

Together we Promote Integrity Values in the IDB Group

Integrity Amendments to the Guidelines for the Use of Consultants under IDB Financing



Islamic Development Bank Group

Group Integrity Office

Safar 1433H
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Integrity Amendments to the Guidelines for the Use of Consultants under IDB Financing to be in line with the MDB's agreement for mutual enforcement of debarment decisions

| Item | Guideline for the Use of Consultants under IDB Financing, May 2009 | Recommended Amendments |
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| Eligibility (1.17) | A firm declared ineligible by IDB in accordance with sub-paragraph (d) of paragraph 1.31 of these Guidelines (regarding fraud and corruption) shall be ineligible for an IDB-financed contract during the period of time determined by IDB. | A firm or an individual declared ineligible by IDB in accordance with sub-paragraph (d) of paragraph 1.31 of these Guidelines or in accordance with the IDB Group Anti-Corruption Guidelines on Preventing and Combating Fraud and Corruption in IDB Group-Financed Activities and sanctions procedures shall be ineligible to be awarded an IDB-financed contract during the period of time determined by IDB. |
| Conflict of Interest (1.18) | If a firm (or the firm with which it is affiliated) combines the functions of consultant with those of contractor or if it is associated with a manufacturer or is a manufacturer with a department or design office offering services as a consultant and is short listed by the Beneficiary, IDB requires that its proposal shall include relevant information on such relationship along with a statement to the effect that it shall limit its role to that of a consultant, and that neither the firm nor its associates / affiliates shall participate in the project in any other capacity. For example, such firms shall be disqualified from providing goods or works for the same project. Conversely, a firm that has been hired to provide goods or works for a project shall be disqualified from providing consulting services for this project. Consultants hired to prepare terms | <p>IDB policy requires that consultants provide professional, objective, and impartial advice and at all times hold the client's interests paramount, without any consideration for future work, and that in providing advice they avoid conflicts with other assignments and their own corporate interests. Consultants shall not be hired for any assignment that would be in conflict with their prior or current obligations to other clients, or that may place them in a position of being unable to carry out the assignment in the best interest of the Beneficiary.</p> <p>Without limitation on the generality of the foregoing, consultants shall not be hired under the circumstances set forth below:</p> <p>(a) Conflict between consulting activities and procurement of goods, works, or non-consulting</p> |

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| | <p>of reference for an assignment should not be hired to carry out the assignment itself.</p> <p>Consulting firms or any of its affiliates shall not be hired for any assignment that, by its nature, may be in conflict with another assignment of the same consulting firm being carried out in the country.</p> | <p>services (i.e., services other than consulting services covered by these Guidelines): A firm that has been engaged by the Beneficiary to provide goods, works, or non-consulting services for a project, or any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm, shall be disqualified from providing consulting services resulting from or directly related to those goods, works, or non-consulting services. Conversely, a firm hired to provide consulting services for the preparation (before Finance effectiveness) or implementation of a project, or any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm, shall be disqualified from subsequently providing goods, works, or services (other than consulting services covered by these Guidelines) resulting from or directly related to the consulting services for such preparation or implementation. This provision does not apply to the various firms (consultants, contractors, or suppliers) which together are performing the Contractor's obligations under a turnkey or design and build contract.</p> <p>(b) Conflict among consulting assignments: Neither consultants (including their personnel and sub-consultants), nor any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm, shall be hired for any assignment that, by its nature, may be in conflict with another</p> |
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| | | <p>assignment of the consultants. As an example, consultants assisting a client in the privatization of public assets shall neither purchase, nor advise purchasers of, such assets. Similarly, consultants hired to prepare Terms of Reference (TOR) for an assignment shall not be hired for the assignment in question.</p> <p>(c) Relationship with Beneficiary's staff: Consultants (including their experts and other personnel, and sub-consultants) that have a close business or family relationship with a professional staff of the Beneficiary(or of the project implementing agency, or of a recipient of a part of the Financing) who are directly or indirectly involved in any part of: (i) the preparation of the TOR for the assignment, (ii) the selection process for the contract, or (iii) the supervision of such contract may not be awarded a contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the IDB throughout the selection process and the execution of the contract.</p> <p>(d) A consultant shall submit only one proposal, either individually or as a joint venture partner in another proposal. If a consultant, including a joint venture partner, submits or participates in more than one proposal, all such proposals shall be disqualified. This does not, however, preclude a consulting firm to participate as a sub-consultant, or an individual to participate as a team member,</p> |
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| | | in more than one proposal when circumstances justify and if permitted by the RFP. |
| Unfair Competitive Advantage (1.19) | <i>(Does not exist in current version of IDB Procurement Guidelines).</i> | Fairness and transparency in the selection process require that consultants or their affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to the assignment in question. To that end, the Beneficiary shall make available to all the short-listed consultants, together with the request for proposals, all information that would in that respect give a consultant a competitive advantage. |
| Fraud and Corruption (1.31a) | <p>It is IDB's policy to require Beneficiaries as well as consulting firms under IDB-financed contracts, to observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, IDB:</p> <p>(a) defines, for the purposes of this provision, the terms set forth as follows:</p> <ul style="list-style-type: none"> - "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the selection procedure or in contract execution; and; - "fraudulent practice" means a misrepresentation of facts in order to influence a selection procedure or the execution of a contract to the detriment of the Beneficiary, and includes collusive practices among | <p>It is the IDB's policy to require that Beneficiaries as well as consultants, and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers, and any personnel thereof, observe the highest standard of ethics during the selection and execution of IDB-financed contracts.¹⁶ In pursuance of this policy, the IDB:</p> <p>(a) defines, for the purposes of this provision, the terms set forth below as follows:</p> <p>(i) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;</p> <p>(ii) "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</p> |

¹⁶ In this context, any action taken by a consultant or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers, and/or their employees, to influence the selection process or contract execution for undue advantage is improper.

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| | <p>consultants (prior to or after submission of proposals) designed to establish prices at artificial, non-competitive levels and to deprive the Beneficiary of the benefits of free and open competition;</p> | <p>obligation;</p> <p>(iii) “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;</p> <p>(iv) “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;</p> <p>(v) “obstructive practice”</p> <p>(aa) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an IDB 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</p> <p>(bb) acts intended to materially impede the exercise of the IDB’s inspection and audit rights provided for under paragraph 1.31(e) below.</p> |
| | <p>b) will reject a proposal for award if it determines that the consulting firm recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;</p> <p>c) on the evidence of corrupt or fraudulent practices by</p> | <p>(b) will reject a proposal for award if it determines that the consultant 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</p> |

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| | <p>the Beneficiary or consultant in the selection procedure or the execution of the contract, will ask the Beneficiary country to take appropriate action to rescind the contract, failing which IDB will cancel the portion of its financing. For this purpose, IDB will require that the proposal documents embody a statement to this effect, and will also require that, in contracts financed by IDB, a provision be included that gives the Beneficiary country the right to rescind the contract in these circumstances;</p> <p>d) will declare a consultant ineligible, either indefinitely or for a stated period of time, to be awarded a IDB-financed contract if it at any time determines that the consultant has engaged in corrupt or fraudulent practices in competing for, or in executing, a IDB-financed contract; and</p> <p>e) will have the right to require that, in contracts financed by IDB, a provision be included requiring consultants to permit IDB to inspect their accounts and records relating to the performance of the contract and to have</p> | <p>contract in question;</p> <p>(c) will declare mis-procurement 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 were engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices during the selection process or the implementation of the contract in question, without the Beneficiary having taken timely and appropriate action satisfactory to the IDB to address such practices when they occur, including by failing to inform the IDB in a timely manner at the time they knew of the practices;</p> <p>(d) will sanction a firm or an individual, at any time, in accordance with prevailing IDB's sanctions procedures,¹⁷ including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded a IDB-financed contract; and (ii) to be a nominated sub-consultant, supplier, or service provider of an otherwise eligible firm being awarded a IDB-financed contract; and</p> <p>(e) will require that a clause be included in the RFP and in contracts financed by IDB requiring consultants, and their agents, personnel, sub-consultants, sub-contractors, service providers, or suppliers, to permit the IDB to inspect all accounts, records, and other</p> |
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¹⁷ A firm or individual may be declared ineligible to be awarded a IDB-financed contract upon: (i) 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 (ii) as a result of temporary suspension or early temporary suspension in connection with an ongoing sanctions proceeding.

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| | them audited by auditors appointed by IDB. | documents relating to the submission of proposals and contract performance, and to have them audited by auditors appointed by the IDB. |
| Fraud and Corruption (1.32) | With the specific agreement of IDB, a Beneficiary country may include in the RfP for a large contract financed by IDB, a requirement that the Consultant undertake a commitment to observe, in competing for and executing a contract, the country's laws against fraud and corruption (including bribery) as listed in the RfP. ¹⁸ IDB will accept the introduction of such a requirement. | With the specific agreement of the IDB, a Beneficiary may introduce, into the RFP for contracts financed by the IDB, a requirement that the consultant include in the proposal an undertaking of the consultant to observe, in competing for and executing a contract, the country's laws against fraud and corruption (including bribery), as listed in the RFP. ¹⁹ The IDB will accept the introduction of such a requirement at the request of the Beneficiary country, provided the arrangements governing such undertaking are satisfactory to the IDB. |

¹⁸ As an example, such an undertaking might read as follows: "We undertake that, in competing for (and, if the award is made to us, in executing) the above contract, we will observe the laws against fraud and corruption in force in the country of the Beneficiary, as such laws have been listed by the client in the RfP for this contract"

¹⁹ As an example, such an undertaking might read as follows: "We undertake that, in competing for (and, if the award is made to us, in executing) the above contract, we will observe the laws against fraud and corruption in force in the country of the Beneficiary, as such laws have been listed by the Beneficiary in the RFP for this contract."