



Guidelines for the Procurement of Goods, Works and Related Services under IsDB Project Financing

APRIL 2019



These Guidelines for the Procurement of Goods, Works and Related Services under Islamic Development Bank Project Financing were approved by the Board of Executive Directors (BED) of the Islamic Development Bank and published in 2018. This document may be used and reproduced for non-commercial purposes. Any commercial use, including without limitation reselling, charging to access, redistribution, or for derivative work such as unofficial translations based on these documents, is not allowed.

For additional information on this document, please contact:

*Project Procurement (PPR)
Country Programs Complex (CPC)
The Islamic Development Bank
8111 King Khalid St.
Al Nuzlah Al Yamania Dist.
Unit No. 1, Jeddah 22332-2444
Kingdom of Saudi Arabia
ppr@isdb.org
www.isdb.org*

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	Definition/terminology
Advanced Contracting	When the Beneficiary starts the procurement process before the Financing Agreement has been signed
Annex	An Annex to these Guidelines
BAFO	Best and Final Offer
BDS	Bid Data Sheet: part of the RFB that is prepared by the Beneficiary. The BDS provides information that is specific to the procurement.
Beneficiary	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 submitted by a Bidder, in response to an RFB, 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
Bidding Documents	Any formal document issued by a Beneficiary in relation to procurement. The Beneficiary's Bidding Documents are based on IsDB's SBDs.
BOO	Build, Own and Operate
BOOT	Build, Own, Operate and Transfer
BOT	Build, Operate and Transfer
Business Day	For the purpose of these Guidelines, a 'day' means a calendar day, unless otherwise specified as a Business Day. A Business Day is considered every official working day of the week of the Beneficiary. It excludes the Beneficiary's official public holidays.
CIF	Port of destination
CIP	Place of destination
Consultant	A Consultant Firm or Individual Consultant that provides Consultant Services. A Consultant is independent of both the Beneficiary and IsDB.
Consultant Services	Those intellectual services, normally of a professional, expert or advisory nature, delivered by a Consultant Firm or an Individual Consultant. Consultant Services are governed by IsDB's <i>Guidelines for the Procurement of Consultant Services under IsDB Project Financing</i> .
Contract Award Notice	The public notice published by the Beneficiary that confirms the award of the contract

COMMON ABBREVIATIONS AND DEFINED TERMS

Contractor	A Firm that is contracted to provide Goods, Works or related services. A Contractor is different from a Supplier of Consultant Services.
Direct Contracting	A procurement method that allows the awarding of a contract without competition. Also known as ‘single-source’ or ‘sole-source contracting’.
Evaluation Report	The IsDB’s standard report used by the Beneficiary to record the evaluation of Bidders’ Bids
EXW	Ex works, ex factory or off-the-shelf
Financing Agreement	The legal agreement between the Beneficiary and IsDB which describes the IsDB financing for a project. It includes the PP and all documents incorporated by reference. If IsDB enters into a project agreement with an entity implementing the project, the project agreement is included as part of the Financing Agreement.
Firm	A business organization (such as a corporation, JV, limited liability company or partnership) that provides Goods, undertakes Works or supplies Consultant Services or related services
Fit-for-Purpose	Applied to procurement processes, contracts or arrangements and the intended development outcomes, it means the most appropriate approach to meet the project development objectives and outcomes, taking into account the value, complexity, nature and context of the procurement, and the types and levels of risk. Fit-for-Purpose includes proportionality. This means undertaking a sufficient level of procurement planning, selecting an appropriate procurement process and contract/arrangement which is proportional to the size, complexity and value of the development project. This means not overcomplicating simple procurements, and putting sufficient safeguards in place for complex procurements.
Force Account	A state-owned construction unit that is not managerially or financially autonomous from the Beneficiary shall be considered a force account unit.
Fraud and Corruption	The sanctionable practices of corruption, fraud, collusion, coercion or obstruction defined in IsDB’s <i>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>
General Conditions of Contract	IsDB’s standard contract provisions that apply to the provision of the Goods or Works or related services
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

COMMON ABBREVIATIONS AND DEFINED TERMS

	transportation, insurance, installation, commissioning, training or initial maintenance.
GPN	General Procurement Notice
Guidelines	IsDB's policies and procedures that govern a Beneficiary's procurement of Goods, Works, Consultant Services and related services under IsDB Project Financing
ICB	International Competitive Bidding open to MC Firms and Firms from non-MCs
ICB/MC	International Competitive Bidding limited to Firms from MCs
IsDB	Islamic Development Bank
IsDB Project Financing	Financing, by IsDB to a Beneficiary, of specific eligible expenditures in relation to a development project. It is arranged through various Shariah-compliant financial products.
ITB	Instructions to Bidders: part of the standard instruction to Bidders in the RFB document
JV	Joint Venture
LIB	Limited International Bidding
MC	Member Country
NCB	National Competitive Bidding
No-Objection	Confirmation by IsDB that it does not object to a stage in the procurement process and that the Beneficiary may proceed to the next stage
Notification of Intention to Award	The notice transmitted by the Beneficiary to participating Bidders/Proposers informing them of the Beneficiary's intention to award the contract to the successful Bidder/Proposer
Paragraph	A numbered Paragraph within these Guidelines. It excludes Paragraphs in the Annexes.
Place of Destination	The seller is responsible for delivering the Goods to the named place in the buyer's country and pays all costs required to deliver the Goods to the destination, including import duties and taxes. The seller is not responsible for unloading.
Plant	A category of procurement relating to the provision of equipped facilities, such as those executed on the basis of design, supply, installation, commissioning, maintenance, modification and protection
Post Review	The process of IsDB reviewing the Beneficiary's Bidding Documents and procurement activities following the award of the contract
PPP	Public-Private Partnership
Prequalification	The shortlisting process which can be used prior to issuing an RFB in the procurement of Goods, Works and related services
Prior Review	The process of IsDB reviewing the Beneficiary's Bidding Documents and procurement activities before the award of the contract

COMMON ABBREVIATIONS AND DEFINED TERMS

Probity Assurance Provider	An independent third party that provides specialist probity services for concurrent monitoring of the procurement process
Procurement Agent	An independent business organization (such as a company, individual or partnership) that manages procurement on behalf of a Beneficiary
Procurement Plan (PP)	The Beneficiary's PP for IsDB projects, as referred to in Paragraph 1.42 and incorporated by reference into the Financing Agreement
Procurement Strategy (PS)	The Beneficiary's project-level strategy document that describes how the procurement will deliver the development objectives. The PS supports Beneficiaries to develop procurement procedures that are Fit-for-Purpose and reflect VfM through the application of IsDB's core procurement principles.
Retroactive Financing	The backdated reimbursement of eligible expenditure from IsDB to a Beneficiary, made from the Project Finance. Any Beneficiary making payment of an eligible expenditure does so entirely at its own risk and without commitment on the part of IsDB.
RFB	Request for Bids as a selection method
RFP	Request for Proposals as a selection method
SOE	State-Owned Enterprise
Special Conditions of Contract	Additional conditions of contract that supplement the General Conditions of Contract and indicate the requirements specific to the Goods, Works, Consultant Services or related services
SPN	Specific Procurement Notice
Standard Bidding Documents (SBDs)	Standardized procurement documents issued by IsDB to be used by Beneficiaries for projects financed by IsDB. These include IsDB's standard documents for GPN, SPN, Prequalification, LOI, RFB and RFP, for example.
Standstill Period	The period following the transmission of the Notification of Intention to Award the contract
Supplier	A Firm or Individual Consultant that is contracted to provide Goods, Works or related services.
TOR	Terms of Reference
UN Agency	This broadly refers to United Nations departments, specialized agencies and their regional offices, funds and programmes.
UNDB Online	UN Development Business Online: www.devbusiness.com
Value-for-Money (VfM)	Obtaining the optimum benefits with the effective, efficient and economic use of resources. This requires an evaluation of relevant costs and benefits, along with an assessment of risks and non-price attributes and/or life-cycle costs, as appropriate. The lowest price alone may not necessarily represent VfM.
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

CHAPTER 1 – GENERAL PROVISIONS.....	1
Purpose of the Guidelines	1
Core procurement principles	1
Relationship between IsDB, the Beneficiary, Bidders and Contractors	2
Responsibilities of the Beneficiary.....	2
Responsibilities of IsDB	2
Procurement methods	2
Applicability of the Guidelines	2
Eligibility.....	3
Conflict of interest	4
Development and use of domestic Firms	5
Association of Firms (Joint Ventures and subcontractors)	5
Review by IsDB and IsDB assistance	6
Hands-on support	7
Non-compliance.....	7
Fraud and Corruption	7
Confidentiality of procedures	9
Procurement Plan and Procurement Strategy	9
Partnerships and co-financing.....	10
Electronic procurement.....	10
Procurement-related complaints.....	11
CHAPTER 2 – INTERNATIONAL COMPETITIVE BIDDING	13
Purpose and scope of International Competitive Bidding	13
Procedure for notification and advertising	13
Advance Contracting and Retroactive Financing	14
Two-stage Bidding	15
Prequalification of Bidders.....	15
Type and size of contracts in Bidding Documents.....	16
Essential elements of the Bidding Documents	17
Contents of the Bidding Documents	17
Reference to IsDB	18
Language and interpretation	18
Clarity of Bidding Documents.....	18
Specifications and standards.....	19

Specifications for equipment and use of brand names	19
Origin of Goods and Works	19
Validity of Bids	20
Bid security	20
Pricing.....	20
Price adjustment.....	21
Currency of Bids.....	21
Currency conversion for Bid comparison.....	22
Currency of payment	22
Transportation and insurance.....	23
Alternative Bids	23
Essential elements of the contract documents	23
Conditions of contract	23
Terms and methods of payment.....	23
Advance and progress payments.....	24
Change orders.....	24
Performance security and retention money	25
Performance security	25
Retention money	25
Indemnification requirements	26
Liquidated damages and bonus payments	26
Force majeure.....	26
Applicable law and settlement of disputes	26
Procedures for Bid submission, opening and evaluation, and award of contract.....	27
Bid submission	27
Time interval between Bid invitation and Bid submission	27
Bid opening and evaluation procedures.....	28
Clarification or alteration of Bids.....	28
Confidentiality of procedures	28
Examination and comparison of Bids	28
Abnormally low Bids.....	30
Margin of preference.....	30
Extension of validity of Bids.....	31
Post-qualification of Bidders.....	31
Rejection of all Bids and re-Bidding.....	31
Notification of Intention to Award	32

Standstill Period.....	33
Debriefing	33
Procurement-related complaint during the Standstill Period	34
Award of contract.....	34
Contract Award Notice.....	35
CHAPTER 3 – OTHER METHODS OF PROCUREMENT.....	37
General principles.....	37
Limited International Bidding	37
National Competitive Bidding.....	37
Advertising under National Competitive Bidding	38
Use of Beneficiary’s procurement documents and Standard Bidding Documents under National Competitive Bidding.....	38
Shopping	39
Direct Contracting.....	39
Force Account	40
Community participation	40
Public–Private Partnerships	40
CHAPTER 4 – SPECIAL PROCUREMENT ARRANGEMENTS	43
Use of Procurement Agents and management Contractors.....	43
Inspection agents.....	43
Procurement in loans to financial intermediaries.....	43
Procurement under Build, Operate and Transfer and similar private-sector arrangements	43
Operations involving a programme of imports.....	44
Procurement of commodities	45
Procurement from specialized agencies.....	45
Performance-based contracts.....	45
Procurement under disaster and emergency assistance	45
Value engineering.....	45
Negotiation	46
Best and Final Offer	46
Beneficiary systems.....	46
Annex A – IsDB’s Prior and Post Reviews.....	49
Annex B – Guidance to Bidders	55
Annex C – Procurement-related complaints	59
Annex D – Margin of preference	65
Annex E – Public–Private Partnerships	69

Annex F – Retroactive Financing 73

GUIDELINES

FOR THE PROCUREMENT OF GOODS, WORKS AND RELATED SERVICES UNDER ISLAMIC DEVELOPMENT BANK PROJECT FINANCING

CHAPTER 1 – GENERAL PROVISIONS

Purpose of the Guidelines

- 1.1 These Guidelines define the policies and procedures of the Islamic Development Bank (IsDB) for the procurement of Goods, Works and related services (excluding Consultant Services) by Beneficiaries for IsDB-financed projects, whether by way of loan, leasing, instalment sale, profit-sharing, Istisna'a or any other mode of financing used by IsDB.
- 1.2 References to Goods and Works in these Guidelines include related services such as transportation, insurance, installation, commissioning, training, initial maintenance and non-consultant services. Non-consultant services are not Consultant Services. Non-consultant services are normally bid for and contracted on the basis of performance of measurable physical output, and for which performance standards can be clearly identified and consistently applied. Examples of non-consultant services include drilling, aerial photography, satellite imagery, mapping and similar operations. These Guidelines do not apply to Consultant Services, which are governed by IsDB's *Guidelines for the Procurement of Consultant Services under IsDB Project Financing*.
- 1.3 The Guidelines assist:
 - a) beneficiaries of IsDB-financed projects to obtain maximum Value-for-Money (VfM) by achieving the optimal benefits with the resources utilized; and
 - b) Bidders to prepare Bids and execute contracts that meet the requirements of IsDB and the Beneficiary for high-quality Goods, Works and related services.
- 1.4 If, in a project financed by IsDB, certain Goods, Works and/or related services are financed by the Beneficiary or by other sources, IsDB reserves the right to ensure that these are of satisfactory quality.

Core procurement principles

- 1.5 The following core procurement principles underpin the policies and procedures described in these Guidelines. These principles support Beneficiaries to deliver sustainable development¹ with integrity. Beneficiaries are encouraged to develop procurement procedures that are Fit-for-Purpose and reflect VfM through the application of IsDB's core procurement principles, which are:

¹ Sustainable development has been defined as: "Development that meets the needs of the present without compromising the ability of future generations to meet their own needs" (1987 Brundtland Commission Report: <http://www.un-documents.net/our-common-future.pdf>).

- a) **economy:** the pricing of Goods, Works, Consultant Services and/or related services expends the minimum amount of resources to obtain the agreed level of output;
- b) **efficiency:** the appropriate management (primarily in relation to time and cost) of a given amount of resources to obtain the agreed level of output;
- c) **fairness:** a process that is transparent and impartial; and
- d) **effectiveness:** the achievement of specific outcomes, taking into account the Beneficiary's development objectives for the particular IsDB-financed project.

Relationship between IsDB, the Beneficiary, Bidders and Contractors

- 1.6 The Financing Agreement governs the legal obligations between the Beneficiary and IsDB regarding procurement financed by IsDB. No party other than the parties to the Financing Agreement shall derive any rights therefrom or have any claim to the funds provided by IsDB. The Bidding Documents issued by the Beneficiary and the contract signed between the Beneficiary and the Contractors define the rights and obligations of the Beneficiary, Bidders and Contractors. For leasing, instalment sale and Istisna'a modes of financing, the contracts relating to the components financed by IsDB shall clearly indicate that the Beneficiary is acting as IsDB's agent in the said contracts.

Responsibilities of the Beneficiary

- 1.7 The ultimate responsibility for achieving maximum VfM for the Goods, Works and/or related services procured and the successful completion of projects rests with the Beneficiary.

Responsibilities of IsDB

- 1.8 IsDB is responsible for making the disbursement in accordance with the terms and conditions of the Financing Agreement and the contract, provided that payment is for the delivery of Goods, Works and/or related services as defined in the Financing Agreement and procured in accordance with these Guidelines and any other conditions defined in the Finance Agreement.

Procurement methods

- 1.9 IsDB normally requires Beneficiaries to obtain Goods, Works and/or related services through International Competitive Bidding (ICB), in accordance with its eligibility rules (Paragraph 1.11). However, depending on the project's requirements, other methods of procurement may be allowed as long as VfM, Fit-for-Purpose and the core procurement principles (defined in Paragraph 1.5) are respected.

Applicability of the Guidelines

- 1.10 The procedures described in these Guidelines apply to all contracts for Goods, Works and/or related services financed in whole or in part by IsDB through Project Financing, unless a waiver has been obtained. If an individual procurement contract is partially financed by IsDB, the Beneficiary may use other procurement procedures, which shall be

satisfactory to IsDB and ensure that IsDB's core procurement principles (defined in Paragraph 1.5), VfM and Fit-for-Purpose are fulfilled so that the Goods, Works and/or related services procured:

- a) are of satisfactory quality and in accordance with the requirements of the entire project;
- b) will be delivered completely and in a timely manner; and
- c) are priced competitively to ensure the economic and financial viability of the project.

Eligibility

1.11 It is a fundamental policy of IsDB that the Request for Bids (RFB) shall unequivocally stipulate that the Goods, Works and/or related services provided by the Contractor, and its associates and subcontractors, shall be in strict compliance with the *Boycott Regulations of the Organization of the Islamic Cooperation, the League of Arab States and the African Union* (Boycott Regulations). The Beneficiary shall advise prospective Bidders that Bids will only be considered from Firms that are not subject to these Boycott Regulations. The Bidder shall provide a letter of oath to that effect.

1.12 A Firm from a country may be excluded if:

- a) as a matter of law or official regulation, the Beneficiary's country prohibits commercial relations with that country;
- b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations the Beneficiary's country prohibits any imports of Goods from, or payments to, a particular country, person or entity; or
- c) in accordance with IsDB's *Cross-Debarment Agreement*.

1.13 The eligibility of a Firm will be determined during the evaluation process. In cases where Firms withhold information to evade disqualification on account of the eligibility requirement, the Beneficiary will have the right to cancel the contract at any time and also to penalize such Firms and claim compensation for losses incurred by the Beneficiary and/or IsDB as a consequence thereof. IsDB reserves the right not to honour any contract if the Contractor involved is found to be ineligible based on the eligibility requirement stated herein.

1.14 For the purpose of these Guidelines, a Member Country (MC) Firm shall comply with all of the following:

- a) it is established or incorporated in an IsDB MC;
- b) its principal place of business is located in an IsDB MC; and
- c) it is more than fifty (50) per cent beneficially owned by a Firm or Firms (which must also qualify as to nationality) in one or more MC and/or citizens of such MC.

1.15 For the purpose of these Guidelines, a domestic Firm of an MC is defined as follows:

- a) it is established or incorporated in the MC where the Works are to be carried out and/or where the Goods are to be delivered;
 - b) its principal place of business is located in the Beneficiary's MC; and
 - c) it is more than fifty (50) per cent beneficially owned by a Firm or Firms (which must also qualify as to nationality) in the Beneficiary's MC and/or citizens of such MC.
- 1.16 State-Owned Enterprises (SOEs) in the Beneficiary's country may participate only if they can establish that they:
- a) are legally and financially autonomous of the Beneficiary;
 - b) operate under commercial law; and
 - c) are not dependent on the budget of the Beneficiary's government.
- 1.17 A Firm or individual declared ineligible by IsDB in accordance with Paragraph 1.39 of these Guidelines, or in accordance with the *IsDB Group Anti-Corruption Guidelines on Preventing and Combating Fraud and Corruption in IsDB Group-Financed Projects* and other sanctions procedures, shall be ineligible to be awarded any IsDB-financed contract during the period of time determined by IsDB.

Conflict of interest

- 1.18 IsDB's policy requires that a Firm participating in a procurement process under a project financed by IsDB shall not have a conflict of interest that gives rise to an unfair competitive advantage. Any Firm found to have a conflict of interest give rising 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 ensure that in providing 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.
- 1.19 **Conflict between provision of Goods, Works or related services and Consultant 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.
- 1.20 **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.

1.21 **Relationship with Beneficiary's staff:** Firms (including their employees and subcontractors) that have a close business or family relationship with a member of the professional staff of the Beneficiary (or of the project implementing agency or of a recipient of a part of the IsDB Project Financing) who is 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.

Development and use of domestic Firms

1.22 To promote the industrial activity of developing countries, it is the policy of IsDB to encourage the participation of domestic Firms in projects for which they are qualified and judged capable of providing the particular Goods, Works and/or related services required, either alone or in association with foreign Firms. When domestic and foreign Firms form Joint Ventures (JVs) or associate themselves to supplement particular services, IsDB requires that the roles and responsibilities of each JV member shall be clearly defined. The leadership of the JV or the association and the ultimate responsibility for the supply of the Goods, completion of the Works and/or delivery of related services shall be stipulated in the documents concerned.

Association of Firms (Joint Ventures and subcontractors)

1.23 In the case of ICB, association of non-MC Firms with MC Firms is encouraged. Association of non-domestic Firms with domestic Firms is also encouraged. MC Firms and domestic Firms are defined in Paragraphs 1.14 and 1.15.

1.24 In the case of ICB/MC, association of non-MC Firms with MC Firms may be accepted. However, the lead MC Firm is expected to perform at least fifty (50) per cent of the contract.

1.25 In the case of National Competitive Bidding (NCB), association of domestic Firms with non-domestic Firms is accepted, with the domestic Firm expected to perform at least fifty (50) per cent of the contract.

1.26 In all cases of subcontracting, a Firm is solely responsible for ensuring the execution to the required standard. It shall retain the leadership of the association and shall provide more than fifty (50) per cent of the contract value from its own operations.

1.27 Firms may conclude association agreements either for the long term or for a specific contract. Such associations may take different forms and constitute:

- a) a JV, whereby all members are jointly and severally liable for the entire contract, and the lead Firm is required to sign the contract with the Beneficiary using power of attorney on behalf of all JV members; or
- b) a subcontracting arrangement, whereby the lead Firm assumes complete responsibility for and coordination of the Goods, Works and/or related services and signs the contract with the Beneficiary, while the subcontractor only executes part of the contract assigned to it under specific Terms of Reference (TOR) and signs a subcontract with the lead Firm only.

Review by IsDB and IsDB assistance

- 1.28 The proposed method of procurement and corresponding procedures, as well as the categories of Goods, Works and/or related services and the lots or packages to which they apply, shall be discussed and agreed at the time of project appraisal, and specified in the Financing Agreement.
- 1.29 The draft Bidding Documents shall be submitted to IsDB, allowing sufficient time for their review and comments. They shall be issued for Bidding only after obtaining IsDB No-Objection.
- 1.30 While it is the Beneficiary's responsibility to carry out all steps to procure Goods, Works and/or related services, IsDB reviews, either by Post or Prior Review, the adequacy of the procurement procedure, Bidding Documents, Bid evaluation recommendations and contracts to satisfy itself that the procurement procedure is carried out in accordance with the provisions of the Financing Agreement and these Guidelines. IsDB shall always Prior review the Procurement Plan (PP), Procurement Strategy (PS) and specification or requirements for the Goods, Works and related services. All other references in these Guidelines to IsDB No-Objection relate to projects where IsDB Prior Review is required. IsDB staff remain available to assist the Beneficiary at all stages of the procurement procedure (with the proviso that this shall not result in IsDB executing procurement on behalf of the Beneficiary), to ensure that the required scope of Goods, Works and/or non-consulting services is fully covered and that the procedure is suitably applied.
- 1.31 IsDB conducts Prior Reviews of procurement activities that are of high value and/or high risk to determine whether the procurement is carried out in accordance with the requirements of the Financing Agreement.
- 1.32 IsDB also conducts Post Review of procurement activities undertaken by the Beneficiary to determine whether they comply with the requirements of the Financing Agreement. IsDB may use a third party to carry out Post Reviews. Any such third party shall carry out the reviews in accordance with the TOR provided to it by IsDB.
- 1.33 Whether procurement is subject to Prior or Post Review is determined on the basis of the project and contract-specific procurement risks. These risks are assessed by IsDB during project preparation and reassessed and updated during project implementation.

- 1.34 The requirement for a Prior or Post Review shall be specified in the PP. During project implementation, IsDB monitors and reassesses the risk and risk mitigation measures. If necessary and appropriate, as determined by IsDB, it may require the Beneficiary to revise the Prior and/or Post Review requirements in the PP.

Hands-on support

- 1.35 IsDB may agree to provide the Beneficiary with hands-on expanded implementation support for procurements where the Beneficiary or, as appropriate, the MC is deemed by IsDB:
- a) to be in urgent need of assistance because of a natural or man-made disaster or conflict; or
 - b) to be experiencing capacity constraints because of fragility or specific vulnerabilities (including small States).
- 1.36 The scope and nature of such support is determined by IsDB on a case-by-case basis. Such support shall not result in IsDB executing procurement on behalf of the Beneficiary, and project execution remains the Beneficiary's responsibility.

Non-compliance

- 1.37 If IsDB determines that the Beneficiary has not complied with the procurement requirements set out in the Financing Agreement and/or these Guidelines, it may, in addition to exercising the legal remedies set out in the Financing Agreement, take other appropriate actions or remedies to address such non-compliance, including declaring misprocurement.²
- 1.38 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.³

Fraud and Corruption

- 1.39 It is IsDB's policy to require that Beneficiaries as well as Firms, Contractors and their agents (whether declared or not), subcontractors, sub-consultants, service providers or Suppliers, and any personnel, observe the highest standard of ethics during the selection

² This includes cases involving violations of IsDB's Integrity Policy, for example, or material non-compliance such as failure by the Beneficiary to address procurement-related complaints in accordance with applicable procedures.

³ This includes situations where IsDB has determined that the No-Objection (or notice of satisfactory resolution of a complaint, for example) was issued on the basis of incomplete, inaccurate or misleading information furnished by the Beneficiary or the terms or conditions of the relevant contract had been substantially modified without IsDB No-Objection.

and execution of IsDB-financed contracts.⁴ In pursuance of this policy, the requirements of the *IsDB Group Anti-Corruption Guidelines on Preventing and Combating Fraud and Corruption in IsDB Group-Financed Projects* and sanctions procedures shall be observed at all times:

- a) IsDB defines, for the purposes of this provision, the terms set forth as follows:
 - i. ‘corrupt practice’ is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
 - ii. ‘fraudulent practice’ is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
 - iii. ‘collusive practice’ is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
 - iv. ‘coercive practice’ is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party; and
 - v. ‘obstructive practice’ is deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators to materially impede an IsDB investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or acts intended to materially impede the exercise of IsDB inspection and audit rights provided for under Paragraph 1.39(e) below.
- b) IsDB will reject a Bid for award if it determines that the Bidder recommended for award, or any of its personnel, or its agents, or its sub-consultants, subcontractors, service providers, Suppliers and/or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question;
- c) IsDB will declare misprocurement and cancel the portion of the Project Financing allocated to a contract if it determines at any time that representatives of the Beneficiary or of a recipient of any part of the proceeds of the Project Financing engaged in corrupt, fraudulent, collusive, coercive or obstructive practices during the procurement or implementation of the contract in question, without the Beneficiary having taken timely and appropriate action satisfactory to IsDB to

⁴ In this context, any action taken by a Contractor or Consultant or any of its personnel, or its agents, or its sub-consultants, subcontractors, service providers, Suppliers and/or their employees, to influence the selection process or contract execution for undue advantage is improper.

address such practices when they occur, including by failing to inform IsDB in a timely manner at the time they knew of the practices;

- d) IsDB will sanction a Firm or individual, at any time, in accordance with the prevailing IsDB sanctions procedures,⁵ including by publicly declaring such Firm or individual ineligible, either indefinitely or for a stated period of time:
 - i. to be awarded an IsDB-financed contract; and
 - ii. to be a nominated subcontractor, Consultant, sub-consultant, Contractor or Supplier of an otherwise eligible Firm being awarded an IsDB-financed contract; and
- e) IsDB will require that a clause be included in Bidding Documents and in contracts financed by IsDB, requiring Bidders, including their agents (whether declared or not), subcontractors, sub-consultants, service providers or Suppliers, to permit IsDB to inspect all accounts, records and other documents relating to the submission of Bids and contract performance, and to have them audited by auditors appointed by IsDB.

1.40 With the specific agreement of IsDB, a Beneficiary may introduce into Bid forms for contracts financed by IsDB an undertaking by the Bidder to observe, in competing for and executing a contract, the country's laws against Fraud and Corruption (including bribery), as listed in the Bidding Documents.⁶ IsDB will accept the introduction of such an undertaking at the request of the Beneficiary country, provided the arrangements governing such an undertaking are satisfactory to IsDB.

Confidentiality of procedures

1.41 After the opening of Bids, information relating to the examination, clarification and evaluation of Bids and recommendations concerning awards shall not be disclosed to those who have submitted Bids, or other persons not officially concerned with this procedure, until Notification of Intention to Award the contract is communicated as part of the activation of the Standstill Period.

Procurement Plan and Procurement Strategy

1.42 A finalized PP and PS for the planned procurement will be prepared during the early stages of project processing, or soon after framing of the Project Concept Note (PCN). The PP and PS will be further refined and detailed by the end of project appraisal and will be linked to the Beneficiary's overall procurement approach. The PP will initially cover the

⁵ A Firm or individual may be declared ineligible to be awarded an IsDB-financed contract: (i) upon completion of the IsDB's sanctions proceedings as per its sanctions procedures, including, *inter alia*, cross-debarment as agreed with other International Financial Institutions, including Multilateral Development Banks; and (ii) as a result of temporary suspension or early temporary suspension in connection with an ongoing sanctions proceeding.

⁶ As an example, such an undertaking might read as follows: "We undertake that, in competing for (and, if the award is made to us, in executing) the above contract, we will strictly observe the laws against Fraud and Corruption in force in the country of the [Purchaser] [Employer], as such laws have been listed by the [Purchaser] [Employer] in the Bidding Documents for this contract."

first eighteen (18) months of project implementation, but it will be a ‘rolling’ plan, updated periodically at reasonable intervals. The finalized PP and a summary of the PS will become part of the project appraisal document and shall be reviewed in detail by the Beneficiary at the project start-up workshop to facilitate smooth and timely project implementation.

- 1.43 The PP and PS will, at a minimum, detail the Goods, Works and/or related services packages, including the requirements, cost estimates, indicative disbursement, implementation schedules, Prior and Post Review approaches, related thresholds, nature and extent of IsDB monitoring and supervision, and other relevant factors. In particular cases such as for new Beneficiaries or in situations where the Beneficiary’s implementation capacity is limited or where abbreviated Prior Reviews or Post Reviews are envisaged, IsDB may decide to assess the capacity of the Beneficiary to implement the PP and undertake capacity and/or risk assessments.
- 1.44 In emergency situations, if it is not possible for the Beneficiary and IsDB to complete the PP and PS for the procurement in a project, completion may be deferred to the implementation phase of the project.
- 1.45 The PP should be posted on the Beneficiary’s project-related website and the IsDB website as soon as possible, but in all events after the Finance Agreement comes into effect, along with any material updates thereto, as and when circumstances require.

Partnerships and co-financing

- 1.46 IsDB may enter into partnerships promoting its objectives through, *inter alia*, co-finance projects with other organizations and institutions that have different procurement procedures, integrity policies and eligibility rules in regard to the procurement of Goods, Works and/or related services. Procurement under such arrangements shall, to the extent reasonably possible, reflect applicable IsDB policy and encourage increased partnership and use of co-financing resources.⁷

Electronic procurement

- 1.47 IsDB encourages Beneficiaries to continually modernize their procurement systems, including by incorporating electronic procurement elements that ensure economy, efficiency, fairness and effectiveness in the procurement process. Beneficiaries may use electronic procurement systems (e-procurement) for aspects of the procurement process, including issuing Bidding Documents and addenda, receiving applications/quotations/Bids/Proposals and carrying out other procurement actions,

⁷ Co-financing may be either parallel or joint. If parallel, each co-financier individually finances separate categories of expenditures relating, among others, to procurement contracts under a given project, and each co-financier applies its own procurement procedures. If joint, co-financiers collectively finance, in agreed proportions, specific expenditure relating to procurement contracts. In such cases, normally the lead co-financier’s procurement policies will apply. If IsDB is not the lead co-financier, a Board waiver from application of the respective procurement policies, particularly regarding eligibility, shall be obtained.

provided IsDB is satisfied with the adequacy of the system, including its accessibility, security and integrity, confidentiality, and audit trail features.

Procurement-related complaints

1.48 Procurement-related complaints are governed by the provisions of Annex C. Such complaints may be brought, at the appropriate stage of the procurement process, to the attention of the Beneficiary by potential or actual applicants/Bidders. To promote an open and fair procurement process, the Beneficiary shall make every effort to address any such procurement-related complaint objectively and in a timely manner, with transparency and impartiality. IsDB undertakes to monitor the process of resolution of any procurement related-complaint about which it receives notice.

CHAPTER 2 – INTERNATIONAL COMPETITIVE BIDDING

Purpose and scope of International Competitive Bidding

- 2.1 The purpose of ICB, whether through open ICB or ICB limited to MCs (ICB/MC), is to provide the Beneficiary with a wide range of choices for selecting the best Bid from competing Bidders, and to give all prospective Bidders from eligible source countries an adequate, fair and equal opportunity to bid for the Goods, Works and/or related services being procured under IsDB Project Financing.
- 2.2 Since IsDB encourages the development of industries and engineering organizations in its MCs, it considers that, as a matter of priority, the Goods, Works and/or related services it finances should be procured, to the extent possible, from its MCs. ICB open to non-MC Firms will, however, be allowed:
- a) for the procurement of Goods, Works and/or related services for which it is considered that MCs do not yet have enough competent companies that are able to provide such Goods, Works and/or related services in all regions of IsDB membership; or
 - b) if the geographical location of the project/country or the prevailing market conditions in the Beneficiary's country/region will make it unlikely that enough acceptable Bids will be received from MC Firms; and
 - c) if a) or b) is verified in the PP and PS.
- 2.3 To achieve the objectives of ICB and ICB/MC, IsDB requires Beneficiaries to observe these Guidelines in preparing RFBs and contract documents, including the requirements for advertising RFB invitations and in receiving, opening and evaluating Bids. Specific procedures are described in the following Paragraphs and supplement the procedures described in Chapter 1.

Procedure for notification and advertising

- 2.4 It is in the interest of the Beneficiary to commission the best-qualified Bidders for a given project. Adequate notification and advertisement should, therefore, be made so that potential Bidders are informed in a timely manner of the opportunity to bid.
- 2.5 Notification and advertising shall be done in two steps. As soon as funds are made available, the Beneficiary shall launch a General Procurement Notice (GPN). Where it concerns ICB, the GPN shall be published on IsDB's external website and the UNDB Online or DgMarket websites, as it is a requirement that the GPN is advertised internationally. This is in addition to advertisement on the Beneficiary's government's respective web portal, and, where available, the GPN shall be published in other appropriate publicly available internationally accessible media with wide distribution. Where it concerns procurement under ICB/MC, the GPN, in addition to the sources stated above, may also be sent to Embassies, Consulates and local representatives of IsDB MCs.

- 2.6 The GPN shall contain information concerning the Beneficiary, the scope and purpose of the project and the amount, the name, telephone or fax number and address of the Beneficiary or the Beneficiary's Procurement Agent responsible for the procurement, and the website and email address, if available. If known, the scheduled date for the availability of Bidding Documents shall also be indicated.
- 2.7 Subsequently, to enable prospective applicants/Bidders to obtain Bidding Documents and prepare applications for Prequalification or Bids, Beneficiaries shall issue a Specific Procurement Notice (SPN) to advertise the invitations to bid when the Bidding Documents are available for interested applicants/Bidders, in the same manner as for the GPN as described in Paragraph 2.5. Beneficiaries may also advertise in well-known technical magazines, newspapers and trade publications with wide international circulation. The SPN shall indicate where the Bidding Documents can be obtained and provide more detailed information on the scope of the Goods, Works and/or related services and when they are needed. In addition, copies of the SPN shall be sent to Embassies, Consulates and local representatives of IsDB MCs.
- 2.8 In the selection of advertising media, the international aspect of IsDB is important. It shall be ensured that the media sources are selected in at least one (1) of IsDB's three (3) working languages (Arabic, English or French), which ensures maximum competition. In the interest of maximizing competition, IsDB may request the publication in other languages.

Advance Contracting and Retroactive Financing

- 2.9 In certain circumstances, to accelerate project implementation or in emergencies, the Beneficiary may, with IsDB No-Objection, proceed with the procurement process and contract award prior to signing the Financing Agreement. This procedure is called Advance Contracting. In such cases, the Beneficiary shall follow these Guidelines, and IsDB will apply its normal review procedures. The Beneficiary undertakes such Advance Contracting at its own risk; any concurrence by IsDB with regard to the procedures and/or contract award does not commit IsDB to provide the Project Financing for the contract(s) in question.
- 2.10 IsDB does not normally finance any expenditure incurred prior to the approval of the project. However, in very exceptional circumstances, financing may be considered, subject to the requirements of these Guidelines. This procedure is called Retroactive Financing. It shall normally be restricted to expenditures incurred and paid for by the Beneficiary six (6) months before the expected date of signing the Financing Agreement. However, in cases where the project objectives, project design and implementation arrangements have been worked out, this period may be extended up to twelve (12) months before signing the Financing Agreement.
- 2.11 Retroactive Financing shall not normally exceed ten (10) per cent of the total project cost. In cases of an emergency, IsDB may consider Retroactive Financing of up to twenty (20)

per cent for expenditures incurred within four (4) months prior to the expected date of signing the Financing Agreement. More information can be found in Annex F.

Two-stage Bidding

- 2.12 Detailed engineering of the Works, Goods and/or related services to be provided, including the preparation of technical specifications and other Bidding Documents, normally precede the invitation to bid for large contracts. However, in the case of a turnkey contract or contracts for large, complex industrial projects or Works or similar complex contracts of a special nature, it may be inappropriate or undesirable to prepare the technical specifications in advance. In such a case, a two-step procedure shall be necessary. The first stage is to invite unpriced technical proposals on the basis of a conceptual design or performance specification, for which the Beneficiary may ask technical clarifications and require necessary adjustments. At the second stage the Beneficiary, while safeguarding the confidentiality of the earlier technical proposals, shall issue the amended Bidding Documents and request the submission of final, fully priced technical Bids.
- 2.13 As opposed to two-stage Bidding, and to ensure transparency, IsDB does not accept the two-envelope (or three-envelope) system in which Bidders are required to submit in separate envelopes: (a) qualification and technical Bids, and (b) priced Bids at the same time, but where the qualification and technical Bids are opened and evaluated first, and the priced Bids are opened and evaluated after that.

Prequalification of Bidders

- 2.14 IsDB normally requires the use of formal Prequalification for large and/or complex contracts, supply contracts of specialized equipment and machinery or turnkey contracts, to ensure, in advance of Bidding, that only Firms and Contractors with relevant technical expertise and adequate resources for implementing the contract will be selected to bid. Prequalification could be applied in any other circumstances in which the high costs of preparing detailed Bids could discourage competition, such as custom-designed equipment, industrial Plant, specialized services and some complex information and technology. The Financing Agreement with IsDB will specify whether Prequalification is required in respect of particular contracts. Prequalification shall be based entirely on the capacity of the potential Bidders, provided they are not otherwise disqualified, to perform the particular work satisfactorily, taking into account, among other things, their:
- a) experience and past performance on similar contracts;
 - b) capabilities with respect to personnel, equipment, Plant and manufacturing facilities;
 - c) current commitments of Works under execution and progress of work; and
 - d) financial position during the past three (3) to five (5) years.
- 2.15 Verification of the information provided in the submission for Prequalification shall be confirmed at the time of contract award, and the award may be denied to a Bidder that

is judged to no longer have the capability or resources to successfully perform the contract.

- 2.16 The notification for Prequalification shall be advertised in the same manner using the same media as the GPN, as described in Paragraphs 2.4–2.8 above. Not less than four (4) weeks should be allowed for prospective applicants to prepare and submit Prequalification applications. The scope of Works, abbreviated specifications and a clear statement of the requirements for qualification should be sent to all Firms and Contractors (not otherwise disqualified) that wish to be considered for Prequalification. When Prequalification is employed, all Firms which are found to be qualified shall be permitted to bid. The report on the process, including the final list of prequalified Firms, shall be submitted to IsDB for No-Objection. The Beneficiary shall then inform all applicants of the results of the Prequalification and will also publish the results using the same media as used for the GPN in accordance with the provisions of Paragraphs 2.4–2.8 above. As soon as Prequalification is completed, the Bidding Documents shall be made available to the qualified shortlisted Bidders.
- 2.17 Where a margin of preference is allowed for MC Firms or local (domestic) Contractors, they shall be required to prequalify to determine their eligibility for such preference.

Type and size of contracts in Bidding Documents

- 2.18 The Bidding Documents shall clearly state the type of contract to be entered into and contain the appropriate proposed contract provisions. The most common types of contracts provide for payments on the basis of a lump sum, unit prices (for Works performed or Goods supplied) or a combination thereof.
- 2.19 Contracts based principally on the reimbursement of actual cost plus fixed fee are normally not acceptable to IsDB, except in special conditions (such as conditions of high risk or where costs cannot be determined in advance with sufficient accuracy) and with IsDB's explicit No-Objection. Such contracts shall include appropriate incentives to limit costs.
- 2.20 The scope of individual contracts will depend on the size, nature and location of the project. For large projects requiring a variety of Goods, Works and/or related services including equipment, it is generally preferable to award separate contracts for the Works and for the supply and installation of different major items of Plant and equipment.
- 2.21 On the other hand, for a project requiring similar but separate Goods, Works and/or related services such as items of equipment and machinery, Bids may be invited under alternative contracting options that would attract the interest of both small and large Firms. Bidders may be allowed to bid for individual contracts (lots) and/or for a group of similar contracts (packages). All Bids and combinations of Bids shall be received by the same deadline and opened and evaluated simultaneously so as to determine the Bid or combination of Bids offering the maximum VfM to the Beneficiary.

- 2.22 When special processes, closely integrated manufacturing or Goods, Works and/or related services of a special nature are involved, IsDB may accept or require a turnkey contract under which the design, engineering, supply and installation of equipment and construction of a complete industrial Plant or Goods, Works and/or related services are provided through a single contract. Alternatively, the Beneficiary may issue an RFB for a single-responsibility contract under which all the Goods, Works and/or related services are provided, except the design and engineering, for which the responsibility remains with the Beneficiary. Design, build and management contracting, performance-based contracts, Public–Private Partnerships (PPPs), framework contracts and other contracting types are also acceptable, where appropriate and when agreed to by IsDB.
- 2.23 In construction, a management Contractor may contract out the Works while maintaining the management responsibilities and taking full responsibility and risk for price, quality and performance. Conversely, a construction manager is a Consultant for, or agent of, the Beneficiary but does not take on such risks. The services of the construction manager, if financed by IsDB, should be procured under the *Guidelines for the Procurement of Consultant Services under IsDB Project Financing*.

Essential elements of the Bidding Documents

Contents of the Bidding Documents

- 2.24 The Bidding Documents shall furnish all the information necessary for a Bidder to prepare a Bid for the Goods, Works and/or related services to be supplied. While the details and complexity of these documents will vary with the size and nature of the proposed contract, they should normally include: an invitation to bid; Instructions to Bidders (ITB); the form of Bid; the form of contract; the conditions of contract; both General Conditions of Contract and Special Conditions of Contract; technical specifications; bills of quantities and drawings; a schedule of prices; delivery times or a schedule of completion; and necessary appendices, including forms for pro forma Bid bonds, performance guarantees and advance payment guarantees.
- 2.25 The basis for Bid evaluation and selection of the Bid offering the maximum VfM shall be clearly described in the Bidding Documents. If a fee is charged for the Bidding Documents, it shall be reasonable and reflect only the cost of their printing and delivery to potential Bidders, and shall not be so high as to discourage qualified Bidders.
- 2.26 Bidding Documents shall be submitted to IsDB for Prior Review before being issued to Bidders.
- 2.27 In developing the Bidding Documents, Beneficiaries shall use the appropriate Standard Bidding Documents (SBDs) issued by IsDB with minimum changes, acceptable to IsDB, as necessary to address country- and/or project-specific issues. Any such changes shall be introduced only through the Bid Data Sheet (BDS) or contract data sheets, or through the Special Conditions of Contract, and not by introducing changes in the standard wording of the SBDs. Where no relevant SBDs have been issued, the Beneficiary shall use other

internationally recognized Bidding Documents and conditions of contract and contract forms, suitably modified, if required, and acceptable to IsDB.

Reference to IsDB

- 2.28 When the contract is to be financed wholly or partly by IsDB, it is necessary to refer to IsDB in the Bidding Documents, along the following lines: “(Name of the Beneficiary) has received (or in appropriate cases has applied for Project Financing) from IsDB in various currencies equivalent to US\$ (insert amount) towards the cost of (name of project), and intends to apply part of the proceeds of this Project Financing to the contract(s) for which this invitation to Bid is issued. Disbursement of funds by IsDB will be subject in all respects to the terms and conditions of the Financing Agreement, and the applicable IsDB Guidelines. Except as IsDB may specifically otherwise agree, no party other than the Beneficiary shall derive any rights from the Financing Agreement or have any claim to its proceeds.”

Language and interpretation

- 2.29 Prequalification and Bidding Documents for ICB and ICB/MC shall be prepared in one (1) of IsDB’s working languages (Arabic, English, or French). Documents may be prepared in the local language as well, in the case of local Bidding only, but IsDB should be supplied with a certified translation of the same in one (1) of its working languages.

Clarity of Bidding Documents

- 2.30 Bidding Documents and specifications shall be worded in such a manner so as to permit and encourage ICB, and shall set forth, as clearly and as precisely as possible, the work to be accomplished, the Goods, Works and/or related services to be supplied, the place of delivery or installation, warranty and maintenance requirements, and any other pertinent terms and conditions. In addition, the Bidding Documents, where appropriate, shall define the tests, standards and methods that will be used to judge conformity with the original equipment specifications, quality of Goods, Works and/or related services and delivery time. Drawings shall be consistent with the text of the technical specifications, and, where appropriate, an order of preference between the two shall be specified in the Bidding Documents.
- 2.31 The Bidding Documents shall clearly spell out:
- a) all factors, including price, which will be taken into account in evaluating and comparing Bids;
 - b) the evaluation criteria, including how these factors will be quantified or otherwise evaluated (methods, terms and conditions of Bid evaluation); and
 - c) whether alternative Bids based on alternative designs, materials, completion schedules or payment terms are permitted. In this case, the Bidding Documents shall clearly state the conditions for their acceptability and the method of their

evaluation, and require that Goods, equipment and Works meeting other internationally accepted standards shall be of equal or higher equivalence.

- 2.32 All prospective Bidders shall be provided with the same information, and shall be assured of equal opportunities to obtain additional information in a timely manner. The Beneficiary shall provide reasonable access to project sites for visits by prospective Bidders. For Goods, Works and/or related services or complex supply contracts, particularly for those requiring the refurbishment of existing Goods, Works and/or related services or equipment, a pre-Bid conference may be arranged for potential Bidders to meet the representatives of the Beneficiary to seek clarifications. Minutes of the conference shall be provided to all prospective Bidders, with a copy to IsDB. Any additional information, clarification, correction of errors or modifications of Bidding Documents shall be sent to each Bidder in sufficient time before the deadline for receipt of Bids to enable Bidders to take appropriate action. If necessary, the deadline shall be extended. IsDB shall receive a copy (in hard copy or by email) and shall be consulted to issue a No-Objection.

Specifications and standards

- 2.33 Technical specifications and standards quoted in Bidding Documents shall promote the broadest possible competition, while ensuring the critical performance or other requirements for the Goods, Works and/or related services to be procured. As far as possible, the Beneficiary shall specify internationally accepted standards such as those issued by the International Standards Organization with which the equipment, materials or workmanship shall comply. Where such standards are unavailable or are inappropriate, national standards may be specified. In all cases, the Bidding Documents shall state that such equipment, material or workmanship will be acceptable as long as it has equal or higher standards.

Specifications for equipment and use of brand names

- 2.34 Specifications shall be based on relevant characteristics, performance, capability and quality, and shall not prescribe brand names, catalogue numbers or products of a specific manufacturer. If it is necessary to quote a brand name or catalogue number of a particular manufacturer to clarify an otherwise incomplete specification, the words “or equivalent” shall be added after such reference, except in very special cases when specific spare parts are required or where a degree of standardization is necessary to maintain certain essential features. In such cases, and where appropriate, the specifications shall permit alternative Goods, Works and/or related services which have similar characteristics and provide performance and quality at least equal to those specified. In all cases where brand names are deemed justified to be procured, No-Objection from IsDB must be obtained.

Origin of Goods and Works

- 2.35 Bidding Documents shall indicate that the supply of Goods, Works and/or related services financed by IsDB is limited to Goods, Works and/or related services originating from

eligible countries, and prospective Bidders are required to provide the appropriate information to verify this.

Validity of Bids

- 2.36 Bidders shall be required to submit Bids valid for a period specified in the Bidding Documents, sufficient to enable the Beneficiary to complete the comparison and evaluation of Bids and obtain the necessary approvals from IsDB and possibly other co-financiers so that the award of contract can be notified within that period. The validity period should normally be between ninety (90) and one hundred and twenty (120) days and may be up to one hundred and eighty (180) days for large and complex Bids.

Bid security

- 2.37 Beneficiaries shall require from Bidders a Bid security to secure the validity of the Bid within the period specified in the Bidding Documents. The Bid security shall be in the form and amount specified in the Bidding Documents, but generally between one (1) and three (3) per cent of the contract value. In place of a Bid security, the Beneficiary may require Bidders to sign a Bid securing declaration accepting that if they withdraw or modify their Bid during the period of Bid validity, or if they are awarded the contract and fail to sign the contract or to submit a performance security before the deadline defined in the Bidding Documents, they will be suspended for the period of time specified in the Bidding Document from being eligible to submit Bids for contracts with the Beneficiary that invited the Bid.
- 2.38 The format of the Bid security shall be in accordance with the form included in the Bidding Documents and shall be issued by a reputable bank or financial institution selected by the Bidder. If the institution issuing the security is located outside the country of the Beneficiary, it must have a correspondent financial institution located in the Beneficiary's country to make it enforceable.
- 2.39 In the case of Force Account (Paragraph 3.12), the Bid security may be waived at the discretion of IsDB.

Pricing

- 2.40 The Beneficiary shall invite Bids for Goods on the basis of CIF (port of destination) or CIP (place of destination)⁸ for all Goods offered from and manufactured abroad, including those previously imported, and ex works, ex factory or off-the-shelf (EXW)⁹ for Goods manufactured in the country of the Beneficiary. Bidders may arrange for ocean and other transportation and related insurance from any eligible source in accordance with IsDB eligibility requirements. Where the Bidder is required to perform installation,

⁸ Refer to the latest INCOTERMS published by the International Chamber of Commerce (<https://iccwbo.org/resources-for-business/incoterms-rules/>).

⁹ The EXW price includes all duties, sales and other taxes already paid or payable for the components and raw materials used in the manufacture of the equipment offered in the Bid.

commissioning or other similar services, as in the case of supply and installation contracts, it shall be required to quote additionally for these services.

- 2.41 In the case of turnkey contracts, the Bidder shall be required to quote the price of the installed Plant at site, including all costs for supply of equipment, marine and local transportation and insurance, installation and commissioning, as well as associated Works and all other services included in the scope of the contract such as design, maintenance and operation. Unless otherwise specified in the Bidding Documents, the turnkey price shall include all duties, taxes and other levies.¹⁰
- 2.42 Bidders for Goods, Works and/or related services contracts shall be required to quote unit prices or lump-sum prices for the delivery and performance of the Goods and Works, and such prices shall include all duties, taxes and other levies. Bidders will be allowed to obtain all inputs (except unskilled labour) from any eligible source, in accordance with IsDB's eligibility requirements, so that they may offer their most competitive Bids.

Price adjustment

- 2.43 Bidding Documents shall state either that Bid prices will be fixed or that price adjustments will be made to reflect any changes (upwards or downwards) in major cost components of the contract, such as labour, equipment, materials and fuel. Price adjustment provisions are usually not necessary in simple contracts involving delivery of Goods or the completion of Goods, Works and/or related services within eighteen (18) months, but they shall be included in contracts which extend beyond eighteen (18) months. However, it is normal commercial practice to obtain firm prices for some types of equipment regardless of the delivery time; in such cases, price adjustment provisions are not needed.
- 2.44 Prices may be adjusted by the use of a prescribed formula (or formulae)¹¹ which breaks down the total price into components that are adjusted by price indices specified for each component or, alternatively, on the basis of documentary evidence (including actual invoices) provided by the Bidder. The use of the formula method of price adjustment is preferable to that of documentary evidence. The method to be used, the formula (if applicable) and the base date for application shall be clearly defined in the Bidding Documents. If the payment currency is different from the source of the input and corresponding index, a correction factor shall be applied in the formula to avoid incorrect adjustment.

Currency of Bids

- 2.45 To ensure fairness and transparency in the Bid evaluation process, and to obtain the best possible price, Bidding Documents shall:

¹⁰ Beneficiaries may prefer to exclude customs duties on imported equipment from the Bid prices, since these are difficult to ascertain, or, alternatively, to include a provisional sum for the reimbursement of actual costs.

¹¹ A different formula should be used for each currency.

- a) clearly state the currency or currencies in which Bid prices may be expressed and the contract price shall be paid; and
 - b) the method for converting prices expressed in different currencies into a single currency for the purpose of comparing Bids.
- 2.46 Clarity of the pricing provisions in Bidding Documents is essential to provide Bidders with an opportunity to minimize exchange risks, and, if needed, to choose a stronger currency for payment to strengthen and stabilize the value of the Bid, and to protect the Beneficiary against possible claims arising from unforeseen currency fluctuations.
- 2.47 Specifically, the Bidding Documents shall state that the Bidder may express the Bid price in the currency of the Bidder's country or in a foreign currency widely used in international trade. A Bidder that expects to incur expenditures in more than one (1) foreign currency may express its Bid in more than one (1) but no more than three (3) such currencies. Alternatively, the Bidder may express the entire Bid in one (1) currency but require percentages of the Bid price to be paid in other currencies, while providing the exchange rates used in these calculations. The Beneficiary may require that Bidders state the portion of the Bid price representing local costs in the national currency. In the Bidding Documents for Goods, Works and/or related services, the Beneficiary may require Bidders to state the Bid price entirely in the Beneficiary's currency, along with requirements for foreign currency payments in up to three (3) foreign currencies of their choice for expected inputs from outside the Beneficiary's country. Such requirements shall be expressed as a percentage of the Bid price, together with the exchange rate used in these calculations.

Currency conversion for Bid comparison

- 2.48 The Bid price is the sum of all payments in various currencies required by the Bidder. For the purpose of comparing prices, Bid prices shall be converted into a single currency selected by the Beneficiary (local currency or fully convertible currency) and stated in the Bidding Documents. The Beneficiary shall calculate this conversion by using the selling (exchange) rates for those currencies quoted by an official source such as the central bank or by a commercial bank or by an internationally circulated newspaper for similar transactions. The conversion date shall be selected in advance, and the source and date shall be specified in the Bidding Documents. The date shall not be earlier than four (4) weeks prior to the deadline for Bid submission and not later than the original expiry date of the period of Bid validity.

Currency of payment

- 2.49 Payment of the contract price shall be made in the currency or currencies in which the Bid price is expressed in the Bid of the successful Bidder.
- 2.50 When the Bid price is required to be stated in the Beneficiary's currency and the Bidder has requested payment in foreign currencies expressed as a percentage of the Bid price, the exchange rates to be used for the purpose of payments shall be those specified by the

Bidder in the Bid, so as to ensure that the value of the foreign currency portions of the Bid is maintained without any loss or gain.

Transportation and insurance

- 2.51 The Bidding Documents shall state precisely the types and terms of insurance to be provided by the Bidder for transportation insurance from any eligible country, and shall indicate the kinds of risks to be insured against, the liabilities to be covered and the duration of the insurance. For Goods, the indemnity payable under transportation insurance shall be at least one hundred and ten (110) per cent of the contract amount in the currency of the contract or in a freely convertible currency, to enable prompt replacement of lost or damaged Goods. For Works, a Contractor's 'all risk' form of policy shall usually be specified. Depending on the mode of IsDB's Project Financing, the type and extent of insurance to be taken out is to be fully covered in the Financing Agreement. For leasing, instalment sale and Istisna'a, IsDB shall be the loss-payee of the insurance, and any indemnity shall be payable to IsDB in freely convertible currency.

Alternative Bids

- 2.52 If alternative Bids are allowed, the Bidding Documents shall state clearly how such Bids shall be submitted, prices shall be offered and how they shall be evaluated. If a Bidder wishes to propose deviations or an alternative solution, it shall, first, quote the price for the method and specifications indicated in the Bidding Documents and, second, indicate the price for the deviation or alternative solution. Only the alternative Bid submitted by the substantially responsive lowest evaluated Bid shall be considered.

Essential elements of the contract documents

Conditions of contract

- 2.53 The contract documents shall clearly define the scope of Works to be performed, the Goods to be supplied and/or the outputs of the related services to be delivered, the rights and obligations of the Beneficiary and the Contractor, and the functions and authority of the engineer, architect or construction manager, if one is employed by the Beneficiary in the supervision and administration of the contract, including any payments and advances to be made. In addition to the General Conditions of Contract, such Special Conditions of Contract as are appropriate shall be included relative to the types of Goods, Works and/or related services to be procured and the location of the project site. The conditions of contract shall provide a balanced allocation of risks and liabilities.

Terms and methods of payment

- 2.54 Payment terms shall be in accordance with the international commercial practices applicable to the specific Goods, Works and/or related services, and disbursement of such payments from IsDB Project Financing shall be made in accordance with IsDB's disbursement procedures and the Financing Agreement.

- 2.55 Contracts for the supply of Goods shall provide for payment on the delivery and inspection, if so required, of the contracted Goods, except for contracts involving installation and commissioning, in which case a portion of the payment may be made after the Contractor has complied with all its obligations under the contract. The use of letters of credit is encouraged to ensure prompt payment to the Contractor.
- 2.56 Contracts for Works shall provide, in appropriate cases, for mobilization advances, advances on the Contractor's equipment and materials to be delivered to the site for incorporation in the Works, regular progress payments, and reasonable retention amounts to be released upon compliance with the Contractor's obligations under the contract.

Advance and progress payments

- 2.57 The Bidding Documents shall:
- a) specify any advances that may be made for supply of equipment and machinery, mobilization expenditures or shipment of materials on site for incorporation into the Works; such advances should not exceed eighty (80) per cent of the value of such materials;
 - b) require that such advance payments shall be covered by an unconditional and irrevocable bank guarantee issued by a bank acceptable to IsDB; and
 - c) specify the modalities and the terms and conditions under which the guarantee will be recovered and released.
- 2.58 Advance payments made upon signature of the contract for mobilization and expenses should be reasonable and should not exceed twenty (20) per cent of the contract price.
- 2.59 Progress payments under the contract shall be made in the currency or currencies in which the price has been stated in the Bid.

Change orders

- 2.60 During the execution of a contract, changes may occur in the quantity of work done which require amendments to the contract agreement between the Beneficiary and the Contractor. Such amendments are executed by a change or variation order, provisions for which are made in the conditions of contract, and are justified in the progress reports of the project. The Beneficiary shall seek IsDB No-Objection prior to any proposed amendment. Price increases resulting from change orders should not exceed twenty (20) per cent of the original contract price. If price increases exceed twenty (20) per cent, the Beneficiary shall provide IsDB with an explanation and justification for the increase and seek IsDB No-Objection.

Performance security and retention money

Performance security

- 2.61 Contracts for Works and Goods which include Plant shall require a performance security in an amount sufficient to protect the Beneficiary in case of non-performance of the contract by the Contractor. This security shall be provided in an appropriate amount, as specified by the Beneficiary in the Bidding Documents. The amount of the security may vary, depending on the type of security furnished and the nature and magnitude of the Works, Plant or facilities. Normally, the amount for bank guarantees should not exceed ten (10) per cent of the contract price, unless the commercial practice and/or market conditions for the industry require a different amount. A portion of this security shall extend sufficiently beyond the date of completion of the Works, Goods or Plant to cover the defects liability or maintenance period up to final acceptance by the Beneficiary.
- 2.62 In contracts for the supply of Goods, the need for performance security depends on the commercial practice and/or market conditions for the particular kind of Goods. To protect against non-performance of the contract, the Contractor may be required to provide a security in an appropriate and reasonable amount, specified by the Beneficiary in the Bidding Documents.
- 2.63 Performance securities shall be in an appropriate form, acceptable to IsDB, as specified by the Beneficiary in the Bidding Documents. Bidders shall be allowed to submit a performance security directly issued by a reputable bank of their choice located in any eligible country. However, if the performance security is issued by a bank located outside the Beneficiary's country, the bank must have a correspondent bank located in the Beneficiary's country to make it enforceable.

Retention money

- 2.64 Retention money may be required in addition to the performance security because it serves a different purpose. Retention money is a percentage deducted from the agreed periodic payments for Goods, Works and/or related services to protect the Beneficiary. In the case of Works, retention money may be against defects liabilities or to cover the maintenance period up to final acceptance of the Works by the Beneficiary. In the case of Goods, retention money may be to cover the Contractor's warranty obligations or any installation or commissioning requirements. Retention money shall be reasonable in amount, in accordance with commercial practice, and vary between five (5) per cent and no more than ten (10) per cent of the contract price. The retention money may, at the option of the Beneficiary, be replaced with a suitable bank guarantee from a bank acceptable to IsDB. When used as a guarantee, retention money should not exceed five (5) per cent of the contract price.
- 2.65 Where a contract provides for both a performance security and retention money, the total amount of both should not exceed fifteen (15) per cent of the contract price. Such retention money shall be withheld until the expiration of the warranty or maintenance

period. After completion of the Works, but before the expiration of the warranty or maintenance period, the retention money may, at the option of the Beneficiary, be replaced with a suitable bank guarantee or other appropriate security acceptable to IsDB.

Indemnification requirements

- 2.66 Contracts shall clearly state that the proceeds of any claim arising from performance guarantees, advance payment guarantees and any insurance policies entered into by the Contractor under the terms of the contract shall be payable to IsDB to the extent of its financial participation for the account of the Beneficiary. On receipt of such proceeds, IsDB will credit the Beneficiary. Upon reaching agreement, any amount which is rightly due to IsDB as reimbursement for previous disbursements on any item which is the subject of the claim shall be deducted from the Financing Agreement, and the balance of the amount received under the claim will become due for payment to the Beneficiary or the Contractor, as the case may be.

Liquidated damages and bonus payments

- 2.67 Contracts shall provide for liquidated damages, or similar clauses, in an appropriate amount¹² to cover the cost of delays in the delivery of Goods, failure to meet performance requirements or non-completion of the Works which result in loss of revenues or other benefits to the Beneficiary.
- 2.68 Provision may also be made for a bonus to be paid to Contractors for completion of contracts ahead of the time specified in the contract when such earlier completion would benefit the Beneficiary.

Force majeure

- 2.69 The conditions of contract shall stipulate that failure on the part of the parties to perform their obligations under the contract will not be considered a default if such failure is due to force majeure, as defined in the contract.

Applicable law and settlement of disputes

- 2.70 The conditions of contract shall contain provisions dealing with the applicable law and the forum for the settlement of disputes. International commercial arbitration has practical advantages over other methods for the settlement of disputes. It is, therefore, recommended that Beneficiaries consider international commercial arbitration in contracts for the procurement of Goods, Works and/or related services, if appropriate. In the case of Works contracts, supply and installation contracts and turnkey contracts, the dispute settlement provision shall also include mechanisms such as dispute review boards or a dispute review expert which are designed to permit a speedier dispute settlement.

¹² An amount not exceeding ten (10) per cent of the contract price is normal commercial practice.

Procedures for Bid submission, opening and evaluation, and award of contract

Bid submission

- 2.71 Unless otherwise agreed, IsDB requires that Bids are submitted in accordance with the procedures described in its SBDs.
- 2.72 The SBDs comprise:
- a) the invitation for Bids, including the Bid submission and opening date;
 - b) a standard section comprising the ITB on how to prepare the Bids, how they will be evaluated and how the contract will be awarded, complemented by a BDS elaborating on the standard instructions and indicating the specific requirements for the procurement, including the Bid price, and specific evaluation and award criteria; and
 - c) notes on technical specifications and drawings, sample forms, including the Bid form, Bid security and performance guarantee forms, bank guarantee form, price schedules, change order procedures and completion and acceptance certificates.
- 2.73 The standard contract document includes:
- a) the General Conditions of Contract, including provisions for contract implementation and payments, performance guarantees and acceptance, liabilities, and arrangements for dispute resolution;
 - b) the Special Conditions of Contract, elaborating on the General Conditions of Contract where needed, providing specifics on the contract price, guarantees and retention money, advances and payment schedules, work and delivery schedules, certificates of provisional and final acceptance, penalties and dispute resolution; and
 - c) forms of contract agreement and advance payments, as well as other relevant forms.
- 2.74 Modifications to the ITB or General Conditions of Contract shall only be introduced through the BDS or the Special Conditions of Contract, respectively.

Time interval between Bid invitation and Bid submission

- 2.75 The time allowed for Bidders to prepare and submit Bids will depend on the size and complexity of the contract. Generally, not less than six (6) weeks from the publication of the SPN shall be allowed for the preparation and submission of Bids under ICB or ICB/MC. Where large Works or complex process Plants are involved, generally not less than twelve (12) weeks shall be allowed to enable prospective Bidders to conduct investigations at the site before submitting their Bids. In such cases, it is recommended that the Beneficiary hold pre-Bid conferences and arrange site visits.

Bid opening and evaluation procedures

2.76 The date, hour and place for the receipt of Bids and for the Bid opening shall be announced in the invitation to bid. The time for Bid opening shall be the same as for the deadline for the receipt of Bids, or if Bids are received in a location different from the place of Bid opening, promptly thereafter, allowing just sufficient time to take the Bids to the place announced for Bid opening. Bids shall be opened in public, and Bidders or their representatives shall be allowed to be present. Bids received after this time shall be returned unopened.¹³ The name of the Bidder and total amount of each Bid and of any alternative Bids, if they have been requested or permitted, shall be read aloud and recorded, and a copy of this record shall promptly be sent to IsDB and all Bidders that submitted Bids.

Clarification or alteration of Bids

2.77 Bidders shall not be permitted or requested to alter their Bids after the deadline for Bid submission. For the purpose of Bid evaluation, the Beneficiary may need to ask clarifications from Bidders – for example, in the event that some pages of supporting information are not initialled, if required in the Bidding Documents, or if the Bidder has not sent the required number of copies or omitted a form. Requests for clarification and Bidders' responses shall be made in writing, and any discrepancies noted shall be recorded in the Bid Evaluation Report. However, the Beneficiary shall not ask nor allow Bidders to change the substance or price of the Bids after Bid opening.

Confidentiality of procedures

2.78 After the opening of Bids, information relating to the examination, clarification and evaluation of Bids and recommendations concerning awards shall not be disclosed to those who have submitted Bids, or other persons not officially concerned with this procedure, until the Notification of Intention to Award is communicated as part of the activation of the Standstill Period.

Examination and comparison of Bids

2.79 The Beneficiary shall use, or ensure the use of, IsDB's standard Bid Evaluation Report for the evaluation of Goods, Works and/or related services to detail the specific reasons for determining the recommendation for the contract award. The Beneficiary shall send the Bid Evaluation Report to IsDB with the Beneficiary's contract award recommendation for IsDB comment and No-Objection before transmission of the Notification of Intention to Award the contract. In case of doubt, IsDB may request a copy of the recommended Bid.

2.80 The Beneficiary shall carry out the Bid evaluation in two (2) phases:

- a) a preliminary examination; and
- b) a detailed evaluation and comparison of Bids.

¹³ No exceptions are permitted.

- 2.81 During the first phase, a preliminary examination is used to verify whether the Bids are substantially responsive to the Bidding Documents. Verification involves checking that Bids:
- a) are accompanied by a valid Bid security, if required;
 - b) meet the eligibility requirements;
 - c) are complete;
 - d) quote prices for all items in the lot or package as stipulated in the Bidding Documents;
 - e) have no computational errors; and
 - f) are generally in order.
- 2.82 If a Bid does not substantially conform to the specifications, or contains inadmissible reservations or is not otherwise substantially responsive to the Bidding Documents, it shall be rejected and not be considered further. However, a Bid should not be rejected on minor procedural grounds¹⁴ which can be rectified through the clarification process. The Bidder shall not make the Bid responsive by correcting the non-conformity or withdrawing material deviations or reservations.
- 2.83 During the second stage, detailed evaluation and comparison of Bids is used to determine the cost to the Beneficiary of each responsive Bid in a manner that permits a comparison on the basis of their evaluated cost in order to select the Bid offering maximum VfM.
- 2.84 The second-stage Bid evaluation shall be consistent with the terms and conditions set forth in the Bidding Documents. The Bid price read out at Bid opening shall be adjusted for any arithmetical errors, and adjustments shall be made for any quantifiable non-material deviations or reservations. Price adjustment provisions applying to the period of implementation of the contract shall not be taken into account in the evaluation.
- 2.85 For the supply of imported Goods, the evaluation and comparison of Bids shall be on the basis of CIF or CIP prices.¹⁵ For Goods manufactured in the Beneficiary's country, EXW prices are evaluated and compared. If Bids are on the basis of CIP, the cost of inland transportation and insurance to the place of destination shall be added to the price of domestically produced Goods. In addition, prices for any required installation, training for technology transfer and other similar services shall be evaluated and compared.¹⁶
- 2.86 In addition to the Bid price, adjusted for arithmetical errors, other factors may be taken into consideration, such as the time of completion of construction, the reliability of construction methods proposed, payment schedules, delivery times, operating costs or

14 For example, a Bidder has omitted to initial some pages of supporting documentation, if this is required in the Bidding Documents.

15 CIF is used for sea transport only. CIP is used for any mode of transport, including sea and multimodal transport and usually concerns containerized Goods.

16 The evaluation of Bids shall not take into account: (a) customs duties and other taxes levied on the imported Goods; or (b) sales and similar taxes levied in connection with the sale or delivery of Goods.

the efficiency and compatibility of the equipment, the availability of service and spare parts, and related training for technology transfer and safety. To the extent practicable, these factors shall be expressed in monetary terms according to criteria specified in the Bidding Documents.

- 2.87 Under Works and turnkey contracts, Bidders are responsible for all duties, taxes and other levies, and Bidders shall take these factors into account when preparing their Bids. Bids shall be evaluated and compared on this basis. Bid evaluation for Works shall be strictly in monetary terms. Any procedure under which Bids above or below a predetermined Bid value are automatically disqualified is not acceptable. If time is a critical factor, the value of early completion to the Beneficiary may be taken into account according to criteria presented in the Bidding Documents, but only if the conditions of contract also provide for commensurate penalties for non-compliance.

Abnormally low Bids

- 2.88 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.
- 2.89 Where the Beneficiary identifies a potential abnormally low Bid, the Beneficiary shall seek written clarifications from the Bidder, including detailed price analyses of its Bid price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the Bidding Documents.
- 2.90 If, after evaluating the Bidder's price analyses, the Beneficiary determines that the Bidder has failed to demonstrate its capability to deliver the contract for the offered price, it may, if provided for in the Bidding Documents, reject the Bid, subject to IsDB No-Objection.

Margin of preference

- 2.91 With the consent of IsDB, under ICB, a margin of preference may be provided to MC Firms when comparing Bids from MC Firms for Goods manufactured in MCs with those from non-MC Firms. The Bidding Documents should refer to this preference and specify the manner in which it will be applied. The preference shall be stated in the RFB, with IsDB No-Objection. In the case of Goods, no Goods shall be eligible for this preference except those Goods complying entirely with the required specifications and standards. Such preference shall not exceed fifteen (15) per cent of the price of the lowest evaluated offer (after the exclusion of customs duties, taxes and other charges). It is a condition for the application of this preference that the added value in the MC reaches thirty (30) per cent or more.

Under ICB, in the case of civil Works, a margin of preference may be provided to local (domestic) Contractors. It shall be a percentage to be agreed with the Beneficiary and

shall not exceed ten (10) per cent of the value of the lowest Bid that satisfies the conditions of the technical and financial evaluation. In the case of JVs or any other form of association between MC firms and non-MC firms (excluding subcontracting arrangements), the above margins of preference shall not be applied.

Extension of validity of Bids

- 2.92 Beneficiaries shall complete the evaluation of Bids and the award of contract within the initial period of Bid validity so that extensions are not necessary. An extension of Bid validity, if justified by exceptional circumstances, shall be requested in writing from all Bidders before the expiration date stated in the Bidding Documents. The extension shall be for the minimum period required to complete the evaluation, obtain the necessary approvals and award the contract. In the case of fixed-price contracts, requests for second and subsequent extensions will be permissible only if the request for extension provides for an appropriate mechanism to adjust the quoted price to reflect changes in the cost of inputs for the contract over the period of extension.
- 2.93 Whenever an extension of the Bid validity period is requested, Bidders shall not be requested or permitted to change the quoted (base) price or other conditions of their Bid. Bidders shall have the right to refuse to grant such an extension without forfeiting their Bid security, but those that are willing to extend the validity of their Bid shall be required to provide a suitable extension of their Bid security.

Post-qualification of Bidders

- 2.94 If the Bidding procedure did not provide for Prequalification, the Beneficiary shall carry out a post-qualification of the Bidder whose Bid has been determined to offer maximum VfM, to verify that the Bidder has the capability and resources to effectively carry out the contract as offered in the Bid. Even though the preliminary examination will reveal if the Bidder's Bid is responsive, post-qualification is needed because Bidders' situations may change or may not be properly reflected in their Bids. The criteria for such post-qualification, including the Bidder's relevant experience, financial position, technical staff and network of after-sales service, if needed, shall be explained in the Bidding Documents, and if the Bidder does not meet them, the Bid shall be rejected. In such an event, the Beneficiary shall select the next Bid that offers the next best VfM.

Rejection of all Bids and re-Bidding

- 2.95 Bidding Documents shall provide that Beneficiaries may reject all Bids, but Bids should not be rejected and new Bids invited with the same specifications solely for the purpose of obtaining lower prices. If the responsive Bid offers maximum VfM and exceeds the Beneficiary's pre-Bid cost estimates by a substantial margin, the Beneficiary shall investigate the causes for the excessive cost, including the contents of the Bidding Documents (in particular, quantities and technical specifications), and consider requesting new Bids on the basis of a revised scope and cost estimate of the Works and/or Goods to be procured.

- 2.96 Alternatively, the Beneficiary may consider a reduction in the scope and/or a reallocation of risk and responsibility which can be reflected in a reduction in the contract price. Following IsDB No-Objection, the Beneficiary may then negotiate with the Bidder offering maximum VfM to try to obtain a satisfactory contract on the basis of the revised terms and conditions. However, substantial reductions (exceeding twenty (20) per cent) in the scope or modification of the Bidding Documents often require re-Bidding to avoid ambiguities.
- 2.97 Rejection of all Bids is justified when there is a lack of effective competition or when Bids are not substantially responsive. However, a lack of competition shall not be determined solely on the basis of the number of Bidders. If, following IsDB No-Objection, all Bids are rejected, the Beneficiary shall review the reasons for the rejection and consider revising the conditions of Bidding Documents, design and specifications, the scope of the contract, or a combination of these, before inviting new Bids.
- 2.98 If only one (1) Bid has been received or is admitted for detailed evaluation, and is found to be technically and financially responsive compared to market prices, it may be considered that a competitive procedure has taken place, provided that IsDB is satisfied that all required procedures (e.g. advertising the RFB and performing the evaluation process) have been adequately carried out and that the justifications given are acceptable.
- 2.99 If the rejection of all Bids is due to a lack of competition, wider advertising shall be considered. If the rejection is due to most or all of the Bids being non-responsive, new Bids with improved clarity of scope, specifications and conditions may be invited, with IsDB No-Objection, from the initially prequalified Bidders (if there was no Prequalification, from only those Bidders that submitted Bids), and a reasonable amount of time shall be allowed for the submission of new Bids.
- 2.100 IsDB No-Objection shall be obtained before rejecting all Bids, soliciting new Bids, selecting the only single Bid received or evaluated, or entering into negotiations with the Bidder offering maximum VfM.

Notification of Intention to Award

- 2.101 Following the decision to award the contract, the Beneficiary shall promptly and simultaneously notify, by the quickest means available (e.g. email or facsimile) each responsive Bidder of its intention to award a contract to the successful Bidder. This is called the Notification of Intention to Award. The transmission of the Notification of Intention to Award activates the Standstill Period. The Notification of Intention to Award shall contain:
- a) the successful Bidder's name and address and the contract price;
 - b) the names of all Bidders that submitted responsive Bids and their Bid price and evaluated price;

- c) a brief statement, to each of the unsuccessful Bidders, of the reasons why its Bid was unsuccessful. In no case shall any confidential information provided by another Bidder in its Bid be disclosed to any of the other Bidders;
- d) the date the Notice of Intention to Award was transmitted;
- e) the date the Standstill Period is due to end; and
- f) instructions on how to request a debriefing and/or submit a procurement-related complaint in relation to the decision to award the contract.

Standstill Period

- 2.102 For each contract financed by IsDB, the Beneficiary shall include in the applicable Bidding Documents a Standstill Period of a minimum of ten (10) Business Days (which may be extended as described below) between the date of transmission of the Notification of Intention to Award the contract and the contract signature.
- 2.103 Notwithstanding Paragraph 2.102, there shall not be a requirement for a Standstill Period in the following situations:
- a) an emergency situation recognized by IsDB;
 - b) a call-off process under a framework agreement;
 - c) when Direct Contracting is used; or
 - d) only (1) one Bid was submitted in an open competitive process.

Debriefing

- 2.104 If, after receipt of the Notification of Intention to Award the contract, an unsuccessful Bidder is not satisfied with the written explanation given for the grounds on which its Bid was not selected, it may seek a debriefing from the Beneficiary. The request for debriefing must be made within three (3) Business Days of receipt of the Notification of Intention to Award.
- 2.105 If the Beneficiary receives a request for debriefing within the deadline, it is required to provide a debriefing within five (5) Business Days, unless it decides, for justifiable reasons, to provide the debriefing outside this time frame. In that case, the Standstill Period shall automatically be extended until five (5) Business Days after the debriefing is provided. If more than one (1) debriefing is so delayed, the Standstill Period shall not end earlier than five (5) Business Days after the last debriefing takes place. The Beneficiary shall promptly inform, by the quickest means available, all Bidders of the extended Standstill Period. For contracts subject to Prior Review, the Beneficiary shall simultaneously send the information on the extended Standstill Period to IsDB.
- 2.106 If the Beneficiary receives a request for debriefing later than the deadline of three (3) Business Days, it should provide the debriefing as soon as practicable, and normally no later than fifteen (15) Business Days from the date of publication of the Contract Award Notice. Requests for debriefing received after the deadline of three (3) Business Days shall not lead to an extension of the Standstill Period.

- 2.107 Debriefings of unsuccessful Bidders may be done verbally (e.g. by telephone, teleconference) or face to face (at a meeting). The Beneficiary will arrange for a debriefing at the appropriate level and with relevant staff. The purpose of the debriefing is only to discuss the evaluation of the Bidder's Bid, and not those of competitors. The Beneficiary shall not impose undue formal requirements that would restrict the Bidder's ability to receive a timely and meaningful debriefing. The Bidder shall bear its own costs of attending a debriefing meeting.
- 2.108 As a minimum, the debriefing shall repeat the information contained in the Notification of Intention to Award and respond to any related questions from the unsuccessful Bidder. The debriefing shall not include:
- a) point-by-point comparisons with another Bidder's Bid; or
 - b) information that is confidential or commercially sensitive to other Bidders.
- 2.109 A written summary of each debriefing shall be included in the official procurement records, and copied to IsDB for contracts subject to Prior Review.

Procurement-related complaint during the Standstill Period

- 2.110 If the Beneficiary receives a written procurement-related complaint from any participating Bidder within the Standstill Period, it is required immediately to acknowledge receipt of the complaint, and promptly take appropriate action, including preparation of a written response. Simultaneously, the Beneficiary shall inform IsDB and shall provide IsDB with all relevant information and documentation, including its proposed course of action (together with the reasons for it) and a draft response to the complaint, for IsDB review.
- 2.111 In the case of Prior Review, if, as a result of the review of a complaint, the Beneficiary proposes to change its contract award recommendation, it also furnishes IsDB with a revised Evaluation Report. The Beneficiary shall not award the contract without receiving IsDB No-Objection. If the Beneficiary does not receive IsDB No-Objection during the Standstill Period, the Standstill Period is automatically extended until IsDB No-Objection is received.

Award of contract

- 2.112 The award of contract is subject to IsDB No-Objection following the Standstill Period and shall be made, within the period of the validity of Bids, to the Bidder that meets the appropriate standards of technical capability and financial resources and whose Bid has been determined to offer maximum VfM. Such a Bidder shall not be required, as a condition of the award, to undertake responsibilities or work not stipulated in the specifications or to modify its Bid as originally submitted.
- 2.113 The Beneficiary shall furnish IsDB with a copy of the signed contract, together with the first request for disbursement and the performance guarantee.

Contract Award Notice

- 2.114 After the award of contract, the Beneficiary shall publish a Contract Award Notice on the UNDB Online or DgMarket websites, in addition to IsDB's external website. In the case of NCB, the Contract Award Notice should be published using the same media as used for the SPN, in accordance with Paragraph 2.7. The Contract Award Notice shall contain:
- a) the name and reference number of the contract being awarded;
 - b) the name of the awardee;
 - c) the subject matter of the contract; and
 - d) the value and duration of the contract.
- 2.115 In the case of Prior Review, a contract which is awarded without IsDB No-Objection shall not be eligible for IsDB Project Financing.

CHAPTER 3 – OTHER METHODS OF PROCUREMENT

General principles

- 3.1 There may be circumstances where open ICB or ICB/MC are not the most economic or efficient methods for procurement, and where other methods may be appropriate. In determining the most advantageous method for the Beneficiary, IsDB will take into account the core procurement principles of economy, efficiency, fairness and effectiveness, as well as equal opportunity, in the interest of the Beneficiary. The appropriate methods and procedures, and the categories of Goods, Works and/or related services to which they apply, shall be agreed between the Beneficiary and IsDB in the Financing Agreement. Packages shall not be split into smaller units to make them less attractive for ICB or ICB/MC or to distribute various lots to different Bidders to widen Bidder participation at the cost of economy and efficiency. VfM should remain the main objective of the Beneficiary. If applicable, packages may be divided into efficient lots that can be handled by local or smaller Contractors, while at the same time allowing larger Bidders to bid for the entire package and offer discounts in the case of multiple contract awards, which reduces the cost to the Beneficiary. The other methods of procurement are described below in descending order of preference. The procedures for Bidding, evaluation and contract award for these methods are similar to the procedures for ICB and ICB/MC in these Guidelines, unless otherwise indicated.

Limited International Bidding

- 3.2 Limited International Bidding (LIB) is essentially ICB (or ICB/MC) by direct invitation without open advertisement. It may be an appropriate method of procurement when:
- a) the contract values are small;
 - b) there are only a limited number of Firms/manufacturers of the particular Goods under consideration;
 - c) the product under consideration is unique/specialized; and/or
 - d) other exceptional reasons may justify departure from ICB procedures, such as in cases of emergency or following a natural disaster. Under LIB, Beneficiaries shall prepare, and submit to IsDB for No-Objection, a list of potential Suppliers, manufacturers and/or Contractors from eligible MCs or non-MCs as the case may be, but broad enough to ensure competitive prices. Such a list should include all Firms/manufacturers/Contractors when there is only a limited number. In all respects other than advertisement, ICB and ICB/MC procedures apply, including submission of the draft Bidding Documents to IsDB for No-Objection.

National Competitive Bidding

- 3.3 NCB is the competitive Bidding procedure normally used for public procurement in the country of the Beneficiary. It may be the most efficient and economical way of procuring

Goods, Works and/or related services when, by their nature or scope, they are unlikely to attract foreign competition because:

- a) the contract values are relatively small;
- b) Works are scattered geographically or spread over time;
- c) Works are labour-intensive; or
- d) the Goods, Works and/or related services are available locally at prices below the international market and are adequate in terms of efficiency and prompt delivery.

- 3.4 NCB procedures may also be used when the advantages of ICB or ICB/MC are clearly outweighed by the administrative or financial burden involved. To be acceptable for use in IsDB-financed procurement, NCB procedures shall be reviewed and modified as necessary to ensure that they reflect the core procurement principles of economy, efficiency, fairness and effectiveness, and broad consistency with the provisions included in Section 1 of these Guidelines. NCB will be open to domestic Firms in accordance with the criteria described in Paragraph 1.15. Any eligible Firms from outside the Beneficiary's country are eligible to participate on the same terms and with the same conditions that apply to national Firms.

Advertising under National Competitive Bidding

- 3.5 The SPN shall be advertised when the Bidding Documents are available for interested Bidders at least twice on two (2) non-consecutive days within a span of ten (10) days on the Beneficiary's website and, where available, in other appropriate publically accessible media with wide distribution. The SPN shall contain information concerning the Beneficiary, the scope, purpose and total amount of the project, the name, telephone or fax number and address of the Beneficiary or the Beneficiary's agency or Procurement Agent responsible for the procurement, as well as their website and email address, if available.

Use of Beneficiary's procurement documents and Standard Bidding Documents under National Competitive Bidding

- 3.6 The Beneficiary may use its own procurement documents, if they are acceptable to IsDB; otherwise IsDB's SBDs should be used. They shall specify the languages that will govern for NCB. If prepared in a national language different from IsDB's three (3) official languages (Arabic, English or French), IsDB shall be provided with a certified translation. The currency of the Beneficiary's country is generally used for the purposes of Bidding and payment. Generally, Bidders should be allowed not less than four (4) weeks to prepare and submit Bids. The Bidding procedures shall provide for adequate competition to ensure reasonable prices. The award of contract shall be published using the same media as used for the SPN, in accordance with Paragraph 2.7.

Shopping

- 3.7 Shopping is a procurement method (comparing written price quotations) that is used to ensure competition has taken place. In the case of Goods, written price quotations shall normally be obtained from at least (3) Firms, including foreign Firms where applicable. In the case of small Works, written price quotations shall normally be obtained from at least three (3) domestic Firms.
- 3.8 This method is appropriate for procuring readily available off-the-shelf Goods or standard-specification commodities, or simple local civil Works that are small in value. Requests for quotations at the international level shall normally be obtained from at least three (3) reputable Firms in at least two (2) eligible countries. The requests shall identify IsDB as the financing source, state the payment terms and provide for a reasonable time to submit quotations (between ten (10) and thirty (30) days).
- 3.9 The quotations for Goods shall provide the description, technical specifications, quantity and cost of the Goods, including the cost of related services such as inland transportation and insurance as the case may be, as well as the estimated delivery time if not immediately available. Quotations for Works shall provide the necessary drawings, estimated quantities and completion time. The quotations shall be submitted in writing, including by email or facsimile. This procurement method shall be agreed between IsDB and the Beneficiary in the Financing Agreement.
- 3.10 The analysis and recommendation for award shall be recorded in a brief Evaluation Report, signed by the Beneficiary, which shall be copied to IsDB. Purchases below a monetary threshold set in the Financing Agreement may be carried out without prior IsDB No-Objection.

Direct Contracting

- 3.11 Direct Contracting (also known as sole-source or single-source contracting) without competition involves dealing directly with a particular Firm. Subject to IsDB No-Objection, it may be allowed in the following situations:
- a) when buying small or off-the-shelf items of low value;
 - b) when standardization is important and equipment and spare parts required to expand or repair existing equipment must be procured from the original Firm or from a Firm offering identical Goods;
 - c) when the equipment is proprietary in character and is obtainable from only one (1) Firm;
 - d) when the Contractor responsible for a process design requires the purchase of critical items from a particular Firm as a condition of the performance guarantee;
 - e) when, after the items originally envisaged for the project have been procured through ICB, an additional quantity of the same items is urgently needed to meet the requirements of the project, and when IsDB can be satisfied that there is no advantage to obtaining these items through ICB or NCB;

- f) when the civil Works to be undertaken are a natural extension of an earlier or ongoing job for which the corresponding contract had been awarded following ICB or NCB to IsDB's satisfaction, and when it can be shown that the engagement of the same Contractor will be more economical than normal Bidding and will ensure compatibility of results in terms of the quality of work; or
- g) in exceptional cases, such as in response to a natural disaster.

Force Account

- 3.12 Force Account involves the use of the Beneficiary's own workforce, equipment and/or other resources in carrying out Works. This method is employed in exceptional circumstances:
- a) when the size, nature and location of the Works are small and scattered or in remote areas, and qualified Firms are unlikely to bid for them;
 - b) when the quantities of work cannot be defined in advance;
 - c) when ongoing Works are interrupted due to a breach of contract or Contractor failure and need to be continued to avoid serious damage; or
 - d) when an emergency, such as a natural disaster, requires immediate attention.
- 3.13 IsDB needs to be satisfied that the Beneficiary's construction facilities are adequate and efficient, and that the Beneficiary has the capability to undertake the Works expeditiously and at reasonable cost. In cases where the Beneficiary's implementing agency is distinct from the executing agency, the two (2) shall enter into a contract for the execution of the Works, subject to IsDB No-Objection.

Community participation

- 3.14 Where, in the interest of project sustainability or to achieve certain specific social objectives of the project, it is desirable to: (a) call for the participation of local communities and/or non-governmental organizations (NGOs) in the delivery of Goods, Works or related services; (ii) increase the utilization of local know-how and materials; or (iii) employ labour-intensive and other appropriate technologies, the procurement procedures, specifications and contract packaging shall be suitably adapted to reflect these considerations, provided these are efficient.

Public–Private Partnerships

- 3.15 A PPP is a long-term contract between a private party and a government entity to provide a public asset or service, in which the private party bears significant risk and management responsibility and remuneration is linked to performance.
- 3.16 IsDB may finance the cost of a project or a contract procured under PPP arrangements, Build, Own and Operate (BOO), Build, Operate and Transfer (BOT), Build, Own, Operate and Transfer (BOOT) concessions or similar types of private-sector arrangements, if the selection procedures:

- a) are Fit-for-Purpose and reflect VfM through the application of IsDB's core procurement principles;
- b) reflect the application of the *IsDB Group Anti-Corruption Guidelines on Preventing and Combating Fraud and Corruption in IsDB Group-Financed Projects*; and
- c) are consistent, as appropriate, with the requirements set out in these Guidelines.

3.17 For details, see Annex E. The private partner selected in accordance with Annex E then procures the Goods, Works and related services, using its own procedures.

CHAPTER 4 – SPECIAL PROCUREMENT ARRANGEMENTS

Use of Procurement Agents and management Contractors

- 4.1 When Beneficiaries lack the necessary organization, resources and/or experience, they may wish (or be required by IsDB) to employ as their Procurement Agent a Firm specializing in handling international procurement. The Procurement Agent shall, on behalf of the Beneficiary, strictly follow all the procurement procedures outlined in the Financing Agreement and these Guidelines, including the use of IsDB's SBDs, review procedures and other documentation. Management Contractors may be employed in a similar manner for a fee to contract for miscellaneous Works involving reconstruction, repairs, rehabilitation and new constructions in emergency situations, or where large numbers of small contracts are involved. If this procedure is funded by IsDB, IsDB's *Guidelines for the Procurement of Consultant Services under IsDB Project Financing* shall be used to acquire the services of the Procurement Agent or a management Contractor on a competitive basis.

Inspection agents

- 4.2 Pre-shipment inspection and certification of imports is one of the safeguards for the Beneficiary, particularly where the country has a large import programme. The inspection and certification usually covers quality, quantity and reasonableness of price. Imports procured through open or limited ICB procedures shall not be subject to price verification, but only verification for quality and quantity. However, imports not procured through open or limited ICB may additionally be subjected to price verification. The inspection agents are usually paid on a fee basis levied on the value of the Goods. Costs for the certification of imports shall not be considered in the evaluation of Bids under open or limited ICB.

Procurement in loans to financial intermediaries

- 4.3 When the Financing Agreement provides for the use of IsDB funds through an intermediary institution, such as an agricultural credit institution or a development finance company, to be used by Beneficiaries such as private-sector enterprises or autonomous commercial enterprises in the public sector for the partial financing of sub-projects, procurement is usually undertaken by the respective Beneficiaries in accordance with established local private-sector or commercial practices, which shall be acceptable to IsDB. However, even in these situations, open or limited ICB may be the most efficient and economical procurement method for the purchase of large single items or in cases where large quantities of Goods can be grouped together for bulk purchasing.

Procurement under Build, Operate and Transfer and similar private-sector arrangements

- 4.4 When IsDB is participating in financing the cost of a project procured under BOO/BOT/BOOT or a similar type of private-sector arrangement, either of the following procurement procedures shall be used, as set forth in detail in the Financing Agreement:

- a) The Contractor under BOO/BOT/BOOT¹⁷ or a similar type of contract shall be selected under ICB or LIB procedures acceptable to IsDB, which may include several stages to arrive at the optimal combination of evaluation criteria, such as the cost and magnitude of the financing offered, the performance specifications of the facilities offered, the cost charged to the user or purchaser, other income generated for the Beneficiary or purchaser by the facility, and the period of the facility's depreciation. The Contractor selected in this manner shall then be free to procure the Goods, Works, Consultant Services or related services required for the facility from eligible sources, using its own procedures. In this case, the Financing Agreement shall specify the type of expenditures incurred by the Contractor towards which IsDB Project Financing will apply; or
- b) If the said Contractor has not been selected in the manner set forth in sub-Paragraph 4.4(a) above, the Goods, Works, Consultant Services or other related services required for the facility, and to be financed by IsDB, shall be procured in accordance with open or limited ICB or LIB procedures.

Operations involving a programme of imports

- 4.5 When the Financing Agreement provides financing for a programme of imports handled by the Beneficiary's public-sector entities, the RFB selection method, with simplified advertising and currency articles, may be used for large-value contracts, as defined in the PP. The simplified articles for notification do not require a GPN. SPNs shall be advertised on the Beneficiary's website or electronic portal with free national and international access, in addition to UNDB Online and the IsDB's external website and, where available, other appropriate publically accessible media with wide distribution. The period allowed for submission of Bids may be reduced to twenty (20) Business Days from the date of publication of the SPN on UNDB Online. Bidding and payment may be limited to one (1) currency widely used in international trade. For smaller contracts identified in the PP, the Beneficiary's public-sector entities may procure the imports using the applicable procedures of the public-sector entity handling the imports, if acceptable to IsDB.
- 4.6 When the private-sector entity handles the procurement of imports, established commercial practices may be applied.
- 4.7 Pre-shipment inspection and certification of imports is one of the risk mitigation measures for the Beneficiary, particularly for a large import programme. The inspection and certification usually covers quality, quantity and reasonableness of price. Imports procured using the RFB selection method may not be subject to price verification, but only verification of quality and quantity. However, imports procured using less competitive methods than RFB may additionally be subjected to price verification. Physical inspection services may also be included.

17 For projects such as toll roads, tunnels, harbours, bridges, power stations, waste disposal plants and water distribution systems.

Procurement of commodities

- 4.8 Procurement of commodities refers to procuring items such as grain, animal feed, cooking oil, fertilizer or metals. The procurement of commodities often involves multiple awards for partial quantities to ensure security of supply, and multiple purchases over a period of time to take advantage of favourable market conditions and to keep inventories low.

Procurement from specialized agencies

- 4.9 There may be situations in which procurement directly from specialized agencies, acting as Suppliers or Contractors, pursuant to their own procedures, may be the most appropriate way of procuring:
- a) small quantities of off-the-shelf Goods, primarily in the fields of education and health; or
 - b) specialized products with a limited number of Suppliers, such as for vaccines or drugs.

Performance-based contracts

- 4.10 Performance-based contracts are contractual relationships in which payments are made for measured outputs (performance targets), instead of inputs. The outputs aim to satisfy functional needs in terms of quality, quantity and reliability. Payment is made in accordance with the quantity of outputs delivered, subject to their delivery at the level of quality required. Reductions from payments – or retentions – may be made for a lower level of quality of outputs, and, in certain cases, premiums may be paid for a higher level of quality. The Contractor is free to propose the most appropriate solution, based on mature and well-proven experience, and shall demonstrate that the level of quality specified in the Bidding Documents will be achieved.

Procurement under disaster and emergency assistance

- 4.11 Procurement of Goods, Works or related services under disaster and emergency assistance shall incorporate greater flexibility. ICB/MC requirements shall be relaxed in favour of NCB, LIB or shopping, as appropriate, with an abbreviated Bidding period. Direct Contracting to Contractors and Suppliers, under existing IsDB Project Financing arrangements, shall be allowed for new contracts, with unit rates negotiated around those in effect for the existing contracts, and adjustments, as required, for inflation and physical factors.

Value engineering

- 4.12 Value engineering is a systematic and organized approach used to provide the necessary functions in a project at the optimal cost. Value engineering promotes the reduction of time or the substitution of materials, methods or less expensive alternatives, all without sacrificing functionality, longevity or reliability. Value engineering should normally enhance performance, reliability, quality, safety, durability, effectiveness or other desirable characteristics. Bidding Documents may allow the application of value

engineering. The mechanism for the application of value engineering during contract execution shall be as specified in the contract documents.

- 4.13 For complex or high-value contracts, provisions may be included that allow for value engineering – that is, suggested value engineering proposals by the Contractor to reduce costs, increase performance, improve completion times or create other benefits to the Beneficiary. The value engineering proposal is prepared at the Contractor’s cost, and the decision of whether or not to adopt the proposal rests with the Beneficiary. The contract shall specify how any benefits arising from the proposal shall be shared between the parties.

Negotiation

- 4.14 In international competitive procurement subject to Prior Review, IsDB may agree to the Beneficiary’s use of negotiations following Bid evaluation and before final contract award.
- 4.15 Any negotiation shall be in accordance with the requirements of the RFB. If negotiations are undertaken, they shall be held in the presence of a Probity Assurance Provider, agreed with IsDB. Negotiations may involve terms and conditions, price and/or social, environmental and innovative aspects, as long as they do not change the minimum requirements of the Bid.
- 4.16 The Beneficiary shall negotiate first with the Bidder that has been evaluated as offering maximum VfM. If the outcome is unsatisfactory or an agreement is not reached, the Beneficiary may then negotiate with the Bidder offering next best VfM, and so on down the list until a satisfactory outcome is achieved.

Best and Final Offer

- 4.17 In international competitive procurement subject to Prior Review, IsDB may agree to the Beneficiary’s use of Best and Final Offer (BAFO). BAFO is an option under which the Beneficiary invites Bidders that have submitted substantially responsive Bids to submit their BAFOs. Such a process may be appropriate when the procurement process would benefit from Bidders having a final opportunity to improve their Bids, including by reducing prices, clarifying or modifying their Bid or providing additional information. The Beneficiary shall inform Bidders in the RFB document:
- a) if a BAFO is to be used;
 - b) that Bidders are not obliged to submit a BAFO; and
 - c) that there will be no negotiation after the BAFO.
- 4.18 If BAFO is to be applied, the Beneficiary shall engage the services of a Probity Assurance Provider, agreed with IsDB.

Beneficiary systems

- 4.19 IsDB may at its sole discretion (subject to its policies and rules, and applicable fiduciary and operational requirements) request that a Beneficiary use its own procurement

policies, procedures and systems when it believes such systems are compatible and comply with all appropriate IsDB policy, procedures and Guidelines that may exist at that time.

Annex A – IsDB’s Prior and Post Reviews

1. Introduction

- 1.1 This Annex outlines IsDB’s procurement oversight function in discharging its fiduciary responsibilities. IsDB exercises procurement oversight through a risk-based approach comprising Prior and Post Reviews of the Beneficiary’s procurement activities and such independent reviews as IsDB considers necessary.
- 1.2 Whether procurement is subject to Prior or Post Review is determined on the basis of the project and contract-specific procurement risks. These risks are assessed by IsDB during project preparation and reassessed and updated during project implementation. A project/contract status may change from Post to Prior Review in certain circumstances described below.

2. Procurement Plan

- 2.1 For each contract, the requirement for Prior or Post Review shall be specified in the PP. IsDB shall review all PPs, including any updates, which are prepared by the Beneficiary in accordance with the provisions of Paragraphs 1.42–1.45. PPs shall be consistent with the Financing Agreement, these Guidelines and the project’s/contract’s proposed implementation programmes and disbursement schedules.
- 2.2 During project implementation, IsDB monitors and reassesses the risk and risk mitigation measures. If necessary and appropriate, as determined by IsDB, IsDB may require the Beneficiary to revise the Prior and/or Post Review requirements in the PP.

3. Prior Review

- 3.1 IsDB normally carries out Prior Reviews of the Beneficiary’s procurement activities that are of high value and/or high risk, to determine whether the procurement is carried out in accordance with the requirements of the Financing Agreement and these Guidelines.
- 3.2 All contracts above the amount specified in the Financing Agreement shall be subject to IsDB Prior Review. In these cases the following provisions outline the Beneficiary’s obligations:

Prequalification

- a) In cases where Prequalification is used, the Beneficiary shall, before Prequalification submissions are invited, furnish IsDB with the draft Bidding Documents to be used, including the text of the invitation to prequalify, the Prequalification questionnaire, the evaluation methodology and a description of the advertising procedures to be followed. The Beneficiary shall introduce such modifications in said procedures and Bidding Documents as IsDB shall reasonably request.
- b) Subsequently, the Beneficiary shall furnish to IsDB for its comments the Evaluation Report evaluating the applications it received. This report shall include a list of the recommended prequalified applicants, with a statement of their qualifications, and a list of any applicants that are excluded from Prequalification, together with the

reasons for their exclusion. The Beneficiary shall furnish this information to IsDB before the applicants are notified of the Beneficiary’s decision, and the Beneficiary shall make such additions to, deletions from or modifications to the list as IsDB shall reasonably request.

Pre-Request for Bid

- c) Before Bids are invited, the Beneficiary shall furnish to IsDB for its comments the draft Bidding Documents, including the invitation to Bid, ITB, BDS, the basis of the Bid evaluation and contract award, the proposed conditions of contract, and the specifications for the supply of Goods, installation of equipment or civil Works, as the case may be.
- d) Where Prequalification has not been used, the Beneficiary shall include a description of the advertising procedures to be followed. After review by IsDB, the Beneficiary shall make such modifications to the Bidding Documents as IsDB shall reasonably request. Any further modification shall require IsDB No-Objection before the Bidding Documents are issued to prospective Bidders.

Post-Bid evaluation

- e) After Bids have been received and evaluated, and before a decision on the award is made and the Notification of Intention to Award is transmitted, the Beneficiary shall furnish to IsDB a detailed Bid Evaluation Report (using IsDB’s standard Bid Evaluation Report form) in sufficient time for IsDB to review it. It shall detail the evaluation and comparison of Bids, together with the recommendation for award and such other information as IsDB shall reasonably request.
- f) If IsDB determines that the recommended award is inconsistent with the Financing Agreement or these Guidelines, it will promptly inform the Beneficiary and state the reasons for such determination. Otherwise, IsDB will provide its No-Objection to the Beneficiary to proceed with the Notification of Intention to Award the contract.
- g) The Notification of Intention to Award activates the Standstill Period (as per Paragraph 2.101). When the Standstill Period expires, and, if appropriate, upon successful completion of any related actions, the Beneficiary will confirm the award to the successful Bidder and proceed to the signing of the contract and publish the Contract Award Notice.
- h) If the Beneficiary requires an extension of the Bid validity period to complete the evaluation process, obtain necessary approvals and clearances and/or make the award, it shall seek IsDB No-Objection:
 - i. for the first request for extension, if it is longer than forty-five (45) calendar days; and
 - ii. for all subsequent requests for extension, irrespective of the period.
- i) The terms and conditions of a contract shall not, without IsDB’s approval, materially differ from those contained in the Prequalification or RFB Bidding Documents. A copy of the signed contract shall be furnished to IsDB promptly after it is signed, together

with the first application for withdrawal of funds from IsDB’s Project Financing in respect of the contract. The description and amount of the contract, together with the name and address of the successful Bidder, shall be subject to public disclosure by IsDB once it receives the copy of the contract.

4. Contract amendments, modifications or extensions

- 4.1 The Beneficiary shall request IsDB No-Objection in relation to any proposed extension, modification or change order to a contract. When seeking No-Objection, the Beneficiary shall provide the reasons for the request. A proposed extension, modification or change order may relate to, for example:
- a) a material extension of the stipulated time for performance of a contract;
 - b) agreeing to any modification or waiver of the conditions of contract; or
 - c) issuing a change order (except in cases of extreme urgency) which would, in aggregate, increase the original amount of the contract by more than fifteen (15) per cent of the original price.
- 4.2 If IsDB determines that the request would be inconsistent with the provisions of the Financing Agreement or these Guidelines, it shall promptly inform the Beneficiary and state the reasons for its determination. The Beneficiary shall send a copy of all amendments to the contract to IsDB for its records.

5. Post Review

- 5.1 IsDB carries out Post Reviews of the Beneficiary’s procurement activities to determine whether they comply with the requirements of the Financing Agreement and these Guidelines. Post Reviews are normally carried out by IsDB. However, IsDB may use a third party to carry out Post Reviews. Any such third party shall be acceptable to IsDB, and carry out the reviews in accordance with the TOR provided to it by IsDB.
- 5.2 Where Post Reviews apply, the Beneficiary shall retain all procurement documentation with respect to each contract not governed by Prior Review. This includes all Bidding Documents, records of selection of Contractors, documentation relating to project implementation, and all records up to two (2) years after the closing of the Financing Agreement.
- 5.3 Depending on the nature of the risks and scope of the project (e.g. involving many low-value and simple contracts), IsDB may also agree with the Beneficiary that it appoints an independent entity to carry out the Post Review, in accordance with terms, conditions and reporting procedures acceptable to IsDB. In such cases, IsDB will review the reports prepared by the independent entity and submitted by the Beneficiary. IsDB retains the right to directly conduct Post Reviews during project implementation as may be needed.

6. Change from Post Review to Prior Review

- 6.1 A contract whose cost estimate was below the IsDB Prior Review threshold (as indicated in the PP) shall fall under Prior Review if the price of the successful Bid exceeds the threshold. All procurement documentation already processed, including Bidding Documents, the Bid Evaluation Report and the recommendation for award, shall be submitted to IsDB for its Prior Review and No-Objection before the Notification of Intention to Award the contract may be transmitted.
- 6.2 When, on the other hand, the price of the successful Bid falls below the Prior Review threshold, the Prior Review process shall continue.
- 6.3 Under certain circumstances, IsDB may require Prior Review to be undertaken for a contract below the Prior Review threshold, such as in the case of a complaint it has determined to be of a serious nature. Also, when the procurement method requires change due to higher or lower cost estimates than previously assessed – for example, from NCB to ICB and inversely – the Beneficiary shall modify the PP and submit it to IsDB for review and No-Objection.

7. Misprocurement

- 7.1 IsDB may declare misprocurement for any of the reasons provided in Paragraph 1.37. In doing so, IsDB shall promptly inform the Beneficiary of such determination. The reasons for declaring misprocurement include if IsDB determines that:
- a) the Goods, Works or related services were not procured in accordance with the agreed procedures and methods reflected in the Financing Agreement and/or these Guidelines;
 - b) the Goods, Works or related services were not procured in accordance with the agreed procedures and methods reflected in the PP to which IsDB gave its No-Objection; or
 - c) the contract is not consistent with the agreed procedures and methods reflected in the Financing Agreement, Guidelines and/or the PP.

8. Beneficiary records

- 8.1 For Prior and Post Review contracts, the Beneficiary shall retain all documentation with respect to each contract during Contractor selection, awarding the contract and project implementation for a period of two (2) years after the closing date of the Financing Agreement. This documentation shall include, but is not be limited to:
- a) all Bidding Documents;
 - b) all original applications for Prequalification and Bids;
 - c) the Bid Evaluation Report, the recommendation for contract award and all documents related to or in support of these steps;
 - d) the signed original of each contract and all subsequent amendments or addenda; and

- e) all documents and correspondence related to the implementation of the contract, including payment invoices or certificates, as well as the certificates for the inspection, delivery, completion and acceptance of Goods, Works and related services.

8.2 For contracts awarded on the basis of Direct Contracting, the records retained by the Beneficiary shall include the justification for using this method, the technical and financial capacity of the Firm selected, and the signed original contract. The Beneficiary shall furnish such documentation to IsDB for examination if requested to do so by IsDB or its Consultants/auditors.

9. Translations

9.1 To facilitate IsDB Prior or Post Review, if national Bidders were permitted to submit their Bids in the national language (other than English, Arabic or French), the Beneficiary shall also furnish to IsDB certified translations of the winning Bid, Evaluation Report, draft or signed contract and any other documents that IsDB reasonably requests.

Annex B – Guidance to Bidders

1. Purpose

- 1.1 This Annex provides guidance to potential Bidders interested in participating in IsDB financed contract opportunities.

2. Responsibility for procurement activities

- 2.1 As emphasized in Paragraph 1.7 of these Guidelines, the Beneficiary is legally responsible for all procurement activities. It invites, receives and evaluates Bids and awards contracts. The Bidding Documents issued by the Beneficiary, and the contracts signed between the Beneficiary and Contractors, define the rights and obligations of the Beneficiary, Bidders and Contractors.

3. IsDB's role

- 3.1 IsDB publishes SBDs for various types of selection methods. It is mandatory for the Beneficiary to use these documents, with minimum changes to address country- and project-specific issues. The Bidding Documents are finalized and issued by the Beneficiary.
- 3.2 IsDB reviews the Beneficiary's procurement activities. This includes the Beneficiary's Bidding Documents, procurement procedures, Bid evaluations, award recommendations and contract terms and conditions to ensure that the procurement is carried out in accordance with the requirements of the Financing Agreement (between IsDB and the Beneficiary) and these Guidelines. Except for small contracts (below monetary thresholds specified in the Financing Agreement), IsDB reviews the documents before they are issued, as described in Annex A.
- 3.3 If at any time in the procurement process (even after the award of contract), IsDB concludes that the agreed procedures were not followed in any material respect, it may declare misprocurement. However, if a Beneficiary has awarded a contract after obtaining IsDB No-Objection, IsDB will declare misprocurement only if the No-Objection was issued on the basis of incomplete, inaccurate or misleading information furnished by the Beneficiary. Furthermore, if IsDB determines that representatives of the Beneficiary or the successful Bidder engaged in corrupt or fraudulent practices, it may impose the applicable sanctions set forth in Paragraphs 1.37 and 1.38 of these Guidelines.

4. Information on Bidding

- 4.1 Information on Bidding opportunities under IsDB Project Financing may be obtained from the GPNs and SPNs published on IsDB's website, the UNDB Online and DgMarket websites or any other approved medium. Information is also made available in specific invitations to prequalify or bid sent to potential or prequalified Bidders.

5. Bidder's role

- 5.1 Only the specific Bidding Documents issued by the Beneficiary govern each individual procurement. An applicant is a Firm that applies to prequalify. A Bidder is a prequalified applicant or, where no Prequalification has taken place, a Firm that submits a Bid in response to an RFB.
- 5.2 Once a potential applicant/Bidder receives the Bidding Documents, it should study the documents carefully to decide if it can meet the technical, commercial and contractual conditions and, if so, proceed to prepare its application to prequalify/bid. The applicant/Bidder should then critically review the Bidding Documents to see if there is any ambiguity, omission or internal contradiction, or any feature of specifications or other conditions which appear to be unclear, discriminatory or restrictive. This includes checking if any of the provisions in the Bidding Documents are inconsistent with these Guidelines. If so, applicants/Bidders should seek clarification from the Beneficiary, in writing, within the time period specified in the Bidding Documents for seeking clarifications.
- 5.3 The criteria and methodology for the shortlisting of applicants or the selection of the successful Bidder are outlined in the Bidding Documents. These are detailed in the ITB, BDS, Bid evaluation and specifications. If they are not clear, clarification should be sought from the Beneficiary.
- 5.4 It is the responsibility of the applicant/Bidder to ensure submission of a fully responsive and compliant application to prequalify or bid. This includes all supporting documents requested in the Bidding Documents, all signature and appropriate numbers of copies. Non-compliance with critical (technical and commercial) requirements will result in rejection of the application/Bid.
- 5.5 If a Bidder wishes to propose deviations to a non-critical requirement, or propose an alternative solution, the Bidder should first quote the price for the fully compliant Bid and then separately indicate the adjustment in price that can be offered if the deviation or alternative solution is accepted. Once Bids are received and publicly opened, Bidders will not be required or permitted to change the price or substance of their Bids.

6. Confidentiality

- 6.1 The process of Bid evaluation shall be confidential until the Notification of Intention to Award is transmitted to all participating Bidders. This is essential to ensure the integrity of the evaluation and contract award process. If during evaluation, a Bidder wishes to bring additional information to the notice of the Beneficiary, IsDB or both, it should do so in writing.

7. Action by IsDB in relation to issues, questions or complaints

- 7.1 The Beneficiary is responsible for the selection and award procedures. Bidders should raise any question, issue or procurement-related complaint with the Beneficiary in writing (email or fax are usually sufficient). However, Bidders may send copies of such

communications to IsDB, or write to IsDB directly if the Beneficiary does not respond promptly or the communication is a complaint against the Beneficiary. Procurement-related complaints shall be handled according to the relevant provisions of Paragraph 1.48 and Annex C of these Guidelines.

- 7.2 Communications received by IsDB from potential Bidders prior to the closing date for submission of Bids will, if appropriate, be referred to the Beneficiary with IsDB's comments and advice for action or response.
- 7.3 Communications, including procurement-related complaints received by IsDB after the opening of the Bids, will be handled according to the relevant provisions of Annex C. Besides acknowledging receipt of communications, IsDB shall not enter into any discussion or correspondence with any Bidder during the evaluation and review procedure, until the Notification of Intention to Award the contract is issued.

8. Debriefing by IsDB

- 8.1 If, after receiving the Notification of Intention to Award, an unsuccessful Bidder has not received a satisfactory explanation of the reasons why its Bid was unsuccessful, it should write to the Beneficiary. If the Bidder is not satisfied with the explanation given by the Beneficiary, it may seek a meeting with IsDB by writing to the IsDB Procurement Manager. This is important for procurements subject to Prior Review. IsDB will arrange a meeting at the appropriate level and with relevant staff. The purpose of such a meeting is only to discuss the Bidder's Bid, and neither to reverse IsDB's position nor to discuss the Bids of competitors.

Annex C – Procurement-related complaints

1. Purpose

1.1 This Annex details the process for making a procurement-related complaint and the Beneficiary's obligations in administering and handling such complaints. It expands on the requirements of Paragraph 1.48 of these Guidelines. This Annex shall apply to procurement-related complaints, unless the PP provides for another method of handling such complaints, in which case the provisions set out in the PP shall apply.

2. Procurement-related complaint

2.1 A procurement-related complaint is a complaint:

- a) made in relation to a Beneficiary's procurement under an IsDB-financed project;
- b) by an 'interested party';
- c) relating to a pre-contract procurement issue;¹⁸ and
- d) challenging any of the following:
 - i. the Beneficiary's Bidding Documents;¹⁹
 - ii. the Beneficiary's decision to exclude the complainant from a procurement process prior to award of contract;²⁰ and/or
 - iii. the Beneficiary's decision to award the contract.²¹

2.2 This Annex deals only with procurement-related complaints from applicants and Bidders in relation to the procurement of Goods, Works and/or related services.²²

2.3 This Annex excludes post-contract issues. Once the contract is signed, the rights and obligations of the purchaser and Contractor are governed by the contract. Such contract disputes are to be resolved within the contractual framework and appropriate governing law. However, the Beneficiary shall promptly inform IsDB of any contract dispute arising that could trigger the use of a dispute resolution mechanism established under the contract, suspension or termination of the contract or court action. In addition, the Beneficiary is required to communicate to IsDB the actions it proposes to satisfactorily resolve the dispute in a timely manner. This is regardless of whether the procurement is subject to IsDB Prior or Post Review.

18 An issue that arises during the procurement process prior to the signing of the contract.

19 Any of the Bidding Documents issued by the Beneficiary, including Prequalification and RFB documents.

20 The Beneficiary's decision to exclude an applicant/Bidder from a procurement process at a point in the process prior to the transmission of the Notification of Intention to Award the contract.

21 The Beneficiary's decision to award the contract as per the Notice of Intention to Award the contract transmitted to participating Bidders.

22 This Annex excludes Consultant Services. For information about the procurement of Consultant Services, see IsDB's *Guidelines for the Procurement of Consultant Services under IsDB Project Financing*.

- 2.4 Complaints are not communications relating to clarifications regarding the Bidding Documents or procurement process. Such clarifications shall be dealt with through the clarifications process detailed in the Bidding Documents.

3. Interested party

- 3.1 A complainant must be an ‘interested party’ – a potential or actual applicant or Bidder. These are described as follows:
- a) **Potential applicants/Bidders:** Firms that are interested in participating in a Prequalification or, where there is no Prequalification, an RFB but have not yet submitted an application or Bid. Potential applicants/Bidders can seek to challenge the Prequalification or RFB procurement processes or Bidding Documents.
 - b) **Actual applicants/Bidders:** Firms that are participating in a procurement process by submitting an application or Bid.

4. Beneficiary’s roles and responsibilities

- 4.1 To promote an open and fair procurement process, the Beneficiary shall make every effort to address procurement-related complaints objectively and in a timely manner, with transparency and impartiality, and in accordance with Paragraph 1.48 of these Guidelines, and this Annex.
- 4.2 Specifically, the Beneficiary’s roles and responsibilities include:
- a) providing timely and sufficient information to applicants/Bidders, so that they can understand the basis for the Beneficiary’s decision and make an informed decision on whether to lodge a complaint challenging that decision;
 - b) promptly acknowledging complaints received;
 - c) resolving complaints promptly and fairly;
 - d) preserving the confidentiality and proprietary information of other applicants/Bidders, marked as such in their applications/Bids, including commercial and financial information and trade secrets; and
 - e) maintaining complete records of all debriefings, complaints and their resolution.

For procurements subject to Prior Review

- 4.3 For procurements subject to Prior Review, the Beneficiary shall:
- a) promptly inform IsDB of receipt of the complaint;
 - b) provide, for IsDB review, all relevant information and documentation, including a draft response to the complainant, once this is available; and
 - c) consult with IsDB promptly and forthrightly throughout the complaint review and resolution process.
- 4.4 For procurements subject to Prior Review, where the Beneficiary’s review of the complaint results in a modification of Bidding Documents, the Beneficiary changing its

decision to exclude the complainant from a process or the Beneficiary changing its contract award recommendation, the Beneficiary shall, upon receiving written confirmation from IsDB of the satisfactory resolution of the complaint;

- a) issue an amendment to Bidding Documents and, if necessary, extend the Application/Bid submission deadline; or
- b) promptly transmit to IsDB a revised Evaluation Report.

4.5 The Beneficiary shall not proceed with the next stage/phase of the procurement process, including awarding a contract, without first receiving from IsDB confirmation of the satisfactory resolution of the complaint. Notwithstanding this requirement, for procurement-related complaints challenging the Bidding Documents or exclusion prior to award, the Beneficiary should consult with IsDB about which, if any, further steps in the procurement process may appropriately be undertaken while the complaint is being considered.

5. Submission of procurement-related complaints

5.1 Interested parties should submit procurement-related complaints to the Beneficiary in a timely manner and at the appropriate stage in the procurement process. A timely manner is specified as follows. For complaints challenging the:

- a) **Beneficiary's Bidding Documents:** the complaint should be submitted to the Beneficiary at least ten (10) Business Days prior to the deadline for submission of applications/Bids, or, where the Beneficiary has amended the Bidding Documents, within five (5) Business Days after the issuing of the amendment, whichever is later;
- b) **Beneficiary's decision to exclude the complainant prior to the award of contract:** the complaint should be submitted to the Beneficiary within ten (10) Business Days following the Beneficiary's transmission to the interested party of notice of such exclusion; or
- c) **Beneficiary's decision to award the contract:** the complaint shall be submitted to the Beneficiary after receipt of the Notification of Intention to Award and prior to the expiry of the Standstill Period.

5.2 Procurement-related complaints shall be submitted in writing and include the following content:

- a) the name, contact details and address of the complainant;
- b) the complainant's interest in the procurement (as defined under Paragraph 2.1 of this Annex);
- c) the specific project, the procurement reference number and the current stage of the procurement process;
- d) any previous communication between the complainant and the Beneficiary on the matters addressed in the complaint;

- e) the nature of the complaint, and the perceived adverse impact on the complainant;
 - f) the alleged inconsistency with, or violation of, the applicable procurement Guidelines or procedures; and
 - g) any other information the complainant considers relevant to the complaint.
- 5.3 The Beneficiary shall acknowledge receipt of a complaint, in writing, within three (3) Business Days. The Beneficiary shall promptly inform IsDB of receipt of the complaint, regardless of whether the complaint is related to a procurement activity subject to Prior or Post Review.
- 5.4 Anonymous complaints will be considered and handled on their own merit. A complaint including allegations of Fraud and/or Corruption may be subject to separate and additional procedures.

6. Responding to a complaint

- 6.1 When handling a procurement-related complaint, the Beneficiary should ensure a timely and meaningful review of the complaint, including all relevant documentation, facts and circumstances related to it. The Beneficiary shall provide sufficient information in its response to the complainant, while maintaining the confidentiality of information provided by applicants/Bidders that they have marked in their applications or Bids as confidential.²³
- 6.2 A response to a procurement-related complaint shall be issued in writing and should, as a minimum, include the following elements:
- a) **a statement of issues** raised by the complainant that need to be addressed;
 - b) **facts and evidence** that, in the Beneficiary's view, are relevant to the resolution of the complaint;
 - c) **the decision and reference to the basis for the decision** – for example, specific parts of Bidding Documents or Paragraphs or Annexes in IsDB Guidelines that support the decision. The response should explain the basis of the decision as precise as possible;
 - d) **analysis** that explains why the basis for the decision applied to the facts/issues raised by the Complainant necessitates this particular decision; and
 - e) **a conclusion**, stating clearly the resolution of the complaint and describing the next steps to be taken, if any.
- 6.3 The Beneficiary should respond to a procurement-related complaint in a timely manner. A timely manner is specified as follows. For complaints challenging the:
- a) **Beneficiary's Bidding Documents:** the response to the complainant should be no later than seven (7) Business Days from the date of receipt of the complaint;

²³ This may include proprietary information, trade secrets and commercial or financially sensitive information.

- b) **Beneficiary’s decision to exclude the complainant prior to the award of contract:** the response to the complainant should be no later than seven (7) Business Days from the date of receipt of the complaint; and
- c) **Beneficiary’s decision to award the contract:** the response to the complainant should be no later than fifteen (15) Business Days from the date of receipt of the complaint.

7. Action when a complaint is upheld

- 7.1 The action that the Beneficiary may take in upholding a procurement-related complaint depends on the nature of the complaint and the stage of the procurement process at which the complaint is submitted. The following circumstances provide examples of the type of action that may be taken.

Complaint in relation to the Beneficiary’s Bidding Documents

- a) If the Beneficiary upholds such a complaint, the Beneficiary may:
 - i. modify the Bidding Documents by issuing an amendment; and
 - ii. extend the application/Bid submission deadline, if appropriate.

Complaint in relation to the Beneficiary’s decision to exclude the complainant prior to the award of contract

- a) If the Beneficiary upholds such a complaint, the Beneficiary may:
 - i. change the results of a decision made during an earlier stage of the procurement process;
 - ii. issue a revised evaluation of the results to all participating applicants/Bidders; and
 - iii. advise all participating applicants/Bidders of any changes to the next steps in the process.

Complaint in relation to the Beneficiary’s decision to award the contract

- a) If the Beneficiary upholds such a complaint, the Beneficiary may:
 - i. change its contract award recommendation;
 - ii. issue a revised Evaluation Report to IsDB for No-Objection (in this instance the Beneficiary shall not award the contract without receiving IsDB’s prior No-Objection to the report); and
 - iii. notify participating Bidders of the revised intention to award and proceed with the revised contract award.

8. Roles and responsibilities of applicants/Bidders

- 8.1 The roles and responsibilities of applicants/Bidders with respect to procurement-related complaints include:
- a) complying with the requirements of this Annex and in particular:
 - i. meeting all the requirements of a procurement-related complaint described in Paragraph 2.1 of this Annex;
 - ii. submitting a complaint in a timely manner as described in Paragraph 5.1 of this Annex; and
 - iii. submitting a complaint containing all the required content described in Paragraph 5.2 of this Annex;
 - b) being familiar with the provisions of the Bidding Documents, as well as these Guidelines, so as to understand the rules governing the procurement process;
 - c) making a timely request for debriefing, if one is desired;
 - d) submitting the complaint to the entity/official designated for that purpose in the Bidding Documents; and
 - e) ensuring that the complaint submitted explains as specifically as possible the issues or concerns and the alleged violation of the applicable procurement rules.

9. Roles and responsibilities of IsDB

- 9.1 IsDB's roles and responsibilities with respect to procurement-related complaints covered by this Annex include:
- a) ensuring that any complaint addressed to IsDB is forwarded promptly to the Beneficiary for review and resolution;
 - b) in the case of procurements subject to Prior Review, considering in a timely manner any action proposed by the Beneficiary, including, but not limited to, with respect to the conduct and content of a debriefing, the denial of a complaint or the taking of action to correct the impropriety identified in the complaint; and
 - c) except for acknowledging receipt of a complaint, not communicating with any applicant/Bidder during the evaluation and review process until publication of the public Contract Award Notice.

Annex D – Margin of preference

1. Purpose

- 1.1 This Annex sets out the evaluation procedures to be used when applying a margin of preference to: (i) Bids based on Goods manufactured in MCs offered through ICB; and (ii) Bids from local (domestic) Contractors for Works offered through ICB. It does not apply to NCB.

2. Requirements

MC margin of preference for Goods

- 2.1 The Beneficiary may, with the agreement of IsDB, grant a margin of preference in the evaluation of Bids in ICB to Bids offering certain Goods manufactured in an MC when compared to Bids offering such Goods manufactured elsewhere. In such cases, the RFB Bidding Documents shall clearly indicate the preference to be granted to the Goods manufactured in an MC and the information required to establish the eligibility of a Bid for such preference. The nationality of the manufacturer or Bidder shall not be a condition for such eligibility. The methods and stages described in this Annex shall be applied in the evaluation and comparison of Bids.
- 2.2 For comparison, responsive Bids shall be classified into one of the following three groups:
- a) **Group A:** Bids exclusively offering Goods manufactured in an MC, if the Bidder establishes to the satisfaction of the Beneficiary and IsDB that:
 - i. labour, raw materials and components, including transportation and insurance, from an MC will account for thirty (30) per cent or more of the EXW price of the Goods offered; and
 - ii. the production facility in which those Goods will be manufactured or assembled has been engaged in the manufacture/assembly of such Goods at least since the time of the Bid submission;
 - b) **Group B:** All other Bids offering Goods manufactured in an MC; or
 - c) **Group C:** Bids offering Goods manufactured abroad that have already been imported or that will be directly imported.
- 2.3 The price quoted for Goods in the Bids of Groups A and B shall include all duties and taxes paid or payable on the basic materials or components purchased in an MC market or imported, but shall exclude the sales and similar taxes on the finished product. The price quoted for Goods in Bids of Group C shall be on the basis of Incoterm CIP, which is exclusive of customs duties and other import taxes already paid or to be paid.
- 2.4 In the first step, all evaluated Bids in each group shall be compared to determine the Bid that offers maximum VfM in each group. Such Bids shall be compared with each other, and if, as a result of this comparison, a Bid from Group A or Group B is the best, it shall be selected for contract award.

- 2.5 If, as a result of the comparison under Paragraph 2.4 of this Annex, the Bid that offers maximum VfM is from Group C, all Bids from Group C shall be further compared with the Bid that offers maximum VfM from Group A after adding to the evaluated price of Goods offered in each Bid from Group C, for the purpose of this further comparison only, an amount equal to fifteen (15) per cent of the respective Incoterm CIP Bid price for the Goods to be imported or already imported. Both prices shall include unconditional discounts and be corrected for arithmetical errors. If the Bid from Group A is the best, it shall be selected for contract award. If not, the Bid offering the maximum VfM from Group C shall be selected as per Paragraph 2.4 of this Annex.

Domestic margin of preference for Works

- 2.6 In the evaluation of Bids in ICB for Works contracts, eligible Beneficiaries may, with the agreement of IsDB, grant a margin of preference to Bidders that are local (domestic) Contractors when comparing their Bids with foreign Bidders. In such cases, the RFB Bidding Documents shall clearly indicate any preference to be granted to Bidders that are local (domestic) Contractors and the information required to establish the eligibility of a Bid for such preference. The following provisions shall apply:
- a) Bidders applying for this preference are asked to provide, as part of the data for qualification, details of ownership, to determine whether, according to the classification established by the Beneficiary and accepted by IsDB, a particular Bidder or group of Bidders qualifies for a margin of preference. The RFB Bidding Documents shall clearly indicate whether the preference will apply and what method will be followed in the evaluation and comparison of Bids to give effect to the preference; and
 - b) after Bids have been received and reviewed by the Beneficiary, responsive Bids shall be classified into the following groups:
 - i. **Group A:** Bids offered by Bidders that are local (domestic) Contractors eligible for the preference; and
 - ii. **Group B:** Bids offered by other Bidders.
- 2.7 As a first evaluation step, all evaluated Bids in each group are compared to determine the Bid offering maximum VfM in that group, and the Bids offering maximum VfM from the two (2) groups are then compared with each other. If, as a result of this comparison, a Bid from Group A offers maximum VfM, it shall be selected for the award of contract.
- 2.8 If a Bid from Group B offers maximum VfM, a second evaluation step shall take place. All Bids from Group B shall then be further compared with the Bid offering maximum VfM from Group A. For the purpose of this further comparison only, an amount equal to up to ten (10) per cent shall be added to the respective Bid price (corrected for arithmetical errors, including unconditional discounts, but excluding provisional sums and the cost of day Works, if any) offered in each Bid from Group B. If the Bid from Group A offers maximum VfM, it shall be selected for award of contract. If not, the Bid offering maximum VfM from Group B based on the first evaluation step shall be selected.

Annex E – Public–Private Partnerships

1. Purpose

- 1.1 This Annex outlines the requirements to be met by Beneficiaries when selecting the private partner in a PPP arrangement financed by IsDB Project Financing.

2. Requirements

- 2.1 In a PPP arrangement, the Beneficiary undertakes the following project phases:
- a) project assessment;
 - b) project structuring;
 - c) selection of the private partner; and
 - d) contract management.
- 2.2 The Beneficiary shall demonstrate that there is adequate institutional capacity to prepare, structure, procure and manage the PPP project.

3. Project assessment: Business case and feasibility requirements

Identification

- 3.1 The proposed PPP component of the project shall have been identified as a priority public investment project and/or derived from an approved national infrastructure plan/sector programme.

Feasibility considerations

- 3.2 The Beneficiary shall have conducted suitable economic and financial analysis to confirm:
- a) whether the underlying project is adequately justified. This is established on the basis of a sound and quantified economic analysis to determine whether the project presents maximum VfM – i.e. is justified on the grounds of cost to benefit – and whether this a suitable approach to deliver the benefits, considering the relevant technical, legal, financial and environmental constraints, irrespective of implementation as a PPP or through other public-sector procurement;
 - b) whether the project’s overall revenue requirements are within the capacity of users, the public authority or both to pay for the infrastructure service;
 - c) that all project risks have been identified and fully assessed, that mitigation measures have been considered, and that the residual fiscal risk will not jeopardise fiscal sustainability;
 - d) that the PPP scheme chosen (i.e. risk allocation matrix, pay and performance mechanism) resulted from the consideration of alternative PPP schemes and other procurement options; and
 - e) that there is sufficient commercial viability – i.e. whether the project is likely to be able to attract good-quality sponsors and lenders by providing robust and reasonable financial returns.

- 3.3 The Beneficiary shall ensure that the information above is available to enable an independent review and third-party assurance of the inputs, assumptions and results.

4. Project structuring: PPP structure requirements

Output specification

- 4.1 The Beneficiary shall ensure that output requirements are included and that the output specifications include:
- a) clear performance targets and output requirements that are specific, measurable, achievable, realistic and time bound;
 - b) how performance will be monitored, including roles for the government’s contract management team, the private partner, external monitors, regulators and users; and
 - c) the consequences for failure to achieve the required performance targets, clearly specified and enforceable.

Risk allocation

- 4.2 Based on the contractual provisions, the Beneficiary shall present a risk matrix to IsDB, exhaustively listing project risks and their appropriate and most efficient allocation to the contractual parties or to third parties.

Performance payment mechanism

- 4.3 The Beneficiary shall develop a payment and performance mechanism that sets out the principle of performance-based payments upon meeting the provision of contractual assets and service at the agreed service level and according to the service schedule.

5. Selection of the private partner

- 5.1 The Beneficiary selects the private partner using a competitive selection method consistent with the selection methods set forth in these Guidelines. As an exception, IsDB may agree to a non-competitive selection process.
- 5.2 IsDB may finance PPP activities whose procurement processes have been initiated or contracts have been awarded, if it is satisfied:
- a) with the project justification, feasibility, PPP structure requirements and contract arrangements; and
 - b) that the selection process for the private partner is Fit-for-Purpose and reflects VfM through the application of IsDB’s core procurement principles and these Guidelines (in particular, Paragraphs 1.18–1.21 (Conflict of Interest), 1.11–1.17 (Eligibility) and 1.39–1.40 (Fraud and Corruption)).

Unsolicited proposals

- 5.3 IsDB may agree to finance PPP projects initiated from unsolicited proposals. In all instances of unsolicited proposals, the process to assess and determine the best Fit-for-Purpose and

VfM approach to awarding a contract initiated by an unsolicited proposal shall be clearly defined by the Beneficiary.

- 5.4 When an unsolicited proposal is subjected to a competitive selection process, the Beneficiary may use one of the following approaches to allow the Firm that submitted the unsolicited proposal to participate in the process:
- a) the Beneficiary grants no advantage to the Firm in the process. The Beneficiary may separately compensate the Firm if permitted under the Beneficiary's applicable regulatory framework; or
 - b) the Firm is granted an advantage in the selection process, such as an additional merit in the evaluation or guaranteed access to the second stage of a two-stage process. This advantage shall be disclosed in the RFB Bidding Documents and defined in such a way that it does not prevent effective competition.

Annex F – Retroactive Financing

1. Introduction

- 1.1 IsDB recognizes that its project cycle can take considerable time before funds are distributed to the Beneficiary. Delays to disbursement particularly affect projects which have a significant likelihood of approval by IsDB but cannot start implementation because of the lack of certainty over funding during the appraisal process. Retroactive Financing may be provided to overcome such difficulties in accordance with the *IsDB Guidelines for Retroactive Financing and Opening of Imprest Account for Quick Disbursement in Projects in IsDB MCs* (Guidelines for Retroactive Financing).
- 1.2 This Annex provides a summary of the Guidelines for Retroactive Financing and how the procedure applies to the procurement of Goods, Works and related services under IsDB Project Financing.

2. Purpose of Retroactive Financing

- 2.1 The purpose of Retroactive Financing is to facilitate the efficient and prompt execution of projects financed by IsDB. However, it can only be used in exceptional circumstances, with appropriate justification and IsDB approval.
- 2.2 Justification for Retroactive Financing may include:
 - a) early project start-up;
 - b) to avoid gaps between sequential projects – for example, in repeater projects;
 - c) to maintain momentum achieved during project preparation; and
 - d) to prevent delays.
- 2.3 Retroactive Financing permits a Beneficiary, entirely at its own volition and without commitment from IsDB, to proceed with the procurement of Goods, Works and related services before signing the Finance Agreement.

3. Uses of Retroactive Funding

- 3.1 Retroactive Financing is normally restricted to certain activities and types of expenditure. These include:
 - a) reinvestment work such as feasibility studies, engineering and architectural work;
 - b) preliminary physical work, such as access roads;
 - c) seasonal work, such as crop planting or construction, which unless undertaken at a particular time of year could delay the start of the project by a year or more;
 - d) activities that require a long lead time and where significant economies are possible;
 - e) office equipment such as photocopiers, faxes and personal computers;
 - f) electricity and gas required to supply power to the project; and
 - g) any other items deemed essential at the pre-operating stage of a project.

4. Limitations of Retroactive Funding

- 4.1 Retroactive Financing shall normally be restricted to expenditure incurred and paid for by the Beneficiary between the date of appraisal and the date of effectiveness of the project. However, in cases where the project objectives, design, implementation arrangements and conditionalities are worked out at the pre-appraisal stage, Retroactive Financing may be provided for expenditure incurred and paid by the Beneficiary between the appraisal stage and the date of effectiveness of the project.
- 4.2 Under no circumstances shall Retroactive Financing exceed ten (10) per cent of the total project cost.
- 4.3 In emergency circumstances, to deal quickly and effectively with a situation such as a natural disaster and its aftermath, IsDB's response will reflect the nature of each emergency, and IsDB shall consider the Beneficiary's justification for Retroactive Financing on a case-by-case basis. For these operations, IsDB may agree Retroactive Financing of up to twenty (20) per cent of the total amount for expenditure incurred within four (4) months prior to the expected date of signing the Financing Agreement but after the occurrence of the emergency.

5. Control measures

- 5.1 The following control measures shall apply to Retroactive Financing:
- a) procurement and use of Consultants shall be processed and cleared as if the Financing Agreement has been signed already;
 - b) procurement actions taken in the expectation of Retroactive Financing shall be at the Beneficiary's risk and do not commit IsDB to agree to finance the project;
 - c) disbursement shall be made to meet the expenditure on approved items and shall be supported by adequate documentation in accordance with the provision of the agreement;
 - d) documentation requirements shall be the same as those for disbursement of expenditures incurred after signing the Financing Agreement; and
 - e) the pre-appraisal or appraisal reports shall state:
 - i. the amount of Retroactive Financing;
 - ii. the percentage of the project cost being retroactively financed;
 - iii. the period that is being retroactivity financed;
 - iv. the nature of the Goods, Works or related services being retroactively financed; and
 - v. the justification for Retroactive Financing.
- 5.2 There is some flexibility in the application of IsDB's Guidelines for Retroactive Financing, particularly in emergency recovery operations; however, such exceptions shall require approval from IsDB's President.



For any additional information, such as Standard Bidding Documents, guidance, training materials and briefing, please see www.isdb.org/procurement

