

**The Coordination Group**  
**Arab Funds Procurement Modernization Project**

**Guidance Note C—Vendor Eligibility**

TABLE OF CONTENTS

1. Vendor Eligibility..... 2
2. Definitions..... 2
3. General Standards..... 4
4. Suspension of Vendors Prior to Responsibility Determination ..... 5
5. Responsibility Determinations of Vendors..... 6
6. Notice of Decision on Responsibility ..... 7

1. Vendor Eligibility

The following sets out the procedures for determining if a given Vendor (as this term is hereinafter defined) is eligible to receive future contract awards from [insert name of Fund] (hereinafter "the Fund").

Only Vendors found to be responsible or conditionally responsible are eligible to become the Funds' Vendors, be awarded contracts by the Fund, and/or bid on the Fund's solicitations. The responsible Procurement Officer within the Fund will assess and confirm the responsibility of a Vendor prior to approving a Vendor's application, and prior to issuing a contract award.

Nothing in these procedures, and nothing shared, exchanged, transmitted or otherwise produced during proceedings, will be considered to alter, abrogate, or waive the privileges and immunities set forth in national law provisions, and/or international conventions, and in the governing documents of the Fund.

2. Definitions

The following definitions apply:

- a. Administrative Agreement—means an agreement between the Fund and a Vendor setting out the conditions and obligations that the Vendor must meet to be considered conditionally responsible.

b. **Affiliate**—means, with respect to any given entity, an entity that:

i. Controls—or has the power to control—the other entity

ii. A third party that controls or has the power to control both entities.

Indications of control include, without limitation:

a) Interlocking management or ownership

b) Identity of interests among family members

c) Shared facilities and equipment

d) Common use of employees

e) A business entity created—or organized—following the suspension, or determination of non-responsibility, of a Vendor that has the same (or similar) management, ownership, or principal employees as the Vendor that was suspended—or deemed to be non-responsible—including business entities organized as a result of a merger, acquisition, or reorganization.

c. **Collusive Practice**—means an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.

d. **Coercive Practice**—means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or its property, to influence improperly the actions of such party.

e. **Conviction**—means a conviction of a criminal offense by a court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of no contest.

f. **Conditional Responsibility Determination**—means a decision by the appropriate authority within the Fund allowing a Vendor to be eligible to receive contract awards from the Fund and to bid on the Fund’s solicitations.

g. **Corrupt Practice**—means the offering, giving, receiving or soliciting, directly or indirectly, of a thing of value to influence improperly the actions of another party.

h. **Donor**—means the legal entity, corporate or individual, including national governments, that provides financing for the Fund’s grant activities.

i. **Fraudulent Practice**—means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

j. **Non-Responsibility Determination**—means a decision by the appropriate authority within the Fund to exclude a Vendor from eligibility to receive contract awards from the Fund and to bid on the Fund’s solicitations for a specified or indefinite period of time.

k. **Obstructive Practice**—means:

- i. Deliberately destroying, falsifying, altering or concealing evidence material to the Fund’s investigation
- ii. Making false statements to investigators in order to materially impede the Fund’s investigation into allegations of a Corrupt, Fraudulent, Coercive, or Collusive Practice
- iii. Threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation, or from pursuing said investigation
- iv. Acts intended to materially impede the exercise of the Fund’s inspection and audit rights provided for under its contract with the Fund’s Vendor.

l. **Responsibility Determination**—means a decision by the appropriate authority within the Fund that a certain vendor is eligible to receive a contract award from the Fund and to bid on the Fund’s solicitations.

m. **Suspension**—means an action taken by the Fund to temporarily exclude a Vendor from the Fund’s procurement pending a determination of whether such Vendor is responsible.

n. **Vendor**—means any legal entity, including its Affiliates, that directly or indirectly (for example, through an Affiliate, prime contractor, or subcontractor) submits offers for, or may be reasonably expected to submit offers for the Fund contract, or is awarded a Fund contract.

### 3. General Standards

To be deemed a responsible Vendor with whom the Fund will conduct business, a Vendor must:

- a. Comply with applicable local and international laws
- b. Have adequate financial resources to perform the contract (or the ability to obtain those resources)

**Note:** To avoid doubt, the financial resources disclosed to the Fund should be those of the entity signing the contract

- c. Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and other business commitments

- d. Have a satisfactory performance record
- e. Have the necessary organization, experience, accounting, operational controls, appropriate insurance, and technical skills (including, as appropriate, such elements as production control procedures, property control systems, quality assurance measures, and safety programs applicable to materials to be produced, or services to be performed by the Vendor)
- f. Have the necessary technical experience, equipment, and facilities
- g. Not have committed any act or offense indicating a lack of integrity or honesty that seriously—and directly—affects the present responsibility of a Vendor, including Fraudulent, Corrupt, Collusive, Coercive, or Obstructive practices
- h. Not have been suspended or debarred, or otherwise identified as ineligible for contracting with the Fund in connection with the Vendor's operational work
- i. Not have been identified on any Anti-Money Laundering/Combating the Financing of Terrorists sanctions lists monitored by the Fund
- j. Not have refused to cooperate with the Fund's review, audit, or investigation
- k. Not have undertaken any other action that, in the sole discretion of the Fund, is so serious or compelling in nature that it adversely affects the current responsibility of the Vendor, or could result in harm to the Fund's reputation or image.

The Fund may also consider a Vendor to be non-responsible if it, or one of its owners, officers or key personnel has been suspended, debarred, or otherwise identified as ineligible for contracting or employment by the Fund.

Should it come to the attention of the Fund that a Vendor may no longer be a responsible Vendor with whom the Fund can conduct business, the appropriate authority within the Fund may make a determination whether or not such Vendor is responsible, conditionally responsible or non-responsible.

#### **4. Suspension of Vendors Prior to Responsibility Determination**

The appropriate authority within the Fund may suspend a Vendor pending a final Responsibility Determination whenever said appropriate authority determines a reasonable likelihood exists that further investigation will lead to a finding of non-responsibility on the part of the Vendor in question.

When a Vendor—and any specifically named Affiliate(s)—is suspended, they shall be advised in writing by the appropriate authority within the Fund:

- a. They have been suspended
- b. The cause(s) relied upon and reasons for imposing suspension

- c. The effect of the suspension
- d. The suspension is for a temporary period pending the completion of proceedings that may ensue
- e. The Vendor may submit—within the time period specified in the notice—either in writing or through oral presentation, information showing that the Vendor is responsible, including any additional specific information that raises a genuine dispute over the material facts, as well as any evidence of remedial measures taken or proposed by the Vendor, or mitigating factors
- f. That suspension may lead to a Determination of Non-responsibility or Conditional Responsibility.

A Vendor suspended pending a Responsibility Determination:

- a. Is not eligible to receive Fund's contract awards and/or to bid on Fund's solicitations
- b. Is excluded from conducting new business with the Fund as an agent or representative of other Vendors
- c. Is precluded from having discussions with the Fund concerning the award of new contracts
- d. Is advised a suspension applies to all Affiliates of the Vendor, unless the suspension decision is limited by its terms to specific divisions, organizational elements, or commodities.

## **5. Responsibility Determinations of Vendors**

The appropriate authority within the Fund will make the determination of whether or not a Vendor is responsible, conditionally responsible, or non-responsible based on all relevant information reasonably available, including any information submitted by the Vendor to the Fund. This determination is final and not subject to appeal.

Vendors found to be responsible are eligible to bid on the Fund's solicitations and receive Fund's contract awards, subject to the Vendors' continuing to satisfy the requirements necessary to be considered responsible.

Vendors found to be conditionally responsible are required to meet the conditions and obligations prescribed by the appropriate authority within the Fund in an administrative agreement prior to being eligible to receive Fund's contract awards or to bid on Fund's solicitations.

Vendors found to be non-responsible are, for a period of time determined by the appropriate authority within the Fund:

- a. Ineligible to receive Fund's contract awards or to bid on Fund's solicitations
- b. Excluded from conducting business with the Fund as agents or representatives of other Vendors
- c. Precluded from having discussions with the Fund concerning the awarding of contracts. A Non-Responsibility Determination applies to all Affiliates of the Vendor, unless the decision provides otherwise.

In any action in which the determination of non-responsibility is not based upon a conviction, the Non-Responsibility Determination must be established on the basis of evidence that it is more likely than not that the Vendor is not a responsible vendor. The expression, "more likely than not," means in this context that, upon consideration of all the relevant evidence, a preponderance of the evidence supports a finding that the Vendor is not a responsible Vendor.

## **6. Notice of Decision on Responsibility**

Notice to the Vendor of a Responsibility Determination will:

- a. Refer to the notice of suspension, if applicable
- b. Indicate whether the Vendor has been determined to be responsible, conditionally responsible, or non-responsible
- c. In the case of a Non-Responsibility Determination, specify the reason(s) for non-responsibility and the period of non-responsibility, including effective dates, and identify all Affiliates, if any, of the Vendor also deemed to be non-responsible
- d. In the case of conditional responsibility, specify the reason(s) for the Conditional Responsibility Determination and include an administrative agreement, as an attachment to the notice, indicating the terms and conditions with which the Vendor is required to comply prior to being eligible to receive Fund's contracts and to bid on Fund's solicitations.

Ineligibility of a Vendor due to non-responsibility will be for a period commensurate with the seriousness of the cause(s):

- a. The appropriate authority within the Fund may extend the ineligibility period for an additional period, if said authority determines that an extension is necessary to protect the Fund's interests.

b. The said appropriate authority may, upon a Vendor's written request, reduce or eliminate the period or extent of ineligibility for reasons such as:

- i. Newly discovered material information
- ii. Reversal of the conviction upon which the Non-Responsibility Determination was based
- iii. Bona fide change in ownership or management
- iv. Measures taken by the Vendor to become responsible
- v. Other reasons deemed appropriate by the appropriate authority within the Fund.

c. Restitution, as well as financial and other remedies, may be sought in exceptional circumstances where there is a quantifiable amount to be restored to the Fund.

The Fund will post publicly the names of non-responsible Vendors, together with the policy basis for that determination.