of obstruction on the grounds that (i) the deletion of emails was a "panicked prior reaction which they overcame and corrected, and which had no material negative effect on the proper course of INT's investigation", and (ii) the EO recognized the alleged obstruction to be temporary and de minimis and largely outweighed by the significant cooperation that the relevant Respondents provided to INT.

105. The transcript of INT's interview with the Respondent Commercial Manager reveals that the emails were deleted after the Procurement Advisor had informed the Respondent Director and the Respondent Commercial Manager that he had been interviewed by the Bank regarding the project at issue. The Sanctions Board thus finds that it is more likely than not that the deletion of emails was intended to impede INT's investigation. Although Respondent Firm et al. argue that the emails were not germane to INT's eventual accusations, the Respondents' interview statements indicate that at least some emails related to their communications with the Procurement Advisor and therefore were material to the investigation. Accordingly, the Sanctions Board concludes that the deletion of those emails constitutes obstructive practices. This conclusion is not negated by any cooperation that the Respondents subsequently provided to INT, as such cooperation could be mitigating but not exculpatory.

106. The Sanctions Board will now consider the potential liability of each of the relevant Respondents in turn below.

107. *Respondent Director*: The record demonstrates, and the Respondents do not contest, that the Respondent Director specifically instructed his staff to delete emails before INT's audit. The Sanctions Board therefore finds that it is more likely than not that the Respondent Director engaged in obstructive practices by directing the deletion of emails that were material to the investigation, with the intent of impeding INT's investigation.

108. *Respondent Commercial Manager*: In contesting liability, the Respondent Commercial Manager argued that he was absent from the office when the Respondent Director had decided

and instructed his staff to delete emails; and that emails could be deleted from his computer by someone else. Yet the record reveals that the Respondent Commercial Manager explained to INT how, after having been informed that INT had approached the Procurement Advisor, "we thought this is not going the right way, and . . . maybe sort of panicked and decided to delete [the Procurement Advisor] from the computer." The Sanctions Board also takes into account the Respondent Commercial Manager's description during his interview as to how and which emails were deleted. The Respondent Commercial Manager asserts that these statements are not inconsistent with his explanation that others took the lead in deciding to delete emails and making these deletions in his absence. However, considering the statements in context, the Sanctions Board finds that it is more likely than not that the Respondent Commercial Manager engaged in obstructive practices.

109. *Respondent Project Manager*: The Sanctions Board notes that, while the Respondent Project Manager confirmed that he had deleted emails, he argued that none of INT's audit letters had been addressed to him and that he was therefore not aware of the implications of such deletion. In addition, the Respondent Commercial Manager indicated during his interview with INT that only he and the Respondent Director knew about INT's audit. The Sanctions Board considers that the record does not support a finding that the Respondent Project Manager was aware of INT's ongoing investigation when he deleted the emails. Accordingly, on the record presented, the Sanctions Board concludes that INT has not met its burden of proof to show it is more likely than not that the Respondent Project Manager deliberately impeded INT's investigation and therefore had the requisite mens rea to be found culpable for obstructive practices.

110. In light of the above, the Sanctions Board finds that all elements of obstructive practices are established under the October 2006 Procurement Guidelines with respect to the Respondent Director and the Respondent Commercial Manager, who were acting on behalf of Respondent Firm International as further discussed below in Paragraphs 111-112 below. The Sanctions Board further finds insufficient evidence to conclude that it is more likely than not that the Respondent Project Manager engaged in obstructive practices.

E. Vicarious and Concurrent Liability

111. In past cases, the Sanctions Board has considered that a respondent entity could be held directly and/or vicariously liable for the acts performed by its president, owner, and sole shareholder or its chief executive officer and authorized representative, acting in the course and scope of that individual's duties.[15] The Sanctions Board has also 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.[16] Where a respondent entity denies responsibility for the acts of its employees based on a rogue employee defense, the Sanctions Board has assessed any evidence presented

[15] See Sanctions Board Decision No. 41 (2010) at para. 85; Sanctions Board Decision No. 52 (2012) at para. 32.

[16] See, e.g., Sanctions Board Decision No. 46 (2012) at para. 29; Sanctions Board Decision No. 55 (2013) at para. 51.

regarding the scope and adequacy of the respondent entity's controls and supervision at the time of the misconduct.[17]

112. In the present case, the parties do not dispute the liability of Respondent Firm and Respondent Firm International for acts performed by the individual Respondents. The record indicates that the payments to the Procurement Advisor originated from the corporate accounts of Respondent Firm and Respondent Firm International. The record also reveals that the Respondent Director and the Respondent Commercial Manager acted within the scope of their duties and on behalf of both Respondent Firm and later Respondent Firm International when they agreed to, implemented, and concealed the arrangement with the Procurement Advisor. Moreover, the record does not provide any basis for, and indeed the Respondents did not present, a rogue employee defense which would require an analysis of any corporate controls or supervision in place at the time of the misconduct. Considering the totality of the evidence in the record, the Sanctions Board concludes that Respondent Firm and Respondent Firm International may be held liable for the corrupt, fraudulent, and obstructive practices committed by the Respondent Director and the Respondent Commercial Manager as their officers and employees.

113. The Sanctions Board also considers the issue of concurrent liability – specifically, the possibility of holding a given respondent liable for different types of sanctionable practices based on the same or closely related facts. For example, the record reveals that INT's allegations of fraud against the Respondent Director are based on his failure to disclose the same corrupt arrangement in which he personally participated, and which he concealed. The Sanctions Board concludes that the corrupt and fraudulent practices successively committed by the Respondent Director should be considered as one indivisible count of misconduct rather than two distinct counts, and that the fraudulent practices may therefore be considered as subsumed under the corrupt practices in assessing the Respondent Director's liability. The Sanctions Board's treatment of INT's two allegations of misconduct against the Respondent Director is without prejudice, however, to the finding of fraudulent practices by the Respondent Commercial Manager, whom INT did not separately accuse of corrupt practices.

114. At the same time, the Sanctions Board concludes that there is no bar to a respondent entity's potential liability for multiple related sanctionable practices if the sanctionable practices were carried out by different individuals acting on behalf of the entity. Accordingly, where the Sanctions Board has found that different individuals acted on behalf of Respondent Firm International in committing different types of sanctionable practices – namely, that the Respondent Director engaged in corrupt practices and the Respondent Commercial Manager engaged in fraudulent practices with respect to the same contract – Respondent Firm International shall be liable for each of these sanctionable practices. With respect to Respondent Firm, in contrast, the Sanctions Board finds that the corrupt and fraudulent practices were successively committed by the same individual – the Respondent Director – and the fraudulent practices may therefore be considered as subsumed under the corrupt practices in assessing Respondent Firm's liability.

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[17] See, e.g., Sanctions Board Decision No. 46 (2012) at para. 29; Sanctions Board Decision No. 47 (2012) at para. 33; Sanctions Board Decision No. 48 (2012) at para. 30; Sanctions Board Decision No. 55 (2013) at para. 53.

F. Sanctioning Analysis

115. Following the above liability analysis, the Sanctions Board will now determine appropriate sanctions for each of the Respondents found liable for corrupt, fraudulent, and/or obstructive practices, namely: Respondent Firm, Respondent Firm International, the Respondent Director, the Respondent Commercial Manager, and the Respondent Co-Owner.

1. General framework for determination of sanctions

116. 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.

117. As reflected in Sanctions Board precedents, the Sanctions Board considers the totality of the circumstances and all potential aggravating and mitigating factors to determine an appropriate sanction.[18] 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.[19]

118. The Sanctions Board is required to consider the 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 a point of reference to help illustrate the types of considerations potentially relevant to a sanctions determination. They further suggest potentially applicable ranges of increases or decreases from a proposed base sanction of debarment with the possibility of conditional release after three years.

119. 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 such respondent.

2. Factors potentially applicable in the present case

120. Section 9.02 of the Sanctions Procedures identifies a number of factors potentially relevant in this case, which are addressed in turn below.

a. Severity of the misconduct

121. Section 9.02(a) of the Sanctions Procedures requires consideration of the severity of the misconduct in determining the appropriate sanction. Section IV.A of the Sanctioning

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

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

Guidelines identifies a repeated pattern, sophisticated means, a central role, management's role, and the involvement of a public official or Bank staff as examples of severity.

122. *Repeated pattern of conduct*: Section IV.A.1 of the Sanctioning Guidelines refers to a repeated pattern of conduct as potential grounds for aggravation. Accordingly, the Sanctions Board has previously applied aggravation where the fraudulent practices involved multiple forgeries across two or more Bank-Financed Projects.[20] The Sanctions Board considers that the misconduct of Respondent Firm International and the Respondent Director in the present case related to Bank-Financed Projects in seven countries, and the Respondent Commercial Manager's misconduct related to Bank-Financed Projects in four countries. The Sanctions Board also considers that the corrupt payments and related misrepresentations took place over several years. As a result, the Sanctions Board concludes that the repetition and duration of the misconduct warrant aggravation with respect to these three Respondents.

123. *Sophisticated means*: Section IV.A.2 of the Sanctioning Guidelines states that this aggravating 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; if more than one jurisdiction was involved." INT alleges that aggravation is warranted in the present case because the Respondents' misconduct involved several jurisdictions. In response, Respondent Firm et al. contend that the scheme, which they attribute to the Procurement Advisor, was "very simple," and "always involved the same small set of persons." The Sanctions Board does not consider that the misconduct's extension across several countries, and therefore different jurisdictions, in itself demonstrates a greater complexity warranting aggravation in addition to the repetition considered above.

124. *Central role in misconduct*: Section IV.A.3 of the Sanctioning Guidelines states that this factor may apply to a respondent who acted as the "organizer, leader, planner, or prime mover in a group of 2 or more." The Sanctions Board finds that the record supports the application of this aggravating factor with respect to the Respondent Director, whose conduct included signing the Consultancy Agreement with the Procurement Advisor, instructing the Respondent Project Manager to delete emails relevant to INT's investigation, and actively seeking the Respondent Co-Owner's approval to make payment to the Procurement Advisor.

125. *Management's role in misconduct*: Section IV.A.4 of the Sanctioning Guidelines states that this factor may apply "[i]f an individual within high-level personnel of the organization participated in, condoned, or was willfully ignorant of the misconduct." INT alleges that the involvement of the Respondent Director and the Respondent Co-Owner constitutes an aggravating factor. Respondent Firm et al. contest the application of this aggravating factor to small and medium-sized enterprises ("SMEs") on the ground that the owners of SMEs are more likely to be involved in their companies' day-to-day activities than executives of larger companies. The Sanctions Board does not find this rationale persuasive in the context of Respondent Firm or Respondent Firm International, each of which employed multiple individuals at different levels, not limited to the high-level personnel who electively engaged in the misconduct. Based on its analysis and findings, the Sanctions Board concludes that

[20] Sanctions Board Decision No. 2 (2008) at para. 7; Sanctions Board Decision No. 41 (2010) at para. 88.

aggravation is warranted for the involvement of the Respondent Director and the Respondent Co-Owner with respect to Respondent Firm and Respondent Firm International.

126. *Involvement of a public official or World Bank staff*: Section IV.A.5 of the Sanctioning Guidelines proposes aggravating treatment where a respondent conspired with or involved a public official or World Bank staff member in the misconduct. INT argues that the involvement of the Procurement Advisor, who held a Bank appointment at the time of the misconduct, constitutes an aggravating factor. The Sanctions Board does not find aggravation warranted on this ground. While the Sanctions Board does not accept the Respondents' claim that they were extorted or coerced, and finds to the contrary that the Respondents deliberately engaged with the Procurement Advisor for their own benefit, the record does not support a finding that the Respondents initiated the corrupt arrangement with the Procurement Advisor so as to justify aggravation for involving a public official or Bank staff in the circumstances presented.

b. Magnitude of harm

127. Section 9.02(b) of the Sanctions Procedures requires consideration of the magnitude of the harm caused by the misconduct in determining a sanction. As examples of such harm, Section IV.B of the Sanctioning Guidelines refers to poor contract implementation and delay, as well as harm to public safety or welfare. The Respondents seek mitigating credit under this factor, claiming that their conduct caused no financial loss to the World Bank and actually improved the outcome of the procurement process. Consistent with Sanctions Board precedent considering the absence of potential aggravating factors as a neutral fact rather than as grounds for mitigation,[21] and noting that cognizable harm to a borrowing country may include non-monetary harms,[22] the Sanctions Board concludes that the Respondents' assertions as to the supposedly neutral or positive consequences of their actions do not justify mitigation.

c. Minor role in misconduct

128. Section 9.02(e) of the Sanctions Procedures provides for mitigation where a sanctioned party played a minor role in the misconduct. Section V.A of the Sanctioning Guidelines proposes that this factor be applied to a "minor, minimal, or peripheral participant." The Sanctions Board finds mitigation justified on these grounds with respect to the Respondent Co-Owner in light of his limited role in the corrupt practices. The record reveals that the Consultancy Agreement was signed less than three months before the split of Respondent Firm's activities between the respective new firms of the Respondent Director and the Respondent Co-Owner, and that the Respondent Co-Owner had only limited access to

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[21] See Sanctions Board Decision No. 52 (2012) at para. 46 (declining to grant mitigation for the respondent's continued performance under the contract at issue); Sanctions Board Decision No. 55 (2013) at para. 69 (denying the respondent's request for mitigation where the record did not suggest interference in the Bank's investigation "since the absence of interference is a neutral fact").

[22] See Sanctions Board Decision No. 55 (2013) at paras. 67-68 (applying aggravation for the magnitude of harm where the respondent's fraudulent conduct necessitated re-bidding and derailed the procurement process, even though the respondent was not awarded the contract and asserted that the value of the bid was modest).

the premises and financial records of Respondent Firm at the time of the Respondents' ensuing transactions with the Procurement Advisor. At that time, according to the Respondent Co-Owner's statements, uncontested by Respondent Firm et al., the Respondent Co-Owner and the Respondent Director had had years of continuous conflict, and the Respondent Co-Owner was focused on ending the outstanding contracts that had been awarded to Respondent Firm prior to the company's split. In addition, INT does not allege, and the record does not reveal, that the Respondent Co-Owner had any role in developing the corrupt scheme.

d. Voluntary corrective action taken

129. Section 9.02(e) of the Sanctions Procedures provides for mitigation where a sanctioned party took voluntary corrective action. Section V.B.3 of the Sanctioning Guidelines identifies the establishment or improvement, and implementation, of a corporate compliance program as an example of voluntary corrective action, with the timing, scope, and quality of the action 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 show voluntary corrective action.[23]

130. There is evidence in the record that the Respondent Co-Owner has taken concrete steps to introduce and implement a compliance program in his new firm (not a respondent in these proceedings). Relevant evidence includes recently adopted documentation providing for a zero-tolerance policy with respect to corrupt and fraudulent practices, among other misconduct; and an external compliance officer's progress report regarding implementation of the compliance program to date. The record also indicates that the Respondent Co-Owner requested that an external accountant review Respondent Firm's annual statements, and sought outside legal advice to obtain additional clarifications from the Respondent Director on certain expenses of Respondent Firm. The Sanctions Board notes that the Respondent Co-Owner took the above measures prior to the EO's issuance of the Notice, thereby supporting a finding of genuine intention to reform. Accordingly, the Sanctions Board concludes that the Respondent Co-Owner's voluntary corrective action warrants mitigation.

e. Cooperation

131. Section 9.02(e) of the Sanctions Procedures provides for mitigation where a respondent "cooperated in the investigation or resolution of the case." Section V.C of the Sanctioning Guidelines identifies a respondent's assistance with INT's investigation, admission or acceptance of guilt or responsibility, and voluntary restraint from bidding as some examples of cooperation.

132. *Assistance with the investigation*: Section V.C.1 of the Sanctioning Guidelines suggests that cooperation may take the form of assistance with INT's investigation or ongoing cooperation, with consideration of "INT's representation that the respondent has provided substantial assistance" as well as "the truthfulness, completeness, reliability of any

[23] Sanctions Board Decision No. 45 (2011) at para. 72.

information or testimony, the nature and extent of the assistance, and the timeliness of [the] assistance."

133. INT states that "[t]he Respondents' eventual admission and cooperation is a mitigating factor." The record reveals that the Respondent Director, the Respondent Commercial Manager, and the Respondent Project Manager met with INT investigators; provided inculpatory evidence to INT, including a list of contracts involving the Procurement Advisor; and made efforts to retrieve previously deleted emails. The Respondent Co-Owner also asserts, and INT does not contest, that he approached INT on his own initiative after INT's initial fact-finding mission; and took extra steps to fully cooperate and assist with INT's investigation at his own expense. On the basis of this record, the Sanctions Board concludes that the Respondents' cooperation constitutes a significant mitigating factor. This mitigating credit is consistent with INT's assurances during its interviews with the individual Respondents, and is not affected by any Respondent's request in the course of an interview to consult a lawyer.

134. *Admission*: Section V.C.3 of the Sanctioning Guidelines recognizes cooperation in the form of a respondent's admission or acceptance of guilt or responsibility, with the condition that early admissions or acceptance should be given more weight than admissions or acceptance coming later in the investigation or sanctions proceedings. During their interviews, the Respondent Director and the Respondent Commercial Manager admitted that they interacted with the Procurement Advisor, clarifying in particular their motivations to conclude the Consultancy Agreement. The Respondent Director also admitted to having instructed his staff to delete emails prior to INT's audit. In turn, the Respondent Co-Owner stated during his interview that he assumed responsibility for approving a payment to the Procurement Advisor. While these early admissions need to be assessed in light of later denials of culpability in the Respondents' written submissions and at the hearing, the Sanctions Board concludes that limited mitigation is appropriate on these grounds.[24]

135. *Voluntary restraint*: Section V.C.4 of the Sanctioning Guidelines provides for mitigation where a sanctioned party has voluntarily refrained from bidding on Bank-financed tenders pending the outcome of an investigation. In the present case, Respondent Firm et al. claim that they declined multiple awards of Bank-financed contracts during INT's investigation on the assumption that this was a requirement for a negotiated resolution of the case, but fail to provide evidence of a policy or practice of voluntary restraint. Accordingly, and consistent with past precedent,[25] the Sanctions Board concludes that the record does not support mitigation for voluntary restraint.

f. Period of temporary suspension

136. Section 9.02(h) of the Sanctions Procedures requires the sanctions determination to take into account the period of temporary suspension already served by the sanctioned party. The Sanctions Board thus takes into consideration that Respondent Firm International and the

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[24] See Sanctions Board Decision No. 49 (2012) at para. 40; Sanctions Board Decision No. 54 (2012) at para. 40.

[25] See Sanctions Board Decision No. 44 (2011) at para. 66.

Respondent Director have been suspended since October 5, 2011, and that Respondent Firm, the Respondent Commercial Manager, and the Respondent Co-Owner have been suspended since May 8, 2012.

137. The Sanctions Procedures provide that a temporary suspension imposed by the EO shall remain in effect "until the date of the final outcome of the sanctions proceedings," as set out in Section 4.02(a), unless the EO decides to terminate the suspension earlier, upon review of a respondent's Explanation, pursuant to Section 4.02(c). The Sanctions Procedures do not otherwise provide for termination of a temporary suspension. Consistent with past precedent,[26] the Respondent Co-Owner's request for early termination of his temporary suspension, presented in his Response, was denied.

g. Other considerations

138. 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."

139. *General performance under development projects*: The Respondent Co-Owner asserts as a mitigating factor that his company has successfully executed numerous development projects in the health sector. Consistent with past precedent regarding respondents' claimed record of general performance and contributions to development work,[27] the Sanctions Board finds no mitigation warranted on these grounds.

140. *Adverse consequences of debarment*: The Respondent Co-Owner further contends that no debarment should be imposed because of the adverse consequences such a sanction would have for his company's business opportunities. The Sanctions Board does not find that the Respondent Co-Owner's arguments regarding the potential impact of debarment justify mitigating treatment.[28]

141. *Proportionality*: In past cases involving multiple respondents and/or affiliates, the Sanctions Board has considered the proportionality of sanctions amongst parties based on their respective roles in the misconduct.[29] The record here supports a finding that the Respondent Director played the most active role in the misconduct, the Respondent Commercial Manager played a less active role, and the Respondent Co-Owner played a minor role.

142. *Plurality of sanctionable practices*: As the Sanctions Board finds that several of the Respondents engaged in two or more sanctionable practices, the Sanctions Board considers

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[26] See Sanctions Board Decision No. 55 (2013) at paras. 35-36.

[27] Sanctions Board Decision No. 47 (2012) at para. 57; Sanctions Board Decision No. 48 (2012) at para. 50.

[28] See Sanctions Board Decision No. 53 (2012) at para. 69. See also Sanctions Board Decision No. 58 (2013) at para. 12 (recognizing that financial impacts may be considered the natural consequences of suspension and debarment under the Bank's sanctions system).

[29] Sanctions Board Decision No. 49 (2012) at para. 42; Sanctions Board Decision No. 56 (2013) at para. 83.

Section III of the Sanctioning Guidelines regarding "Cumulative Misconduct" (emphases 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) or in misconduct in different cases (*e.g.*, in different projects or in contracts under the same project but for which the misconduct occurred at significantly different . . . times), each separate incidence of misconduct may be considered separately and sanctioned on a cumulative basis. In the alternative, the fact that the respondent engaged in multiple incidences of misconduct may be considered an aggravating factor under Section IV.A.1 ["Repeated Pattern of Conduct"] below.

143. In a previous case where respondents were found to have engaged in corrupt and fraudulent practices in two factually unrelated cases, the Sanctions Board considered the gravity of each incidence of misconduct on its own and determined that the sanctions for each offense should run on a cumulative basis.[30] By contrast, the Sanctions Board considers that the various sanctionable practices for which Respondent Firm International, the Respondent Director, and the Respondent Commercial Manager are found liable were closely interrelated. More specifically, the fraudulent practices were intended to conceal the corrupt agreement, the investigation of which was later obstructed. Accordingly, the Sanctions Board concludes that the plurality of sanctionable practices in this case warrants aggravation, rather than multiplication, of the base sanction for these three Respondents.

G. Determination of Liability and Appropriate Sanctions for the Respondents

144. Considering the full record and all the factors discussed above, the Sanctions Board:

i. determines that Respondent Firm, Respondent Firm International, and the Respondent Director, together with any entity that is an Affiliate directly or indirectly controlled by any of these Respondents, shall be, and hereby declares that they are, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner; (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any Bank-Financed Projects, provided, however, that after a minimum period of ineligibility of one (1) year and six (6) months for Respondent Firm and four (4) years for Respondent Firm International, Respondent Firm and/or Respondent Firm International may be released from ineligibility only if such entity has, in accordance with Section 9.03 of the Sanctions Procedures, adopted and implemented an effective integrity compliance program in a manner satisfactory to the World Bank; and that after a minimum period of ineligibility of four (4) years, the

[30] Sanctions Board Decision No. 41 (2010) at para. 89.

Respondent Director may be released from ineligibility only if all entities he directly or indirectly controls have, in accordance with Section 9.03 of the Sanctions Procedures, adopted and implemented effective integrity compliance programs in a manner satisfactory to the World Bank. These sanctions are imposed on Respondent Firm for corrupt practices as defined in Paragraph 1.14(a)(i) of the May 2004 Procurement Guidelines; on Respondent Firm International for corrupt practices as defined in Paragraph 1.14(a)(i) of the May 2004 Procurement Guidelines and Paragraph 1.14(a)(i) of the October 2006 Procurement Guidelines, fraudulent practices as defined in Paragraph 1.14(a)(ii) of the May 2004 Procurement Guidelines and Paragraph 1.14(a)(ii) of the October 2006 Procurement Guidelines, and obstructive practices as defined in Paragraph 1.14(a)(v) of the October 2006 Procurement Guidelines; and on the Respondent Director for corrupt practices as defined in Paragraph 1.14(a)(i) of the May 2004 Procurement Guidelines and Paragraph 1.14(a)(i) of the October 2006 Procurement Guidelines, and obstructive practices as defined in Paragraph 1.14(a)(v) of the October 2006 Procurement Guidelines.

ii. determines that the Respondent Commercial Manager, together with any entity that is an Affiliate that he directly or indirectly controls, shall be, and hereby declares that he is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner; (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider 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, for a period of three (3) years. This sanction is imposed on the Respondent Commercial Manager for fraudulent practices as defined in Paragraph 1.14(a)(ii) of the May 2004 Procurement Guidelines and Paragraph 1.14(a)(ii) of the October 2006 Procurement Guidelines, and obstructive practices as defined in Paragraph 1.14(a)(v) of the October 2006 Procurement Guidelines.

iii. reprimands the Respondent Co-Owner through a formal letter of reprimand to be posted on the World Bank's website for a period of six (6) months, without prejudice to the Respondent Co-Owner's eligibility to participate in Bank-Financed Projects. This sanction is imposed on the Respondent Co-Owner for corrupt practices as defined in Paragraph 1.14(a)(i) of the May 2004 Procurement Guidelines.

iv. finds insufficient evidence to conclude that it is more likely than not that the Respondent Project Manager engaged in the alleged obstructive practices as defined in Paragraph 1.14(a)(v) of the October 2006 Procurement Guidelines, and therefore declares that the sanctions proceedings against the Respondent Project Manager are hereby terminated.

145. The ineligibility of any entities and individuals debarred pursuant to the present decision 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.[31] The periods of ineligibility shall begin on the date this decision issues.

L. Yves Fortier (Chair)

On behalf of the
World Bank Group Sanctions Board

L. Yves Fortier
Marielle Cohen-Branche
Patricia Diaz Dennis
Catherine O'Regan
Denis Robitaille
Randi Ryterman

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