



Guidance
Note on the
Conflict of
Interest for Islamic
Development Bank
financed Procurements

February 2019

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 Guidelines/Guidance Note

Abbreviation/term	Full terminology/definition
Bid	An offer, by a Bidder venture, 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
Beneficiary	A Beneficiary is the recipient of IsDB Project Financing. The term includes any entity involved in the implementation of an IsDB financed project on behalf of the Beneficiary.
Consultant	A Consultant Firm or Individual Consultant that provides Consultant Services. A Consultant is independent of both the Beneficiary and IsDB.
Consulting Services	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 IsDB's <i>Guidelines for the Procurement of Consultant Services under IsDB Project Financing</i> .
Fraud and Corruption	The sanctionable practices of corruption, fraud, collusion, coercion and obstruction defined in <i>IsDB's Guidelines on Combating Fraud and Corruption</i> and in <i>IsDB Group Anti-Corruption Guidelines on Preventing and Combating Fraud and Corruption in IsDB Group- Financed Projects</i>
Goods	A category of Procurement that includes: for example consumables, equipment, machinery, vehicles, commodities, raw material or industrial Plant. The tem may also include related services, such as: transportation, insurance, installation, commissioning, training, and initial maintenance.
IsDB	Islamic Development Bank
MC	Member Country
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.
Prequalification	The shortlisting process which can be used prior to inviting request for Bids in the Procurement of Goods, Works or Non-Consulting Services.

COMMON ABBREVIATIONS AND DEFINED TERMS

Abbreviation/term	Full terminology/definition
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 required Consultant Services
Proposer	A firm that submits a Proposal for the supply of the required Consultant Services
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.

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Section 1. Introduction

1.1 Overview

This Guidance Note relates to the Conflict of Interest of Bidders and Proposers/Consultants 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 the Beneficiaries on the Conflict of Interest situations for Bidders and Proposers/Consultants.

The Conflict of Interest situation could relate to a Bidder, applicant, Consultant or to a staff of the Beneficiary. These requirements are linked to eligibility, unfair competitive advantage and one Bid/Proposal per Bidder/Consultant, as indicated in the Bidding/Proposal 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. If the financing agreement specifies the use of "ICB Open" or "International Shortlist of Consultants" under a project, then no nationality restrictions would apply. Annex II provides list of reference materials and websites.

The Conflict of Interest requirements for each Procurement financed by IsDB are fully detailed in the Procurement 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 preparation of Bidding or Request for Proposal Document, shortlisting or Prequalification, evaluation process, award of contract, complaints handling and during contract amendments.

¹ <https://www.isdb.org/procurement>

Section 2. Goods, Works and Related Services

2.1 Conflict of Interest

IsDB's policy requires that a Firm participating in a Procurement process under IsDB financed projects shall not have a conflict of interest that gives rise to an unfair competitive advantage. Any Firm found to have a conflict of interest giving rise to an unfair competitive advantage shall normally be ineligible for award of a contract. Firms participating in a Procurement process shall hold the Beneficiary's interests paramount, without any consideration for future work, and that in providing delivering Goods, Works or related services they avoid conflicts with other assignments and their own business interests. Firms shall not be selected for any contract 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 contract in the best interest of the Beneficiary.

2.2 Conflict between provision of Goods, Works, or Services

A Firm hired to provide Consultant Services for the preparation (before IsDB Project Financing effectiveness) or implementation of a project, or any affiliate that directly or indirectly controls, is controlled by, or is under common control of that Firm, shall be disqualified from subsequently providing Goods, Works or related services 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.

2.3 Conflict with other contractual commitments

Neither Firms, nor any affiliate that directly or indirectly controls, is controlled by, or is under the common control with that Firm, shall be selected for a contract that, by its nature, may be in conflict with another contract being undertaken, or about to be undertaken by that Firm.

2.4 Relationship with Beneficiary's staff

Firms (including their employees and subcontractors) 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 IsDB Project Financing) who are directly or indirectly involved in any part of the following:

- a) The preparation of the specifications for a contract;
- b) The selection process for the contract; or
- c) 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 IsDB throughout the selection process and the execution of the contract.

2.5 Provisions in a Prequalification Document

Applicants shall not have a conflict of interest. Applicants shall be considered to have a conflict of interest, if they, or any of their affiliates, participated as a Consultant in the preparation of the design or technical specifications or have been hired or proposed to be hired by the Employer or Beneficiary as Engineer for contract implementation of the Works that are the subject of this Prequalification. In addition, Applicants may be considered to have a conflict of interest if they 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:

- a) Are directly or indirectly involved in the preparation of the Prequalification Document or Bidding Document or specifications of the Contract, and/or the Bid evaluation process of such Contract; or
- b) Would be involved in the implementation or supervision of such Contract, unless the conflict stemming from such relationship has been resolved in a manner acceptable to IsDB throughout the Prequalification, Bidding process and execution of the Contract

2.6 Provisions in a Standard Procurement Document

A Bidder shall not have a conflict of interest. All Bidders found to have in conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest with one or more parties in this Bidding process, if:

- a) Directly or indirectly controls, is controlled by or is under common control with another Bidder; or
- b) Receives or has received any direct or indirect subsidy from another Bidder; or
- c) Has the same legal representative as another Bidder; or
- d) Has a relationship with another Bidder, directly or through common third parties, that puts it in a position to influence the Bid of another Bidder, or influence the decisions of the Employer regarding this Bidding process; or
- e) Any of its affiliates participated as a Consultant in the preparation of the design or technical specifications of the facilities that are the subject of the Bid; or
- f) Any of its affiliates has been hired, or is proposed to be hired, by the Employer the Beneficiary as Project Manager for the Contract implementation; or
- g) Would be providing Goods, Works, or Non-Consulting Services resulting from or directly related to Consulting Services for the preparation or implementation of the project specified in the Bid Data Sheet/Instructions to Bidders that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; or
- h) Has 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:

- (i) Are directly or indirectly involved in the preparation of the Bidding documents or specifications of the contract, and/or the Bid evaluation process of such contract;
- (ii) Would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to IsDB throughout the Procurement process and execution of the Contract.

Section 3. Consultancy Services

3.1 Conflict of Interest

IsDB policy requires that Consultants provide professional, objective, and impartial advice and at all times hold the Beneficiary's interests paramount, without any consideration for future work, and that in providing advice they avoid conflicts with other assignments and their own business 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.

Without limitation on the generality of the foregoing, Consultants shall not be hired under the circumstances set forth below:

- a) ***Conflict between Consultant activities and Procurement of Goods, Works, or related non-Consultant services:*** (i.e., services other than Consultant Services covered by these Guidelines). A Firm that has been engaged by the Beneficiary to provide Goods, Works, or related non-Consultant 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 Consultant Services resulting from, or directly related to, those Goods, Works, or related non-Consultant services. Conversely, a Firm hired to provide Consultant Services for the preparation (before IsDB Project Financing 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 related non-Consultant services (other than Consultant Services covered by these Guidelines) resulting from, or directly related to, the Consultant 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.
- b) ***Conflict among Consultant 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 assignment of the Consultants. As an example, Consultants assisting a Beneficiary in the privatization of public assets shall neither purchase, nor advise purchasers of, such assets. Similarly, Consultants hired to prepare TOR for an assignment shall not be hired for the assignment in question.
- 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 IsDB Project Financing) who are directly or indirectly involved in any part of the following: 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 IsDB throughout the selection process and the execution of the contract.

3.3 Provisions in Request For Proposal Documents

In accordance with provisions for Guidelines for Consultant Services, similar provisions shall be stipulated in Request for Proposal Documents prepared by the Beneficiary based on Standard RFP of IsDB.

The Consultant is required to provide professional, objective, and impartial advice, at all times holding the Client's interests paramount, strictly avoiding conflicts with other assignments or its own corporate interests, and acting without any consideration for future work.

The Consultant has an obligation to disclose to the Client any situation of actual or potential conflict that impacts its capacity to serve the best interest of its Client. Failure to disclose such situations may lead to the disqualification of the Consultant or the termination of its Contract and/or sanctions by IsDB.

Without limitation on the generality of the foregoing, and unless stated otherwise in the Data Sheet, the Consultant shall not be hired under the circumstances set forth in the Standard Request for Proposal Document as per the requirements stated in the Guidelines for the Procurement of Consultant Services.

3.3 Unfair competitive advantage

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 Consultant Services related to the assignment in question. To that end, the Beneficiary shall make available to all the short-listed Consultants, together with the RFP, all information that would in that respect give a Consultant a competitive advantage.

3.4 Information For Consultants

Request for Proposal Document/Data Sheet shall contain a statement that the Firm and any of its affiliates shall be disqualified from providing downstream Goods, Works, or related services under the project if, in IsDB's judgment, such activities constitute a conflict of interest resulting in a competitive advantage with the Consultant Services provided under the assignment.

Section 4. One Bid/Proposal per Bidder/Consultant

4.1 Goods, Works and Related Services

One Bid per Bidder: A firm shall not submit more than one Bid, either individually or as a joint venture partner in another Bid, except for permitted alternative Bids. Submitting or participating in more than one Bid results in the disqualification of all Bids in which the firm is involved. This does not limit the inclusion of a firm as a subcontractor in more than one Bid. However, for certain types of Procurement, the participation of a Bidder as a subcontractor in another Bid may be permitted as allowed by the IsDB's Standard Procurement Documents applicable to such types of Procurement.

4.2 Consultant Services

One Proposal: A Consultant shall submit only one Proposal, either individually or as a JV member in another Proposal. If a Consultant, including a JV member, submits or participates in more than one Proposal, all such Proposals shall be disqualified. This does not, however, preclude a Consultant Firm participating as a sub-Consultant, or an Individual Consultant participating as a team member, in more than one Proposal when circumstances justify, and if permitted by the RFP.

Section 5. Exceptions to Conflict of Interest Requirements for Bidders

Based on IsDB policy and provisions of Bid/Proposal documents, certain exceptions apply which are dealt under IsDB's 2018 revised Procurement Policy and Guidelines, eligibility requirements of Bid/Proposal Documents or as specified in Procurement Document issued by the Beneficiary.

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.

In case of Procurement of Plant, Design, Supply, and Installation the participation of a Bidder as a subcontractor in another Bid may be permitted if so allowed by the IsDB's Standard Procurement Documents applicable to such types of Procurement (As per IsDB Standard Procurement Document of January 2019 for Plant, Design, Supply, and Installation such deviation is permitted as per the statement "However, this does not limit the participation of a Bidder as a subcontractor in another Bid or of a firm as a subcontractor in more than one Bid").

A Bidder or an Applicant shall not participate in more than one application or Bid in the same Prequalification or Bidding process. In accordance with Standard Prequalification Document (January 2019) "A firm and any of its affiliates (that directly or indirectly control, are controlled by or are under common control with that firm) may submit its application for Prequalification either individually, as joint venture or as a sub-contractor among them for the same contract. However, if prequalified only one prequalified applicant will be allowed to Bid for the same contract. All Bids submitted in violation of this procedure will be rejected".

However, in case where Bidders or Applicants are allowed to Bid for individual contracts (lots) and/or for a group of similar contracts (packages), the Conflict of Interest situation shall be examined on the basis of participation of individual lots (and resulting contract) and not for the entire package, as per provisions of the Bidding/Prequalification document.

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

