



Guidance  
Note on  
Non-Compliance  
in Procurement for  
Islamic Development  
Bank financed  
Procurements

**Novembre 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
<b>APA</b>	Alternative Procurement Arrangements
<b>BED</b>	Board of Executive Directors
<b>Beneficiary</b>	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.
<b>Bid</b>	An offer, by a Bidder, in response to a Request for Bids, to provide the required Goods, and/or Works and/or related services.
<b>Bidder</b>	A Firm that submits a Bid for the provision of Goods and/or Works and/or related Services
<b>Consultant</b>	A Consultant Firm or Individual Consultant that provides Consultant Services. A Consultant is independent of both the Beneficiary and IsDB.
<b>Consultant Service(s)</b>	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.
<b>FA</b>	Financing Agreement
<b>Goods</b>	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.
<b>IsDB</b>	Islamic Development Bank
<b>MC</b>	Member Country
<b>Non-Consulting Services:</b>	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.
<b>Procurement</b>	The function of planning for, and sourcing Goods, Works, Non-Consulting Services, and/or Consulting Services to meet required objectives.
<b>Procurement Documents</b>	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.
<b>PPR</b>	Project Procurement

## COMMON ABBREVIATIONS AND DEFINED TERMS

<b>Abbreviation / term</b>	<b>Full terminology / definition</b>
<b>SBDs</b>	Standard Bidding Documents
<b>Standard Bidding Documents</b>	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.
<b>VfM</b>	Value for Money
<b>Works</b>	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 Background

The Islamic Development Banks (IsDB) updated Procurement Guidelines for the Procurement of Goods, Works and Related Services and the Guidelines for the Procurement of Consultant Services under IsDB Project Financing (2019) provide a more flexible approach in the handling of situations when a Beneficiary have not complied with aspects of the signed Financing Agreement.

Non-compliance is detailed in the Procurement Guidelines for the Procurement of Goods, Works and Related Services and Guidelines for the Procurement of Consultant Services. It states that if IsDB determines that the Beneficiary has not complied with the procurement requirements set out in the Financing Agreement (FA) and/or the Procurement Guidelines, it may, in addition to exercising the legal remedies set out in the FA, take other appropriate actions or remedies to address such non-compliance, including declaring misprocurement.

In cases of misprocurement, in addition to any other available legal remedies, IsDB shall cancel the relevant portion of Project Financing relating to the misprocured contract, whether before or after contract award. In other cases of non-compliance, IsDB may agree not to cancel the portion of the proceeds of the Project Financing allocated to the contract associated with the non-compliance but reallocate such proceeds to other components under the project.

### 1.2 Overview

This guidance note gives detailed information to Beneficiary's on how to address situations of non-compliance in operations governed by the Procurement Policy and Guidelines. Detailed are possible contractual remedies (in more serious situations of non-compliance) or other remedial actions (where non-compliance is deemed less serious).

The timely and appropriate handling of any non-compliance can help the Procurement process with the following benefits.

#### ***Efficiency and Effectiveness***

- Reduced Procurement time frames.
- Avert additional delays.

#### ***Increased Quality***

- Better Procurement outcomes.
- Better project outcomes.

#### ***Reduced Risk***

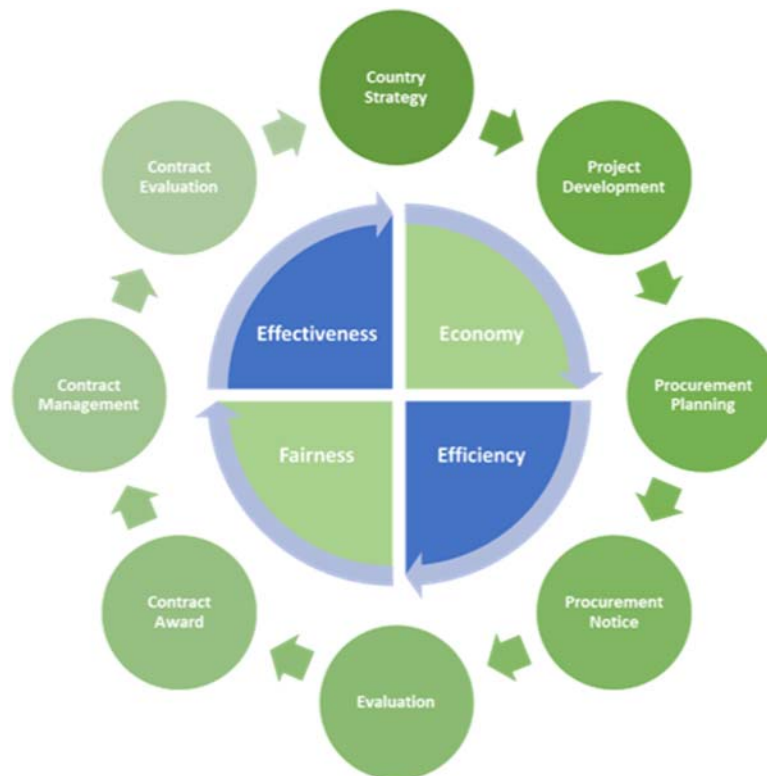
- Of Bidding-related complaints and/disputes.
- Improve compliance to audit requirements (both national and IsDB).
- Resulted risk of failed Bidding processes.

### 1.3 Scope

This guidance note provides more detailed information to assist Beneficiaries with factors they need to consider when faced with actual or potential non-compliance for projects financed in whole or in part by the Islamic Development Bank (IsDB) and the actions that can be taken in such cases. The note also aims to clarify the roles and responsibilities of IsDB and Beneficiaries with a view to speedy and more efficient resolution of situations of non-compliance.

Procurement for projects financed in whole or in part by IsDB is governed by the terms and conditions set out in the FA. The FA provides that the Procurement of Goods, Works, and Services required by the beneficiary are subject to and are governed by the Guidelines for the Procurement of Goods, Works and related services and the Guidelines for the Procurement of Consultant Services under IsDB Project Financing. Beneficiaries are responsible for carrying out all Procurements in compliance with the provisions of the FA, which governs the legal relationship between the Beneficiary and IsDB.

Procurement non-compliance relates to potential or actual situations where the Beneficiary (including other parties involved in the Procurement process) fails to follow the applicable provisions of the applicable Procurement Policy and Guidelines or, when applicable, the agreed Alternative Procurement Arrangements (APAs) between or among IsDB and other development partners and/or the relevant Beneficiary. Non-compliance may be identified at any stage of IsDB's Procurement cycle.



**Figure 1 – Project Cycle**



## Section 2 – Non-Compliance Identification

### 2.1 Key Considerations

Situations of non-compliance may be identified.

- By the Beneficiary and reported to IsDB;
- By IsDB during IsDB’s review or supervision;
- Following a Procurement review or audit; or
- Through consideration of a Bidding-related complaint, or post-award communication, notification, or representation.

Determination of non-compliance will be made by IsDB, based on the applicable project Procurement Documents (e.g., Procurement plan) and the specific Procurement covenants in the financing and related agreements undertaken with the Beneficiary. In accordance with the Guidelines for the Procurement of Goods, Works and related services and the Guidelines for the Procurement of Consultant Services under IsDB Project Financing, IsDB may exercise contractual remedies in the case of documented non-compliance that are consistent with its implementation role and fiduciary obligations. In certain circumstances, IsDB may also prescribe other remedial actions.

The revised Procurement Policy and Guidelines, permits IsDB to take a proportional and incremental approach to situations of non-compliance, depending on the nature and seriousness of the relevant deviation and the level of commitment of the Beneficiary to remedy the situation.

### 2.2 Procurement Transactions under the Procurement Regulations (Excluding Alternative Procurement Arrangement Situations)

In all cases in which the Procurement Guidelines apply, excluding APA situations, IsDB will determine if a factual situation of non-compliance has arisen and, if it has, the remedial options available to correct the situation following an assessment as described in Section 3.

Typical situations of non-compliance may include.

- Beneficiary issuing a specific Bidding document that has not been endorsed by IsDB;
- Beneficiary implementing a specific bid evaluation recommendation that has not been endorsed or approved by IsDB;
- Beneficiary responding to a bidding-related complaint in ways contrary to those recommended by IsDB;
- Beneficiary omitting to undertake specific required steps under a Procurement method prescribed in the project Procurement plan,
- Beneficiary providing IsDB with an incomplete or misleading record of a Procurement transaction, and

- Beneficiary failing to take appropriate action when a party awarded the contract has breached its contractual obligations.

Matters involving the allegation of integrity violations, such as fraud, corruption, coercion, collusion, among others, must be reported to IsDB's Integrity & Ethics Department and will be handled in accordance with IsDB's Anticorruption Policy and IsDB's Group Anti-Corruption Guidelines on Preventing and Combating Fraud and Corruption in IsDB Group-Financed Projects.

### **2.3 Procurement Transactions under Alternative Procurement Arrangements**

If an APA is applicable, determination of noncompliance will depend on the applicable Procurement regime, whether it will be the lead co-financier or an accredited agency of the Beneficiary. In APA situations, in the absence of the allegation of integrity violations, the determination of noncompliance will be made by either the lead co-financier, under the relevant mutual reliance agreement(s), or by the accredited agency of the Beneficiary under the relevant project agreement and applicable local Procurement rules and procedures.

Any allegation of integrity violation in APA situations must be reported to Integrity & Ethics Department and will be handled in accordance with IsDB Group Anti-Corruption Guidelines on Preventing and Combating Fraud and Corruption in IsDB Group-Financed Projects and integrity principles and guidelines. In such cases, IsDB will request the Beneficiary, or the co-financier or accredited agency, to provide detailed information about the alleged integrity violation. IsDB reserves the right in such cases to determine whether IsDB policies and procedures have been violated, including independently investigating integrity violations under such APA Procurement. In such circumstances, IsDB's findings of non-compliance with its Anti-Corruption Guidelines on Preventing and Combating Fraud and Corruption in IsDB Group-Financed Projects and/or integrity principles and guidelines may result in remedial action, including sanctions imposed by Integrity & Ethics Department. IsDB may also exercise its right to withdraw, suspend, or terminate its own participation or financing under the relevant mutual reliance agreement(s) and/or FA.

## Section 3 – Assessment and Action of Non-Compliance

### 3.1 Assessment of Noncompliance

The assessment of non-compliance covers transactions under the revised Procurement Policy and Guidelines, and excludes transactions conducted using APAs. Under APA situations, barring allegations of integrity violations, the co-financier or accredited agency will undertake the assessment of non-compliance.

The first step in assessing non-compliance is to undertake a detailed written description of the relevant facts. The purpose of this is to document the circumstances of the non-compliance and provide a basis for determining the recommended remedial action(s).

Whether the assessment is initiated by the Beneficiary or by IsDB, it must document and analyse the extent of any non-compliance that has occurred. It will address, at a minimum, the details of each instance of possible non-compliance in terms of the:

- Procurement requirement that was not satisfied or was violated;
- Nature and scope of the Procurement irregularity;
- Known or suspected reasons that led to such noncompliance;
- Past instances (if any) of similar or related types of noncompliance under the project or other projects involving the same Beneficiary;
- Impact of the non-compliance on the integrity of the Procurement process; and
- Potential or actual impact of such non-compliance on achievement of targeted project outcomes.

When a non-compliance is identified, normally, the Beneficiary will prepare the initial assessment and submit it to IsDB for review, validation, and further action.

A sample non-compliance assessment memorandum template is provided in Annex II that can be used by the Beneficiary. If IsDB initiates such assessment, it will share the draft non-compliance assessment report with the Beneficiary and consider the Beneficiary's comments before finalizing.

Recommendation(s) for remedial actions (which will be included in the written assessment) will consider the following:

- Actions, inactions, or omissions by the Beneficiary, and/or any party involved in the Procurement process, including IsDB staff;
- Severity of the non-compliance;
- Degree of harm to the successful completion of the Procurement process or project;
- Impact on the development objectives;
- If the non-compliance can be remedied by corrective action;

- The Beneficiary's history of Procurement compliance and implementing corrective actions; and
- Any mitigating circumstances, including voluntary corrective actions already taken or proposed to be taken by the Beneficiary.

## **3.2 Remedial Actions**

### **General Considerations**

If IsDB determines that the Goods, Works, or services were not procured by the Beneficiary in accordance with the requirements of the FA, IsDB may undertake contractual remedies as set out in the relevant FA or non-contractual remedies, depending on the nature and magnitude of the Procurement non-compliance.

Whatever the circumstances of the identified non-compliance may be, the severity of the non-compliance will define the nature of the required remedial measures (i.e., contractual or non-contractual). The severity or magnitude of non-compliance is a function of the assessment of the following:

- Whether the action of non-compliance was intentional or inadvertent;
- Whether such non-compliance materially or only marginally undermines the integrity of the Procurement process;
- If fit-for-purpose outcomes and optimal value for money (VfM) were compromised by the non-compliant bidding process;
- If the non-compliance carries a reputational risk to IsDB; and
- Whether the non-compliance is accompanied by, or includes, an integrity violation.

### **Contractual Remedies**

In cases where the non-compliance materially undermines the integrity of the Procurement process and results in an outcome that is less than optimal in terms of VfM, contractual remedies may be invoked. These may include

- Cancellation of any funding for the improper Procurement; and/or
- Suspension of further loan or grant funding until adequate new commitments and/or remedial measures are undertaken by the Beneficiary that provide enough assurances that such non-compliance will not occur again under the project.

### **Other Remedial Actions**

If a Beneficiary shows wilful intent not to comply with either the terms of the project Procurement arrangements as set out in the relevant project documents or IsDB's project-level guidance or direction, IsDB may consider endorsing a noncomplying approach in exceptional circumstances. However, IsDB may take further action, as it deems necessary, such as issuing

warnings to the Beneficiary that, if such action is repeated, it reserves the right to exercise contractual remedies that may include a suspension of IsDB's loan or withdrawal of IsDB financing for that Procurement award.

If the relevant non-compliance is inadvertent and only marginally undermines the integrity of the Procurement process but results in an outcome that does not provide optimal VfM, noncontractual remedies may be appropriate. These may include targeted capacity building, revisions to Procurement and review arrangements, and/or issuance of warnings. If the non-compliance at issue is inadvertent but results in an outcome that materially undermines the integrity of the Procurement process, a rebidding exercise would be the typical remedy, coupled with targeted capacity building.

In the case of post review (sampling), other remedies may include initiating changes to project Procurement arrangements (through amendments to the Procurement plan or otherwise), including increased frequency of sampling and changes to the nature or size of sampling. For more serious non-compliance, IsDB may introduce prior review for those categories of Procurement transactions and processes previously subject to post review (sampling).

#### **Post Contract Award**

There may also be situations of non-compliance that arise post contract award during implementation of the relevant Procurement contract based on a bidding process. While such situations are governed by the terms of the relevant contract, there may be circumstances that involve non-compliance with the terms of the relevant contract management plan entered between the Beneficiary and IsDB.

In such cases involving contract management plans, a similar approach to non-compliance by the Beneficiary will be followed and will consider (i) if the action of non-compliance in relation to the applicable contract management plan was intentional or inadvertent; (ii) if such non-compliance, materially or marginally, undermines the integrity of the actual contractual administration and implementation process followed under such contract management plan; and (iii) whether such contract management with identified non-compliance will still result in outcomes that are adequately fit for purpose or provide optimal VfM for the Beneficiary.

#### **Increase the project fiduciary risk classification of the project and intensify Bank supervision of the project.**

This may include greater reliance on third party assurances, carrying out IPRs or reducing or modifying the prior review thresholds by the Bank, increasing the periodicity or sample size of the post reviews by the Bank. This action may be appropriate when non-compliance is due to limited institutional capacity by the Beneficiary.

### **Request changes in the Procurement Planning and Strategy**

If as a result of non-compliance, the Bank considers that the original Procurement Planning & Strategy document produced is no longer appropriate and require modifications, the Bank may ask the Beneficiary to reformulate the Procurement Planning & Strategy to provide additional assurances and mitigating measures to avoid future non-compliance, and/or make changes in the Procurement Plan.

The changes may include removing certain approaches to market, replacing the implementing agency, hiring third parties or excluding implementing agents or items or parts of the project that are affecting performance.

### **Action Plan**

The Bank may request that the Beneficiary formally agree on a specific action plan to address and correct non-compliance and take steps to lessen the risk of future non-compliance.

### **Misprocurement**

In particularly serious or egregious cases of non-compliance, the Bank may declare misprocurement. When misprocurement is declared the Bank may (but is not required to) cancel part of the loan related to the non-compliance. Cancellation of funds would be a legal remedy.

### **Alternative Procurement Arrangements**

In APA situations, IsDB will adhere to the determination of non-compliance by the lead co-financier or accredited agency, and their contemplated contractual or noncontractual remedies, unless the relevant mutual reliance agreement or agency accreditation approval permits IsDB to take alternative action, and, in any case, without prejudice to paras. 2.2 and 2.3 of this guidance note. Such alternative action may include, for example, IsDB's withdrawal from the relevant mutual reliance agreement or revocation of the relevant agency accreditation, if IsDB concludes that the findings and proposed remedial actions of the lead co-financier or accredited agency are inappropriate or unsatisfactory. The mutual reliance agreement or project agreement concerned will specify these situations to the extent reasonably possible to provide concrete project-specific benchmarks for operational guidance.

## 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





## Annex II. Non-Compliance Assessment report Memorandum template

[BENEFICERY (OR EXECUTING AGENCY) LETTERHEAD]

[Date]

**[Name of Islamic Development Bank (IsDB) Operations Team Leader]**

**[Address]**

**[SUBJECT:]** Loan/Grant No. **[Country]**: Project Title

### Noncompliance Assessment Report

1. We refer to the following Procurement package for the subject project: **[details of relevant Procurement package and transaction giving rise to the observed noncompliance]**
2. In our assessment, the actions described below have resulted in a failure to adhere to the Procurement procedures and processes required under the project Procurement plan and/or have violated IsDB's Procurement Guidelines for the Procurement of Goods, Works and Related Services and the Guidelines for the Procurement of Consultant Services under IsDB Project Financing: **[details of the specific impugned actions, actual parties involved and the nature and extent of the observed violations of the project Procurement plan, Procurement policy, and/or Procurement regulations]**
3. The impact of the noncompliance with applicable procedures on the integrity of the Procurement process and on project implementation has been as follows: **[details of impact of identified noncompliance on project]**
4. In these circumstances, we propose the following corrective measures for consideration and approval by IsDB: **[provide specific recommendations on nonlegal or legal measures that should be taken]**
5. We wish to schedule a meeting with you to elaborate further on such noncompliance and our suggested recommendations to correct the situation.

Yours faithfully,

[Name of Beneficiary's Official]

[Designation]



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

[www.isdb.org/Procurement](http://www.isdb.org/Procurement)

