



Date of issuance: June 30, 2023

**Sanctions Board Decision No. 141
(Sanctions Case No. 503)**

**IBRD Loan No. 7807-BR
Municipality of Santos
Federative Republic of Brazil**

Decision of the World Bank Group¹ Sanctions Board imposing sanctions of debarment with conditional release on the respondent entity (the “Respondent Firm”) and the respondent individual (the “Respondent Individual”) (together, the “Respondents”) in Sanctions Case No. 503, together with certain Affiliates.² Each of the Respondents is hereby declared ineligible for a minimum period of nine (9) months, beginning from the date of this decision. These sanctions are imposed on the Respondents for fraudulent practices.

I. INTRODUCTION

1. The Sanctions Board convened as a panel composed of Maria Vicien Milburn (Chair), Michael Ostrove, and Adedoyin Rhodes-Vivour to review this case. Consistent with Section III.A, sub-paragraph 6.01 of the Sanctions Procedures, the Chair decided to call a hearing in her discretion. The hearing was held on May 3, 2023, at the World Bank Group’s headquarters in Washington, D.C.³ The World Bank Group’s Integrity Vice Presidency (“INT”) participated in the hearing through its representatives attending in person. The Respondent Individual, representing himself and the Respondent Firm, participated in the hearing via video conference from the World Bank Group’s offices in São Paulo, Brazil. T

Component”).⁷ The Construction Works encompassed a Project scope financed by the Bank and additional scopes financed separately by other institutions. On September 15, 2012, the PMU issued bidding documents for the scope financed by the Bank (“Contract 2”). On January 22, 2013, the PMU issued a revised version of these bidding documents. On July 18, 2013, the PMU awarded Contract 2 to a contractor. On August 5, 2013, the PMU and this contractor entered into Contract 2.

8. On December 1, 2013, the Bank issued a no-objection letter regarding a proposed agreement to increase the scope of Contract 1 (the “Amendment to Contract 1”). On December 20, 2013, the PMU and the Consortium entered into the Amendment to Contract 1. On October 3, 2014, the PMU cancelled Contract 1.

9. INT alleges that

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B. The Respondents' Principal Contentions in the Response

17. Preliminary matters The Respondents appear to assert that the Bank's pursuit of the present proceedings is inconsistent with Contract 1. According to the Respondents, under the applicable contractual provisions on fraud and corruption, any sanctionable practices were to be addressed by the PMU through specific contractual remedies.

18. Fraud allegation: The Respondents dispute INT's allegations. Generally, the Respondents contend that their billing practices were supported by Contract 1 and were justified in light of the complexity and the challenges of the Construction Works. Specifically concerning Misrepresentation 1, the Respondents assert that the Executive Designs Component was delivered entirely by a subcontractor of the Consortium (the "Subcontractor"), who was responsible for elaborating the detailed designs. The Respondents maintain that Consultants A and B reviewed and revised the Subcontractor's detailed designs, in addition to performing other services,¹⁰ and that all such activities were properly billed under the Supervision Component. In addition, the Respondents argue that relevant authorities accepted the billing practices in question, as demonstrated by evidence that the PMU agreed, and the Bank did not object, to the Amendment to Contract 1. With respect to Misrepresentation 2, the Respondents deny having overstated the number of hours worked by Consultant B. As for Misrepresentation 3, the Respondents appear to concede that they misrepresented Consultant C's hours, while maintaining that such actions did not constitute "willful misconduct."

19. Sanctioning factors: The Respondents oppose any aggravation and request mitigation based on cooperation, admission, voluntary restraint, INT's conduct during the investigation, and other factors relating to contractual implementation and performance.

C. INT's Principal Contentions in the Reply

20. Preliminary matters INT does not address the Respondents' arguments referenced in Paragraph 17 above.¹¹

21. Fraud allegation: With respect to Misrepresentation 1, INT contends that the billing practices in question were not supported by Contract 1 and that the Respondents' interpretation of the relevant clauses is unreasonable. INT further argues that the unanticipated complexity of the Construction Works does not justify the Respondents' misconduct; that neither the Bank, nor the PMU, had contemporaneous awareness of the misrepresentation; and that the Amendment to Contract 1 did not retroactively validate the Respondents' improper invoicing. In addition, INT reiterates its earlier arguments pertaining to Misrepresentations 2 and 3.

¹⁰ According to the Respondents, such services included overseeing phases of the Construction Works not financed by the Bank; defining the technical specifications and related bidding requirements for Contract 2; translating bidding documents for Contract 2; and preparing documentation to be filed with Brazilian regulatory authorities.

¹¹ See infra Paragraph 24.

besides the Consortium's timesheets, they have no contemporaneous evidence to demonstrate Consultant B's actual time commitment and contributions to the Project.

28. As for Misrepresentation 3, the Respondents admitted to knowingly misleading the Bank reW nBT3i0.0

under the Supervision Component, in exchange for time-based compensation. In INT's view, such time-based analysis was justified only after the bidding period and in the context of imminent construction, as the Consortium gathered the requisite knowledge to oversee the Construction Works and considered any necessary amendments to the final designs. Consistent with this interpretation, INT asserts that the services at issue could not constitute supervision within the meaning of the TOR because they were provided prior to the bidding period and as early as two years before construction began.

39. In their defense, the Respondents argue that the Executive Designs Component was limited to the "elaboration" of the detailed designs—a term which, in the Respondents' view, comprised only the Subcontractor's drafting of these documents. According to the Respondents, Consultant A's and Consultant B's review and revision of the designs constituted a "preliminary analysis of the projects" and "quality control of the services" re3.g Co(t)- 57M1 (?)4

42. Misrepresentation 2INT submits that the Respondents overstated the number of hours worked by Consultant B between November 2011 and March 2013. According to INT, Consultant B “firmly denied” working under Contract 1 through this entire period, and “conceded” that the Respondents claimed payments for services that she did not perform. The Respondents dispute this allegation, challenging INT’s interpretation of the record. On balance, the totality of the evidence supports INT’s case.

43. The record includes the Consortium’s measurement sheets, which underlie the Requests for Payment to the PMU, as well as internal timesheets attesting Consultant B’s activities and hours logged under Contract 1. These documents indicate that Consultant B worked full-time or nearly full-time from August 2011 through January 2012 and consistently worked a significant number of hours each month from February 2012 through March 2013. Following

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the PMU granted the Consortium verbal authorization to bill for these services under the Supervision Component; and that (ii) the Bank knew of this practice and implicitly accepted it, as demonstrated by the fact that the Bank did not object to the Amendment to Contract 1.

50. The Sanctions Procedures recognize the Sanctions Board's discretion to infer knowledge on the part of a respondent from circumstantial evidence and state broadly that any kind of evidence may form the basis of conclusions reached by the Sanctions Board.¹⁶ In past cases involving misrepresentations, the Sanctions Board has inferred knowledge where respondents asserted alternative interpretations of relevant bidding or contractual terms, and those interpretations were found to be implausible or inconsistent with clear evidence in the record.¹⁷ Similarly, here, the Sanctions Board finds the Respondents' purported understanding of the TOR to be unreasonable. As addressed in Paragraphs 39-40 above, the Respondents' position is not only ant

of the Respondents. Documentary evidence shows that, before this amendment was executed, the Bank conducted an Independent Procurement Review (“IPR”) of Contract 1. The IPR aimed to clarify, inter alia, why the Consortium had deployed over 60 percent of the time-based portion of Contract 1 within the first two years of its implementation. The IPR report observed that one of the root causes of this issue was that the Consortium had billed “as one of the program management support activities (contracted under a time-based system), the management of the preparation of the executive projects . . . which makes no sense.” The IPR report also proposed specific measures to address this issue under the Amendment to Contract 1, for example: (i) reducing the number of additional hours by “the exact number of hours consumed [by the Consortium] in work oversight activities . . . without said works having been tendered or contracted,” and (ii) enhancing the PMU’s operational controls over the Consortium, in order to prevent similar impropriety in the future. Contrary to the Respondents’ assertions, this evidence demonstrates that the Bank only

increased the Consortium's earnings. In such circumstances, it logically ensues that the purpose of these actions was to obtain undue remuneration under Contract 1.²³

62. Accordingly, the Sanctions Board finds that it is more likely than not that representatives of the Respondent Firm, including the Respondent Individual, engaged in Misrepresentations 1-3 in order to obtain a financial benefit under Contract 1.

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

63. The Sanctions Board has consistently found that an employer can be held liable for the acts

sanction.²⁵ 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.²⁶

66. 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.

67. Where the Sanctions Board imposes a sanction on a respondent, it may also, pursuant to

Respondents submitted several misleading Requests for Payment and supporting documentation to the PMU over a period of time. The Respondents dispute the application of this factor. While the record shows that the Respondents engaged in multiple instances of fraudulent payment claims, the Sanctions Board concludes that these actions were closely interrelated, reflecting a single scheme to obtain undue compensation under the same contract. In these circumstances, consistent with precedent, the Sanctions Board declines to apply aggravation.

70. **Central role in the misconduct** Section IV.A.3 of the Sanctioning Guidelines recommends that this factor may apply to a respondent who acted as the organizer, leader, planner, or prime mover in a group of two or more. Consistent with this definition, the Sanctions Board has applied aggravation where a respondent led or initiated acts of misconduct involving two or more individuals or entities.³⁰ Here, INT submits that aggravation is justified because the Respondent Individual was the organizer, leader, planner, and prime mover of the misconduct. The Respondents dispute the application of this factor, arguing that the Respondent Individual's wrongdoing was limited to Misrepresentation 3. The record supports a conclusion that the Respondent Individual played a central role in this case, *inter alia*, by coordinating the preparation and submission of the Requests for Payment and supporting documents to the PMU, and by personally instructing the Consortium Partner to include false information in invoices and fabricate records to conceal the Respondents' fraudulent actions. On this basis, the Sanctions Board finds that aggravation is warranted for the Respondent Individual.

71. **Management's role in the misconduct** Section IV.A.4 of the Sanctioning Guidelines recommends aggravation where a high-level employee of the organization participated in, condoned, or was willfully ignorant of the sanctionable practice. Accordingly, the Sanctions Board has applied aggravation where the record showed that senior members of a respondent entity's management personally participated in the misconduct.³¹ In cases finding misconduct by both a respondent entity and a high-ranking respondent individual, the Sanctions Board has generally considered the individual's position as a potential aggravating factor only for the respondent entity, and not for the respondent individual.³² Here, INT contends that aggravation is warranted because the Respondent Individual personally engaged in wrongdoing while holding a managerial position within the Respondent Firm and the Consortium. The Respondents do not specifically address this factor. As examined in Paragraph 63 above, it is undisputed that the Respondent Individual was acting in his capacity as a high-ranking member of the Respondent Firm when he engaged in the conduct at issue. In these circumstances, consistent with precedent, the Sanctions Board finds that aggravation is justified for the Respondent Firm.

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³⁰ See, e.g., Sanctions Board Decision No. 60 (2013) at para. 124; Sanctions Board Decision No. 90 (2016) at para. 38;

as well as “the truthfulness, completeness, [and] reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of assistance.” The Sanctions Board has consistently granted mitigation for cooperation where respondents met with INT on several occasions and provided relevant information and documentation,³⁸ or replied to INT’s show-cause letter and follow-up inquiries.³⁹ In addition, the degree of mitigation granted by the Sanctions Board has been proportionate to the extent of respondents’ cooperative conduct.⁴⁰ Where respondents were found to have concealed, destroyed, or otherwise failed to produce evidence, the Sanctions Board has declined to grant mitigation for cooperation⁴¹ or, separately, applied aggravation for interference.⁴²

75. In the present case, the record shows that the Respondents assisted INT’s investigation, including by agreeing to interviews, producing certain documents, and replying to INT’s show-cause letter. Nevertheless, INT contends that only partial mitigation is warranted because the Respondents failed to share material evidence—including particularly inculpatory emails that INT eventually obtained by other means—and lacked candor during the investigation. Over the course of these proceedings, the Respondents presented different justifications for the lacunr9(tio)2 (n) 0.35 0 Tdrv

timing and investigative value of admissions, as well as their scope.⁴³ For example, the Sanctions Board has granted limited mitigation where the respondent admitted to certain facts without accepting responsibility for misconduct during the investigation, but fully conceded to the allegations in the response.⁴⁴ Here, the Respondents request mitigation based on their admission to Misrepresentation 3. The Sanctions Board observes that, during the hearing, the Respondents acknowledged and accepted full responsibility for this aspect of the conduct at issue. However, this admission was belated and limited in scope. Throughout the investigation and most of the current proceedings, while the Respondents conceded the fact that Consultant C's hours had been misrepresented, they continued to deny that this practice constituted "willful misconduct." Moreover, the Respondents did not admit to any elements of Misrepresentations 1 or 2. In these circumstances, the Sanctions Board grants only partial mitigation under this factor.

77. **Voluntary restraint** Section V.C.4 of the Sanctioning Guidelines identifies a respondent's voluntary restraint from bidding on Bank-financed tenders pending the outcome of an investigation as a form of assistance and/or cooperation. In past cases, the Sanctions Board's decision to apply or deny mitigation on these grounds has depended on whether or not the asserted restraint was corroborated by relevant evidence.⁴⁵ For example, the Sanctions Board has granted mitigation where respondents provided contemporaneous evidence of a formal company policy or practice,⁴⁶ or proof of withdrawal of bids for Bank-financed contracts pending the outcome of INT's investigation.⁴⁷ Conversely, the Sanctions Board has declined to grant mitigation where respondents claimed but failed to demonstrate a policy or practice of voluntary restraint prior to any temporary suspension from eligibility.⁴⁸ This notwithstanding, the Sanctions Board has granted mitigation in the absence of corroborating evidence, where INT expressly accepted that the respondents had voluntarily restrained during a specific time period.⁴⁹

78. In the present case, the Respondents request mitigation under this factor. However, the Sanctions Board observes that the Respondents have provided conflicting statements as to the precise period of their purported restraint. For example, at different points in the investigation and the current proceedings, the Respondents claimed to have begun cooperating in this manner in 2016, 2017, 2018, and 2019. Such inconsistency hampers the credibility of their position. In addition, the Respondents maintain that they verbally declined several invitations to participate in

⁴³ See, e.g., Sanctions Board Decision No. 99 (2017) at paras. 33-34; Sanctions Board Decision No. 125 (2020) at para. 42.

⁴⁴ See Sanctions Board Decision No. 105 (2017) at para. 30 (observing that the respondent (i) during the investigation, admitted to the solicitations in question but did not accept responsibility for any corrupt conduct, and (ii) in the response, conceded that he engaged in the actions alleged by INT).

⁴⁵ See, e.g., See, e.g., Sanctions Board Decision No. 73 (2014) at para. 50; Sanctions Board Decision No. 79 (2015) at para. 51; Sanctions Board Decision No. 102 (2017) at para. 80.

⁴⁶ See, e.g., Sanctions Board Decision No. 83 (2015) at para. 99; Sanctions Board Decision No. 129 (2020) at para. 59; Sanctions Board Decision No. 130 (2020) at para. 91; Sanctions Board Decision No. 137 (2022) at para. 67.

⁴⁷ See, e.g., Sanctions Board Decision No. 102 (2017) at para. 80.

⁴⁸ See, e.g., Sanctions Board Decision No. 44 (2011) at para. 66; Sanctions Board Decision No. 74 (2014) at para. 45; Sanctions Board Decision No. 111 (2018) at paras. 58-59; Sanctions Board Decision No. 116 (2019) at para. 31.

⁴⁹ Sanctions Board Decision No. 130 (2020) at para. 91.

86. The Respondents' ineligibility shall extend across the operations of the World Bank Group.

Maria Vicien Milburn (Chair)

On behalf of the