European Bank
for Reconstruction and Development

Rejection Grounds

# Guidance note

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Rejection Grounds

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# 1. Purpose

This document provides guidance for Clients on the application and interpretation of the Rejection Grounds set out in Section III, Articles 2.8 PPR in relation to Public Sector Operations. It furthermore provides insight to entities, individuals or JVCAs on possible grounds for rejection of their Prequalification applications or Proposals.

# 2. Definitions

Terms used in this Guidance have the following meanings:

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| AEB | means the Agreement Establishing the European Bank for Reconstruction and Development. |
| Agreement for Mutual Enforcement of Debarment Decisions | has the meaning as set out in the EPPs. |
| Control (including, with correlative meanings the terms "controlled by" and "under common control with") | as used in respect of any person or entity, means, possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting shares, by contract or otherwise. |
| EPPs | means the Bank's Enforcement Policy and Procedures as amended from time to time. |
| Non-UN Sanctions | means, as in force from time to time, any economic, financial, trade or other sanction, embargo or restrictive measure administered (including import and export restriction) imposed by supranational bodies (e.g., European Union) or national governments (e.g., the USA, the UK, France, Canada, Turkey, Ukraine, Switzerland, Russia, etc). |
| OCCO | means the Office of the Chief Compliance Officer of the Bank. |
| Rejection Grounds | means the grounds listed in Section III, Article 2.8 PPR. |
| Sanctions (including, with correlative | means the Non-UN Sanctions and the UN Sanctions. |

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| meanings the term "Sanctioned") | |
| Third Party Finding | has the meaning as set out in the EPPs. |
| UN Sanctions | Means, as in force from time to time, any economic, financial, trade or other sanction, embargo or restrictive measure (including import and export restriction) imposed by the United Nations Security Council under Chapter VII of the Charter of the United Nations. |

Terms not defined in this Guidance have the same meaning as set out in the PPR.

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# 3. Scope

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## 3.1. Introduction

Article 13(xii) of the AEB stipulates that: *"the Bank shall place no restriction upon the procurement of goods and services from any country from the proceeds of any loan, investment or other financing undertaken in the ordinary or special operations of the Bank (...)".* This fundamental principle is operationalised through the PPR in Section III, Article 2.7: *"[t]he Bank shall place no restriction upon the procurement of Goods, Works, Services or Consultancy Services from a JVCA, entity or individual from any country, regardless of whether such country is a member of the Bank."*

The conditions for contract award shall be limited to those that are essential to ensure the capability of the eligible entity, individual or JVCA to successfully perform under the contract in question. These conditions are normally limited to eligibility and qualification considerations (please refer to the Guidance note on Qualification Assessment). However, in limited circumstances, Participants may be excluded from contract award for reasons not directly related to their ability to successfully perform under a contract. These circumstances are included in the PPR to reflect the Bank's oversight function, to mitigate project implementation risk, to preserve the integrity of the procurement process, or to acknowledge under certain circumstances the inability of a Client to proceed with awarding the contract to a specific Participant or the existence of circumstances or events outside of the Client's control materially impacting contract implementation. Any such circumstance could trigger the necessity for the Client to reject a Pre-qualification application or Proposal. These Rejection Grounds apply only to a Public Sector Operation.

## 3.2. Timing of the Client's assessment

During the procurement process, during the evaluation phase, and specifically whilst assessing the legal capacity of a Participant (see Qualification Assessment Guidance), it is expected that the Client shall also assess if any of the Rejection Grounds apply. If this is the case, the Client must reject a Prequalification application or Proposal by such entity, individual or JVCA.

## 3.3. Responsibilities of the Client vis-à-vis the Bank

The Client is responsible for conducting the procurement in accordance with the PPR, including con-ducting checks to assess if any of the Rejection Grounds could apply. The Bank in turn monitors the process to review if the requirements in the PPR are met by the Client.

The Rejection Grounds set out in Section III, Article 2.8(a) and (b) PPR cover the eligibility of Participants to be awarded a Bank-financed Contract by the Client. If a Participant is ineligible under the EPPs or subject to the UN Sanctions (or the relevant Goods, Works, Services or Consultancy Services or their suppliers are restricted by the UN Sanctions), the Client must reject the Participant. The Client can only proceed with a proposed rejection if the Bank provides a *prior* no-objection to such rejection.

The other Rejection Grounds in Article 2.8 (c) – (g) PPR cover among others rejection in case of Conflict of Interest, Unfair Competitive Advantage, Anti-Competitive Conduct, the Client's inability to enter into a contract with a specific Participant, circumstances or events outside of the Client's control materially impacting contract implementation. As explicitly stated in the preamble of Article 2.8 PPR, the Client can only proceed with a proposed rejection if the Bank provides a *prior* no-objection to such rejection. The Client will only be allowed to reject an entity, individual or JVCA's Prequalification application or Proposal in accordance with Article 2.8 (c) - (g) PPR, if such rejection is not contrary to the principles set out in Section III, Article 1 PPR. The Bank's oversight role is critical to prevent attempts to undermine the integrity or competitiveness of the procurement process or to manipulate its outcome.

Similarly, the Client does not have absolute discretion in relation to its decision *not* to exclude an entity, individual or JVCA under these grounds. Before providing its no-objection to the Client's recommendation for Prequalification, evaluation of Proposals or ultimately for contract award, the Bank screens Participant(s), who are being proposed to be prequalified or awarded the contract, to assess if any of the Rejection Grounds applies. If the Bank determines that a Rejection Grounds could apply, the Bank shall probe the Client's decision and will request the Client to reject the Pre-qualification application or Proposal in question. If the Client does not appropriately reflect the Bank's request in the evaluation report, the Bank will not be in a position to provide its no-objection to the Client's evaluation report, thus the Client will not be able to finance the resulting contract from the Bank's resources.

## 3.4. Application of the Rejection Grounds

The Rejection Grounds in Article 2.8 (a)-(g) PPR are discussed in the paragraphs 3.4.1 - 3.4.7 below. Furthermore, the applicability of the Rejection Grounds in relation to a Sub-Contractor and in relation to other procurement procedures is discussed in paragraphs 3.5 and 3.6 respectively.

## 3.4.1. Ineligible under the EPPs

A Prequalification application or Proposal from an entity, individual or JVCA that has been declared in-eligible pursuant to the EPPs shall be rejected pursuant to Article 2.8(a) PPR. A party can be declared ineligible in this respect resulting from a debarment imposed by the Bank (i) following an OCCO investigation or Third Party Finding or (ii) in recognition of debarments imposed by other institutions that are signatories to the Agreement for Mutual Enforcement of Debarment Decisions (i.e. cross-debarments).

a. Bank-initiated debarments

The Bank requires that the Clients as well as Participants observe the highest standard of ethical conduct, transparency and integrity and act in a manner that is fair, accountable and honest during the procurement, execution and implementation of such contracts. They represent and covenant that they shall not, themselves and shall not authorise or permit any of their officers, directors, authorised employees, Affiliates, agents or representatives, to engage in Prohibited Practices with respect to the procurement, award, or execution of the Bank-financed Contract.

The Client shall reject a Proposal only when the Participant has been declared ineligible in accordance with the EPPs following a decision by the Bank's Enforcement Commissioner or the Enforcement Committee that the Participant had engaged in a Prohibited Practices (i.e. a debarment has been imposed). An ongoing OCCO investigation cannot serve as a ground for rejection under the PPR. In certain cases, to preserve the integrity of the procurement process, OCCO can request the Bank's Enforcement Commissioner to suspend the Participant at early stages of the investigation. If granted, the Participant's eligibility is suspended pending the OCCO investigation. Thereafter, the Client must exclude the Participant from contract award under Article 2.8(a) PPR.

Furthermore, the Bank can impose enforcement action for Prohibited Practices based on a final judgment of a judicial process in a member country of the Bank or the enforcement mechanism of certain international organisations (i.e. Third Party Finding). If a Third Party Finding has sufficient relevance and seriousness for the Bank as to warrant an enforcement, the Enforcement Commissioner can impose an enforcement action, including debarment.

In case the Client identifies suspicions or indications that Prohibited Practices may have occurred in relation to the procurement of the Bank-financed Contract, they must report this to the Bank (as mandated in the project legal agreement the Client signed with the Bank). The Bank will advise the Client, if needed, how to navigate an ongoing tender during an OCCO investigation.

For more information on the Bank's enforcement system, please refer to OCCO's pages on the website of the Bank (EBRD OCCO site).

b. Cross-debarments

In addition to the Bank, the World Bank, the African Development Bank, the Asian Development Bank and the Inter-American Development Bank are signatories to the cross-debarment regime (i.e. the Agreement for Mutual Enforcement of Debarment Decisions).

If one institution issues a debarment decision that is eligible for cross-debarment, this institution needs to subsequently notify the other institutions thereof. The Bank's Enforcement Commissioner determines if the Bank will recognise a debarment decision of another institution.

c. Sources for information on imposed (cross-)debarments

The Bank publishes on its external website the list of entities debarred and cross-debarred. The list is found under this link: Ineligible Entities.

In accordance with the Covenant of Integrity (attachment to the letter of tender, or a similar affidavit in case of Direct Contracting), which must be signed and submitted by each Participant, a Participant must represent that they (including each partner in a JVCA) have not been debarred by a development bank or international financial institution (e.g. the signatories to the cross-debarment regime and the European Investment Bank). In case they are debarred, they need to disclose it.

In case of any inconsistencies, the list of ineligible entities on the Bank's website prevails.

### 3.4.2. Ineligible due to UN Sanctions

a. UN Sanctions

As an international organisation formed by treaty, the Bank gives due regard to the UN Sanctions, in the sense that the Bank will not engage with parties, or finance Goods, Works, Consultancy Services or Services subject to the UN Sanctions. The Bank's position in respect of the UN Sanctions is operationalised in Article

2.8(b) PPR. The Client shall reject an entity, individual or JVCA in case they are subject to UN Sanctions or any of the Goods, Works, Consultancy Services or Services or any supplier thereof is the subject of, or otherwise prohibited by, the UN Sanctions.

b. Determination of application of the UN Sanctions

All UN member states must comply with the UN Sanctions, these are therefore normally transposed into the national law. Clients would already be required to comply under their national laws with the relevant restrictions. If an exposure to the UN Sanctions has been identified (e.g. through due diligence by the Client or disclosure in the Covenant of Integrity), the Client, with the Bank's assistance, must conduct further assessment to determine if it falls within the scope of the Rejection Ground under Article 2.8(b) PPR. Sanctions assessments are usually complex and require special expertise (including, in certain cases, assistance from external sanctions experts). The Bank can assist the Client with navigating such assessments.

c. Sources for information on the application of the UN Sanctions

Information on the UN Sanctions is publicly available on the UN official website. The UN Sanctions lists are also normally included in all commercial sanctions databases and screening tools available to market participants. Participants are required to flag any potential issues in the Covenant of Integrity which contains a representation in respect of the UN Sanctions.

d. Non-UN Sanctions

Please refer to paragraphs 3.4.5 and 3.4.6 for discussion on the application of the Rejection Grounds due to Non-UN Sanctions.

### 3.4.3. Conflict of Interest, Unfair Competitive Advantage, Anti-Competitive Conduct

In accordance with Section III, Article 2.8(c) PPR, the Client shall reject a Prequalification application or a Proposal from an entity, individual or JVCA in case in relation to the procurement process or contract implementation, it has been determined that such entity, individual or JVCA has a Conflict of Interest, an Unfair Competitive Advantage, or has engaged in Anti-Competitive Conduct.

a. Conflict of Interest

The PPR provides a broad definition of Conflict of Interest, whereby a nexus with the procurement process or contract implementation is required: *"means a circumstance in which the personal, financial, or professional interests, obligations or relationships of a Participant or the Client, as well as of any of their officers, directors, authorised employees, agents, representatives, or consultants, including their employees, improperly influence or may improperly influence their actions or judgments in the performance of their official duties or responsibilities."*

The definition encompasses the following dimensions:

- personal Conflict of Interest, whereby an individual's personal interests, obligations, or relationships (e.g. financial, relational or other) could compromise their professional judgment or actions; and

- institutional Conflict of Interest, whereby an organisation's interests obligations, or relationships (e.g. financial investments, control, partnerships) may affect its decisions or policies.

The scope of the definition also covers representatives, agents, consultants on the Participant's or Client's behalf in relation to the procurement process or contract implementation, including – in case it concerns entities – their employees.

Analysing Conflict of Interest is inherently complex and must be conducted on a case-by-case basis, as each situation presents distinct circumstances, relationships and potential implications that require careful consideration. A further complicating factor is that circumstances may create the appearance of a conflict, but upon comprehensive analysis it may turn out that there is no substantive or actual conflict. To make the analysis more manageable and as objective as possible, the definition in the PPR only focuses on actual conflict of interest.

Conflict of Interest may arise at different stages in the procurement process, including before and after the submission deadline. Prior to the deadline it can, for example, involve participation in the development of feasibility studies, design or tender specifications. After the submission deadline, a conflict may emerge during the evaluation of proposals or contract award, when members of the tender evaluation committee, or management have close ties to a Participant or benefit from the outcome.

To assist Clients in assessing whether a Conflict of Interest exist in a specific case, a list with common examples is provided in Annex 1. It is important to note that this is not an exhaustive list. If one of the circumstances set out in the annex applies, this may indicate that there is a Conflict of Interest. The Client shall verify whether the elements in the definition of Conflict of Interest have been met. Furthermore, in some circumstances Conflict of Interest can be identified and mitigated by among others transparent decision-making, disclosure requirements, recusal from the evaluation of conflicted individuals, independent oversight.

In case it is determined that there is a Conflict of Interest that cannot be mitigated, if appropriate, the Client shall inform the Participant of their assessment and shall provide the Participant with the opportunity to demonstrate to the satisfaction of the Client as well as the Bank that there is no Conflict of Interest.

The letter of tender contains a representation that the Participant has no Conflict of Interest. However, it is recognised that a Participant may not have all the necessary information about other potential Participants or the Client's staff involved with the procurement process. In case a Participant is unsure about the existence of a Conflict of Interest, they can, ahead of the tender submission deadline, submit to the Client a request for clarification in accordance with the procurement documents. The Client would subsequently need to assess the facts provided and determine if there would be a Conflict of Interest.

In case it transpires that a Participant knowingly or recklessly misrepresented information in its Proposal submission in this respect, this may possibly be investigated as a potential Prohibited Practice (e.g. Fraudulent Practice) under the EPPs. The Client must refer these matters to the Bank for further assessment by OCCO.

b. Unfair Competitive Advantage

The PPR provides a definition for Unfair Competitive Advantage: *"a circumstance when a Participant, compared to other Participants has an unfair advantage that materially distorts or may materially distort competition."*

Creating an equal playing field for all Participants in a public procurement is a fundamental principle, thus, everyone must be treated fairly and equally and have access to the same level of information concerning the procurement process and its subject. The concept of Unfair Competitive Advantage focuses therefore on a Participant compared to the other Participants having greater access to information in respect of the procurement process or the Contract or having a close business relationship with the Client that may materially distort the behaviour of the Client in respect of the procurement process, including the award of the Contract. The scope of the concept also covers those circumstances where there may not be an unfair advantage at the time of assessing the relevant circumstances, but there will be later in the procurement process (*"may distort"*).

However, it is important to note that the unfair advantage must have an impact on the underlying procurement process. Advantages that do not or will not distort competition in the underlying procurement, shall not be considered as these would unreasonably limit competition as well as increase the opportunity to manipulate the outcome of the procurement process.

Determining the possible existence of an Unfair Competitive Advantage in a specific circumstance is complex and requires a case-by-case analysis, with the Client not always having access to complete information. To assist Clients in assessing whether Unfair Competitive Advantage exists in a specific case, a list with common examples is provided in Annex 1. It is important to note that this is not an exhaustive list. Also, Unfair Competitive Advantage may result from Conflict of Interest or Anti-Competitive Conduct.

If one of the circumstances set out in the annex applies, this may indicate that the Participant has an Unfair Competitive Advantage. The Client shall verify whether the elements in the definition of the concept have been met. Furthermore, although Unfair Competitive Advantage may arise, the Client can mitigate this by for example ensuring that all Participants have equal access to information by publicly disclosing all relevant documents and relevant information.

In case it is determined that there is an Unfair Competitive Advantage that cannot be mitigated, if appropriate, the Client shall inform the Participant of their assessment and shall provide the Participant with the opportunity to demonstrate to the satisfaction of the Client as well as the Bank that there is no Unfair Competitive Advantage.

The letter of tender contains a representation that the Participant has no Unfair Competitive Advantage. It is recognised that Participants can only disclose information pertaining to themselves. In case it transpires that this was a misrepresentation, the Participant may have engaged in fraud under the EPPs. The Client must refer these matters to the Bank for further assessment by OCCO.

c. Anti-Competitive Conduct

Anti-Competitive Conduct is recognised in many jurisdictions as an inappropriate and unacceptable practice. The PPR provides a broad definition of Anti-Competitive Conduct, *"practices by a Participant with the effect of* *preventing, restricting or distorting competition and improperly influencing decision-making processes or outcomes, including the Client's decisions".*

It is important to note that the Anti-Competitive Conduct is considered exclusively in the context of the underlying procurement process. Anti-Competitive Conduct identified outside of the context of the procurement for the Bank-financed Contract (i.e. conduct that has no effect of preventing, restricting or distorting competition and improperly influencing decision-making processes or outcomes, including the Client's decisions) shall not be applied as a ground for rejection by the Client.

Anti-Competitive Conduct must be assessed on a case-by-case basis. It is inherently complex, certain information may not be publicly available or accessible for the Client and it may require specific expertise to properly analyse. To assist Clients in determining whether Anti-Competitive Conduct exists in a specific case, a non-exhaustive list with common examples is provided in Annex 1. If one of the circumstances set out in the annex applies, this may indicate that the Participant may have possibly engaged in Anti-Competitive Conduct. In order to establish whether a Participant has engaged in Anti-Competitive Conduct, the Client shall verify whether the conduct by the Participant would have *"the effect of pre-venting, restricting or distorting competition and improperly influencing decision-making processes or outcomes, including the Client's decisions"* as stipulated in the definition. If appropriate, the Client shall inform the Participant of their assessment and shall provide the Participant with the opportunity to demonstrate to the satisfaction of the Client as well as the Bank that the conduct in question would not constitute Anti-Competitive Conduct.

For example, in case a Participant is connected to another Participant or the Client through the same Controlling shareholder(s) (which can be the state), it needs to be determined if the element of Control has been met, whether one entity is able to direct or cause the direction of the management and policies of another entity, whether through the ownership of voting shares, by contract or otherwise. This can be the case, when such entity directly or indirectly holds more than 50% of the shares or voting rights, or directly or indirectly has the right to appoint a majority of the board of directors or holds a special type of share granting it control over a company while holding less than 50% of the shares. In case control has been established, the Client must verify if the elements of Anti-Competitive Conduct have been met.

The below factors, among others, may be relevant for the Client's assessment:

i. **Corporate Governance Independence:** to verify whether relevant Participants operate as genuinely separate economic actors.
    - Separate legal entities: e.g. distinct registration or incorporation documentation, and tax identification numbers.
    - Independent governance: no overlapping (Supervisory) Board Directors, Executives, or decision-makers who can influence Proposals.
    - Separate ownership structure: e.g., no direct shareholding between subsidiaries.
    - Independent business strategies: documented independent procurement, pricing, and operational policies and strategies.

ii. **Operational and Resource Separation:** the Participants' daily operations are not coordinated in ways that could influence their procurement strategy.
    - Separate staff and teams preparing proposals: no shared tender preparation personnel, consultants, or advisors.

- Separate IT systems and document storage: no access to each other's confidential proposal information and data.
- No shared cost or pricing documentation / databases: commercial strategies developed independently.
- No shared premises: or, if co-located, strict data and communication firewalls.

iii. Coordinated Patterns:

- Evidence of coordination in the tender process.
- Exchange of proposal-related information between the Participants.
- Coordinated patterns: e.g. tender rotation, price alignment, or market sharing.
- Different content Proposals: e.g. Proposals show independent market research, cost structures, and technical solutions.

iv. Economic and Market Considerations: examining whether the proposals show real competition.

- Competitive pricing differences: absence of identical or artificially close prices.
- Distinct supply chains and subcontractors: no coordinated sourcing that undermines independence.
- Evidence of competing in other markets: if the Participants have worked together as joint venture members on projects or have competed against each other elsewhere without complaints of collusion.

If reasonable grounds are identified to suspect that a Participant has engaged in Anti-Competitive Conduct during the procurement process, the Client shall reject the Prequalification application or Proposal, as applicable, of the entity, individual or JVCA after the Bank has provided its no-objection. Moreover, the Bank may declare the contract to be ineligible for Bank-financing.

In this context, it shall be noted that although it is recognised that Participants who benefit from state subsidies may have distortive impact on competition, the matter of assessing distortive effect of subsidies does not fall under the scope of the PPR. The Bank considers that the topic is most appropriately dealt with by national or international authorities, in particular specialised international organisations such as the WTO and the EU.

There may be overlap between the concepts Anti-Competitive Conduct and Collusion (one of the Prohibited Practices under the EPPs). If Anti-Competitive Conduct has been identified, this may give indications of a Participant having engaged in collusive behaviour.

The letter of tender contains a representation that the Participant has not engaged in Anti-Competitive Conduct. In case it transpires later that this was a misrepresentation, the Participant may have engaged in fraud under the EPPs. The Client must refer indications of Prohibited Practices to OCCO.

d. Sources for information on Conflict of Interest, Unfair Competitive Advantage, Anti-Competitive Conduct

Beyond representations included in the letter of tender, each Participant will be required under the Bank's standard procurement documents to include information on its ownership structure with its submission. This information may be useful for the Client to assess if any of these concepts may have arisen between the Participant and the Client and whether there is the element of Control.

The Client has the right to request further information from the Participant about its ownership structure (e.g. information on beneficial ownership), information on the relationship between parties. Further information may be found by the Client in public legal data bases and other public data sources and publications.

## 3.4.4. Final criminal conviction for Prohibited Practices

In accordance with Section III, Article 2.8(d) PPR, the Client shall reject a Prequalification application or a Proposal from an entity, individual or JVCA in case such an entity, individual or JVCA or its Affiliate has been sanctioned for an offence involving a Prohibited Practice or equivalent act during the five years preceding the eligibility assessment, provided that the criminal conviction or administrative fine is final in the relevant national jurisdiction and was rendered in judicial proceedings providing for adequate due process acceptable to the Bank.

a. A criminal conviction or administrative fine involving a Prohibited Practice or equivalent act

It must concern a criminal conviction or an administrative fine, not a civil penalty. Neither ongoing investigations, indictments nor prosecutions by national criminal authorities or prosecutors nor ongoing criminal trials before national courts are considered being criminal convictions. A deferred prosecution agreement as imposed by some national enforcement authorities (e.g. Department of Justice in the US or the Serious Fraud Office in the UK) are not criminal convictions, while plea agreement may be considered a criminal conviction depending on their conditions. It only covers administrative fines, not other type of administrative decisions, such as administrative debarments (these fall under the scope of Article 2.8(e)), reprimand, suspension of license or permit, mandatory corrective actions).

The conviction or fine must be for a Prohibited Practice or equivalent act. Prohibited Practices are quite broadly defined in the EPPs. Some other criminal offences under national laws, dependent on their definitions, may fall under the scope of one of the definitions of Prohibited Practices (e.g. abuse of office, influence peddling, abuse of office). Under national laws, collusion and equivalent acts may fall under the scope of criminal or administrative law.

b. A criminal conviction or administrative fine against the Participant or its Affiliate

The criminal conviction or administrative fine must be against the Participant or its Affiliate. Affiliate is broadly defined in the PPR. It covers among others the Participant's subsidiaries, group companies with whom the Participant is under common control (directly or indirectly), the Participant's parent company, and the Participant's ultimate beneficial owner. This last category has been included, because some jurisdictions do not recognise the concept of corporate criminal liability. In those jurisdictions, the owner and not the company would be convicted if they engaged in a Prohibited Practice through the company.

c. A final criminal conviction or administrative fine

The criminal conviction must be final and therefore binding on the relevant party in the relevant national jurisdiction. This means that the Participant or Affiliate has either exhausted all possibilities for appealing the conviction before national courts or the conviction is non-appealable. A conviction will not be considered final, if appeal against it has been submitted to national courts, because it can be overturned in appeal.

For example, a criminal conviction for corruption by the court in first instance has been appealed by the Participant and the trial is ongoing. The conviction by the court in first instance is not considered a final conviction. Therefore, Article 2.8(d) PPR would not apply in relation to such convictions.

d. A conviction or fine rendered in the past five years

Only a final conviction or administrative fine that was rendered during the five years preceding the eligibility assessment is considered for the application of this ground. Final criminal convictions or administrative fines that are too historic are not considered as relevant.

e. Judicial proceedings with adequate due process acceptable to the Bank

It must be reviewed if the criminal conviction was rendered during judicial proceedings that provided for adequate due process acceptable to the Bank. No in-depth assessment would be required, it would be a more generic assessment, whereby it is assessed, inter alia, if the party was able to defend themselves against the allegations, the judgment has been made public, the reputation of the jurisdiction where the conviction was rendered.

f. Sources for information on final convictions or fine

In the Covenant of Integrity, the Participant must represent that they have not been “convicted in any court or sanctioned by any authority of any offence involving a Prohibited Practice (…) during the ten years preceding the date of this Covenant” and that “none of [their] directors, employees, agents or representatives (…) has been dismissed or has resigned from any employment on the grounds of being implicated in any Prohibited Practice”. In case there is such conviction, dismissal, or resignation, the Participant must disclose it.

Commercial databases and screening tools available to market participants or internet searches may identify national investigations as well as convictions and sanctions, in particular if these relate to major fraud, corruption, collusion cases that usually receive media exposure.

Moreover, each Participant will be required under the Bank’s standard procurement documents to include information on its ownership structure with its Proposal submission. This information can be useful for the Client to assess if a convicted entity is an Affiliate of the Participant. The Client can request further information or representations from the Participant about identified investigations or convictions: e.g. copies of judgments, information on the status of the investigations. Also, further information can be requested about the ownership structure.

### 3.4.5. Unlawfulness under applicable law or orders by national authorities

The Rejection Ground in Article 2.8(e) PPR provides the Client with the ability to reject an application or Proposal in case, it is, or, it will become, unlawful under applicable national law or by order by national authorities to enter into the relevant contract or to perform its obligations under the contract. Although Clients are required to follow the PPR for the procurement of Bank-financed Contracts, the Bank recognizes that they are entities established under their national laws and as such are subject to such laws and the Bank-financed contracts are usually governed by these same laws. There could be circumstances where the

Client is unable to award a contract or perform obligations under contracts due to restrictions imposed under applicable laws.

These cases include, but are not limited to, national exclusion lists and registers of ineligible entities (often formed based on poor performance by private parties under public contracts), Non-UN Sanctions, other restrictions resulting from regional geopolitical conflicts, public interest and national security considerations. Primary or secondary national laws or specific ordinances issued by dedicated authorities in the Clients' countries may prohibit engagement with the specific Participant or intended Sub-contractor due to threats to national security, including information security or critical infrastructure. A non-exhaustive list with common examples of circumstances that could fall under this provision are set out in Annex 2.

Clients will need to inform the Bank on whether the awarding of a contract to a specific Participant is unlawful or will become unlawful in the short term (e.g. legislation is already adopted but did not enter into force) or that it would be threats to national security, including information security or critical infrastructure. The latter can be done with reference to specific provisions in primary or secondary national laws (e.g. national security laws, ministerial decrees) or specific ordinances or formal instructions by national enforcement or security agencies.

The Client will likely flag the applicability of this Rejection Ground and propose for a Participant to be rejected. The Bank can request from the Client various types of information: e.g. copies of the applicable legislation, a copy of the Client's assessment on the applicability of this provision, a legal opinion from an independent law firm confirming whether it is unlawful under applicable law for the Client to enter into the contract and the legal implications for the Client if they award the contract.

If the Client attempts inappropriately to apply this provision, the Bank will be in a position to withhold its no-objection to the recommendation for contract award.

## 3.4.6. Circumstance or event materially prohibiting, impairing, delaying contract performance

a. General Interpretation

The Rejection Ground in Article 2.8(f) PPR provides the Client with a mechanism to appropriately respond to a circumstance or event outside of the Client's control which has or might reasonably be expected to have the effect of materially prohibiting, impairing or delaying the performance under the resulting contract by either the Client or the Participant.

Some examples of such circumstances or events include pandemics, wars, invasions, terrorism, civil unrests, revolutions, riots, coups, earthquakes, floods, natural catastrophes (volcanic activity, hurricane, typhoon), health hazards (e.g. leakage or spilling toxic chemicals in area of work), Non-UN Sanctions. The absence of sufficient funding for a contract due to co-financier(s) cancelling financing in case a specific Participant is awarded the contract and the Client not being able to find alternative funding, may be a sufficient ground for rejection of a Proposal. A non-exhaustive list with common examples that could fall under this provision are set out in Annex 3.

If the Client attempts to inappropriately apply this provision, the Bank will be in a position to withhold its no-objection to the recommendation for contract award.

b. Non-UN Sanctions

Depending on their nature and scope, Non-UN Sanctions may have the effect of materially prohibiting, impairing or delaying the performance under the resulting contract by either the Client or the Participant. These types of sanctions may, among other things, adversely affect the ability of the Bank to make payments on a Client's behalf, or the ability of the Participant to deliver under the contract, lead to operational delays or disruptions as well as give rise to a variety of other risks, including regulatory, legal, enforcement and commercial risks for the Client. Although the Bank is exempt from compliance with Non-UN Sanctions imposed by the Bank's member countries due to the privileges and immunities set forth in the AEB (in particular Article 49), such exemption cannot help mitigating the risks relevant to the relevant contract or the parties to such contract.

Therefore, if, for example, the Participant proposed for contract award is (i) a target of or otherwise subject to Non-UN Sanctions (including by virtue of its ownership or control), (ii) incorporated or domiciled in a comprehensively Sanctioned jurisdiction, or owned or controlled by the government of any comprehensively Sanctioned jurisdiction, or (iii) substantially dependent on a supply chain impacted by Non-UN Sanctions, the Bank will require the Client to undertake an enhanced due diligence and risk assessment to demonstrate the Participant's as well as the Client's ability to perform as required under the contract despite the Sanctions impact. In particular, the Client will be required to confirm that relevant Non-UN Sanctions would not be reasonably expected to effectively prohibit, restrict, impair or delay in any material respect any payments or delivery/acceptance of Goods required under the relevant contract or any other performance by that Participant or the Client under the contract. As part of enhanced due diligence, the Client will be required to, among other things, analyse the impact of the relevant Non-UN Sanctions on:

- The Bank's/Client's ability to, as applicable, freely make/receive payments to/from the successful Participant, giving due regard to involvement of international commercial banks in processing such payments;
- The enforceability of (and practical ability to collect under) bank guarantees issued in connection with the Participant's Proposal;
- The Client's ability to claim and receive, without delay or impediments, payments under insurance policies;
- The Participant's ability to mobilise the required personal/equipment in the Client's country;
- The reliability of the Participant's supply chain;
- The Participant's ability to timely obtain essential licenses, permits, certifications required to commence works without any material delays to the performance under the contract; and
- The Participant's economic and financial capacity to perform the contract in question.

A Participant may have already flagged any potential issues in relation to Non-UN Sanctions or eligibility in the Covenant of Integrity in cases required in the procurement documents, for example in cases where cofinanciers impose additional restrictions, including in respect of Non-UN Sanctions. The Participant is required to disclose if it is subject to the relevant Non-UN Sanctions or other restrictions.

Sanctions assessments are usually quite complex and require special expertise (including, in certain cases, assistance from external sanctions experts). They can be also very time consuming. The Bank can assist the Client with navigating such assessments.

### 3.4.7. Credible Allegations of forced labour, child labour, or human rights violations

The Bank has continuously promoted international standards and good international practices on environmental and social matters. In line with this commitment, the Bank has introduced a rejection ground in Article 2.8(g) PPR that allows the Client to reject a Prequalification application or a Proposal from an entity, individual or JVCA in case such entity, individual or member of a JVCA, or any of its Affiliates, has been subject to Credible Allegations of forced labour, child labour, or human rights violations.

Mainstream media as well as social media may share allegations of companies engaging in forced or child labour or violating human rights, which are not always substantiated. To ensure objectivity and consistency in applying this provision and to mitigate misuse of the provision, the Bank defines Credible Allegations of forced labour, child labour, or human rights violations as allegations that are corroborated in court judgments, reports from intergovernmental organisations, or recognised human rights organisations.

Examples of intergovernmental organisations that may publish reports in relation to these matters are (i) United Nations organisations, in particular the International Labour Organisation and UNICEF; and (ii) Council of Europe. Often intergovernmental organisations appoint a special rapporteur to monitor, investigate and report on human rights issues either globally (thematic mandate) or within a specific country (country mandate).

There are several recognised human rights organisations that may share reports, including without limitation (i) Non-governmental organisations (such as Human Rights Watch, International Federation for Human Rights, International Trade Union Confederation, International Consortium of Investigative Journalists) and (ii) academic and research institutions (e.g. Helena Kennedy Centre for International Justice; Stern Center for Business and Human Rights; Institute for Human Rights and Business).

These reports may not always focus on specific companies or may have been published years before the procurement process. Participants may submit recent third-party audits undertaken in line with international audibility principles, certifications based on such audits, or other documentation to demonstrate compliance and to rebut concerns raised in such reports.

Each participant will be requested in the procurement documents to represent that they have not engaged in forced or child labour as well as human rights violations. If it is later determined that a Participant knowingly or recklessly misrepresented information in its Proposal submission in this respect, this may possibly be investigated as a potential Prohibited Practice (e.g. Fraudulent Practice) under the EPPs. The Client must refer these matters to the Bank for further assessment.

## 3.5. Application Rejection Grounds to Sub-contractors

All the Rejection Grounds set forth under Section III, Article 2.8 (a) - (g) PPR, may also apply to a Sub-contractor. They can be declared ineligible under the EPPs because they have been debarred after engaging in a Prohibited Practice, they may be subject to UN Sanctions or come from countries from whose imports of Goods are prohibited by UN Sanctions, they may have a conflict of interest in relation to the procurement process, and so on.

In case any grounds apply, a Sub-contractor shall be deemed unacceptable and shall be substituted without rejection of the Participant's Proposal in line with Article 2.9 PPR. This is a standard approach that has always been set out in the Bank's standard procurement documents.

## 3.6. Application Rejection Grounds to other procurement procedures

Article 2.8 PPR applies also when other procurement procedures set out in the PPR are used (e.g. Direct Contracting, Procurement of Commodities, Procurement under National Laws, Procurement by Utilities (Section III, Articles 3.60, 3.61, 3.62-3.64, 3.65-3.66 PPR).

For the Rejection Grounds to be applied in procurements under National Laws, the legal agreement between the Bank and the Client shall contain the obligation for the Client to apply the provision during the procurement (Article 3.64 PPR). If such application is not possible under national laws of the Client (due to technical or administrative restrictions), the Bank may agree with the Client to use other procurement procedures in accordance with the PPR or the Bank may decide not to finance the contract. Please refer to the Procurement under National Law Guidance for further details. With regards to the Procurement by Utilities, the Bank may request adjustments to the Utilities' established procedures to ensure compliance with Section III, Article 2.8. Please refer to the Procurement by Utilities Guidance for further details.

# Annex 1 – Examples of Conflict of Interest, Unfair Competitive Advantage, Anti-Competitive Conduct[1]

*Conflict of Interest*

Personal conflict of interest

- A close relative of a member of the evaluation committee or consultant assisting the committee is employed by the company who submitted a Proposal under evaluation by that committee.
- A close relative of a consultant of the Client involved with the procurement process has submitted a Proposal for the same procurement process.

Institutional conflict of interest

- A Participant or its Affiliates has been hired, or is proposed to be hired, by the Client for the supervision of the contract for which they are submitting a Proposal.
- The Participant or a related party is involved with the evaluation of submitted Proposals.
- The Participant or a related party assisted the Client with drafting the terms of reference for Consultancy Services which is the subject of the tender.
- The Participant or its Affiliate has been involved in drafting technical specification or developing design for the contract subject to procurement process.
- The Participant, any member of the JVCA, or their Affiliates have participated in the feasibility or design stages of the project.

*Unfair Competitive Advantage*

- A Participant compared to the other Participants has greater access to information in respect of the procurement process or the contract.
- A Participant compared to the other Participants has close business relations with the Client that may materially distort the behaviour of the Client in respect of the Procurement Process, including the award of the Contract.
- The Client creates non-competitive environment by targeting a specific product by developing technical specification requiring compliance with specific parameters that only one participant meets but which parameters are not essential for the customary functionality of the equipment. Equally, the Client targets a specific Participant by creating qualification criteria tailored to be met by a preferred Participant.
- In case of extensions/modernisations of existing systems or facilities, the Client limits disclosure of non-confidential information relating to such systems or facilities, thereby giving an unfair competitive advantage to the original provider of the systems or facilities, or parties involved in their assessment prior to the tender.

[1] Common examples are provided to support the Client with their assessment. However, please note that this is not an exhaustive list. Also, depending on the specific circumstances, particular conduct may fall within the scope of two or all of these concepts.

- The Client does not provide Participants with adequate timeline to obtain necessary licenses / certificates being aware that a preferred Participant has already obtained these.
- A Participant possess, or has access to, information important to the procurement process that is not made available to other Participants.

*Anti-Competitive Conduct*

- Participants entering in formal or informal non-compete agreements.
- A Participant agreeing to share or sharing information with the Client or other Participants that might lead to competition being reduced (e.g. bid rigging, price fixing, market sharing, abusing dominant market position).
- Submission of a non-responsive Proposal by a Participant with the aim to support another Participant to win the contract.
- Consultations amongst Participants on whether to submit a Proposal.
- Consultations amongst Participants about pricing in Proposals and / or composition, methods, factors or formulas used in price calculations or the terms of the Proposal.
- Participant or a related party is involved with the preparation of the specifications or technical requirements in relation to the contract being tendered.
- The Participant or a related party has influenced the decisions of the Client regarding the procurement process.
- For the purposes of the procurement of the Bank-financed Contract, the Participant has the same representative as other participants.
- A Participant has a relationship with other Participants or the Client that, directly or indirectly, grants the Participant access to information about the procurement process or the Proposal of another Participant, the ability to influence the Proposal of another Participant, or the ability to influence the decision of the Client regarding the procurement process.
- A Participant is connected to another Participant or the Client through the same Controlling shareholder(s).
- Participants are Controlled by the same state.

# Annex 2 – Examples of unlawfulness under applicable law or orders by national authorities

- Participant is subject to a sanctions programme in the Client’s country, because of which the Client is prohibited to enter into a contract with the Participant or to perform under the contract.
- Participant is debarred pursuant to a debarment regime in the Client’s country, pursuant to which the Client is not allowed to award a contract to such participant.
- Other forms of restrictions under national laws or by judgments of courts in the Client’s country that prohibit the Client to enter into a commercial relationship with the winning Participant.
- Primary or secondary national laws or specific ordinances issued by dedicated authorities in the Clients’ countries may prohibit engagement with the specific Participant or intended Sub-contractor due to threats to national security, including information security or critical infrastructure.

# Annex 3 – Examples of circumstances or events materially prohibiting, impairing, delaying contract performance

- The Participant proposed for contract award is affected by Sanctions and any relevant correspondent (agent) banks would be prohibited, unable or unwilling to process payments under the contract or otherwise deal in funds due to the involvement of such Participant.
- Payments are to be made for transactions (e.g., delivery of Goods, provision of Services, etc) that are prohibited or otherwise restricted by Sanctions and any relevant correspondent (agent) banks are prohibited, unable or unwilling to process funds in connection with such transactions.
- Processing of payments is impossible or restricted due to disconnection of the Participant's bank (and broadly most banks in the Participant's jurisdiction of incorporation or domiciliation) from SWIFT (or from the relevant correspondent banking relationships).
- Availability and enforceability of tender security, advance or performance guarantee is or might be adversely affected by Sanctions. For example, if issued by banks that are subject to Sanctions, or cut-off from SWIFT or downgraded as a result of Sanctions.
- Availability of insurance to the Client or the Client's ability to receive insurance payments is or might be adversely affected by Sanctions.
- Visa bans and travelling restrictions have been enacted by countries that impact the ability for the Participant recommended for contract award to mobilise and ensure sustainable contract performance.
- Restrictions on cross-border or in-country movements because of a circumstance or event, which affect supply chains, make it impossible under the offered conditions to provide Goods, Works, Consultancy Services or Services or otherwise timely perform under the contract.
- The Participant proposed for contract award is unable to timely obtain essential licenses, permits, certifications to commence works without any material delays to the performance under the contract.
- The absence of sufficient funding for a contract due to co-financier(s) withholding or cancelling financing due to a reputationally unacceptable Participant and the Client not being able to find alternative funding.

Guidance note
Rejection Grounds

# 4. Disclosure
# 5. Effective Date
# 6. Decision Making Framework
# 7. Related Documents

# 4. Disclosure

This Guidance will be disclosed on the Bank's external website.

# 5. Effective Date

This Guidance is effective from 1 September 2026.

# 6. Decision Making Framework

Director, Project Procurement Department ("PPD") is accountable for this Guidance.

Associate Director, Legal, PPD, is responsible for this Guidance.

# 7. Related Documents

Procurement Policies and Rules.

Enforcement Policy and Procedures.

Qualification Assessment Guidance.

Guidance notes: Rejection Grounds


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