

Millennium Challenge Corporation

# **Program Procurement Guidelines**

October 23, 2009



**MILLENNIUM**  
CHALLENGE CORPORATION  

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UNITED STATES OF AMERICA



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## 1. Purpose and Scope

The principles, rules, and procedures set out in these Program Procurement Guidelines (“Guidelines”) shall govern the conduct and administration by the MCA Entity or other entity( excluding MCC) of the procurement of the goods, works, consultant, and non-consultant services that need to be acquired to implement the projects funded by MCC (“Project” or “Projects”) under Millennium Challenge Compacts and grant and implementation agreements entered into pursuant to Section 609(g) of the Millennium Challenge Act unless the Millennium Challenge Corporation (“MCC”) specifically agrees to the application of alternative procurement procedures.<sup>1</sup> These guidelines do not apply to MCC threshold programs funded pursuant to Section 616 of such Act.

## 2. Authorities

### 2.1 Statutory Authority

- a. Section 609(b)(1)(I) of the Millennium Challenge Act of 2003, as amended (P.L. No. 108-199, codified at 22 U.S. C. 7701, et seq.)

### 2.2 Federal Government Regulations, Standards, and Other Guidance

- a. Not applicable

### 2.3 Related MCC Policies and Procedures

- a. Guidance on Reporting and Considering Past Performance by Contractors in MCA Entity Program Procurements
- b. Cost Principles for Cost-Reimbursement Contracts under MCC-Financed Grants
- c. Cost Principles for Government Affiliates Involved in MCC Compact Implementation
- d. Policy on Preventing, Detecting, and Remediating Fraud and Corruption in MCC Operations
- e. Guidelines for Accountable Entities and Implementation Structures

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<sup>1</sup> The MCC Program Procurement Guidelines are based on “Guidelines: Procurement Under IBRD Loans and IDA Credits May 2004, revised October 2006” and Guidelines: Selection and Employment of Consultants by World Bank Borrowers, May 2004, revised October 2006”. © 2004 by the International Bank for Reconstruction and Development/The World Bank. All rights reserved. For further information, please visit <http://www.worldbank.org>.

### **3. Effective Date**

These guidelines shall become effective on the date approved and shall supersede all previous versions.

### **4. Guidelines**

# Part 1.

## Conduct and Administration of Procurement

### Section 1.A. Program Procurement Guidelines: Procurement of Goods, Works, and Non-Consultant Services

#### I. Introduction

##### Applicability of Section 1.A of these Guidelines

P1.A.1.1 Section 1.A sets forth the principles, rules, and procedures generally applicable to the procurement of goods, works, and non-consultant services funded by MCC.

##### General Considerations

P1.A.1.2 The MCA Entity is responsible for implementing the Projects and therefore for selecting the contractors and suppliers and awarding and subsequently administering the contracts. While in practice the specific procurement rules and procedures to be followed in the implementation of a Project depend on the circumstances of the particular case, the following four considerations (“*MCC Program Procurement Principles*”) generally guide the application of these Guidelines:

P1.A.1.2 (a) Open, fair, and competitive procedures used in a transparent manner to solicit, award, and administer contracts to procure goods, works, and non-consultant services;

P1.A.1.2 (b) Solicitations for goods, works, and non-consultant services shall be based upon a clear and accurate description of the goods, works, or non-consultant services to be acquired;

P1.A.1.2 (c) Contracts shall be awarded only to qualified and capable suppliers and contractors that have the capability and willingness to perform the contracts in accordance with the terms and conditions of the applicable contracts and on a cost-effective and timely basis; and

P1.A.1.2 (d) No more than a commercially reasonable price (as determined, for example, by a comparison of price quotations and market prices) shall be paid to procure goods, works, and non-consultant services.

P1.A.1.3 The MCA Entity shall ensure that all the procurements for goods, works, and non-consultant services undertaken in furtherance of the Compact and funded in whole or in part, directly or indirectly, with MCC funding shall comply with these MCC Program Procurement Principles.

P1.A.1.4 Open competition is the basis for efficient public procurement. In most cases therefore, MCC requires that MCC-funded goods, works, and non-consultant services be obtained through a competitive bidding process ("*Competitive Bidding*") open to eligible suppliers and contractors as set out in Sub-Section 1.A. II below.

P1.A.1.5 Where Competitive Bidding is not the most appropriate method of procurement, other methods of procurement may be used. Sub-Section 1.A. III describes these other methods of procurement and the circumstances under which their application would be more appropriate. The particular methods to be followed for procurements under the Compact shall be set out in Procurement Plans as approved by MCC.

### **Conflict of Interest**

P1.A.1.6 Bidders, suppliers, contractors, and subcontractors shall provide professional, objective, and impartial advice and at all times hold the interests of the MCA Entity paramount, without any consideration for future work. Firms and individuals shall avoid conflicts with other assignments and their own corporate interests. Firms and individuals shall not be hired for any assignment 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 assignment in the best interest of the MCA Entity. Without limiting the generality of the foregoing, firms and individuals shall not be hired under the circumstances set forth below:

P1.A.1.6 (a) Conflict between consultant activities and procurement of goods, works, or non-consultant services: A firm or individual that has been engaged by MCC, the MCA Entity or another donor to provide goods, works, or non-consultant services for a Project, and each of its affiliates, shall be disqualified from providing consultant services related to those goods, works, or non-consultant services. Conversely, a firm or individual hired to provide consultant services for the preparation or implementation of a Project, and each of its affiliates, shall be disqualified from subsequently providing goods, works, or non-consultant services resulting from or directly related to the firm's consultant services for such preparation or implementation.

P1.A.1.6 (b) Relationships with the MCA Entity staff: A firm or individual that has been engaged by the MCA Entity to provide, goods, works, or services (including their personnel, subcontractors and affiliates) that either are themselves or have a business or family relationship with (i) a member of the MCA Entity board of directors or staff, (ii) the Project implementing entity's staff, or (iii) the Procurement Agent or Fiscal Agent hired by the MCA Entity in connection with the Compact any of whom is directly or indirectly involved in any part of: (A) the preparation of the bidding documents related to the procurement, including the contract, (B) the selection process for such procurement, or (C) the supervision of any contract awarded in the procurement, may not be awarded the contract, unless the conflict stemming from this relationship has been resolved in a manner ac-

ceptable to MCC throughout the process of preparing the documents related to the procurement, the selection process and the award and execution of the contract.

### **Eligibility**

P1.A.1.7 To foster competition, MCC permits firms and individuals to offer goods, works, and non-consultant services for MCC-funded Projects, except firms and individuals from any country subject to sanction or restriction by law or policy of the United States. Any conditions for participation shall be limited to those that are essential to ensure the firm's capability to fulfill the contract in question.

P1.A.1.8 In connection with any MCC-funded contract, MCC does not permit the MCA Entity to deny pre- or post-qualification to a firm for reasons unrelated to its capability and resources to perform the contract successfully; nor does it permit the MCA Entity to disqualify any bidder for such reasons. Consequently, the MCA Entity should carry out due diligence on the legal, technical, and financial qualifications of bidders to be assured of their capabilities in relation to the specific contract.

P1.A.1.9 As exceptions to the foregoing:

P1.A.1.9 (a) Firms of a country or goods manufactured in a country may be excluded if, (i) as a matter of law or official regulation, the country of the MCA Entity prohibits commercial relations with that country, provided that MCC is satisfied that such exclusion does not preclude effective competition for the supply of goods, works or non-consultant services required, or (ii) 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 country of the MCA Entity prohibits any import of goods from, or payments to, a particular country, person, or entity.

P1.A.1.9 (b) A firm which has been engaged to provide consultant services for the preparation or implementation of a Project, and any of its affiliates, shall be disqualified from subsequently providing goods, works, or non-consultant services resulting from or directly related to the firm's consultant 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. (*See paragraph P1.A.2.5 of this Section 1.A for discussion of the use of turnkey or design and build contracts*).

P1.A.1.9 (c) Government-owned enterprises, other than Force Account units, in the country of the MCA Entity may participate only if they can establish that they (i) are legally and financially autonomous, (ii) operate under commercial law, and (iii) are not a dependent agency of the MCA Entity.

P1.A.1.9 (d) A firm declared ineligible in accordance with Part 10, Eligibility Verification Procedures, shall be ineligible to be awarded an MCC-funded contract. This would also remove from eligibility any procurement from

a country or from a firm that is organized in or has its principal place of business or a significant portion of its operations in any country that is subject to sanction or restriction by law or policy of the United States.

### **Advance Contracting and Retroactive Financing**

P1.A.1.10 In certain circumstances, such as to accelerate Project implementation, the MCA Entity may, with the approval of MCC, wish to proceed with the procurement of goods, works, or non-consultant services before the obligation of Compact funds that will finance such procurement. This process is referred to as advance contracting. In such cases, the procurement procedures, including advertisement, shall be in accordance with these Guidelines, and MCC shall review the process used by the MCA Entity. The MCA Entity undertakes such advance contracting at its own risk, and any concurrence by MCC with the procedures, documentation, or proposal for award does not commit MCC to fund the contract in question. If the contract is signed, reimbursement by MCC of any payments made by the MCA Entity under the contract prior to obligation of the related Compact funds is referred to as retroactive financing. Under no circumstances will MCC reimburse the MCA Entity for any contract costs if the contract is signed prior to obligation of funds by MCC and any required MCC approval.

### **Joint Ventures**

P1.A.1.11 Any firm may bid independently or in joint venture (so long as all firms participating in the joint venture are jointly and severally liable) with domestic firms and/or with foreign firms, but MCC does not accept conditions of bidding which require mandatory joint ventures or other forms of mandatory association between firms.

### **MCC Review**

P1.A.1.12 MCC shall review the MCA Entity procurement procedures, documents, bid evaluations, award recommendations, and contracts to ensure that the procurement process is carried out in accordance with the agreed procedures. These review procedures are described in Attachment 1 of these Guidelines.

### **Misprocurement**

P1.A.1.13 MCC does not fund expenditures for goods, works, or non-consultant services which have not been procured in accordance with the agreed provisions as detailed in the Compact, any Supplemental Agreement, these Guidelines, and the approved Procurement Plans. In such cases, MCC will declare a misprocurement and may cancel that portion of the Compact allocated to the goods, works, or non-consultant services that have been misprocured if corrective measures satisfactory to MCC are not taken. MCC may, in addition, exercise other remedies provided for under the Compact. Even once the contract is awarded after obtaining an approval from MCC, MCC may still declare a misprocurement if it concludes that the approval was issued on the basis of incomplete, inaccurate, or misleading information furnished by the MCA Entity or the terms and conditions of the contract had been modified without MCC approval.



## References to MCC

P1.A.1.14 The MCA Entity shall use the following language (or similar language acceptable to MCC) when referring to MCC in procurement documents:

*The United States of America acting through the Millennium Challenge Corporation (“MCC”) and the [Insert Country] (the “Government”) have entered into a Millennium Challenge Compact for Millennium Challenge Account assistance to help facilitate poverty reduction through economic growth in [Insert Country] (the “Compact”) in the amount of approximately [Insert amount of Compact] USD (“MCC Funding”). The Government, acting through [Insert full legal name of the MCA Entity] (“MCA-[Insert as Appropriate]”) intends to apply a portion of the MCC Funding to eligible payments under a contract for which this [Insert Type of Bidding Document] is issued. Any payments made under the proposed contract will be subject, in all respects, to the terms and conditions of the Compact and related documents, including restrictions on the use and distribution of MCC Funding. No party other than the Government and [the MCA Entity] shall derive any rights from the Compact or have any claim to the proceeds of MCC Funding.*

## Fraud and Corruption

P1.A.1.15 MCC requires that all beneficiaries of MCC funding, including the MCA Entity and any bidders, suppliers, contractors, and subcontractors under any MCC-funded contracts, observe the highest standards of ethics during the procurement and execution of such contracts. MCC’s Policy on Preventing, Detecting, and Remediating Fraud and Corruption in MCC Operations is applicable to all procurements involving MCC funding and can be found on the MCC Website. In pursuance of this policy, the following provisions shall apply.

P1.A.1.16 (a) For the purposes of these provisions, the terms set forth below are defined as follows:

- (i) “coercive practice” means impairing or harming or threatening to impair or harm, directly or indirectly, persons or their property, to influence their participation in a procurement process, or affect the execution of a contract;
- (ii) “collusive practice” means a scheme or arrangement between two (2) or more parties, with or without the knowledge of the MCA Entity, designed to establish prices at artificial, noncompetitive levels or to otherwise deprive the MCA Entity of the benefits of free and open competition;
- (iii) “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of a public official (including MCA Entity and MCC staff, and employees of other organizations taking or reviewing selection decisions) in the selection process or in contract execution, or the making of any payment to any third party, in connection with or in furtherance of a contract, in violation of (A) the United States Foreign Corrupt Practices Act of 1977, as amended (15 USC 78a et seq.) (“FCPA”), or any other

actions taken that otherwise would be in violation of the FCPA if the FCPA were applicable, or (B) any applicable law in the MCA Entity's country;

(iv) "fraudulent practice" means any act or omission, including any misrepresentation, in order to influence (or attempt to influence) a selection process or the execution of a contract, to obtain a financial or other benefit, or to avoid (or attempt to avoid) an obligation;

(v) "obstructive practice" means

(aa) destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to impede an investigation into allegations of a coercive, collusive, corrupt, fraudulent, or prohibited practice; and threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, and

(bb) acts intended to impede the exercise of the inspection and audit rights of MCC provided under the Compact; and related agreements, and

(vi) "prohibited practice" means any action that violates Section E (Compliance with Anti-Corruption, Anti-Money Laundering and Terrorist Financing Statutes and Other Restrictions) of the "General Provisions Annex" that will be made a part of MCC-funded contracts and may be found on the MCC website at [http://www.mcc.gov/guidance/compact/general\\_provisions.pdf](http://www.mcc.gov/guidance/compact/general_provisions.pdf).

P1.A.1.16 (b) The MCA Entity will reject a bid (and MCC will deny approval of a proposed contract award) if it determines that the bidder recommended for award has, directly or through an agent, engaged in coercive, collusive, corrupt, fraudulent, obstructive, or prohibited practices in competing for the contract in question.

P1.A.1.16 (c) MCC and the MCA Entity have the right to sanction a bidder, supplier, contractor, or subcontractor, including declaring such party ineligible, either indefinitely or for a stated period of time, to be awarded an MCC-funded contract if at any time either the MCA Entity or MCC determines that the bidder, supplier, contractor, or subcontractor has, directly or through an agent, engaged in coercive, collusive, corrupt, fraudulent, obstructive or prohibited practices in competing for, or in executing, such a contract.

P1.A.1.16 (d) MCC and the MCA Entity have the right to require that a provision be included in solicitation documents and in MCC-funded contracts requiring a bidder, supplier, contractor, or subcontractor to permit the MCA Entity, MCC, or any designee of MCC, to inspect its accounts, records and other documents relating to the submission of a bid or performance of an MCC-funded contract and to have them audited by auditors appointed by MCC or the MCA Entity with the approval of MCC.

P1.A.1.16 (e) MCC has the right to cancel any portion or all of the MCC funding allocated to a contract if it determines at any time that representatives of a beneficiary of the MCC funding engaged in coercive, collusive, corrupt, fraudulent, obstructive or prohibited practices during the selection process or the execution of an MCC-funded contract, without the MCA Entity having taken timely and appropriate action satisfactory to MCC to remedy the situation.

P1.A.1.17 With the specific approval of MCC, the MCA Entity may introduce, into bid forms for contracts funded by MCC, an undertaking of 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 solicitation documents MCC will accept the introduction of such undertaking at the request of the MCA Entity, provided the arrangements governing such undertaking are satisfactory to MCC.

### **Price-Reasonableness Analysis**

P1.A.1.18 One of the MCC Program Procurement Principles is that "No more than a commercially reasonable price (as determined, for example, by a comparison of price quotations and market prices) shall be paid to procure goods, works, and non-consultant services." To ensure compliance with this principle, the MCA Entity shall systematically gather bid and price information for all procurements and use this as part of the process of conducting a price-reasonableness analysis of the prices offered in a procurement process (both for competitive and single-source procurements for goods, works, consultant and non-consultant services in accordance with Attachment 11, Guidance on the Price-Reasonableness Analysis.

## **II. Competitive Bidding**

### ***A. General***

#### **Introduction**

P1.A.2.1 The objective of Competitive Bidding, as described in these Guidelines, is to provide all eligible prospective bidders with timely and adequate notification of the MCA Entity's requirements and an equal opportunity to bid for the required goods, works, and non-consultant services.

#### **Type and Size of Contracts**

P1.A.2.2 The solicitation documents shall clearly state the type of contract to be entered into and contain the proposed contract provisions appropriate for the type of contract to be used. The most common types of contracts provide for payments on the basis of a lump sum, unit prices, reimbursable cost plus fees, or combinations thereof. Requirements contracts, indefinite delivery- indefinite quantity contracts and blanket purchase agreements are also permitted. As discussed in Part 11, reimbursable-cost contracts are acceptable to MCC only in exceptional circumstances such as conditions of high risk or where costs cannot be determined in advance

with sufficient accuracy. Such contracts shall include appropriate incentives to limit costs and shall reference the relevant MCC Cost Principles found at the MCC website, [www.mcc.gov](http://www.mcc.gov).

P1.A.2.3 The size and scope of individual contracts will depend on the magnitude, nature, and location of the Project. For Projects requiring a variety of goods and works, separate contracts generally are awarded for the supply and/or installation of different goods and for works. The choice of contract will depend upon procurement efficiency, minimizing overhead, mobilization costs, easing the contract administration and oversight burden, market considerations, and funding availability.

P1.A.2.4 For a Project requiring similar but separate items of goods or works, bids may be invited under alternative contract options that would attract the interest of both small and large firms which could be allowed, at their option, to bid for individual lots or for a group of similar lots. 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 lowest evaluated cost to the MCA Entity.

P1.A.2.5 In certain cases, MCC may accept or require a turnkey contract under which the design and engineering, the supply and installation of equipment, and the construction of a complete facility or works are provided within one contract. Alternatively, the MCA Entity may remain responsible for the design and engineering, and invite bids for a single responsibility contract for the supply and installation of all goods and works required for the Project component. Design and build, and management contracting contracts are also acceptable where appropriate.

### **Two-Stage Bidding**

P1.A.2.6 In the case of turnkey contracts or contracts for large complex facilities or works of a special nature, or complex information and communication technology, it may be undesirable or impractical to prepare complete technical specifications in advance. In such a case, a two-stage bidding procedure may be used, under which first un-priced technical proposals on the basis of a conceptual design or performance specifications are invited, subject to technical as well as commercial clarifications and adjustments, to be followed by amended bidding documents and the submission of final technical proposals and priced bids in the second stage.

### **Notification and Advertising**

P1.A.2.7 Timely notification of procurement opportunities is essential in competitive bidding. On at least a semi-annual basis, the MCA Entity shall publicize through a General Procurement Notice (“GPN”), procurements planned for the upcoming period as identified in the adopted Procurement Plan which was approved by MCC. The GPN shall be advertised in a manner to provide reasonable notice of planned procurements to potential suppliers and contractors. Advertisement of the GPN, shall include posting in English at the MCA Entity’s website (or such other appropriate website designated by the MCA Entity and approved by MCC), the Development Gateway Market website at [www.dgmarket.com](http://www.dgmarket.com) (“dgMarket”) and the United Nations Development Business

online website at [www.devbusiness.com](http://www.devbusiness.com) ("**UNDB Online**"). The MCA Entity shall also publish the GPN in a newspaper of wide circulation in the country of the MCA Entity and in such other media outlets as appropriate or as requested from time to time by MCC. In countries where the official language is other than English, the GPN shall be published in the official local language of the country of the MCA Entity in at least one newspaper of wide circulation in the country and on the MCA Entity's website.

P1.A.2.8 Invitations to prequalify or to bid, as the case may be, shall be advertised as Specific Procurement Notices ("**SPN**"). For contracts for goods and non-consulting services with an estimated value at or over 200,000USD and contracts for works valued at or over 1,000,000USD, such invitations shall be published in at least one (1) newspaper of national circulation in the country of the MCA Entity and posted at the MCA Entity's website (or such other appropriate website designated by the MCA Entity and approved by MCC), at the *dgMarket* website and at UNDB Online. Contracts valued below the respective thresholds can be advertised in the venue of preference of the MCA entity-local, regional and/or international. Publication in local print and broadcast and other national and international media is encouraged as long as the posting does not pre-date the required postings. The MCA Entity shall publish the SPNs in sufficient time to enable prospective bidders to obtain pre-qualification or bidding documents and prepare and submit their responses. MCC reserves the right to approve the text of any SPN.

#### **Pre-qualification of Bidders**

P1.A.2.9 Pre-qualification can be conducted for large or complex works, or in any other circumstances in which the high costs of preparing detailed bids could discourage competition, such as custom designed equipment, industrial plants, specialized services, some complex information and technology and contracts to be let under turnkey, design and build, or management contracting. This also ensures that invitations to bid are extended only to those who have adequate capabilities and resources. Pre-qualification shall be based entirely upon the capability and resources of prospective bidders to perform the particular contract satisfactorily, taking into account the factors, methods, criteria, and requirements defined in Section III of the Standard Bidding Documents for the Pre-qualification of Works.

P1.A.2.10 The invitation to prequalify for bidding on specific lots or groups of similar lots shall be advertised as described in Paragraphs P1.A.2.7 and P1.A.2.8 above. The scope of the contract and a clear statement of the requirements for qualification shall be sent to those who responded to the invitation. The MCA Entity shall inform all applicants of the results of pre-qualification. Following pre-qualification, the bidding documents shall be made available to the qualified prospective bidders. For pre-qualification for groups of contracts to be awarded over a period of time, a limit for the number or total value of awards to any one bidder may be made on the basis of the bidder's resources. The list of prequalified firms in such instances shall be reviewed annually and updated as necessary. Verification of the information provided in the submission for pre-qualification shall again be

confirmed prior to award of contract, and award may be denied to a bidder that is judged no longer to have the capability or resources to perform the contract successfully.

## ***B. Bidding Documents***

### **General**

P1.A.2.11 The bidding documents shall furnish all information necessary for a prospective bidder to prepare a bid for the goods, works or non-consultant services to be provided. While the detail and complexity of these documents may vary with the size and nature of the proposed bid package and contract, they generally include: invitation for bids; instructions to bidders and a bid data sheet; evaluation and qualification criteria; bidding forms; form of contract, including both general and specific conditions; specifications and drawings; relevant technical data (including of geological and environmental nature); list of goods or bill of quantities; delivery time or schedule of completion; and necessary appendices, such as formats for various securities. The basis for bid evaluation and selection of the lowest evaluated bid shall be clearly outlined in the instructions to bidders and/or the specifications. If a fee is charged for the bidding documents, it shall be reasonable and reflect only the cost of their printing and delivery to prospective bidders, and shall not be so high as to discourage qualified bidders. The MCA Entity may use an electronic system to distribute bidding documents, provided that MCC is satisfied with the adequacy of such system. If bidding documents are distributed electronically, the electronic system shall be secure to avoid modifications to the bidding documents and shall not restrict the access of bidders to the bidding documents. Guidance on critical components of the bidding documents is given in the following paragraphs.

P1.A.2.12 The MCA Entity shall use the appropriate Standard Bidding Documents (“*SBDs*”) made available by MCC pursuant to Part 3 of these Guidelines. The SBDs may be modified to address Project-specific conditions, subject to approval by MCC when the change is material. To the extent possible, such changes shall be introduced through the Bid Data Sheets (“*BDSs*”), Appendix to Bid or through the Special Conditions of Contract (“*SCC*”) and not by introducing changes in the General Conditions of Contract (“*GCC*”).

### **Validity of Bids and Bid Security**

P1.A.2.13 Bidders shall be required to submit bids valid for a period specified in the bidding documents which shall be sufficient to enable the MCA Entity to complete the comparison and evaluation of bids, review the recommendation of award with MCC (if required), and obtain all the necessary approvals so that the contract can be awarded within that period.

P1.A.2.14 The MCA Entity has the option of requiring a bid security. When used, the bid security shall be in the amount and form specified in the bidding documents and shall remain valid for a sufficient time beyond the validity period of the bids, in order to provide reasonable time for the MCA Entity to act if the security is to be called. The format of the bid security shall be in accordance with the Standard 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 MCA Entity, it shall have a correspondent financial institution located in the country of the MCA Entity. Except under certain circumstances (e.g., where a bidder withdraws its bid during the period of bid validity, where a bidder does not accept certain corrections to its bid, or where an otherwise successful bidder fails to sign the contract or provide the performance security within the time specified) that are to be clearly stated in the bidding documents, bid security shall be released to unsuccessful bidders once the contract has been signed with the winning bidder.

### **Language**

P1.A.2.15 All advertisements for contracts and notices of contract awards for contracts valued at or above 100,000USD, whether posted at the MCA Entity's website, at *dgMarket*, or *UNDB Online* shall be posted in English; and, at the discretion of the MCA Entity may also be published in the official language of the country of the MCA Entity (if different from English). Advertisements for contracts and notices of contract awards for contracts valued at less than 100,000USD may be published in English or the official local language of the country of the MCA Entity (if different from English) or in both languages at the discretion of the MCA Entity. The English version will control in the event of discrepancies between the English version and a local language version.

P1.A.2.16 For all contracts at or above 100,000USD, the solicitation documents, the documents responding to these solicitations (including the bids) and the contracts themselves shall be prepared in English, and English shall govern contractual relations between the MCA Entity and the supplier or contractor. At the discretion of the MCA Entity, the solicitation documents also may be prepared in the local official language of the country of the MCA Entity (if different from English). For contracts valued at less than 100,000USD, any solicitation document, responding documents and contracts may be prepared in English or the local official language of the country of the MCA Entity (if different from English) or both at the discretion of the MCA Entity, provided that if the documents are prepared in both languages, the English version will control. However, contractors and suppliers shall not be permitted or required to sign contracts in two languages.

P1.A.2.16.1 The MCA Entity may seek a limited waiver from the language requirements of Paragraphs P1.A.2.15 and P1.A.2.16 as described in Part 9; "Language."

### **Clarity of Bidding Documents**

P1.A.2.17 Bidding documents shall be so worded as to permit and encourage international competition and shall set forth clearly and precisely the work to be carried out, the location of the work, the goods to be supplied, the place of delivery or installation, the schedule for delivery or completion, minimum performance requirements, and the warranty and maintenance requirements, as well as any other pertinent terms and conditions. In addition, the bidding documents, where appropriate, shall define the tests, standards, and methods that will be employed to judge the conformity of equipment as delivered, or works as performed with the specifications.

Drawings shall be consistent with the text of the specifications, and an order of precedence between the two shall be specified.

P1.A.2.18 The bidding documents shall specify any factors, in addition to price, which will be taken into account in evaluating bids, and how such factors will be quantified or otherwise evaluated. If bids based on alternative designs, materials, completion schedules, etc., are permitted, conditions for their acceptability and the method of their evaluation shall be expressly stated.

P1.A.2.19 All prospective bidders shall be provided the same information, and shall be assured of equal opportunities to obtain additional information on a timely basis. The MCA Entity shall provide reasonable access to Project sites for visits by prospective bidders. For works or complex supply contracts, particularly for those requiring refurbishing existing works or equipment, a pre-bid conference may be arranged whereby potential bidders may meet with representatives of the MCA Entity to seek clarifications (in person or online). Minutes of the conference shall be provided to all prospective bidders with a copy included in the record of the procurement. Any additional information, clarification, correction of errors, or modifications of bidding documents shall be sent to each recipient of the original bidding documents in sufficient time before the deadline for receipt of bids to enable bidders to take appropriate actions. If necessary, the deadline shall be extended. For any bidding documents originally approved by MCC, MCC will provide final approval of all responses, modifications, and addenda before their being sent by the MCA Entity to the prospective bidders or consultants.

### **Standards and Technical Specification**

P1.A.2.20 Standards and technical specifications quoted in bidding documents shall promote the broadest possible competition, while assuring the critical performance or other requirements for the goods, works or non-consulting services under procurement. As far as possible, the MCA Entity shall specify internationally accepted standards such as those issued by the International Standards Organization with which the equipment or materials or workmanship shall comply. Where such international standards are unavailable or are inappropriate, national standards may be specified. In all cases, the bidding documents shall state that equipment, material, or workmanship meeting the industry standards, which promise at least substantial equivalence, will also be accepted.

### **Use of Brand Names**

P1.A.2.21 Specifications shall be based on relevant characteristics and/or performance requirements. References to brand names, catalog numbers, or similar classifications shall be avoided. If it is necessary to quote a brand name or catalog number of a particular manufacturer to clarify an otherwise incomplete specification, the words "or equivalent" shall be added after such reference. The specification shall permit the acceptance of offers for goods which have similar characteristics and which provide performance at least substantially equivalent to those specified.



## Over-Specification

### Definition

P1.A.2.22 Over-specification occurs when a specification exceeds the minimum standards necessary to complete the intended task.

### Procedures for Verifying Proper Specification

P1.A.2.23 MCA Entities must propose specifications for the procurement of goods that meet the minimum requirements necessary to complete the intended task. Goods which meet the minimum standards do not have to be goods of the lowest possible quality, but must have the minimum physical, functional and/or performance characteristics required to complete the intended work in an effective and efficient manner.

The Procurement Agent(s) of the MCA Entity is then responsible for verifying the specifications and questioning any instances where over-specification is indicated. Extraordinary circumstances which may require specifications above minimum requirements must be documented and noted when submitted for MCC approval.

### Consequences of Over-Specification

P1.A.2.24 In all instances of over-specification, the primary consequences are restriction of competition and the potential for excessive and inefficient expenditure of funds. Competition is restricted because over-specification excludes viable alternatives that could meet the minimum standards of the intended use without inhibiting program efficiency. This not only limits the number of bids that could be received and considered, but represents the potential for intentional manipulation and fraud. There is also the potential for waste of funds because over-specification can also result in unnecessary price increases.

### Pricing

P1.A.2.25 Unless otherwise specified in the solicitation documents, bids for goods shall be invited on the basis of (a) CIP<sup>2</sup> for all goods manufactured abroad, including those previously imported, and (b) EXW<sup>3</sup> for goods manufactured or assembled in the country of the MCA Entity, plus the cost of inland transportation and insurance to the place of destination. Bidders shall be allowed to arrange for ocean and other transportation and related insurance from any eligible source. Where installation, commissioning, or other similar services are required to be performed by the bidder, as in the case of “supply and installation” contracts, the bidder shall be required to quote for these services, in addition.

P1.A.2.26 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,

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<sup>2</sup> Refer to INCOTERMS 2000, published by the International Chamber of Commerce, Cours Albert 1er, 75008 Paris, France, for definition of CIP.

<sup>3</sup> Refer to INCOTERMS 2000, published by the International Chamber of Commerce, Cours Albert 1er, 75008 Paris, France, for definition of EXW.

and commissioning, as well as associated works and all other services included in the scope of contract such as design, maintenance, operation, etc.

P1.A.2.27 Bidders for works contracts shall be required to quote unit prices or lump sum prices for the performance of the works. Bidders shall be allowed to obtain all inputs from any eligible source so that they may offer their most competitive bids.

### **Price Adjustment**

P1.A.2.28 Bidding documents shall state either (a) that bid prices will be fixed or (b) that price adjustments will be made to reflect any changes (upwards or downwards) in major cost components of the contract, such as labor, equipment, materials, and fuel. Price adjustment provisions are usually not necessary in simple contracts involving delivery of goods or completion of works within eighteen months, but might be included in contracts which extend beyond eighteen (18) months with the approval of MCC.

P1.A.2.29 Prices may be adjusted by the use of a prescribed formula (or formulae) 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 supplier or contractor. 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.

### **Transportation and Insurance**

P1.A.2.30 Bidding documents shall permit suppliers and contractors to arrange transportation and insurance from any eligible source. Bidding documents shall state the types and terms of insurance to be provided by the bidder. The indemnity payable under transportation insurance shall be at least 110 percent of the contract amount denominated in United States dollars or local currency of the country of the MCA Entity depending upon the currency of the contract. For works, a contractor's "all risk" form of policy usually shall be specified. For large Projects with several contractors on a site, a "wrap up" or total Project insurance arrangement may be obtained by the MCA Entity, in which case the MCA Entity shall seek competition for such insurance.

### **Allowable Currencies for Bids**

P1.A.2.31 Bidding documents shall state the currency or currencies in which bidders are to state their prices. Bidders must comply with the currency restrictions as set out in the solicitation documents. Any bid or proposal that deviates from the currency requirement as stated in the solicitation documents may be rejected as non-responsive.

P1.A.2.32 In stating the currency or currencies:

P1.A.2.32 (a) The MCA Entity may allow bidders to submit bids using United States dollars, the local currency of the country of the MCA Entity, or, if justified by sound business reasons, a combination of the two. No other currency or combinations of currencies are allowed.

P1.A.2.32 (b) The MCA Entity may restrict bidders to use only one currency and not a combination of the two, or even to one particular currency of the MCA Entity's choice, even if it is the local currency of the country of the MCA Entity.

### **Currency Conversion for Bid Comparison**

P1.A.2.33 The bid price is the sum of all payments in United States dollars or the currency of the country of the MCA Entity as applicable. For the purpose of comparing prices, bid prices shall be converted to either one of the two currencies as selected by the MCA Entity and stated in the bidding documents. The MCA Entity shall make this conversion by using the selling (exchange) rates for those currencies quoted by an official source (such as the Central Bank of the country of the MCA Entity or the OANDA website - <http://www.oanda.com/convert/classic>), by a commercial bank or by an internationally circulated newspaper for similar transactions on a date selected in advance. Such source and date shall be specified in the bidding documents, provided that the date shall not be earlier than four weeks prior to the deadline for the receipt of bids and no later than the original date for the expiration of the period of bid validity.

### **Allowable Currencies for Contract Denomination and Payment**

P1.A.2.34 Contract Denomination. Contracts can be denominated either in United States dollars, the local currency of the country of the MCA Entity, or, if justified by sound business reasons, a combination of the two.

P1.A.2.35 Contract Payment. Payment need not be made in the currency denominated in the proposal or bid documents. Contracts can be payable either in United States dollars, the local currency of the country of the MCA Entity, or, if justified by sound business reasons, a combination of the two.

P1.A.2.36 In all cases where the currency denominated differs from the currency for payment; a specific exchange rate must be fixed at the date of contract signing and clearly defined at that time in the contract itself.

P1.A.2.37 The MCA Entity may not require foreign bidders to be paid in the local currency of the country of the MCA Entity; the foreign bidder must be paid in United States dollars unless, at its option, it requests to be paid in the local currency of the country of the MCA Entity.

### **Terms and Methods of Payment**

P1.A.2.38 Bidding documents shall specify the terms and methods of payment. Terms of payment may not be used as an evaluation criterion and may not affect the bid evaluation.

P1.A.2.39 Payment terms shall be in accordance with the international commercial practices applicable to the specific goods, works, or non-consultant services. The contract shall provide for the payment of interest if payment is delayed due to the fault of the MCA Entity or its agents beyond the time allowed in the contract, and the rate of charges shall be specified in the contract.

P1.A.2.39 (a) Contracts for the supply of goods shall provide for full payment on the delivery and inspection, if so required, of the contracted goods except for contracts involving installation, commissioning and testing, in which case a portion of the payment may be made after the supplier has complied with all its obligations under the contract. The use of letters of credit is encouraged so as to assure prompt payment to the supplier. In major contracts for goods and plants, provision shall be made for partial payments for work done and, in contracts of long duration, for partial payments during the period of manufacture or assembly.

P1.A.2.39 (b) Contracts for works shall provide in appropriate cases for partial payments for work done in furtherance of contract performance and reasonable retention amounts to be released upon compliance with the contractor's obligations under the contract.

P1.A.2.40 Any payment for work done in furtherance of the contract shall be related to the estimated amount of these expenses and be specified in the bidding documents. Amounts and timing of other payments to be made, such as for materials delivered to the site for incorporation in the works, shall also be specified.

### **Advance Payments**

P1.A.2.41 Advance payments are advances of funds to a supplier or contractor before, in anticipation of, and for the purpose of performance under the contract. Since advance payments are not measured by contract performance, they differ from progress payments which are based on actual performance of tasks in furtherance of the contract. Advance payments may be advisable to cover the initial mobilization expenses for large civil works or custom-made goods.

P1.A.2.42 Because advance payments are made before the MCA Entity receives any value for the funds, advance payments may be authorized only when progress payments are not viable because of the difficulty in establishing an appropriate payment schedule. Advance payment shall be limited to 15% of the contract value for goods and for works procurements and 10% for non-consulting services procurements, unless MCC approves a waiver for a higher percentage. The justification and approval of advance payments must be included in the procurement files.

P1.A.2.43 Where advance payments have been properly justified and approved, the related bidding documents shall specify (a) the amount of the advance payment (as a percentage of the contract value determined in accordance with these Guidelines), (b) the form of security required in connection with the advance payment (as discussed more fully in P1.A.2.44), and (c) the manner in which such advance payment will be liquidated against

future invoice payments. Generally, advance payments are liquidated from payments made to the supplier or contractor during performance of the contract, usually by deducting a percentage from each scheduled payment for performance.

### **Advance Payment Security Guarantees**

P1.A.2.44 In all cases where advance payments are authorized, including payment made upon signature of a contract for goods, works, or non-consultant services, an advance payment security guarantee is required. This security shall be provided in an appropriate form and amount, as specified by the MCA Entity in the bidding document.

### **Progress Payments**

P1.A.2.45 Progress payments are the preferred form of payment for all MCC-funded contracts, whether for goods, works, or services. Progress payments are multiple payments, each payable upon acceptable partial performance of the contract. Although progress payments for partial performance generally are treated as a method of payment and not as a method of contract financing, payment for partial performance can provide suppliers and contractors with needed working capital to perform the contract without use of an advance payment to provide contract financing.

P1.A.2.46 Whenever appropriate, the contract deliverables and the payment schedule should be designed to permit acceptance and payment for discrete portions of contract performance that comply with applicable contract terms as soon as accepted. During the early stages of contract performance, payments may be scheduled for deliverables of such tasks or items of work as (a) a work plan or inception report, (b) achievement of defined milestones, such as orders placed or staff mobilized, (c) establishment of an office, and (d) deposits on goods or services required for contract performance. Once the contractor has mobilized, the payments would most likely be less frequent and the deliverables to trigger payment would be tied to performance of the programmatic work, such as a percentage or stage of completion, accomplishment of defined milestones or other quantifiable measures of results.

P1.A.2.47 Progress payments based on costs are appropriate only in the case of cost-reimbursement type of contracts. Progress payments based on costs would be based on the documentation supporting the costs incurred by the supplier or contractor as work progresses under the contract. Cost-reimbursement contracts are extremely difficult to administer. In all cases where progress payments based on costs are used, the MCA Entity must ensure that all costs under such contracts are allowable and appropriately recorded and justified in accordance with the relevant MCC Cost Principles.

### **Final payment**

P1.A.2.48 Final payment is made only after all contract performance is completed and accepted. Normally, a percentage of the contract amount is retained for a period of time after physical completion and delivery of goods or works. Retentions are not normally used under contracts for services.

### **Performance Guarantees**

P1.A.2.49 In the case of a works procurement, performance security must be provided by the contractor in an amount sufficient to protect the MCA Entity in case of breach of contract by the contractor. In the case of a goods procurement, performance security may be required depending on the market conditions and commercial practice for the particular kind of goods. These performance guarantees are in addition to the unconditional security guarantee for advance payments in section P1.A.2.44 above.

### **Interest on Late Payments**

P1.A.2.50 The contract shall provide for the payment of interest at specific rates when payment is delayed due to the fault of the MCA Entity or its agents beyond the time allowed in the contract for payment.

### **Alternative Bids**

P1.A.2.51 The bidding documents shall clearly indicate when bidders are allowed to submit alternative bids, how alternative bids should be submitted, how bid prices should be offered and the basis on which alternative bids shall be evaluated.

### **Performance Security**

P1.A.2.52 Bidding documents for works shall require a performance security in an amount sufficient to protect the MCA Entity in case of breach of contract by the contractor. This security shall be provided in an appropriate form and amount, as specified by the MCA Entity in the bidding document. The amount of the security may vary, depending on the type of security furnished and on the nature and magnitude of the works. A portion of this security shall extend sufficiently beyond the date of completion of the works to cover the defects liability or maintenance period up to final acceptance by the MCA Entity.

P1.A.2.53 In contracts for the supply of goods, the need for performance security depends on the market conditions and commercial practice for the particular kind of goods. Suppliers or manufacturers may be required to provide a security to protect against nonperformance of the contract and to cover warranty obligations. The security shall be reasonable in amount. The bidding documents shall specify the arrangements for required performance securities.

### **Liquidated Damages and Bonus Clauses**

P1.A.2.54 Provisions for liquidated damages or similar provisions in an appropriate amount shall be included in the conditions of contract when delays in the delivery of goods, completion of works or failure of the goods,



works or non-consultant services to meet performance requirements would result in extra cost or loss of revenue or loss of other benefits to the MCA Entity. With prior approval of MCC, provision may also be made for a bonus to be paid to suppliers or contractors for completion of works or delivery of goods ahead of the times specified in the contract when such earlier completion or delivery would be of benefit to the MCA Entity.

### **Force Majeure**

P1.A.2.55 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 the result of an event of force majeure as defined in the conditions of contract.

### **Applicable Law and Settlement of Disputes**

P1.A.2.56 The conditions of contract shall include provisions dealing with the applicable law and the forum for the settlement of disputes. Settlement of disputes shall take place in the country of the MCA Entity with the possibility for international arbitration in the case where foreign entities are parties to the contract and in other cases where the parties so agree. In the case of works contracts, supply and installation contracts, and turnkey contracts, the dispute settlement provision might also include mechanisms such as dispute review boards or adjudicators, which are designed to permit a speedier dispute settlement.

## ***C. Bid Opening, Evaluation, and Award of Contract***

### **Time for Preparation of Bids**

P1.A.2.57 The time allowed for the preparation and submission of bids shall be determined with due consideration of the particular circumstances of the Project, the magnitude and complexity of the contract, and the period of advance notice provided by the GPN. Where large works or complex items of equipment are involved, the period shall be long enough to enable prospective bidders to conduct investigations before submitting their bids. In such cases, the MCA Entity is encouraged to convene pre-bid conferences and arrange site visits. Bidders shall be permitted to submit bids by mail or by hand. The MCA Entity may also use electronic systems permitting bidders to submit bids by electronic means, provided MCC is satisfied with the adequacy of the system, including, *inter alia*, that the system is secure, maintains the confidentiality and authenticity of bids submitted and uses an electronic signature system or equivalent to keep bidders bound to their bids. In this case, bidders shall continue to have the option to submit their bids in hard copy. The deadline and place for receipt of bids shall be specified in the invitation to bid.

### **Bid Opening Procedures**

P1.A.2.58 The time for the bid opening shall be the same as for the deadline for receipt of bids or promptly thereafter, i.e., to allow sufficient time to take the bids to the place announced for public bid opening and shall be announced, together with the place for bid opening, in the invitation to bid. The MCA Entity shall open all bids at the stipulated time and place. Bids received after the time stipulated shall not be considered. Bidders or

their representatives shall be allowed to be present (in person or online, when electronic bidding is used) at the bid opening. The general public may attend at the discretion of the MCA Entity. 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 posted online when electronic bidding is used) and recorded when opened. A copy of this record shall be provided to bidders in accordance with the provisions of the bidding documents.

### **Clarifications or Alterations of Bids**

P1.A.2.59 Except as otherwise provided in Paragraphs P1.A.2.76 and P1.A.2.77 of Section 1.A of these Guidelines, bidders shall not be requested or permitted to alter their bids after the deadline for receipt of bids. The MCA Entity shall ask bidders for clarification needed to evaluate their bids but shall not ask or permit bidders to change the substance or price of their bids after the bid opening. Requests for clarification and the bidders' responses shall be made in writing, in hard copy and/or by an electronic system satisfactory to MCC.

### **Confidentiality**

P1.A.2.60 After the public opening of bids, information relating to the examination, clarification, and evaluation of bids and recommendations concerning awards shall not be disclosed to bidders or other persons not officially concerned with this process until the publication of contract award.

### **Examination of Bids**

P1.A.2.61 The MCA Entity shall ascertain whether the bids (a) meet the eligibility requirements specified in Paragraphs P1.A.1.7, P1.A.1.8 and P1.A.1.9 of Section 1.A of these Guidelines, (b) have been properly signed, (c) are accompanied by the required securities or required declaration signed as specified in Paragraph P1.A.2.14 of Section 1.A of these Guidelines, (d) are substantially responsive to the bidding documents, and (e) are otherwise generally in order. If a bid is not substantially responsive, that is, it contains material deviations from or reservations to the terms, conditions, and specifications in the bidding documents, it shall not be considered further. The bidder shall not be permitted to correct or withdraw material deviations or reservations once bids have been opened.

### **Evaluation and Comparison of Bids**

P1.A.2.62 The purpose of bid evaluation is to determine the price to the MCA Entity of each bid in a manner that permits a comparison on the basis of their evaluated price. Subject to Paragraph P1.A.2.70 of Section 1.A of these Guidelines, the bid with the lowest evaluated price but not necessarily the lowest submitted price shall be selected for award. (Design/Build Works Procurements using QCBS procurement process shall be evaluated in compliance with Paragraph B.2.9 through B.2.14.)

P1.A.2.63 The bid price read aloud at the bid opening shall be adjusted to correct any arithmetical errors. Also, for the purpose of evaluation, adjustments shall be made for any quantifiable nonmaterial deviations or reservations.



P1.A.2.64 The evaluation and comparison of bids shall be on CIP prices for the supply of imported goods, the MCA Entity may ask for prices on a CIF basis (and bids compared on that same basis) only when the goods are carried by sea and the goods are not containerized. CIF shall not be used for anything other than sea transport. In the case of manufactured goods, it is unlikely that the choice of CIF will be appropriate, because these goods are usually containerized. CIP can be used for any mode of transport, including sea and multimodal transport. EXW prices, plus cost of inland transportation and insurance to the place of destination, for goods manufactured within the country of the MCA Entity, together with prices for any required installation, training, commissioning, and other similar services. The evaluation of bids shall not take into account: (a) customs duties and other taxes levied on imported goods quoted CIP (which are excluded of custom duties); or (b) sales and similar taxes levied in connection with the sale or delivery of the goods.

P1.A.2.65 Bidding documents shall also specify the relevant factors in addition to price to be considered in bid evaluation and the manner in which they will be applied for the purpose of determining the lowest evaluated bid. For goods and equipment, other factors may be taken into consideration including, among others, delivery time, operating costs, efficiency and compatibility of the equipment, availability of service and spare parts, and related training, safety, and environmental benefits. The technical responsiveness factors other than price to be used for determining the lowest evaluated bid shall be given a relative weight in the evaluation provisions in the bidding documents.

P1.A.2.66 Bid evaluation for works shall be based solely on bid price. Any evaluation procedure under which bids above or below a predetermined project cost estimate are automatically disqualified is not acceptable. If time is a critical factor, the value of early completion to the MCA Entity may be taken into account according to criteria presented in the bidding documents, only if the conditions of contract provide for commensurate penalties for noncompliance and MCC has granted prior approval.

P1.A.2.67 The MCA Entity shall prepare a detailed report on the evaluation and comparison of bids setting forth the specific reasons on which the recommendation is based for the award of the contract.

### **Domestic Preferences**

P1.A.2.68 Application of domestic preferences shall not be permitted.

### **Extension of Validity of Bids**

P1.A.2.69 The MCA Entity shall complete evaluation of bids and 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. The extension shall be for the minimum period required to complete the evaluation, obtain the necessary approvals, and award the contract. Whenever an extension of bid validity period is requested, bidders shall not be requested or be permitted to change the quoted (base) price or other conditions of their bid, unless specified in the bidding documents. Bid-

ders shall have the right to refuse to grant such an extension. If the bidding documents require a bid security, bidders may exercise their right to refuse to grant such an extension without forfeiting their bid security, but those who are willing to extend the validity of their bid shall be required to provide a suitable extension of bid security.

### **Post-qualification of Bidders**

P1.A.2.70 If bidders have not been prequalified, the MCA Entity shall determine whether the bidder whose bid has been determined to offer the lowest evaluated price and substantially responsive bid has the capability and resources to effectively carry out the contract as offered in the bid. The criteria to be met shall be set out in the bidding documents, and if the bidder does not meet them, the bid shall be rejected. In such an event, the MCA Entity shall make a similar determination and also confirm eligibility of the next-lowest evaluated bidder.

P1.A.2.71 If bidders have been prequalified, the MCA Entity shall request an update of the information provided at the time of pre-qualification, and shall verify if the lowest evaluated bidder still meets the pre-qualification criteria.

### **Award of Contract**

P1.A.2.72 The MCA Entity shall award the contract, within the period of the validity of bids, to the bidder who meets the appropriate standards of capability and resources and whose bid has been determined (i) to be substantially responsive to the bidding documents and (ii) to offer the lowest evaluated price. A bidder shall not be required, as a condition of award, to undertake responsibilities for work not stipulated in the bidding documents or otherwise to modify the bid as originally submitted.

### **Publication of the Award of Contract**

P1.A.2.73 After the award of contract, the MCA Entity shall post the results, identifying the procurement, the name of the winning bidder and the price, duration, and summary scope of the contract at the same site that hosted the SPN, and at the MCA Entity's website. The same information shall be sent to all bidders who have submitted bids. The posting at the SPN websites shall be done monthly and at the MCA Entity's website (or such other appropriate website designated by the MCA Entity and approved by MCC) at least weekly. The posting shall be in a format of a summarized table covering the previous period. All such postings shall be in English. At the discretion of the MCA Entity, posting on the MCA Entity's website (or such other appropriate website designated by the MCA Entity and approved by MCC) may also be in the local language of the country of the MCA Entity.

### **Rejection of All Bids**

P1.A.2.74 Bidding documents usually provide that the MCA Entity may reject all bids. Rejection of all bids is justified when there is lack of effective competition, bids are not substantially responsive or when bid prices are unreasonable or are substantially higher than the MCA Entity's budget for the Project. Lack of competition

shall not be determined solely on the basis of the number of bidders. Even when only one bid is submitted, the bidding process may be considered valid if the bid was satisfactorily advertised and prices are reasonable in comparison to market values. The MCA Entity may, after approval by MCC, reject all bids. If all bids are rejected, the MCA Entity shall review the causes justifying the rejection and consider making revisions to the conditions of contract, design and specifications, scope of the contract, or a combination of these, before inviting new bids.

P1.A.2.75 If the rejection of all bids is due to 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 may be invited from the initially prequalified firms, or with approval of MCC from only those that submitted bids in the first instance.

P1.A.2.76 All bids shall not be rejected and new bids invited on the same bidding and contract documents solely for the purpose of obtaining lower prices. If the lowest evaluated responsive bid exceeds the MCA Entity pre-bid cost estimates by a substantial margin, the MCA Entity shall investigate causes for the excessive cost and consider requesting new bids as described in the previous paragraphs. Alternatively, with prior approval of MCC, the MCA Entity may negotiate, with the lowest evaluated bidder to try to obtain a satisfactory contract through a reduction in the scope and/or a reallocation of risk and responsibility which can be reflected in a reduction of the contract price. However, substantial reduction in the scope or modification to the contract documents generally will require rebidding.

P1.A.2.77 The prior approval of MCC shall be obtained before rejecting all bids, soliciting new bids, or entering into negotiations with the lowest evaluated bidder. Within two weeks of the rejection of all bids, the MCA Entity shall post at the same site that hosted the SPN, and the MCA Entity's website (or such other appropriate website designated by the MCA Entity and approved by MCC) notification of the cancellation of the procurement. The notification shall identify the procurement and state briefly the reason for cancelling the procurement. The same information shall be sent to all bidders who have submitted bids. All such postings shall be in English. At the discretion of the MCA Entity, posting on the MCA Entity's website, or such other appropriate website designated by the MCA Entity and approved by MCC, may also be in the local language of the country of the MCA Entity.

### **Debriefing**

P1.A.2.78 The bidding documents shall specify that any bidder who wishes to ascertain the grounds, on which its bid was not selected, may request an explanation from the MCA Entity. The MCA Entity shall promptly provide an explanation of why such bid was not selected, either in writing and/or in a debriefing meeting, at the option of the MCA Entity. The requesting bidder shall bear all the costs of attending such a debriefing.

### ***D. Modified Competitive Bidding***

#### **Procurement of Commodities**

P1.A.2.79 Market prices of commodities, such as grain, animal feed, cooking oil, fuel, fertilizer, and metals, fluctuate depending upon the demand and supply at any particular time. Many are quoted in established commodity markets. Procurement often involves multiple awards for partial quantities to assure security of supply and multiple purchases over a period of time to take advantage of favorable market conditions and to keep inventories low. A list of prequalified bidders may be drawn up to whom periodic invitations are issued. Bidders may be invited to quote prices linked to the market price at the time of or prior to the shipments. Bid validities shall be as short as possible. Bid prices must be denominated and paid in either United States dollars or the local currency of the country of the MCA Entity. The currency shall be specified in the bidding document. Bidding documents may permit faxed bids or bids submitted by electronic means. In such cases either no bid security is required or standing bid securities will have been submitted by prequalified bidders that are valid for a specified period of time. Standard contract conditions and forms consistent with market practices shall be used.

### **III. Other Methods of Procurement**

#### **General**

P1.A.3.1 This Section describes, in descending order of preference, the methods of procurement that can be used where Competitive Bidding would not be the most economic and efficient method of procurement, and where other methods are deemed more appropriate. Contracts shall not be divided into smaller units in order to make them less attractive for Competitive Bidding procedures; any proposal to divide a contract into smaller packages shall require the prior approval of MCC.

#### **Limited Bidding**

P1.A.3.2 Limited Bidding (“**LB**”) is essentially Competitive Bidding by direct invitation without open advertisement. It may be an appropriate method of procurement where (a) there are only a limited number of suppliers, or (b) other exceptional reasons may justify departure from full Competitive Bidding procedures. Under LB, the MCA Entity shall seek bids from a list of potential suppliers or contractors broad enough to assure competitive prices, such list to include all suppliers or contractors when there are only a limited number. In all respects other than advertisement, Competitive Bidding procedures shall apply, including the publication of the contract award as indicated in Paragraph 1, P1.A 2.74 of Section 1.A of these Guidelines.

#### **National Competitive Bidding**

P1.A.3.3 National Competitive Bidding is not an authorized method of procurement under these Guidelines.

## Shopping

P1.A.3.4 Shopping is a procurement method based on comparing price quotations obtained from several suppliers (in the case of goods) or from several contractors (in the case of civil works), with a minimum of three (3), to assure competitive prices, and is an appropriate method for procuring readily available off the shelf goods or standard specification commodities of small value, or simple civil works of small value.

Shopping may be used when a contract has an estimated value of 200,000USD or less or 300,000USD or less for vehicles. The MCA Entity may request a waiver to use shopping for higher value contracts on a case-by-case basis.

Requests for quotations shall indicate the description and quantity of the goods or specifications of works or non-consultant services, as well as desired delivery (or completion) time and place. Quotations may be submitted by letter, facsimile or electronic means. The evaluation of quotations shall follow the same principles as Competitive Bidding. The terms of the accepted offer shall be incorporated in a purchase order or brief contract.

## Direct Contracting

P1.A.3.5 Direct contracting is contracting without competition (sole source) and may be an appropriate method under the following circumstances:

P1.A.3.5 (a) An existing contract for goods, works or non-consultant services, awarded in accordance with procedures acceptable to MCC, may be extended, within reasonable limits, for additional goods, works or non-consultant services of a similar nature. MCC shall be satisfied in such cases that no advantage could be obtained by further competition and that the prices on the extended contract are reasonable. Provisions for such an extension, if considered likely in advance, shall be included in the original contract.

P1.A.3.5 (b) Standardization of equipment or spare parts, to be compatible with existing equipment, may justify additional purchases from the original supplier. For such purchases to be justified, the original equipment shall be suitable, the number of new items shall generally be less than the existing number, the price shall be reasonable, and the advantages of another make or source of equipment shall have been considered and rejected on grounds acceptable to MCC.

P1.A.3.5 (c) The required equipment is proprietary and obtainable only from one source.

P1.A.3.5 (d) The contractor responsible for a process design requires the purchase of critical items from a particular supplier as a condition of a performance guarantee.

P1.A.3.5 (e) In exceptional cases, such as in response to natural disasters.

P1.A.3.5 (f) The value of the contract is under 2,000USD.

P1.A.3.6 For all procurements valued above 5,000USD, the MCA Entity, after the contract signature, shall post at the MCA Entity's website or such appropriate website designated by the MCA Entity and approved by MCC, at *dgMarket* and at *UNDB Online* the name of the contractor, price, duration, and summary scope of the direct contract. This publication may be done quarterly and in the format of a summarized table covering the previous period.

#### **Force Account**

P1.A.3.7 Force Account, that is, construction by the use of the government's own personnel and equipment, may be the only practical method for constructing some kinds of works. A government-owned construction unit that is not legally, operationally and financially autonomous shall be considered a force account unit. "Force account" is otherwise known as "direct labor," "departmental forces," or "direct work." The use of Force Account may be justified where:

P1.A.3.7 (a) quantities of work involved cannot be defined in advance;

P1.A.3.7 (b) works are small and scattered or in remote locations for which qualified construction firms are unlikely to bid at reasonable prices;

P1.A.3.7 (c) work is required to be carried out without disrupting ongoing operations;

P1.A.3.7 (d) risks of unavoidable work interruption are better borne by the MCA Entity than by a contractor; or

P1.A.3.7 (e) there are emergencies needing prompt attention.

#### **Procurement Agents and Fiscal Agents**

P1.A.3.8 Where the MCA Entity lacks the necessary organization, resources, and experience, the MCA Entity may wish (or be required by MCC) to employ, as its agents, firms specializing in handling procurement and/or financial management services ("*Procurement Agent*" or "*Fiscal Agent*," respectively). Such agents shall be selected following the appropriate procedures as approved by MCC and set out in the RFP requesting such agent services. The Procurement Agent shall follow all the procurement procedures provided for in the Compact and any Supplemental Agreements, including these Guidelines, conduct procurement in conformance with a Procurement Plan approved by MCC, use appropriately the Standard Bidding Documents or other forms provided by MCC, follow review procedures, and properly document the procurement activity. Management contractors may be employed in a similar manner for a fee to contract for miscellaneous works involving reconstruction, repairs, rehabilitation, and new construction in emergency situations, or where large numbers of small contracts are involved.



### **Inspection Agents**

P1.A.3.9 Preshipment inspection and certification of imports is one of the safeguards for the MCA Entity, particularly where the country has a large import program. The inspection and certification usually covers quality, quantity, and reasonableness of price. Imports procured through Competitive Bidding procedures shall not be subject to price verification, but only verification for quality and quantity. However, imports not procured through Competitive Bidding may additionally be subjected to price verification. The inspection agents ordinarily are paid for on a fee basis levied on the value of the goods. Costs for certification of imports shall not be considered in the evaluation of bids under Competitive Bidding and the cost of this certification shall be paid separately by the MCA Entity.

### **Procurement under BOO/BOT/BOOT, Concessions and Similar Private Sector Arrangements**

P1.A.3.10 Where MCC is participating in funding the cost of a Project procured under a Build, Own, Operate (BOO)/ Build, Operate, Transfer (BOT)/ Build, Own, Operate, Transfer (BOOT), concessions or similar types of private sector arrangements, either of the following procurement procedures shall be used, as provided for in the Compact including any Supplemental Agreements and further elaborated in the Procurement Plan approved by MCC:

P1.A.3.10 (a) The concessionaire or entrepreneur under the BOO/BOT/BOOT or similar type of contract, for projects such as toll roads, tunnels, harbors, bridges, power stations, waste disposal plants, and water distribution systems. shall be selected under Competitive Bidding procedures acceptable to MCC; which may include several stages in order 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 MCA Entity or purchaser by the facility, and the period of the facility's depreciation.

Or,

P1.A.3.10 (b) If the said concessionaire or entrepreneur has not been selected in the manner set forth in Subparagraph (a) above, the goods, works, or non-consultant services required for the facility and to be funded by MCC shall be procured in accordance with Competitive Bidding procedures defined in Sub-Section 1.A. II.

### **Performance Based Procurement / Output Based Procurement**

P1.A.3.11 Performance Based Procurement, also called Output Based Procurement, refers to competitive procurement processes resulting in a contractual relationship where payments are made for measured outputs instead of the traditional way where inputs are measured. The technical specifications define the desired result and which outputs will be measured including how they will be measured. Those outputs aim at satisfying a functional need both 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 lower-quality levels of outputs and, in certain cases, premiums may be paid for higher quality levels of outputs. The bidding documents do not normally prescribe the inputs, nor a work method for the contractor. 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. The use of Performance Based Procurement in MCC funded projects should be the result of a satisfactory technical analysis of the different options available and shall be subject to prior approval by MCC for incorporation into the Procurement Plan.

P1.A.3.12 Performance Based Procurement can involve: (a) the provision of services to be paid on the basis of outputs; (b) design, supply, construction (or rehabilitation) and commissioning of a facility to be operated by the MCA Entity; or (c) design, supply, construction (or rehabilitation) of a facility and provision of services for its operation and maintenance for a defined period of years after its commissioning. Examples of such type of procurement are: (i) for the case of procurement of services: provision of medical services, i.e. payments for specific services, like office visits, or defined laboratory tests, etc.; (ii) for the case of procurement of a facility: design, procurement, construction, and commissioning of a thermal power plant to be operated by a grantee; (iii) for the case of procurement of a facility and services: design, procurement, construction (or rehabilitation) of a road and operation and maintenance of the road for 5 years after construction. For the cases where design, supply and/or construction are required, pre-qualification is normally required and the use of Two-Stage Bidding as indicated in Paragraph P1.A.2.6 of Section 1.A of these Guidelines will usually apply.



## Section 1.B. Program Procurement Guidelines: Procurement of Consultants and Consultant Services

### I. Introduction

#### Purpose

P1.B.1.1 This Section 1.B sets forth the principles, rules and procedures generally applicable to the procurement of consultants and consultant services.

P1.B.1.2 For the purpose of these Guidelines, the term *consultants* includes a wide variety of entities, including consulting firms, engineering firms, construction managers, project and program managers, management firms, Procurement Agents, Fiscal Agents, inspection agents, auditors, investment and merchant banks, universities, research institutions, nongovernmental organizations, and individuals. Consultants assist in a wide range of activities such as policy advice, institutional reforms, management, engineering services, construction supervision, financial services, procurement services, and social and environmental studies.

#### General Considerations

P1.B.1.3 The MCA Entity is responsible for implementing the Projects, and therefore for selecting the consultants, and awarding and subsequently administering the contracts. While in practice the specific procurement rules and procedures to be followed in the implementation of a Project depend on the circumstances of the particular case, the following four MCC Program Procurement Principles shall generally guide the application of these Guidelines:

P1.B.1.3 (a) Open, fair and competitive procedures used in a transparent manner to solicit, award and administer contracts to procure consultant services;

P1.B.1.3 (b) Solicitations for consultant services shall be based upon a clear and accurate description of the consultant services to be acquired;

P1.B.1.3 (c) Contracts shall be awarded only to qualified and capable consultants that have the capability and willingness to perform the contracts in accordance with the terms and conditions of the applicable contracts and on a cost-effective and timely basis; and

P1.B.1.3 (d) No more than a commercially reasonable price (as determined, for example, by a comparison of price quotations and market prices) shall be paid to procure the consultant services.

P1.B.1.4 The MCA Entity shall ensure that all the procurements for consultant services undertaken in furtherance of the Compact and funded in whole or in part, directly or indirectly, by MCC funding shall comply with these MCC Program Procurement Principles.

P1.B.1.5 MCC considers that, in the majority of cases, these considerations can best be addressed through competition among qualified firms in which the selection is based on the quality of the proposal and the price of the services to be provided. Sub-Sections 1.B.II and III of these Guidelines describe the different methods of selection of consultants and the circumstances in which they are appropriate. Since Quality and Cost Based Selection (“QCBS”) is the most commonly recommended method, Sub-Section 1.B.II of these Guidelines describes in detail the procedures for QCBS. However, QCBS is not the most appropriate method of selection for all cases; therefore, Sub-Section 1.B.III describes other methods of selection and the circumstances in which they are more appropriate.

#### **Applicability of Section 1.B of these Guidelines**

P1.B.1.6 The consultant services to which Section 1.B of these Guidelines apply are of an intellectual and advisory nature. This section of these Guidelines does not apply to other types of services in which the physical aspects of the activity predominate (for example, operation and maintenance of facilities or plants, surveys, exploratory drilling, aerial photography, satellite imagery, and services contracted on the basis of performance of measurable physical output).

#### **Conflict of Interest**

P1.B.1.7 Consultants shall provide professional, objective, and impartial advice and at all times hold the interests of the MCA Entity paramount, without any consideration for future work, and in providing advice consultants shall avoid conflicts with other assignments and their own corporate interests. Consultants shall not be hired for any assignment 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 assignment in the best interest of the MCA Entity. Without limiting the generality of the forgoing, consultants shall not be hired under the circumstances set forth below:

P1.B.1.7 (a) Conflict between consultant activities and procurement of goods, works or non-consultant services: A firm that has been engaged by the MCA Entity to provide goods, works, or non-consultant services for a Project, and each of its affiliates, shall be disqualified from providing consultant services related to those goods, works or non-consultant services. Conversely, a firm hired to provide consultant services for the preparation or implementation of a Project, and each of its affiliates, shall be disqualified from subsequently providing goods, works or non-consultant services resulting from or directly related to the firm’s consultant services for such preparation or implementation.

P1.B.1.7 (b) Conflict among consultant assignments: Neither consultants (including their personnel and sub-consultants) nor any of their affiliates shall be hired for any assignment that, by its nature, may be in conflict with another assignment of the consultants. As an example, consultants hired by MCC, the MCA Entity or another donor to prepare engineering design for an infrastructure Project generally should not be engaged to prepare an

independent environmental assessment for the same Project. Similarly, consultants hired to prepare a Terms of Reference (“*TOR*”) for an assignment shall not be hired for that assignment.

P1.B.1.7 (c) Relationships with the MCA Entity staff: consultants (including their personnel, sub- consultants and affiliates) that either are themselves or have a business or family relationship with (i) a member of the MCA Entity board of directors or staff, (ii) the Project implementing entity’s staff, or (iii) the Procurement Agent or Fiscal Agent hired by the MCA Entity in connection with the Compact, any of whom is directly or indirectly involved in any part of: (A) the preparation of the bidding documents related to the procurement, including the contract, (B) the selection process for such procurement, or (C) the supervision of any contract awarded in the procurement, may not be awarded the contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to MCC throughout the process of preparing the documents related to the procurement, the selection process and the award and execution of the contract.

P1.B.1.7 (d) The consultant shall not receive any remuneration in connection with the assignment except as provided in the contract. The consultant and its affiliates shall not engage in consultant or other activities that conflict with the interest of the MCA Entity under the contract. The contract shall include provisions limiting future engagement of the consultant or other services resulting from or directly related to the firm’s consultant services in accordance with the requirements of this Paragraph P1.B.1.7 and Paragraph P1.B.1.8 of these Guidelines.

### **Unfair Competitive Advantage**

P1.B.1.8 Consultants (and sub-consultants) or their affiliates competing for a specific assignment shall not derive an unfair competitive advantage from having provided consultant services related to the assignment in question. To that end, the MCA Entity shall make available to the consultants, together with the Request for Proposal (“*RFP*”), all information that would give a consultant an unfair competitive advantage. If the MCA Entity, in consultation with MCC, determines that it is inappropriate or impractical to release information sufficient to cure a potential unfair advantage, the consultant with the potentially unfair advantage may be disqualified for purposes of the particular procurement.

### **Eligibility**

P1.B.1.9 To foster competition, MCC permits firms and individuals to offer consultant services for MCC-funded Projects, except firms and individuals from any country subject to sanction or restriction by law or policy of the United States. Any conditions for participation shall be limited to those that are essential to ensure the firm’s or individual’s capability to fulfill the contract in question.

P1.B.1.9 (a) Consultants may be excluded if: (i) as a matter of law or official regulation, the country of the MCA Entity prohibits commercial relations with the consultant’s country, provided that MCC is satisfied that such exclusion does not preclude effective competition for the consultant services required, or (ii) 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 country of the MCA Entity prohibits any payments to a particular firm or person or for particular goods.

P1.B.1.9 (b) Government-owned enterprises, other than force account units, in the country of the MCA Entity may participate only if they can establish that they (i) are legally and financially autonomous, (ii) operate under commercial law, and (iii) are not dependent agencies of the country of the MCA Entity.

P1.B.1.9 (c) As an exception to (b), government-owned universities or research centers may participate.

P1.B.1.9 (d) Government officials and civil servants may only be hired under consultant contracts, either as individuals or as members of a team of a consultant firm, if they (i) are on leave of absence without pay; (ii) are not being hired by the agency they were working for immediately before going on leave; and (iii) their employment would not create a conflict of interest (see Paragraph P1.B.1.9 of this Section 1.B).

P1.B.1.9 (e) A firm declared ineligible in accordance with Part 10, Eligibility Verification Procedures, shall be ineligible to be awarded an MCC-funded contract. This would also remove from eligibility any procurement from a country or from a firm that is organized in or has its principal place of business or a significant portion of its operations in any country that is subject to sanction or restriction by law or policy of the United States.

#### **Advance Contracting and Retroactive Financing**

P1.B.1.10 In certain circumstances, such as to accelerate Project implementation, the MCA Entity may, with the approval of MCC, wish to proceed with the selection of consultants before the obligation of Compact funds that will finance such procurement. This process is referred to as advance contracting. In such cases, the selection procedures, including advertisement, shall be in accordance with these Guidelines, and MCC shall review the process used by the MCA Entity. The MCA Entity undertakes such advance contracting at its own risk, and any concurrence by MCC with the procedures, documentation, or proposal for award does not commit MCC to fund the contract in question. If the contract is signed, reimbursement by MCC of any payments made by the MCA Entity under the contract prior to obligation of the related Compact funds is referred to as retroactive financing. Under no circumstances will MCC reimburse the MCA Entity for any contract costs if the contract is signed prior to obligation of funds by MCC and any required MCC approval.

#### **Associations between Consultants**

P1.B.1.11 Consultants may associate with each other in the form of a joint venture or of a sub-consultancy agreement to complement their respective areas of expertise, strengthen the technical responsiveness of their proposals and make available bigger pools of experts, provide better approaches and methodologies, and, in some cases, offer lower prices. Such an association may be for the long term (independent of any particular assignment) or for a specific assignment. If the MCA Entity employs an association in the form of a joint venture, the association should appoint one of the firms to represent the association; and all members of the joint venture shall sign

the contract and shall be jointly and severally liable for the entire assignment. Short-listed firms may form a joint venture or sub-consultancy only with the approval of the MCA Entity. The MCA Entity shall not require consultants to form associations with any specific firm or group of firms without the prior approval of MCC.

### **MCC Review, Assistance, and Monitoring**

P1.B.1.12 MCC reviews the hiring of consultants by the MCA Entity to satisfy itself that the selection process is carried out in accordance with the provisions of these Guidelines. The thresholds for MCC review are described in Attachment 1 of these Guidelines.

P1.B.1.13 MCC does not furnish a short list or a long list of firms or individuals to the MCA Entity. However, if the MCA Entity undertakes a shortlisting procedure before inviting proposals, the record of the shortlisting procedure together with the final short list shall be submitted to MCC for approval before the MCA Entity issues the RFP if the estimated value of the anticipated contract exceeds the thresholds in Attachment 1 of these Guidelines.

P1.B.1.14 The MCA Entity is responsible for supervising the performance of the consultants and ensuring that they carry out the assignments in accordance with the contract. Without assuming the responsibilities of the MCA Entity or the consultants, MCC shall monitor the work as necessary to satisfy itself that it is being carried out according to appropriate standards and is based on acceptable data. At times it may be appropriate for MCC to review and approve deliverables from consultants (e.g., those that are critical to the implementation of the program/Project or those that have been expressly called for in conditions precedent, set forth in any Supplemental Agreement or other documents associated with the Compact. As appropriate, MCC may take part in discussions between the MCA Entity and the consultants and, if necessary, may help the MCA Entity in addressing issues related to the assignment. If a significant portion of Project preparation work is being carried out in the consultants' home offices, MCC staff may, with approval of the MCA Entity, visit these offices to review the consultants' work.

### **Misprocurement**

P1.B.1.15 MCC does not fund expenditures for consultant services if the consultants or consultant services selected have not been contracted in accordance with the agreed provisions as detailed in the Compact and any Supplemental Agreements, these Guidelines and the approved Procurement Plans. MCC will declare misprocurement and may cancel that portion of the Compact allocated to the services that have been misprocured if corrective measures satisfactory to MCC are not taken. MCC may, in addition, exercise other remedies provided for under the Compact. Even once the contract is awarded after obtaining an approval from MCC, MCC may still declare misprocurement if it concludes that the approval was issued on the basis of incomplete, inaccurate, or misleading information furnished by the MCA Entity or the terms and conditions of the contract had been modified without MCC approval.

## References to MCC

P1.B.1.16 The MCA Entity shall use the following language (or similar language acceptable to MCC) when referring to MCC in procurement documents:

*The United States of America, acting through the Millennium Challenge Corporation (“MCC”) and the [Insert Country] (the “Government”) have entered into a Millennium Challenge Compact for Millennium Challenge Account assistance to help facilitate poverty reduction through economic growth in [Insert Country] (the “Compact”) in the amount of approximately [Insert amount of Compact] USD (“MCC Funding”). The Government, acting through [Insert full legal name of the MCA Entity] (“MCA-[Insert as Appropriate]”) intends to apply a portion of the MCC Funding to eligible payments under a contract for which this Request for Proposals is issued. Any payments made under the proposed contract will be subject, in all respects, to the terms and conditions of the Compact and related documents, including restrictions on the use and distribution of MCC Funding. No party other than the Government and [the MCA Entity] shall derive any rights from the Compact or have any claim to the proceeds of MCC Funding.*

## Training or Transfer of Knowledge

P1.B.1.17 If the assignment includes an important component for training or transfer of knowledge to the MCA Entity staff or national consultants, the TOR shall indicate the objectives, nature, scope, and goals of the training program, including details on trainers and trainees, skills to be transferred, time frame, and monitoring and evaluation arrangements. The cost for the training program shall be included in the consultant’s contract and in the budget for the assignment.

## Language

P1.B.1.18 All advertisements for contracts and notices of contract awards for contracts valued at or above 100,000USD, whether posted at the MCA Entity’s website, at **dgMarket**, or **UNDB Online**, shall be posted in English; and, at the discretion of the MCA Entity may also be published in the official language of the country of the MCA Entity (if other than English). Advertisements for contracts and notices of contract awards for contracts valued at less than 100,000 USD may be published in English or the official local language of the country of the MCA Entity (if different from English) or in both languages at the discretion of the MCA Entity. The English version will control in the event of discrepancies between the English version and a local language version.

P1.B.1.19 For all contracts at or above 100,000USD, the solicitation documents, the documents responding to these solicitations (including the proposals) and the contracts themselves shall be prepared in English, and this language shall govern contractual relations between the MCA Entity and the consultant. At the discretion of the MCA Entity, the solicitation documents also may be prepared in the local official language of the country of the MCA Entity (if different from English). For contracts valued at less than 100,000USD, any solicitation document, responding documents and contracts may be prepared in English, the local official language of the MCA Entity



(if different from English) or both at the discretion of the MCA Entity. However, consultants shall not be permitted or required to sign contracts in two (2) languages. The English version will control in the event of discrepancies between the English version and a local language version.

P1.B.19.1 The MCA Entity may seek a limited waiver from the language requirements of Paragraph P1.B.1.18 and P1.B.1.19 as described in Part 9, Language.

### **Fraud and Corruption**

P1.B.1.20 MCC requires that all beneficiaries of MCC funding, including the MCA Entity and any consultant and sub-consultants under any MCC-funded contracts, observe the highest standards of ethics during the procurement and execution of such contracts. MCC's Policy on Preventing, Detecting, and Remediating Fraud and Corruption in MCC Operations is applicable to all procurements involving MCC funding and can be found on the MCC Website. In pursuance of this policy, the following provisions shall apply.

P1.B.1.21 (a) For the purposes of these provisions, the terms set forth below are defined as follows:

(i) "coercive practice" means impairing or harming or threatening to impair or harm, directly or indirectly, persons or their property, to influence their participation in a procurement process, or affect the execution of a contract;

(ii) "collusive practice" means a scheme or arrangement between two (2) or more parties, with or without the knowledge of the MCA Entity, designed to establish prices at artificial, noncompetitive levels or to otherwise deprive the MCA Entity of the benefits of free and open competition;

(iii) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of a public official (including MCA Entity and MCC staff, and employees of other organizations taking or reviewing selection decisions) in the selection process or in contract execution, or the making of any payment to any third party, in connection with or in furtherance of a contract, in violation of (A) the FCPA, or any other actions taken that otherwise would be in violation of the FCPA if the FCPA were applicable, or (B) any applicable law in the MCA Entity's country;

(iv) "fraudulent practice" means any act or omission, including any misrepresentation, in order to influence (or attempt to influence) a selection process or the execution of a contract, to obtain a financial or other benefit, or to avoid (or attempt to avoid) an obligation;

(v) "obstructive practice" means

(aa) destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to impede an investigation into allegations of a coercive, collusive, corrupt, fraud-

ulent, or prohibited practice; and threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, and

(bb) acts intended to impede the exercise of the inspection and audit rights of MCC provided under the Compact and related agreements; and

(vi) “prohibited practice” means any action that violates Section E (Compliance with Anti-Corruption, Anti-Money Laundering and Terrorist Financing Statutes and Other Restrictions) of the “General Provisions Annex” that will be made a part of MCC-funded contracts and may be found on the MCC website at [http://www.mcc.gov/guidance/compact/general\\_provisions.pdf](http://www.mcc.gov/guidance/compact/general_provisions.pdf).

P1.B.1.21 (b) The MCA Entity will reject a proposal (and MCC will deny approval of a proposed contract award) if it determines that the consultant recommended for award has, directly or through an agent, engaged in coercive, collusive, corrupt, fraudulent, obstructive or prohibited practices in competing for the contract in question.

P1.B.1.21 (c) MCC and the MCA Entity have the right to sanction a consultant or sub-consultant, including declaring such party ineligible, either indefinitely or for a stated period of time, to be awarded an MCC-funded contract if at any time either the MCA Entity or MCC determines that the consultant or sub-consultant has, directly or through an agent, engaged in coercive, collusive, corrupt, fraudulent, obstructive or prohibited practices in competing for, or in executing, such a contract.

P1.B.1.21 (d) MCC and the MCA Entity have the right to require that a consultant or sub-consultant permit the MCA Entity, MCC, or any designee of MCC, to inspect its accounts, records and other documents relating to the submission of a proposal or performance of an MCC-funded contract and to have them audited by auditors appointed by MCC or the MCA Entity with the approval of MCC.

P1.B.1.21 (e) MCC has the right to cancel any portion or all of the MCC funding allocated to a contract if it determines at any time that representatives of a beneficiary of the MCC funding engaged in coercive, collusive, corrupt, fraudulent, obstructive or prohibited practices during the selection process or the execution of an MCC-funded contract, without the MCA Entity having taken timely and appropriate action satisfactory to MCC to remedy the situation.

P1.B.1.22 With the specific approval of MCC, the MCA Entity may introduce into the proposal forms for contracts funded by MCC, an undertaking of the consultant to observe, in competing for and executing a contract, the country’s laws against fraud and corruption (including bribery). MCC will accept the introduction of such undertaking at the request of the MCA Entity, provided the arrangements governing such undertaking are satisfactory to MCC.



### **Price-Reasonableness Analysis**

P1.B.1.23 One of the MCC Program Procurement Principles is that “No more than a commercially reasonable price (as determined, for example, by a comparison of price quotations and market prices) shall be paid to procure the consultant services.” To ensure compliance with this principle, the MCA Entity shall conduct a price-reasonableness analysis of the prices offered in a procurement process (both for competitive and single-source procurements) for consultant services in accordance with Attachment 11, Guidance on the Price-Reasonableness Analysis.

## **II. Quality and Cost Based Selection**

### **The Selection Process**

P1.B.2.1 Quality and Cost Based Selection uses a competitive process that takes into account the quality of the proposal and the cost of the services in the selection of the successful firm. Cost as a factor of selection shall be used judiciously. The relative weight to be given to the quality and cost shall be determined for each case depending on the nature of the assignment.

### **Terms of Reference**

P1.B.2.2 The MCA Entity shall be responsible for the Terms of Reference (“**TOR**”) for the assignment. The TOR shall be prepared by an implementing entity, person(s), or a firm specialized in the area of the assignment. The scope of the services described in the TOR shall be compatible with the available budget as approved by MCC in the Procurement Plan. The TOR shall define clearly the objectives, goals, and scope of the assignment and provide background information (including a list of existing relevant studies and basic data) to facilitate the consultants’ preparation of their proposals. If transfer of knowledge or training is an objective, it should be specifically outlined along with details of number of staff to be trained, and so forth, to enable consultants to estimate the required resources. The TOR shall list the services and surveys necessary to carry out the assignment and the expected outputs (for example, reports, data, maps, surveys). However, the TOR should not be too detailed or inflexible, so as to prevent competing consultants from proposing their own methodology and staffing. Firms shall be encouraged to comment on the TOR in their proposals. The respective responsibilities of the MCA Entity, the implementing entity (if relevant) and the consultant should be defined clearly in the TOR. See Attachment 11, Guidance on Writing and Reviewing Terms of Reference, for additional guidance on preparing the TOR.

### **Budget**

P1.B.2.3 Preparation of a thorough and realistic budget estimate is essential if MCC funding is to be managed properly. This budget should be carefully considered during the preparation of the Procurement Plan between the MCA Entity’s procurement director, fiscal director and the relevant sector director, and should correspond to the funds available in the fiscal accountability plan for that sector and the activity. Based on this budget, the MCA Entity’s procurement director will decide the procurement methodology to be used, which is then

approved by MCC during the approval of the Procurement Plan. Any modification of the budget or the procurement methodology after the approval of the Procurement Plan, must be approved by MCC (see Part 2 for guidance on developing the Procurement Plan). The budget estimate shall be based on the MCA Entity's assessment (with input from the implementing entity) of the resources needed to carry out the assignment, including staff time, logistical support, and physical inputs (e.g. vehicles and equipment).

### **Advertising**

P1.B.2.4 Timely notification of procurement opportunities is essential in competitive bidding. On at least a semi-annual basis, the MCA Entity shall publicize through a General Procurement Notice, procurements planned for the upcoming period as identified in the adopted Procurement Plan which was approved by MCC. The GPN shall be advertised in a manner to provide reasonable notice of planned procurements to potential suppliers and contractors. Advertisement of the GPN, shall include posting in English at the MCA Entity's website (or such other appropriate website designated by the MCA Entity and approved by MCC), the *dgMarket* and *UNDB Online*. The MCA Entity shall also publish the GPN in a newspaper of wide circulation in the country of the MCA Entity and in such other media outlets as appropriate or as requested from time to time by MCC. In countries where the official language is other than English, the GPN shall be published in the official local language of the country of the MCA Entity in at least one newspaper of wide circulation in the country and also on the MCA Entity's website.

P1.B.2.5 Invitations for specific procurements shall be advertised as SPNs. For contracts valued at or over 100,000USD, such invitations shall be published in at least one (1) newspaper of national circulation in the country of the MCA Entity and posted at the MCA Entity's website (or such other appropriate website designated by the MCA Entity and approved by MCC), at the dgMarket website, and at UNDB Online. Contracts valued below 100,000USD can be advertised in the venue of preference of the MCA entity--local, regional and/or international. Publication in local print and broadcast and other national and international media is encouraged as long as the posting does not pre-date the required postings. The MCA Entity will publish a SPN in sufficient time to enable prospective consultants to obtain information, or the relevant solicitation documents, and prepare and submit their responses, taking into consideration the estimated value of the contract and period of advance notice given with the GPN. MCC reserves the right to approve the text of a SPN.

### **Short List of Consultants**

P1.B.2.6 The MCA Entity may begin the procurement with an open request for proposals or consultant qualifications or, if provided for in the Procurement Plan, the MCA Entity may advertise for Request for Expression of Interest ("*REOI*"). If the MCA Entity advertises for REOI, based on the review of the submissions, it may prepare a short-list and invite only short-listed firms or individuals to submit proposals or qualifications as appropriate for the selection procedure chosen for the particular procurement. When the MCA Entity chooses to begin a procurement with a shortlisting procedure, the MCA Entity is responsible for preparation of the short list. There

is no maximum limit to the number of firms that may be short-listed and care should be taken not to eliminate qualified participants from competing for the consultant contract. Consideration must be given to all firms or organizations – national and international – expressing interest and possessing the relevant qualifications. The method for developing a short list shall be fair and objective according to the criteria pre-announced in the REOI.

### **Preparation and Issuance of the Request for Proposals**

P2.B.2.7 The Request for Proposals (“*RFP*”) shall include (a) a Letter of Invitation (“*LOI*”); (b) Instructions to Consultants (“*ITC*”) together with a proposal data sheet; (c) a description of the qualifications and evaluation criteria to be used in considering the proposals received; (d) forms to be used to prepare both the technical and financial proposals; (e) contract forms; and (f) the Terms of Reference. The MCA Entity shall use the Standard Bidding Documents for Consulting Services provided by MCC pursuant to Part 3 of these Guidelines, as may be modified to address Project-specific conditions, subject to MCC approval when the change is material. The MCA Entity may use an electronic system to distribute the RFP, provided that MCC is satisfied with the adequacy of such system. If the RFP is distributed electronically, the electronic system shall be secure to avoid modifications to the RFP and shall not unfairly restrict the access of consultants to the RFP. When the Standard Bidding Documents are not appropriate (for example, for preshipment inspection and procurement services), the MCA Entity shall use other contract forms acceptable to MCC.

### **Receipt of Proposals**

P1.B.2.8 The MCA Entity shall allow enough time for the consultants to prepare their proposals. The time allowed shall depend on the assignment, the value of the contract and the difficulty of preparing a technical proposal and the duration of the advance notice given with posting of the GPN. The technical and financial proposals shall be submitted at the same time. No amendments to the technical or financial proposals shall be accepted after the deadline. To safeguard the integrity of the process, the technical and financial proposals shall be submitted in separate sealed envelopes. Any proposal received after the closing time for submission of proposals shall be returned unopened after the time for protest has expired. Consultants or their representatives shall be allowed to be present (in person or online, when electronic bidding is used). The general public may attend at the discretion of the MCA Entity. The financial proposals shall remain sealed and shall be properly secured until they are opened in accordance with Paragraph P1.B.2.10 of these Guidelines. The MCA Entity may use electronic systems permitting consultants to submit proposals by electronic means, provided MCC is satisfied with the adequacy of the system, including, that the system is secure, maintains the confidentiality and authenticity of proposals submitted and uses an electronic signature system or equivalent to keep consultants bound to their proposals. Consultants shall continue to have the option to submit their proposals in hard copy.

**Evaluation of Proposals: Consideration of Technical Quality and Cost**

P1.B.2.9 The evaluation of the proposals shall be carried out in two (2) stages: (1) technical quality and (2) cost. The MCA Entity shall use a technical evaluation panel ("*TEP*") to evaluate each technical proposal. Guidance on the TEP is provided in Attachment 14. MCC encourages expert external expertise on major procurements. Evaluators of technical proposals shall not have access to the financial proposals until the technical evaluation, including any required MCC reviews and approvals, is concluded. The evaluation shall be carried out in full conformity with the provisions of the RFP.

**Evaluation of Financial Proposals**

P1.B.2.10 After the evaluation of quality is completed and the required reviews and approvals have been issued, the MCA Entity shall inform the consultants who have submitted proposals of the technical points assigned to each consultant and shall notify those consultants whose proposals did not meet the minimum qualifying mark or were considered nonresponsive to the RFP and the TOR that their financial proposals will be returned unopened after the signature of the contract. The MCA Entity shall simultaneously notify the consultants that have secured at least the minimum qualifying mark of the date, time, and place set for opening the financial proposals and notify them that their attendance at the opening of the financial proposals is not mandatory. Based upon the financial proposal opening date, unavoidable constraints may allow for a very short notice to consultants to make arrangements to attend the opening of the financial proposals. The financial proposals shall be opened publicly in the presence of representatives of the consultants who choose to attend (in person or online). The name of the consultant, the technical points, and the proposed prices shall be read aloud and recorded. A copy of the record will be provided to all consultants whose proposals were opened.

P1.B.2.11 The MCA Entity shall then review the financial proposals. If there are any arithmetical errors, they shall be corrected. For the purpose of comparing proposals, the RFP shall require that all proposals be stated in the same currency or currencies (local currency of the country of the MCA Entity, or USD or a combination of the two). If there is a need to make a conversion between the two allowable currencies, the RFP shall specify the source of the exchange rate to be used and the date of that exchange rate, provided that the date shall not be earlier than four weeks prior to the deadline for submission of proposals, nor later than the original date of expiration of the period of validity of the proposal. Any proposal that deviates from the currency requirement as stated in the RFP may be rejected as non-responsive.

P1.B.2.12 For the purpose of evaluation, the financial proposals shall include or exclude local identifiable direct or indirect taxes as instructed in the RFP. The financial proposal shall include all consultants' remuneration and other expenses such as travel, translation, report printing, or secretarial expenses. The evaluation methodology to be used shall be described in the RFP.

### **Combined Technical Quality and Price Evaluation**

P1.B.2.13 The total score shall be obtained by weighting the technical quality and price scores using the methodology as described in the RFP. The firm obtaining the highest total score shall be invited for negotiations.

P1.B.2.14 When the procurement is subject to MCC prior review for proposed award (See Attachment 1), the MCA Entity shall furnish a combined evaluation report to MCC for its review and approval before the MCA Entity commences negotiations with the selected bidder. The combined evaluation report must contain a complete history of the procurement process culminating with a recommendation for award.

### **Negotiations and Award of Contract**

P1.B.2.15 Negotiations shall include discussions of the TOR, the methodology, staffing, inputs by the MCA Entity and special conditions of the contract. These discussions shall not substantially alter the original TOR or the terms of the contract, lest the procurement process be invalidated. The final TOR and the agreed methodology shall be incorporated into the “Description of Services,” which shall form part of the contract.

P1.B.2.16 The selected firm should not be allowed to substitute key staff, unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. If this is not the case and if it is established that key staff were included in the proposal without confirming their availability, the firm may be disqualified and the process continued with the next ranked firm. The key staff proposed for substitution shall have qualifications equal to or better than the key staff initially proposed.

P1.B.2.17 Financial negotiations shall include clarification of the consultants’ tax liability in the country of the MCA Entity (if any) to ensure that the contract is consistent with the provisions of the Compact and any Supplemental Agreement. As payments under Fixed-Price Contracts are based on work done and delivery of outputs (or products), the offered price shall include all costs (staff time, overhead, travel, hotel, etc.). Consequently, if the selection method for a Fixed-Price Contract included price as a component, this price shall not be negotiated. In the case of Time-Based Contracts, payment is based on inputs (staff time and reimbursables) and the offered price shall include staff rates and an estimation of the amount of reimbursables. When the selection method includes price as a component, negotiations of staff rates should not take place, except in special circumstances, such as when staff rates offered are much higher than rates typically charged by consultants in similar circumstances for similar contracts. Reimbursables are to be paid on actual expenses incurred at cost, subject to limitations set out in the applicable MCC Cost Principles, upon presentation of receipts and therefore are not subject to negotiations. However, if the MCA Entity wants to define ceilings for unit prices of certain reimbursables (like travel or hotel rates) it should indicate the maximum levels of those rates in the RFP or define a per diem in the RFP. If the contract permits reimbursement of any costs, the reimbursement rates shall be limited by applicable MCC Cost Principles found at the MCC website, [www.mcc.gov](http://www.mcc.gov).

P1.B.2.18 If the negotiations fail to result in an acceptable contract within a reasonable time, the MCA Entity shall terminate the negotiations and invite the next ranked firm for negotiations. If there is no next ranked firm for the procurement, the procurement may be cancelled and re-competed. The MCA Entity shall consult with MCC prior to taking this step. The consultant shall be informed of the reasons for termination of the negotiations. Once negotiations are commenced with the next ranked firm, the MCA Entity shall not reopen the earlier negotiations. After negotiations are successfully completed and all required reviews and approvals have been issued, the MCA Entity shall promptly notify other firms that they were unsuccessful.

#### **Publication of the Award of Contract**

P1.B.2.19 After the award of contract, the MCA Entity shall post the results, identifying the procurement, the name of the winning bidder and the price, duration, and summary scope of the contract at the same site that hosted the SPN and the MCA Entity's website. The same information shall be sent to all consultants who have submitted proposals. The posting at the SPN sites must be done monthly and at the MCA Entity's website (or such other appropriate website designated by the MCA Entity and approved by MCC) at least weekly. The posting shall be in a format of a summarized table covering the previous period. All such postings shall be in English. At the discretion of the MCA Entity, posting on the MCA Entity's website (or such other appropriate website designated by the MCA Entity and approved by MCC) may also be in the local language of the country of the MCA Entity.

#### **Debriefing**

P1.B.2.20 In the publication of contract award referred to in Paragraph P1.B.2.19 above, the MCA Entity shall specify that any consultant who wishes to ascertain the grounds on which its proposal was not selected should request an explanation from the MCA Entity. The MCA Entity shall promptly provide the explanation as to why such proposal was not selected, in writing and/or in a debriefing meeting, at the option of the consultant. The requesting consultant shall bear all the costs of attending such a debriefing.

#### **Rejection of All Proposals, and Re-invitation**

P1.B.2.21 The MCA Entity will be justified in rejecting all proposals only if all proposals are nonresponsive because they present major deficiencies in complying with the TOR, if they involve prices substantially higher than the original estimate, or if contracting for the services is no longer in the best interest of implementation of the Compact. In the case of a higher price, the feasibility of increasing the budget, or scaling down the scope of services with the firm should be investigated in consultation with MCC. Before all the proposals are rejected and new proposals are invited, the MCA Entity shall notify MCC, indicating the reasons for rejection of all proposals, and if required by Attachment 1, shall obtain MCC's approval before proceeding with the rejection and the new process. The new process may include revising the RFP (including the short list) and the budget. These revisions shall be agreed upon with MCC. Within two weeks of the rejection of all proposals, the MCA Entity shall post at the same site that hosted the SPN notification of the cancellation of the procurement. The notification



shall identify the procurement and state briefly the reasons for cancellation. The same information shall be sent to all those who have submitted proposals. All such postings shall be in English. At the discretion of the MCA Entity, posting on the MCA Entity's website (or such other appropriate website designated by the MCA Entity and approved by MCC) may also be in the local language of the country of the MCA Entity.

### **Confidentiality**

P1.B.2.22 Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the consultants who submitted the proposals, or to other persons not officially concerned with the process, except as provided in Paragraphs P1.B.2.10 and P1.B.2.18 of Section 1.B of these Guidelines.

## **III. Other Methods of Selection**

### **General**

P1.B.3.1 This Sub-Section 1.B.III describes the selection methods other than QCBS, and the circumstances under which they are acceptable. All the relevant<sup>4</sup> provisions of Sub-Section 1.B.II (QCBS) shall apply whenever competition is used.

### **Quality Based Selection**

P1.B.3.2 Quality Based Selection ("**QBS**") may be appropriate for the following types of assignments:

P1.B.3.2 (a) complex or highly specialized assignments for which it is difficult to define precise TORs and the required input from the consultants, and for which the MCA Entity expects the consultants to demonstrate innovation in their proposals;

P1.B.3.2 (b) assignments that have a high downstream impact and in which the objective is to have the best experts; and

P1.B.3.2 (c) assignments that can be carried out in substantially different ways, such that proposals will not be comparable.

P1.B.3.3 In QBS, the RFP may request submission of a technical proposal only (without the financial proposal), or request submission of both technical and financial proposals at the same time, but in separate envelopes (two (2)-envelope system). The procurement shall be advertised according to the requirements set out in Paragraphs P1.B.2.4 and P1.B.2.5 of Section 1.B, and may, at the discretion of the MCA Entity, be preceded by a shortlisting procedure (see Paragraph P1.B.2.6 of Section 1.B). The RFP may provide either, but never both, the estimated price budget or the estimated level of effort of key staff.

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<sup>4</sup> All provisions of Section 1.B.II shall be applied with the modifications and suppressions required by the method for selecting consultants used in the specific case. Advertisement is not required when single source selection is used.

P1.B.3.4 If technical proposals alone were invited, after evaluating the technical proposals using the same methodology as in QCBS, the MCA Entity shall ask the consultant with the highest ranked technical proposal to submit a detailed financial proposal. The MCA Entity and the consultant shall then negotiate the financial proposal and the contract. All other aspects of the selection process shall be identical to those of QCBS, including the publication of the award of contract as described in Paragraph P1.B.2.19. If consultants were requested to provide financial proposals initially together with the technical proposals, safeguards shall be built in as in QCBS to ensure that, after the negotiations are successfully concluded, the financial proposal of only the selected firm is opened and the rest are returned unopened.

### **Selection under a Fixed Budget**

P1.B.3.5 The Selection under a Fixed Budget (“*FBS*”) method is appropriate when the assignment can be precisely defined. The RFP shall indicate the available budget and request the consultants to provide their best technical and financial proposals, which stay within the budget, in separate envelopes. The TOR should be particularly well prepared to make sure that the budget is sufficient for the consultants to perform the expected tasks. The procurement shall be advertised according to the requirements set out in Paragraphs P1.B.2.4 and P1.B.2.5 of Section 1.B, and may, at the discretion of the MCA Entity, be preceded by a shortlisting procedure (see Paragraphs P1.B.2.6 of Section 1.B). Evaluation of all technical proposals shall be carried out first as in the QCBS method. Then the financial proposals shall be opened in public and prices shall be read aloud. Proposals that exceed the indicated budget shall be rejected. The consultant who has submitted the highest ranked technical proposal shall be selected and invited to negotiate a contract. The publication of the award of contract shall be as described in Paragraph P1.B.2.19.

### **Least-Cost Selection**

P1.B.3.6 The Least-Cost Selection (“*LCS*”) method is appropriate for selecting consultants for assignments of a standard or routine nature (audits, engineering design of noncomplex works, etc.) where well established practices and standards exist. This method shall not be used as a substitute for QCBS and shall be used only for the specific cases of procurements that are of a very standard and routine technical nature where the intellectual component is minor. Under this method, a “minimum” qualifying mark for the “quality” of 70 points or higher is established. Proposals, to be submitted in two (2) envelopes, are invited. The procurement shall be advertised according to the requirements set out in Paragraphs P1.B.2.4 and P1.B.2.5 of Section 1.B, and may, at the discretion of the MCA Entity, be preceded by a shortlisting procedure (see Paragraphs P1.B.2.6 of Section 1.B). Technical proposals are opened first and evaluated. Those securing less than the minimum qualifying mark are rejected, and the financial proposals of the rest are opened in public. The firm with the lowest price shall then be selected and the publication of the award of contract shall be as described in Paragraph P1.B.2.19. Under this method, the minimum qualifying mark shall be established, understanding that all proposals above the minimum compete only on “price.” The minimum qualifying mark shall be stated in the RFP.



### **Selection Based on the Consultants' Qualifications**

P1.B.3.7 The Consultants' Qualifications ("CQS") method may be used where the need for preparing and evaluating competitive proposals is not justified because of the cost or length of the assignment. In such cases, the MCA Entity shall prepare the TOR, request information on the consultants' experience and competence relevant to the assignment, and select the firm with the most appropriate qualifications and references. The procurement shall be advertised according to the requirements set out in Paragraphs P1.B.2.4 and P1.B.2.5 of Section 1.B. The selected firm shall be asked to submit a combined technical and financial proposal and then be invited to negotiate the contract.

P1.B.3.8 The publication of the award of contract shall be as described in Paragraph P1.B.2.19.

### **Individual Consultants**

P1.B.3.9 Individual consultants whose contracts will have a value above the 2,000USD threshold are employed on assignments for which (a) teams of personnel are not required, (b) additional outside (home office) professional support is not required, and (c) the experience and qualifications of the individual are the paramount requirement. When coordination, administration, or collective responsibility may become difficult because of the number of individuals, it would be advisable to employ a firm.

P1.B.3.10 Individual consultants are selected on the basis of their qualifications for the assignment. The procurement shall be advertised according to the requirements set out in Paragraphs P1.B.2.4 and P1.B.2.5 of Section 1.B and may, at the discretion of the MCA Entity, be preceded by a shortlisting procedure (see Paragraphs P1.B.2.6 of Section 1.B). Consultants do not need to submit proposals but shall be selected through evaluation and comparison of qualifications. Individuals considered for comparison of qualifications shall meet the minimum relevant qualifications and those selected to be contracted by the MCA Entity shall be the best qualified and shall be fully capable of carrying out the assignment. Capability is judged on the basis of evidence of knowledge and past experience relevant to the services to be provided and past performance based upon references and recommendations.

P1.B.3.11 From time to time, permanent staff or associates of a consultant firm may be available as individual consultants. In such cases, the conflict of interest provisions described in these Guidelines shall apply.

P1.B.3.12 Individual consultants may be selected on a sole source basis with due justification in exceptional cases such as for: (a) tasks that are a continuation of previous work that the consultant has carried out and for which the consultant was selected competitively; (b) certain assignments with total expected duration of less than six (6) months; (c) emergency situations resulting from natural disasters; and (d) when the individual is the only consultant qualified for the assignment.

P1.B.3.13 Recruitment of MCA Entity staff is not considered a procurement for the purposes of these Guidelines and therefore not covered hereby. The MCA Entity, however, should follow its hiring practices and employment policies.

### **Sole Source Selection**

P1.B.3.14 Sole Source Selection (“SSS”) of consultants does not provide the benefits of competition with regard to quality and cost, lacks transparency in selection, and could encourage unacceptable practices. Therefore, sole source selection shall be used only in exceptional cases. The justification for sole source selection shall be examined in the context of the overall interests of the MCA Entity and implementation of the Compact and the responsibility of MCC to ensure economy and efficiency and provide equal opportunity to all qualified consultants.

P1.B.3.15 Sole source selection may be appropriate only if it presents a clear advantage over competition: (a) for tasks that represent a natural continuation of previous work carried out by the firm (see Paragraph P1.B.3.16), (b) in emergency cases, such as in response to disasters and for consultant services required during the period of time immediately following the emergency, (c) for assignments of small value or of short duration, or (d) when only one (1) firm is qualified or has experience of exceptional worth for the assignment.

P1.B.3.16 When continuity for downstream work is essential, the initial RFP shall outline this prospect, and if practical, the factors used for the selection of the consultant shall take the likelihood of continuation into account. Continuity in the technical approach, experience acquired, and continued professional liability of the same consultant may make continuation with the initial consultant preferable to a new competition, subject to satisfactory performance in the initial assignment. For such downstream assignments, the MCA Entity shall ask the initially selected consultant to prepare technical and financial proposals on the basis of the TOR furnished by the MCA Entity, which shall then be negotiated.

P1.B.3.17 If the initial assignment was not awarded on a competitive basis or if the downstream assignment is substantially larger in value, a competitive process acceptable to MCC shall normally be followed in which the consultant carrying out the initial work is not excluded from consideration if it expresses interest. MCC will consider exceptions to this rule only under special circumstances and only when a new competitive process is not practicable.

P1.B.3.18 The publication of the award of contract shall be as described in Section 1.B, Paragraph P1.B.2.19.

## IV. Types of Contracts and Important Provisions

### Types of Contracts

#### Fixed-Price Contract

P1.B.4.1 Fixed-Price Contracts (each a *“Fixed-Price Contract”*) may take various forms such as lump sum, unit price and percentage fees. Percentage contracts directly relate the fees paid to the consultant to the estimated or actual project construction cost, the cost of the goods procured or inspected or other measure of service such as (i) in the case of a Procurement Agent, the value of contracts procured or (ii) for a Fiscal Agent, the amount of funds disbursed. Percentage contracts must be distinguished from cost-plus-percentage-of-cost type contracts which are prohibited as such contracts motivate a supplier, contractor or consultant to increase its profits by increasing cost of performance. Fixed-Price Contracts are used mainly for assignments in which the content and duration of the services and the required output of the consultants are clearly defined. They are widely used for simple planning and feasibility studies, environmental studies, detailed design of standard or common structures, preparation of data processing systems, and so forth. Payments are linked to work done in performance of the contract and to outputs (deliverables), such as reports, drawings, bills of quantities, bidding documents, and software programs. Fixed-Price Contracts are easier to administer than Time-Based Contracts because payments are due on clearly specified outputs.

#### Time-Based Contract

P1.B.4.2 The Time-Based Contract (*“Time-Based Contract”*) is appropriate when it is difficult to define the scope and the length of services, either because the services are related to activities by others for which the completion period may vary, or because the input of the consultants required to attain the objectives of the assignment is difficult to assess. Payments are based on agreed hourly, daily, weekly, or monthly rates for staff (who are normally named in the contract) and on reimbursable items using actual expenses and/or agreed unit prices. Time-based contracts need to be closely monitored and administered by the MCA Entity to ensure that the assignment is progressing satisfactorily and that payments claimed by the consultants are appropriate. For contracts that permit reimbursement of any costs, the reimbursement rates shall be limited by applicable MCC Cost Principles. The costs shall also be subject to audit in accordance with the requirements set out in the Compact and any Supplemental Agreements.

#### Reimbursable-Cost Contracts

P1.B.4.3 As discussed in Part 11, reimbursable-cost contracts are acceptable to MCC only in exceptional circumstances such as conditions of high risk or where costs cannot be determined in advance with sufficient accuracy.

**Percentage Contract**

P1.B.4.4 Percentage Contracts (each a “*Percentage Contract*”) are commonly used for architectural services. Percentage Contracts directly relate the fees paid to the consultant to the estimated or actual Project construction cost. The contracts are negotiated on the basis of market norms for the services and/or estimated staff-month costs for the services, or competitively bid. It should be borne in mind that in the case of architectural or engineering services, Percentage Contracts implicitly lack incentive for economic design and are hence discouraged. Therefore, the use of such a contract for architectural services is recommended only if it is based on a fixed target cost and covers precisely defined services

**Indefinite Delivery and Indefinite Quantity Contract**

P1.B.4.5 Indefinite Delivery and Indefinite Quantity (“IDIQ”) contracts are used when the MCA Entity requires goods, simple works, and/or services for which delivery and quantity cannot be defined in advance. The IDIQ contract is normally for a period of a year or more.

**Requirements and Blanket Purchase Agreements Contracts**

P1.B.4.6 The MCA Entity may use these contract types for reoccurring needs.

**Allowable Currencies for Proposals**

P1.B.4.7 RFPs shall clearly state that firms must express the price for their services in the currency stated in the RFP, which in every case must be either United States dollars or the local currency of the country of the MCA Entity or a combination thereof. Consultants must comply with the currency restrictions as set out in the RFPs. Any proposal that deviates from the currency requirement as stated in the solicitation documents may be rejected as non-responsive.

**Currency Conversion for Proposal Comparison**

P1.B.4.8 The proposal price is the sum of all payments in United States dollars or the currency of the country of the MCA Entity as applicable. Where the RFP allows the proposal price to be stated in more than one currency, or the purpose of comparing prices proposal prices shall be converted to either one of the two currencies as selected by the MCA Entity and stated in the RFP. The MCA Entity shall make this conversion by using the selling (exchange) rates for those currencies quoted by an official source (such as the Central Bank of the country of the MCA Entity or the OANDA website - <http://www.oanda.com/convert/classic>), by a commercial bank or by an internationally circulated newspaper for similar transactions on a date selected in advance. Such source and date shall be specified in the RFP, provided that the date shall not be earlier than four weeks prior to the deadline for the receipt of proposals and no later than the original date for the expiration of the period of proposal validity.

**Allowable Currencies for Contract Denomination and Payment**

P1.B.4.9 Contract Denomination. Contracts can be denominated either in United States dollars, the local currency of the country of the MCA Entity, or, if justified by sound business reasons, a combination of the two.

P1.B.4.10 Contract Payment. Contracts can be payable either in United States dollars, the local currency of the country of the MCA Entity, or a combination of both.

P1.B.4.11 In all cases where the currency denominated differs from the currency for payment; a specific exchange rate must be fixed at the date of contract signing and clearly defined at that time in the contract itself.

P1.B.4.12 The MCA Entity may not require foreign bidders to be paid in the local currency of the country of the MCA Entity; the foreign bidder must be paid in United States dollars unless, at its option, it requests to be paid in the local currency of the country of the MCA Entity.

### **Terms and Methods of Payment**

P1.B.4.13 The RFP shall specify the terms and methods of payment. Terms of payment may not be used as an evaluation criterion and may not affect the proposal evaluation.

### **Advance Payments**

P1.B.4.14 Advance payments are advances of funds to a consultant before, in anticipation of, and for the purpose of performance under the contract. Since advance payments are not measured by contract performance, they differ from progress payments which are based on actual performance of tasks in furtherance of the contract. Advance payments for long-term contracts involving considerable front-end setup costs may be appropriate for consulting services.

P1.B.4.15 Because advance payments are made before the MCA Entity receives any value for the funds, advance payments may be authorized only when progress payments are not viable because of the difficulty in establishing an appropriate payment schedule. Advance payment shall be limited to 10% for consulting services procurements, unless MCC approves a waiver for a higher percentage.

P1.B.4.16 The bidding documents shall specify (a) the amount of the advance payment (as a percentage of the contract value determined in accordance with these Guidelines), (b) the form of security required in connection with the advance payment (as discussed more fully in P1.B.4.17), and (c) the manner in which such advance payment will be liquidated against future invoice payments. Generally, advance payments are liquidated from payments made to the supplier or contractor during performance of the contract, usually by deducting a percentage from each scheduled payment for performance.

### **Advance Payment Security Guarantees**

P1.B.4.17 In all cases where advance payments are authorized, including payment made upon signature of a contract for consultant services, a commitment from the consultant of an unconditional security guarantee from a reputable commercial bank is required in an amount equal to the amount of the advance payment. The RFP shall specify the arrangements for any security required for advance payments.

**Progress Payments**

P1.B.4.18 Progress payments are the preferred form of payment for all MCC-funded contracts. Progress payments are multiple payments, each payable upon acceptable partial performance of the contract. Although progress payments for partial performance generally are treated as a method of payment and not as a method of contract financing, payment for partial performance can provide consultants with needed working capital to perform the contract without use of an advance payment to provide contract financing.

P1.B.4.19 Whenever appropriate, the contract deliverables and the payment schedule should be designed to permit acceptance and payment for discrete portions of contract performance that comply with applicable contract terms as soon as accepted. During the early stages of contract performance, payments may be scheduled for deliverables of such tasks or items of work as a work plan or inception report and achievement of defined milestones, such as staff mobilized. Once the consultant has mobilized, the payments would most likely be less frequent and the deliverables to trigger payment would be tied to performance of the programmatic work, such as a percentage or stage of completion, accomplishment of defined milestones or other quantifiable measures of results.

P1.B.4.20 Progress payments based on costs are appropriate only in the case of cost-reimbursement type of contracts. Progress payments based on costs would be based on the documentation supporting the costs incurred by the supplier or contractor as work progresses under the contract. Cost-reimbursement contracts are extremely difficult to administer. In all cases where progress payments based on costs are used, the MCA Entity must ensure that all costs under such contracts are allowable and appropriately recorded and justified in accordance with the relevant MCC Cost Principles.

**Final Payment**

P1.B.4.21 Final payment is made only after all contract performance is completed and accepted. Retentions are not normally used under contracts for consultant services.

**Performance Guarantees**

P1.B.4.22 Performance guarantees are not allowed for consultants' services. Their enforcement is often subject to judgment calls, they can be easily abused, and they tend to increase the costs to the consultant industry without evident benefits, which are eventually passed on to the MCA Entity.

**Interest on Late Payments**

P1.B.4.23 The contract shall provide for the payment of interest at specific rates when payment is delayed due to the fault of the MCA Entity or its agents beyond the time allowed in the contract for payment.

**Staff Substitutions**

P1.B.4.24 During an assignment, if substitution is necessary (for example, because of ill health or because a staff member proves to be unsuitable), the consultant shall propose other staff of at least the same level of qualifications for approval by the MCA Entity.

**Professional Liability**

P1.B.4.25 The consultant is expected to carry out its assignment with due diligence and in accordance with prevailing standards of the profession. If the parties wish to limit the consultant's liability to the MCA Entity, this must be provided for in the contract. In addition, (a) any such limitation shall be subject to applicable law, (b) there must be no such limitation in case of the consultant's gross negligence or willful misconduct; (c) the consultant's liability to the MCA Entity may in no case be limited to less than a multiplier of the total value of the contract to be indicated in the RFP and in the special conditions of the contract (the amount of such limitation will depend on each specific case); The MCA Entity is encouraged to secure insurance for potential risks above these limits and (d) any such limitation may deal only with the consultant's liability toward the MCA Entity and not with the consultant's liability toward third parties.

**Applicable Law and Settlement of Disputes**

P1.B.4.26 The contract shall include provisions dealing with the applicable law and the forum for the settlement of disputes. Settlement of disputes shall take place in the country of the MCA Entity with the possibility for international arbitration in the case of foreign consultants and in other cases where the parties so agree.



# Part 2. Procurement Planning, Implementation, and Reporting

## P2.1 Procurement Plan

### Purpose

P2.1.1 The MCA Entity shall prepare periodic procurement plans for acquiring goods, works and consultant and non-consultant services needed to implement the Compact (each, a *“Procurement Plan”*). The Procurement Plan is a key program planning and implementation document prepared by the MCA Entity. The primary function of the Procurement Plan is to serve as a managing tool by which the MCA Entity oversees the procurement activities of the Procurement Agent and by which MCC monitors the MCA Entity’s approach to implementation.

### Requirements and Approvals

P2.1.2 The MCA Entity shall ensure that all goods, works, and consultant and non-consultant services shall be procured using the procurement method approved in the Procurement Plan. The MCA Entity shall periodically prepare a Procurement Plan for acquiring goods, works, and consultant and non-consultant services needed to implement the Compact. Compliance, satisfactory to MCC, with the approved Procurement Plan shall be a condition precedent to MCC disbursements or payments. Each Procurement Plan shall be adopted by the governing body of the MCA Entity and shall be submitted to MCC for its approval.

### Period Covered

P2.1.3 Each Procurement Plan will cover a specific minimum period of time, which shall be at least six (6) months in duration (longer periods are strongly encouraged where appropriate), and shall be updated, at a minimum every six (6) months.

### Contents and Organization

P2.1.4 The Procurement Plan shall (a) list the particular contracts for the goods, works, non-consultant and consultant services required to implement the Compact for the period covered in such Procurement Plan; (b) identify the proposed method of procurement for such contracts as determined according to the rules set out in these Guidelines; and (c) set forth the estimated value for each contract. The Procurement Plan shall be organized as follows: each procurement action shall be categorized under goods, works, consultant services, or non-consultant services. Each procurement action shall then be linked to the Project for which it is being procured using a numbering system or other system of identification. For example, the numbering system FIN001 and FIN002 may be used for the first two procurement actions for a finance Project. There shall be a column for



procurement action descriptions, prices and procurement methods. See Attachment 6 for a Sample Procurement Plan.

### **Direct Contracting/Sole Source Procurement**

P2.1.5 If the MCA Entity wishes to do a direct contracting or sole-source selection, it must submit a justification for it at the time of submission of the Procurement Plan. If the MCA Entity does not submit the justification, MCC may, at its discretion, approve the plan conditionally, subject to receipt of adequate justification, or MCC may require that the procurement method be changed to competitive.

P2.1.6 Except for sole source procurements of individuals to serve as evaluation panel members, all direct contracting or sole-source selection above 5,000USD shall be listed and approved in the Procurement Plan with a justification for the direct contracting or sole-source selection recommendation as a prerequisite before initiating any procurement activity. For those exceeding 25,000USD MCC's approval of this justification is required. For sole source procurements of individual evaluation panel members, the threshold requiring MCC prior approval is procurements valued at more than 25,000USD.

### **Amendment**

P2.1.7 If the MCA Entity determines that a material change from the approved Procurement Plan is necessary or appropriate, the MCA Entity shall propose an amendment and secure approval from MCC before beginning the new or changed procurement action. The MCA Entity shall submit an amended Procurement Plan whenever new procurements are planned. Updates adding or increasing the value of a particular procurement by 25,000USD or more shall be submitted to MCC for its approval. Any material change to the Procurement Plan must also be approved by the governing body of the MCA Entity. Examples of material changes are initiating procurement actions that are not in the Procurement Plan, changing the procurement method, significantly increasing or decreasing the budget of procurement, or increasing the estimate/ budget allocation above the threshold for the designated method of procurement. If MCC approves the amendment, the MCA Entity shall comply with any instructions contained in the approval, including any publication requirements (e.g. update of the GPN). See Attachment 6 for Sample Procurement Plan Amendment Form.

P2.1.8 If a particular procurement results in the recommendation for award at a price significantly higher than the budgeted amount in the approved Procurement Plan, the MCA Entity will not amend the Procurement Plan, but will ensure the documentation submitted for approval of the resulting proposed award explicitly identifies the difference between the budgeted and proposed award values.

## P2.2 Procurement Implementation Plan

### Purpose and Requirement:

P2.2.1 The principal purposes of the Procurement Implementation Plan (“PIP”) are to identify timelines for key milestones in the procurement process and to provide details of the planned strategy for successful completion of each procurement action. The Procurement Agent is required to prepare a separate PIP for each procurement in the Procurement Plan.

### Contents and Organization

P2.2.2 As appropriate for the procurement, the PIP shall identify and define: (a) the procurement method or selection procedure to be used, (b) the timelines for procurement, including approvals by MCC and the MCA Entity, (c) the advertising strategy to be used to maximize competition, (d) the plan for conducting pre-bid/proposal conferences, (e) the strategy for appointing members of Technical Evaluation Panels, (f) the methodology to be used by the TEP for reviewing bids or evaluating proposals, (g) any auxiliary requirements or prerequisites to planned procurements, as well as proper sequencing, and (h) the source and status of the Terms of Reference or Specifications. See Attachment 7: Attachment 7 presents Guidance on Writing and Reviewing Terms of Reference to these Guidelines for a Sample PIP.

### PIP Checklist

P2.2.3 The elements of a PIP in Paragraph P2.2.2 of this Part 2 are captured in the checklist below which presents the Procurement Agent with a series of questions to be answered. While not every question will be applicable in every case, each question shall be considered in constructing the Procurement Implementation Plan:

Elements of the PIP	Includes:
Procurement Method or Selection Procedure	What procurement method (such as Competitive Bidding) or selection procedure (such as Quality and Cost-Based Selection, Quality Based Selection, Fixed Budget Selection, Least Cost Selection, or Selection Based on Consultants Qualifications) will be used to determine the winner?
Procurement Timeline and Approvals	What are the major procurement milestones (with dates) required to finalize each contract? This should include time for review and approval by the MCA Entity and MCC, as laid out in <u>Attachment 1</u> of the MCC Program Procurement Guidelines as part of the planning.

Advertising Strategy	In which newspaper or other media outlets will notices be placed in order to maximize competition consistent with the requirements of the procurement?
	What will be the timing of these notices?
	Text of notices should be included as an annex to this Procurement Implementation Plan.
Pre-bid/Proposal Conference	Is a pre-bid/proposal conference necessary to clarify the requirement and gather market feedback?
	What is the timeframe for providing responses to questions and issues raised in the pre-bid/proposal conference?
Technical Evaluation Panel or Technical Review Panel Selection Plan	What expertise will be sought for panel members?
	How many will be required?
	What procedures will be undertaken to ensure there is no conflict of interest?
	What is the training plan for Technical Evaluation Panel members?
Auxiliary or Prerequisite Procurements/Sequencing	Will this procurement require additional procurements to accept/verify deliverables or supervise the processes that have not been anticipated previously? Is the sequencing with related procurements appropriately structured?

## P2.3 Procurement Performance Report

### Purpose

P2.3.1 The information in the Procurement Performance Report (“*PPR*”) is used for implementation oversight and is prepared by the MCA Entity. The primary function of the Procurement Performance Report is to serve as a managing tool by which the MCA Entity oversees the procurement activities of the Procurement Agent and by which MCC monitors the MCA Entity’s approach to implementation and progress on the specific milestones achieved in the procurement process. The objective is to assist MCC in monitoring the MCA Entity’s compliance with these Guidelines.

### Submission Requirements

P2.3.2 The MCA Entity shall prepare the PPR using the format in “Guidance on Preparing the Procurement Performance Report (PPR)” posted at <http://www.mcc.gov/procurement/mca-guidancepapers.php>. The MCA Entity shall submit the PPR together with the regular quarterly reporting submissions required to be included as part of each Disbursement Request.

### P2.4 Contractor Past Performance Reporting System (CPPRS)

#### Policy

P2.4.1 MCC’s Contractor Past Performance Reporting System (“*CPPRS*”) mandates regular reporting on contractor performance, thereby facilitating information sharing and standardized use of information relating to contractor performance so that better informed decisions can be made across MCC partner countries regarding awarding new contracts or maintaining current contracts with specific contractors. To that end, the MCA Entity shall (a) ensure that, for each procurement resulting in a total contract awarded that is valued or estimated to be valued in excess of 100,000USD, a past performance report on the contractor’s performance is submitted at least annually (quarterly if one or more aspects of performance are problematic) during the period of contract performance (b) consult the MCC local office in the MCA Entity’s country at specific stages in the procurement process to seek relevant CPPRS information on bidders or potential bidders and use such information in its evaluation and review panels, and (c) include a provision within their solicitation document(s), and contracts, as the case may be, to ensure that contractors are aware of the CPPRS obligation and how information gathered as a result of compliance with the CPPRS might be used. Further information regarding the procedures and forms to be used by the MCA Entity in performing these tasks is provided in MCC’s “Guidance on Reporting and Considering Past Performance by Contractors in MCA Entity Program Procurements” posted at: <http://www.mcc.gov/mcc/procurement/ppg/index.shtml>.

#### Applicability

P2.4.1.2 The CPPRS procedures apply to any procurement resulting in a total contract awarded that is valued or estimated to be valued in excess of 100,000USD. Total value or estimated total value is based on the base period of performance as well as any option periods of performance.

# Part 3.

## Standard Bidding Documents

P3.1.1 MCC has developed Standard Bidding Documents that are required to be used by all MCA Entities in procuring the goods, works, and services needed to implement their Compacts. These SBDs are the procurement standard to be used by all MCA Entities, regardless of whether the MCA Entities have SBDs previously approved by MCC for their use.

P3.1.2 MCC will notify the MCA Entities when the SBDs for each type of procurement are posted on MCC's website at <http://www.mcc.gov/mcc/procurement/sbd/index.shtml>. Once any SBD is posted on MCC's website, unless otherwise agreed by MCC, the MCA Entities will use the applicable SBDs for all procurements thereafter, and revise any existing draft documents that have not yet been submitted to MCC for approval to conform to the SBD.

P3.1.3 Each SBD includes an "Introduction" providing specific guidance on the use of the SBD, including guidance on which sections are to be used in procurement documents without modification. In situations where a modification to these sections may be necessary to address unique situations in a particular country (e.g., tax arrangements), the MCA Entity must consult MCC before making the modification.

P3.1.4 French and Spanish versions of the SBDs also are posted on the MCC website. These SBDs may only be used if MCC has waived the English language requirements of these Guidelines as described in Part 9 – Language.

# Part 4.

## Review and Approval Requirements

P4.1.1 Certain important procurement actions and decisions shall be subject to prior review or approval by levels of authority within the MCA Entity or by MCC, as provided in Attachment 1 of these Guidelines. This system of review and approval requirements is intended to ensure adequate oversight and monitoring of MCC-funded procurement activities, help detect errors when they can be easily corrected and otherwise avoid problems in such procurement activities.

P4.1.1.1 Because the level of review by the MCA Entity or MCC needed to assure that these goals are achieved can depend on different factors, including the experience of the MCA Entity in conducting procurements generally or a particular procurement approach, the susceptibility of the procurement to fraud and corruption, and the degree of completion risk surrounding the related Project, Attachment 1 of these Guidelines provides two levels of approval requirements. The approvals set forth in Schedule A of Attachment 1 shall apply to procurements undertaken by the MCA Entity, unless MCC has notified the MCA Entity otherwise. If MCC determines, in its sole discretion that the approvals set forth in Schedule B (Programs/Compacts in Oversight) of Attachment 1 should apply to the MCA Entity's procurements it will notify the MCA Entity and thereafter the approvals set forth in Schedule B shall be required. The level of approval requirements set forth in Schedule A of Attachment 1 reflects MCC's general standard of review, and will apply to most MCA Entities. The second level, set forth in Schedule B of Attachment 1 and referred to as the "oversight model," is based on the idea of simplifying the review process where it is warranted by focusing MCC's review of documents and processes more on after the fact action (ex post) rather than before the fact (ex ante). Thus, for example, approval of contracts awarded, operations manuals, material change orders, etc. is not automatically required. MCC, however, reserves the right, to require the increased level of review reflected in Schedule A at any time.

P4.1.1.1.2 In particular, MCC reserves the right to (i) require additional approvals at the Project or procurement action level based on perceived risk level and (ii) require the MCA Entity to follow the approvals required in Schedule A of Attachment 1 if there are material negative findings in any ex-post financial or procurement reviews or audits of the MCA Entity or MCC determines that the MCA Entity or its Procurement Agent is not adhering to these Guidelines. This system of review and approval requirements is subject to modification or exception at any time by MCC.

P4.1.2 The MCA Entity shall ensure that all procurement actions described in Attachment 1 for goods, works, consultant and non-consultant services in furtherance of the Compact and funded in whole or in part by MCC funding shall be subject to the prior approval of the MCA Entity's Procurement Director or board of directors

(or equivalent governing body) for the corresponding type of action or dollar amount threshold in Attachment 1, unless MCC has granted a written exception to the approval requirement set out in Attachment 1.

P4.1.3 Notwithstanding the approval requirements set out in Attachment 1, MCC shall have the right to review and require prior approval of any other procurement action, decision or document.

# Part 5. Bid Challenge System

## P5.1 Introduction

P5.1.1 This Part provides guidance to the MCA Entity on developing a Bid Challenge System (“BCS”) and for implementing an Interim Bid Challenge System (“IBCS”) to be used until the BCS is operational.

P5.1.2. No procurements may be issued unless an IBCS or an approved BCS is in place and Bidders and Potential Bidders have been given notice of it. The MCA Entity shall ensure that all bid challenges are accepted, reviewed, and processed in accordance with the rules and procedures of the MCA Entity’s BCS as approved by MCC or the IBCS.

## P5.1.3 Definitions.

P5.1.3 (a) “Appeal Body” means the independent panel that considers appeals of initial decisions made with respect to bid challenges.

P5.1.3 (b) “Bidder” means any consultant, contractor or supplier that participates in the procurement process to provide goods, works or services in furtherance of the Compact.

P5.1.3 (c) “Challenger” means any Bidder or Potential Bidder who submits a bid challenge

P5.1.3 (d) “Filed” or “filing” means the receipt, either by mail services or other delivery services (fax and email), of any document by the addressee before the close of its business day.

P5.1.3 (e) “Potential Bidder” means the Bidders who would have participated in the solicitation process but for an alleged mistake of the MCA Entity.

## P5.2 Bid Challenge System

P5.2.1 Within six (6) months of Compact signing, the MCA Entity must establish and publish a Bid Challenge System that provides Bidders or Potential Bidders who believe they have been damaged by a violation of the procurement principles or procedures by the MCA Entity the ability to seek review of the procurement process. The particular organization, rules, and procedures of the BCS are largely up to the discretion of the MCA Entity. However, the BCS must comply with this Part 5 and must be approved in writing by MCC. MCC also reserves the right to review and comment on the organization and operation of the BCS.

P5.2.2 The Bid Challenge System must include (a) a first level of review by the MCA Entity and (b) an appeal to an independent Appeal Body.



### **P5.3 First Level of Review by the MCA Entity**

#### **Checklist for Necessary Elements of BCS Review Process by MCA Entity**

P5.3.1. As part of the BCS, the MCA Entity shall adopt clear and transparent written procedures which must be followed by the MCA Entity in its review of bid challenges. The procedures shall include the following necessary elements:

- Language requirements
- Eligibility to file a bid challenge
- Deadline to file a bid challenge
- Filing fees
- Required elements of bid challenge document
- Procedures for accepting a bid challenge claim
- Suspension considerations
- Issues subject to review
- Written decisions
- Deadline to issue written decision
- Possible remedies
- Report to MCC

#### **Language**

P5.3.2 The BCS shall state the language for the bid challenge proceedings, including the appeal process. Permitted languages include English, Spanish, French, or Portuguese at the discretion of the MCA Entity.

#### **Filing Eligibility, Deadline, and Fees**

P5.3.3 Bidders and Potential Bidders shall be eligible to file a bid challenge. Subcontractors or members of the general public are not eligible to file bid challenges. The bid challenge must be filed within a reasonable time, to be determined by the MCA Entity, after the Challenger became aware of, or should have become aware of, the circumstances giving rise to the bid challenge. Any filing fees shall be set out in the BCS.

#### **Content of Bid Challenge**

P5.3.4 The bid challenge must specify: (a) the provisions of these Guidelines which allegedly were violated, (b) the justification for relief, and (c) the remedy sought.

#### **Suspension of Procurement**

P5.3.5 The BCS shall provide that as soon as the bid challenge has been filed, the procurement will be suspended for the duration of the bid challenge process *unless* the MCA Entity determines that (a) there are urgent or com-

elling reasons not to suspend, (b) the claim is frivolous, (c) there will be no irreparable harm to the Challenger, or (d) the granting of the suspension will cause disproportionate harm to the MCA Entity.

### **Issues Subject to Review**

P5.3.6 The BCS shall list which acts by the MCA Entity are not subject to review, such as the selection of a method of procurement, the choice of a selection procedure, or the decision to reject all offers.

### **Written Decision, Deadline, and Remedies**

P5.3.7 The MCA Entity shall review the bid challenge and issue a written decision on the bid challenge by a specified deadline. The decision shall state the reasons for the decision and any remedies to be taken.

## **P5.4 Appeal Process**

### **Checklist for Necessary Elements of BCS Appeal Process**

P5.4.1 As part of the BCS, the MCA Entity shall adopt clear and transparent written procedures which must be followed by the Appeal Body. The procedures shall include the following necessary elements:

- Independence of Appeal Body
- Authority of Appeal Body
- Qualifications and training of Appeal Body
- Language requirements
- Eligibility to file appeal
- Deadline to file appeal
- Location to file appeal
- Filing fees
- Required elements of appeal document
- Procedure for accepting an appeal
- Suspension considerations
- Oral hearing options
- Written decision
- Deadline to issue written decision
- Possible remedies
- Report to MCC

### **Independent Appeal Body**

P5.4.2 The BCS shall identify an independent Appeal Body. The Appeal Body shall be impartial, independent, have no interest (through financial, family, business, beneficial ownership, or otherwise) in the outcome of the procurement, nor be involved in or related to the procurement process. The Appeal Body can be a procurement panel, composed of outside procurement experts, an administrative body, or a court.

P5.4.3 The BCS shall provide that the Appeal Body has the authority to require the MCA Entity to revise the procurement proceedings to conform to the applicable guidelines, suspend the procurement in order to preserve the commercial opportunity pending the outcome of the review, terminate the procurement, order a new procurement, or require the MCA Entity to compensate a successful Challenger for loss or damage suffered to the extent of the cost of preparation of the bid challenge. Anticipated profits may not be recovered.

P5.4.4 The Procurement Agent or the MCA Entity will be responsible for recruitment, training, and certification of the Appeal Body. The Appeal Body must be well-versed in procurement, but the MCA Entity must ensure that they are trained in MCC procurement principles, practices and procedures. Non-governmental Appeal Body members may receive reasonable compensation for this service based on local market conditions.

### **P5.5 Report to MCC**

P5.5.1 The Challenger shall have no right to appeal to MCC. The MCA Entity must submit a report of the handling and disposition of any bid challenge to MCC. The report must be submitted to MCC (a) if there is no appeal, within 3 days after the deadline for filing an appeal or (b) if there is an appeal, within 3 days after receipt of the decision of the Appeal Body.

### **P5.6 Interim Bid Challenge System**

P5.6.1 During the period before the BCS has been adopted and becomes operational, the MCA Entity shall use the IBCS set forth in this Paragraph P5.6.1. In contrast to the BCS, the design of the IBCS is not up to the discretion of the MCA Entity. The MCA Entity must follow the directions below. The IBCS must be presented to Bidders and Potential Bidders in the solicitation documents precisely as follows (unless otherwise agreed by MCC):

#### **Bid Challenges**

The [Insert name of MCA Entity] shall entertain a bid challenge from any contractor, supplier, or consultant that claims to have suffered or that may suffer loss or injury due to a breach of a duty by the [Insert name of MCA Entity] in the conduct of this procurement. Any bid challenge shall be submitted in writing (may be in electronic form) to [Insert name of the MCA Entity] within five (5) working days of when the contractor, supplier or consultant submitting the bid challenge became aware, or should have become aware, of the circumstances giving rise to the bid challenge. Unless the bid challenge is resolved by mutual agreement, the [Insert name of MCA Entity] shall, within fifteen (15) days after submission of the bid challenge, issue a written decision stating the reasons for the decision and,

if the bid challenge is upheld in whole or in part, indicating the corrective measures that are to be taken. The bid challenge shall be addressed to:

Coordinator  
[Insert name of MCA Entity]  
Address  
Fax  
Email

### Appeals

In certain cases, a contractor, supplier, or consultant may seek review by MCC after it has exhausted all remedies with [Insert name of the MCA Entity]. MCC's review will be limited to claims that [Insert name of MCA Entity] failed to entertain its bid challenge, or failed to issue a written decision on the bid challenge, or claims that [Insert name of the MCA Entity] violated the procedures set out in the solicitation documents. The appeal to MCC must be received in writing (may be in electronic form) within five (5) working days of the date the contractor, supplier or consultant learned or should have learned of an adverse decision by [Insert name of the MCA Entity] or other basis of appeal to MCC. The appeal should be addressed to:

Millennium Challenge Corporation  
Attention: Vice President for Compact Implementation  
(with a copy to the Vice President and General Counsel)  
875 Fifteenth Street, N.W.  
Washington, DC 20005  
United States of America  
Fax: (202) 521-3700  
Email: [VPImplementation@mcc.gov](mailto:VPImplementation@mcc.gov) (Vice President for Compact Implementation)  
[VPGeneralCounsel@mcc.gov](mailto:VPGeneralCounsel@mcc.gov) (Vice President and General Counsel)

# Part 6.

## Subcontracting

Every contract or subcontract for goods, works, consultant, or non-consultant services with any party that receives MCC funding shall require the contracting party to follow the fundamental procurement principles promoting transparency, openness, competition and fairness to the maximum extent possible, remaining consistent with the objectives and requirements of the contract when subcontracting for goods, works, consultant or non-consultant services.

Any contractor or subcontractor planning to subcontract for a major item of goods, works, consultant, or non-consultant services (deemed major if valued in excess of 100,000USD) shall seek the MCA Entity's prior written approval of the subcontractor.

# Part 7.

## Amendments and Waivers

### 7.1 Amendments

P7.1.1 These Guidelines may be superseded from time to time by the issuance of new editions or may be amended from time to time through the issuance of interim amendments (“Interim Amendments”). Such new editions and Interim Amendments shall apply with prior notice to the MCA Entities or as MCC and any MCA Entity may otherwise agree.

P. 7.1.2 An Interim Amendment is a change to these Guidelines that occurs between editions because it has been determined to be of a significant nature. Among other things, it may introduce improved procedures, correct errors or omissions, or temporarily waive a specific provision of these Guidelines. It typically will apply to all MCA Entities, but if appropriate, may apply only to a subset. Interim Amendments will be announced in an “Interim Amendment Notice” posted on MCC’s website and will take effect on the date specified in the notice. Unless earlier repealed, each Interim Amendment will remain in effect until issuance of the next edition of these Guidelines (or such shorter period as may be specified in the Interim Amendment Notice), at which time the Interim Amendment may be incorporated in the new edition. Material Interim Amendments (as determined by MCC’s Procurement Coordinator) will be approved in accordance with MCC’s Policy on Creating and Maintaining MCC Policies. All other Interim Amendments will be approved by MCC’s Procurement Coordinator.

### 7.2 Waivers

P7.2.1 Generally. On a case-by-case basis, MCC may grant waivers of specific provisions of these Guidelines for a particular procurement. Each waiver shall be in writing and shall be effective only to the extent specifically set forth in such writing. Unless issued as an Interim Amendment, a waiver does not affect permanent change to these Guidelines, but, rather, functions as a one-time exception necessary to support a specific procurement and applies only to the specific MCA Entity requesting the waiver. For example, a waiver may, if justified, be appropriate to permit a shorter solicitation period or to increase the dollar value threshold for using a procurement method.

P7.2.2 Initiation and Required Content. Waivers are initiated by the MCA Entity. Waiver requests must include a description of the anticipated impact the waiver would have on the MCA Entity’s procurement activities and the program objectives supported by those procurement activities. It must contain sufficient detail to explain the basis of the request, the procedure(s) to be waived, and any recommended alternative action. The request must also detail why granting such a waiver is in the interest of the country’s Compact program, and why it would

be detrimental to the program if the waiver were denied. See Attachment 10 for a Sample Guidelines Waiver Request Form.

**P7.2.3 Review and Approval.** All waivers require formal MCC approval prior to implementation. Waiver requests must be submitted by the MCA Entity to the MCC Resident Country Director in country who will forward it to the appropriate MCC Procurement Director. The MCC Procurement Director will make a determination in accordance with the table below on the level of approval within MCC required for the waiver. As noted in the table, the required approval level will depend on the nature of the waiver and its potential impact on the overall MCC procurement policy. Waiver requests may be denied if the MCA Entity's interests in requesting the waiver do not outweigh the interests of proceeding under these Guidelines without variation.

Nature of Requested Waiver	Approver
Minor deviation from the requirements of these Guidelines affecting one MCA Entity	Director, Procurement for country of the requesting MCA Entity
Minor deviation from the requirements of these Guidelines potentially affecting all MCA Entities (e.g., correction of conflict between these Guidelines and SBDs)*	Procurement Coordinator
Significant deviation affecting one MCA Entity (e.g., pilot program for use of insurance bonds instead of bank guarantees)	Deputy Vice President, Compact Implementation
Agency-wide significant change potentially affecting the majority of MCA Entities*	As determined by MCC's <i>Policy on Creating and Maintaining MCC Policies</i>

\* Waivers of this nature will result in an Interim Amendment

**P7.2.4 Waiver Tracking.** Each MCA Entity, either alone or in conjunction with its Procurement Agent, is responsible for maintaining copies in the MCA Entity's procurement files of all waiver requests and the associated MCC approvals/rejections.



# Part 8.

## Publication of MCC Program Procurement Guidelines and Additional Information

### **Publication by MCA Entity**

P8.1.1 The MCA Entity shall ensure that these Guidelines (including any amendments thereto) are published on the MCA Entity's website (or such other appropriate website designated by the MCA Entity and approved by MCC).

### **Additional Information**

P8.1.2 Information about MCC and its programs can be found at [www.mcc.gov](http://www.mcc.gov). Information about MCC programs in the country of the MCA Entity is to be included on the website established by the MCA Entity (or such other appropriate website designated by the MCA Entity and approved by MCC).

# Part 9.

## Language

### **Official Language**

P9.1.1 English is the official operating language of MCC-funded procurement documents.

### **Advertising Documents Solicitation, Procurement and Contract Documents**

P9.1.2 The language requirements for these documents are in Paragraphs P1.A.2.15 and P1.A.2.16 of Section 1.A and Paragraphs P1.B.1.18 and P1.B.1.19 of Section 1.B of these Guidelines

### **Procurement Records and Reports**

P9.1.3 Any document which is subject to MCC approval according to Attachment 1 (Approval Requirements) of these Guidelines, and any reports required under Part 2 of these Guidelines, must be in English.

### **Waivers**

P9.1.4 MCC may, in its sole discretion waive the English-only language requirements of these Guidelines to permit any procurement documentation (including, without limitation, procurement/bidding documents, technical evaluation reports, and contracts), to be in English, Spanish, French, or a combination thereof, regardless of contract value. The waiver, if approved, would continue for a period of six (6) months. MCC may also, in its sole discretion, renew any waiver for an additional period of time as deemed necessary through written notification to the MCA Entity.

# Part 10.

## Eligibility Verification Procedures

### P10.1 Introduction

P10.1.1 This Part provides guidance on performing eligibility verification procedures during the evaluation of bids and proposals for MCA Entity program procurements.

P10.1.2 A firm declared ineligible by The World Bank for any reasons, including in accordance with The World Bank Group anti-corruption policies, shall be ineligible to be awarded an MCC-funded contract during the period of time that the firm is sanctioned by The World Bank.

P10.1.3 In addition, any person or entity that has been blacklisted by The World Bank or debarred or suspended from participation in procurements funded by the United States Federal Government or otherwise prohibited by applicable United States law or executive order or United States policies including under any then-existing anti-terrorist policies shall also be ineligible to be awarded an MCC-funded contract.

P10.1.4 The MCA Entity shall recognize as ineligible any firm listed on any of the following:

- Excluded Parties List System (EPLS)--• <http://www.epls.gov/>
- World Bank Debarred List--• <http://web.worldbank.org/external/default/main?contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984&querycontentMDK=64069700&theSitePK=84266>
- US Treasury, Office of Foreign Assets Control, Specially Designated Nationals List (SDN)--• <http://www.treas.gov/offices/enforcement/ofac/sdn/>
- US Department of Commerce, Bureau of Industry and Security, Denied Persons List (DPL)--• <http://www.bis.doc.gov/dpl/Default.shtm>
- US Department of Commerce, Bureau of Industry and Security, The Entity List--• <http://www.bis.doc.gov/Entities/Default.htm>
- US State Department, Directorate of Defense Trade Controls, Debarred Parties List--• <http://www.pmddtc.state.gov/compliance/debar.html>
- US State Department, Terrorist Exclusion List--• <http://www.state.gov/s/ct/list>

## **P10.2 Eligibility Verification Procedures**

P10.2.1 The MCA Entity (or through its Procurement Agent) shall perform the following procedures to verify the eligibility of firms, key personnel and subcontractors:

### **Partial Eligibility Verification**

P10.2.2 The MCA Entity shall verify the eligibility of the consultant or contractor (*“partial eligibility verification”*) concurrently with the administrative compliance review at the beginning of the bid or proposal evaluation process. If a consultant or contractor is deemed eligible in this first review (i.e., no adverse, material records have been found), the MCA Entity will clear its bid or proposal to proceed to the next step in the evaluation process. If an adverse record(s) has/have been found for one or more contractors or consultants, the MCA Entity must conduct additional research to determine whether the finding is a “false positive.” If it is, the MCA Entity will clear the contractor or consultant for further evaluation and will notify MCC. On the other hand, if after further investigation any firm is found on any of the lists provided above, that firm will be deemed to be ineligible and its proposal or bid will be rejected.

### **P10.2 Full Eligibility Verification**

P10.2.3 After completion of the technical review or evaluation the panel may recommend a consultant or contractor for contract award. However, before the panel’s recommendation is approved, the MCA Entity will conduct a “full eligibility verification,” which consists of the same eligibility verification process in the first review with two exceptions: a) only the highest scoring consultant or contractor will be reviewed, and b) the review will also be conducted on all key personnel and subcontractors included in the bid or proposal for that consultant or contractor. In the case where an adverse record(s) is found for the contractor, the consultant, or any of its key personnel or subcontractors, additional research must be conducted to determine whether the finding is a “false positive.” If all positive records are deemed to be false positives, the consultant and/or contractor will be cleared for award and MCC should be notified.

P10.2.4 In the event that the MCA Entity finds an adverse record for the contractor or consultant that is not determined to be a false positive, the bid or proposal will be rejected and the consultant or contractor with the next highest evaluated bid or proposal will then be examined through the full eligibility verification process. If, on the other hand, any of the selected consultant’s or contractor’s key personnel or subcontractors are found to be ineligible at this stage, the MCA Entity will determine whether it is possible under the circumstances to allow the consultant or contractor to make a substitution. This determination will be made on a case by case basis and will require approval by MCC regardless of the estimated value of the proposed contract.

### **Periodic Eligibility Verification**

P10.2.5 After contract award, MCA Entities shall periodically examine the eligibility of consultants and contractors prior to partial payments according to the requirements of the MCA Entity's fiscal accountability plan. During the course of these checks, if any consultant or contractor is found to be ineligible due to its appearance on any of the required lists, the MCA Entity should proceed with contract termination immediately. If any of the selected consultant's or contractor's key personnel or subcontractors are found to be ineligible after contract award, the MCA Entity will determine whether it is possible under the circumstances to allow the consultant or contractor to make a substitution. This determination will be made on a case by case basis and will require approval by MCC regardless of the value of the contract.

### **Documentation of Eligibility Verification**

P10.3.1 Documentation of the process takes two forms. Two of the lists, EPLS and World Bank Debarred, are searchable databases that return a positive or negative search results page upon submission of a name to be searched. In order to document the eligibility of a given contractor or consultant, the MCA Entity should print out the search results page, which reads, "Your search returned no results," (in the case of EPLS) and, "No Matching Records found!" (in the case of World Bank Debarred List). These documents should be printed and retained as part of the overall record of the procurement. The other lists, while updated on a regular basis, are statically rather than dynamically searchable, i.e. the user must look for an entry. They are also often quite long, making it administratively burdensome to print out and retain the lists during each search. Therefore, the form in Attachment 4 to these Guidelines provides a space for the MCA Entity to insert the date on which each of these lists was last updated. Each of the websites posts the date on the list site.

P10.3.2 The results of the partial eligibility verification should be documented using the partial eligibility compliance worksheet (see sample Appendix A in Attachment 4 to these Guidelines), which is referenced in the technical evaluation report or technical review report and included as an annex to that report.

P10.3.3 The results of the full eligibility verification should be documented using the full eligibility compliance worksheet (see sample in Appendix B of Attachment 3), which should be referenced in the technical evaluation report or technical review report and included as an annex to that report.

P10.3.4 The MCA Entity or its agent must fill out the partial and full eligibility compliance worksheets by inserting "E" for eligible in any instances in which there is NOT an adverse material record that would show a consultant or contractor to be ineligible, and "I" if any consultant or contractor has an adverse material record showing them to be ineligible. In the event that a contractor or consultant has no adverse material records on any of the lists, then they are deemed to be eligible, and this should be indicated by an "E" in the far right column.

# Part 11.

## Choice of Contract Types

P11.1.1 While MCC does not prohibit the use of reimbursable-cost contracts, reimbursable-cost contracts are acceptable to MCC only in exceptional circumstances, such as conditions of high risk or where costs cannot be determined with sufficient accuracy in advance.

P11.2 Reimbursable-cost contracts shall include appropriate incentives to limit costs and shall reference and be subject to the relevant MCC Cost Principles found at the MCC website, [www.mcc.gov](http://www.mcc.gov)

P11.3 MCC favors the use of fixed price contracts over reimbursable-cost contracts for MCC sponsored procurements for a number of reasons.

P11.3.1 The most significant reason for favoring the use of fixed-price contracts is the audit requirement for reimbursable-cost contracts. Fixed-price contracts do not require audit of the costs because there is a fixed price for the work required and, therefore, no need to monitor the individual costs associated with completing the work. In contrast, audit of individual costs, including overhead, under reimbursable-cost contracts is a MCC Inspector General mandate that is not subject to negotiation. While the audit provisions are not onerous requirements for U.S. firms that have significant contract experience under the Federal Acquisition Regulations, small, international or inexperienced U.S. firms who wish to participate in MCC funded procurements are likely to find them onerous, which would undermine MCC's efforts to achieve the broadest possible international participation in MCA Entity procurements. In addition, because of the audit requirement, a reimbursable-cost contract award may have to be conditioned on a successful pre-contract award audit to determine if the contractor has a financial management system in place capable of tracking specified costs during contract performance.

P11.1.3.2 Given the ambitious nature of MCC funded activities, the tight timeframes during which they must be completed, and the relatively limited contract management expertise of the MCA Entities, fixed-price contracts are more appropriate. This is due to the fact that at the inception of these contracts there is an operating assumption by the parties to the contract that all of the work will be completed for the agreed-upon price and within the specified timeframe. Reimbursable-cost contracts do not offer the same level of assurances.

P11.1.3.3 Fixed-price contracts favor the MCA Entity in the contractual relationship because most of the risk involved in completing the requirement is assumed by the contractor.

In reimbursable-cost contracts, the MCA Entity assumes more risk within the context of the contractual relationship. There is no firm commitment by the contractor to deliver all requirements within the ceiling amount

and the specified timeframe established in the contract; there is only a promise not to exceed the expense limit, often referred to as a total estimated cost, during completion of the required tasks.

P11.1.3.4 Because reimbursable-cost contracts have a ceiling price and no assumption or guarantee that the work will be completed within the ceiling price, they also involve significantly more oversight by the MCA entity and MCC during performance.

P11.1.4 For the reasons stated above, MCC strongly recommends that MCA Entities consider very carefully the audit, contract management, risk and other implications of cost-reimbursable contracts before making a decision to use a reimbursable-cost contract instead of a fixed-price contract.



# Part 12.

## Property Leasing

P12.1.1 This Part provides guidance to the MCA Entity in renting office space or other real estate for use under Compact funding.

P12.1.2 The MCA Entity is not required to include property leases in the Procurement Plan.

P12.1.3 Property leasing must be based on the fundamental procurement principles of (a) open competition; (b) market price; and (c) no conflict of interest.

P12.1.4 The MCA Entity shall clearly define its requirements for the space, such as nature, size and functionality of the space taking into account its needs for employee offices or cubicles, meeting rooms, document storage, utilities (such as telephone, internet, water, electricity, back-up generation); the cost of adapting the space for the anticipated uses, parking, security and building management.

P12.1.5 The MCA entity shall also establish a set of clear selection criteria. Two aspects which are distinctively critical for real estate are location and the cost of adapting the building for the anticipated uses.

P12.1.6 After reaching a decision on requirements and selection criteria, the MCA Entity should conduct a search for possible space and seek proposals from several sources (four to five would be ideal). Selection should be made based upon the best overall value that meets the requirements of the MCA Entity.

P12.1.7 The MCA Entity should ensure that the budgeted amount for the lease is not exceeded without approval and indication from the Fiscal Agent of the source for the additional funds.

P12.1.8. Where the time period of the lease is negotiable; MCC prefers a fixed commitment for a shorter period (2-3 years) with option years that would complete the Compact period. Prepayment for a full year's lease is discouraged based upon principles of sound cash management and should only be made in circumstances where there is no alternative option or the full payment is more cost effective.

P12.1.9 MCC will review the process and terms prior to lease signing, as well as any modifications to the lease terms made after signing. The lease shall be signed by an official of each party with authority to enter into such agreements.

P12.1.10 Any sub-leasing must be approved by the MCC.

# Part 13. Records and Post Review

## **Procurement Records**

P13.1.1 The MCA Entity shall maintain complete and uniform procurement records according to a standard format approved by MCC. The procurement records will be retained by the MCA Entity for at least five (5) years after the expiration or termination of the Compact. As part of the procurement records, the MCA Entity shall retain all documentation with respect to each contract during implementation of the Compact which should include, but is not to be limited to, the signed original of the contract, the analysis of the respective proposals, recommendations for award, the record of MCC approvals, and the record of any bid challenge.

## **Post Review**

P13.2.1 The procurement records are subject to examination by MCC, its oversight agencies and by its agents and consultants. The MCA Entity shall furnish such documentation to MCC upon request. If MCC determines that the goods, works or non-consultant or consultant services were not procured in accordance with the agreed procedures, as reflected in the Compact including any Supplemental Agreements and further detailed in the Procurement Plan approved by MCC, or that the contract itself is not consistent with such procedures, it may declare misprocurement as established in Paragraph P1.A.1.13 of Section 1.A or Paragraph P1.B.1.15 of Section 1.B of these Guidelines. MCC shall promptly inform the MCA Entity of the reasons for such determination.

# Attachment 1.

## Approval Requirements

### Schedule A

Schedule A: Goods, Works and Non-Consultant Services				
Procurement Procedure or Method	Decision <sup>5</sup>	LEVEL OF APPROVAL (Thresholds expressed in USD)		
		MCA Entity Director of Procurement	Governing Body of MCA Entity <sup>6</sup>	MCC <sup>7</sup>
	Procurement Plans	All	All	All
	Amendments to Procurement Plans	All	Material Change <sup>8</sup>	Material Change <sup>8</sup>
Pre-qualification	Pre-qualification documents and advertising procedures	All	None	Above 1,000,000USD
	Report with proposed list of entities qualified	All	Above 500,000USD	Above 500,000USD
	Record of Bid Challenges	All	All	All
Competitive Bidding	Bidding Documents	All	None	Above 1,000,000USD Goods Above 5,000,000USD Works
	Bid Review Panel Membership	All	None	Above 1,000,000USD Goods Above 5,000,000USD Works
	Bid Review Report with Proposed Award	All	None <sup>9</sup>	Above 500,000USD
	Rejection of All Bids	All	None	All
	Final Contract	All	None <sup>10</sup>	None <sup>10</sup>
	Record of Bid Challenges	All	All	All

<sup>5</sup> Within each “Procurement Procedure or Method,” each separate “Decision” shown is an independent requirement, and all requisite approvals must be received for each such “Decision” before proceeding, sequentially from top to bottom, to the next “Decision” requirement.

<sup>6</sup> Notwithstanding the thresholds for the Governing Body of the MCA Entity set forth in this Attachment 1, Schedule A, the Governing Body may exercise its authority to review any procurement decision with prior notice to the principal officer of the MCA Entity.

<sup>7</sup> Notwithstanding the thresholds for the MCC set forth in this Attachment 1, Schedule A, the MCC may exercise its authority to review and approve any procurement decision with prior notice to the principal officer of the MCA Entity.

<sup>8</sup> Updates adding or increasing the value of a particular procurement by 25,000USD or more shall be submitted to the Governing Body of the MCA Entity and MCC for their approval.

<b>Schedule A: Goods, Works and Non-Consultant Services</b>				
		LEVEL OF APPROVAL (Thresholds expressed in USD)		
Procurement Procedure or Method	Decision <sup>5</sup>	MCA Entity Director of Procurement	Governing Body of MCA Entity <sup>6</sup>	MCC <sup>7</sup>
Limited Bidding	Short List Report	All	None	Above 100,000USD
	Bidding Documents	All	None	Above 1,000,000USD Goods Above 5,000,000USD Works
	Bid Review Panel Membership	All	None	Above 1,000,000USD Goods Above 5,000,000USD Works
	Bid Review Report with Proposed Award	All	None <sup>9</sup>	Above 1,000,000USD Goods Above 5,000,000USD Works
	Rejection of All Bids	All	None	All
	Final Contract	All	None <sup>10</sup>	None <sup>10</sup>
	Record of Bid Challenges	All	All	All
Shopping	Evaluation Report	Over 2,000USD	None	None
	Record of Purchases	Weekly	Monthly	None
	Record of Bid Challenges	All	All	All
Direct Contracting	Proposed Award	Over 2,000USD	None <sup>9</sup>	Above 50,000USD
	Final Contract	Over 2,000USD (Under 2,000USD review monthly report)	Above 50,000USD	Above 50,000USD
	Record of Bid Challenges	All	All	All
Force Account	Selection of using equipment owned by or employees of Government for performing works	All	All	All
	Proposed Contract	All	None <sup>10</sup>	All
	Final contract	All	All	All

<sup>9</sup> Unless the proposed contract award value is more than 10% higher than the estimated award value in the approved Procurement Plan.

<sup>10</sup> Unless contract has a substantial change in terms of legal clauses or technical requirements from the draft issued with bidding documents.

<b>Schedule A: Goods, Works and Non-Consultant Services</b>				
		LEVEL OF APPROVAL (Thresholds expressed in USD)		
Procurement Procedure or Method	Decision <sup>5</sup>	MCA Entity Director of Procurement	Governing Body of MCA Entity <sup>6</sup>	MCC <sup>7</sup>
All Procurement Actions	Contract Modifications and Change Orders	All (Exception: If approval authority has been delegated to the FIDIC Engineer under and as defined in the applicable bidding documents, only approval of the FIDIC Engineer shall be required for changes within the FIDIC Engineer's delegated authority)	If individual contract mods/change orders (i) raise a contract which did not require approval above an approval threshold, or (ii) extend the original contract term by 25% or more without an increase in value, or (iii) increase the original contract value by 10% or more.	If individual or collective contract mods/change orders (i) raise the contract value of a contract that did not require approval above an approval threshold, or (ii) extend the original contract term by 25% or more without an increase in contract value or (iii) increase the original contract value by 10% or more. Once the 10% contract mod/change order threshold set in clause (iii) has been reached for a contract, any subsequent contract mods/change orders that individually or collectively exceed 3% of the original contract value will also require MCC approval.

	Schedule A: Consultant Services			
		LEVEL OF APPROVAL (Thresholds expressed in USD)		
Procurement Procedure or Method	Decision <sup>5</sup>	MCA Entity Director of Procurement	Governing Body of MCA Entity <sup>6</sup>	MCC <sup>7</sup>
	Procurement Plans	All	All	All
	Amendments to Procurement Plans	All	Material Change <sup>8</sup>	Material Change <sup>8</sup>
Quality and Cost Based Selection (QCBS)	Request for Expression of Interest	All	None	None
	Technical Evaluation Panel Membership	All	None	Above 500,000USD
	Short List Report	All	None	Above 500,000USD
	Proposal Documents	All	None	Above 500,000USD
	Technical Evaluation Report	All	None	Above 500,000USD
	Rejection of all proposals	All	None	Above 500,000USD
	Combined Evaluation Report	All	None <sup>9</sup>	Above 500,000USD
	Final Contract	All	None <sup>10</sup>	None <sup>10</sup>
	Record of Bid Challenges	All	All	All
Quality Based Selection (QBS)	Request for Expression of Interest	All	None	None
	Technical Evaluation Panel Membership	All	None	Above 500,000USD
	Short List Report	All	None	Above 500,000USD
	Rejection of all proposals	All	None	Above 500,000USD
	Review Report with Proposed Award	All	Above 500,000USD	Above 500,000USD
	Final Contract	All	Above 500,000USD	Above 500,000USD
	Record of Bid Challenges	All	All	All

	Schedule A: Consultant Services			
		LEVEL OF APPROVAL (Thresholds expressed in USD)		
Procurement Procedure or Method	Decision <sup>5</sup>	MCA Entity Director of Procurement	Governing Body of MCA Entity <sup>6</sup>	MCC <sup>7</sup>
Fixed Budget Selection (FBS)	Request for Expression of Interest	All	None	None
	Technical Evaluation Panel Membership	All	None	Above 500,000USD
	Short List Report	All	None	Above 500,000USD
	Proposal Documents	All	None	Above 500,000USD
	Technical Evaluation Report	All	None	Above 500,000USD
	Rejection of all proposals	All	None	Above 500,000USD
	Combined Evaluation Report	All	None <sup>9</sup>	Above 500,000USD
	Final Contract	All	None <sup>10</sup>	None <sup>10</sup>
	Record of Bid Challenges	All	All	All
Least-Cost Selection	Request for Expression of Interest	All	None	None
	Technical Evaluation Panel Membership	All	None	Above 500,000USD
	Short List Report	All	None	Above 500,000USD
	Proposal Documents	All	None	None
	Review Report with Proposed Award	All	None <sup>9</sup>	Above 500,000USD
	Rejection of all proposals	All	None	Above 500,000USD
	Final Contract	All	None <sup>10</sup>	None <sup>10</sup>
	Record of Bid Challenges	All	All	All
Selection Based on Consultant's Qualifications	Request for Expression of Interest	All	None	None
	Technical Evaluation Panel Membership	All	None	Above 500,000 USD
	Short List Report	All	None	Above 500,000 USD
	Proposal Documents	All	None	None
	Technical Evaluation Report	All	None	None
	Rejection of All Proposals	All	None	Above 500,000 USD
	Review Report with Proposed Award	All	None	None
	Final Contract	All	Above 500,000 USD	Above 500,000 USD
	Record of Bid Challenges	All	All	All



	Schedule A: Consultant Services			
		LEVEL OF APPROVAL (Thresholds expressed in USD)		
Procurement Procedure or Method	Decision <sup>5</sup>	MCA Entity Director of Procurement	Governing Body of MCA Entity <sup>6</sup>	MCC <sup>7</sup>
Sole-Source Selection	Proposed Award	All	None	Above 50,000 USD
	Final Contract	All	Above 50,000 USD	Above 50,000 USD
	Record of Bid Challenges	All	All	All
Individual Consultants	Short List Report	All	None	Above 50,000 USD
	Technical Evaluation Panel	All	None	Above 50,000 USD
	Technical Evaluation Report	All	None	None
	Review Report with Proposed Award	All	None	None
	Final Contract	All	Above 50,000 USD	Above 50,000 USD
	Record of Bid Challenges	All	All	All
All Procurement Actions	Contract Modifications and Change Orders	All	If individual contract mods/change orders (i) raise a contract which did not require approval above an approval threshold, or (ii) extend the original contract term by 25% or more without an increase in value, or (iii) increase the original contract value by 10% or more.	If individual or collective contract mods/change orders (i) raise the contract value of a contract that did not require approval above an approval threshold, or (ii) extend the original contract term by 25% or more without an increase in contract value or (iii) increase the original contract value by 10% or more. Once the 10% contract mod/change order threshold set in clause (iii) has been reached for a contract, any subsequent contract mods/change orders that individually or collectively exceed 3% of the original contract value will also require MCC approval.

## Schedule B - Programs/Compacts in Oversight

<b>Schedule B:</b> Goods, Works and Non-Consultant Services				
		LEVEL OF APPROVAL (Thresholds expressed in USD)		
Procurement Procedure or Method	Decision <sup>11</sup>	MCA Entity Director of Procurement	Governing Body of MCA Entity <sup>12</sup>	MCC <sup>13</sup>
	Procurement Plans	All	All	All
	Amendments to Procurement Plans	All	Material Change <sup>14</sup>	Material Change <sup>14</sup>
Pre-qualification	Pre-qualification documents and advertising procedures	All	None	None
	Report with proposed list of entities qualified	All	Above 500,000USD	None
	Record of Bid Challenges	All	All	All
Competitive Bidding	Bidding Documents	All	None	Above 1,000,000USD Goods Above 5,000,000USD Works
	Bid Review Panel Membership	All	None	None
	Bid Review Report with Proposed Award	All	None <sup>15</sup>	Above 500,000USD
	Rejection of all bids	All	None	Above 1,000,000USD Goods Above 5,000,000USD Works
	Final Contract	All	None <sup>16</sup>	None <sup>16</sup>
	Record of Bid Challenges	All	All	All

<sup>11</sup> Within each "Procurement Procedure or Method," each separate "Decision" shown is an independent requirement, and all requisite approvals must be received for each such "Decision" before proceeding, sequentially from top to bottom, to the next "Decision" requirement.

<sup>12</sup> Notwithstanding the thresholds set forth in this Attachment 1, Schedule B of these Guidelines with respect to the Governing Body of the MCA Entity, the Governing Body may exercise its authority to review any procurement decision with prior notice to the principal officer of the MCA Entity.

<sup>13</sup> Notwithstanding the thresholds set forth in this Attachment 1, Schedule B of these Guidelines with respect to the MCC, the MCC may exercise its authority to review and approve any procurement decision with prior notice to the principal officer of the MCA Entity.

<sup>14</sup> Updates adding or increasing the value of a particular procurement by 25,000USD or more shall be submitted to the Governing Body of the MCA Entity and MCC for their approval.

<sup>15</sup> Unless the proposed contract award value is more than 10% higher than the estimated value in the approved Procurement Plan.

<sup>16</sup> Unless contract has a substantial change in terms of legal clauses or technical requirements from the draft issued with bidding documents.

<b>Schedule B: Goods, Works and Non-Consultant Services</b>				
		LEVEL OF APPROVAL (Thresholds expressed in USD)		
Procurement Procedure or Method	Decision <sup>11</sup>	MCA Entity Director of Procurement	Governing Body of MCA Entity <sup>12</sup>	MCC <sup>13</sup>
Limited Bidding	Short List Report	All	None	Above 1,000,000USD Goods Above 5,000,000USD Works
	Bidding Documents	All	None	Above 1,000,000USD Goods Above 5,000,000USD Works
	Bid Review Panel Membership	All	None	None
	Bid Review Report with Proposed Award	All	None <sup>15</sup>	Above 1,000,000USD Goods Above 5,000,000USD Works
	Rejection of all bids	All	None	All
	Final Contract	All	None <sup>16</sup>	None <sup>16</sup>
	Record of Bid Challenges	All	All	All
Shopping	Evaluation Report	Over 2,000USD	None	None
	Record of Purchases	Weekly	Monthly	None
	Record of Bid Challenges	All	All	All
Direct Contracting	Proposed Award	Over 2,000USD	None <sup>15</sup>	Above 50,000USD
	Final Contract	Over 2,000USD (Under 2,000USD review monthly report)	Above 50,000USD	Above 50,000USD
	Record of Bid Challenges	All	All	All
Force Account	Selection of using equipment owned by or employees of Government for performing works	All	All	All
	Proposed contract	All	None <sup>15</sup>	All
	Final contract	All	All	All

<b>Schedule B: Goods, Works and Non-Consultant Services</b>				
		LEVEL OF APPROVAL (Thresholds expressed in USD)		
Procurement Procedure or Method	Decision <sup>11</sup>	MCA Entity Director of Procurement	Governing Body of MCA Entity <sup>12</sup>	MCC <sup>13</sup>
All Procurement Actions	Contract Modifications and Change Orders	<b>All</b> <b>(Exception:</b> If approval authority has been delegated to the FIDIC Engineer under and as defined in the applicable bidding documents, only approval of the FIDIC Engineer shall be required for changes within the FIDIC Engineer's delegated authority)	If individual contract mods/change orders (i) raise a contract which did not require approval above an approval threshold, or (ii) extend the original contract term by 25% or more without an increase in value, or (iii) increase the original contract value by 10% or more.	If individual or collective contract mods/change orders (i) raise the contract value of a contract that did not require approval above an approval threshold, or (ii) extend the original contract term by 25% or more without an increase in contract value or (iii) increase the original contract value by 10% or more. Once the 10% contract mod/change order threshold set in clause (iii) has been reached for a contract, any subsequent contract mods/change orders that individually or collectively exceed 3% of the original contract value will also require MCC approval.

Schedule B: Consultant Services				
		LEVEL OF APPROVAL (Thresholds expressed in USD)		
Procurement Procedure or Method	Decision <sup>11</sup>	MCA Entity Director of Procurement	Governing Body of MCA Entity <sup>12</sup>	MCC <sup>13</sup>
	Procurement Plans	All	All	All
	Amendments to Procurement Plans	All	Material Change <sup>14</sup>	Material Change <sup>14</sup>
Quality and Cost Based Selection (QCBS)	Request for Expression of Interest	All	None	None
	Technical Evaluation Panel Membership	All	None	None
	Short List Report	All	None	Above 500,000USD
	Proposal Documents	All	None	Above 500,000USD
	Technical Evaluation Report	All	None	Above 500,000USD
	Rejection of all proposals	All	None	Above 500,000USD
	Combined Evaluation Report	All	None <sup>15</sup>	None
	Final Contract	All	None <sup>16</sup>	None <sup>16</sup>
	Record of Bid Challenges	All	All	All
Quality Based Selection (QBS)	Request for Expression of Interest	All	None	None
	Technical Evaluation Panel Membership	All	None	None
	Short List Report	All	None	Above 500,000USD
	Rejection of all proposals	All	None	Above 500,000USD
	Review Report with Proposed Award	All	Above 500,000USD	Above 500,000USD
	Final Contract	All	Above 500,000USD	Above 500,000USD
	Record of Bid Challenges	All	All	All

Schedule B: Consultant Services				
		LEVEL OF APPROVAL (Thresholds expressed in USD)		
Procurement Procedure or Method	Decision <sup>11</sup>	MCA Entity Director of Procurement	Governing Body of MCA Entity <sup>12</sup>	MCC <sup>13</sup>
Fixed Budget Selection (FBS)	Request for Expression of Interest	All	None	None
	Technical Evaluation Panel Membership	All	None	None
	Short List Report	All	None	Above 500,000USD
	Proposal Documents	All	None	Above 500,000USD
	Technical Evaluation Report	All	None	Above 500,000USD
	Rejection of all proposals	All	None	Above 500,000USD
	Combined Evaluation Report	All	None	None
	Final Contract	All	None <sup>16</sup>	None <sup>16</sup>
	Record of Bid Challenges	All	All	All
Least-Cost Selection	Request for Expression of Interest	All	None	None
	Technical Evaluation Panel Membership	All	None	None
	Short List Report	All	None	None
	Proposal Documents	All	None	None
	Review Report with Proposed Award	All	None <sup>15</sup>	None
	Rejection of all proposals	All	None	Above 500,000USD
	Final Contract	All	None <sup>16</sup>	None <sup>16</sup>
	Record of Bid Challenges	All	All	All
Selection Based on Consultant's Qualifications	Request for Expression of Interest	All	None	None
	Technical Evaluation Panel Membership	All	None	None
	Short List Report	All	None	None
	Proposal Documents	All	None	None
	Technical Evaluation Report	All	None	Above 500,000USD
	Rejection of all proposals	All	None	Above 500,000USD
	Review Report with Proposed Award	All	None <sup>15</sup>	None
	Final Contract	All	None	None
	Record of Bid Challenges	All	All	All

Schedule B: Consultant Services				
		LEVEL OF APPROVAL (Thresholds expressed in USD)		
Procurement Procedure or Method	Decision <sup>11</sup>	MCA Entity Director of Procurement	Governing Body of MCA Entity <sup>12</sup>	MCC <sup>13</sup>
Sole-Source Selection	Proposed Award	All	None	Above 50,000USD
	Final Contract	All	Above 50,000USD	Above 50,000USD
	Record of Bid Challenges	All	All	All
Individual Consultants	Short List Report	All	None	None
	Technical Evaluation Panel	All	None	None
	Technical Evaluation Report	All	None	None
	Review Report with Proposed Award	All	None <sup>15</sup>	None
	Final Contract	All	None	None
	Record of Bid Challenges	All	All	All
All Procurement Actions	Contract Modifications and Change Orders	All	If individual contract mods/change orders (i) raise a contract which did not require approval above an approval threshold, or (ii) extend the original contract term by 25% or more without an increase in value, or (iii) increase the original contract value by 10% or more.	If individual or collective contract mods/change orders (i) raise the contract value of a contract that did not require approval above an approval threshold, or (ii) extend the original contract term by 25% or more without an increase in contract value or (iii) increase the original contract value by 10% or more. Once the 10% contract mod/change order threshold set in clause (iii) has been reached for a contract, any subsequent contract mods/change orders that individually or collectively exceed 3% of the original contract value will also require MCC approval.



# Attachment 2.

## Glossary of Terms

**Bid Challenge System or BCS** has the meaning set forth in *Part 5*.

**BOO or Build Own Operate** means a financing arrangement in which a developer (1) designs and builds a complete Project or facility, (2) operates the facility as a business for a specified period.

**BOOT or Build, Own, Operate Transfer** means a financing arrangement in which a developer (1) designs and builds a complete Project or facility, (2) owns and operates the facility as a business for a specified period after which (3) transfers it to the government or partner at a previously agreed-upon or market-price.]

**BOT or Build, Operate Transfer** means a financing arrangement in which a developer (1) designs and builds a complete Project or facility, (2) operates the facility as a business for a specified period after which (3) transfers it to the government or partner at a previously agreed-upon or market-price.

**Consultant's Qualifications or CQS** has the meaning set forth in *Section 1.B, Par. 3.7*.

**Contractors Past Performance Reporting System or CPPRS** has the meaning set forth in *Part 2, Par. 4.1*

**Compact** means the Millennium Challenge Compact entered into between the United States of America, acting through the Millennium Challenge Corporation, and the government of the country receiving assistance from the Millennium Challenge Account.

**Competitive Bidding** has the meaning set forth in *Section 1.A, Par. 1.4*.

**dgMarket** has the meaning set forth in *Section 1.A, Par 2.7*.

**Direct Contracting** has the meaning set forth in *Section 1.A, Pars. 3.5 and 3.6*.

**Disbursement Request** means a request for disbursement of the proceeds of the Compact funding made in accordance with the terms of the Compact and related documents.

**FCPA** has the meaning set forth in *Section 1.A, Par. 1.16(a) (iii)*.

**Fiscal Agent** has the meaning set forth in *Section 1.A., Par. 3.8*.

**Fixed Budget** or **FBS** has the meaning set forth in *Section 1.B, Par. 3.5*.

**Fixed Price Contract** has the meaning set forth in *Section 1.B, Par. 4.1*.

**Force Account** has the meaning set forth in *Section 1.A, Par.3.7*.

**General Procurement Notice** (GPN) has the meaning set forth in *Section 1.A, Par. 2.7*.

**Guidelines** has the meaning set forth in *Part 1, Preamble*.

**Indefinite Delivery and Indefinite Quantity Contract** or **IDIQ Contract** has the meaning set forth in *Section 1.B, Par. 4.5*.

**Instructions to Consultants** or **ITC** has the meaning set forth in *Section 1B, Par. 2.7*.

**Interim Bid Challenge System** or **IBCS** has the meaning set forth in *Part 5*.

**Least-Cost Selection** or **LCS** has the meaning set forth in *Section 1.B, Par. 3.6*.

**Letter of Invitation** or **LOI** has the meaning set forth in *Section 1.B, Par. 2.7*.

**Limited Bidding** or **LB** has the meaning set forth in *Section 1A, Par.3.2*.

**MCA Entity** means the entity designated by the government of the country receiving assistance from the Millennium Challenge Account as responsible for the oversight and management of implementation of the Compact on behalf of the government.

**MCC** has the meaning set forth in *Part 1, Preamble*.

**MCC Cost Principles** means MCC's "Cost Principles for Cost-Reimbursement Contracts under MCC-Financed Grants" and "Cost Principles for Government Affiliates Involved in MCC Compact Implementation," both located on MCC's website at [www.mcc.gov](http://www.mcc.gov).

**MCC Program Procurement Principles** has the meaning set forth in *Section 1.A, Par. 1.2*.

**Partial eligibility verification** has the meaning set forth in *Part 10*.

**Percentage Contract** has the meaning set forth in *Section 1.B, Par. 4.4*.

**Performance Based Procurement** or **Output Based Procurement** has the meaning set forth in *Section 1.A, Par. 3.11*.

**Procurement Agent** has the meaning set forth in *Section 1.A, Par. 3.8*.

**Procurement Director** means the officer of the MCA Entity responsible for the overall management of procurement activities of the MCA Entity.

**Procurement Implementation Plan** or **PIP** has the meaning set forth in *Part 2, Par. 2.1 through 2.3*.

**Procurement Performance Report** or **PPR** has the meaning set forth in *Part 2, Par. 3.1*.

**Procurement Plan** has the meaning set forth in *Part 2, Par. 1.1*.

**Project(s)** has the meaning set forth in *Part 1, Preamble*.

**Quality Based Selection** or **QBS** has the meaning set forth in *Section 1.B, Pars. 3.2 through 3.4*.

**Quality Cost Based Selection** or **QCBS** has the meaning set forth in *Section 1.B, Para. 1.5*.

**Request for Expression of Interest** or **REOI** has the meaning set forth in *Section 1.B, Par. 2.6*.

**Request for Proposals** or **RFP** has the meaning set forth in *Section 1.B, Par. 2.7*.

**Shopping** has the meaning set forth in *Section 1.A, Par. 3.4*.

**Sole Source Selection** or **SSS** has the meaning set forth in *Section 1.B, Pars. 3.14 through 3.18*.

**Specific Procurement Notice (SPN)** has the meaning set forth in *Section 1.A, Par. 2.8*.

**Standard Bidding Documents** or **SBDs** has the meaning set forth in *Section 1.A, Par. 2.12*.

**Supplemental Agreement** means any agreement executed in connection with the Compact.

**Technical evaluation panel** or **TEP** has the meaning set forth in *Section 1.B, Par. 2.9*.

**Terms of Reference** or **TOR** has the meaning set forth in *Section 1.B, Par. 2.2*.

**Time-Based Contract** has the meaning set forth in *Section 1.B, Par. 4.2*.

**Two-Stage Bidding** has the meaning set forth in *Section 1.A, Par. 2.6*.

**UNDB Online** has the meaning set forth in *Section 1.A, Par. 2.7*.

**USD** means United States dollars.

# Attachment 3.

## Director of Procurement - Model Position Description

### Major Responsibilities and Duties

The Procurement Director works under the supervision of the Chief Executive Officer.

The Procurement Director ensures that all procurement transactions are implemented in accordance with these Guidelines; consolidates and keeps records of all procurement activity; and reports on the progress of this activity.

The Procurement Director is responsible for managing the flow of procurement activity to implement the Compact by the MCA Entity. The Procurement Director serves as the primary liaison between the Procurement Agent(s), MCC and outside entities from a variety of specialized sectors on all procurement activities and facilitates the smooth interplay between and among all elements of the procurement process. A key aspect of this responsibility involves synchronizing the substance and process elements of procurement activities.

In addition, the Procurement Director:

- Coordinates the functions of the MCA Entity and the Procurement Agent(s) in implementing the Compact program, including identifying initial procurement needs and organizing procurement operations.
- Reviews the solicitation documents, Procurement Plans, CPPRs and all other required documents prepared by the Procurement Agent(s) and recommend any necessary changes or improvements to ensure they comply with the MCC Program Procurement Principles and these Guidelines and that they meet the procurement needs of the MCA Entity.
- Reviews the MCA Entity's procurement operations manual prepared by the Procurement Agent(s) and recommends any necessary changes or improvements to ensure it responds to the operational reality of the MCA Entity.
- Ensures that the Procurement Agent(s) act consistently with the approved procurement operations manual.
- Monitors compliance by the Procurement Agent(s) with all the rules and procedures of these Guidelines.

- Supports management and the chief executive officer of the MCA Entity in maintaining the integrity and confidentiality of the procurement process.
- Facilitates the preparation and submission to the Procurement Agent(s) of necessary procurement documents by the technical staff of the MCA Entity.
- Reviews reports submitted by the Procurement Agent(s).
- Manages the members of the MCA Entity procurement team.
- Approves procurement decisions in accordance with Attachment 1 to these Guidelines.
- Performs other tasks and responsibilities as requested by the chief executive officer of the MCA Entity.

#### **Required Qualifications and Experience**

- University degree in business administration, public administration, finance, law, international development or related field
- Approximately 7 to 8 years experience developing and managing procurements in systems applying international standards
- Ability to coordinate with numerous distinct entities in overseeing and reporting on procurement activities
- Familiarity and/or experience with international donor institutions' procurement guidelines and procedures, particularly those of the World Bank and/or US Government.
- Strong computer skills with Microsoft Office applications (Word, Excel, PowerPoint)
- Oral and written fluency in English (U.S. Government Level 4)
- Demonstrated ability to work collaboratively with domestic and international stakeholders and counterparts
- Superior organizational and time management skills

# Attachment 4. Eligibility Verification Template

Download MS Excel template from: <http://www.mcc.gov/mcc/procurement/ppg/index.shtml>

# Attachment 5.

## Sample Technical Evaluation Panel Confidentiality Agreement

NOTE: Confidential information shall not be disclosed to any member of the evaluation panel or anyone seeing or reviewing the reports from the panel until they agree to execute and be bound by the terms of a Confidentiality Agreement.

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### EVALUATION PANEL CONFIDENTIALITY AGREEMENT

MCA ENTITY: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

PROCUREMENT NO.: \_\_\_\_\_

I hereby affirm, under penalty of law that I will comply with the following:

I agree to participate in the evaluation of the above-mentioned procurement. I confirm that I have taken the appropriate steps to familiarize myself with the information available to date concerning this procurement. I shall execute my responsibilities on this evaluation committee honestly and fairly.

I do not have any affiliation with any of the parties submitting a proposal for this procurement. To the best of my knowledge and belief, neither I nor my spouse, dependent child, general partner, or any organization which I am serving as an officer, director, trustee, general partner, or employee, or any person or organization with whom I am negotiating or have an arrangement concerning prospective employment, has a financial or other outside interest that can be affected by any decision I make on this procurement.

To the best of my knowledge, my spouse, dependent child, general partner, or any organization which I am serving (or have served within twelve months from the date of this declaration) as an officer, director, trustee, general partner, or employee, or any person or organization with whom I am negotiating or have an arrangement



concerning prospective employment are not parties to and do not represent a party who has an interest in the matter.

I also acknowledge my responsibility to disclose the acquisition of any financial or other outside interest as described above that would be affected by any action I may take on this procurement and to disclose any financial or other outside interest I, or anyone noted above, has in any organization that is competing for award of this procurement.

I agree to hold in trust and confidence any information or documents ("confidential information") disclosed to me or discovered by me or prepared by me in the course of or as a result of the evaluation of this procurement and agree that it shall be used only for the purposes of the evaluation of this procurement and shall not be disclosed to any third party. I also agree not to retain copies of any written information or prototypes supplied to me or created by me.

NAME	
SIGNED	
DATE	

# Attachment 6. Sample Procurement Plan and Amendment Form

## SAMPLE PROCUREMENT PLAN

ID	Description	Budgeted Amount (In USD)	Procurement Procedure
	<b>GRAND TOTAL</b>	<b>GRAND TOTAL</b>	
<b>1</b>	<b>Procurement of Goods</b>	<b>CATEGORY TOTAL</b>	
<b>1.2</b>	<b>IT EQUIPMENT</b>	<b>Sub-Total</b>	
	<b>Project A</b>		
	Desktop Computers, Laptops, Software, and Peripherals	Budget	CB
<b>1.3</b>	<b>OFFICE EQUIPMENT, SUPPLIES AND FURNITURE</b>	<b>Sub-Total</b>	
	<b>Program Administration</b>		
	Office Furniture	Budget	S
<b>2</b>	<b>Procurement of Field Activities, Designs, Feasibility and Environmental Studies, and Consultants</b>	<b>CATEGORY TOTAL</b>	
<b>2.1</b>	<b>FIRMS</b>	<b>Sub-Total</b>	
	<b>Project A</b>		
	Supervision of Rural and urban zones Cadastral Survey	Budget	QCBS
	Radio and Television Campaign for Communication Strategy	Budget	CQS
<b>2.2</b>	<b>INDIVIDUALS</b>	<b>Sub-Total</b>	
	<b>Project A</b>		
	<b>Capacity Building</b>		
	Design of ToR for “Construction of multi-office complex”	Budget	CQS
<b>3</b>	<b>Procurement of works/construction</b>	<b>CATEGORY TOTAL</b>	
	<b>Project B</b>	<b>Sub-Total</b>	
	Infrastructure for Demonstration Farms	Budget	CB
	<b>Program Administration</b>	<b>Sub-Total</b>	
	Office Building, Conditioning/ Remodeling	Budget	S
<b>4</b>	<b>Non-Consultant Services</b>	<b>CATEGORY TOTAL</b>	
	<b>Project A</b>	<b>Sub-Total</b>	
	Demarcation and Sign Installation of Protected Areas	Budget	S
	<b>Project B</b>	<b>Sub-Total</b>	
	Non Consultant Services for Planting True Forest Plantations	Budget	CB
		CB	Competitive bidding
		CQS	Selection based on consultant qualification
		QCBS	Quality & Cost based selection
		S	Shopping
		SSS	Single-Source Selection

## SAMPLE AMENDMENT FORM

Amendment to Procurement Plan Request Form*		
Procurement # and Description	Amendment Request	Estimated Total Change (USD)
Procurement identification number (if necessary) and description	Description of what is being requested in terms of change to the Procurement Plan (i.e., additional procurement, change in procurement method, change in estimated value, etc).	Value, in USD, of procurement change being requested. Used to determine overall, estimated cost impact of requested amendment
Justification		
1) First justification for amending the Procurement Plan		
2) Second justification for amending the Procurement Plan (if applicable)		

*\*This form must be submitted as an attachment to the amended Procurement Plan.*

# Attachment 7.

## Guidance on Writing and Reviewing Terms of Reference

This attachment provides guidance to the MCA Entity on developing Terms of Reference (“TOR”) in accordance with the Paragraph P1.B.2.2 of Section 1.B of these Guidelines.

### **Purpose and Function of the Terms of Reference**

In the TOR, the MCA Entity describes in detail the consultant services it needs to purchase. The TOR is the document that provides the substance to the Request for Proposals (RFP). The following points should be considered when developing a TOR:

#### **State the objective or purpose of the procurement:**

- Describe very clearly what services the MCA Entity wishes to procure and for what purpose.
- Provide as much information as possible to describe the MCA Entity’s vision of the assignment.
- Consider that the TOR is going to be read by outsiders who have little or no knowledge of the Project but are expected to propose a methodology and price for undertaking the assignment based on the information provided in the TOR.
- Do not be too “prescriptive” in the TOR (including using restraint in defining the staffing requirements) in order to allow and encourage consultants to propose their own methodologies for performing the services and providing the deliverables.

#### **Provide a clear description of the background and context:**

- Ensure that the context of the TOR is described so that a consultant can easily understand it. Emphasize how this contract fits into the overall Compact program; why the proposed assignment is important for the Project.
- Describe the history of the Project and the tasks already completed, if applicable.

- Describe how work carried out under this contract is linked and sequenced with work done by other consultants. Be explicit about required coordination with other consultants, contractors or government institutions.
- Identify other donors that are involved in the Project or could have an impact on the assignment.
- Include, when appropriate, an annotated list of the institutions that the consultant will be supporting or interfacing with, so that the consultant can clearly understand the interactions and the full Project. Explain the relationships within and among these institutions for purposes of delivery of the services being supported. Do not assume that the consultant will intuitively know or understand this.
- Include any publicly available studies or references (MCC guidance papers, Compact documents, etc.) relevant to the work to be done. Provide a list of special studies and documents that will be made available to the selected consultant.
- If the procurement includes associated goods, include a description of the goods and the performance standards or functions to be achieved through the purchase of the goods. Be sure that the technical specifications accurately reflect the minimum requirements and do not favor a certain brand or unfairly discriminate against certain brands.

**Clearly describe deliverables and required resources:**

- Ensure that tasks are clearly described and numbered, and deliverables are explicitly stated. Ensure that the proposed deliverables are within the approved work plan and the scope of the activities described in the Compact.
- Include a time period for the performance of the service and an anticipated timeline for submission of deliverables by the consultant. Where comments on interim deliverables are to be provided by the MCA Entity or decisions are to be taken by the MCA Entity affecting further work of the consultant, indicate such requirements and the timeframe for MCA Entity inputs.
- Be precise in defining those deliverables for which precise parameters are required (e.g., special surveys, mapping).
- Include, if appropriate, a clear estimate of the amount of staff time, stated in workdays or work-months, needed to perform the needed services.
- Include, when appropriate, the required staff needed and key personnel positions.
- Include, when appropriate, the required staff qualifications, especially for key personnel.

- Describe the language requirements during contract performance such as the language needs for staffing the working environment, giving oral presentations, and delivering interim and final reports.
- Describe types and numbers of reports to be produced, special formats, and software requirements (e.g., Excel spreadsheets, AutoCADD drawings).
- Define what the MCA Entity will provide to support the assignment, *for example*, counterparts, office space, phone, Internet connection, and printing.

**Special guidance for procurement of Monitoring and Evaluation services:**

- Clearly identify any data collection requirements: what data are needed; how frequently it should be collected; which units and definitions are to be used for indicators; and what measures or mechanisms should be employed to safeguard quality of data.
- Describe reporting format (such as electronic file type, software to be used, hard copy, etc.) so that those involved with monitoring and evaluation can aggregate reporting and data collected across implementers.
- Describe, where relevant, the impact evaluation methodology to be used and any accommodations that would be needed in order to conduct the impact evaluation, such as the phasing of service delivery roll-out or the intake of beneficiaries.

**Editing:**

- Spell check and proofread.
- When required, ensure adequate translation of documents into English.

# Attachment 8.

## Sample General Procurement Notice

### GENERAL PROCUREMENT NOTICE

Government of [Country]

Millennium Challenge Account-[Country]

The Government of the [Country] has received grant funding of [Dollar Amount] from the Millennium Challenge Corporation (MCC) of the United States Government to enable the Government of [Country] to implement this program and achieve the objectives of the MCC Grant (Compact), and it intends to apply parts of the proceeds of the funds to payments for Contracts for Goods, Works and Services.

The procurement program for the next six months will include the following:

Procurements for [Specify] Half of [Year]	
Estimated Value – [Dollar Amount]	
<b>Procurement of Goods</b> in the Land Tenure, Finance, Agricultural Business Investment Project (ABIP) and general MCA-[Country] Administration sectors to include:	
* IT hardware, data transmission systems and software	
* Imagery for cadastral mapping	
* Office Furniture and general office supplies	
* Motorbikes	
* Other assorted vehicles	
* Equipping credit bureaus, risk analysis and rating agencies	

<b>Procurement of Works</b> in the Land Tenure, Finance, Agricultural Business Investment Project (ABIP) and general MCA-[Country] Administration sectors to include:
* Rehabilitation of existing office building structures
* Site layout and construction of new administrative buildings of various sizes
* Archival system
* Installation of satellite data transmission system.
<b>Procurement of Services (to include Consultant Services)</b> in the Land Tenure, Finance, Monitoring and Evaluation, and Agricultural Business Investment Project (ABIP) sectors to include:
* Services to modernize and decentralize land management, including creation of relevant information systems and software.
* Agricultural training program on raising and maintaining dairy livestock.
* Technical assistance organizing strategic communication and information campaigns for promotion of objectives in all sectors.
* Short and long term legal consulting.
* Short term feasibility study of National Land Tenure Funds.
* Technical studies on land management operations and facilities.
* Technical assistance to [Country's] financial institutions.
* Consultants for general finance sector capacity building.
* Architectural design, site design and environmental assessment work.
* Technical assistance for agricultural business plan development.
* Agricultural market, value chain and investment studies.
* Capacity building in preparation for, and technical assistance in implementing, Monitoring and Evaluation data collection and survey work.
* Training on Monitoring and Evaluation procedures manual.
* Design and implementation of Monitoring and Evaluation database software and MIS.
* Organization of agricultural fairs and trade shows.
* Technical assistance in [local crop] production.



Contracts for Goods, Works and Services financed under the program will be implemented according to the principles, rules and procedures set out in the MCC Program Procurement Guidelines which can be found at the MCA Entity's website.

The Procurement is open to all bidders from eligible source countries as defined in the MCC Program Procurement Guidelines.

Specific procurement notices for contracts to be tendered under the competitive bidding procedures and for consultant contracts will be announced, as they become available, on the MCA Entity's website, United Nations Development Business (UNDB: <http://www.devbusiness.com/>), Development Gateway Market (dgMarket: <http://www.dgmarket.com/>), in local newspapers, and other media outlets as appropriate.

Interested eligible contractors and consultants who wish to be included on the mailing list to receive a copy of advertisements, or those requiring additional information, should contact:

Fiscal & Procurement Agent  
c/o MCA-[Country]

Address

Telephone

Email

# Attachment 9. Sample Specific Procurement Notice (SPN)

## SPECIFIC PROCUREMENT NOTICE (SPN) TEMPLATE

**Procurement Name:** \_\_\_\_\_

**Project Name:** \_\_\_\_\_

Type of Notice: Request For Proposals (RFP):

### General Information

Country

City/Locality:

Notice/Contract Number:

Publication Date:

Deadline:

Funding Agency: Millennium Challenge Account (MCA)

Buyer: Millennium Challenge Account-\_\_\_\_\_

### Eligibility of Bidders:

-

-

### Contact Information

Address:

City:

Country:

Telephone:

Email:

Type of Procurement: (Goods/Works/Services)

Procurement Code: (from dgMarket)

**Main Text:**

[Brief summary of the Compact]

[3-6 paragraph description of the specific procurement]

Please see the following websites for the complete Request for Consultant Qualifications (RFQ) including the Letter of Invitation (LOI) and Terms of Reference (TOR):

<http://mcc.dgmarket.com>, <http://www.devbusiness.com>.

Alternatively, please contact:   [insert]   to receive a copy of the complete RFP including the Letter of Invitation and the TOR.

Consultant submissions should make reference to RFP and must be received no later than

  [insert]   by   [time]   local time at the following address:

# Attachment 10. Sample MCC Program Procurement Guidelines Waiver Request Form

MCC Program Procurement Guidelines Waiver Request Form	
Guidelines Provision	Waiver Request
MCC PPG Provision Part, Section and Paragraph Numbers	Description of the provision of these Guidelines for which waiver is requested. Include both the text of the provision as it appears in these Guidelines and the specific waiver being requested.
<b>Justification for waiving the Guidelines provision(s)</b> Include description of the anticipated impact the waiver would have on the MCA Entity's procurement activities. Explain the basis of the request, the procedure(s) to be waived, and any recommended alternative action. Detail why the waiver is in the interest of the country's Compact program, and why it would be detrimental to the program if the waiver were denied.	
<b>Approval</b>	
<div style="display: flex; justify-content: space-between; align-items: flex-end; margin-top: 50px;"> <div style="width: 45%;"> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 10px;"/> <p style="text-align: center;">Signature</p> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 10px;"/> <p style="text-align: center;">Name, Title</p> </div> <div style="width: 45%;"> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 10px;"/> <p style="text-align: center;">Date</p> </div> </div>	

# Attachment 11. Guidance on the Price-Reasonableness Analysis

This attachment provides guidance to the MCA Entity on conducting the price-reasonableness analysis required by Paragraph P1.A.1.18 of Section 1.A and Paragraph P1.B.1.23 of Section 1.B of these Guidelines.

## **Responsibility and Documentation**

The Procurement Agent, with the help of the MCA Entity, is responsible for conducting the analysis. The analysis should be conducted for the potential winner of the contract during the financial evaluation of the bids/proposals. The price-reasonableness analysis should be documented in the record of the procurement (including the Technical Evaluation Report if applicable) and noted in the Contractor Past Performance Report (CPPR).

## **Definition and Purpose**

The price-reasonableness analysis is a review of the prices proposed by a contractor, supplier or consultant to ensure that the prices offered in the bids or proposals are fair to both parties considering the effort required to complete the task, the quality of the bid or proposal, and the comparability of the prices on similar projects in local and international markets. The prices are reviewed to ensure that the quoted prices of the selected contractor, supplier or consultant are neither unreasonably high (which could happen, for example, when there is a poor response to the Invitation for Bids or Request for Proposals, or collusion) nor unreasonably low (which could happen, for example, when there is severe price competition, or poorly understood description of the objective of the procurement). This analysis provides a secondary check by the MCA Entity that the MCC funds will be utilized in a cost effective manner, and that the selected contractor, supplier or consultant will be able to meet the requirements of the procurement as set out in the solicitation documents.

A price-reasonableness analysis is different from a cost analysis. The major difference is that a price-reasonableness analysis looks at the total price while a cost analysis examines the individual cost elements of this total price. Depending upon the Project, the cost elements may vary but generally include labor rates, material costs, overhead or indirect rates, a cost of money factor, general and administrative expenses, and a profit or fee. Price-reasonableness analysis is usually conducted for fixed-price contracts. Cost analysis is usually conducted for reimbursable-cost contracts.

## **Methods for Conducting a Price-Reasonableness Analysis**

There are several ways a price-reasonableness analysis may be conducted without examining the individual components of the total price.

**(a) Competitive Prices:** In an open competitive bidding process where price is an evaluation factor and several acceptable and qualified bids or proposals are received, it can be safely assumed that the prices are reasonable as determined by the market conditions, but only if there are minimal discrepancies among the offered prices. If there are significant discrepancies between any two bids or proposals, the MCA Entity should ensure that the description of the procurement is clear enough not to be misunderstood, and that there are no calculation errors.

**(b) Historical Prices:** If the prices offered are comparable to the prices offered in the past for similar contracts either by the same or other contractors, suppliers or consultants to the MCA Entity, to other large government buyers, or to a donor agency in the country of the Project, then the prices can be assumed to be reasonable. When comparing current prices with historical prices, inflation and a reasonable margin for increased profits should be taken into account.

**(c) Catalogue Prices:** This method is suitable when purchasing off-the-shelf commercial goods, where the supplier is likely to have a catalogue, and the supplier is willing to provide a current, dated page from the catalogue that lists the price of the item being procured and any discounts that may be available to large buyers. In this case, the supplier may be requested to provide a reference of another large buyer, whether inside the country of the Project or outside, who can verify the prices that were paid by that buyer to this supplier.

**(d) Published Prices:** Some commercially traded commodities such as grains, petrol, or copper have international or national prices that are published in popular press. If the prices offered are the same or lower than these published prices, then it can be assumed that the prices are reasonable.

**(e) Independent Estimate or Planned Budget:** If an independent estimate or planned budget has been prepared by MCC or the MCA-Entity, this independent estimate or planned budget may be used as an element for price reasonableness if considered valid and appropriate at the time of award.

**(f) Comparison with Prices of a Similar Item:** In the procurement of goods, if a supplier can demonstrate the prices of a similar item, and justify its price difference based on additional or different features, the MCA Entity can accept the proposed prices based on these two (2) factors. The differences between the supplier's price and the price of a competitor should be detailed and justified, and the referenced prices should be available from verifiable independent sources (not only from the supplier itself).

# Attachment 12. Financial Eligibility Criteria for Pre and Post Qualification of Large Works Contractors

## Introduction

The selection of financial eligibility criteria for Millennium Challenge Account (MCA) works contracts facilitates a quality control process to assure better selection of construction contractors. The key challenge is to find and appoint contractors that are likely to be able to complete their works within the time and budget constraints of the Compact. The key criteria that employers are looking to judge are: Are they solvent, and likely to remain so? Are they busy but not too busy? Are they able to focus on the management of their works and not be distracted by other financial worries?

The MCC Standard Bidding Documents (SBD) do not include standards for financial metrics in the pre- or post-qualification processes for MCA contracts. This memo provides additional guidance to MCA's on the financial qualifications presented by contractors involving large works.

The SBD for pre-qualification of works contractors currently requires contractors to submit the following financial information:

- Current Ratio
- Debt to Equity Ratio
- Construction Turnover
- Free Cash Flow
- Value of Comparable Contracts

Other financial ratios or indicators may be appropriate in order to allow Technical Evaluation Panels to assess a given contractor's financial health prior to award. The Construction Financial Management Association (CFMA) in its Annual Survey of US construction companies lists another 18 financial ratios in its analyses of construction industry groups. While the addition of financial criteria would increase the work of technical evalu-

ation panels, the added information may provide (i) greater assurance that a selected contractor can perform the work or (ii) rationales for the exclusion of a risky contractor. If an MCA must award the contract quickly, some additional financial criteria (such as Backlog to Working Capital, Turnover Ratio and Quick Ratio) could be used as part of the post-qualification benchmarks to increase the likelihood of better award results. These ratios are covered at the end of the memorandum.

It should also be noted that MCC has elected to use a set of ratios and, for the most part, minimum acceptable criteria, largely consistent with the ratios that the World Bank and other internationally funded institutions (multi-lateral lenders and donors) have adopted on the grounds that the MCAs are tapping into essentially the same market for construction services. One difference between MCA contracts and country agencies using other donor funds may be in the average size of the contracts. MCAs typically are putting out larger projects compared to other donor funded projects and this typically leads to requirements associated with larger contractors. As MCAs look at their specific procurements, MCC recommends that they take this into account and find the appropriate indicators and ratios for such larger market participants.

The remainder of this memo reviews the information in the CFMA Annual Survey as it applies to the MCC SBDs. MCAs are encouraged to consider the specific circumstances of the procurement and apply prudent financial criteria in all cases. MCC Washington staff is available to assist the MCA in development of these financial criteria to ensure broader market appeal to stronger construction contractors. The 2008 CFMA Annual Survey is available to MCAs in order to assist them in developing the financial criteria in the specific procurements.

### **CFMA Annual Survey**

The 2008 CFMA Annual Survey is a self-selected sample from approximately 4,300 CFMA members employed by US construction companies and a small number of other US contractors. CFMA does not claim that the survey is a statistically valid representation of the construction industry. The IRS provides similar information but it has a long lag time (2004 data is now available) which makes it a less useful guide in today's rapidly changing financial climate.

The survey is separated by three (3) contractor types: Industrial & Non-residential, Heavy & Highway, and Specialty Trade (including 18 specialty contractor types). The survey also has aggregate financial information for the following types of US limited liability corporate entities: C, S and LLCs (limited liability companies). The majority of companies are S type with a small minority publicly owned or owned by foreign firms (8% in survey). (The "S" corporation is limited to 35 shareholders whereas the "C" has no limit on shareholder numbers. The LLC is similar to an "S" corporation. The vast majority of US publicly traded companies are "C" corporations.) The contractor type most applicable for MCA contracts are "Heavy and Highway Contractors" because they include NAICS codes for water/sewer, oil & gas, power & communication, and highway & bridge companies.



## Overview of current financial eligibility Criteria ranges

### Liquidity: Current Ratio and Cash Flow Requirements

The *Current Ratio* (Current Assets/Current Liabilities) is a measurement of a company's market liquidity – or the degree to which the company can meet its immediate short-term obligations (current liabilities) using current liquid assets. Below is a summary of CFMA's 2006, 2007 and 2008 industry survey results regarding this critical ratio:

Current Ratio	Mean	Median
<u>Heavy and Highway Sub-Industry</u>	2006-2007-2008	2006-2007-2008
Composite	1.4-1.5-1.5	1.5-1.4-1.6
Best in Class	1.4-1.7-1.8	1.4-1.8-1.8
<u>By Annual Revenue Stream</u>		
<10 Million USD	1.9-1.5-2.4	2.0-1.3-1.5
10-25 Million USD	2.2-1.4-1.7	1.8-1.4-1.7
25-50 Million USD	1.7-1.6-2.0	1.4-1.5-1.8
50-100 Million USD	1.5-1.5-1.4	1.5-1.4-1.4
>100 Million USD	1.5-1.4-1.4	1.5-1.4-1.4

A current ratio of 1.0 indicates that current assets at least equal current liabilities, and has been used in the past as a minimum financial requirement in MCC's PQDs. However, the heavy and highway construction sub-industry should demand a higher ratio, as the need to purchase large machines or other equipment with cash in advance of a major project would reduce current assets and severely strain both working capital and the current ratio.

The typical value of bank covenants for Current Ratio as revealed in the survey was 1.3. The larger companies show ratios that are reasonably steady year to year and that are higher, but not much higher, than the covenant value. However, some large, reputable construction companies have lower Current Ratios because they have large lines of credit to support that operation.

**MCC recommends considering a value of 1.2 for the Current Ratio as a minimum selection criterion.**

**However, in some cases involving large contracts that have other larger turnover criteria, this ratio may be reduced to 1.1 in order to attract a larger pool of qualified contractors.**

### Cash Flow Requirement

In addition to establishing a firm's Current Ratio, MCC's SBDs require confirmation that the contractor has adequate access to capital to fund activities until reimbursement. The amount of cash flow required depends heavily on the value of the contract works and should cover six (6) months cash flow needs under the contract in question. The 2008 CFMA Annual Survey does not provide data on this criterion; however, the backlog to working capital (see page 108) could help bring this in focus.

### Access to Capital: Debt-Equity Ratio

The *debt-equity ratio* (Total Liabilities/Total Net Worth) indicates what portion of a firm's liabilities is financed by debt, thereby demonstrating its leverage. Below is a summary of CFMA's industry survey results regarding this critical ratio:

Debt-Equity Ratio	Mean	Median
<u>Heavy and Highway Sub-Industry</u>	2006-2007-2008	2006-2007-2008
Composite	1.4-1.5-1.3	1.4-1.5-1.2
Best in Class	0.8-1.5-0.8	1.0-1.5-0.9
By Annual Revenue Stream		
<10 Million USD	0.8-1.3-1.1	0.8-1.1-1.4
10-25 Million USD	0.8-1.5-1.1	0.8-1.4-1.2
25-50 Million USD	1.0-1.2-0.8	1.3-1.5-1.0
50-100 Million USD	1.7-1.6-1.0	1.7-2.1-1.4
>100 Million USD	1.5-1.6-1.6	1.7-1.6-1.5

A company with a debt ratio of less than 1.0 has most of its liabilities financed by equity. A debt ratio of over 1.0 demonstrates liabilities financed through greater short term and/or long term debt. The typical value of bank covenants for Debt to Equity ratio for Heavy and Highway contractors as revealed in the survey was 2.5. (Only 15% of these companies were affected by such a covenant). The larger companies show ratios that are reasonably steady year to year and that are substantially lower than the covenant value. The Debt to Equity ratio must be considered in tandem with the Interest Cover ratio that explicitly looks at the impact of debt on cash flow.

**MCC recommends considering a value of 3.0 for the Debt to Equity Ratio as a maximum selection criterion, however, firms with higher ratios should be scrutinized carefully. The MCC SBD uses a comparable**

**ratio of Total Debt to Total Assets (the “Debt Ratio) and the equivalent criterion would be a Debt Ratio of not more than 0.75.**

#### **Average Annual Construction Turnover**

The Contract Revenue sub-category in the 2008 CFMA Annual Survey would correspond to the Construction Turnover line in the composite Statement of Earnings in the survey. The minimum turnover called for in the bidding documents will depend upon the size and complexity of the works being bid. A general rule that MCC has used is that the contractor should have a minimum Average Annual Construction Turnover double the proposed contract amount.

#### **Value of Comparable Contracts**

The Value of Comparable Contracts establishes another element of a contractor’s ability to meet the performance for the proposed award. As a general rule, MCC has recommended that contractors have similar experience in the last two (2) to three (3) years involving two (2) or more contracts each with value at least 75-80% the amount of the expected award

#### **Additional Financial Criteria**

The following additional financial criteria may be valuable to add to a pre- or post-qualification.

#### **Times Interest Earned**

Times Interest Earned (aka *interest coverage ratio* or *fixed charged coverage*) is a metric used to measure a company’s ability to meet its debt obligations. It is calculated by taking a company’s earnings before interest and taxes (EBIT) and dividing it by the total interest payable on bonds and other contractual debt. It is usually quoted as a ratio and indicates how many times a company can cover its interest charges on a pretax basis. Failing to meet these obligations could force a company into bankruptcy – a ratio below 1 means that a company does not have sufficient earned income to cover borrowing expenses. Typically, a ratio below 2.5 is considered a warning sign. A high ratio means that a company is able to meet its interest obligations because earnings are significantly greater than annual interest obligations; however, a high ratio can also mean that a company has an undesirably low level of leverage or pays down too much debt with earnings that could be used for other investment opportunities to get higher rate of return.

Below is a summary of CFMA’s industry survey results regarding this ratio:

<b>Times Interest Earned Ratio</b>	<b>Mean</b>	<b>Median</b>
<u>Heavy and Highway Sub-Industry</u>	2007-2008	2007-2008
Composite	17.1-16.6	13.4-11.7
Best in Class (2008)	73.9	65.5
<u>By Annual Revenue Stream</u>		
>50 Million USD	17.5-9.1	15.2-10.3

The larger companies show interest cover that is reasonably steady year to year and well in excess of the “warning” level (below 2.5). At or below these levels, management will be distracted from work completion to financial survival to the detriment of possible Compact obligations.

**MCC recommends considering a value of 5 for the Times Interest Cover Ratio as a minimum selection criterion.**

#### **Backlog to Working Capital**

This ratio indicates the relationship between signed or committed work (backlog) and working capital (current assets minus current liabilities). A higher ratio may indicate the need for an increase in working capital, and if this ratio is too high the company may not have the available resources to finish the jobs they have already committed to complete. The implications to projects with tight timelines (such as those in MCC Compacts) are evident, since an overcommitted contractor may have problems mobilizing on-schedule. The CFMA does not recommend a range for this ratio but the CFMA ratios for Heavy & Highway Contractors are shown below.

<b>Backlog to Working Capital Ratio</b>	<b>Mean</b>	<b>Median</b>
<u>Heavy and Highway Sub-Industry</u>	2006-2007-2008	2006-2007-2008
Composite	9.5-9.7-11.7	5.4-7.0-6.8
Best in Class	3.7-9.7-5.0	3.0-7.0-4.5

<u>By Annual Revenue Stream</u>		
<10 Million USD	3.0-6.7-3.8	7.3-5.2-6.3
10-25 Million USD	2.1-8.0-6.6	2.5-9.6-5.2
25-50 Million USD	5.0-6.1-5.6	6.3-6.8-6.8
50-100 Million USD	10.7-7.2	8.5-6.5
>100 Million USD	11.3-10.4-9.8	5.8-6.4-8.3

**MCC recommends considering a value of 10 for the Backlog to Working Capital Ratio as a maximum selection criterion.**

### Quick Ratio

The quick (aka *acid test*) ratio (current assets without inventories minus current liabilities) is a more rigorous test of a contractor's access to liquidity than the working capital ratio, primarily because the working capital ratio allows for the inclusion of inventory that may disguise a shortage of cash. Companies with ratios of less than 1.0 cannot pay their current liabilities and should be evaluated with extreme caution. Furthermore, if the Quick Ratio is much lower than the Current Ratio, it means current assets are highly dependent on inventory.

Quick Ratio	Mean	Median
<u>Heavy and Highway Sub-Industry</u>	2006-2007-2008	2006-2007-2008
Composite	1.3-1.2-1.2	1.3-1.3-1.3
Best in Class	1.2-1.5-1.6	1.5-1.7-1.7
<u>By Annual Revenue Stream</u>		
<10 Million USD	1.7-1.2-2.1	1.5-1.3-1.2
10-25 Million USD	1.6-1.2-1.5	1.3-1.3-1.3
25-50 Million USD	1.5-1.5-1.7	1.4-1.4-1.6
50-100 Million USD	1.3-1.3-1.2	1.2-1.3-1.3
>100 Million USD	1.2-1.1-1.2	1.2-1.2-1.2

These findings show that the mean and median among all revenue streams have a quick ratio greater than 1.0, with the best contractors in their class coming in closer to 1.5. The Quick Ratio for numerous, very large international companies (those with more than 1 billion USD in turnover) are typically below 1.0. This situation reflects these large companies' ability to fund themselves through short term borrowing from banks.

**Based upon the potential variation of the Quick Ratio involving international construction firms, MCC does not recommend any particular ratio.** Nevertheless, the Quick Ratio should be evaluated alongside other financial tests for all potential contractors.

### Backlog Months

The Backlog Months measures the amount of firm work that a company has on its books assuming that it continues to operate at its current size. If the Backlog Months is relatively small, this indicates management time is likely to be diverted to work search. If Backlog Months is relatively large, this may indicate that the contractor could be indifferent to the successful completion of any one contract.

Months in Backlog	Mean	Median
<u>Heavy and Highway Sub-Industry</u>	2007-2008	2007-2008
Composite	10.3-13.7	8.5-7.7
Best in Class (2008)	8.5	7.3
<u>By Annual Revenue Stream</u>		
<10 Million USD	7.8-9.6	6.5-7.4
10-25 Million USD	9.6-8.5	6.5-8.1
25-50 Million USD	9.6-8.9	8.5-9.1
50-100 Million USD	7.9-11.0	7.1-9.3
>100 Million USD	10.6-10.7	7.5-9.3

A minimum Backlog of about 6 months would be a reasonable compromise as supported by the results from the CFMA survey. **However, MCC does not recommend a specific criterion in this category.** As backlog is not a formal reporting requirement in many countries, care must be exercised in requesting such a figure as there will be no definite means of checking the veracity of any statement.

### Notes

The definition of the form and content of the ratios must be clearly specified in the bidding documents as different companies will interpret the data needs in different ways. As the company accounts are always required,

a separate table that is linked explicitly to line items in the accounts should be adopted. This consolidation of information will also reduce the amount of searching through account documents during the evaluation process.

While these ratios are useful in selecting an appropriate contractor, they are no guarantee that the financial health of a company will not change fundamentally over the contract period. MCAs should monitor on an annual basis, at a minimum, the financial health of the contractors against these core indicators.

In the event that the MCA Technical Evaluation Panel does not include member(s) with a strong financial background the use of these ratios as a guide can help them ascertain the financial health of a firm under evaluation. Since these ratios are not perfect indicators of a firm's capability to perform a given contract, we recommend that the TEPs be encouraged to prepare/calculate these ratios for inclusion in their reports, but that any action taken as a result of this analysis be reviewed by someone with the appropriate background in finance (e.g., DAF, MCA Fiscal Agent, outside consultant or other resource).

# Attachment 13. Contract File Index Sample

Contract File Contents		Contract #		Mod. #		Description of Action:	
Place document in file, separated by tabs. If document is required, place an “X” in the “IN FILE” column, or use folder identifier if there is more than one folder.							
#	DOCUMENT	IN FILE	#	DOCUMENT	IN FILE		
	AWARD DOCUMENTATION			EVALUATION DOCUMENTATION			
	Contract & Award Letters			Source Selection Plan			
	SF30 Modifications and Modification Log			Notice to Late Offerors			
	No Bid Documentation			Proposal Evaluation: Tech/PP/Price			
	Award Distribution			Competitive Range Determination			
				Notice of Exclusion from Competitive Range			
#	SOLICITATION DOCUMENTATION			Clarifications/Discussions			
	Solicitation Document			Request for Final Revised Proposals			
	Amendment & Support Documentation			Post Negotiation Memorandum			
	Supervisory Solicitation Review			Source Selection Decision			
	SharePoint Entry			Debriefing Reports			
				Documentation of Contract Review			
	TASK & CALL ORDERS						
	Task/Call Orders and Associated Modifications			POST-AWARD DOCUMENTATION			
				Unsuccessful Proposals - Separate file			
#	ADMINISTRATIVE DOCUMENTATION			Separate file No.:			
	COTR/Project Monitor Designation			Post-Award Notice to Unsuccessful Offerors			
	Award Synopsis			Successful Proposal (s)			
	Subcontracting Plan/Reports			Contract Closeout			
	Post-Award Conference Documentation						
	Contractor’s Reports			MODIFICATION BACKUP DOCUMENTATION			
	Invoices and Related Correspondence			Action Memo & IGCE			



	Administrative Correspondence			Revised Statement of Work	
				Requisition	
	<b>PRE-AWARD DOCUMENTATION</b>			Determination to Exercise Option	
	Milestones			Post Negotiation Memorandum	
	Action Memo			Modification Correspondence	
	Requisition			Review Sheet	
	SOW			Closeout Modification:	
	IGCE			Contract Completion Statement	
	Evaluation Criteria			Contract Closeout Checklist	
	Recommended Sources			Closeout Memo to COTR	
	COTR Nomination			Closeout Letter to Contractor	
	TEP Member Designation				
	Market Research				
	Adv Proc Plan				
	Determinations & Findings: Options & T&M				
	EPLS Eligibility				
	DOL Wage Rate Determinations				
	Pre-Award Synopsis				
	Pre-Award Correspondence				

# Attachment 14. Bid Review and Technical Evaluation Panels

## **Bid Review and Technical Evaluation Panels**

The MCA Entity shall use technically qualified panels to evaluate each bid or technical proposal. MCC encourages expert external expertise on major procurements.

### **Technical Members**

All Members of the panel must be technically qualified to review and evaluate the substance of the proposals. It is important to ensure that the panel members actually possess the various skills required to evaluate all aspects of the proposals (e.g., environmental, social, and monitoring and evaluation), and not be serving merely as a representative of an organization or by virtue of the office they hold. However, panel members are not expected to be procurement experts and will not be making decisions about the procurement process. All members of the panel must be voting members. Panels generally consist of 3 to 5 technical members, but the size will vary depending on the types of expertise needed for the specific procurement. In each case, however, the number of technical members must be rationally related to the task at hand. In the interest of continuity, the same panel should be used throughout the selection process.

MCC employees and its agents or consultants are normally not eligible to serve as a member of a panel for an MCA Entity procurement. An exception is the procurement of the services of a Procurement Agent. In other, extraordinary cases, MCC may grant exceptions allowing MCC employees, its agents or consultants to serve as a member of a panel provided the terms of that service are acceptable to MCC, including the imposition of appropriate mechanisms for dealing with any actual, potential or perceived conflict of interest. MCA Entity employees and consultants may serve on a panel if qualified, but MCA Entity board members are not eligible to serve on a panel. The Procurement Agent does not serve on a panel. The MCA Entity's procurement director does not serve on a panel except when the procurement is for the services of a Procurement Agent.

### **Auxiliary Member**

In addition to the technical members, the MCA Entity may appoint an auxiliary member(s) to the panel. The auxiliary member would check references, financial and other eligibility, assist the technical members in writing the technical evaluation report and perform other administrative duties for the panel. Auxiliary members shall not evaluate, vote, or comment on any bid or proposal.

**Observers**

MCC reserves the right of its own staff, agents or consultants to observe the proceedings of the panel. The presence of an observer from MCC is not an approval or endorsement of the results of the evaluation panel, and in no way binds MCC to approve the results. Observers shall not evaluate, vote, or comment on any bid or proposal, and shall not answer any substantive question related to the procurement or any bid/proposal that could be taken as a binding on MCC.

**Approval of Panel Members**

The Procurement Agent is responsible for conducting an initial review and approval of the technical members of the panel proposed by the MCA Entity. For procurements valued above the thresholds listed in Attachment 1 (Approval Requirements) Schedule A: Goods, Works and Non-Consultant Services and Consultant Services, MCC must approve the panel members. MCC may opt-in, as necessary, for approval of panel members for those projects under Schedule B: Goods, Works and Non-Consultant Services and Consultant Services. For projects in regard to which approval is required whether under Schedule A or as an opt-in under Schedule B, the MCA Entity shall submit, for MCC approval of a panel member, their Curriculum Vitae or a list of the candidate's qualifications.

**Confidentiality**

The names of the panel members must remain confidential in order to decrease the possibility of undue influence by the competing entities. All proposal information must remain confidential and may not be shared by anyone who has not signed an Impartiality and Confidentiality Declaration.

**Conflict of Interest of Panel Members**

The designation process for the panel must also ensure that the panel members do not currently, nor have engaged in during the past one year, work for any of the competing entities. In addition, the panel member must not have a financial interest that could be affected by their participation on the panel. Any person who is listed as personnel (key personnel or other specifically designated personnel) in a proposal, or who is considering prospective employment with a competing consultant, is not eligible to be a member of a panel for the related procurement. Each member of the panel, including any auxiliary members, the Procurement Agent, the procurement director and any observer or anyone provided procurement sensitive information must sign an Impartiality and Confidentiality Declaration and that this be documented in the evaluation report. (See Attachment 5 to these Guidelines for a sample). This sample can be altered to fit the specific context of the procurement, but must preserve the key elements of the declaration. It is of utmost importance that the members of the panel do not have any financial interest in the outcome of the procurement, and it is the responsibility of the Procurement Agent to ensure that all members understand this requirement.

### **Payments to Panel Members**

*Government Employees* In general, The MCA Entity shall not pay honorariums to employees of the MCA Entity or other government agencies. Government employees may be paid for travel and per diem expenses directly related to participation as a panel member, subject to the limitations set forth in the applicable MCC Cost Principles.

*Private Sector Members.* The MCA Entity may pay a reasonable fee to private sector members for their services as a panel member, subject to the limitations set forth in the applicable MCC Cost Principles. Private sector members are procured as consultants under Part 1.B.

### **Bid Review or Technical Evaluation**

In conducting the bid review or evaluation members of the panel will conduct the evaluation in accordance with the evaluations criteria in the bidding documents, and will provide numerical scores for each criteria and sub-criteria. An adjectival score may be used only in conjunction with the numerical score. For example: excellent 100 - 92; good 91 - 85; satisfactory 84 - etc.

Consensus will be used to reach the final scoring. In regard to achieving consensus within the panel, the panel is encouraged to meet as soon as possible after completing initial evaluations. The panel members are encouraged to discuss the rationale of their ratings and any unique understanding of the proposals and/or Terms of Reference (ToR) that may add to each other's knowledge and/or understanding of the effort. It is permissible for panel members to change their rating if, through this discovery process, they believe they have missed important information in evaluating the proposal.

These discussions are an open forum that allows each member of the panel to focus on how their fellow panel members came to an evaluation decision. These factors assist to reach and support (through the narrative) a consensus opinion concerning the technical merit, strengths, and weaknesses of each proposal based upon the evaluation factors in the bidding documents. As a result of these discussions no panel member should be pressured to change a rating or comment, but also realize that any panel member is free to change any initial rating or comments he or she has assigned based upon this discussion. The final panel rating may not always reflect the "average" rating, but shall reflect a rating agreed to through this consensus discussion.

### **Bid Review or Technical Evaluation Report**

At the end of the evaluation process, the MCA Entity shall prepare a report documenting the results of the evaluation process and, if required by the approval requirements (Attachment 1) submit the report to MCC for its review and approval. The report shall substantiate the results of the evaluation and describe the relative major/minor strengths and major/minor weaknesses of the proposals. All records relating to the evaluation, such as individual mark sheets, shall be retained by the Procurement Agent until completion of the Compact.