



Guidance
Note on the
Eligibility
Requirements
under Islamic
Development Bank Project
Financing

December 2018

This Guidance Note is intended to complement the Guidelines for Procurement of Goods and Works and related services and for the Procurement of Consultant Services under Islamic Development Bank Financing, approved by the Board of Executive Directors (BED) of the Islamic Development Bank, and published September 2018. This document may be used and reproduced for non-commercial purposes. Any commercial use, including without limitation reselling, charging to access, redistribute, or for derivative Works such as unofficial translations based on these documents is not allowed.

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Common Abbreviations and Defined Terms

Common abbreviations and defined terms that are used in these Guidelines. Defined terms are written using capital letters.

Abbreviation / term	Full terminology / definition
BED	Board of Executive Directors
Beneficiary	A Beneficiary is the recipient of IsDB Project Financing. This term includes any entity involved in the implementation of an IsDB financed project on behalf of the Beneficiary.
Bid	An offer, by a Bidder, in response to a Request for Bids, to provide the required Goods, and/or Works and/or related services.
Bidder	A Firm that submits a Bid for the provision of Goods and/or Works and/or related Services
Consultant	A Consultant Firm or Individual Consultant that provides Consultant Services. A Consultant is independent of both the Beneficiary and IsDB.
Consultant Service(s)	Consultant Services are those intellectual services delivered by a Consultant Firm or an Individual Consultant. Consultant Services are normally of a professional, expert or advisory nature. Consultant Services are governed by these Guidelines.
Fraud and Corruption	The sanctionable practices of corruption, fraud, collusion, coercion or obstruction defined in IsDB's <i>Guidelines on Combatting Fraud and Corruption</i> and in <i>IsDB Group Anti-Corruption Guidelines on Preventing and Combatting Fraud and Corruption in IsDB Group-Financed Projects</i> .
Goods	A category of procurement that includes, for example: consumables, equipment, machinery, vehicles commodities, raw materials or industrial plant. The term may also include related services, such as: transportation, insurance, installation, commissioning, training or initial maintenance.
IsDB	Islamic Development Bank
MC	Member Country
NCB	National Competitive Bidding
Non-Consulting Services:	Services which are not Consulting Services. Non-Consulting Services are normally Bid and contracted on the basis of performance of measurable outputs, and for which performance standards can be clearly identified and consistently applied. Examples include: drilling, aerial photography, satellite imagery, mapping, and similar operations.
PPR	Project Procurement

COMMON ABBREVIATIONS AND DEFINED TERMS

Abbreviation / term	Full terminology / definition
Prequalification	The shortlisting process, which can be used prior to inviting Request for Bids in the procurement of Goods, Works and related services.
Procurement	The function of planning for, and sourcing Goods, Works, Non-Consulting Services, and/or Consulting Services to meet required objectives.
Procurement Documents	A generic term used in these Guidelines to cover all Procurement Documents issued by the Beneficiary. It includes: GPN, SPN, EOI, REOI, Prequalification document, RFB and RFP, including any addenda.
Proposal	An offer, by a Proposer, in response to a Request for Proposal to provide the required Services.
Proposer	A Firm that submits a Proposal for the supply of the required Services.
SOE's	State Owned Enterprises
SBDs	Standard Bidding Documents
Standard Bidding Documents	Standardised procurement documents issued by IsDB to be used by Beneficiaries for IsDB financed projects. These include IsDB's standard documents for, e.g.: GPN, SPN, Prequalification, LOI, RFB and RFP.
Works	A category of procurement that refers to construction, repair, rehabilitation, demolition, restoration, maintenance of civil work structures, and related services such as transportation, insurance, installation, commissioning, and training.
UN	United Nations

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Section 1 - Introduction

1.1 Overview

This Guidance Note relates to the Eligibility of Bidders and Proposers for Islamic Development Bank's (IsDB) financed Procurements by expanding on and explaining IsDB's 2018 revised Procurement Policy and Guidelines¹. The purpose of this guidance is to provide additional information to Beneficiaries on the Eligibility of Bidders and Proposers.

The eligibility requirements vary from project to project. These requirements include such things as:

- The nationality of Bidders;
- Conflict of interest;
- IsDB eligibility requirements;
- Eligibility of state-owned enterprises;
- United Nations eligibility; and
- Evaluation and qualification criteria outlined in the Procurement Documents.

Bidders, Firms and Contractors, and their Sub-Contractors, agents, personnel, Consultants, sub-Consultant, Providers, or Suppliers Bidding for Procurements fully or partially financed by IsDB should be from a IsDB Member Country (MC) (Annex I), unless the financing agreement specifies otherwise. In the case of ICB no nationality restrictions would apply.

The eligibility requirements for each procurement financed by IsDB are fully detailed in the Bidding Documents issued by the Beneficiary.

1.2 When to use this Guidance Note in Procurement and Selection Process

Beneficiaries need to refer to this document specifically at the stage of the preparation of Bidding or Request for Proposal documents, shortlisting or prequalification and at the evaluation stage of the procurement.

¹ <https://www.isdb.org/procurement>

Section 2 - Goods, Works and Non-Consulting Services

2.1 Eligibility

Firms, Suppliers or Contractors (including sub-Contractors) are eligible only if they are not subject to the Boycott Regulations of the Organization of the Islamic Cooperation, the League of Arab States and the African Union and all Bidders must provide a letter of oath to that effect. Firms, Suppliers or Contractors (including sub-Contractors) can participate in Procurements by a Beneficiary financed by the IsDB if they are a MC of IsDB.

A MC Firm or Contractor is defined by and shall comply with all the following:

- It is established or incorporated in a MC of IsDB;
- Its principal place of business is located in a MC of IsDB; and
- It is more than 50% Beneficially owned by a Firm or Firms in one or more MC (which the Firm or Firms must also qualify as to nationality) and/or citizens of such MC.

The Eligibility requirements are specified in the following documents, which can be found on IsDB's website².

- Financing Agreement; and
- Procurement Documents (Prequalification/Bidding Documents/Request for Proposal etc).

2.2 National Competitive Bidding (NCB)

Procurements that are awarded under National Competitive Bidding (NCB) are only eligible to domestic Firms, Suppliers or Contractors (including sub-Contractors) that are from the Beneficiary's country unless NCB is used instead of ICB as outlined below. A domestic Firm is defined as follows:

- a) It is established or incorporated in the MC where the Works are to be carried out and/or where the Goods are to be delivered;
- b) Its principal place of business is in the Beneficiary MC; and
- c) It is more than 50% Beneficially owned by a Firm or Firms in the Beneficiary MC (which the Firm or Firms must also qualify as to nationality) and/or citizens of such MC;

NCB procedures may also be used where the advantages of International Competitive Bidding (ICB) or ICB/MC are clearly outweighed by the administrative or financial burden involved. NCB will be open to domestic Firms, in accordance with the criteria outlined above. In this case any eligible Firm from outside the Beneficiary's country is eligible to participate on the same terms and conditions that apply to national Firms.

² <https://www.isdb.org/procurement>

The eligibility of a Firms, Suppliers or Contractors (including sub-Contractors) should be determined during the evaluation as outlined in the Guidelines for the procurement of Goods, Works and related services under IsDB Project Financing in Paragraph 1.13.

2.3 State Owned Enterprises (SOE's)

State Owned Enterprises (SOE's) in the Beneficiary's country are only eligible and may participate only if they can establish that they:

- a) Are legally and financially autonomous;
- b) Operate under commercial law, and
- c) Are not dependent on the Beneficiary's Agency responsible for contracting.

If the SOE meets the requirements above then they are free to participate in ISDB's financed procurements and should be treated the same as any other Firm, Suppliers or Contractors.

2.4 Disqualification

In cases where Firms, Suppliers or Contractors (including sub-Contractors) withhold information to evade disqualification because of the eligibility requirement set out in the Procurement Documents, the Beneficiary will have the right to cancel the contract at any time and to penalize such parties and claim compensation for losses incurred.

IsDB has the right not to honour any contract if the Firm, Supplier or Contractor (including sub-Contractors) involved that is found to be ineligible based on the eligibility requirement stated in the Procurement Policy and Guidelines, this Guidance Note and in the Procurement Documents.

A Firm, Supplier or Contractor (including sub-Contractors) from a country may be excluded if:

- a) As a matter of law or official regulation, the Beneficiary's country prohibits commercial relations with that country; or
- b) By an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, or
- c) The Beneficiary's country prohibits any payment to a particular country, person or entity; or
- d) There is a Conflict of Interest in terms of activities, assignments and relationships with Beneficiary's staff; or
- e) In accordance with IsDB Cross Debarment Policy³.

³ <https://www.isdb.org/who-we-are/integrity/IsDB-group-integrity-enhancements-meet-standards-cross-debarment-agreement>

Section 3 - Consultancy Services

3.1 Eligibility

It is a fundamental policy of IsDB that the RFP shall unequivocally stipulate that the Consultant Services provided by the Consultant Firm/Individual Consultant, and its associates and sub-consultants, shall be in strict compliance with the Boycott Regulations of the Organization of the Islamic Cooperation, the League of Arab States and the African Union (Boycott Regulations). The Beneficiary shall advise prospective Proposers that Proposals will only be considered from Consultant Firms/Individual Consultants that are not subject to these Boycott Regulations. The Bidder/Proposer shall provide a letter of oath to that effect.

The eligibility of a Consultant will be finally determined at the time of signature of the contract. In cases where Consultants withhold information to evade disqualification because of the eligibility requirement, the Beneficiary will have the right to cancel the contract at any time and to penalize such parties and claim compensation for losses, as a consequence thereof, to the Beneficiary and IsDB. IsDB reserves the right not to honour any contract if the Consultant involved is found to be ineligible based on the eligibility requirements stated.

A MC Firm is defined by and shall comply with all the following:

- a) It is established or incorporated in a MC of IsDB;
- b) Its principal place of business is located in a MC;
- c) Its chief officer is a National of a MC; and
- d) More than half of its managerial and professional staff are nationals of an MC or MCs.

A domestic Firm of an MC is defined by and shall comply with all the following:

- a) It is established or incorporated in the MC where the assignment is to be carried out;
- b) Its principal place of business is located in the MC;
- c) Its chief officer is a national of the MC; and
- d) More than half of its managerial and professional staff are nationals of the MC.

SOE's in the Beneficiary's country may participate only if they can establish that they:

- a) Are legally and financially autonomous;
- b) Operate under commercial law; and
- c) Are not dependent on the budget of the Beneficiary's Government.

State-owned universities and research centres in the Beneficiary's country, and university professors and research staff, may participate if they are critical to the Consultancy assignment. Such participation will be decided on a case by case basis and subject to IsDB No-Objection.

Government officials and civil servants can only be hired under Consultant Service contracts, either as individuals or as members of a team of a Consultant Firm, if they are (a) on leave of absence without pay; and (b) are not in any conflict of interest situation.

A Firm or an individual declared ineligible by IsDB in accordance with sub-paragraph (d) of paragraph 1.38 of the Guidelines for the Recruitment and Use of Consultants under Project Financing or in accordance with IsDB Group Anti-Corruption Guidelines on Preventing and Combating Fraud and Corruption in IsDB Group-Financed Activities⁴ and sanctions procedures shall be ineligible to be awarded an IsDB financed contract during the period of time determined by IsDB.

Consultants from a country may be excluded if (i) as a matter of law or official regulation, the Beneficiary's country prohibits commercial relations with that country; or (ii) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Beneficiary's country prohibits any payment to a particular country, person or entity (iii) in accordance with IsDB Cross Debarment Policy.

⁴ <https://www.isdb.org/sites/default/files/2018-03/Anti-CorruptionGuidelines.pdf>

Section 4 - Ineligibility

A Firm or individual declared ineligible by IsDB in accordance with paragraph 1.39 of IsDB's Guidelines for Procurement of Goods, Works and related services under Project Financing and with paragraph 1.38 of IsDB's Guidelines for the Procurement of Consultant Services under Project Financing.

It is IsDB policy to require that Beneficiaries as well as Contractors, Firms, Consultants, and their agents (whether declared or not), sub-Contractors, Sub-Consultants, Providers or Suppliers, and any personnel thereof, observe the highest standard of ethics during the selection and execution of IsDB financed contracts. The requirements of IsDB Group Anti-Corruption Guidelines on Preventing and Combating Fraud and Corruption in IsDB Group-Financed Projects and sanctions procedures must always be observed. IsDB defines the terms set forth as follows:

- **Corrupt Practice**
 - Is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- **Fraudulent Practice**
 - Is 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;
- **Collusive Practices**
 - Is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- **Coercive Practices**
 - Is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party; and
- **Obstructive Practice**
 - Is deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an IsDB investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or acts intended to materially impede the exercise of IsDB inspection and audit rights as detailed in Paragraph 1.39 e) of Guidelines for procurement of Goods, Works and related services and 1.38 e) of Guidelines for the Procurement of Consultant Services.

A Bid should be rejected for award if it determines that the Bidder/Proposer recommended for award, or any of its personnel, or its agents, or its Sub-Consultants, Sub-Contractors, Service

Providers, Suppliers and/or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question.

IsDB will declare misprocurement and cancel the portion of the Financing allocated to a contract if it determines at any time that representatives of the Beneficiary or of a recipient of any part of the proceeds of the Financing engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices during the Procurement or the implementation of the contract in question, without the Beneficiary having taken timely and appropriate action satisfactory to IsDB to address such practices when they occur, including by failing to inform IsDB in a timely manner.

IsDB will sanction a Firm or individual, at any time, in accordance with IsDB's sanctions procedures, including by publicly declaring such Firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded a IsDB financed contract; and (ii) to be a nominated Sub-Contractor, Consultant, sub-Consultant, Supplier, or Provider of an otherwise eligible Firm being awarded a IsDB financed contract.

A Firm or individual may be declared ineligible to be awarded a IsDB financed contract upon.

- a. Completion of the IDB's sanctions proceedings as per its sanctions procedures, including, inter alia, cross-debarment as agreed with other International Financial Institutions, including Multilateral Development Banks; and
- b. As a result of temporary suspension or early temporary suspension in connection with an ongoing sanctions proceeding.

IsDB requires that a clause be included in Bidding Documents and in contracts financed by IsDB, requiring Bidders, Firms and Contractors, and their Sub-Contractors, agents, personnel, Consultants, sub-Consultant, Providers, or Suppliers, to permit IsDB to inspect all accounts, records, and other documents relating to the submission of Bids and contract performance, and to have them audited by auditors appointed by IsDB.

With the specific agreement of IsDB, a Beneficiary may introduce, into Bid forms for contracts financed by IsDB, an undertaking of the Bidder/Proposer to observe, in competing for and executing a contract, the country's laws against Fraud and Corruption (F&C) (including bribery), as listed in the Bidding Documents. IsDB will accept the introduction of such undertaking and at the request of the Beneficiary country, provided the arrangements governing such undertaking are satisfactory to IsDB.

Section 5 - Source and Origin

Bidding Documents shall indicate that the supply of Goods and Works financed by IsDB is limited to Goods and Works and related services originating from a MC, and prospective Bidders are required to provide the appropriate information.

Goods and Works meeting the following criteria shall be eligible for Procurement financed by IsDB:

- a) In relation to Goods, Goods shall be eligible if they have their source and origin in an MC, and for that purpose:
 - i. **“source”** means the country from which an item is transported to the country in which the project is located or the latter country, provided that in both cases the item is located there at the time of purchase;
 - ii. **“origin”** means the country in which an item is mined, grown or produced. An item is produced when, through manufacturing, processing or substantial and major assembling of components, a commercially recognised new product results that is substantially different in basic characteristics or in purpose or utility from its components; and
 - iii. Goods shall be considered to originate in a country if they meet the criterion of at least 50% by value derived from within that country.

Section 6 - Exceptions to Eligibility Requirements for Bidders/Proposers

There are some exceptions to the eligibility requirements for procurements financed by IsDB. Bodies corporate, Consultant Firms or Individual Consultants from an Eligible Country or Goods from a specific Country may be excluded if:

- a) as a matter of law or official regulation, the country of the Beneficiary prohibits commercial relations with that country, provided that IsDB is satisfied that such exclusion does not preclude effective competition for the required Goods, Works or Services; or
- b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations (UN), the country of the Beneficiary prohibits any import of Goods from, or payments to, a particular country, person, or entity. Where the country of the Beneficiary prohibits payments to a particular body corporate, Consultant Firm or individual or for particular Goods by such an act of compliance, that body corporate or individual may be excluded; or
- c) there is a conflict of interest in terms of activities, assignments and relationships with Beneficiary staff.

A Firm or an individual sanctioned by IsDB for engaging in Prohibited Practices shall be ineligible to be awarded a IsDB financed contract, or to benefit from a IsDB financed contract, financially or otherwise, during such period of time as IsDB;

- a) If requested by the Recipient, IsDB may agree that under IsDB financed contracts, the Standard Bidding Documents (SBDs) state that a Firm or individual that is under a sanction of debarment from being awarded a contract by the proper judicial or administrative authorities in the Recipient's country and pursuant to its relevant laws is ineligible to be awarded a IsDB financed contract. Provided that IsDB concludes to its satisfaction that the debarment relates to Prohibited Practices and follows a judicial or administrative proceeding affording the Firm or the individual adequate due process; and
- b) Where UN Agencies or other regional or international organisations, contracted by Recipients, are permitted by IsDB to apply their eligibility procedures in relation to any Procurement they need to make under a IsDB financed contract.

SOE's or institutions of the Beneficiary's country shall be eligible to compete and be awarded contracts in the Beneficiary's country only if they can establish, in a manner acceptable to IsDB, that they:

- a) Are legally and financially autonomous. "Legally autonomous" means a legal entity separate from the Recipient's government. "Financially autonomous" means not receiving budget support from any Recipient public entity, and not being obliged to pass financial surplus to the same, except through dividends to shareholders;
- b) Operate under commercial law - Being vested with legal rights and liabilities similar to any commercial enterprise, including, being incorporated or established by statutory charter under local law; having the right:

- (aa) to enter into legally binding contracts;
 - (bb) to sue;
 - (cc) to be sued; and
 - (dd) to borrow money, being liable for the repayment of debts and being able to be declared bankrupt;
- c) Are not under supervision by agencies of the Beneficiary's country. Exceptions include:
- (aa) when Works and Non-Consulting Services are provided under the Force Account selection method; and
 - (bb) when Goods and Services are provided by universities, research institutes or similar institutions, which are SOEs, and are of a unique or exceptional nature because of the absence of suitable private sector alternatives, or as a consequence of the regulatory framework, or because their participation is critical to Project implementation, IsDB may agree to the contracting of these entities on a case-by-case basis.

State-owned universities and research centres in the Beneficiary's country, and university professors and research staff, may participate if they are critical to the Consultant assignment. Such participation will be decided on a case by case basis and subject to IsDB No-Objection.

Government officials and civil servants can only be hired under Consultant Service contracts, either as individuals or as members of a team of a Consultant Firm, if they are (a) on leave of absence without pay; and (b) are not in any conflict of interest situation.

Annex I - ISDB Member Countries

The Islamic Development Bank is made up of fifty-seven (57) Member Countries.

- Afghanistan
- Albania
- Algeria
- Azerbaijan
- Bahrain
- Bangladesh
- Benin
- Brunei
- Burkina Faso
- Cameroon
- Chad
- Comoros
- Cote D'Ivoire
- Djibouti
- Egypt
- Gabon
- Gambia
- Guinea
- Guinea Bissau
- Guyana
- Indonesia
- Iran
- Iraq
- Jordan
- Kazakhstan
- Kuwait
- Kyrgyz Republic
- Lebanon
- Libya
- Malaysia
- Maldives
- Mali
- Mauritania
- Morocco
- Mozambique
- Niger
- Nigeria
- Oman
- Pakistan
- Palestine
- Qatar
- Saudi Arabia
- Senegal
- Sierra Leone
- Somalia
- Sudan
- Suriname
- Syria
- Tajikistan
- Togo
- Tunisia
- Turkey
- Turkmenistan
- Uganda
- United Arab Emirates
- Uzbekistan
- Yemen



For any additional information, such as Standard Bidding Documents (SBDs), Guidance, training materials and briefing, please see

www.isdb.org/procurement

