THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: December 15, 2020

Sanctions Board Decision No. 129
(Sanctions Case No. 546)

IBRD Loan No. 7985-CO
Republic of Colombia

Decision of the World Bank Group[1] Sanctions Board imposing a sanction of debarment with conditional release on the respondent entity in Sanctions Case No. 546 (the "Respondent"), together with certain Affiliates,[2] with a minimum period of ineligibility of one (1) year and three (3) months beginning from the date of this decision. This sanction is imposed on the Respondent for a fraudulent practice.

I. INTRODUCTION

1. The Sanctions Board convened as a panel composed of Mark Kantor (Panel Chair), Cavinder Bull, and Maria Vicien Milburn to review this case. A hearing was held on September 29, 2020, at the request of the Respondent and the World Bank Group's Integrity Vice Presidency ("INT"), in accordance with Section III.A, sub-paragraph 6 of the Sanctions Procedures. Due to the COVID-19 pandemic, the Sanctions Board Chair determined that the hearing would be held virtually. Accordingly, INT participated in the hearing through its representatives attending via video conference. The Respondent was represented by its outside counsel, its chief executive officer ("CEO"), and the chief legal officer of the Respondent's parent company (the "Parent Company") – all attending via video conference. The Sanctions Board deliberated and reached its decision based on the written record and the arguments presented at the hearing.

2. In accordance with Section III.A, sub-paragraph 8.02(a) of the Sanctions Procedures, the written record for the Sanctions Board's consideration included the following:

i. Notice of Sanctions Proceedings issued by the World Bank's Suspension and Debarment Officer (the "SDO") to the Respondent on November 22, 2019 (the

[1] In accordance with Section II(y) of the World Bank Procedure: Sanctions Proceedings and Settlements in Bank Financed Projects, issued on June 28, 2016 (the "Sanctions Procedures"), the term "World Bank Group" means, collectively, the International Bank for Reconstruction and Development ("IBRD"), the International Development Association ("IDA"), the International Finance Corporation ("IFC"), and the Multilateral Investment Guarantee Agency ("MIGA"). The term "World Bank Group" includes Bank Guarantee Projects and Bank Carbon Finance Projects, but does not include the International Centre for Settlement of Investment Disputes ("ICSID"). As in the Sanctions Procedures, the terms "World Bank" and "Bank" are here used interchangeably to refer to both IBRD and IDA. See Sanctions Procedures at Section II(x).

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

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

ii. Explanation submitted by the Respondent to the SDO on January 10, 2020;

iii. Response submitted by the Respondent to the Secretary to the Sanctions Board on March 13, 2020 (the "Response");

iv. Reply submitted by INT to the Secretary to the Sanctions Board on April 17, 2020 (the "Reply");

v. Post-hearing submission filed by the Respondent on October 27, 2020 (the "Respondent's Post-Hearing Submission");

vi. Post-hearing submission filed by INT on November 4, 2020 ("INT's Post-Hearing Submission"); and

vii. Additional evidence submitted by the Respondent on November 11, 2020 (the "Additional Evidence").

3. On November 22, 2019, pursuant to Section III.A, sub-paragraphs 4.01 and 4.02 of the Sanctions Procedures, the SDO issued the Notice and temporarily suspended the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent (including but not limited to the controlled Affiliates listed in Section II.C of the Notice), from eligibility[3] with respect to any Bank-Financed Projects,[4] pending the final outcome of these sanctions proceedings. The Notice specified that the temporary suspension would apply across the operations of the World Bank Group. In addition, pursuant to Section III.A, sub-paragraphs 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the SDO recommended in the Notice the sanction of debarment with conditional release for the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent (including but not limited to the controlled Affiliates listed in Section II.C of the Notice). The SDO recommended a minimum period of ineligibility of two (2) years and one (1) month, after which period the Respondent may be released from ineligibility only if it has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, demonstrated to the World Bank Group's Integrity Compliance Officer that it has (i) taken appropriate remedial measures to address the sanctionable practice for which the Respondent has been sanctioned and (ii) adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank.

[3] The full scope of ineligibility effected by a temporary suspension is set out in the Sanctions Procedures at Section III.A, sub-paragraphs 4.02(a) and 9.01(c), read together.

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

II. GENERAL BACKGROUND

4. This case arises in the context of the Río Bogotá Environmental Recuperation and Flood Control Project (the "Project") in the Republic of Colombia, which seeks to transform the Río Bogotá river into an environmental asset for the Bogotá Distrito Capital metropolitan region by improving water quality, reducing flood risks, and creating multi-functional areas along the riverbank. On July 15, 2011, IBRD entered into a loan agreement with Colombia's Corporación Autónoma Regional de Cundinamarca (the "Borrower" or "PIU") to provide US$250 million for the Project (the "Loan Agreement"). The Project became effective on September 21, 2011, and is scheduled to close on September 30, 2021.

5. On April 4, 2013, the PIU issued prequalification documents (the "PQ Documents") for a contract for the detailed design, civil works, equipment supply and installation, and operations support for the improvement of the El Salitre Waste Water Treatment Plant (the "Contract"). On July 31, 2013, a consortium (the "External Consortium") comprising the Respondent and two partners (respectively, the First Partner and the Second Partner) submitted an expression of interest (the "EOI") to prequalify for the Contract. On February 12, 2014, the PIU issued an evaluation report prequalifying the External Consortium for the Contract. In December 2014, the PIU issued bidding documents for the Contract (the "Bidding Documents"). On May 11, 2015, the External Consortium submitted a bid for the Contract (the "Bid"). On April 22, 2016, the PIU recommended the award of the Contract to the External Consortium, based on an evaluation report dated March 2016. On May 20, 2016, the External Consortium and the PIU entered into the Contract.

6. INT alleges that the Respondent knowingly, or at least recklessly, misrepresented to the Bank and the PIU its intended role in the execution of the Contract.

III. APPLICABLE STANDARDS OF REVIEW

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

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

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

10. *Applicable definition of fraudulent practice*: The Loan Agreement provided that all goods, works, and services would be procured in accordance with the World Bank's Guidelines:

Procurement under IBRD Loans and IDA Credits (May 2004, revised October 1, 2006, and May 1, 2010) (the "May 2010 Procurement Guidelines"). The PQ Documents, the Bidding Documents, and the Contract each included language setting out the Bank's authority to sanction and definitions of sanctionable practices that are consistent with the May 2010 Procurement Guidelines. Paragraph 1.14(a)(ii) of these 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." A footnote to this definition explains that the term "party" refers to a public official; the terms "benefit" and "obligation" relate to the prequalification process, the procurement process, or contract execution;[5] and the "act or omission" is intended to influence the procurement process or contract execution.[6]

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

11. INT alleges that the Respondent misrepresented to the Bank and the PIU its intended role in the execution of the Contract. According to INT, the External Consortium represented in the EOI, the Bid, and the Contract the Respondent's role as the leader of the External Consortium. INT contends that, contrary to the External Consortium's representations, evidence shows that the Respondent did not intend to play a material role in the execution of the Contract. INT asserts that the Respondent agreed with its partners that it would receive a 3% success fee and a Project reference in exchange for the use of its credentials in securing the Contract. A separate consortium, which would exclude the Respondent and only include the First Partner, the Second Partner, and two local companies (the "Internal Consortium"), would execute the Contract. INT submits that the Respondent acted knowingly or at least recklessly in making the misrepresentations, and that the Respondent's actions were aimed at misleading the PIU and the World Bank to obtain the 3% success fee and the Project reference.

12. INT submits as aggravating factors sophisticated means and management's role. INT supports mitigation for the Respondent's cessation of misconduct, compliance program, cooperation, and voluntary restraint.

B. The Respondent's Principal Contentions in its Response[7]

13. The Respondent denies having misrepresented its involvement as lead partner for the Contract or merely lending its credentials, arguing that it "has always been the lead Consortium representative" to the PIU and that it was responsible for the success of the Contract. According

[5] The PQ Documents, the Bidding Documents, and the Contract all explain that the terms "benefit" and obligation" relate to the procurement process or contract execution. The PQ Documents and the Contract additionally explain that these terms relate to the prequalification process.

[6] May 2010 Procurement Guidelines at para. 1.14(a)(ii), n.20.

[7] In its Explanation, the Respondent does not address INT's allegation of fraud in detail but rather principally discusses sanctioning factors, which the Respondent expands upon in its Response. Accordingly, this summary focuses on the Response, though the Sanctions Board carefully considered the Explanation and all other submissions in the record.

to the Respondent, it did not act with the requisite intent because its personnel believed at all relevant times that its arrangements were common, legal, and appropriate. In support of this position, the Respondent makes the following principal arguments. First, the Respondent contends that it believed its arrangements were appropriate based on its experience under European Union ("EU") and Greek law. Second, the Respondent argues that it confirmed with external counsel that its arrangements were legal under Colombian law and under the Contract prior to execution of the Contract. Third, the Respondent submits that it had no reason to believe that its arrangements were otherwise improper under the Contract, arguing, inter alia, that it understood that subcontracting was permissible. Fourth, the Respondent argues that INT overstates evidence suggesting the Respondent's awareness that the arrangements were prohibited. And fifth, the Respondent argues that its actions were not aimed at misleading, or attempting to mislead, a party. In addition, the Respondent submits that its representations were not made to obtain a financial benefit to which it was not entitled.

14. The Respondent opposes any aggravation and requests mitigation for cooperation, voluntary restraint, temporary suspension, acceptance of responsibility, cessation of misconduct, compliance program, changes in management and governance, proportionality, passage of time, and minor role.

C. INT's Principal Contentions in the Reply

15. INT submits that the Response fails to rebut INT's allegation, arguing that the Respondent "brought entities into the Contract" that were not disclosed to the PIU and the Bank as required by the relevant procurement and Contract documents. INT contends that, contrary to the Respondent's argument, the Contract did not provide for "unfettered subcontracting," but rather required disclosure of subcontractors and that subcontractors comply with the Contract's qualification requirements. INT further contends that (i) World Bank rules and regulations govern the tender process and Contract (not Colombian, Greek, or EU law); (ii) the "overwhelming evidence" supports INT's case; (iii) the Respondent failed to demonstrate, despite the "made-for-litigation affidavit" of its water business unit manager (the "Water Unit Manager"), that the Respondent lacked knowledge of its fraudulent practices; and (iv) "the fact that INT did not find evidence showing that PIU officials challenged the Consortium over a confidential distribution of responsibility does not make the arrangements lawful vis-à-vis the World Bank." In addition, INT asserts that the Respondent's actions were aimed at misleading the PIU and the Bank so that it would pre-qualify and qualify for the Contract.

16. INT maintains its positions on the application of aggravating and mitigating factors, though it argues that mitigation should be offset for certain mitigating factors.

D. Presentations at the Hearing

17. INT reiterates its allegation that the Respondent engaged in fraud by misrepresenting its intended role in the implementation of the Contract. INT submits that it is uncontested that the Respondent represented that it would be the lead partner at 40% participation, even though seven "secret agreements" show that the Respondent did not intend to participate in the implementation of the Contract. INT argues that the various internal agreements are directly at odds with the

Respondent's representations in the EOI, the Bid, and the Contract. INT further argues that the Respondent was required to disclose all partners implementing the Contract as subcontractors, who must meet certain qualification requirements and be subjected to scrutiny. According to INT, the Bank's procurement rules are meant to ensure that the Bank and the Borrower know who is implementing the Contract and do not permit the sort of "indemnity based model" the Respondent arranged. INT disputes the Respondent's submission that it had confirmed that its arrangements were legal prior to Contract execution, arguing that the legal opinions from Colombian counsel did not answer the question of whether the arrangements complied with World Bank regulations and, in any event, were obtained after submission of the EOI and the Bid and therefore have no bearing on the Respondent's mens rea at the time of those submissions.

18. The Respondent disputes INT's allegation, arguing that INT oversimplified the Respondent's intended participation. The Respondent submits that it understood from the outset that it was ultimately responsible for the success of the Contract, that the record shows that it behaved in a manner consistent with its Contract obligations, that its personnel were "on the ground" from the very beginning, and that its internal arrangements were not improper. According to the Respondent, the key issue for the Sanctions Board to determine is whether the Respondent acted with the requisite intent to deceive. The Respondent argues that INT failed to meet its burden on this intent requirement; and that nothing in the PQ Documents, the Bidding Documents, or the Contract put the Respondent on notice that its conduct might not be proper. The Respondent further argues that the legal opinions from Colombian counsel confirmed that the arrangements in question were proper and legal. In addition, the Respondent argues that, should the Sanctions Board find it liable for misconduct, any sanction should be limited to a letter for reprimand. For his part, the Respondent's CEO states that the Respondent has improved its governance structure and management since 2018 – including through sweeping changes to the composition and governance of the Board of Directors; his appointment as CEO; and the Parent Company's hiring of a new chief financial officer, group-wide compliance officer, and general counsel.

19. At the conclusion of the hearing, the Panel Chair asked INT and the Respondent to confirm whether they had a fair hearing and opportunity to present their case. INT confirmed that it felt it had been heard completely. The Respondent stated that it felt heard on the merits, but that it did not feel fully heard on potential sanctioning factors. In light of the parties' oral submissions, the Panel Chair invited the Respondent to submit a request to make a post-hearing submission on sanctioning factors, which the Panel Chair would consider permitting in his discretion.

E. The Respondent's Principal Contentions in its Post-Hearing Submission

20. In its Post-Hearing Submission, the Respondent addresses arguments and evidence raised in INT's Reply in relation to sanctioning factors. The Respondent argues in this submission that (i) INT's theory that the Respondent's changes in management and counsel were part of a litigation strategy to intentionally delay these proceedings is meritless; (ii) its extensions to file its Explanation and Response were objectively reasonable and do not merit a deduction in mitigating credit; (iii) INT's efforts to undermine the Respondent's extensive cooperation with INT's investigation are unfounded; (iv) the Respondent merits substantial mitigating credit for the implementation of, and improvement to, its compliance program; (v) the voluntary measures that the Respondent took to remedy the alleged wrongdoing merits mitigating credit; and (vi) the

Respondent's acceptance of responsibility merits mitigation. In addition, the Respondent opposes aggravation for sophisticated means, arguing that INT attempts in its Reply "to stretch the sophisticated means factor to apply aggravation where there is none." The Respondent concludes by submitting that no aggravation is warranted in this case and requesting that the Sanctions Board apply full mitigating credit.

F. INT's Principal Contentions in its Post-Hearing Submission

21. INT argues that the Respondent "holds a significant share of responsibility for the timeline of these proceedings" and that, therefore, the passage of time in this case has limited mitigating impact. INT further argues that the Respondent deserves mitigating credit for its cooperation, but this cooperation "did not go 'above and beyond' the scope of the applicable audit clause." INT also contends that the company's compliance documents were entirely in Greek as of October 2019 and that the Respondent has produced no evidence that the policies were effectively communicated to employees in a language they understand. In addition, INT submits that cessation of misconduct as a mitigating factor is incompatible with the fact that the Respondent has maintained its original indemnity protections against its partners, and that the Respondent has never accepted full responsibility for the misconduct at issue. Finally, INT reiterates its position on sophisticated means as an aggravating factor.

G. The Respondent's Additional Evidence

22. In support of its asserted compliance efforts, the Respondent submits three ISO certifications as evidence that the Parent Company (and a sister company) have implemented Anti-Bribery Management Systems in accordance with ISO standards.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

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

A. Procedural and Evidentiary Matters

24. The parties in the course of these proceedings raised a number of procedural and evidentiary matters, including the Respondent's requests to file additional submissions and the parties' dispute regarding the weight of an affidavit submitted by the Respondent.

1. The Respondent's request to file a response to INT's Reply

25. On May 26, 2020, the Respondent requested leave to file an additional submission in response to INT's Reply. In support of its request, the Respondent argued that the Reply raises new issues and arguments not included in the SAE, and that it contains factual misstatements and factual and legal mischaracterizations. On June 1, 2020, exercising his discretion under Section III.A, sub-paragraph 5.01(c) of the Sanctions Procedures, the Sanctions Board Chair denied the Respondent's request, having found no adequate basis to authorize the additional

submission. The Sanctions Board Chair reminded the parties that they would have the opportunity to address or refute any arguments or evidence contained in the record during the oral hearing in this matter.

2. The Respondent's request to file a post-hearing submission and additional evidence

26. As noted above, at the conclusion of the hearing held on September 29, 2020, the Panel Chair invited the Respondent to submit a request to make a post-hearing submission on sanctioning factors. On October 2, 2020, the Respondent requested leave to submit a post-hearing brief to address the application of aggravating and mitigating factors, as well as other issues raised in INT's Reply. On October 13, 2020, the Panel Chair, in consultation with the Sanctions Board, granted the Respondent's request. In addition, the Panel Chair invited INT to comment on the Respondent's Post-Hearing Submission. The Respondent filed its Post-Hearing Submission on October 27, 2020, and INT's filed its comments on that submission on November 4, 2020.

27. In its Post-Hearing Submission, the Respondent requested leave to submit into the record the Additional Evidence summarized above. Considering the Respondent's request and INT's related comments, the Panel Chair, in consultation with the Sanctions Board, decided to grant the Respondent's request. The Respondent filed the Additional Evidence on November 11, 2020.

3. Weight of affidavit submitted by the Respondent

28. On February 10, 2020, the Respondent requested INT to schedule a re-interview of its Water Unit Manager, citing alleged irregularities and inconsistencies with the interview, which the Respondent argued compromised the reliability of the statements. On February 12, 2020, INT requested the Respondent to provide additional details setting out the factual basis for the re-interview request. Following further exchanges between the Respondent and INT, on February 24, 2020, INT determined that a re-interview of the Water Unit Manager was not warranted. The Respondent subsequently submitted with its Response an affidavit from the Water Unit Manager.

29. The Sanctions Board has carefully reviewed the transcripts of INT's interviews with witnesses. The Sanctions Board agrees with the Respondent that certain transcripts of interviews conducted by INT reflect confusing and unclear lines of questioning by INT investigators, and that the quality of these interviews – including the interview with the Water Unit Manager – affects the clarity and weight of the evidence in the interview statements. However, even assuming (without deciding) that the Water Unit Manager's affidavit is a more accurate presentation of his interview, documentary evidence in the record is more than sufficient for the Sanctions Board to resolve the disputed matters presented in this case. Accordingly, the Sanctions Board primarily bases its factual findings in the analysis that follows on the documentary evidence in this case, including the various agreements executed in connection with the Contract.

B. Evidence of Fraudulent Practices

30. In accordance with the definition of "fraudulent practice" under the May 2010 Procurement Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondent (i) engaged in any act or omission, including a misrepresentation (ii) that knowingly or recklessly

misled, or attempted to mislead, a party (iii) to obtain a financial or other benefit or to avoid an obligation.

1. Act or omission, including a misrepresentation

31. As discussed in detail below, the record supports a finding that the Respondent's employees misrepresented the Respondent's intended role in the implementation of the Contract in the EOI, the Bid, and the Contract.

a. Evidence of misrepresentation in the EOI

32. On April 4, 2013, the PIU issued the PQ Documents. Clause 4.1 of the PQ Documents provided that bidders may be in the form of a temporary partnership supported by a letter of intent or an existing agreement; and Clause 30.1 provided that any change in the structure or formation of the applicant after being prequalified "shall be subject to the [PIU's] approval in writing, within the deadline for bid submission." The PQ Documents also contained Forms ELE-1.1 and ELE-1.2, which required bidders to provide information regarding each partner. Form ELE-1.2 stated at its beginning that "[t]he following information has to be completed by all parties partnering with the Applicant, including the partners of a joint venture, and the subcontractors of the detailed design, in case this activity is subject to subcontracting." The record supports a finding that the Respondent's employees misrepresented in the EOI the Respondent's intended role in the implementation of the Contract. The External Consortium submitted its EOI to prequalify for the Contract on July 31, 2013. The EOI contained an agreement between the External Consortium members executed on July 11, 2013 (the "External Consortium Agreement"). This agreement provided that the members would participate in all phases of the Contract, with the Respondent as lead at 40% participation and the First Partner and the Second Partner each at 30% participation. The Form ELE-1.1 attached to the EOI confirmed that the Consortium would be composed of the Respondent, the First Partner, and the Second Partner. In addition, in response to the following statement in the Bid Submission Form: "(f) The undersigned, in accordance with Subclause 24.1 of the ITA, intend to subcontract the following critical components and/or sections of the works" – the External Consortium affirmed: "NONE." Moreover, this form made a number of representations in clauses (b), (c), and (d) regarding the status of, inter alia, any subcontractors; while in clause (f), as just noted above, the form represented that there were "NONE."

33. Notably, on June 27, 2013 (approximately one month prior to submission of the EOI) the Respondent, the First Partner, and a local company executed an indemnification agreement (the "Indemnification Agreement"). Contrary to representations in the EOI, the Indemnification Agreement provided, inter alia, that the Respondent would (i) not be required to participate in the implementation of the Contract (save for limited obligations) even though it would be considered a partner/lead for the purposes of prequalification and tender; (ii) provide, in its discretion, two or three engineers and one accountant; and (iii) relinquish its profits under the Contract and only retain a 3% success fee. This agreement supports a finding that the EOI misrepresented the Respondent's intended role in relation to the Contract.

b. Evidence of misrepresentation in the Bid

34. The record reflects that the misrepresentation in the EOI carried over into the Bid. The External Consortium submitted its Bid for the Contract on May 11, 2015. The Bid contained an incorporation agreement between the External Consortium members executed on May 5, 2015 (the "External Consortium Incorporation Agreement"), which maintained the same participation structure of 40-30-30. The External Consortium Incorporation Agreement stated that the "lead partner of the Consortium is [the Respondent]." The Agreement further provided that the partners "will be jointly and severally liable for the execution of the Contract and compliance of all provisions thereof" and that the partners agree that "together they will execute, through the Consortium, jointly and severally, all parts of the Plant and all works of the Contract." The Form ELE-1.1 attached to the Bid confirmed that the Consortium would be composed of the Respondent, the First Partner, and the Second Partner. The proposed key sub-contractor forms, EXP-2.4.2(a) [Key Sub-Contractors Proposed for Important Installation and Construction Elements] and EXP-2.4.2 (b) [Experience of Key Sub-Contractors] attached to the Bid identified only one company (the "Named Sub-Contractor") and the External Consortium as proposed key sub-contractors.

35. Three internal agreements executed by the Respondent and other entities indicate that the External Consortium's Bid misrepresented the Respondent's intended role with respect to the Contract. First, the External Consortium entered into a memorandum of understanding (the "MOU") on January 30, 2015 (over three months prior to Bid submission) with two local companies (neither of them the Named Sub-Contractor) to constitute the Internal Consortium for purposes of implementing the Contract. As previously noted, the Internal Consortium would exclude the Respondent and only include the First Partner, the Second Partner, and the two local companies.[8] Regarding the Respondent's participation, the MOU provided that "the participation of [the Respondent] must be consistent with the provisions of the Indemnity Agreement," and that the Respondent agrees that the First Partner and the Second Partner "will be in charge of taking decisions for [the External Consortium] related with the Bid and the Project." On May 8, 2015 (just three days before Bid submission), the Respondent and the Internal Consortium entered into two additional agreements essentially confirming and elaborating on the MOU (respectively, the "Respondent Participation Agreement" and the "Internal Consortium Agreement"). Under the Respondent Participation Agreement, the Respondent would be paid a 3% success fee in the event of Contract award and would be entitled to a Project reference document officially noting its 40% participation, "[n]otwithstanding the fact that [the Respondent] is not participating in the [Contract]." The Respondent Participation Agreement further provided that, "[n]otwithstanding that it is intended that [the Respondent] becomes a member of the Consortium, it has been agreed between the parties that save as set out in this agreement, all risks and rewards relating to [the Respondent's] participation in the Consortium and the Project shall be for the account of the Executing Parties, pursuant to their Internal Interest Percentages." The Agreement additionally stated that the Respondent "shall not be required to participate in the Project save to the extent of its obligations under clause 2.5." Clause 2.5, in turn, stated only that the Respondent "shall sign any documents necessary for the effective continuation of the Consortium, the Project . . . and the conduct of its business provided that any such document is within the scope of the Project and is

[8] On August 24, 2016, after the Contract was executed, the members of the Internal Consortium entered into an agreement with another local company, adding that company to the Internal Consortium.

needed for the Consortium to perform its obligations vis-à-vis the Customer." Pursuant to the Internal Consortium Agreement, inter alia, the parties agreed that: (i) for purposes of the bid and the relationship with the PIU, the parties will be represented by the External Consortium, according to the "External Interest Percentage[s]" (i.e., 40% for the Respondent and 30% each for the First Partner and the Second Partner); (ii) this notwithstanding, the Internal Consortium will be responsible for the preparation of the proposal and implementation of the Contract, according to "Internal Interest[] Percentage[s]" (i.e., 33.3% each for the First Partner and one of the local companies, 16.7% for the Second Partner, 15.7% for the other local company, and zero for the Respondent); (iii) "[n]otwithstanding that [the Respondent] is a member of the Consortium towards the [PIU]," the Respondent will not be required to have an "active participation at any stage of the [Contract]" or bear any related costs or liability, and will assign its economic rights under the Contract to the First Partner and the Second Partner; (iv) the Internal Consortium will bear all costs or losses and retain all benefits and profits from the Contract; and (v) the Respondent will be entitled to a 3% success fee and may designate three engineers and one CPA professional to work on the Contract. Contrary to its obligations under the Clause 30.1 of the PQ Documents and relevant disclosure provisions of the Bidding Documents, other than the members of the External Consortium, none of the other members of the Internal Consortium were disclosed to the PIU or the World Bank in the EOI, the Bid, the Contract or otherwise as members of the Consortium or as key sub-contractors, nor were the indemnification or the alterations to participation percentages, the responsibilities of the Respondent or the economic rights of the Respondent.

c. Evidence of misrepresentation in the Contract

36. On March 7, 2016, the PIU requested the External Consortium to confirm and update its corporate information, including its current composition. On March 16, 2016, the Respondent, on behalf of the External Consortium, responded that the composition of the External Consortium had not changed. Shortly thereafter, on May 20, 2016, the Contract between the PIU and the External Consortium was executed. The Contract provided that, among other documents, the "Bid Letter" and the "Other Forms of the Bid, duly completed and submitted with the Bid" constituted "the Contract between the Contracting Party and the Contractor, each one of which shall be considered and interpreted as a an integral part of the Contract." Following execution of the Contract, the External Consortium and the Internal Consortium signed an agreement to define rights and obligations between the partners vis-à-vis the PIU and the Bank (the "Joint Accounts Agreement."). This Agreement provided, inter alia, that "towards the [PIU], [the External Consortium] will be considered the sole owner of the legal business, and it will execute the awarded Contract in its sole name and under its personal credit," but that the Internal Consortium will use its "capacity and experience for material execution of the Contract . . . making its knowledge, know-how, human and material resources available" for that purpose. There is no indication in the record that the Respondent shared the Joint Accounts Agreement or any of the earlier internal agreements discussed above with the Bank or PIU during the relevant period, or otherwise made the requisite disclosures.

37. Considering the evidence discussed above, and the record as a whole, the Sanctions Board finds that it is more likely than not that the Respondent's employees misrepresented the Respondent's intended role in the implementation of the Contract.

2. That knowingly or recklessly misled, or attempted to mislead, a party

38. The record reveals that employees of the Respondent negotiated and signed the various internal agreements. These internal agreements support a finding that the employees knew that the Respondent's intended role with respect to the Contract conflicted with the role represented to the PIU. For instance, as noted above, the Indemnification Agreement was executed approximately one month prior to submission of the EOI and provided that the Respondent would not be required to participate in the implementation of Contract (save for limited obligations) – even though it would be represented to the PIU and the World Bank as the lead partner for purposes of prequalification and tender. As also noted above, the Internal Consortium Agreement was executed just three days prior to submission of the Bid and provided that "[n]ot withstanding that [the Respondent] is a member of the Consortium towards the [PIU]," the Respondent will not be required to have an "active participation at any stage of the [Contract]" or bear any related costs or liability, and will assign its economic rights under the Contract to the First Partner and the Second Partner. Further, the External Consortium and the Respondent did not disclose any of the additional Internal Consortium members as sub-contractors in the EOI, the Bid, or the Contract while having already agreed on a contrary allocation of actual responsibilities among the International Consortium members. In addition, contemporaneous email correspondence reveals that, even before submission of the EOI, employees of the Respondent and the First Partner discussed that the Respondent would need to appear as the leading partner with a participation of 40%, even though they could later agree to different roles internally. This evidence, as well as the evidence discussed above, indicates that the Respondent's employees knowingly misrepresented in the EOI, the Bid, and the Contract that the Respondent would serve as the lead partner in implementing the Contract.

39. The Sanctions Board is not persuaded by the Respondent's defense that it did not act with requisite intent because its personnel believed at all relevant times that its arrangements with the Consortiums were common, legal, and appropriate. In support of this position, the Respondent makes two principal arguments in its written submissions – each of them unavailing. First, with reference to EU Directive 2004/18/EC and EU Directive 2014/24/EU as implemented in Greece, the Respondent contends that its arrangements were permitted under EU and Greek law. The Sanctions Board does not take a position on the Respondent's interpretation of these Directives, which are not material to the Sanctions Board's findings here. As the Sanctions Board has consistently held, sanctions cases are governed by World Bank Group rules and not by the law of a particular jurisdiction.[9] Second, the Respondent argues that, by September 2016, it confirmed through legal advice from law firms in Colombia that its arrangements were legal under Colombian law and under the Contract prior to execution of the Contract. This argument is not convincing because this legal advice did not substantively address the External Consortium's obligation under the relevant World Bank procurement framework to disclose the actual entities implementing the Contract. For clarity, the legal opinions did not advise that undisclosed sub-contracting was permitted, and the various forms appended to the EOI and the Bid made clear that key sub-contractors must be disclosed (and never were). Moreover, the legal advice was received after the misrepresentation had already been made in the EOI, the Bid, and the Contract. While the

[9] See, e.g., Sanctions Board Decision No. 63 (2014) at para. 53; Sanctions Board Decision No. 93 (2017) at para. 36; Sanctions Board Decision No. 98 (2017) at para. 29; Sanctions Board Decision No. 104 (2017) at paras. 23-25.

Respondent's understanding of EU, Greek, and Colombian law may be relevant to its state of mind as to the legality of its arrangements, it is not sufficient to rebut the evidence showing that it knew it was acting contrary to its clear obligations under the applicable World Bank procurement rules and regulations.

40. The Respondent additionally suggested at the hearing that carrying out its financial obligations and its joint and several liability were sufficient to meet its obligations under the Contract, even though some undisclosed companies would actually implement the Contract. The Sanctions Board does not accept this argument. The record shows that the Respondent's employees, through the External Consortium, represented to the PIU and the Bank that the Respondent would participate as lead partner at 40%, and that these employees knew that the Consortium was prequalified for and awarded the Contract based in part on the Respondent's qualifications to perform the work. The Respondent's designation as lead partner related not just to financial obligations, but also to the Respondent's role in implementing the Contract. This is clear from a plain reading of the documents, which required bidders to list their experience and qualifications, and to disclose (for PIU approval) any companies to whom work would be subcontracted.

41. On the basis of this record, the Sanctions Board finds that it is more likely than not that the Respondent's representatives acted knowingly in misrepresenting the Respondent's intended role with respect to the Contract.

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

42. The Sanctions Board has previously found sufficient evidence of intent to obtain a financial or other benefit or to avoid an obligation where the record showed that misrepresentations were made in response to a tender requirement.[10] Here, the PQ Documents and the Bidding Documents required bidders in the form of a partnership to submit a letter of intent or existing partnership agreement. In response to these requirements, the Respondent's employees, through the External Consortium, attached the External Consortium Agreement to its EOI and the External Consortium Incorporation Agreement to its Bid. As discussed above, these agreements misrepresented the Respondent's intended role in the implementation of the Contract. In addition, and as also discussed above, contemporaneous email correspondence reveals that, even before submission of the EOI, employees of the Respondent and the First Partner discussed that the Respondent would need to appear as the leading partner with a participation of 40% to strengthen their proposal under the criteria set out in the PQ Documents.

43. On the basis of this record, the Sanctions Board finds that it is more likely than not that the Respondent's representatives engaged in the misrepresentation in order to prequalify for and win

[10] See, e.g., Sanctions Board Decision No. 74 (2014) at para. 29; Sanctions Board Decision No. 83 (2015) at para. 52; Sanctions Board Decision No. 88 (2016) at para. 37; Sanctions Board Decision No. 92 (2017) at para. 72; Sanctions Board Decision No. 99 (2017) at paras. 23-25; Sanctions Board Decision No. 106 (2017) at paras. 25-27; Sanctions Board Decision No. 114 (2018) at paras. 41-42; Sanctions Board Decision No. 120 (2019) at para. 41.

the Contract, and ultimately to benefit financially from the Contract as contemplated in the various internal agreements.

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

44. In past cases, the Sanctions Board has concluded that an employer could be found liable for the acts of its employees under the doctrine of respondeat superior, considering in particular whether the employees acted within the course and scope of their employment, and were motivated, at least in part, by the intent of serving their employer.[11] In the present case, the record supports a finding that the Respondent's employees engaged in the fraudulent practice in accordance with the scope of their duties and with the purpose of serving the interests of the Respondent. For instance, the record reflects that employees of the Respondent signed the External Consortium's EOI and Bid, as well as the Contract. Each of these documents misrepresented the Respondent's intended role in implementing the Contract. The record also shows that the Respondent's employees negotiated and signed the various internal agreements setting out the actual role intended for the Respondent. There is no indication in the record that these individuals acted for any purpose other than serving the Respondent, i.e., to obtain a financial benefit and a Project reference for the Respondent in relation to the Contract. Moreover, the Respondent does not present, and the record does not provide any basis for, a rogue employee defense. Accordingly, the Sanctions Board finds the Respondent liable for the fraudulent practice carried out by its employees.

D. Sanctioning Analysis

1. General framework for determination of sanctions

45. Where the Sanctions Board determines that it is more likely than not that a respondent engaged in a sanctionable practice, Section III.A, sub-paragraph 8.01(ii) of the Sanctions Procedures requires the Sanctions Board to select and impose one or more appropriate sanctions from the range of possible sanctions identified in Section III.A, sub-paragraph 9.01. The range of sanctions set out in Section III.A, sub-paragraph 9.01 are: (a) reprimand; (b) conditional non-debarment; (c) debarment; (d) debarment with conditional release; and (e) restitution. As stated in Section III.A, sub-paragraph 8.01(ii) of the Sanctions Procedures, the Sanctions Board is not bound by the SDO's recommendations.

46. 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.[12] 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.[13]

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[11] See, e.g., Sanctions Board Decision No. 55 (2013) at paras. 51-52; Sanctions Board Decision No. 68 (2014) at para. 30; Sanctions Board Decision No. 102 (2017) at para. 59.

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

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

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

48. Where the Sanctions Board imposes a sanction on a respondent, it may also, pursuant to Section III.A, sub-paragraph 9.04(b) of the Sanctions Procedures, impose appropriate sanctions on any Affiliate of the respondent.

2. Factors considered in the present case

a. Severity of the misconduct

49. Section III.A, sub-paragraph 9.02(a) of the Sanctions Procedures requires the Sanctions Board to consider the severity of the misconduct in determining the appropriate sanction. Section IV.A of the Sanctioning Guidelines identifies sophisticated means and management's role in the misconduct as examples of severity.

50. *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." INT argues that aggravation is warranted under this factor. The Respondent contends that INT's argument is based on a misconstrued application of the Sanctioning Guidelines that is inapplicable to the facts of the case and inconsistent with Sanctions Board precedent. As discussed above, the Sanctions Board has found that the Respondent misrepresented in the EOI, the Bid, and the Contract its intended role in the implementation of the Contract. The record shows considerable coordination between the members of the External and Internal Consortiums, as reflected in the various internal agreements executed during an approximately three-year period. Consistent with precedent,[14] the Sanctions Board finds that aggravation is warranted under this factor based on the apparent forethought and planning among a number of independent parties required to effectuate the fraudulent scheme over the course of a number of years.

51. *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." The Sanctions Board has previously applied aggravation on this basis where high-level members of a respondent entity's management personally participated in the misconduct.[15] Here, the record indicates that senior

[14] See, e.g., Sanctions Board Decision No. 97 (2017), para. 70; Sanctions Board Decision No. 112 (2018) at para. 48.

[15] See, e.g., Sanctions Board Decision No. 102 (2017) at para. 69.

personnel of the Respondent – including the president of the Board of Directors, who signed the Indemnification Agreement and other internal agreements – were involved in the fraudulent conduct. Accordingly, the Sanctions Board applies aggravation on this basis.

b. Minor role in the misconduct

52. Section III.A, sub-paragraph 9.02(e) of the Sanctions Procedures provides for mitigation "where the sanctioned party played a minor role in the misconduct." Section V.A of the Sanctioning Guidelines states that mitigation may be warranted where "no individual with decision-making authority participated in, condoned, or was willfully ignorant of the misconduct." The Respondent raises this factor as an alternative to mitigation for proportionality, as discussed in Paragraph 63 below. 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."[16] As the Respondent has not carried this burden – considering in particular that the record indicates that the Respondent's employees were directly involved in the fraudulent scheme – the Sanctions Board declines to apply mitigation on this basis.

c. Voluntary corrective action

53. Section III.A, sub-paragraph 9.02(e) of the Sanctions Procedures provides for mitigation where the respondent took voluntary corrective action. Section V.B of the Sanctioning Guidelines identifies several examples of voluntary corrective actions that may warrant mitigation, with the timing, scope, and/or quality of those actions to be considered as potential indicia of the respondent's genuine remorse and intention to reform. A respondent bears the burden of presenting evidence to substantiate any claimed voluntary corrective action.[17]

54. *Cessation of misconduct*: Section V.B.l of the Sanctioning Guidelines states that mitigation may be appropriate where a respondent ceases to engage in misconduct and the record reflects "genuine remorse and intention to reform." INT submits that mitigation is warranted under this factor, but that "credit for ceasing the misconduct should be offset" because the Respondent has maintained internal agreements with risk transfer provisions. The Sanctions Board is not convinced by INT's argument. The internal agreements govern the financial relationship between the Respondent and its partners and do not affect the Respondent's relationship vis-à-vis the PIU – which is governed by the Contract. Considering that the record reflects that the Respondent is presently participating in the implementation of the Contract consistent with the External Consortium's representations in the EOI, the Bid, and the Contract, and that the Respondent remains fully liable to the PIU under those instruments regardless of its counter-indemnification from the other Consortium members, the Sanctions Board finds that mitigation is warranted on this basis.

55. *Effective compliance program*: Section V.B.3 of the Sanctioning Guidelines states that mitigation may be appropriate where the record shows a respondent's "[e]stablishment or

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

[17] See, e.g., Sanctions Board Decision No. 106 (2017) at para. 39.

improvement, and implementation of a corporate compliance program" and reflects "genuine remorse and intention to reform." INT supports limited mitigating credit for the Respondent's establishment of a compliance program, which INT argues is neither sufficiently tailored to the Respondent's risk profile nor specifically designed to address the Respondent's prior misconduct. The Respondent argues that INT's characterization of the compliance program and code of conduct "unfairly diminishes [their] strength and completeness." The record includes the Respondent's detailed compliance program and code of conduct, which appear to have been improved and upgraded with the benefit of guidance from outside advisors. The Respondent sets out in its Response and its Post-Hearing Submission the continuing efforts of its Parent Company to strengthen the compliance program for its entire corporate group and the Respondent's continued enhancements to its own compliance program. The Respondent also expresses in the Response its continued willingness to implement any further procedures the Integrity Compliance Officer may deem warranted. On the basis of this record, and considering that the compliance measures appear to address the type of fraudulent conduct at issue in this case[18] and at least some of the elements set out in the World Bank Group's Integrity Compliance Guidelines (the "Integrity Guidelines"),[19] the Sanctions Board finds mitigation warranted under this factor. This finding is made based on the written record before the Sanctions Board, and therefore without prejudice to any future assessment that the World Bank Group's Integrity Compliance Officer may conduct to more fully evaluate the adequacy and implementation of integrity compliance measures taken by the Respondent.

d. Cooperation

56. Section III.A, sub-paragraph 9.02(e) of the Sanctions Procedures provides for mitigation where a respondent "cooperated in the investigation or resolution of the case." Section V.C 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 on Bank-financed tenders as examples of cooperation.

57. *Assistance and/or ongoing cooperation*: Section V.C.1 of the Sanctioning Guidelines provides that mitigation may be appropriate for assistance with INT's investigation or ongoing cooperation "[b]ased on INT's representation that the respondent has provided substantial assistance," as well as on "the truthfulness, completeness, [and] reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of assistance." According to INT, mitigating credit is warranted under this factor. The Respondent submits that it provided substantial cooperation, the nature and scope of which INT failed to adequately describe in its submissions. The record reveals that the Respondent made extensive document productions and facilitated interviews with key personnel. These interviews and documents include inculpatory

[18] See, e.g., Sanctions Board Decision No. 79 (2015) at para. 46; Sanctions Board Decision No. 88 (2016) at para. 53.

[19] See, e.g., Sanctions Board Decision No. 102 (2017) at para. 74; Sanctions Board Decision No. 109 (2018) at para. 48.

evidence as relied upon by INT in the SAE. Considering relevant precedent,[20] the Sanctions Board finds that mitigation is warranted for the Respondent in these circumstances.

58. *Admission/acceptance of guilt/responsibility*: 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 attention to the scope of any such admission. The Respondent seeks mitigating credit under this factor. INT submits that no mitigation should be granted on this basis, asserting that the Respondent is contesting INT's accusations. The record reflects that the Respondent accepts many key facts as alleged by INT, though it disputes that it acted with fraudulent intent. Considering that the Respondent did not accept guilt or responsibility for fraud,[21] the Sanctions Board determines that mitigation is not justified for admission.

59. *Voluntary restraint*: Section V.C.4 of the Sanctioning Guidelines advises that voluntary restraint from bidding on Bank-financed tenders pending the outcome of an investigation may be considered as a form of assistance and/or cooperation. In the SAE, INT states that voluntary restraint is a mitigating factor for the Respondent. However, INT contends in the Reply that the length of voluntary restraint should be "partly imputed to [the Respondent's] representation and litigation strategy." The Sanctions Board does not accept this argument. INT has not asserted, and there is no indication in the record, that the Respondent acted in bad faith in carrying out its litigation strategy or in changing its legal representation as this matter evolved. Consistent with past precedent,[22] and considering that the record reflects, and the parties do not dispute, that the Respondent voluntarily restrained from bidding on Bank-financed tenders from June 2017 until it was temporarily suspended in November 2019 (a period of approximately two and a half years), the Sanctions Board finds that mitigation is justified under this factor.

e. Period of temporary suspension

60. Pursuant to Section III.A, sub-paragraph 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account the period of the Respondent's temporary suspension since the SDO's issuance of the Notice on November 22, 2019.

f. Other considerations

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

62. *Passage of time and change in management/governance*: 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

[20] See, e.g., Sanctions Board Decision No. 111 (2018) at para. 55; Sanctions Board Decision No. 113 (2018) at para. 44.

[21] See, e.g., Sanctions Board Decision No. 61 (2013) at para. 47; Sanctions Board Decision No. 92 (2017) at para. 125; Sanctions Board Decision No. 125 (2020) at para. 42.

[22] See Sanctions Board Decision No. 120 (2019) at para. 60.

practices, to the initiation of sanctions proceedings.[23] 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.[24] The Sanctions Board has also applied mitigation where the record demonstrated a corporate restructuring and/or other changes in the respondent's management, particularly with respect to individuals involved in the misconduct.[25] The Respondent requests mitigation on these bases. At the time of the SDO's issuance of the Notice in November 2019, approximately six years and three months had elapsed since the External Consortium submitted the EOI containing the misrepresentation. The Sanctions Board considers this significant passage of time, as well as the changes in the Respondent's Board of Directors and governance structure since the misconduct, as weighing in favor of mitigation. However, the Sanctions Board also considers the Respondent's communication in March 2016, in which it confirmed to the PIU the composition of the External Consortium without disclosing the Internal Consortium, as weighing against mitigating credit. The Sanctions Board finds that only some mitigation is warranted in these circumstances.

63. *Proportionality*: The Respondent submits that any sanction should reflect the principles of proportionality, arguing that the "instigator of the arrangements at issue" was the First Partner, which settled with the Bank "for a far lesser sanction" than the sanction recommended for the Respondent by the SDO. In past cases, the Sanctions Board has declined to consider the sanctions agreed between settling parties to bear upon its own determination of contested sanctions for respondents, noting that the final sanctions in settlements may be shaped by considerations extrinsic to the sanctioned party's relative culpability or responsibility for misconduct.[26] Consistent with this precedent, the Sanctions Board declines to apply mitigation under this factor.

E. Determination of Appropriate Sanction

64. 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;[27] (ii) be a

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[23] See, e.g., 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); Sanctions Board Decision No. 118 (2019) at para. 90 (applying mitigation where, at the time of the Acting SDO's issuance of the Notice, approximately four years and six months had elapsed since the collusive arrangement first commenced).

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

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

[26] See, e.g., Sanctions Board Decision No. 56 (2013) at para. 82; Sanctions Board Decision No. 85 (2016) at para. 53; Sanctions Board Decision No. 118 (2019) at para. 92.

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

nominated sub-contractor, consultant, manufacturer or supplier, or service provider[28] 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 three (3) months beginning from the date of this decision, the Respondent may be released from ineligibility only if it has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, adopted and implemented effective integrity compliance measures that, inter alia, specifically address the misconduct at issue in this case, in a manner satisfactory to the World Bank Group. This sanction is imposed on the Respondent for a fraudulent practice as defined in Paragraph 1.14(a)(ii) of the May 2010 Procurement Guidelines.

65. The Respondent's ineligibility shall extend across the operations of the World Bank Group. 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 declarations of ineligibility with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and procedures.[29]

Mark Kantor (Panel Chair)

On behalf of the
World Bank Group Sanctions Board

Mark Kantor
Cavinder Bull
Maria Vicien Milburn

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

[29] At present, the MDBs that are party to the Cross-Debarment Agreement are the African Development Bank Group, the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank Group, and the World Bank Group. The Cross-Debarment Agreement provides that, subject to the prerequisite conditions set forth in the Cross-Debarment Agreement, unless a participating MDB (i) believes that any of the prerequisite conditions set forth in the Cross-Debarment Agreement have not been met or (ii) decides to exercise its rights under the "opt out" clause set forth in the Cross-Debarment Agreement, each participating MDB will promptly enforce the debarment decisions of the other participating MDBs. More information about the Cross-Debarment Agreement is available on the Bank's website https://www.worldbank.org/en/about/unit/sanctions-system/sanctions-board#3 (see "Background and Reference Documents" section, item titled "Agreement for Mutual Enforcement of Debarment Decisions (April 9, 2010)").