



Guidance
Note on New
Procurement
Approaches in
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 these Guidelines. Defined terms are written using capital letters.

Abbreviation / term	Full terminology / definition
ALB	Abnormally Low Bid
BAFO	Best and Final Offer
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.
CQS	Consultant Qualifications Selection
FBS	Fixed Budget Selection
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
LCS	Least Cost Selection
MDB	Multi-Lateral Development Bank
Non-Consulting Services:	Services which are not Consulting Services. Non-Consulting Services are normally Bid and contracted based on 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.
PIU	Project Implementation Unit

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.
Probity Assurance Provider	Probity Auditor
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.
PPR	Project Procurement
QBS	Quality Based Selection
QCBS	Quality and Costs Based Selection
RFB	Request for Bids
RFP	Request for Proposals
RFQ	Request for Quotations
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.
UN	United Nations
VFM	Value for Money
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.

Contents

Section 1 - Introduction	1
Section 2 - Abnormally Low Bids (ALB)	3
2.1 Overview	3
Section 3 - Best and Final Offer (BAFO).....	5
3.1 Overview	5
3.2 Procurement Prior Review	6
3.3 Probity Assurance Provider	6
3.3.1 Probity Report	6
3.4 BAFO Process & Requirements	6
3.6 Process Flow Charts	8
3.7 Bid Opening	8
3.8 Guidelines for the Beneficiary.....	9
3.9.1 Requesting a BAFO	9
3.9.2 Submission of a BAFO	9
3.9.3 Opening of a BAFO	9
3.9.4 Evaluation of a BAFO.....	9
Section 4 - Complaints Standstill Period	11
4.1 Overview	11
Section 5 - Procurement Strategy	13
5.1 Overview	13
5.2 Background	14
5.3 Procurement Strategy	14
Section 6 - Probity Assurance Provider	15
6.1 Background.....	15
Key elements of a probity audit are:.....	15
6.2 Auditor Independence	15
Determining Independence	15
Threats to Independence	16
Safeguards for Independence	16
6.3 Conflict of interest.....	17
6.4 Recommended Practice	17
Annex I - Probity Auditor Terms of Reference	19
Annex II - Procurement Options and Recommendations Template.....	23
Annex III - Project Overview Template	25
Annex IV - Procurement Strategy Template.....	27

Section 1 - Introduction

This Guidance Note relates to new Procurement approaches, methods and functionality introduced in IsDB's 2018 revised Guidelines for the Procurement of Goods, Works and related services under IsDB Project Financing and Guidelines for the Procurement of Consultant Services under IsDB Project Financing.

Detailed in this note is more information on each of the new features, explaining their conditions of use and an overview of the benefits. The new features covered in the Guidance Note are detailed below.

- Abnormally Low Bids (ALB);
- Best and Final Offer (BAFO);
- Complaints Stand Still Period; and
- Procurement Strategy.

The new features covered in this Guidance Note are also covered in more detail in individual Guidance Notes on each feature which can be found on IsDB's website¹.

- Guidance Note on Abnormally Low Bids under Islamic Development Bank financed Procurements;
- Guidance Note on Procurement Related Complaints Handling; and
- Guidance Note on Procurement Planning and Strategy.

¹ <https://www.isdb.org/>

Section 2 - Abnormally Low Bids (ALB)

2.1 Overview

The revised Guidelines for the Procurement of Goods, Works and related services under IsDB Project Financing introduced the new approach to determining Abnormally Low Bids in IsDB financed Procurements. The Guidelines provide the following definition.

“An abnormally low Bid typically covers Works and is one in which the Bid price, in combination with other elements of the Bid, appears so low that it raises material concerns with the Beneficiary as to the capability of the Bidder to perform the contract for the offered price.”

For Goods and Works the IsDB Standard Bidding Document (SBD) contain an ALB instruction to Bidders. If the Beneficiary uses a SPD with the ALB instruction they must check as part of the financial evaluation if the Bid price is Abnormally Low and make use of the ALB clauses in the SPD.

While it is expected that in all contract award decisions, the Beneficiary will undertake reasonable due diligence to ensure the Bidder can perform the contract, in the case of a suspected ALB, there is a requirement to undertake enhanced due diligence on the Bid.

While an ALB may appear to represent good value, it can result in greater overall costs, contract delays or even the collapse of a contract. In other terms, accepting ALBs has the potential to put the contract in jeopardy, as ALBs are often submitted by Firms, Suppliers or Contractors (including sub-Contractors) that may not be able to complete their work as priced. Or they may simply have made errors in their Bid and be unable to complete the work at the Bid price. Public authorities must then spend time and money managing a poorly performing Firm, Supplier or Contractor (including sub-Contractors), or finding a new Firm, Supplier or Contractor (including sub-Contractors) to complete the job.

Examples of how a Bid may appear Abnormally Low include:

- When it is compared with the Beneficiary’s cost estimate for the contract if there is no ability to compare market prices;
- When it is compared with all other Substantially Responsive Bids;
- When it does not appear to provide a margin for profit; and
- Where the low price cannot be explained by, for example:
 - The economy of the selected constructions method, or
 - The technical solution chosen by the Bidder.

The process of establishing whether a Bidder is capable to perform a contract within its total evaluated Bid price can be highly complex and subjective, particularly for design and build type contracts, and in instances where IsDB Beneficiaries do not have the necessary in-house

capability and expertise. In these cases, the Beneficiaries may require the input of independent Consultants with technical knowledge and experience relevant to the specification and project.

If the Bidder is unable to show they can complete the contract for the Bid price, then subject to IsDB's Prior Review, the Bid must be rejected. Bidders whose Bids are rejected due to an ALB will not forfeit their Bid security due to their low Bid.

There are five steps to the treatment of an ALB:

- **Identify:** The Beneficiary identifies a potential ALB based on comparison with available prices from the market, or with the cost estimate.
- **Clarify:** The Beneficiary seeks clarification from the Bidder.
- **Justify:** The Bidder prepares a justification of their price based on the request from the Beneficiary.
- **Verify:** The Beneficiary fully analyses the Bidders justification to verify if it is in fact an ALB.
- **Decide:** The Beneficiary fully documents the decision to accept or reject the Bid with IsDB's no-objection.

The issue of ALBs has increasingly become a major issue for the Multilateral Development Banks (MDBs) and many public-sector entities. This methodology on the identification and treatment of ALBs was developed in conjunction with other MDB's and provides Beneficiary's with a structured approach to address the issue of ALBs that will better enable them to obtain Value for Money (VFM) through projects under IsDB Project Financing.

A detailed Guidance Note on Abnormally Low Bids under Islamic Development Bank financed Procurements has been produced to assist Beneficiaries with identifying ALBs which also includes mathematical formulas to assist with identification. This Guidance Note can be found on IsDB's website².

² <https://www.isdb.org/>

Section 3 - Best and Final Offer (BAFO)

3.1 Overview

In international competitive Procurement, subject to prior review, IsDB may agree to the Beneficiary's use of BAFO. BAFO is a new option in the Procurement Guidelines which the Beneficiary invites Bidders that have submitted Substantially Responsive Bids to submit their BAFO.

BAFO may be appropriate when the Procurement process would benefit from Bidders having a final opportunity to improve their Bid, including reducing prices, clarifying or modifying their Bid, or providing additional information.

BAFO is not to be used for all Procurements financed by IsDB but in the following circumstances it should be considered by the Beneficiary and IsDB.

- All Bids submitted do not sufficiently address the Procurement requirements;
- Each such Bid is in some respect otherwise unclear or deficient; and
- All Bid costs are too high and/or not within the project budget estimate.

BAFO is an additional step in the Procurement process designed to achieve better VfM outcomes. It is a process where Bidders are invited to submit their BAFO. The Bidders must have submitted Substantially Responsive Bids and have achieved a specified minimum score (if applicable).

Bidders are given the opportunity to improve their Bid. This may include, for example: price reduction, clarification or modification of any aspect of the Bid or the provision of additional information. However, a Bidder doesn't have to revise their Bid when BAFO is used if they are content with their original Bid.

The decision to use BAFO shall be reflected in the Procurement Plan and its use must be agreed with IsDB. When the use of BAFO has been agreed the Beneficiary shall inform prospective Bidders of this in the respective RFB document. At a minimum, the information shall state that:

- BAFO will be used;
- Bidders are not obliged to submit a BAFO; and
- There will be no negotiation following BAFO.

The use of BAFO does not apply to Consulting Services. BAFO can only be used once in a Procurement process and cannot be used in conjunction with Negotiation, each are mutually exclusive.

When BAFO is used, discussions covering Bid clarifications must at some point be terminated so that the Bidder can submit their BAFO in writing. The Beneficiary can then proceed to select one or more Bid for award. To close discussions, a final deadline for submission is established for formal submissions of BAFOs. All remaining Bidders must be notified, in writing, of the deadline for submission. The time between notification and the deadline for submission must allow the

Bidders enough time to prepare and submit their BAFOs. It is important that there is no change in the specified business function or performance requirement.

3.2 Procurement Prior Review

Procurement that includes the use of BAFO in a competitive Procurement process for Goods, Works and Non-consulting Services are subject to prior review by IsDB. The Procurement should still be prior reviewed even if BAFO isn't used by the Beneficiary.

If BAFO is used, the evaluation report prior to requesting BAFO's, and the final evaluation report prior to award of the contract are both subject to IsDB no objection.

3.3 Probity Assurance Provider

When BAFO applies, the Beneficiary must appoint a Probity Assurance Provider (Probity Auditor) acceptable and approved by IsDB, to oversee the integrity of the Procurement process, and the conduct of the BAFO.

For the Stage 2 (see Figure I) opening of the second envelopes (financial Bids):

- The second envelopes shall not be opened at a public opening, but at an opening in the presence of the Probity Auditor; and
- The Beneficiary shall prepare a record of the opening of the financial Bid which shall be signed by the Probity Auditor.

More information on how to select a Probity Auditor is detailed in Section 6.

3.3.1 Probity Report

When the Beneficiary has made the decision to award the contract, the Probity Auditor shall prepare a probity report. The report should be provided to the Beneficiary and a copy sent to IsDB. To ensure transparency and accountability the Probity Auditor's report must be sent by the Beneficiary to all Bidders (that is every Bidder that submitted a Stage 2 Bid regardless of whether they were invited to submit a BAFO) and published on the Beneficiary's website. This must be done at the same time as transmission of the Notice of Intention to Award the contract.

3.4 BAFO Process & Requirements

A suggested approach to BAFO is to:

- Undertake the Bid evaluation and decide on whether a BAFO is required. Any meetings or communications on the decision whether to undertake a BAFO must be in the presence of the Probity Auditor;
- Set out the plan and timescales for the stages of the BAFO;
- Send a formal communication to all Bidders who have submitted a Bid confirming BAFO is being used, as detail in the RFB;

- Formally write to each Bidder identifying areas of concern or deficiency in their Bid. This can be in the form of a list of questions;
- Undertake clarification meetings with each Bidder. These can be face to face meetings, telephone/conference calls and video conferences or any combination of. It is essential that all Bidders are offered the same mode of communication method(s). It is acceptable for Bidders to choose different communication methods if the Bidders have been offered the same alternative methods. The Probit Auditor must attend all meetings;
- Once all BAFO clarification meetings have been completed, the Beneficiary should write to all Bidders confirming the request for a BAFO and the Bid Opening;
- After receipt of BAFOs, the Beneficiary shall not undertake further dialogue with any Bidder, beyond normal Bid clarification, until pre-contract discussions with the successful Bidder;
- Reevaluate Bids using the same evaluation methodology and criteria as used for the original evaluation; and
- Following evaluation of the BAFOs, the Beneficiary shall select the Bid Offering the Most Value for Money, in accordance with the applicable selection method.

Upon completion of the technical and financial evaluation, if BAFO is to be used the Beneficiary must issue to all Bidders that have submitted Substantially Responsive Bids a request for their BAFOs. The request should include:

- Notice that evaluations are concluded;
- Notice that they have an option to submit a BAFO;
- A deadline for submission of a BAFO that allows a reasonable opportunity for submission of written BAFO; and
- Notice that if any BAFO is submitted, it must be received by the date and time specified.

3.6 Process Flow Charts

The following figure outlines the process that should be followed when using BAFO in the Procurement process.

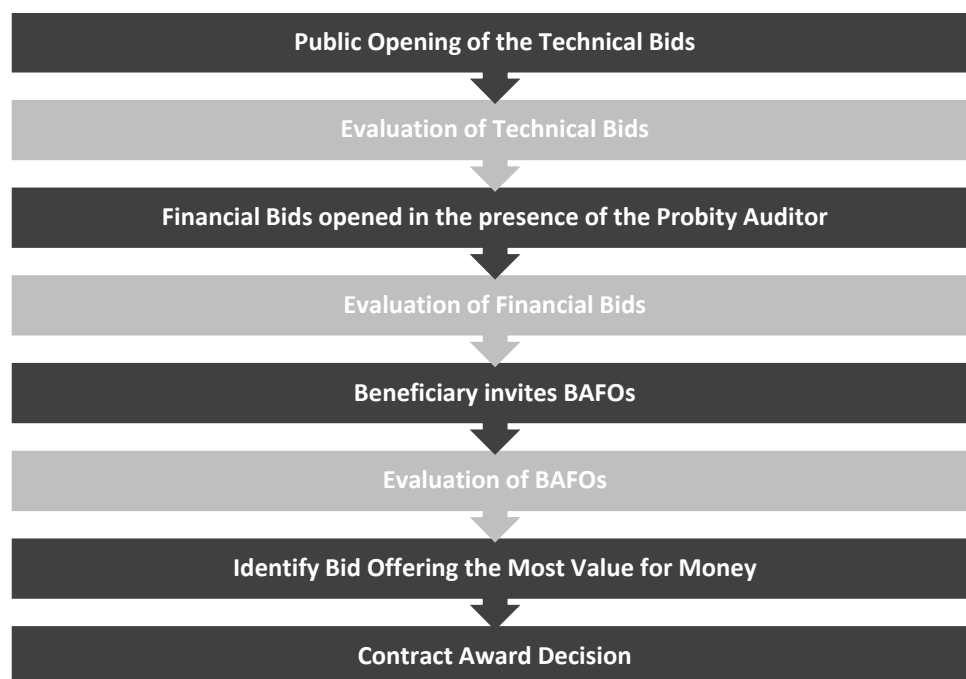


Figure 1 – BAFO Process Flow Chart

3.7 Bid Opening

The date and time for the Bid opening shall be the same as the deadline for receipt of Bids or promptly thereafter, and shall be announced, together with the place for Bid opening, in the RFB document and/or the SPN. In a single stage, two-envelope process, the date, time and place for opening the second envelope shall also be appropriately announced. At the Bid opening, the Beneficiary shall neither discuss the merits of any Bid nor reject any Bid that has been received on time.

When BAFO is to be used the technical Bid opening will take place in public. The opening of the financial Bid is not opened in public but in the presence of a Probity Assurance Provider acceptable to IsDB.

In a multistage process in which the first-stage submission does not include prices, the information to be read out is the same as in a single stage, two-envelope process. In a multi-stage, two-envelope process, where BAFO will take place, the opening of the financial part of the Bid will not take place in public, but in the presence of a Probity Assurance Provider acceptable to IsDB.

A copy of the record of Bid opening must be promptly sent to all Bidders whose Bids were opened and to IsDB for prior review. The financial Bid opening should always be done in the presence of

a Probity Assurance Provider and the information is included in the Probity Assurance Provider's probity report.

3.8 Guidelines for the Beneficiary

3.9.1 Requesting a BAFO

Requests for BAFO's to Bidders must be in writing and should contain the following:

- Specific notice that discussions have been concluded;
- Notice that this is the opportunity for the Bidders to submit a BAFO;
- A definite, deadline for submission date and time that allows a reasonable opportunity for the preparation and submission of the BAFO; and
- Notice that the final offer must be received at the place designated by the time and date set in the request and is subject to any provisions dealing with late submissions, modifications and withdrawals of Bids set forth in the solicitation.

The Beneficiary is responsible for reviewing Bids prior to any request for BAFOs. Significant aspects of these reviews should include ensuring regulatory compliance, the inclusion of current mandatory provisions/clauses, and that the terms and conditions are clear, concise, and not subject to interpretation. Except for pricing issues, all major discussion points on the technical Bid should be clarified prior to requesting BAFOs from all Bidders who are substantially responsive. Once clarifications have been sought and BAFOs have been received, discussions must not be reopened.

3.9.2 Submission of a BAFO

In submitting a BAFO, a Bidder is free to make technical or price/cost changes to its earlier Bid if it believes it will best enhance its competitive position. However, the Bidder is not allowed to reduce the minimum technical requirements as this would make their Bid non-responsive.

It should be made clear to Bidders, through the written notification, that they are being asked to submit their written BAFO revision to their original Bid and not just to confirm or reconfirm prior offers. If the Bidder chooses to submit a revised BAFO, the written response must be submitted by the date and time specified if it is to be considered by the Beneficiary. If no revised BAFO is received, then the Beneficiary should presume that the Bidder is happy with their original Bid.

3.9.3 Opening of a BAFO

The opening of a BAFO for a Bid will not take place in public, but in the presence of a Probity Assurance Provider acceptable to IsDB who is required to provide a report detailing the opening procedures and a record of all Bids opened.

3.9.4 Evaluation of a BAFO

Upon receipt of the BAFO(s) within the given timeframe, the Beneficiary must evaluate each Bid. Once evaluated the Beneficiary should be able to recommend award to a Bidder in accordance

with the terms and conditions of the Procurement Documents and once no objection is received from IsDB.

If the BAFO fails to correct deficiencies/weaknesses which were pointed out in written or oral discussions, the prior evaluation stands.

Section 4 - Complaints Standstill Period

4.1 Overview

The Standstill Period in the revised complaints process is a period of at least ten (10) Business Days following the ‘Notification of Intention to Award’ decision, before the contract is signed with the successful Firm, Supplier, Contractor (including sub-Contractors).

The purpose of a Standstill Period is to allow unsuccessful Bidders or Proposers an opportunity to challenge an intended contract award decision before the actual ‘Notification of Contract Award’ is issued. Although in some situations it delays the contract award for a period, the benefits are that it mitigates the risk of legal challenges following contract award. Legal challenges can delay a contract for far longer than a Standstill Period.

A Standstill Period can also improve the level of competition, as it can in some cases increase potential Bidders/Proposers confidence that the Procurement process will be conducted in a fair and transparent way. The Standstill Period starts at the contract award stage of IsDB’s Procurement Cycle as outlined in Figure II below, when the ‘Intention to Award the Contract’ notice is issued.

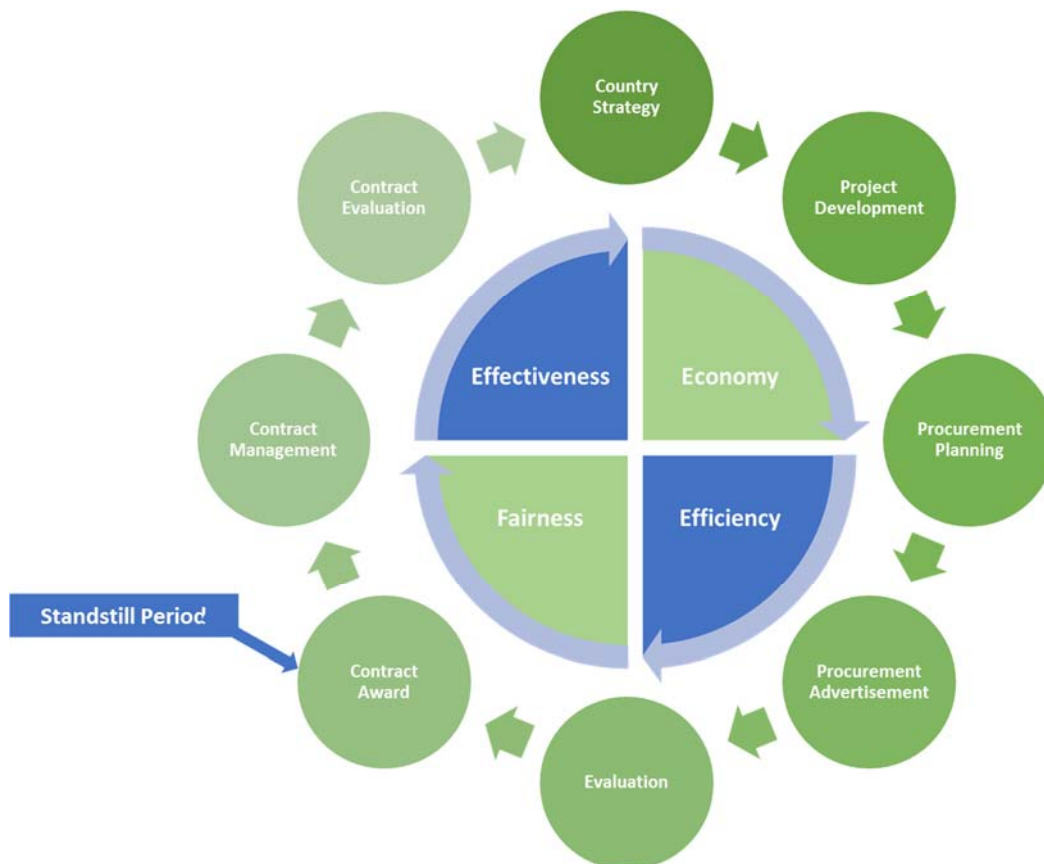


Figure II – Procurement Cycle (Including Standstill Period)

A Standstill Period was included in IsDB’s revised Project Procurement Guidelines to enable unsuccessful Bidders and/or Proposers time to determine once the ‘Notification of Intention to Award’ has been issued whether to seek a debrief or to submit a Procurement-Related Complaint.

A Standstill Period is not applied to all Procurement financed by IsDB and does not apply under the following conditions:

- Framework Agreements
 - The mandatory Standstill Period only applies at the stage at which the agreement itself is awarded but does not apply to subsequent call-offs or mini-competitions within the agreement;
- When only one Bid or Proposal is received in an open competitive Bidding process;
- Direct Contracting;
- The first stage of a two-stage Procurement process;
- The technical evaluation of a two-envelope Procurement process; and
- Following prequalification.

If the Beneficiary receives a written Procurement-Related Complaint within the Standstill Period, the Beneficiary must immediately acknowledge receipt of the complaint using the template in Annex I. The Beneficiary is required to promptly take appropriate action, including preparing a response in writing. Simultaneously, the Beneficiary must inform IsDB and provides IsDB with all relevant information and documentation, including its proposed course of action and justification and a draft response to the complaint for IsDB review.

Any contract financed by IsDB, the Beneficiary is required to include in the applicable Procurement Documents a Standstill Period. The Standstill period must be for a minimum of ten (10) Business Days between the date of the ‘Notification of Intention to Award’ the contract and the contract signature. In certain situation this period may be extended as described later in this document.

A detailed Guidance Note on Procurement Related Complaints Handling has been produced to assist Beneficiaries with the complaints and standstill period process which also includes templates and process charts. This Guidance Note can be found on IsDB’s Procurement website³.

³ <https://www.isdb.org/>

Section 5 - Procurement Strategy

5.1 Overview

Under the previous Procurement Guidelines, a Procurement Plan was required to be completed for each project under the project by the Beneficiary for all Procurements under the project. The 2018 revised Guidelines for the Procurement of Goods, Works and related services under IsDB Project Financing and Guidelines for the Procurement of Consultant Services under IsDB Project Financing⁴ introduced requirement that in certain circumstances for high risk and/or high value projects/Procurements IsDB may request that a Procurement Strategy be produced as well as the mandatory Procurement Plan.

When requested by IsDB to produce a Procurement Strategy, the Beneficiary should follow IsDB's Guidance Note on Procurement Planning and Strategy using the templates provided in Annexes II, III, and IV of that Guidance Note.

The Procurement Planning stage of IsDB's Procurement Cycle is detailed below.

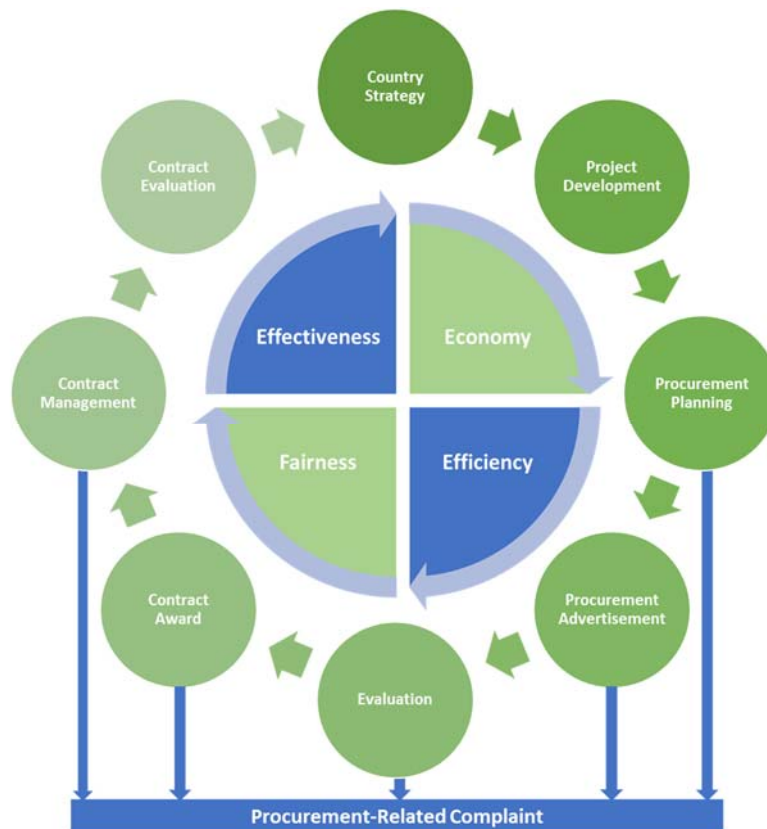


Figure III – Procurement Cycle

⁴ <https://www.isdb.org/procurement>

5.2 Background

The Procurement Plan and Procurement Strategy, when required, are documents that the Beneficiary prepares as part of the Project preparation process.

A Procurement Plan must always be completed for the project by the Beneficiary for all Procurements. In certain circumstances and for high risk and high value projects IsDB may request that a Procurement Strategy should be produced as well as the Procurement Plan. When requested by IsDB to produce a Procurement strategy following IsDB's best practice guide.

If a Procurement Strategy is required to be developed by IsDB it is not required to be cleared but should be shared with IsDB for reference. Also, as part of Project preparation, a Procurement Plan is prepared based on the analysis in the Procurement Strategy and is subject to no-objection by IsDB.

5.3 Procurement Strategy

The Procurement Strategy addresses how Procurement activities will support the development objectives of the project and deliver the best Value for Money (VfM). The Procurement Strategy helps Beneficiaries by using different Procurement and management tools to provide adequate justification for the selected selection methods in the Procurement Plan. The level of detail and analysis in the Procurement Strategy shall be proportional to the risk, value and complexity of the Procurement as agreed with IsDB.

The Beneficiary prepares the Procurement Strategy if required by IsDB during project preparation, and IsDB reviews the Procurement Strategy and agrees to the Procurement Plan, by no objection before the completion of the negotiation with the Beneficiary.

If requested by IsDB to produce a Procurement Strategy the Beneficiary would be required to complete the templates provided in Annex II, III and IV of this Guidance Note (Annexes II, III and IV of the Guidance Note on Procurement Planning and Strategy) and the strategy would cover the following areas:

- Identification of the specific project needs;
- Assessment of the operating context and its potential impact on the Procurement;
- Assessment of the implementing agency's capacity, resources and previous experience in procuring these types of activities;
- Assessment of the adequacy, behaviour and capabilities of the market to respond to the Procurement; and
- Justification of the proposed Procurement arrangements based on market analysis, risk and operating context and the project's circumstances.

The Beneficiary may prepare a high level, simplified Procurement Strategy in situations of urgent need of assistance because of a natural or man-made disaster or conflicts recognized by IsDB, provided that the simplified Procurement arrangements in the Procurement Strategy are consistent with IsDB's Core Procurement Principles.

Section 6 - Probity Assurance Provider

6.1 Background

A probity audit is an assurance engagement, in which a Probity Auditor provides independent scrutiny of a Procurement Process and expresses an objective opinion as to whether the prescribed probity requirements have been adhered to. The conclusion expressed should be based on evidence gathered against prescribed criteria.

Independence is essential to a probity audit. A third party to the Procurement Process should be able to rely on the probity audit to obtain confidence that the probity requirements of that Procurement Process have been adhered to.

Key elements of a probity audit are:

- **Criteria** - These are the predetermined benchmarks used to measure and evaluate whether the probity requirements within the Procurement Process have been met. The criteria should be clarified and agreed prior to commencement of the audit.
- **Evidence** - The Probity Auditor is required to obtain sufficient, appropriate evidence for all established criteria. The Probity Auditor's decision must be supported by robust facts and documentary evidence. It is not sufficient for professional judgement to be used as the justification for decisions that are not otherwise supported by the facts and circumstances of the audit or sufficient relevant evidence. However, the Probity Auditor will use professional judgement as to whether the evidence is adequate to support the decision based on the determined criteria.

The results and opinion of the Probity Auditor as to whether the probity requirements have been met are documented in a probity audit report, which includes any significant issues that have been identified and that impact upon the opinion that the Probity Auditor provides.

6.2 Auditor Independence

Ensuring the independence of the Probity Auditor will help to make sure that they provide an objective and impartial view of probity within the Procurement Process.

The involvement of an independent Probity Auditor provides greater assurance to the Bank and to Bidders wishing to do business with the Beneficiary as to the probity of the Procurement Process.

Determining Independence

A key element of independence is impartiality, which 'means' being free from bias and not affected by influences or interests that compromise professional judgment.

Impartiality allows the Probity Auditor to act with integrity and to exercise objectivity in respect of the probity engagement. For a Probity Auditor to be impartial and free from bias, they should not be exposed to situations or relationships that may impair their objectivity with respect to the

engagement, or that may be perceived as impairing their objectivity with respect to the engagement.

Probity auditors must not only be independent in action but must also be perceived to be independent. The appearance of independence, as demonstrated by external facts and circumstances, provides an important indicator of actual independence.

There are many potential threats to independence as well as potential safeguards that mitigate these threats. A summary of these is provided below.

Threats to Independence

- **Self-Interest** - This occurs where the Probity Auditor stands to benefit from a financial or significant non-financial interest in a probity client (Beneficiary or Bidder). When evaluating the significance of the self-interest threat, consider the type of interest (direct or indirect) and the materiality of the interest.
- **Self-Review** - This occurs where a Probity Auditor reviews their own advice. For example, a Probity Auditor provides advice regarding probity within a Procurement Process and then conducts a probity audit over the Procurement.
- **Advocacy** - This occurs where the Probity Auditor promotes, or may be perceived to promote, a Beneficiary's or Bidder position to the point that objectivity may, or may be perceived to be, compromised. For example, this can arise where a Probity Auditor entity promotes a particular Procurement approach to market and selection method which has not been reviewed for probity by a third party.
- **Familiarity** - This occurs where a close relationship between the Probity Auditor and a Beneficiary or Bidder causes the Probity Auditor to become biased to the Beneficiary or Bidder.
- **Intimidation** - This occurs where the Probity Auditor is deterred from acting objectively, by threats (actual or perceived) from other parties associated with the Procurement. For example, a Probity Auditor may be threatened with replacement over a disagreement over a probity issue in the Procurement Process, or have their credibility threatened.

Safeguards for Independence

Where there is a potential threat to the independence of the Probity Auditor, the Beneficiary should determine whether there are any safeguards that could eliminate or reduce the threats to independence. Safeguards could include:

- A governance structure that provides oversight and support for probity within Procurement.
- Training Beneficiary staff so that they are well informed with regard to probity requirements in Bank financed contracts.
- Following a structured process in the appointment of the Probity Auditor to ensure independence.

6.3 Conflict of interest

Conflicts of interest represent one of the potential threats to independence. A conflict of interest means having an interest (whether personal, financial or otherwise) which conflicts with, or may reasonably be perceived as conflicting with, the ability of the Probity Auditor to perform their obligations fairly and objectively. Perceived or potential conflicts of interest can be as damaging as actual conflicts of interest.

6.4 Recommended Practice

The issue of independence should be specifically considered and addressed prior to engaging a Probity Auditor. At this stage, potential threats to independence should be considered as well as any safeguards that might eliminate or reduce the threats to independence.

In the case of a Probity Audit, independence is essential. A third party to the Procurement should be able to rely on the Probity Audit to obtain greater confidence regarding whether the probity requirements of that Procurement have been adhered to.

Potential Probity Auditor should be required to divulge all potential threats to independence, including conflicts of interest, at the time of offer or as soon as any conflict becomes apparent during the probity service engagement. The Probity Auditor should be required to provide written assurance that they have no conflict of interest in the Procurement, can remain objective and impartial throughout the engagement, and will provide notification of any conflict of interest, or compromise to independence, that arises during the Probity services engagement.

If the Beneficiary is advised of any threat to independence that has arisen during the probity service engagement, its impact on the engagement should be considered including how the threat will be managed.

Annex I - Probity Auditor Terms of Reference

For Beneficiary's Implementing Agency (Client) to complete

The Implementing Agency (referred to as the client of this Probity Assurance Provider Order) to complete this and send the entire form to potential Providers.

Date		Client	
Project Name		Client Email Address	
Project Description			
<i>Information to be added about the Project</i>			
Objectives of Assignment			
<p>The Probity Assurance Auditor will provide probity assurance services in relation to the Negotiation or BAFO of the contract for (Insert the Name of the Project) to ensure that:</p> <ul style="list-style-type: none"> • The Negotiation or BAFO process is consistent with the applicable Islamic Development Bank's Procurement Guidelines, the Procurement Documents as issued to the Bidders and any applicable national policies or procedures; • The Negotiation or BAFO process as conducted is fair, balanced, transparent and conducted with integrity, so that no party is treated unfairly; • Risks are identified, and mitigating actions are taken in a timely, effective manner; and • Probity principles are applied, and probity practices are applied with integrity. 			
Scope of Work			
<p>The Probity Assurance Provider shall:</p> <ol style="list-style-type: none"> 1) Examine and evaluate documentation, information and processes: <ol style="list-style-type: none"> a) Review the RFB document, draft form of contract and the Bidders submission; b) Reviewing the Procurement Document and advising the Beneficiary on any identified aspects therein that may compromise probity; 			

- c) Observing the Bid opening and signing the minutes of opening;
- d) Confirm that the price information as evaluated by the Beneficiary fully reflects the Bidders prices as observed at the closed opening;
- e) Observe that no undue advantage was given to any Bidder during the Negotiation or BAFO process;
- f) Observe that the Beneficiary maintained appropriate confidentiality throughout the Negotiation or BAFO process;
- g) Noting that the Beneficiary has already evaluated the Bidders Bid as substantially technically responsive and taking into account the terms and conditions of the Procurement Documents as issued and the draft form of contract as subsequently provided by the Beneficiary to the Bidder on (insert date), identify potential areas of vulnerability in the Negotiation or BAFO process, such as issues which might give rise to the risk of failure of the contract Negotiations; these might include areas where certain aspects of the Bidders Bid may not be entirely consistent with the technical or commercial requirements of the Procurement Documents or draft form of contract. Pay attention to these issues in the observation of the contract Negotiations or BAFO process to ensure that, to the greatest extent possible, they are appropriately handled, negotiated and resolved by the parties during contract Negotiations or BAFO process;
- h) Act as an independent observer of the Negotiation or BAFO process, including written and face-to-face communications between the Beneficiary and Bidder and comment on all aspects of the negation or BAFO including:
 - i. briefing meetings and evaluation committee meetings held among Beneficiary officials to discuss the Negotiations or BAFO;
 - ii. Negotiation between the Beneficiary and the Bidder; and
 - iii. correspondence and documentation recording the Negotiation or BAFO process.
- i) Scrutinize the Negotiation or BAFO process to determine whether the applicable Islamic Development Bank Procurement Guidelines and any applicable Beneficiary guidelines or policies are followed, and that best practice has been applied;
- j) Ensure that the process has been impartial and fair, with no party being given advantage over another or unfairly discriminated against;
- k) Ensure that participants in the process are aware of their responsibilities to disclose any potential or actual conflicts of interest;
- l) Review and assess all relevant documentation to ensure accountability. For example, check that Beneficiary decisions have been correctly recorded, that participating officials are duly authorized to make decisions and commit their part(ies) to agreements reached with the Bidder, check that any departures from applicable Guidelines or procedures have been correctly recorded and approved,

as necessary. Check that clearances are obtained from the Bank, as and when required; and

m) Monitor the procedures used by the Beneficiary to protect confidential information.

2) Advise on the management of probity issues that may arise

a) Conduct a risk assessment and identify possible probity issues that may arise before the Negotiation or BAFO process commences (for more detailed information on risk assessment, refer to the ICAC's publication Practical Guide to Corruption Prevention: Module 2 - Corruption Risk Assessment and Management);

b) Provide impartial probity advice to the Beneficiary, as necessary or as requested, on how emerging issues can be resolved or managed, for example, conflicts of interest. However, it must be emphasized that the Probity Auditor is not part of the decision-making process;

c) Assist with improving the level of decision-making, if the circumstances so warrant;

d) Observe and document the process followed and document and report on any probity issues that may arise; and

e) Liaise with other departments of the Beneficiary, if appropriate, for example, Ministry of Legal Affairs, tax authorities, etc.

3) Document information and report to the organization

a) Obtain, analyze, interpret and document information to support the outcomes of the probity assurance process;

b) Submit reports to management based on predetermined Negotiation or BAFO milestones or as requested or, when considered necessary, provide a record of the process confirming that probity has been observed;

c) Document matters, obtain sufficient and appropriate information to support any conclusions on which reports are based, and identify any areas where information has been withheld by either party; and

d) Prepare a signed, written final report describing the Beneficiary's performance when conducting the process.

The report should present the purpose, scope and results of the probity assurance audit and include an expression of the Probity Auditor's opinion regarding the Objective of Assignment set out in Objections Section above. Reports should highlight significant findings and recommendations and inform management of any major deviation from the applicable Procurement Guidelines and the reason for those deviations.

Deliverables

All deliverable to be added including reports and documents

Timeframes
Outputs
Qualifications and Experience

Annex II - Procurement Options and Recommendations Template

	Attribute	Selected Approach	Justification
Requirements	Specifications	Conformance/Performance	
Contract Strategy	Contract Type	A. Traditional B. Design and Build C. Design, Build, Operate and Maintain D. Design and Build – Turnkey or Prime Contractor E. EPC and EPCM	
	Pricing and Costing Mechanism	A. Lump Sum B. Performance based contracts C. Schedule of Rates/Admeasurement D. Time and Materials E. Cost Plus	
	Supplier Relationship	Adversarial/Collaborative	
	Price Adjustments	A. None, Fixed Price B. Negotiated C. Percentage	
	Form of Contract (Terms and Conditions)		
Selection Methods	Selection Method	A. Request for Bids (RFB) B. Request for Proposals (RFP) C. Request for Quotations (RFQ) D. Direct Selection	
	Selection Arrangement	A. Public Private Partnerships (PPP) B. Commercial Practices C. United Nations (UN) Agencies D. Imports E. Commodities F. Community Driven Development G. Force Accounts H. Framework Agreements	
	Market Approach	A. Type of Competition <ol style="list-style-type: none"> 1. Open 2. Limited 3. International 4. National 5. No Competition (Direct Selections) B. Number of Envelopes/Stages <ol style="list-style-type: none"> 1. Single Envelope 	

ANNEX II. PROCUREMENT OPTIONS AND RECOMMENDATIONS TEMPLATE

		2. Two Envelope 3. Single Stage 4. Multi Stage C. BAFO (Yes/No) D. Negotiations (Yes/No)	
	Pre / Post Qualification	A. Pre-Qualification B. Post-Qualification	
Evaluation Methods	Evaluation Selection Method	A. Quality Cost Based Selection (QCBS) B. Fixed Budget Based Selection (FBS) C. Least Cost Based Selection (LCS) D. Quality Based Selection (QBS) E. Consultant's Qualifications Based Selection (CQS) F. Direct Selection	
	Evaluation of Costs	A. Adjusted Bid Price B. Life-Cycle Costs	
	Domestic Preference	Yes/No	
	Evaluation Criteria	List the type of Criteria to be used (Mandatory/Desired)	

Annex III - Project Overview Template

Country:	<i>Insert the Country of the Project</i>
Region:	<i>Insert the Region of the Project</i>
Sector:	<i>Insert Sectors Covered by the Project</i>
Project Name:	<i>Insert Project Name</i>
Project Number:	<i>Insert Project Number</i>
Total Financing:	<i>Add Total Financing Amount</i>
Project Description:	<i>For each contract/sub-contract, there should be a short description of what is required from the Firm, Supplier, Contractor (including sub-Contractors) or Individual including the cost estimate.</i>
Project Development Objectives:	<i>The Project Development Objectives should be consistent with the Project Development Objectives identified in the Project Concept Note.</i>
Result Indicators:	<i>Result indicators should be “SMART” indicators (Specific, Measurable, Attributable, Relevant, and Time-bound) and linked to Project outcomes. Each Project Development Objectives should be measured by one or more outcome indicators.</i>
Proposed Procurement Summary:	<i>A summary of the proposed contracts within the Project including a Supply Positioning model for identified contracts.</i>
Legal/Policy Requirements:	<i>A statement of any legal or policy requirements such as the application of Special Procurement Arrangements, use of Stated Owned Enterprises for restricted contracts such as aerial mapping, and any policy requirements.</i>

Annex IV - Procurement Strategy Template

SECTION 1. PROJECT OVERVIEW	
Country:	<i>Insert the Country of the Project</i>
Region:	<i>Insert the Region of the Project</i>
Sector:	<i>Insert Sectors Covered by the Project</i>
Project Name:	<i>Insert Project Name</i>
Project Number:	<i>Insert Project Number</i>
Total Financing:	<i>Add Total Financing Amount</i>
Project Description:	<i>For each contract/sub-contract, there should be a short description of what is required from the Firm, Supplier, Contractor (including sub-Contractors) or Individual including the cost estimate.</i>
Project Development Objectives:	<i>The Project Development Objectives should be consistent with the Project Development Objectives identified in the Project Concept Note.</i>
Result Indicators:	<i>Result indicators should be “SMART” indicators (Specific, Measurable, Attributable, Relevant, and Time-bound) and linked to Project outcomes. Each Project Development Objectives should be measured by one or more outcome indicators.</i>
Proposed Procurement Contract Summary:	<i>A summary of the proposed contracts within the Project including a Supply Positioning model for identified contracts.</i>
Legal/Policy Requirements:	<i>A statement of any legal or policy requirements such as the application of Special Procurement Arrangements, use of Stated Owned Enterprises for restricted contracts such as aerial mapping, and any policy requirements.</i>
SECTION 2. ASSESSMENT OF OPERATING AND BENEFICIARY CAPACITY	
2a. Operational Context	
Governance Aspects	<i>Summary of the Governance Aspects of the Project</i>
Economic Aspects	<i>Summary of the Economic Aspects of the Project</i>

Sustainability Aspects	<i>Summary of the Sustainability Aspects of the Project</i>
Technological Aspects	<i>Summary of the Technological Aspects of the Project</i>
Conclusions on Operational context to be addressed through the Procurement approach	
2b. Assessment of Beneficiary Capability and Project Implementation Unit (PIU)	
<p><i>This subsection should describe features of the PIU that need to be addressed to ensure that VfM is achieved. This subsection should address the following topics, as relevant to the Project:</i></p> <ul style="list-style-type: none"> <i>A. Experience implementing similar Projects and implementing IsDB Projects;</i> <i>B. Experience of use of Special Procurement Arrangements;</i> <i>C. The need for hands-on support to undertake a fit for purpose Procurement planning, contractor/Consultant selection, and contract award;</i> <i>D. Contract management capacity and capability;</i> <i>E. Complaints management and dispute resolution systems;</i> <i>F. Procurement capacity (previous experience, availability of resources and track record) to undertake successful fit for purpose Procurement planning, Procurement process, Bid/Proposal evaluation, supplier selection and contract award;</i> <i>G. The need for hands-on-support to undertake a fit for purpose Procurement, from planning, contractor/Consultant selection, and contract award;</i> <i>H. The reliance on, criticality of and use of professional advisors such as Consultants to augment Beneficiary capability; and</i> <i>I. Lessons learned from the implementation of other similar Projects.</i> <p><i>At the end of the Beneficiary's capability assessment, a Resourcing Plan should be created.</i></p>	

Conclusions on Client Capability and PIU Assessment to be addressed.**SECTION 3. STAKEHOLDER ANALYSIS**

Identify the main stakeholders who have an interest or impact on the Project and whether their interest is one of responsibility, accountability, to be consulted or informed. The identified Stakeholders will need to be engaged to understand what objectives they have from the Procurement.

Stakeholder		Interest (Responsible, Accountable, Consulted, Informed)	Stakeholder Objectives from the Procurement	Stakeholder Management Approach
Name	Role			

SECTION 4. PROCUREMENT RISK ASSESSMENT

This subsection analyses and prioritizes the risks identified from Section 2 that relate to the Operational Context, Market Analysis and PIU Assessment that could be mitigated through the Procurement approach.

Risk Description	A	B	Overall Risk Score (A*B)	Description of Proposed Mitigation	Risk Owner	Procurement Stage
	Likelihood Rating	Impact Rating				

SECTION 5. PROCUREMENT OBJECTIVES

Based upon the Strategic Analysis, Risk Assessment and Stakeholder Analysis, detail the key Procurement Objectives that if achieved will support the delivery of the Project’s Development Objectives and achieve Value for Money. The Procurement Objectives need to be SMART — Specific, Measurable, Achievable, Realistic and Time-bound. The Procurement objectives should be tested with the identified Stakeholders to ensure agreement on the prioritized list of Procurement Objectives.

Prioritized Procurement Objectives

1	
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2	
3	
4	
5	

SECTION 6. MARKET RESEARCH AND ANALYSIS

This subsection should identify the specific contracts to be procured and include a market analysis of each of the target market segments that is proportional in detail to the relative risk and value of the contract within the Project conducted through a Supply Positioning Model. If different markets fulfil different contracts within the Project, the market analysis should research each market.

For low-value, low-risk contracts it will generally be sufficient to detail the Procurement approach in Section VII without further supporting analysis.

For all other contracts, the level of analysis to support the justification for the preferred Procurement arrangement should be proportional to the Procurement risk and value of the contract.

This subsection should address the following topics, as relevant to the Project:

A. Research

- i. Supply Positioning Model — Identify the risk and value thresholds of the project;

- ii. Segmentation of the market by geography (local, national, international), specialization or differentiation;
- iii. Market sector dynamics — Nature and extent of competition, levels of experience, capability and innovation, external influences and factors, Supplier Preferencing;
- iv. Market trends — Technology, new services, ownership structures and alliances, market growth, new entrants;
- v. Financial — Sources of cost and value, cost stability, pricing strategies and mechanisms, cost and financial benchmarks; and
- vi. Procurement trends — Procurement s of other entities procuring similar contracts, typical contract terms, common issues that inhibit or contribute to achieving value for money, typical responses and lessons learned.

B. Analysis and Action

At the end of the Market Research stage, Beneficiaries should develop a range of Procurement Approach Options and a Market Engagement Plan.

Conclusions on the Market Analysis to be addressed through the Procurement approach.

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SECTION 7. PROCUREMENT APPROACH OPTIONS AND RECOMMENDATIONS

Contract Description	
Contract Category (Works, Goods, Consultancy Firms and Individuals, and Non-Consultancy Services)	
Estimated Cost	

Contract Approach			
<p>The output of this section will be a:</p> <ul style="list-style-type: none"> • Procurement Approach stating how the Beneficiary is going to approach the market, select the supplier, and finalize the contract; • Set of selection methods and market approaches; and • Procurement Plan that summarizes how each contract within the Project will be procured. <p>The following table should be completed.</p>			
	Attribute	Selected Approach	Justification
Requirements	Specifications	Conformance/Performance	
	Contract Type	A. Traditional B. Design and Build C. Design, Build, Operate and Maintain D. Design and Build – Turnkey or Prime Contractor E. EPC and EPCM	
Contract Strategy	Pricing and Costing Mechanism	A. Lump Sum B. Performance based contracts C. Schedule of Rates/Admeasurement D. Time and Materials E. Cost Plus	
	Supplier Relationship	Adversarial/Collaborative	
	Price Adjustments	A. None, Fixed Price B. Negotiated C. Percentage	
	Form of Contract (Terms and Conditions)		
	Selection Method	A. Request for Bids (RFB) B. Request for Proposals (RFP) C. Request for Quotations (RFQ) D. Direct Selection	
Selection Methods	Selection Arrangement	A. Public Private Partnerships (PPP) B. Commercial Practices C. United Nations (UN) Agencies	

		<ul style="list-style-type: none"> D. Imports E. Commodities F. Community Driven Development G. Force Accounts H. Framework Agreements 	
	Market Approach	<ul style="list-style-type: none"> A. Type of Competition <ul style="list-style-type: none"> 1. Open 2. Limited 3. International 4. National 5. No Competition (Direct Selections) B. Number of Envelopes/Stages <ul style="list-style-type: none"> 1. Single Envelope 2. Two Envelope 3. Single Stage 4. Two Stage C. BAFO (Yes/No) D. Negotiations (Yes/No) 	
	Pre / Post Qualification	<ul style="list-style-type: none"> A. Pre-Qualification B. Post-Qualification 	
Evaluation Methods	Evaluation Selection Method	<ul style="list-style-type: none"> A. Quality Cost Based Selection (QCBS) B. Fixed Budget Based Selection (FBS) C. Least Cost Based Selection (LCS) D. Quality Based Selection (QBS) E. Consultant's Qualifications Based Selection (CQS) F. Direct Selection 	
	Evaluation of Costs	<ul style="list-style-type: none"> A. Adjusted Bid Price B. Life-Cycle Costs 	
	Domestic Preference	Yes/No	
	Rated Criteria	List the type of Criteria to be used (Mandatory/Desired)	

SECTION 8. SUMMARY OF THE PROCUREMENT STRATEGY

Empty box for the summary of the procurement strategy.



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

www.isdb.org/Procurement

