



(the
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



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



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 representatives demonstrating, inter alia, that (i) the assist with technical specifications; (ii) the Team an equipment list and asked to be provided with detailed equipment specifications and prices; (iii) the T Manager a summary of the basic design costs and asked to be provided with cost estimates; (iv) the Manager about technical specifications that would fit the ; and (v) the system design for one of the Downstream Contracts was based on . 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
Rabab Yasseen

