4HsANE+loRts BOARD
Date of issuance: September 29, 2015

Sanctions Board Decision No. 82 (Sanctions Case No. 335)

GEF Trust Fund Grant No. TF056599 Honduras

Decision of the World Bank Group! Sanctions Board imposing a sanction of debarment with conditional release on the respondent entity in Sanctions Case No. 335 (the "Respondent"), together with any entity that is an Affillate/ directly or indirectly controlled by the Respondent, with a minimum period of ineligibility of three (3) years beginning on the date of this decision. This sanction is imposed on the Respondent for a fraudulent practice.

I. INTRODUCTION

1. The Sanctions Board met in a plenary session on June 3, 2015, at the World Bank
Group's headquarters in Washington, D.C., to review this case. The Sanctions Board was
composed of L. Yves Fortier (Chair), Alison Micheli, Ellen Gracie Northfleet, Catherine
O'Regan, Denis Robitaille, and J. James Spinner.

2. A hearing was held on June 3, 2015, following requests from the Respondent and with Section 1.02(a)
"Sanctions Procedures"), the term
Reconstruction and Developme
International Finance Corporatio
the avoidance of doubt, the term "
but does not include the Internati
Sanctions Procedures, the terms "
IBRD and IDA. See Sanctions Pro

2 The term "Affiliate" means "any lega control with, the Respondent, as de
3 Effective March 31, 20l3, the EO's ti For consistency with the Sanctions

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appending the Statement of Accusations and Evidence (the "SAE") presented to the EO by

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specified that the temporary suspension would apply across the operations of the World Bank Group.

II. GENERAL BACKGROUND

6. This case arises in the context of the Nicaragua-Honduras Corazon Transboundary Biosphere Reserve Project (the "Project"). The Project sought to improve management of the Corazon Transboundary Biosphere Reserve through a variety of means, including

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engaged in a sanctionable practice. As set forth in Section 7.01 of the Sanctions Procedures, formal rules of evidence do not apply; and the Sanctions Board has discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered.

10. Under Section 8.02(b)(ii) of the Sanctions Procedures, !NT 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.

11. The Grant Agreement provided that consultants' services under the Project would be
governed by the World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004) (the "May 2004 Consultant Guidelines"). The RFP issued to the Respondent, however, defined sanctionable practices in accordance with the World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (January 1997, revised in September 1997 and January 1999) (the "January 1999 Consultant Guidelines"). Finally, each of the Contracts defined sanctionable practices in a manner consistent with both the World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004, revised October 1, 2006) (the "October 2006 Consultant Guidelines") and the World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004, revised October 1,2006, and May 1,2010) (the "May 2010 Consultant Guidelines").

12. INT asserted in the SAE that its allegations of sanctionable practices should be
considered

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14. Accordingly, the Sanctions Board considers the definitions of sanctionable practices in
the Contracts to be directly relevant. The Respondent was put on notice of the definitions of sanctionable practices in the Contracts, and the Respondent's alleged misconduct took place entirely in the course of the execution of the Contracts. The Sanctions Board therefore concludes that the alleged sanctionable practices in this case have the meaning set forth in the October 2006 Consultant Guidelines and the May 2010 Consultant Guidelines, whose common definitions of sanctionable practices are in the Contracts. Paragraph 1.22(a)(ii) of both Guidelines defines the term "fraudulent practice" as "any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation/"

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

15. INT asserts that the Respondent engaged in fraudulent practices by falsely confirming
the disbursement of funds and/or fulfillment of Subproject objectives on two data sheets appended to the 2011 Audit Report and seven data sheets appended to the 2012 Subproject Report. INT submits that the Respondent's failure to consider all necessary documentation in preparing the reports supports a finding that the Respondent's employees acted knowingly or at least recklessly in making the alleged misrepresentations. INT further asserts that the misrepresentations were intended to influence the execution of the Contracts by falsely indicating that the Respondent "had completed its 2011 and 2012 audit work." According to INT, the Respondent's failure to alert the PIU of the Project's "failings" was detrimental to the Borrower. INT contends that the misrepresentations made by the Respondent's employees therefore constituted fraudulent practices, which should be imputed to the Respondent. With respect to potential sanctioning factors, INT argues that aggravation is warranted because the alleged misrepresentations were repeated and contributed to the continuation of "Project failings." INT submits that it has not identified any mitigating factors.

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

16. In contesting liability for the alleged misconduct, the Respondent asserts that INT has
misunderstood or taken out of context statements in the data sheets, none of which contained misrepresentations of fact. Specifically, the Respondent argues that the data sheets' statements that disbursements ha0 Td (Respondent's) (data) Tj 23.52 0 Td c c c c c c the to

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proper oversight" that facilitated the local staffs misconduct. The Respondent does not explicitly request mitigation or contest aggravation under any sanctioning factors.

C. INT's Principal Contentions in the Reply

17. INT reiterates its allegations made in the SAE and introduces one additional allegation
of misrepresentation, which INT asserts is based on new evidence found in the Response. INT's additional allegation relates to one of the data sheets submitted with the 2011 Audit Report, for which INT had originally asserted a misrepresentation relating to disbursement of funds. INT adds in the Reply that the Respondent also misrepresented completion of the Subproject objectives listed in that data sheet.

18. INT rejects the Respondent's defense that the 2012 Subproject Report was intended to
be considered as a draft. INT argues that to the extent that the Respondent used preliminary data
without identifying it as such, or failed to convey exactly how the 2012 Subproject Report
should be interpreted, the Respondent recklessly shared a misleading document. INT
additionally denies any impropriety in the conduct of its investigation and defends its sources
of testimonial evidence.

19. With respect to sanctioning factors, INT argues that mitigation may be waj 24.48 0 Td (misrepr

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v. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

22. The Sanctions Board will first consider procedural and evidentiary matters raised in the
course of the sanctions proceedings. The Sanctions Board will next consider whether it is more likely than not that the Respondent engaged in fraudulent practices. The Sanctions Board will then determine what sanction, if any, should be imposed on the Respondent.

A. Procedural and Evidentiary Matters

23. Translation of the reports: During its review of the pleadings, the Sanctions Board noted that the record did not include complete translations of the 2011 Audit Report, the 2012 Subproject Report, or the 2012 Audit Report, all of which the Respondent had originally prepared and submitted to the PIU in Spanish. In correspondence prior to the hearing, the Respondent objected to INT's incomplete translations of the reports. The Sanctions Board Chair invited the Respondent to identify any additional relevant sections of the reports that should be translated. However, the Respondent did not specify any additional excerpts that would be pertinent to the Sanctions Board's determination. Rather, the Respondent submitted that the entire texts of the three reports should have been translated for the Sanctions Board's review. INT, for its part, stated that it provided translations of those extracts of the reports that it considered relevant to the case. In these circumstances, the Sanctions Board accepts INT's representations and denies the Respondent's request for additional translations to be submitted into the record.

24. Additional allegation: As noted above in Paragraph 17, INT included in its Reply an additional allegation of misrepresentation in the 2011 Audit Report. At the hearing, the Respondent objected to INT's addition to its original allegations, arguing that the additional allegation was not made to the Respondent in its native language and that there had been no . opportunity for the Respondent to reply to their new allegation. The Sanctions Board first notes that Section 5.02(a) of the Sanctions Procedures provides that "[a]ll written materials submitted to the Sanctions Board shall be submitted in English, except that exhibits shall be in the original language with the pertinent parts translated into English." INT thus correctly presented its arguments in English. Secondly, the Sanctions Board observes that the Respondent, represented by counsel, had the opportunity, following INT's Reply, to present any additional arguments that it wished to make in response to the new allegation. The Respondent addressed the additional allegation at the hearing and could have asked for leave to file a post-Reply written submission. Moreover, the Respondent's asserted defenses to liability presented in the Response and at the hearing may be considered to apply equally to all data sheets included in the relevant reports, including the one addressed in INT's Reply. In these circumstances, the Sanctions Board dismisses the Respondent's objections and will consider INT's additional allegation of fraud raised in its Reply.

B. Evidence of Fraudulent Practices

25. In accordance with the definition of "fraudulent practice" under the October 2006 and
May 2010 Consultant 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,

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(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. Misrepresentation

26. As mentioned earlier, INT asserts that the Respondent misrepresented the completion
of disbursements and/or objectives under certain Subprojects in two data sheets appended to the 2011 Audit Report and seven data sheets appended to the 2012 Subproject Report. Specifically, the Respondent placed check marks in boxes titled "[fJulfilled" following certain listed disbursement amounts and objectives. The Respondent denies the alleged misrepresentations, asserting that the data sheets reflected fulfillment of disbursements to the Special Payer rather than to local beneficiaries and were not final conclusions with respect to completion of specific Subproject objectives. INT asserts that the Respondent's proposed interpretation of the term "[fJulfilled" is "not intuitive or obvious from the text or the data sheets."

27. The Sanctions Board first considers whether the Respondent represented, in the data
sheets identified by INT, that the disbursements to local beneficiaries and Subproject objectives had been completed. A plain reading of the data sheets supports INT's interpretation. With respect to disbursements, each data sheet named the relevant local beneficiaries and/or their legal representatives. Nothing in the data sheets, or other excerpts of the relevant reports, suggests that there was a different recipient. With respect to Subproject objectives, a plain reading of the data sheets indicates that the documents expressed firm conclusions, and nothing in the data sheets or the totality of the record suggests that the data sheets were preliminary. In summary, the record supports a finding that the Respondent's completion of the data sheets with check marks showing certain disbursements and objectives as "[fJulfilled" represented that those aspects of each Subproject had in fact been completed ..

28. The Sanctions Board next considers whether the Respondent's representations were
false at the time that they were made. The Sanctions Board concludes that it is more likely than
not that each of the nine data sheets in question misrepresented the status of Subproject
disbursements and/or objectives, as INT alleges. First, legal representatives of the relevant
Subprojects denied that either the objectives and/or the disbursements to local beneficiaries had
been completed. Second, the record reflects the Special Payer's admission that he did not make
any direct payments to local beneficiaries of the Subprojects. u oEai"n17.28 0 Td Td (orspects) Tj 0 Td l61w sheets Td (adsts)nts u oEai"n17.2

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additional qualification or clarification. The Respondent submits that it could not, and therefore did not, confirm that disbursements reached local beneficiaries or that objectives were fulfilled.

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took adequate steps to verify the statements and key findings in the reports before submission to the PIU and the Bank.

34. In these circumstances, the Sanctions Board finds that the failure of the Respondent's
staff to confirm or correct the content of the data sheets at issue constitutes a reckless failure to mitigate a substantial risk of misrepresentation with respect to a number of Subprojects, as presented in both the 2011 Audit Report and the 2012 Subproject Report.

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

35. INT asserts that, in submitting the 2012 Subproject Report "as a final document," the
Respondent sought to benefit from payment under the Contract. INT makes no assertion with respect to the Respondent's possible intent to obtain a benefit, or avoid an obligation, by submitting the misleading data sheets with the 2011 Audit Report.

36. As the record reveals, and the parties do not dispute, the 2011 Audit Report and the 2012
Subproject Report were specific deliverables listed in the respective payment schedules under the Contracts between the Respondent and the PIU. The Respondent's completion of the data sheets submitted with the reports appeared to corroborate the Respondent's field visits and related Subproject analysis in accordance with the Contracts. Importantly, the Respondent itself cited its completion of these two reports as specific deliverables warranting payments under the Contracts. The Sanctions Board notes that the Respondent may not have been paid if it had failed to include any data sheets documenting the Subproject site visits or appended data sheets revealing that the status of Subproject disbursements and objectives was "unknown" or "unascertained." In these circumstances, the Sanctions Board finds that the Respondent's submission of the misleading data sheets was made to obtain a financial benefit in the form of remuneration for contracted work.

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submitted the 2011 Audit Report and the 2012 Subproject Report with those data sheets as annexes. The record reflects involvement by two key personnel in particular: the audit supervisor under the 2011 Contract, also named as the Respondent's representative in the majority of field visits to the concerned Subprojects; and the "Partner in Charge" of the 2011 Contract, who also signed the Respondent's cover letter to the 2012 Subproject Report. The Respondent does not deny its responsibility for the acts of these employees or contest that the involvement of these individuals was within the course and scope of their employment and in the Respondent's interest. In these circumstances, the Sanctions Board finds that the Respondent is liable for the fraudulent misrepresentations in both reports.

D. Sanctioning Analysis

4. General framework for determination of sanctions

39. Where the Sanctions Board determines that it is more likely than not that a respondent
engaged in a sanctionable practice, Section 8.01(b) of the Sanctions Procedures requires the Sanctions Board to select and impose one or more appropriate sanctions from the range of possible sanctions identified in Section 9.01. The range of sanctions set out in Section 9.01 includes: (i) reprimand, (ii) conditional non-debarment, (iii) debarment, (iv) debarment with conditional release, and (v) restitution or remedy. As set out in Section 8.01(b) of the Sanctions Procedures, the Sanctions Board is not bound by the EO's recommendations.

40. As reflected in Sanctions Board precedents, the Sanctions Board considers the totality
of the circumstances and all potential aggravating and mitigating factors in order to determine an appropriate sanction." 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.!?

41. The Sanctions Board is required to consider the types of factors set forth in Section 9.02
of the Sanctions Procedures, which provides a non-exhaustive list of considerations. In addition, the Sanctions Board refers to the factors and principles set out in the World Bank Sanctioning Guidelines (the "Sanctioning Guidelines"). While the Sanctioning Guidelines themselves state that they are not intended to be prescriptive in nature, they provide guidance as to the

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5. Factors applicable in the present case

a. Severity of the misconduct

43. Repeated pattern of conduct: Section 9.02(a) of the Sanctions Procedures requires consideration of the severity of the misconduct in determining the appropriate sanction. Section IV.A.1 of the Sanctioning Guidelines identifies a repeated pattern of conduct as one example of severity. INT submits that aggravation is warranted for the Respondent's submission of the 2011 Audit Report and the 2012 Subproject Report, which made misrepresentations regarding the fulfillment of Subproject disbursements and/or objectives "on two occasions, to the PIU and the Bank."

44. In recent decisions, the Sanctions Board applied aggravation where the record showed
that a respondent submitted identical forged documents with two separate bids for two Bank-financed contracts under the same project, on two consecutive days,'" but has declined to apply aggravation where a respondent submitted the same forged document in multiple bids in a single course of action. 19 Here, the Sanctions Board notes that the Respondent's misrepresentations appear to arise from the same general modus operandi by which the Respondent recklessly failed to verify key components of its successive reports under the same Project. However, the record also demonstrates that this was not a one-time failure. The data sheets in question were submitted on different dates several months apart, with separate deliverables, and under two different contracts. The Sanctions Board therefore finds that some aggravation is warranted for repetition.

b. Magnitude of harm

45. Section 9.02(b) of the Sanctions Procedures requires the Sanctions Board to consider
the magnitude of the harm caused by the misconduct. Section IV.B.2 of the Sanctioning Guidelines identifies the degree of harm to the project through poor contract implementation or
delay as an example of such harm.

46. While submitting that some harm to the Project arose from the role of the Special Payer
rather than the Respondent, INT asserts that the Respondent contributed harm a4t49 Td 11t tted to h to from to Responduct

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aggravation does not require that the magnitude of harm should exceed a certain value threshold or that the Respondent be the sole cause of harm to the Project.

48. The Sanctions Board does not find that misrepresentations in the 2012 Subproject Report harmed the Project, given that the Project closed before the Respondent delivered the report. With respect to misrepresentations in the 2011 Audit Report, however, the record supports a finding that the Respondent's misrepresentations harmed the Project by concealing problems in disbursements and fulfillment of Subproject objectives described in the 2011 Audit Report. The Sanctions Board particularly notes that the Respondent was hired to assist the PIU and the Bank to verify implementation of numerous Subprojects intended to benefit vulnerable communities in remote areas. In this high-risk environment, the Respondent's task was critical to the Project's success. The Sanctions Board thus concludes that aggravation for magnitude of harm to the Project is warranted.

c. Voluntary corrective action

49. Section 9.02(e) of the Sanctions Procedures provides for mitigation where the sanctioned party 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."

50. Effective compliance program: Section V.B.3 of the Sanctioning Guidelines suggests that mitigation may be appropriate where the record shows a respondent's "[e]stablishment or improvement, and implementation of a corporate compliance program." The Sanctions Board has previously granted mitigation on this ground upon a finding that a respondent's asserted compliance measures appeared to address the type of misconduct at issue22 and/or at least some of the elements set out in the World Bank Group's Integrity Compliance Guidelines (the "Integrity Compliance Guidelines'rj.P Conversely, the Sanctions Board has declined to afford mitigation in cases where there was no evidence in the record that the respondent had in fact implemented compliance measures.i" or where the evidence did not demonstrate the type of voluntary corrective actions that would prevent or address the type of misconduct at issue.f'

21 See, e.g., Sanctions Board Decision No. 45 (2011) at para. 72; Sanctions Board Decision No. 71 (2014) at para. 92.
22 See, e.g., Sanctions Board Decision No. 71 (2014) at para. 94.

23 See, e.g., Sanctions Board Decision No. 56 (2013) at para. 69 (finding that the asserted compliance measures addressed, at least in part, some of the elements suggested in the Integrity Compliance Guidelines); Sanctions Board Decision No. 71 (2014) at para. 94 (finding that the asserted compliance measures appeared to address most of the principles set out in the Integrity Compliance Guidelines).

24 See, e.g., Sanctions Board Decision No. 75

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51. In this case, the Respondent asserts that it operates in "strict compliance" 'with an "Internal Quality Control Manual" on standards related to ethics, anti-corruption, and quality control. The Respondent also asserts that it uses a rigorous annual training program "encompassing ethics and independence standards." The Respondent further submits that it intends to apply improvements to its field visit procedures and documentation and to develop a compliance system in the future. However, the Respondent did not provide any documentation to corroborate the establishment or improvement of any compliance program. Accordingly, the Sanctions Board declines to apply any mitigation on this basis.

d. Cooperation

52. Assistance and/or ongoing cooperation: Section 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.1 of the Sanctioning Guidelines suggests that cooperation may take the form
of assistance with INT's investigation or ongoing cooperation, with consideration of "INT's representation that the respondent has provided substantial assistance," 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." For example, the Sanctions Board has re8timo oninforcon th) Tj ly,)Tj ev detesstr(operates)66j 42.96 0 Td (that) 1. 45.36 0 Td (the) 8

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despite the Respondent's misrepresentations in the reports, the Respondent sought in several instances, both during and after INT's investigation, to inform the Bank of apparent gaps in the Project's implementation and documentation. The Sanctions Board finds that some mitigation is warranted in these circumstances.

E. Determination of Liability and Appropriate Sanction

57. Considering the full record and all the factors discussed above, the Sanctions Board determines that the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, shall be, and hereby declares that it is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner; (ii) be a nominated sub-contractor, consultant,

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58. 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. 27

L. Yves Fortier (Chair)

On behalf of the
World Bank Group Sanctions Board

L. Yves Fortier
Alison Micheli
Ellen Gracie Northfleet
Catherine O'Regan
Denis Robitaille
J. James Spinner

27 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 any of the to O'R6es any operations MDB and Tj 24.72 0"opi O'MC an Tj 59.04 02 Developm that -Tj an