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submitted by INT to the SDO (undated);



5. *inal recommendation:* The Respondent submitted an Explanation to contest the



11. *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.

12. *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.

13. *Applicable definitions of corrupt and collusive practices:* The financing agreement, RFP, and the Contract all refer to, and/or reflect definitions of corrupt and collusive practices in accordance with, the Guidelines: Selection and Employment of Consultants under IBRD Loans and IDA Credits and Grants by World Bank Borrowers (January 2011) (the January 2011 Consultant Guidelines). Paragraph 1.23(a)(i) of the January 2011

soliciting, directly or indirectly, of anything of value to influence improperly the actions of another official acting in relation to the selection process or contract organizations taking or reviewing selection decisions. ⁵ Paragraph 1.23(a)(iii) of the January 2011 Consultant Guidelines defines the or more parties designed to achieve an improper purpose, including to influence improperly the selection process (including public officials) attempting . . . to simulate competition or to establish contract prices at artificial, non-

V. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT’s Principal Contentions in the SAE

14. *Corruption allegation:* INT alleges that the Manager, acting on behalf of the Respondent and the Subsidiary, solicited from one of the Bidders a percentage of the Downstream Contracts. INT claims that this corrupt scheme was reflected in a commercial agency agreement, under which the First Bidder was to pay a consulting company (the Consulting Company) the Consulting Company and the Respondent had the same business address and five-person board of directors, such that a payment to the Consulting Company constituted a payment to the Respondent. INT further submits that the Manager is considered a public official when she solicited the illicit payment because she was an employee of the Respondent and the Subsidiary that



is more likely than not that the alleged sanctionable practices occurred and, if so, whether the Respondent may be held liable for the misconduct. Finally, the Sanctions Board will determine what sanction, if any, should be imposed on the Respondent.

A. Asserted Violation of the Fundamental Fairness Principles

28. The Respondent asserts that certain aspects of the present case are inconsistent with the principles of fundamental fairness. Specifically, the Respondent asserts that (i)

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itself; (ii) pursuing a second case after Sanctions Case No. 620 relating to the same contract and based on the same reason of lack of control and supervision ;
(iii) while INT settled with parties directly involved in the alleged sanctionable practices, it advanced these proceedings against the Respondent whose direct employees were not involved in the misconduct.

29. First, with respect to the way INT presented its allegations, the Sanctions Board does not consider to be so vague as to ability to defend itself. Although the SAE could have presented each element of these sanctionable practices in a more clearly delineated manner, the Sanctions Board finds that both the SAE and the Reply articulate all the elements of corrupt and collusive practices, and provide arguments and evidence in support of each allegation. Therefore, the Sanctions Board does not find that the Respondent was prejudiced by the way that INT presented the allegations and evidence in the SAE. On the contrary, as discussed under plurality of sanctionable practices in Paragraphs 52-54 below, the interconnectedness among the circumstances surrounding the alleged corrupt and collusive acts results in a practical outcome that is beneficial to the Respondent.

30. Second, with respect to the filing of the present case after Sanctions Case No. 620, the record shows that the evidence supporting fraud and obstruction allegations in Sanctions Case No. 620 was gathered of the Respondent in 2017. This investigation led INT to issue a show-cause letter to the Respondent on January 25, 2018, and eventually submit the SAE in Sanctions Case No. 620 to the SDO on August 30, 2019. The evidence supporting case was the Bidders in 2019. These investigations prompted INT to issue another show-cause letter to the Respondent on August 29, 2019, and submit the SAE to the SDO in this case in September 2021. The Sanctions Board is concerned about cases, considering the temporal overlaps between the investigation in Sanctions Case No. 620 and the investigations in this case.

31. Nevertheless, the Sanctions Board finds that conduct separate proceedings stemmed from limited document production during investigations in 2017 and the fact that the pertinent evidence used in the present proceedings became available only after further audits in 2019. Moreover, the Sanctions Board does not consider the lapse of time from the initial audit in 2017 up to the



processes and procedures. The Sanctions Board, therefore, deems it more appropriate to consider this matter as a sanctioning factor under passage of time in Paragraph 61 below.

32. The Sanctions Board now turns to



payment to the Respondent. The Sanctions Board underscores that under the applicable definition of corrupt practice provided in Paragraph 35 above, an allegation of solicitation does not require evidence of payment. The definition only requires proof that the Manager solicited a thing of value and the preceding paragraph details exactly how that is met in this case. Thus, the Sanctions Board need not consider whether any payment to the Consulting Company is functionally equivalent to a payment to the Respondent. For the reasons set out in the preceding paragraph, the Sanctions Board finds that it is more likely than not that the Manager solicited from the First Bidder the payment of a percentage of the total price of the Downstream Contracts.

2. To influence improperly the actions of another party

38. [redacted] rests on its assertion that there is no public official involved in the scheme. The Respondent argues that the Manager cannot be considered a public official because deciding technical requirements and writing bidding documents . . . occur in decisions. At the hearing, the Respondent added another facet to this argument by claiming that if the Manager who solicited the payment is herself considered a public official, then there is no an [redacted] to be influenced as prescribed under the second element.

39. U



Manage



1. Arrangement between two or more parties

44. The record shows, and the parties do not dispute, that the Manager entered into an arrangement with the Bidders in which the Manager and the Team Leader shared confidential bidding information with the Bidders and invited them to draft technical specifications and pricing details for the Downstream Contracts. For instance, the record contains emails among the Manager, the Team Leader, and the [redacted] representatives demonstrating, inter alia, that (i) the [redacted] assist with technical specifications; (ii) the Team [redacted] an equipment list and asked to be provided with detailed equipment specifications and prices; (iii) the T [redacted] Manager a summary of the basic design costs and asked to be provided with cost estimates; (iv) the Manager [redacted] about technical specifications that would fit the [redacted]; and (v) the system design for one of the Downstream Contracts was based on [redacted]. On the basis of this record, and consistent with precedent, the Sanctions Board finds that it is more likely than not that the Manager had an arrangement with the Bidders.

2. Designed to achieve an improper purpose, including to influence improperly the actions of another party

45. The record shows, and the parties do not dispute, that the collusive arrangement among the Manager, the Team Leader, and the Bidders was designed to influence improperly the procurement





51. 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. Plurality of sanctionable practices

52. As the Sanctions Board finds that the Respondent engaged in two counts of misconduct, the Sanctions Board



participants;²⁴ the respondent did not prompt, encourage, or develop the misconduct at issue;²⁵ or junior employees engaged in the misconduct without management affirmatively participating or condoning that behavior.²⁶ Here, the Respondent argues that its participation in implementing the Contract was peripheral, considering that the Manager and the Team Leader were directly involved in contract implementation and in interacting with the Bidders, and none of direct employees or representatives participated in the scheme. The record demonstrates that the Manager acted as an employee of t was authorized through the power of attorney the Contract. However, aware of the misconduct. While the record also shows that the Respondent exercised inadequate supervision and controls to prevent the misconduct, and therefore may be held liable for it, there is no evidence that the condoned the



misconduct.³⁰ In this case, the Respondent acknowledges that it initiated action against relevant but unidentified individuals only recently, considering that the individuals involved in misconduct have long left the company. The Respondent asserts that it has sent the relevant individuals two demand letters but is still evaluating whether there are sufficient grounds to pursue legal action against them. At the hearing, the Respondent explained that there is no other possible internal action left but to pursue legal action against the Consulting Company that the Respondent claims is currently ongoing. The record contains evidence that demand letters against the Consulting Company were only sent two months after the Notice was issued. The Respondent has not provided evidence of the supposed letters against any other individuals involved in the misconduct or the proceedings initiated against the Consulting Company. Considering belated internal action and its failure to present satisfactory evidence thereof,³¹ the Sanctions Board declines to apply mitigation under this factor.

59. *Effective compliance program:* Section V.B.3 of the Sanctioning Guidelines states that

granted mitigation
misconduct at issue,



prejudice to any future assessment that the ICO may conduct to more fully evaluate the adequacy and implementation of integrity compliance measures taken by the Respondent.

d. Cooperation

60. Section III.A, sub-paragraph 9.02(e) of the Sanctions Procedures provides for mitigation V.C.1 of the Sanctioning Guidelines provides that mitigation may be appropriate for assistance and/or

teness, reliability of any information or testimony, the nature and extent of the assistance, and the

In this case, INT submits that the limited mitigation because although the Respondent provided INT with some documents and made some staff members available for interviews, the Respondent interfered with the investigation and its conduct lacked candor. The Respondent requests full mitigating credit on the grounds that it -cause letter in a timely manner, provided INT with relevant documents, and made staff available for interviews. The Respondent underscores that it could not have provided any more information beyond what it had given INT as the Respondent had no access to documents retained by the Manager. At the hearing, the Sanctions Board asked the parties to detail the extent of cooperation with the present case and separat0 g5(T)31(with)28(r



ability of individuals to remember details of the relevant procurement processes. The Sanctions Board considers that significant mitigation is warranted in this case given that almost a decade has already passed since the misconduct occurred.

62. *Changes in management or corporate identity:* The Sanctions Board has previously applied mitigation when the record demonstrated a corporate restructuring or other changes in the



the considerable corporate transformation in the Respondent



Maria Vicien Milburn (Chair)

On behalf of the
World Bank Group Sanctions Board

Maria Vicien Milburn
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