~HSANEi-lOt~lS BOARD

Date of issuance: June 21, 2017 Sanctions Board Decision No. 95 (Sanctions Case No. 399)
IBRD Loan No. 4760-RO
Romania

Decision of the World Bank Group

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11. Explanation submitted by the Respondent to the EO on November 5, 2015 (the "Explanation");

111. Response submitted by the Respondent to the Secretary to the Sanctions Board on February 4, 2016 (the "Response"); and

1v. Reply submitted by INT to the Secretary to the Sanctions Board on March 7, 201

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IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

11. INT submits that it is more likely than not that the Respondent engaged in a corrupt practice
by offering and paying a bribe to the Procurement Advisor in connection with Tender 9. INT asserts that, consistent with an agreement (the "Agreement") signed by the Respondent's co-owner and managing director (the "Co-Owner") and the Procurement Advisor, the Respondent offered and paid the Procurement Advisor a 5% commission for the award of the Contract. INT contends that the Respondent paid the Procurement Advisor through an intermediary (the "Intermediary") and that the Procurement Advisor exercised considerable influence over the decision-making process to award the Contract to the Respondent. According to INT, the Respondent knew that the Procurement Advisor was a public official.

12. With respect to sanctioning factors, INT submits that aggravation is warranted for (i) the
sophistication of the Respondent's conduct, (ii) the involvement of the Respondent's senior management in the corrupt practice, and (iii) the Respondent's repeated denials of knowledge of the Procurement Advisor's identity and role in the procurement process for the Contract, despite documentary evidence proving the Respondent's knowledge thereof. INT asserts that no mitigating factors apply in this case.

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

13. The Respondent challenged INT' s redaction of certain exhibits to the SAE and argued that
a separate set of SAE exhibits are "patchy and of limited quality." The Respondent requested "access to the documents' full content" and challenged the evidentiary value of the exhibits. As discussed in Paragraph 20 below, the Sanctions Board resolved these issues on December 9, 2016.

14. In response to INT's corruption allegation, the Respondent argues that INT has not
discharged its burden of proof to establish that the Respondent engaged in a sanctionable practice.
The Respondent acknowledges that its employees offered and made a 5% commission payment to
the Procurement Advisor, but asserts that the Respondent only knew the Procurement Advisor as
"an independent procurement expert" and did not know that he was a public official. The
Respondent further asserts that it was misled and deceived by the Procurement Advisor, who "clandestinely cooperat[ed]" with the Respondent's former executive director for business development (the "Former Executive Director"). In addition, the Respondent contends sRi eubT Tj 6.84 0 Td dsp ar

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the transcripts of interview in the context of the record as a whole when assessing their evidentiary weight.·

B. Evidence of Corrupt Practice

21. 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.

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

22. INT alleges that the Respondent offered and paid the Procurement Advisor, through the Intermediary, a 5% commission for the Contract. The Respondent acknowledges that it made a payment to the Procurement Advisor, stating that "[t]he evidence shows that an offer and a
payment have been made from [the Respondent] to a temporarily hired consultant of the World
Bank." Consistent with the Respondent's acknowledgment, the record reflects that employees of
the Respondent agreed to make payments to the Procurement Advisor in relation to Tender 9.
Specifically, in December 2010, the Co-Owner entered into the Agreement with the Procurement
Advisor on behalf of the Respondent, pursuant to which the Respondent agreed to pay the
Procurement Advisor "5% of the total net value" of any contract awarded to the Responde e

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34. In light of the above, the San

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Sanctioning Guidelines identifies sophisticated means of misconduct and management's role in the misconduct as examples of severity.

40. 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 used a variety of tactics including receipt of confidential bid information from a public official, use of an alias by the public official for purposes of the Agreement with the Respondent, and use of an intermediary to make a payment to a public official's Swiss bank account. The Sanctions Board finds that aggravation is warranted for the Respondent in these circumstances.

41. 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 p

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INT." The Sanctions Board has previously declined to apply mitigation under this factor where
the respondent did not provide any evidence or details of its asserted internal investigation.

26 In
the present case, the Respondent states that, in July 2014, it advised its compliance officer to conduct an investigation of any potential irregularity within the Respondent's group of companies, to report any investigation results to the Respondent's senior management, and to implement corrective measures. However, the Respondent did not provide documentation to corroborate its asserted internal investigation, Accordingly, the Sanctions Board declines to apply mitigation on this basis.

f. Period of temporary suspe ta

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practices, to the initiation of sanctions proceedings.

28 This passage of time may affect the weight
that the Sanctions· Board attaches to the evit

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decision. The ineligibility shall extend across the operations of the World Bank Group. This sanction is imposed on the Respondent for a corrupt practice as defined in Paragraph l.14(a)(i) of the May 2004 Procurement Guidelines.

57. 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.

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J. James Spinner (Chair)

On behalf of the
World Bank Group Sanctions Board

J. James Spinner
Olufunke Adekoya
Catherine O'Regan

33 At present, the MDBs that are party to the Cross-Debarment Agreement are t e n 0 Td 95 Tzo o C

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