

Date of issuance: June 2, 2017

**Sanctions Board Decision No. 93
(Sanctions Case No. 397)**

**IBRD Loan No. 4760-RO
Romania**

Decision of the World Bank Group¹ Sanctions Board imposing a sanction of debarment with conditional release on the respondent entity in Sanctions Case No. 397 (the “Respondent”), together with any entity that is an Affiliate² directly or indirectly controlled by the Respondent, with a minimum period of ineligibility of fourteen (14) years beginning on the date of this decision. This sanction is imposed on the Respondent for corrupt and obstructive practices.

I. INTRODUCTION

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

2. A hearing was held on the same day at the request of the Respondent and in accordance with Article VI of the Sanctions Procedures. The World Bank Group’s Integrity Vice Presidency (“INT”) participated in the hearing through its representatives attending in person. The Respondent was represented by outside counsel, also attending in person. The Sanctions Board deliberated and reached its decision based on the written record and the arguments presented at the hearing.

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

- i. Notice of Sanctions Proceedings issued by the World Bank’s Evaluation and Suspension Officer (the “EO”)³ to the Respondent on July 20, 2015 (the “Notice”), appending the Statement of Accusations and Evidence (the “SAE”) presented to the EO by INT, dated May 20, 2015;

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 the 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.

² 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.” Sanctions Procedures at Section 1.02(a).

³ Effective March 31, 2013, the EO’s title changed to “IBRD/IDA Suspension and Debarment Officer” (“SDO”). For consistency with the Sanctions Procedures, this decision refers to the former title.

- ii. Response submitted by the Respondent to the Secretary to the Sanctions Board on January 4, 2016 (the “Response”); and
- iii. Reply submitted by INT to the Secretary to the Sanctions Board on April 18, 2016 (the “Reply”).

4. Pursuant to Sections 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the EO recommended debarment with conditional release for the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent. The EO recommended a minimum period of ineligibility of ten (10) years, after which period the Respondent may be released from ineligibility only if it has, in accordance with Section 9.03 of the Sanctions Procedures, demonstrated to the World Bank Group’s Integrity Compliance Officer that it has (i) taken appropriate remedial measures to address the sanctionable practices for which it has been sanctioned and (ii) adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank.

5. Effective May 21, 2014, pursuant to Article II of the Sanctions Procedures, which provides for temporary suspension prior to sanctions proceedings in certain circumstances, the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, was 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 provider⁵ 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”⁶). Upon submission of the SAE to the EO, the Respondent’s temporary suspension was automatically extended pending the final outcome of these sanctions proceedings pursuant to Sections 2.04(b) and 4.02 of the Sanctions Procedures. The Notice specified that the temporary suspension would apply across the operations of the World Bank Group.

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

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

⁶ The term “Bank-Financed Projects” includes activities financed through trust funds administered by the Bank to the extent governed by said Guidelines. Sanctions Procedures at Section 1.01(c)(i), n.3.

II. GENERAL BACKGROUND

6. This case arises in the context of the Health Sector Reform Project (II) (the “Project”) in the Republic of Romania (the “Borrower”), which sought to “provide more accessible services of increased quality and with improved health outcomes for those requiring maternity and newborn care, emergency medical care and rural primary health care.” On January 28, 2005, the Bank and the Borrower entered into a loan agreement to provide the approximate equivalent of US\$80 million to support the Project (the “Loan Agreement”). The European Investment Bank (“EIB”) also provided a loan to the Borrower in support of the Project. The Project became effective on May 31, 2005, and closed on December 31, 2013.

7. On May 26, 2008, the Borrower’s Ministry of Health (the “Ministry”) issued bidding documents with tender reference number ICB04 under the Project for the procurement of medical equipment for the emergency services of municipal and local hospitals (“Tender 4”). Tender 4 was composed of seven lots, and the Respondent submitted bids for all of them. The Respondent won Lots 1, 3, 5, and 7 and entered into contracts with the Borrower for each of those lots (the “Tender 4 Contracts”). The Tender 4 Contracts were valued at, respectively, US\$1,325,000, €218,750, €297,500, and €247,500.

8. On June 17, 2009, the Ministry issued bidding documents with tender reference number ICB08 under the Project for the procurement of laboratory equipment (“Tender 8”). The Respondent submitted a bid and won the sole lot under Tender 8. The Ministry and the Respondent entered into a contract for Tender 8 (the “Tender 8 Contract”), which was valued at US\$4,995,900.

9. On September 10, 2009, the Ministry issued bidding documents with tender reference number ICB09 under the Project for the procurement of maternity and neonatal care equipment (“Tender 9”). Tender 9 was composed of seven lots. The Respondent won Lots 1 and 4 and entered into contracts with the Borrower for those lots (the “Tender 9 Contracts”). The Tender 9 Contracts were valued at, respectively, US\$1,630,500 and €275,000.

10. On May 30, 2011, the Ministry issued bidding documents with tender reference number ICB10 under the Project for the procurement of equipment for emergency room, intensive care, and cardiology units (“Tender 10”). Tender 10 was composed of six lots. The Respondent won Lots 1 and 3, and entered into contracts with the Borrower for those lots (the “Tender 10 Contracts”). The Tender 10 Contracts were valued at, respectively, US\$597,800 and €270,250.

11. INT alleges that the Respondent engaged in corrupt practices in connection with Tenders 4, 8, and 9 by offering and paying commissions to a World Bank consultant involved in the procurement processes for those tenders (the “Procurement Advisor”). INT further alleges that the Respondent engaged in corrupt practices by offering and paying for personal trips for five staff members of the project management unit (“PMU”) in order to influence the award or execution of contracts under the Project. Finally, INT alleges that the Respondent engaged in an obstructive practice in connection with Tender 10 by refusing to permit INT to conduct an audit as requested.

III. APPLICABLE STANDARDS OF REVIEW

12. 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, formal rules of evidence do not apply; and the Sanctions Board has discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered.

13. 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.

14. The alleged sanctionable practices in this case with respect to Tenders 4, 8, and 9 have the meaning set forth in the World Bank’s Guidelines: Procurement under IBRD Loans and IDA Credits (May 2004) (the “May 2004 Procurement Guidelines”), which governed procurement for the Project and whose definition of sanctionable practices was repeated in the respective bidding documents for Tenders 4, 8, and 9. As noted above, INT alleges that the Respondent engaged in corrupt practices with respect to these tenders. Paragraph 1.14(a)(i) of the May 2004 Procurement Guidelines defines the term “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,” and the footnote thereto provides that the term “public official” includes “World Bank staff and employees of other organizations taking or reviewing procurement decisions.”

15. The alleged sanctionable practice in this case with respect to Tender 10 has the meaning set forth in the World Bank’s Guidelines: Procurement under IBRD Loans and IDA Credits (May 2004, revised October 2006 and May 2010) (the “May 2010 Procurement Guidelines”). Although the Loan Agreement provided that the May 2004 Procurement Guidelines would govern procurement for the Project, the bidding documents for Tender 10 and the Tender 10 Contracts defined sanctionable practices in accordance with the May 2010 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 or recipient country and the respondent as governing the particular contract at issue, rather than the standards agreed between the borrowing or recipient country and the Bank.⁷ Therefore, the alleged obstructive practice in connection with Tender 10 has the meaning set forth in Paragraph 1.14(a)(v)(bb) of the May 2010 Procurement Guidelines, which defines the term “obstructive practice” as, inter alia, “acts intended to materially impede the exercise of the Bank’s inspection and audit rights.”

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

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

1. Allegations of corrupt practices

16. *Corruption allegation 1:* INT alleges that the Respondent engaged in corrupt practices in relation to Tender 4 by offering and paying the Procurement Advisor, through an intermediary (the "Intermediary"), a 3% commission for each of the lots that it won. According to INT, the Respondent knew of the Procurement Advisor's direct influence over the bid evaluation process for Tender 4 and "used it to influence the actions of other public officials in its favor."

17. *Corruption allegation 2:* INT submits that the Respondent offered and agreed to pay a 5% commission to the Procurement Advisor for the Tender 8 Contract. INT asserts that, over the course of the Tender 8 bid submission and evaluation, the Respondent and the Procurement Advisor engaged in extensive efforts to influence the bid evaluation process in the Respondent's favor.

18. *Corruption allegation 3:* INT further alleges that the Respondent offered the Procurement Advisor a 5% commission for the Tender 9 Contracts and paid a 5% commission for the Tender 9 Lot 1 Contract. INT asserts that the Respondent and the Procurement Advisor engaged in extensive efforts to influence the bid evaluation process for Tender 9 in the Respondent's favor.

19. *Corruption allegation 4:* According to INT, during the evaluation processes for Tender 4, the Respondent offered and paid for a personal trip to the Netherlands for four members of the PMU. INT asserts that the Respondent paid for the trip in order to influence the PMU members' decision-making with respect to the award of two contracts under Tender 4.⁸

20. *Corruption allegation 5:* INT alleges that the Respondent offered and paid for a trip to Italy for the Project's financial coordinator (the "Financial Coordinator"), in order to obtain the Financial Coordinator's "influence in ongoing and future tenders and contracts" in connection with the Project.

2. Allegation of obstructive practice

21. INT submits that the Respondent engaged in an obstructive practice in connection with Tender 10 by refusing to permit INT to conduct an audit as requested. According to INT, after initially agreeing to cooperate with INT's audit, the Respondent ultimately refused to allow INT to inspect the requested records.

⁸ INT also asserts that the Respondent offered and paid for the trip to influence the PMU members in connection with the tender with reference number ICB07 ("Tender 7"), but states that its allegations of corrupt practices relate only to Tender 4 because Tender 7 was financed by the EIB.

3. Sanctioning factors

22. INT submits as aggravating factors (i) the Respondent's "numerous corrupt offers and payments," (ii) the sophistication of the Respondent's misconduct, (iii) the involvement of public officials and a World Bank staff member in the misconduct, (iv) the involvement of the Respondent's senior management in the misconduct, and (v) harm to the Project caused by the Respondent's corrupt practices. INT asserts that no mitigating factors apply in this case.

B. The Respondent's Principal Contentions in the Response

1. Contentions regarding requests for a stay of proceedings and production of evidence

23. The Respondent renews earlier requests – first raised prior to filing the Response – for a stay of proceedings and for the production of evidence.⁹ According to the Respondent, its "status as a suspect" in a national criminal proceeding (and its concomitant right against self-incrimination) and inability to interview witnesses for its defense "make it premature for the Sanctions Board to examine the case substantively." In addition, the Respondent states that INT did not produce evidence of certain individuals' asserted status and scope of responsibilities as "public officials," such as employment contracts, and requests the production of such evidence.

2. Contentions regarding INT's allegations of corrupt practices

24. *Corruption allegations 1, 2, and 3:* The Respondent submits that INT has not established all elements of corruption with respect to Tenders 4, 8, and 9. The Respondent argues that the record does not support that the Procurement Advisor was a public official, that at the time of the alleged misconduct the Respondent regarded the Procurement Advisor as an independent consultant, and that INT has presented insufficient evidence of the Respondent's alleged intent to influence the Procurement Advisor. The Respondent further argues that its former sales director (the "Sales Director") (now deceased), "played the leading role" in offering, agreeing, and making payments to the Procurement Advisor, and that INT has neither established that the Sales Director acted "dishonestly/improperly" nor justified the attribution of the Sales Director's acts to the Respondent.

25. *Corruption allegations 4 and 5:* With respect to INT's allegations that the Respondent offered and paid for trips for public officials, the Respondent argues that INT has not established that the recipients of the trips were public officials as the record does not contain "any employment contracts that include the positions they were to occupy in the relevant periods of employment." The Respondent further argues that INT has not established that the Respondent intended to influence the individuals in question or that the individuals held any "powers in respect of the award or implementation of the contracts" at issue.

⁹ The Respondent raised these requests in its submission of September 28, 2015.

3. Contentions regarding INT's allegation of obstructive practice

26. The Respondent contests INT's obstruction allegation, arguing that INT cannot compel it "to cooperate unconditionally" with the audit as this would lead to circumvention of the Respondent's "right not to incriminate itself vis-à-vis the pending [national] criminal charge." According to the Respondent, notwithstanding its right against self-incrimination, INT has not been willing to assure the Respondent that information from the audit "shall not be shared with criminal prosecution authorities."

4. Sanctioning factors

27. The Respondent disputes the application of aggravating factors and submits that the EO's recommended sanction "constitutes an exceptionally punitive level of sanctioning." In addition, the Respondent argues that, in determining any sanction, the Sanctions Board should consider, *inter alia*, that INT's investigation was flawed, the period of temporary suspension served, and "the crucial and initiating role" played by the Procurement Advisor and the roles of the Intermediary and the Sales Director. The Respondent also submits that its affiliates outside of Romania should be excluded from any sanction.

C. INT's Principal Contentions in the Reply

1. Contentions regarding the Respondent's request for a stay of proceedings

28. In response to the Respondent's stay request, INT refers to its earlier submission commenting on the Respondent's initial requests of September 28, 2015.¹⁰ In its submission, INT argued that the request has "no basis in the sanctions framework or in the facts of the case and should therefore be denied."

2. Contentions in support of its allegations of corrupt practices

29. INT argues that the Respondent has "made no effort to counter any of the evidence put forward by INT" with respect to its allegations of corrupt practices, and that the Respondent's "mute response speaks for itself." INT also argues that the Procurement Advisor's failure to exercise his influence in favor of the Respondent for every tender does not disprove the extensive evidence of his influence over the award of several of them.

3. Contentions in support of its allegation of obstructive practice

30. INT argues that the Respondent's refusal to permit an audit based solely on its "purported right against corporate self-incrimination" is an obstructive practice. INT further argues that the Respondent continues to assert "a blanket denial position" rather than exploring solutions – despite INT's stated willingness to commit that specific pieces of potentially incriminating evidence will not be disclosed to national authorities.

¹⁰ INT responded to the Respondent's initial requests in its submission of October 16, 2015.

D. Presentations at the Hearing

31. At the outset of the hearing, the Sanctions Board Chair invited INT and the Respondent to address the Respondent's request for a stay of proceedings. In responding, the Respondent referred to its asserted rights under Article 6 of the European Convention on Human Rights (the "ECHR"). Following the parties' presentations on this point, the Sanctions Board Chair called for a short recess so that the Sanctions Board could deliberate on the stay request. As discussed further below at Paragraphs 35-36, the Sanctions Board determined to deny the Respondent's request. Accordingly, the Sanctions Board proceeded to conduct the hearing on the merits in this case.

32. In its presentation, INT reiterated its allegations that the Respondent paid bribes to the Procurement Advisor, provided trips to the Netherlands and Italy for other public officials, and refused to permit INT to conduct an audit in relation to the Project. Regarding its allegation of bribe payments to the Procurement Advisor, INT argued that the only defense that the Respondent has put forward is that it was not aware that the Procurement Advisor was a public official. According to INT, this defense is not viable as INT has provided considerable evidence that the Respondent was aware of the Procurement Advisor's status and influence. INT specifically referenced evidence assertedly demonstrating that employees of the Respondent discussed "promised lots" that they expected to receive based on the Procurement Advisor's services, and that the Procurement Advisor shared with the Respondent "inside information" to which only a public official would have had access. With respect to its obstruction allegation, INT argued that the national and international law principles raised by the Respondent in support of its asserted right against self-incrimination do not apply in these sanctions proceedings, and that the right against self-incrimination would be more appropriately raised in the context of the national proceedings. Finally, INT argued that this case involves "egregious corruption" and warrants restitution payments as part of the Respondent's sanction.

33. The Respondent disputed INT's corruption allegations, arguing that INT has failed to establish on the record that the Procurement Advisor or the recipients of the trips were public officials or that the Respondent improperly influenced any of those individuals. The Respondent further argued that it understood the Procurement Advisor to be an independent procurement expert and that the Intermediary's conduct should not be attributed to the Respondent. According to the Respondent, the references to "promised lots" raised by INT may be understood as "business talk or a bit of bragging." With respect to INT's obstruction allegation, the Respondent reasserted its argument that it could not be compelled to cooperate with the audit in light of its right against self-incrimination, and that it would have submitted to the audit had INT committed to respecting its rights. The Respondent also acknowledged that the referenced international law principles may not be "directly applicable" in these sanctions proceedings, but asserted that the principles should nevertheless have some bearing on the case. In addition, the Respondent addressed potential sanctions, arguing that restitution was only raised by INT at the hearing and should not be applied. The Respondent further argued that mitigation should be applied considering, inter alia, that the Respondent's rights to mount a meaningful response and against self-incrimination have been breached; and that the Respondent has a past history of supplying "substantial innovative life support systems" for the benefit of the Borrower.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

34. The Sanctions Board will first address the procedural and evidentiary matters raised in the course of these sanctions proceedings. The Sanctions Board will then consider whether it is more likely than not that the Respondent engaged in the sanctionable practices alleged. Finally, the Sanctions Board will determine what sanctions, if any, should be imposed on the Respondent.

A. Procedural and Evidentiary Matters

1. Determination on the Respondent's request for a stay of proceedings

35. Referring to international law standards, the Respondent asserted that its "status as a suspect" in a national criminal proceeding (and its concomitant right against self-incrimination) and inability to interview witnesses for its defense "make it premature for the Sanctions Board to examine the case substantively." The Respondent further asserted that the specified individuals are expected to furnish exculpatory evidence in the course of interviews and that witness testimony may be collected following a stay of proceedings. INT argued that the request has "no basis in the sanctions framework or in the facts of the case." INT further argued, *inter alia*, that the Respondent's request "should be denied insofar as it attempts to connect sanctions proceedings with national criminal procedures;" and that "it is highly unlikely that the individuals listed by the Respondent could be compelled to provide any further information anyway – be it exculpatory or, indeed, inculpatory."

36. After carefully considering the parties' numerous written submissions, as well as the related presentations at the hearing, including the Respondent's arguments in relation to Article 6 of the ECHR, the Sanctions Board denied the Respondent's request for a stay of proceedings at the hearing. In reaching this determination, the Sanctions Board took into account that sanctions proceedings are solely administrative in nature and intended to ensure that the Bank's fiduciary duty is fulfilled and that the proceeds of its financings are used for their intended purposes. The Sanctions Board noted that its proceedings are carried out in accordance with the World Bank Group's sanctions framework, as approved by its member country shareholders. The Sanctions Board further noted that the sanctions framework does not provide for a stay of proceedings due to any concurrent criminal, civil, or administrative proceedings before a national court or other tribunal. In addition, the Sanctions Board observed that the conduct of these proceedings does not prejudice the Respondent's right to raise its asserted privilege against self-incrimination in the context of the pending national criminal proceedings; and that whether the Respondent may successfully raise the privilege is a matter for the national tribunal's consideration, not the Sanctions Board. Finally, the Sanctions Board determined that the Respondent's asserted inability to interview the specified witnesses does not constitute a basis for granting a stay of proceedings, as the Respondent has been given a full opportunity to respond to the case made out by INT. The Sanctions Board thus found no unfairness or fundamental procedural flaw in this respect that affected the Respondent's ability to mount a meaningful response to INT's allegations.

2. Determination on the Respondent's request for the production of evidence

37. With respect to INT's corruption allegations, the Respondent argued that INT did not produce evidence establishing that the alleged targets of influence were in fact public officials and requested access to any such evidence. In response, INT argued that sufficient evidence regarding the status of the relevant public officials had been submitted with the SAE.

38. Whether the evidence provided by INT is sufficient to establish a sanctionable practice is a question that the Sanctions Board must determine. Although Section 7.03 of the Sanctions Procedures provides that there is no right of discovery in sanctions proceedings, the Sanctions Board notes that INT is obligated to produce all exculpatory evidence in its possession under Section 3.02. As there is no suggestion here that the evidence sought by the Respondent is exculpatory, or indeed that it exists, the Sanctions Board denies the Respondent's request.

B. Evidence of Corrupt Practices

39. In accordance with the definition of corrupt practice under the May 2004 Procurement Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondent (i) offered or gave, directly or indirectly, any thing of value (ii) to influence the action of a public official in the procurement process or in contract execution.¹¹

1. Corruption allegation 1: Alleged bribes in connection with Tender 4

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

40. INT alleges that the Respondent offered and paid the Procurement Advisor, through the Intermediary, a 3% commission for each of the Tender 4 lots that it won. While the Respondent concedes that one of its employees made payments to the Intermediary, the Respondent argues that it was unaware of the "channe[lling of payments" by the Intermediary to the Procurement Advisor.

41. The record supports a finding that employees of the Respondent agreed to make payments – and did make payments – to the Procurement Advisor through the Intermediary in connection with Tender 4. For instance, in an email exchange in August 2008, the Sales Director confirmed to the Intermediary the Respondent's acceptance of a consultancy fee to be paid in relation to Tender 4.¹² Consistent with this agreement, contemporaneous evidence – including invoices, bank statements, and emails – indicates that employees of the Respondent made two payments to the Intermediary in March and May 2009. Following receipt of payments from employees of the Respondent, the Intermediary made corresponding payments to the Procurement Advisor, as revealed by emails between the Intermediary and the Procurement Advisor, as well as invoices

¹¹ The definition of "corrupt practice" in the bidding documents for Tenders 4, 8, and 9 omitted the footnote defining the term "public official."

¹² The record indicates that the Intermediary used at least two different email addresses to communicate with employees of the Respondent and the Procurement Advisor – including one email address that appears to have been in the name of the Intermediary's wife.

from the Procurement Advisor to the Intermediary that correlate exactly with the Procurement Advisor's bank statements.

42. Contrary to the Respondent's assertion that it was unaware of the channeling of payments by the Intermediary to the Procurement Advisor, the record indicates that employees of the Respondent knew of the relationship between the two individuals. For instance, before the second payment to the Intermediary, the Sales Director and the Intermediary exchanged emails regarding Tender 4 with copy to the Procurement Advisor. Also around the time of the payments, the Sales Director emailed the Intermediary and the Procurement Advisor – with copy to the Respondent's chief executive officer (the "CEO") – specifically addressing his salutation to the Intermediary and the Procurement Advisor. In addition, in January 2011, the CEO directly emailed the Procurement Advisor, with copy to the Sales Director, confirming that "payments were done" for Tender 4 through the Intermediary.

43. In light of the above, the Sanctions Board finds that it is more likely than not that employees of the Respondent made payments to the Procurement Advisor through the Intermediary. Because "offering" and "giving" are set out as alternative elements of corrupt practice under the applicable definition, the Sanctions Board declines to address INT's separate allegation of an offer.¹³

b. To influence the action of a public official in the procurement process or in contract execution

44. INT argues that the Respondent paid the Procurement Advisor in order to influence the award of the Tender 4 Contracts in the Respondent's favor. The Respondent argues, *inter alia*, that the record does not support that the Procurement Advisor was a public official, that evidence does not show that the Procurement Advisor was specifically appointed by the World Bank to work on the Project or contracts at issue, and that INT has presented insufficient evidence of the Respondent's alleged intent to influence the Procurement Advisor.

45. The applicable definition of corrupt practice in this case does not require evidence that the public official whom a respondent has sought to influence was specifically appointed to work on any particular project or contract.¹⁴ As the Sanctions Board has previously observed,¹⁵ even without being officially assigned responsibility in a procurement process, a public official may be shown on the record to have an actual or perceived role in taking or reviewing procurement decisions, and thus be the target of sanctionable influence. The record in this case demonstrates, and the parties do not dispute, that the Procurement Advisor did in fact have a role in the procurement process for the contracts at issue. In addition, the record contains documentary evidence showing that the Procurement Advisor was appointed by the Bank as a consultant at the time of the alleged misconduct. On the basis of this record, the Sanctions Board finds that the

¹³ Cf. Sanctions Board Decision No. 60 (2013) at para. 70 (deciding to consider the allegation of offering only with respect to those contracts for which the record contained no evidence of payments).

¹⁴ See *id.* at para. 78.

¹⁵ See *id.*

Procurement Advisor was a Bank staff member, and therefore a public official, acting in the procurement process for the contracts at issue.

46. The totality of the evidence supports a finding that employees of the Respondent acted with the requisite intent to influence the Procurement Advisor. Contemporaneous email and documentary evidence reflects that, in return for payments from the Respondent's employees, the Procurement Advisor exerted influence over the Tender 4 decision-making process for the Respondent's benefit. For example, in September 2008 – approximately two weeks after employees of the Respondent confirmed the payment arrangement with the Intermediary – the Procurement Advisor provided his comments to a Bank official on the bid evaluation report for Tender 4, which found that the Respondent's bids for a number of lots were non-compliant. In his comments, the Procurement Advisor asserted that the rejection of the Respondent for two Tender 4 contracts is unjustified and that the evaluation report should be amended to recommend award of those contracts to the Respondent. Evidence that employees of the Respondent expected to win "promised" contracts based on the arrangement with the Intermediary and the Procurement Advisor further supports a finding that the employees acted with corrupt intent. Specifically, in October 2008, the Sales Director emailed the Intermediary in reference to Tender 4 with the following inquiry, "Trust the 'promised (2) lots' will follow?;" and in January 2009, the Sales Director sent the Intermediary the following message, "Trust to receive the 'promised last lot.'" Consistent with the Respondent's expectations and the alleged corrupt arrangement to influence the procurement process, the Respondent won four Tender 4 contracts – including the two additional contracts for which the Respondent had not been recommended initially. As the Sanctions Board has previously observed,¹⁶ evidence that the desired influence actually materialized may bolster a showing of the respondent's intent to influence, even though it is not necessary for a finding of corrupt practices.

47. The Sanctions Board is not persuaded by the Respondent's defense that, at the time of the alleged misconduct, the Respondent regarded the Procurement Advisor as an independent consultant and not a public official. Evidence in the record – including that the Procurement Advisor was in fact a public official, that employees of the Respondent used the Intermediary to make payments to the Procurement Advisor and knew of the relationship between the two, that the Procurement Advisor exerted actual influence over the procurement process, and that the Respondent's employees expected contracts based on that influence – supports a finding that the employees were aware that the Procurement Advisor was functioning as a public official in relation to Tender 4.

48. On the basis of this record, the Sanctions Board determines that it is more likely than not that employees of the Respondent made payments to the Procurement Advisor in his capacity as a public official with a purpose to influence his actions in the procurement process for the Tender 4 Contracts.

¹⁶ See, e.g., Sanctions Board Decision No. 50 (2012) at para. 45; Sanctions Board Decision No. 60 (2013) at para. 84; Sanctions Board Decision No. 78 (2015) at para. 56.

2. Corruption allegation 2: Alleged bribes in connection with Tender 8
 - a. Offering or giving, directly or indirectly, any thing of value

49. INT alleges that the Respondent offered and agreed to pay a 5% commission to the Procurement Advisor for the Tender 8 Contract. The Respondent states that the Sales Director “played the leading role” in offering, agreeing, and making payments to the Procurement Advisor, but argues that INT has neither established that the Sales Director acted “dishonestly/improperly” nor justified the attribution of the Sales Director’s acts to the Respondent.

50. Email correspondence indicates that employees of the Respondent agreed to pay a 5% commission to the Procurement Advisor in connection with Tender 8. In July 2009, the Sales Director emailed the Procurement Advisor and the Intermediary stating that he included a 5% commission for Tender 8 as “discussed and agreed.” Consistent with this agreement, contemporaneous documentary evidence – including invoices, bank statements, and emails – reflects that employees of the Respondent made payments to the Procurement Advisor for his services.

51. In light of the above, the Sanctions Board finds that it is more likely than not that employees of the Respondent made payments to the Procurement Advisor. Because “offering” and “giving” are set out as alternative elements of corrupt practice under the applicable definition, the Sanctions Board declines to address INT’s separate allegation of an offer.¹⁷

- b. To influence the action of a public official in the procurement process or in contract execution

52. INT argues that the Respondent paid the Procurement Advisor for the award of the Tender 8 Contract. The Respondent argues, *inter alia*, that INT has presented insufficient evidence of the Respondent’s alleged intent to influence a public official.

53. The record contains direct evidence that payments under the first element were made in exchange for the Procurement Advisor’s Tender 8 services. For example, in October 2010 – just two days after the Ministry notified the Respondent that it had been selected for contract award – the Sales Director emailed the Procurement Advisor to confirm a 5% commission in return for the Procurement Advisor’s “commitments” with respect to Tender 8. As supported by the evidence discussed in the following paragraph, the record indicates that the Procurement Advisor’s commitments relate to his efforts to influence the selection process for Tender 8 in the Respondent’s favor.

54. Following the issuance of successive bid evaluation reports in which the Respondent was not recommended for contract award, the record demonstrates that the Procurement Advisor and employees of the Respondent worked together in support of the Respondent’s bid. Extensive contemporaneous documentary evidence indicates that the Procurement Advisor used information

¹⁷ Cf. Sanctions Board Decision No. 60 (2013) at para. 70 (deciding to consider the allegation of offering only with respect to those contracts for which the record contained no evidence of payments).

provided by employees of the Respondent to support his position, as communicated to World Bank staff, that the other bidders that had been recommended for contract award should be disqualified in favor of the Respondent. For example, the Sales Director provided the Procurement Advisor with detailed information “to reject a possible award” to the initially recommended bidder (the “First Competitor”) and instructed the Procurement Advisor to “please try to inform/convince the evaluation committee accordingly and let them correct/revise award to us.” The Procurement Advisor subsequently exchanged numerous emails with World Bank staff, appearing to use information from the Sales Director to support his position that the First Competitor’s bid was non-compliant. The bid evaluation report was subsequently revised and reissued. The revised report determined that the First Competitor’s bid was non-compliant and recommended contract award to another bidder (the “Second Competitor”). The record indicates that the Procurement Advisor and employees of the Respondent continued to work together for the Respondent’s benefit following issuance of that revised report, and that the Procurement Advisor used information provided by the Sales Director to support his position that the Second Competitor should be disqualified in favor of the Respondent.

55. Consistent with the alleged corrupt arrangement to influence the procurement process, the Respondent eventually won the Tender 8 Contract. As the Sanctions Board has previously observed,¹⁸ evidence that the desired influence actually materialized may bolster a showing of the respondent’s intent to influence, even though it is not necessary for a finding of corrupt practices.

56. As discussed in Paragraph 47 above, the Sanctions Board is not persuaded by the Respondent’s defense that the Respondent regarded the Procurement Advisor as an independent consultant and not a public official. It is clear from the nature of the Procurement Advisor’s services and his impact on the procurement process – which the Respondent’s employees were aware of as indicated by the evidence discussed above – that the Procurement Advisor was functioning as a public official in reviewing Tender 8 procurement decisions.¹⁹

57. On the basis of this record, the Sanctions Board determines that it is more likely than not that employees of the Respondent made payments to the Procurement Advisor in his capacity as a public official with a purpose to influence his actions in the procurement process for the Tender 8 Contract.

3. Corruption allegation 3: Alleged bribes in connection with Tender 9

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

58. INT alleges that the Respondent offered the Procurement Advisor a 5% commission for the Tender 9 Contracts and paid a 5% commission for the Tender 9 Lot 1 Contract. As noted in Paragraph 49 above, the Respondent states that the Sales Director “played the leading role” in offering, agreeing, and making payments to the Procurement Advisor.

¹⁸ See, e.g., Sanctions Board Decision No. 50 (2012) at para. 45; Sanctions Board Decision No. 60 (2013) at para. 84; Sanctions Board Decision No. 78 (2015) at para. 56.

¹⁹ See Sanctions Board Decision No. 60 (2013) at para. 78.

59. The record reflects that employees of the Respondent agreed to make payments to the Procurement Advisor in connection with Tender 9. For example, in October 2010, the Sales Director emailed the Procurement Advisor confirming that “we included 5%” for Tender 9. Consistent with this agreement, contemporaneous documentary evidence – including invoices, bank statements, and emails – reveals that employees of the Respondent made payments to the Procurement Advisor for his Tender 9 services.

60. In light of the above, the Sanctions Board finds that it is more likely than not that employees of the Respondent made payments to the Procurement Advisor. Because “offering” and “giving” are set out as alternative elements of corrupt practice under the applicable definition, the Sanctions Board declines to address INT’s separate allegation of an offer.²⁰

b. To influence the action of a public official in the procurement process or in contract execution

61. INT argues that the Respondent offered and made payments under the first element in order to influence the procurement process for Tender 9. The Respondent argues, *inter alia*, that INT has presented insufficient evidence of the Respondent’s alleged intent to influence a public official.

62. The record contains direct evidence that payments under the first element were made in exchange for the Procurement Advisor’s Tender 9 services. For instance, the Sales Director emailed the Procurement Advisor in October 2010 confirming that “we included 5%” for the Procurement Advisor’s Tender 9 commitments. In addition, invoices in the record reflect requests for payments from the Respondent for the Procurement Advisor’s services in connection with Tender 9. As supported by the evidence discussed in the following paragraph, the record indicates that the Procurement Advisor’s commitments and services relate to his efforts to influence the selection process for Tender 9 in the Respondent’s favor.

63. Evidence demonstrates that the Procurement Advisor and employees of the Respondent worked together to alter the Tender 9 bidding documents to benefit the Respondent. In July 2009 – approximately two months before the Ministry issued the Tender 9 bidding documents – the Procurement Advisor emailed the CEO and the Sales Director a draft of the bidding documents requesting “comments on the attached.” In response, the CEO emailed his comments on the documents and, with respect to one aspect of the bidding documents, wrote that “[m]aybe you are able to [i]nsert some details into the final specification to secure it more in our [d]irection.” The Procurement Advisor then provided feedback to World Bank staff on the bidding documents, which feedback the World Bank shared with officials of the Ministry. The record reflects that the Procurement Advisor and employees of the Respondent continued to work together for the Respondent’s benefit after issuance of the bid evaluation report for the Tender 9 Lot 4 Contract – in which report the First Competitor was recommended for contract award. For instance, following the Respondent’s submission of a complaint to the Ministry regarding asserted deviations in the First Competitor’s bid, the Procurement Advisor emailed World Bank staff setting out the basis for his view that “it is clear [the First Competitor’s] offer for Lot 4 is not compliant.” Notably, the

²⁰ Cf. Sanctions Board Decision No. 60 (2013) at para. 70 (deciding to consider the allegation of offering only with respect to those contracts for which the record contained no evidence of payments).

Procurement Advisor shared his message to the World Bank with the CEO and the Sales Director in an email with the subject line: “4 for you[r] eyes only.” The record includes additional communications between employees of the Respondent and the Procurement Advisor in which the employees provided the Procurement Advisor with information on the First Competitor’s asserted technical non-compliance. The record also includes an email indicating that the World Bank eventually decided to support award of the contract to the Respondent based on consultations with the Procurement Advisor.

64. Consistent with the alleged corrupt arrangement to influence the procurement process, the Respondent eventually won the Tender 9 Lot 4 Contract, in addition to the Tender 9 Lot 1 Contract. As the Sanctions Board has previously observed,²¹ evidence that the desired influence actually materialized may bolster a showing of the respondent’s intent to influence, even though it is not necessary for a finding of corrupt practices.

65. Finally, for the reasons discussed in Paragraphs 47 and 56, the Sanctions Board rejects the Respondent’s defense that the Respondent regarded the Procurement Advisor as an independent consultant and not a public official during the relevant period.

66. On the basis of this record, the Sanctions Board determines that it is more likely than not that employees of the Respondent made payments to the Procurement Advisor in his capacity as a public official with a purpose to influence his actions in the procurement process for the Tender 9 Contracts.

4. Corruption allegation 4: Alleged trip to the Netherlands for PMU members

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

67. INT alleges that employees of the Respondent offered and paid for a personal trip to the Netherlands for PMU members. The Respondent does not specifically contest this element of INT’s allegation. The Sanctions Board has held that a “thing of value” for purposes of corrupt practice need not be in the form of money, as it can instead be some other type of benefit or advantage.²² In a recent case, the Sanctions Board found that the respondent gave a “thing of value” to a public official in the form of an entertainment trip.²³

68. The record supports a finding that employees of the Respondent paid for a trip to the Netherlands for PMU members. This finding is supported by an airline invoice and a booking confirmation for a hotel in the Netherlands, which confirms rooms for three nights in

²¹ See, e.g., Sanctions Board Decision No. 50 (2012) at para. 45; Sanctions Board Decision No. 60 (2013) at para. 84; Sanctions Board Decision No. 78 (2015) at para. 56.

²² See Sanctions Board Decision No. 66 (2014) at para. 24 (finding that the respondent’s predecessor gave a “thing of value” to a Bank staff member by acceding to the staff member’s request that the respondent’s predecessor hire his son); Sanctions Board Decision No. 78 (2015) at paras. 53-54 (finding that the respondent firm had provided a “thing of value” to a public official by hiring the official’s daughter as an intern and then as a full-time employee).

²³ Sanctions Board Decision No. 85 (2016) at para. 23.

November 2008 for PMU members and a representative of the Respondent (the “Representative”). The hotel booking confirmation indicates that the Sales Director made the booking.

69. In light of the above, the Sanctions Board determines that it is more likely than not that employees of the Respondent gave a thing of value to the PMU members in the form of a trip to the Netherlands. Because “offering” and “giving” are set out as alternative elements of corrupt practice under the applicable definition, the Sanctions Board declines to address INT’s separate allegation of an offer.²⁴

- b. To influence the action of a public official in the procurement process or in contract execution

70. According to INT, the Respondent knew of the roles of the PMU members in connection with Tender 4, and paid for the trip in order to influence their decision-making with respect to the award of two contracts under Tender 4. The Respondent argues that INT has not established that the recipients of the trip were public officials or that the Respondent intended to influence the individuals in question.

71. Evidence supports a finding that at least three of the recipients of the trip to the Netherlands were public officials. The minutes of the bid opening session for Tender 4, attended by the Respondent’s employees, identify these individuals as members of the PMU within the Ministry. The record reflects that employees of the Respondent were aware that the individuals held responsibilities with respect to the Project and that the Respondent’s employees expected to discuss Project-related matters in the Netherlands. For example, in response to an email from the Sales Director regarding the Tender 4 Lot 7 Contract, the Representative stated that the trip “will be a good opportunity to discuss more details” about the contract. In a subsequent email, the Representative asked the Sales Director to “[p]lease, take into consideration that our guests” in the Netherlands consist of half of the evaluation committee for the “monitoring systems tender.” The record also reflects that employees of the Respondent expected to gain an advantage by providing the trip to the PMU members. Specifically, the Representative emailed the Sales Director thanking him for the hotel reservations and stated that “I appreciate that the business with [the Respondent] will be [i]ncreased after this conne[ct]ion.”

72. In addition, the timing of the trip further supports a finding that employees of the Respondent acted with corrupt intent. The Netherlands trip took place in November 2008, approximately four months after the bid submission deadline for the Tender 4 Contracts and prior to the award of the Tender 4 Lot 1 and Tender 4 Lot 3 Contracts. Finally, consistent with the corrupt arrangement, the Respondent won four Tender 4 contracts – including the contracts for Lots 1 and 3, which were awarded after the trip. As the Sanctions Board has previously observed,²⁵

²⁴ Cf. Sanctions Board Decision No. 60 (2013) at para. 70 (deciding to consider the allegation of offering only with respect to those contracts for which the record contained no evidence of payments).

²⁵ See, e.g., Sanctions Board Decision No. 50 (2012) at para. 45; Sanctions Board Decision No. 60 (2013) at para. 84; Sanctions Board Decision No. 78 (2015) at para. 56.

evidence that the desired influence actually materialized may bolster a showing of the respondent's intent to influence, even though it is not necessary for a finding of corrupt practices.

73. On the basis of this record, the Sanctions Board determines that it is more likely than not that employees of the Respondent provided the trip to the Netherlands with a purpose to influence the PMU members' actions in the procurement process for Tender 4.

5. Corruption allegation 5: Alleged trip to Italy for the Financial Coordinator

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

74. INT alleges that employees of the Respondent offered and paid for a trip to Italy for the Project's Financial Coordinator. The Respondent does not specifically contest this element of INT's allegation. As noted above, the Sanctions Board found in a recent case that the respondent's employees gave a "thing of value" to a public official in the form of an entertainment trip.²⁶

75. The record reflects that employees of the Respondent paid for a trip to Italy for the Financial Coordinator. During his interview with INT, the Financial Coordinator stated that he went on a trip to Italy paid for by the Respondent. According to the Financial Coordinator, the Respondent provided flight and accommodations, but not pocket money. Consistent with the Financial Coordinator's testimony, the record contains documentary evidence – including a hotel booking confirmation and internal accounting records – indicating that employees of the Respondent paid for the trip to Italy.

76. In light of the above, the Sanctions Board determines that it is more likely than not that employees of the Respondent gave a thing of value to the Financial Coordinator in the form of hotel accommodations and airfare for a trip to Italy. Because "offering" and "giving" are set out as alternative elements of corrupt practice under the applicable definition the Sanctions Board declines to address INT's separate allegation of an offer.²⁷

b. To influence the action of a public official in the procurement process or in contract execution

77. INT argues that the Respondent paid for the Financial Coordinator's trip to Italy in order to obtain his "influence in ongoing and future tenders and contracts in the Romania Project." The Respondent argues that INT has not established that the Financial Coordinator was a public official or that the Respondent intended to influence him.

78. The record reflects that the Financial Coordinator was a public official with responsibility for the Project. The minutes of the bid opening session for Tender 4, attended by the Respondent's employees, identify the Financial Coordinator as a representative of the PMU within the Ministry. In addition, during his interview with INT, the Financial Coordinator confirmed that he served in

²⁶ Sanctions Board Decision No. 85 (2016) at para. 23.

²⁷ Cf. Sanctions Board Decision No. 60 (2013) at para. 70 (deciding to consider the allegation of offering only with respect to those contracts for which the record contained no evidence of payments).

the PMU and stated that his role was “to allocate the budget to each contract based on the allocation received each year from the Ministry of Finance.”

79. The record supports a finding that employees of the Respondent acted with corrupt intent in paying for the Financial Coordinator’s trip. Evidence indicates that employees of the Respondent provided the trip on a confidential basis to the Financial Coordinator for his “good cooperation” with the Respondent in relation to the Project. In December 2010, the Representative emailed the CEO stating that the Financial Coordinator is interested in a trip for his family “if possible during vacation summer 2011 (very confidential).” In that email, the Representative suggested that the CEO “please take into consideration our good cooperation with him, covered by many . . . contracts.” During his interview with INT, the Financial Coordinator stated that other companies do not offer such trips, that he was wrong for accepting the trip from the Respondent, and that he is very sorry for that. In addition, the timing of the trip further supports a finding that employees of the Respondent acted with corrupt intent. The trip to Italy took place in July 2011, during which period the Tender 9 Lot 4 Contract was signed and while other contracts under the Project were open.

80. On the basis of this record, the Sanctions Board determines that it is more likely than not that employees of the Respondent provided the Financial Coordinator with the trip to Italy in order to influence his actions with respect to Tender 9.

C. Evidence of an Obstructive Practice

81. In accordance with the definition of obstructive practice under the May 2010 Procurement Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondent engaged in “acts intended to materially impede the exercise of the Bank’s inspection and audit rights.” INT alleges that the Respondent engaged in an obstructive practice by refusing to permit INT to conduct an audit in connection with the Project. According to INT, after initially agreeing to cooperate with INT’s audit, the Respondent ultimately refused to allow for inspection of the requested records. The Respondent argues that INT could not compel it to cooperate unconditionally with the audit as this would have led to circumvention of its right not to incriminate itself in light of concurrent national criminal proceedings. According to the Respondent, notwithstanding its right against self-incrimination, INT tried to compel the Respondent to cooperate with the audit even though INT was not willing to commit that information shared would not be referred to national prosecution authorities.

82. The audit clauses for the Tender 10 bidding documents and the Tender 10 Contracts specifically required the Respondent to permit the Bank to inspect all accounts and records relating to performance of the contracts at issue and the submission of the related bids, and to have such accounts and records audited by auditors appointed by the Bank. INT sent an audit letter to the Respondent in November 2013 (the “Audit Letter”). The Audit Letter referred to the Tender 10 Contracts and all of the other contracts at issue in this case, and requested that the listed documents be made available by a specified date and that INT be granted access to certain staff. The record indicates that INT and the Respondent communicated about the audit through February 2014, and that the Respondent ultimately did not provide INT with any of the requested materials or access to staff. Consistent with arguments raised by the Respondent in these sanctions proceedings, the

Respondent – through its outside counsel – took the position during INT’s investigation that the Respondent cannot be compelled to cooperate with the audit based on the Respondent’s asserted right against self-incrimination.

83. The Sanctions Board notes that INT does not have the power to compel the production of evidence or witness testimony, and that its investigative toolkit is limited. Accordingly, INT’s audit rights are an integral part of its investigative and fact-finding mandate, without which INT’s ability to detect, deter, and prevent fraud and corruption may be compromised. Here, the bidding documents for Tender 10 and the Tender 10 Contracts put the Respondent on notice that it may be sanctioned for obstructive practices for failure to cooperate with the Bank’s audit. The record includes INT’s stated willingness to commit that it would not disclose to national authorities specific pieces of potentially incriminating evidence. Despite this stated commitment and the Respondent’s obligations under the relevant audit clauses, the Respondent does not appear to have made any effort to identify specific documents that might not have conflicted with its asserted right against self-incrimination. Instead, the Respondent asserted a wholesale refusal to cooperate based on its right against self-incrimination. However, the Respondent may not raise a privilege against self-incrimination in these proceedings to avoid its contractual obligations to the Bank. Sanctions proceedings are not criminal in nature; they are an administrative process based on contractual obligations undertaken by the Respondent. Those contractual obligations include, first, an obligation to comply with an audit request by the Bank in relation to the relevant contracts, and second, an agreement that failure to comply with an audit request by the Bank may constitute the sanctionable practice of obstruction. These sanctions proceedings do not prevent the Respondent from raising its asserted privilege against self-incrimination in the context of the pending national criminal proceedings. Whether the Respondent may successfully raise this asserted privilege is a matter for the national tribunal’s consideration.

84. In light of the above, and considering the totality of the record, the Sanctions Board determines that it is more likely than not that the Respondent engaged in obstruction by impeding the Bank’s exercise of its inspection and audit rights.

D. Liability of the Respondent

85. In past cases, the Sanctions Board has concluded that an employer could be found liable for the acts of its employees under the doctrine of respondent 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.²⁸

86. The Respondent argues that the Sales Director “played the leading role” in making payments to the Procurement Advisor and that INT has not justified the attribution of the Sales Director’s acts to the Respondent. The Sanctions Board does not accept this defense, as the record supports a finding that employees of the Respondent, including senior management, engaged in corrupt and obstructive practices in accordance with the scope of their duties and with the purpose of serving the interests of the Respondent. For instance, the record indicates that the Sales Director

²⁸ See, e.g., Sanctions Board Decision No. 55 (2013) at paras. 51-52, 55; Sanctions Board Decision No. 61 (2013) at para. 30.

and the CEO arranged for payments from the Respondent to the Procurement Advisor in connection with various tenders; and that the Representative, along with the Sales Director and the CEO, arranged trips funded by the Respondent for public officials involved in various tenders or contracts under the Project. There is no indication in the record that any of these activities were undertaken outside the course and scope of the employees' duties or for any purpose other than serving the Respondent in winning and benefiting financially from the contracts. Thus, the Sanctions Board finds the Respondent liable for the corrupt and obstructive practices carried out by its employees.

E. Sanctioning Analysis

1. General framework for determination of sanctions

87. 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.

88. As reflected in Sanctions Board precedent, the Sanctions Board considers the totality of the circumstances and all potential aggravating and mitigating factors to determine an appropriate sanction.²⁹ 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.³⁰

89. The Sanctions Board is required to consider the types of factors set forth in Section 9.02 of the Sanctions Procedures, which provides a non-exhaustive list of considerations. In addition, the Sanctions Board refers to the factors and principles set out in the World Bank Sanctioning Guidelines (the "Sanctioning Guidelines"). While the Sanctioning Guidelines themselves state that they are not intended to be prescriptive in nature, they provide guidance as to the types of considerations potentially relevant to a sanctions determination. The Sanctioning Guidelines further suggest potentially applicable ranges of increases or decreases from a proposed base sanction of debarment with the possibility of conditional release after a minimum period of three years.

90. 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.

²⁹ See, e.g., Sanctions Board Decision No. 40 (2010) at para. 28.

³⁰ Sanctions Board Decision No. 44 (2011) at para. 56.

2. Plurality of sanctionable practices

91. As the Sanctions Board finds that the Respondent engaged in multiple counts of corrupt practices and an obstructive practice, the Sanctions Board considers Section III of the Sanctioning Guidelines regarding “Cumulative Misconduct.” The Sanctioning Guidelines provide in relevant part:

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

92. The Sanctions Board has previously applied separate cumulative sanctions where the different counts of misconduct arose out of factually unrelated cases,³¹ and where a respondent’s fraudulent conduct was distinct from, and not merely a means of concealing or furthering, the respondent’s corrupt practices in the same case.³² By contrast, the Sanctions Board applied aggravation rather than a separate sanction for multiple sanctionable practices in a case where the counts of misconduct were closely interrelated, with the fraud intended to prevent the discovery of the corrupt practices, the investigation into which was later obstructed.³³ In that case, the Sanctions Board concluded that the plurality of sanctionable practices warranted aggravation, rather than multiplication, of the base sanction for each respondent.³⁴

93. The record reflects that the Respondent engaged in six counts of misconduct in relation to four tenders and multiple contracts. Each count of misconduct was distinct from, and not merely a means of furthering, the other counts of misconduct. For example, the bribe payments to the Procurement Advisor under corruption allegations 1, 2, and 3 were made at different points in time and relate to different tenders and contracts; and the trips to the Netherlands and Italy under corruption allegations 4 and 5 were provided to different public officials for different purposes. Accordingly, the Sanctions Board concludes that the plurality of sanctionable practices engaged by the Respondent warrants multiplication, rather than aggravation, of the base sanction for the Respondent.

³¹ Sanctions Board Decision No. 87 (2016) at para. 150.

³² Sanctions Board Decision No. 63 (2014) at paras. 118-119; Sanctions Board Decision No. 87 (2016) at para. 151.

³³ Sanctions Board Decision No. 60 (2013) at para. 143.

³⁴ Id. See also Sanctions Board Decision No. 72 (2014) at para. 67 (finding that the plurality of sanctionable practices engaged in by a respondent warranted aggravation where that respondent engaged in corrupt practices in relation to one of the projects under which he had previously engaged in fraudulent practices and commissions to the same agent were central to each allegation of misconduct).

3. Factors applicable in the present case

a. Severity of the misconduct

94. Section 9.02(a) of the Sanctions Procedures requires the Sanctions Board to consider the severity of the misconduct in determining the appropriate sanction. Section IV.A of the Sanctioning Guidelines identifies a repeated pattern of conduct, sophisticated means of misconduct, management's role in the misconduct, and involvement of a public official in the misconduct as examples of severity.

95. *Repeated pattern of conduct:* INT submits that aggravation is warranted for the Respondent's "numerous corrupt offers and payments." The Sanctions Board applies aggravation for repetition on the first and third counts of corruption, considering that the Respondent made bribe payments in relation to four contracts under Tender 4 and two contracts under Tender 9.

96. *Sophisticated means:* Section IV.A.2 of the Sanctioning Guidelines states that this factor may include "the complexity of the misconduct (e.g., degree of planning, diversity of techniques applied, level of concealment); the number and type of people or organizations involved; whether the scheme was developed or lasted over a long period of time; [and] if more than one jurisdiction was involved." The record indicates that the corrupt misconduct was intended to manipulate the procurement process for numerous tenders with different technical specifications; and used a variety of tactics, including use of an intermediary to make bribe payments, provision of personal trips for public officials, and provision of information to a public official used to disqualify competitors. In addition, the record indicates that the scheme was implemented over the course of approximately three years with the active involvement of several of the Respondent's staff in both planning and execution. The Sanctions Board finds that aggravation is warranted for the Respondent in these circumstances.

97. *Management's role in the 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." The Sanctions Board has previously applied aggravation on this basis where high-level members of a respondent entity's management personally participated in a corrupt arrangement.³⁵ Here, the record reveals that senior officials of the Respondent who had ownership interests in the company, including the CEO and the Sales Director, were involved in the misconduct. Accordingly, the Sanctions Board finds that aggravation is warranted under this factor.

98. *Involvement of public official or World Bank staff:* Section IV.A.5 of the Sanctioning Guidelines states that aggravation should apply "[i]f the respondent conspired with or involved a public official or World Bank staff in the misconduct." In past cases, the Sanctions Board has

³⁵ See, e.g., Sanctions Board Decision No. 66 (2014) at para. 36 (applying aggravation for the direct involvement of the director of the respondent's predecessor where the record reflected that the director received and subsequently acceded to a Bank staff member's solicitation of employment for his son); Sanctions Board Decision No. 78 (2015) at para. 77 (applying aggravation for the involvement of the respondent firm's chief executive officer in the corrupt arrangement).

found that aggravation was warranted where the respondents conspired with public officials to win contracts,³⁶ and where the respondents, admittedly acting on their own initiative, proactively offered and paid a bribe to a public official.³⁷ In contrast, the Sanctions Board has declined to apply aggravation where the record did not establish that the respondent specifically conspired with or involved a public official in the corrupt scheme³⁸ or initiated the corrupt arrangement.³⁹ Here, INT submits that aggravation is warranted because the Respondent's misconduct involved public officials and a World Bank staff member. While the record reflects that employees of the Respondent made payments to the Procurement Advisor and provided trips to other public officials, the record does not support a finding that the Respondent's employees conspired with a public official or initiated the corrupt misconduct so as to justify aggravation under this factor.

b. Magnitude of harm caused by the misconduct

99. Section 9.02(b) of the Sanctions Procedures requires the Sanctions Board to consider 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 identifies harm to public safety/welfare and harm to the project. INT submits that the Respondent's corrupt practices undermined several tender processes, resulting in the Respondent receiving Bank-financed contracts at significantly higher prices than would have been paid to other bidders. However, as the bidders offered different products with different specifications in the various bids, it is not clear on the record – and it would be speculative for the Sanctions Board to opine – whether the Respondent's corrupt misconduct caused overpayment as asserted by INT. Accordingly, the Sanctions Board declines to apply aggravation on this ground.

c. Minor role in the misconduct

100. Section 9.02(e) of the Sanctions Procedures provides for mitigation “where the sanctioned party played a minor role in the misconduct.” Section V.A of the Sanctioning Guidelines states that mitigation may be warranted where “no individual with decision-making authority participated in, condoned, or was willfully ignorant of the misconduct.” The Respondent argues that the Sanctions Board should consider “the crucial and initiating role” played by the Procurement Advisor as compared to the roles of the Intermediary and the Sales Director. The Sanctions Board has previously observed that “a respondent bears the burden to show affirmatively that no one with decision-making authority participated in, condoned, or was willfully ignorant of the misconduct.”⁴⁰ As the Respondent has not carried this burden – considering in particular that the Respondent does not point to specific evidence in support of its assertion and that the record indicates that the CEO and the Sales Director were directly involved in the misconduct – the Sanctions Board declines to apply mitigation on this basis.

³⁶ See Sanctions Board Decision No. 87 (2016) at para. 130.

³⁷ See Sanctions Board Decision No. 70 (2014) at para. 33.

³⁸ See Sanctions Board Decision No. 50 (2012) at para. 62.

³⁹ See Sanctions Board Decision No. 60 (2013) at para. 126.

⁴⁰ Sanctions Board Decision No. 71 (2014) at para. 91.

d. Period of temporary suspension

101. Pursuant to Section 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account that the Respondent has been suspended since May 21, 2014, pursuant to Article II of the Sanctions Procedures, which provides for early temporary suspension by the EO prior to sanctions proceedings.

e. Other considerations

102. 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.”

103. *Passage of time:* The Sanctions Board has previously considered as a mitigating factor the passage of a significant period of time from the commission of the misconduct, or from the Bank’s awareness of the potential sanctionable practices, to the initiation of sanctions proceedings.⁴¹ This passage of time may affect the weight that the Sanctions Board attaches to the evidence presented, as well as the fairness of the process for respondents.⁴² At the time of the EO’s issuance of the Notice in July 2015, approximately seven years had elapsed since the Respondent’s agreement to make payments to the Procurement Advisor in August 2008 in connection with Tender 4. The Sanctions Board finds that mitigation is warranted in these circumstances.

104. *Contributions to development work:* The Respondent requests mitigating credit based on its asserted history of supplying “substantial innovative life support systems” for the benefit of the Borrower. Section 9.02(i) of the Sanctions Procedures expressly limits the Sanctions Board’s sanctioning analysis to considerations reasonably relevant to a respondent’s own culpability or responsibility for the sanctionable practice. The Respondent fails to establish the relevance of its argument under this framework. Consistent with past precedent declining to grant mitigating credit for respondents’ claimed contributions to development work, the Sanctions Board finds no mitigation justified on these grounds under the sanctions framework.⁴³

105. *Other considerations raised by the Respondent:* The Respondent argues that, in determining any sanction, the Sanctions Board should consider, *inter alia*, that INT’s investigation was flawed, that the Respondent “has been deprived of effective means and of equality of arms” to defend itself against INT’s allegations, that the Respondent’s “fundamental rights were

⁴¹ See, e.g., Sanctions Board Decision No. 50 (2012) at para. 71 (applying mitigation where sanctions proceedings were initiated approximately five years after the Bank’s awareness of the potential sanctionable practices); Sanctions Board Decision No. 63 (2014) at para. 116 (applying mitigation to multiple respondents where sanctions proceedings were initiated more than five (and up to nine) years after the misconduct, and more than five (and up to eight) years after the Bank’s awareness of the potential sanctionable practices); Sanctions Board Decision No. 68 (2014) at para. 47 (applying mitigation where sanctions proceedings were initiated more than four and a half years after the sanctionable practices had occurred and more than four years after the Bank had become aware of the potential misconduct).

⁴² See, e.g., Sanctions Board Decision No. 50 (2012) at para. 71; Sanctions Board Decision No. 83 (2015) at para. 102.

⁴³ See, e.g., Sanctions Board Decision No. 78 (2015) at para. 91.

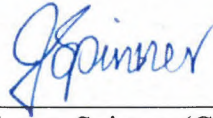
breached,” and that in collaborating with national authorities INT “has colluded in or has even initiated a second prosecution” against the Respondent. However, the Respondent does not specify how these proposed considerations may relate to their culpability or responsibility for the misconduct alleged by INT, as Section 9.02(i) of the Sanctions Procedures requires. While the way in which an investigation is conducted by INT may in certain circumstances inform the Sanctions Board’s consideration of the credibility, weight, and sufficiency of the evidence in a sanctions case, Section 9.02 of the Sanctions Procedures does not provide for the consideration of INT’s conduct in the determination of an appropriate sanction.⁴⁴ Moreover, the Sanctions Board notes that the Respondent had numerous opportunities to be heard and present arguments and evidence, including by filing an Explanation, Response, and other submissions during the course of these proceedings, and making oral presentations at the hearing. Accordingly, on the record presented, the Sanctions Board does not find that INT’s conduct or any other aspect of the proceedings compromised the Respondent’s ability to mount a meaningful response to the allegations presented. The Sanctions Board declines to afford any mitigating credit in these circumstances.

F. Determination of Liability and Appropriate Sanction

106. Considering the full record and all the factors discussed above, the Sanctions Board determines that the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, shall be, and hereby declares that it is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner; (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, provided, however, that after a minimum period of ineligibility of fourteen (14) years beginning on the date of this decision, the Respondent may be released from ineligibility only if it has, in accordance with Section 9.03 of the Sanctions Procedures, adopted and implemented an effective integrity compliance program in a manner satisfactory to the World Bank Group. This ineligibility shall extend across the operations of the World Bank Group. This sanction is imposed on the Respondent for corrupt practices as defined in Paragraph 1.14(a)(i) of the May 2004 Procurement Guidelines and an obstructive practice as defined in Paragraph 1.14(a)(v)(bb) of the May 2010 Procurement Guidelines.

⁴⁴ See Sanctions Board Decision No. 71 (2014) at para. 104; Sanctions Board Decision No. 87 (2016) at para. 156.

107. The Bank will also provide notice of this declaration of ineligibility to the other multilateral development banks (“MDBs”) that are party to the Agreement for Mutual Enforcement of Debarment Decisions (the “Cross-Debarment Agreement”) so that they may determine whether to enforce the declaration of ineligibility with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and procedures.⁴⁵



J. James Spinner (Chair)

On behalf of the
World Bank Group Sanctions Board

J. James Spinner
Olufunke Adekoya
Catherine O’Regan

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