

PROCUREMENT AGREEMENT

BY AND AMONG THE

MILLENNIUM CHALLENGE CORPORATION,

THE

**MINISTRY OF FINANCE AND PLANNING,
ON BEHALF OF THE GOVERNMENT OF THE REPUBLIC OF CAPE VERDE**

AND

MCA-CAPE VERDE

TABLE OF CONTENTS

	<u>Page</u>
Article I.	Procurement Plan 1
Section 1.1	Procurement Plan Development 1
Section 1.2	Publication of Procurement Plans 2
Section 1.3	Procurement Plan Implementation..... 2
Section 1.4	Deviations from Procurement Plan..... 2
Article II.	Obligations and Representations..... 2
Section 2.1	Procurement Principles 2
Section 2.2	Procurement Guidelines..... 2
Section 2.3	Bid Challenge..... 3
Section 2.4	Procurement Contracts..... 3
Section 2.5	Reports 3
Section 2.6	Other Responsibilities..... 3
Section 2.7	Ministry Representations as of the Effective Date 3
Section 2.8	MCA-Cape Verde Representations..... 3
Article III.	Approvals..... 4
Section 3.1	Approvals..... 4
Section 3.2	MCC..... 4
Article IV.	General Provisions 4
Section 4.1	Ministry Responsibility..... 4
Section 4.2	Initial Operating Period..... 4
Section 4.3	Communications 5
Section 4.4	Amendments 5
Section 4.5	Publicity 5
Section 4.6	Nonwaiver of Remedies..... 5
Section 4.7	Attachments 6
Section 4.8	Inconsistencies 6
Section 4.9	Headings 6
Section 4.10	Severability 6
Section 4.11	Interpretation; Definitions..... 6
Section 4.12	Counterparts; Signatures..... 6

Section 4.13	Assignment	6
Section 4.14	Entire Agreement	7
Section 4.15	Further Assurances.....	7
Section 4.16	Termination; Suspension	7
Section 4.17	MCC Status.....	8
Section 4.18	Representatives	8
Section 4.19	Reports	8
Section 4.20	Consultation	8
Section 4.21	Effective Date; Term.....	9

SCHEDULE 1

PROCUREMENT GUIDELINES

<i>Section 1.</i>	<i>Procurement Management</i>	<i>1</i>
1.	Organization.....	1
<i>Section II.</i>	<i>Sub Activity Procurement.....</i>	<i>2</i>
1.	Infrastructure.....	2
2.	Watershed Management and Agriculture Support Project	2
3.	Private Sector Development Project	3
<i>Section III.</i>	<i>Procurement Rules</i>	<i>3</i>
1.	Bid Challenge System.....	3
2.	Subcontracting	3
3.	Records	4
4.	Bidding and Proposal Documents.....	4
5.	Notice of Procurement	4
6.	World Bank Procedures	5
7.	Eligibility	6
8.	Procurement Plans	6
9.	Limitations on the Use or Treatment of MCC Funding.....	6
10.	Audit of Covered Providers	6
<i>Section IV.</i>	<i>Procurement Review Thresholds.....</i>	<i>6</i>
1.	MCA-Cape Verde Review	6

Schedule II	Procurement Review Thresholds	8
	2. Prior Review Actions	8
Annex 1	Procurement Guidelines: Procurement of Works and Goods	10
	I. INTRODUCTION	10
	Purpose.....	10
	General Considerations.....	10
	Applicability of Guidelines.....	10
	Eligibility	10
	Advance Contracting and Retroactive Financing	12
	Joint Ventures	12
	MCC Review	12
	Misprocurement	12
	References to MCC.....	12
	Fraud and Corruption.....	13
	Procurement Plan	14
	II. INTERNATIONAL COMPETITIVE BIDDING.....	14
	A. General Introduction	14
	Type and Size of Contracts	14
	Two-Stage Bidding.....	15
	Notification and Advertising.....	15
	Prequalification of Bidders	16
	B. Bidding Documents	16
	General.....	16
	Validity of Bids and Bid Security	17
	Language.....	17
	Clarity of Bidding Documents	18
	Standards.....	18
	Use of Brand Names	18
	Pricing.....	19
	Price Adjustment.....	19
	Transportation and Insurance.....	20
	Currency Provisions.....	20
	Currency of Bid.....	20
	Currency Conversion for Bid Comparison	20
	Currency of Payment	20
	Terms and Methods of Payment	21
	Alternative Bids	21
	Conditions of Contract.....	21
	Performance Security.....	22
	Liquidated Damages and Bonus Clauses.....	22

	Force Majeure	22
	Applicable Law and Settlement of Disputes.....	22
C.	Bid Opening, Evaluation, and Award of Contract.....	23
	Time for Preparation of Bids	23
	Bid Opening Procedures	23
	Clarifications or Alterations of Bids.....	23
	Confidentiality	24
	Examination of Bids	24
	Evaluation and Comparison of Bids	24
	Domestic Preferences.....	25
	Extension of Validity of Bids	25
	Postqualification of Bidders.....	26
	Award of Contract.....	26
	Publication of the Award of Contract	26
	Rejection of All Bids	26
	Debriefing	27
D.	Modified ICB	27
	Operations Involving a Program of Imports	27
	Procurement of Commodities	27
III.	OTHER METHODS OF PROCUREMENT	28
	General.....	28
	Limited International Bidding.....	28
	National Competitive Bidding	28
	Shopping	29
	Direct Contracting.....	29
	Force Account.....	30
	Procurement from United Nations Agencies	30
	Procurement Agents.....	30
	Inspection Agents.....	31
	Procurement in Loans to Financial Intermediaries	31
	Procurement under BOO/BOT/BOOT, Concessions and Similar Private Sector Arrangements.....	31
	Performance Based Procurement.....	32
	Community Participation in Procurement	33
	Indefinite Quantity Contracts.....	33
	APPENDIX 1: REVIEW BY THE MCC OF PROCUREMENT DECISIONS	33
	Prior Review	33
	Post Review	33
	APPENDIX 2: DOMESTIC PREFERENCES.....	33

	Preference for Domestically Manufactured Goods.....	33
	APPENDIX 3: GUIDANCE TO BIDDERS	33
Annex 2	Procurement Guidelines: Procurement of Consultants and Consulting Services .	34
	I. INTRODUCTION	34
	Purpose.....	34
	General Considerations.....	34
	Applicability of Guidelines.....	34
	Conflict of Interest	34
	Unfair Competitive Advantage	35
	Eligibility	35
	Advance Contracting and Retroactive Financing	36
	Associations between Consultants.....	36
	MCC Review, Assistance, and Monitoring	37
	Misprocurement	37
	Training or Transfer of Knowledge	38
	Language.....	38
	Fraud and Corruption.....	38
	Procurement Plan	39
	II. QUALITY AND COST BASED SELECTION (QCBS).....	39
	The Selection Process	39
	Terms of Reference (TOR)	40
	Cost Estimate (Budget).....	40
	Advertising.....	41
	Short List of Consultants	41
	Preparation and Issuance of the Request for Proposals (RFP)	42
	Letter of Invitation (LOI).....	42
	Instructions to Consultants (ITC).....	42
	Contract.....	42
	Receipt of Proposals	42
	Evaluation of Proposals: Consideration of Quality and Cost	43
	Evaluation of the Quality	43
	Evaluation of Cost.....	44
	Combined Quality and Cost Evaluation	45
	Negotiations and Award of Contract	46
	Publication of the Award of Contract	46
	Debriefing	47
	Rejection of All Proposals, and Re-invitation	47
	Confidentiality	47
	III. OTHER METHODS OF SELECTION	47
	General.....	47
	Quality Based Selection (QBS)	48

Selection under a Fixed Budget (FBS)	48
Least-Cost Selection (LCS)	49
Selection Based on the Consultants' Qualifications (CQS).....	49
Single- Source Selection (SSS).....	49
Commercial Practices	50
Selection of Particular Types of Consultants.....	50
IV. TYPES OF CONTRACTS AND IMPORTANT PROVISIONS.....	52
Types of Contracts	52
Important Provisions.....	53
V. SELECTION OF INDIVIDUAL CONSULTANTS	55
APPENDIX 1: REVIEW BY THE BANK OF THE SELECTION OF CONSULTANTS.....	55
Scheduling the Selection Process.....	55
Prior Review	56
Post Review	56
APPENDIX 2: INSTRUCTIONS TO CONSULTANTS (ITC)	56
APPENDIX 3: GUIDANCE TO CONSULTANTS	58

PROCUREMENT AGREEMENT

This PROCUREMENT AGREEMENT (the “*Agreement*”) is made by and among the Millennium Challenge Corporation, a United States Government corporation (“*MCC*”), the Ministry of Finance and Planning (the “*Ministry*”), on behalf of the Government of the Republic of Cape Verde (the “*Government*”), and MCA-Cape Verde, an independent unit established under the laws of Cape Verde (“*MCA-Cape Verde*”), and shall become effective as provided herein. MCC, the Ministry and MCA-Cape Verde are sometimes referred to herein individually as a “*Party*” and together as the “*Parties*.” All capitalized terms that are used but not defined herein shall have the meaning given such terms in that certain Millennium Challenge Compact by and between the United States of America, acting through MCC, and the Government signed in Praia, Cape Verde on July 4, 2005 (the “*Compact*”).

RECITALS

WHEREAS, the Compact sets forth the general terms and conditions on which the United States, through MCC, will provide MCC Funding to the Government to use to implement the Program in the Republic of Cape Verde (“*Cape Verde*”) and achieve the Compact Goal and Objectives; and

WHEREAS, prior to the entry into force of the Compact, the Government must deliver to MCC an executed copy of this Agreement, in form and substance satisfactory to MCC, which further specifies the terms and conditions for procurements of goods, services and works made in furtherance of the Compact and using MCC Funding;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements set forth herein, the Parties hereby agree as follows:

ARTICLE I.

PROCUREMENT PLAN

Section 1.1 Procurement Plan Development. The Ministry and MCA-Cape Verde shall ensure that MCA-Cape Verde develops and adopts a procurement plan on a semi-annual basis for acquiring the goods, works and services needed to implement the Compact (each, a “*Procurement Plan*”), which Procurement Plans shall be subject to MCC approval and shall:

(a) identify how purchasing needs for such period will be bundled into specific procurements;

(b) for each type of procurement identified therein, identify the method of procurement anticipated to be used for selecting the supplier(s) or contractor(s); and

(c) for each type of procurement identified therein, estimate (i) the proposed budget for such procurement; (ii) the time period required to conduct such procurement; and (iii) the date by which such procurement is expected to be completed.

The Procurement Plan shall be submitted to MCC for approval no less than five (5) business days prior to the 40 day publication period referenced in Section 1.2. MCC may, in its sole discretion, extend its review period an additional five (5) business days and notify MCA-Cape Verde in writing of this extension.

Section 1.2 Publication of Procurement Plans. Unless MCC requests in writing an extension of its review period pursuant to Section 1.1, MCA-Cape Verde shall publicize each proposed Procurement Plan, as approved by MCC, at least forty (40) days prior to the beginning of the six-month period to be covered by such plan, which publication shall include posting on the MCA-Cape Verde Website, posting to the Development Gateway Market website at www.dgmarket.com, publication in a daily newspaper of wide circulation in Cape Verde, and public announcement in such other media outlets as appropriate or as requested from time to time by MCC. Each publication under this Section, including in the local media and on the MCA-Cape Verde Website, shall be in English and in Portuguese.

Section 1.3 Procurement Plan Implementation. The Ministry and MCA-Cape Verde shall ensure that all procurements of goods, services and works shall be consistent with each Procurement Plan, unless the value of the procurement is less than USD \$10,000 or the Parties otherwise agreed in writing. Satisfactory compliance with the Procurement Plan shall be a condition precedent to MCC Disbursements or Re-Disbursements for the related Program or Project expense.

Section 1.4 Deviations from Procurement Plan. For any procurement the value of which exceeds USD \$10,000, the Ministry or MCA-Cape Verde shall notify MCC at least ten (10) days prior to using a procurement method different from the method identified in a Procurement Plan, which deviation shall be subject to MCC approval on a no-objection basis.

ARTICLE II.

OBLIGATIONS AND REPRESENTATIONS

Section 2.1 Procurement Principles. The Ministry and MCA-Cape Verde shall ensure that all procurements of goods, services or works in furtherance of the Compact and funded in whole or in part, directly or indirectly, by MCC Funding shall comply with the general principles set forth in Section 3.6 of the Compact (the “*Procurement Principles*”).

Section 2.2 Procurement Guidelines. The Ministry and MCA-Cape Verde shall ensure that all procurements of goods, services or works in furtherance of the Compact and funded in whole or in part, directly or indirectly, by MCC Funding shall comply with the Procurement Guidelines set forth on Schedule 1 attached hereto or as the Parties may otherwise agree in writing (the “*Procurement Guidelines*”). The Ministry shall ensure that (i) all Government Affiliates, MCA-Cape Verde and any other Permitted Designees are notified of the terms of this Agreement and the Procurement Principles and that each adopts and complies with the Procurement Guidelines and (ii) that the Procurement Guidelines are incorporated in any relevant Supplemental Agreement with any Government Affiliate, MCA-Cape Verde or any other Permitted Designee. MCA-Cape Verde shall ensure that (i) any Provider not referenced in the preceding sentence is

notified of the terms of this Agreement and the Procurement Principles and that each adopts and complies with the Procurement Guidelines and (ii) that the Procurement Guidelines are incorporated in any relevant Supplemental Agreement with any such Providers.

Section 2.3 Bid Challenge. The Ministry and MCA-Cape Verde shall ensure that any bid challenges are conducted in accordance with the terms set forth on Schedule 1.

Section 2.4 Procurement Contracts. The terms and conditions of relevant contracts with Providers, including governing law and dispute resolution, shall be set out in the applicable Bidding and Proposal Documents (defined in Schedule 1). Notwithstanding the generality of the foregoing sentence, contracts with Providers, and as the case may be with other third parties as required under the Procurement Guidelines, shall contain provisions required by the Procurement Guidelines or other Compact Documents, including (i) the limitations on use and treatment of MCC Funding set forth in Section 2.3, (ii) as applicable, the audit, access and records requirements set forth in Section 3.8 of the Compact, (iii) any applicable reporting requirements set forth in Section 3.12 of the Compact, (iv) eligibility requirements related to prohibited source provisions in accordance with then applicable U.S. law, regulations or policy, and (v) such other terms and conditions as may be specified in the Compact or other Supplemental Agreement or the Term Sheet as applicable to a contract or agreement of that nature. MCC shall have the right to review and approve the form of relevant contracts and any material modifications from those forms.

Section 2.5 Reports. MCA-Cape Verde shall deliver or cause the delivery of quarterly reports to MCC of all procurement actions since the prior quarter, including written explanations of any variance from the Procurement Plan for that quarterly period.

Section 2.6 Other Responsibilities. The Ministry and MCA-Cape Verde shall comply with all applicable terms and conditions and fulfill all applicable Government Responsibilities in the other Compact Documents, including requirements set forth in Section 3.6 of the Compact and any audit or reporting requirements.

Section 2.7 Ministry Representations as of the Effective Date. The Ministry hereby provides the following representations to MCC that as of the Effective Date:

(a) Powers; Authorization. The Ministry has the power and authority to execute, deliver and perform its obligations and, pursuant to Section 4.2, any obligations of MCA-Cape Verde under this Agreement and each other agreement, certificate, or instrument contemplated hereby on behalf of the Government. The execution, delivery and performance by the Ministry of this Agreement and the transactions contemplated herein (i) have been duly authorized by all necessary action on the part of the Government and (ii) will not violate (a) any applicable law or regulation or (b) any obligation of the Ministry, the Government, any Government Affiliate or any other Permitted Designee. No other action, consent, approval, registration or filing with or any other action by any governmental authority is required in connection with the execution and effectiveness of this Agreement. This Agreement is a valid and binding agreement and a legally enforceable obligation of the Ministry.

Section 2.8 MCA-Cape Verde Representations. MCA-Cape Verde provides the following representations to MCC as of the date of its execution of this Agreement:

(a) Powers; Authorization. MCA-Cape Verde has the power and authority to execute, deliver and perform its obligations under this Agreement and each other agreement, certificate, or instrument contemplated hereby. The execution, delivery and performance by MCA-Cape Verde of this Agreement and the transactions contemplated herein (i) have been duly authorized by all necessary action and (ii) will not violate (a) any applicable law or regulation or (b) any obligation of MCA-Cape Verde. No other action, consent, approval, registration or filing with or any other action by any person, entity or governmental authority is required in connection with the execution and effectiveness of this Agreement. This Agreement is a valid and binding agreement and a legally enforceable obligation of the MCA-Cape Verde.

ARTICLE III.

APPROVALS

Section 3.1 Approvals. MCA-Cape Verde shall ensure that procurement actions regarding terms of reference, selection of procurement method, and selection, award and formation of contracts for goods, services or works in furtherance of the Compact and funded in whole or in part by MCC Funding shall be approved by the authorized entity, officer or body as designated on Schedule 1 for the corresponding type of action or dollar amount threshold, unless otherwise agreed in writing by the Parties.

Section 3.2 MCC. Notwithstanding Section 3.1, nothing in this Agreement shall limit the rights of MCC to approve Material Agreements, Material Re-Disbursements, Material Terms of Reference or any other action or document in accordance with Section 3(b) of Annex I of the Compact or otherwise limit any other MCC approval rights set forth therein or in the Governance Agreement or any other Supplemental Agreement. With respect to any MCC approvals rights under this Agreement, MCC shall exercise its right of approval within 20 business days or inform MCA-Cape Verde prior to the expiration of the period of the extension of MCC's approval period for an additional 20 business days.

ARTICLE IV

GENERAL PROVISIONS

Section 4.1 Ministry Responsibility. Notwithstanding any other provision of this Agreement, the Ministry shall retain overall responsibility for ensuring compliance with this Agreement by any Government Affiliate, MCA-Cape Verde and any other Permitted Designee.

Section 4.2 Initial Operating Period. Notwithstanding any other provision of this Agreement, during the first 180 days following entry into force of the Compact, (i) any authorization, certification or other action required to be taken by, or obligation of, the Chairman of the Steering Committee may be taken by, and shall become obligations of, the Principal Representative of the Government; (ii) any certificates or other action required to be taken by, or obligations of, the Managing Director or any officer of MCA-Cape Verde may be taken by, and

shall become obligations of, the Principal Ministry Representative, and (iii) any action required of MCA-Cape Verde may be taken by, and shall become an obligation of, the Ministry.

Section 4.3 Communications. Any notice, request, document or other communication required, permitted, or submitted by either Party to the other under this Agreement shall be (i) in writing, (ii) in English, and (iii) deemed duly given: (a) upon personal delivery to the Party to be notified; (b) when sent by confirmed facsimile or electronic mail, if sent during normal business hours of the recipient Party, if not, then on the next business day; or (c) two (2) business day after deposit with an internationally recognized overnight courier, specifying next day delivery, with written verification of receipt to the Party to be notified at the address indicated below, or at such other address as such Party may designate:

To MCC:

Millennium Challenge Corporation

Attention: Vice President for Country Relations, with a copy to the General Counsel

875 15th Street, N.W.

Washington, D.C. 20005

United States of America

Facsimile: (202) 521-3700

Email: VPCountryRelations@mcc.gov (Vice President for Country Relations);

VPGeneralCounsel@mcc.gov (Vice President and General Counsel)

To the Ministry:

Ministry of Finance and Planning

Attention: Minister of Finance and Planning

Avenida Amilcar Cabral, CP30

Praia, Republic of Cape Verde

Facsimile: (238) 261-3897

Phone: (238) 260-7644

E-mail: Ministro.Financas.Planeamento@gov1.gov.cv

To MCA-Cape Verde: at the address to be provided upon its entry into this Agreement.

Section 4.4 Amendments. The Parties may amend this Agreement by entering into a written amendment to this Agreement signed by the Principal Representatives of the Parties; *provided*, that prior to entry into this Agreement by MCA-Cape Verde this Agreement may be amended by written agreement of MCC and the Ministry.

Section 4.5 Publicity. Subject to Section 3.13 of the Compact, the Ministry shall give, or cause to be given, appropriate publicity to this Agreement, including by posting a copy of this Agreement and the Procurement Plan (updated semi-annually) on the MCA-Cape Verde Website in English and Portuguese.

Section 4.6 Nonwaiver of Remedies. The Parties agree that no delay or omission to exercise any right, power or remedy accruing to either Party, upon any breach, default or noncompliance

by the other Party under this Agreement or any other Compact Document, shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of or in any similar breach, default or noncompliance thereafter occurring. The Parties further agree that any waiver, permit, consent or approval of any kind or character on either Party's part of any breach, default or noncompliance under this Agreement or any other Compact Document or any waiver on such Party's part of any provisions or conditions of this Agreement or any other Compact Document must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or any other Compact Document, by law, or otherwise afforded to either Party, shall be cumulative and not alternative.

Section 4.7 Attachments. Any Exhibit, Schedule or other attachment expressly attached hereto (together, the "***Attachments***") is incorporated herein by reference and shall constitute an integral part of this Agreement.

Section 4.8 Inconsistencies. In the event of any conflict or inconsistency between this Agreement and the Compact, the terms of the Compact shall prevail. In the event of any conflict or inconsistency between this Agreement and any other Supplemental Agreement between the Parties or any Procurement Plan, the terms of this Agreement shall prevail.

Section 4.9 Headings. The Section and Subsection headings used in this Agreement are included for convenience only and are not to be considered in construing or interpreting this Agreement.

Section 4.10 Severability. If one or more provisions of this Agreement is held to be unenforceable under any applicable law, such provision(s) shall be excluded from this Agreement and the balance of this Agreement shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.

Section 4.11 Interpretation; Definitions. Any reference to the term "including" in this Agreement shall be deemed to mean "including without limitation" except as expressly provided otherwise. Any reference to "business days" shall mean any day that is business day in Washington, D.C and Praia, Cape Verde. Any reference to "Compact Documents" shall mean this Agreement, the Compact, any Supplemental Agreement between MCC and the Government, and any Supplemental Agreement between the Parties.

Section 4.12 Counterparts; Signatures. This Agreement may be executed in one or more counterpart signatures and each when so executed and delivered shall be an original instrument, but such counterparts together shall constitute a single agreement. Except as the Parties may otherwise agree in writing from time to time, a signature delivered by facsimile or electronic mail in accordance with Section 4.3 shall be deemed an original signature, and the Parties hereby waive any objection to such signature or to the validity of the underlying agreement on the basis of the signature's legal effect, validity or enforceability solely because it is in facsimile or electronic form. Such signature shall be accepted by the receiving Party as an original signature and shall be binding on the Party delivering such signature.

Section 4.13 Assignment. MCC may assign, delegate or contract its rights and obligations, in whole or in part, under this Agreement to any Affiliate, agent, or representative of MCC, to the

full extent permitted by the laws of the United States of America, without the prior consent of the Ministry or MCA-Cape Verde. MCC shall provide written notice to the Ministry upon the effectiveness of such assignment, delegation or contract. Neither the Ministry nor MCA-Cape Verde may assign, delegate or contract its rights and obligations under this Agreement without the prior written consent of MCC.

Section 4.14 Entire Agreement. Except as otherwise expressly provided in the Compact or as may be subsequently agreed by the Parties in writing from time to time, this Agreement, including all Attachments, and all certificates, documents or agreements executed and delivered in connection with and in furtherance of this Agreement, when executed and delivered, shall constitute the entire agreement of the Parties with respect to the subject matter hereof, superseding and extinguishing all prior agreements, understandings and representations and warranties relating to the subject matter hereof.

Section 4.15 Further Assurances. The Ministry shall promptly do and perform such other and further acts, and take all necessary and appropriate actions to bring into effect this Agreement with respect to MCA-Cape Verde.

Section 4.16 Termination; Suspension.

(a) Either Party may terminate this Agreement in its entirety by giving the other Party thirty (30) days' written notice.

(b) Notwithstanding any other provision of this Agreement or any other Supplemental Agreement between MCC and the Government, MCC may suspend or terminate this Agreement, in whole or in part, and any obligation or sub-obligation related thereto, upon giving the Government written notice, if MCC determines that:

(i) The Compact has expired or has been suspended or terminated in whole or in part in accordance with Section 5.4 of the Compact; *provided, however*, this Agreement shall remain in effect for ninety (90) days following the termination or expiration of the Compact;

(ii) Any Supplemental Agreement has been suspended or terminated in whole or in part, and such termination or suspension will have a materially adverse effect on the purpose of this Agreement or the ability of the Ministry, MCA-Cape Verde or Government to implement their respective obligations and responsibilities under the Compact Documents;

(iii) The Ministry or MCA-Cape Verde, in MCC's sole opinion, has materially breached one or more of its representations or any other covenants, obligations or responsibilities under the Compact Documents, including without limitation Section 1.3 of this Agreement;

(iv) Any event that would be a basis for termination or suspension of a Supplemental Agreement in accordance with Section 5.4 of the Compact has occurred.

(v) There has occurred, in MCC's sole opinion, a failure to meet a condition precedent or series of conditions precedent to MCC Disbursement as set out in and in accordance with this Agreement or any other Supplemental Agreement between the Parties or any Supplemental Agreement between the Government and MCC.

(vi) The Government, Ministry or MCA-Cape Verde or any Government Affiliate or Permitted Designee, in MCC's sole opinion, has materially breached one or more of its representations or any other covenants, obligations or responsibilities under this Agreement or any of the Compact Documents.

Section 4.17 MCC Status. MCC is a United States government corporation acting on behalf of the United States Government in the implementation of the Compact. As such, MCC has no liability under this Agreement, is immune from any action or proceeding arising under or relating to this Agreement and the Ministry hereby waives and releases all claims related to any such liability. In matters arising under or relating to this Agreement, MCC shall not be subject to the jurisdiction of the courts or other body of Cape Verde.

Section 4.18 Representatives. For all purposes relevant to this Agreement, the Ministry shall be represented by the individual holding the position of, or acting as, Minister of Finance and Planning of the Ministry of Finance and Planning (the "**Ministry Principal Representative**"), MCC shall be represented by the individual holding the position of, or acting as, Vice President for Country Relations (the "**MCC Principal Representative**"), and MCA-Cape Verde shall be represented by the individual holding the position of, or acting as, Managing Director (the "**MCA-Cape Verde Principal Representative**"), each of whom, by written notice, may designate one or more additional representatives (each, an "**Additional Representative**") for all purposes other than signing amendments to this Compact. The Ministry hereby designates the Chief of the Office of the Minister of Finance and Planning as an Additional Representative of the Ministry. The names of the Ministry Principal Representative and any Additional Representative of the Ministry shall be provided, with specimen signatures, to MCC and the name of the MCC Principal Representative shall be provided with specimen signature to the Ministry, and the Parties may accept as duly authorized any instrument signed by such representatives relating to the implementation of this Agreement, until receipt of written notice of revocation of their authority. A Party may change its Principal Representative to a new representative of equivalent or higher rank and seniority upon written notice to the other Party, which notice shall include the specimen signature of the new Principal Representative.

Section 4.19 Reports. Any reports required pursuant to this Agreement, including pursuant to Section 2.5, shall be provided to MCC in a timely manner and in the required form acceptable to MCC to afford reasonable and appropriate review of such reports and in no event less than 20 business days from end of the prior reporting period. MCA-Cape Verde shall deliver to MCC in a timely manner any information or document that arises under or is related to this Agreement that may be required for the fulfillment of the Government's obligations under the reporting and audit requirements set forth in Section 3.8 of the Compact and any reporting requirements set forth in Section 3.12 of the Compact or as may be otherwise reasonably requested by MCC from time to time. MCC shall have the right to use any information or data delivered to MCC under this Agreement for the purpose of satisfying MCC reporting requirements or in any other manner.

Section 4.20 Consultation. Any Party may, at any time, request consultations relating to the interpretation or implementation of this Agreement between the Parties. Such consultations shall begin at the earliest possible date. The request for consultations shall designate a representative for the requesting Party with the authority to enter consultations and the other Parties shall

endeavor to designate a representative of equal or comparable rank. If such representatives are unable to resolve the matter within 20 days from the commencement of the consultations then each Party shall forward the consultation to the Principal Representative or such other representative of comparable or higher rank. The consultations shall last no longer than 45 days from date of commencement. If the matter is not resolved within such time period, any Party may terminate this Agreement pursuant to Section 4.16. The Parties shall enter any such consultations guided by the principle of achieving the Compact Goal in a timely and cost-effective manner.

Section 4.21 Effective Date; Term. This Agreement shall (i) become effective and enter into force as of the date hereof upon the signature of duly authorized representatives of MCC and the Ministry (the “*Effective Date*”) and (ii) end ninety (90) days following the termination or expiration of the Compact; *provided, however*, no new procurements shall be made or obligations incurred after the termination or expiration of the Compact; *provided, further*, that this Agreement may be effective for no more than 180 days prior to the execution of this Agreement by the Principal Representative of MCA-Cape Verde; and *provided, further*, that the term of this Agreement may be extended for a period that is longer than ninety (90) days following the termination or expiration of the Compact if MCC determines that Re-Disbursements related to obligations incurred prior to the expiration or termination of the Compact remain to be carried out.

[Signature page begins on the next page.]

IN WITNESS WHEREOF, the Ministry and MCC, each acting through its duly authorized representative, have caused this Agreement to be executed in their names and delivered as of the date first written above.

MINISTRY OF FINANCE AND PLANNING,
ON BEHALF OF THE
GOVERNMENT OF THE
REPUBLIC OF CAPE VERDE

MILLENNIUM CHALLENGE
CORPORATION

By: _____
Name: João António Pinto Coelho Serra
Title: Minister of Finance and Planning

By: _____
Name: John Hewko
Title: Vice President, Country Programs

MCA-Cape Verde, acting through its duly authorized representative, has joined this Agreement and shall be subject to its provisions as of the date first written below.

MCA-CAPE VERDE

By: _____
Name: _____
Title: _____
Date: _____

SCHEDULE 1

PROCUREMENT GUIDELINES

SECTION I. Procurement Management

1. Organization

MCA-Cape Verde will conduct and administer the procurements necessary to implement the Compact. Certain important procurement actions and decisions shall be subject to prior review or approval by levels of authority within MCA-Cape Verde or by MCC, as provided below. This system of review and approval requirements is intended to ensure adequate oversight over Compact-related procurement activities, help detect errors when they can be easily corrected and to otherwise avoid problems in such procurement activities, and is subject to modification or exception at any time, which modification or exception shall be subject to MCC approval.

Procurement and contract management by MCA-Cape Verde will be conducted under the broad oversight and authority of the MCA Steering Committee, through the MCA Procurement Review Commission (PRC) which will supervise the procurement operations of the MCA Management Unit, as set forth in the procurement Agreement and the PRC Charter.

Operational procurement management, including monitoring, evaluation and reporting functions, will be the responsibility of the MCA Management Unit. The MCA Management Unit will include a Procurement Manager and a Procurement Specialist. The Managing Director of the MCA Management Unit will submit requests for the review and approval of procurement to the PRC. The PRC will forward to MCC after PRC approval, all documents that MCC has designated for its review. The total review process is expected to take no more than 30 days from submission by the Management Unit through to the completion of the MCC “no objection”, of which 5 days will be available to the MCC for its review and approval, unless MCC provides notice that it needs to extend the period for review.

The Procurement Manager will be responsible to the Managing Director of the MCA Management Unit to organize, manage and conduct procurement operations in support of MCA-Cape Verde. The Procurement Specialist will support the work of the Procurement Manager including working with the project managers to develop final procurement plans. The Procurement Manager will also be responsible for:

- overall management of the MCA-Cape Verde procurement program;
- development of procurement plans;
- preparation and administration of the MCA-Cape Verde Procurement Manual containing procedures and program contract templates, bidding and proposal documents, forms, and instructions;
- preparation of requests for approval of procurement and contract actions;

- operation of a system of data collection, records review and oversight of component managers and units to monitor MCA-Cape Verde procurement and contract operations and performance;
- arrangements for the provision of procurement training;
- preparation of quarterly and annual reports providing a quantitative and qualitative assessment of procurement activities of the MCA-Cape Verde;
- supporting the Steering Committee in its responsibilities; and,
- other matters relating to procurement as requested by the MCA Managing Director.

SECTION II. Sub Activity Procurement

The procurement procedures set out in Annexes 1 and 2 shall govern the procurement of all works, goods and consulting services needed under subactivities of the MCA-Cape Verde involving Roads, Port Improvements and under the Private Sector Development Project, except that:

(a) The competitive practices developed by Director General of the State Patrimony (DGPE), as recommended by the PRC and approved by MCC, will be used to procure items valued at USD 2,000 or less under the subactivity for Watershed Management and Soil Conservation.

(b) Routine items identified by the MCA-Cape Verde Management Unit, such as fuel, electricity, office supplies, etc. will be procured under government-wide contracts of the DGPE in support of the Management Unit and all project operating units of the MCA-Cape Verde.

1. Infrastructure

For the Roads and Bridges Project, MCA-Cape Verde will delegate technical contract management and technical supervisory responsibilities under the contract to the Ministry of Industry and Transports, Road Sector Support Project (RSSP). MCA-Cape Verde will monitor and evaluate their performance. The RSSP will perform its duties in compliance with the Procurement Guidelines. .

For the Port of Praia Expansion Project, MCA-Cape Verde will delegate technical contract management and technical supervisory responsibilities under the contract to the Ministry of Industry and Transports, (ENAPOR). MCA-Cape Verde will monitor and evaluate their performance. ENAPOR will perform its duties in compliance with the Procurement Guidelines.

2. Watershed Management and Agriculture Support Project

All Works up to a value of USD 55,000 will be procured under the MIT rules (Decree Law 31/94, Implementing Decree 6/94, and Decree 87/89) except it is understood that:

(a) Article 2 will not apply except to the extent that the participation of foreign companies with the required and demonstrated technical, economical and financial qualities in public work contracts is authorized; and,

(b) Community Based Organizations (cooperatives) are authorized to compete for contracts.

All procurements supporting the Rural Banking Project will be conducted in compliance with these Procurement Guidelines.

The separate Ministry Representative for an island (i.e. Agriculture, MIT and the agency responsible for the Private Sector Development Project will be coordinating activities for MCA-Cape Verde on the island for their individual sector component.

The central government and local officials should be involved in developing the project's implementation.

3. Private Sector Development Project

This project supports Cape Verde's long-term economic transformation strategy of becoming less dependent on remittances and donor aid by developing a competitive, private sector-driven economy. This project comprises two main activities. The objective of the first activity is to increase investments in growth sectors of the economy. The objectives of the second activity are to improve financial intermediation and to increase competition in the primary government securities market. These Procurement Guidelines shall govern all procurement actions and decisions supporting this project.

SECTION III. Procurement Rules

1. Bid Challenge System

MCA-Cape Verde will support the PRC Protests and Disputes Panel to implement a bid challenge system that provides suppliers and contractors the ability to seek review of procurement actions and decisions. Such bid challenge system shall be subject to MCC approval. All interactions with the review body must be impartial and independent and shall not be influenced by any personal interest (through financial, family, business or beneficial ownership or otherwise) in the outcome of the procurement or involved in or related to the procurement process. The MCA-Cape Verde shall implement in a timely manner the PRC Protests and Disputes Panel decision on any bid challenge. MCC reserves the right to review and comment on the organization and operation of the bid challenge system.

2. Subcontracting

Every contract or subcontract for goods, services or works with any party that receives at least USD \$50,000 in the aggregate of MCC Funding shall require the contracting party to follow the

Procurement Principles set out in the Compact to the maximum extent consistent with the objectives and requirements of the contract when subcontracting for goods, services or works.

In every contract or subcontract valued in excess of USD \$1,000,000, the contracting party shall be required to have written procurement procedures that may be subject to review by MCA-Cape Verde, MCC, the Government and any of their respective agents or representatives.

Any contractor or subcontractor planning to subcontract for a major item of supply, services, or works, (deemed major if valued in excess of USD \$100,000) shall seek MCA-Cape Verde prior written approval of the subcontractor.

3. Records

Complete and uniform procurement records shall be maintained according to a standard format approved by MCC.

4. Bidding and Proposal Documents

Standard bidding and proposal documents (“Bidding and Proposal Documents”) shall be developed and subject to review by MCC. The instructions to bidders and consultants in the Bidding and Proposal Documents must set out or reference the rules and procedures governing the procurement. The data sheet accompanying the instructions to bidders and consultants must also state the currency or currencies for the offers and shall require that payment be made in the same currency as the offer which must be in either United States dollars or the local currency of the Republic of Cape Verde.

The Bidding Documents must be available in the English language and in the Portuguese language. The English language version will control. Procurement solicitations shall be written:

(a) in the Portuguese language in procurements estimated to be less than \$100,000 but may also be in English;

(b) in the English language in procurements estimated to be \$100,000 or more, but may also be in Portuguese.

5. Notice of Procurement

(a) MCA-Cape Verde shall publicize its proposed Procurement Plan, as approved by MCC, at least forty (40) days prior to the beginning of the six-month period to be covered by such plan, which publication shall include posting on the MCA-Cape Verde Website, posting to the United Nations Development Business online at www.devbusiness.com and posting to Development Gateway Market website at www.dgmarket.com, publication in a daily newspaper of wide circulation in the Republic of Cape Verde, and public announcement in such other media outlets as appropriate or as requested from time to time by MCC. Each publication, including in the local media and on the MCA-Cape Verde Website, shall be in English and in Portuguese.

(b) The specific notice of procurement (SPN) including expressions of interest (EOI) for all procurements valued at \$100,000 and above shall be posted in English on the MCA-Cape Verde website and on the UN Development Business online (www.devbusiness.com) and the Development Gateways dg Market online (www.dgmarket.com). Notifications shall contain information concerning the counterpart, amount and purpose of the contract opportunity, the scope of the procurement, and the name, telephone number, physical address and website address of the entity responsible for the procurement. If known, the scheduled date for availability of pre-qualification or bidding and proposal documents should be indicated. These notices are intended to provide reasonable notice of procurement opportunities. The related pre-qualification or bidding and proposal documents, as the case may be, shall not be released to the public earlier than the date of publication of the notice. The Managing Director of the Management Unit shall approve the advertisement prior to placement and publication. Notifications must also be placed for a period of no less than 14 days in the Cape Verde daily newspaper of greatest national circulation.

(c) After the contract signature, the MCA-Cape Verde shall publish in MCA-Cape Verde-Country Website, in UNDB online and in dgMarket for all contracts valued above 10,000 USD (and for all direct contracts valued above 2,000 USD) the name of the contractor, price, duration, and summary scope of the contract. This publication may be done quarterly and in the format of a summarized table covering the previous period.

6. World Bank Procedures

The principles, rules and procedures set out in The World Bank Guidelines: Selection and Employment of Consultants by World Bank Borrowers, May 2004 and The World Bank Guidelines: Procurement Under IBRD Loans and IDA Credits, May 2004 (WB Procurement Guidelines) shall govern the conduct and administration of the procurement of the goods, works and services that need to be acquired to implement the projects and programs under the Compact subject to the exceptions set out in Annexes 1 and 2:

An MCA-Cape Verde Procurement Manual consistent with these Procurement Guidelines will be finalized by the Managing Director, reviewed and accepted by the Procurement Review Commission and by MCC, to be adhered to by all entities involved in procurement, contract and program management.

References to the “Bank” unless otherwise noted should refer to the Millennium Challenge Corporation.

References to the “Borrower” unless otherwise noted refer to the Government of Cape Verde as signatory to the Compact and the Steering Committee as the accountable entity. (Collectively referred to as Cape Verde or Grantee)

References to the “Loan Agreement” unless otherwise noted refer to the Compact.

Dispute resolution will take place primarily in the Republic of Cape Verde with the possibility for international arbitration in the case that disputes are not resolved at the national level.

Selection of the procurement method and requirements for prior review, post review and no-objection will be consistent with the modified thresholds established in these Procurement Guidelines.

7. Eligibility

Any person or entity that has been blacklisted from participation in procurements funded with The World Bank assistance or debarred or suspended from participation in procurements funded by the US 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 be excluded from procurements awarded under the Compact. Without limiting the foregoing, this would remove from eligibility any procurement from a country or from a firm that is organized in or has its principle place of business or a significant portion of its operations in any country that is subject to sanction or restriction by United States law or policy. As of the date hereof, this list includes Cuba, Iran, Libya, North Korea, Sudan and Syria.

8. Procurement Plans

The MCA-Cape Verde shall develop and adopt a procurement plan as set forth in the Procurement Agreement.

9. Limitations on the Use or Treatment of MCC Funding

MCA-Cape Verde will ensure that the restrictions set forth in Section 2.3 of the Compact are included in all contracts, including restrictions on the use of funds for Abortions and Involuntary Sterilizations; United States Job Loss or Displacement of Production; Military Assistance and Training; Environmental, Health or Safety Hazards; and Taxation in that no taxes, duties or levies of the Government of Cape Verde shall be paid under the Compact by MCA-Cape Verde; and that all items acquired shall be used only for Compact purposes.

10. Audit of Covered Providers

MCA-Cape Verde shall ensure that the substance of Section 3.8 of the Compact regarding Audits and Records will be applicable to all covered providers as set forth in the Compact.

SECTION IV. Procurement Review Thresholds

1. MCA-Cape Verde Review

(a) All procurement actions are subject to post review by the Management Unit, Procurement Review Commission, Steering Committee and MCC. Proper valuations of estimates shall be used for purposes of describing procurement actions to apply the thresholds, which will be certified by the Director of Studies (GEB) in the component management organization. All procurement actions shall be reviewed by the Management Unit and the Procurement Review Commission. All such reviews will be prior to taking a decision on a

contract, except that the following actions will be subject to Post Review by the Management Unit and the PRC:

- Routine procurement transactions under DGPE government-wide contracts;
- Small purchases for \$2,000 or less following DGPE competitive practices; and
- Contracts made under the Procurement Guideline for Shopping with a value of \$30,000 or less.

(b) All requests for (1) Grants, (2) Pre-Qualification, or (3) Concessions (e.g. Build, Operate and Transfer contracts) and Similar Private Sector Arrangements must obtain a prior approval from the MCC.

(c) (1) Subcontracts, and (2) any change to a contract, in the amount of \$100,000 or more shall be specifically and separately approved by the PRC.

(d) Subject to change by MCC after review of the initial procurement plans, thresholds for prior review of procurement decisions and use of particular procurement methods are set out in Schedule II.

Schedule II: Procurement Review Thresholds			
Procurement Decisions subject to Prior Review by the MCC are for a procurement contract or package of contracts estimated to have a value, as certified by the appropriate Director of Studies, as stated below, or as stated in the MCA-Cape Verde:			
GOODS, WORKS and NON-CONSULTING SERVICES			
	Procurement Method (as described in World Bank Guidelines)	Prior Review Threshold	Comments
1.	International Competitive Bidding (ICB)(Goods)	\$250,000 or above	ICB actions must be advertised in the UN Development Business (on line) and Development Gateway www.devbusiness.com ; www.dgmarket.com
2.	National Competitive Bidding (NCB) (Goods)	\$100,000 or above	
3.	ICB (Works)	\$500,000 or above	
4.	NCB (Works)	\$500,000 or above	
5.	ICB (Non-Consultant Services)	\$250,000 or above	
6.	Brand name or Direct contracts or any modification or extension thereto.	ALL	

Schedule II: Procurement Review Thresholds

Procurement Decisions subject to Prior Review by the MCC are for a procurement contract or package of contracts estimated to have a value, as certified by the appropriate Director of Studies, as stated below, or as stated in the MCA-Cape Verde:

GOODS, WORKS and NON-CONSULTING SERVICES

	Procurement Method (as described in World Bank Guidelines)	Prior Review Threshold	Comments
Selection of Consultants			
7.	International Competition Methods	\$200,000	
8	National Competition*	\$100,000	
	Single Source	\$10,000	Any extension or modification of any single source contract must receive prior approval from MCC

* Short-list comprised entirely of national consultants will be developed according to paragraph 2.7 WB Consultants Guidelines. Paragraph 2.5 WB Guidelines mandate that the advertisement be made through the development website and the Development Gateway when the competition is above USD 200,000.

2. Prior Review Actions

The MCC review process is intended to ensure that MCC funds are used for the purposes intended and that required procurement procedures are followed in letter and in spirit.

When a procurement meets one of the thresholds for prior review by MCC, each of the following actions with supporting documents must be described and sent by the PRC to MCC in a timely manner to allow for review, comment and/or approval (estimated to be 5 days) before proceeding to the next step of the procurement:

- Proposed advertisement, including the Expression of Interest, General Procurement Notice and the Specific Procurement Notice;
- All proposed bidding and proposal documents and addenda, with evaluation criteria and plan, cost estimates and budget support documents;
- The establishment of a short list with full identification of Selection Panel and shortlisting process;
- The bid evaluation report and the proposal for award of contract, to include the proposed contract documents with the bid or proposal, to identify any substantial differences from

the proforma contract included in the bidding documents and to verify consistency with bid evaluation;

- All modifications to the contract during execution which affect the price, duration or scope of the contract; and
- Any decision to conduct a pre-qualification or concession procurement as well as the invitation, bidding or proposal documents and subsequent evaluation regardless of value.

Annex 1

Procurement Guidelines: Procurement of Works and Goods

The principles, rules and procedures set out in The World Bank Guidelines: Procurement Under IBRD Loans and IDA Credits, May 2004 (WB Procurement Guidelines) as modified¹ in the text that follows shall govern the conduct and administration of the procurement of the goods, works and non-consultant services that need to be acquired to implement the projects and programs under the Compact.

I. INTRODUCTION

Purpose

1.1 DELETED

General Considerations

1.2 DELETED

1.3 Open competition is the basis for efficient public procurement. In most cases, therefore, MCC requires MCA-Cape Verde to obtain goods, works, and services through a competitive bidding (ICB) process open to eligible suppliers and contractors as set out in Section II of the Guidelines.

1.4 Where ICB is not the most appropriate method of procurement, other methods of procurement may be used. Section 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 the semi-annual Procurement Plans.

Applicability of Guidelines

1.5 DELETED.

Eligibility

1.6 To foster competition the MCC permits firms and individuals from almost all countries to offer goods, works, and services for MCC -financed projects. Any conditions for participation shall be limited to those that are essential to ensure the firm's capability to fulfill the contract in question.

1.7 In connection with any contract to be financed in whole or in part from an MCC grant, the MCC does not permit MCA-Cape Verde to deny pre- or post- qualification to a firm for reasons unrelated to its capability and resources to successfully perform the contract; nor does it

¹ Note: Bracketed text in this section provides explanations of modifications.

permit MCA-Cape Verde to disqualify any bidder for such reasons. Consequently, MCA-Cape Verde should carry out due diligence on the technical and financial qualifications of bidders to be assured of their capabilities in relation to the specific contract.

1.8 As exceptions to the foregoing:

(a) Firms of a country or goods manufactured in a country may be excluded if, (i) as a matter of law or official regulation, Cape Verde prohibits commercial relations with that country, provided that the MCC is satisfied that such exclusion does not preclude effective competition for the supply of goods or works 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, Cape Verde prohibits any import of goods from, or payments to, a particular country, person, or entity. Where Cape Verde prohibits payments to a particular firm or for particular goods by such an act of compliance, that firm may be excluded.

(b) A firm which has been engaged to provide consulting services for the preparation or implementation of a project, and any of its affiliates, shall be disqualified from subsequently providing goods, works, or services resulting from or directly related to the firm's consulting services for such preparation or implementation. This provision does not apply to the various firms (consultants, contractors, or suppliers) which together are performing the contractor's obligations under a turnkey or design and build contract.

(c) Government -owned enterprises in Cape Verde 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 Cape Verde.

(d) A firm declared ineligible by the World Bank in accordance with subparagraph (d) of paragraph 1.14 of these Guidelines shall be ineligible to be awarded an MCC financed contract during the period of time determined by the World Bank.

(e) Any person or entity that has been blacklisted from participation in procurements funded with The World Bank assistance or debarred or suspended from participation in procurements funded by the US 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 be excluded from procurements awarded under the Compact. Without limiting the foregoing, this would remove from eligibility any procurement from a country or from a firm that is organized in or has its principle place of business or a significant portion of its operations in any country that is subject to sanction or restriction by United States law or policy. As of the date hereof, this list includes Cuba, Iran, Libya, North Korea, Sudan and Syria.

Advance Contracting and Retroactive Financing

1.9 Cape Verde may wish to proceed with the initial steps of procurement before MCC Compact comes into force. In such cases, the procurement procedures, including advertising shall be in accordance with the Procurement Guidelines in order for the eventual contracts to be eligible for MCC financing, and the MCC shall review the process used by Cape Verde. Cape Verde undertakes such advance contracting at its own risk, and any concurrence by the MCC with the procedures, documentation, or proposal for award does not commit MCC to make a grant for the project in question. Under no circumstances will MCC reimburse Cape Verde for any contract costs if the contract is signed prior to entry into effect of the Grant and any required MCC approval.

Joint Ventures

1.10 Any firm may bid independently or in joint venture confirming joint and several liability, either with domestic firms and/or with foreign firms, but the MCC does not accept conditions of bidding which require mandatory joint ventures or other forms of mandatory association between firms.

MCC Review

1.11 The MCC shall review the MCA-Cape Verde 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 Schedule II of these Procurement Guidelines. The Procurement Plan approved by the MCC shall specify the extent to which these review procedures shall apply in respect of the different categories of goods and works to be financed, in whole or in part, from the MCC loan.

Misprocurement

1.12 The MCC does not finance expenditures for goods and works which have not been procured in accordance with the agreed provisions as detailed in the Compact and supporting documents such as the Procurement Plan. In such cases, the MCC will declare misprocurement, and cancel the portion of funds allocated to the goods and works that have been misprocured if corrective measures satisfactory to the MCC are not taken. The Steering Committee may exercise other remedies, and the MCC may temporarily suspend or permanently cancel disbursement. Even once the contract is awarded after obtaining a “no objection” from the MCC, the MCC may still declare misprocurement if it concludes that the “no objection” was issued on the basis of incomplete, inaccurate, or misleading information furnished by Cape Verde or the terms and conditions of the contract had been modified without MCC approval.

References to MCC

1.13 When referring to the MCC in any contract documents, the following language shall be used:

“The Millennium Challenge Corporation signed a Millennium Challenge Compact with the Government of Cape Verde in July 2005. This Compact proposes to reduce poverty and spur

economic growth in Cape Verde. Payment by MCC under the Compact will be made only at the request of MCA -Cape Verde and upon approval by MCC, and will be subject, in all respects, to the terms and conditions of the Compact.”

Fraud and Corruption

1.14 MCC requires that grantees (including beneficiaries of MCC grants), as well as bidders, suppliers, and contractors under MCC financed contracts; observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this requirement, the MCC:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, of any thing of value to influence the action of a public official in the procurement process or in contract execution;
 - (ii) “fraudulent practice” means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract;
 - (iii) “collusive practices” means a scheme or arrangement between two or more bidders, with or without the knowledge of the Grantee designed to establish bid prices at artificial, non-competitive levels; and
 - (iv) “coercive practices” means harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in a procurement process, or affect the execution of a contract.
- (b) will reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the contract in question;
- (c) will cancel the portion of the loan allocated to a contract if it determines at any time that representatives of the Grantee or of a beneficiary of a grant engaged in corrupt, fraudulent, collusive, or coercive practices during the procurement or the execution of that contract, without the Grantee having taken timely and appropriate action satisfactory to the MCC to remedy the situation;
- (d) will sanction a firm or individual, including declaring ineligible, either indefinitely or for a stated period of time, to be awarded a MCC financed contract if it at any time determines that the firm has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for, or in executing, a MCC financed contract; and
- (e) will have the right to require that a provision be included in bidding documents and in contracts financed by a MCC grant, a provision be included requiring bidders, suppliers and contractors to permit the MCC to inspect their accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by the MCC.

1.15 With the specific agreement of the MCC, Cape Verde may introduce, into bid forms for large contracts financed by the 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 bidding documents. The MCC will accept the introduction of such undertaking at the request of Cape Verde, provided the arrangements governing such undertaking are satisfactory to the MCC.

Procurement Plan

1.16 DELETED [*The rules for preparing and implementing the Procurement Plan are set out in the Procurement Agreement.*]

II. INTERNATIONAL COMPETITIVE BIDDING

A. General Introduction

2.1 The objective of International Competitive Bidding (ICB), as described in these Guidelines, is to provide all eligible prospective bidders with timely and adequate notification of a Grantee's requirements and an equal opportunity to bid for the required goods and works.

Type and Size of Contracts

2.2 The bidding documents shall clearly state the type of contract to be entered into and contain the proposed contract provisions appropriate there for. 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. Reimbursable cost contracts are acceptable to the 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.

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 items of equipment and plant² and for the works.

2.4 For a project requiring similar but separate items of equipment 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 contracts (slices) or for a group of similar contracts (package). 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 Grantee.³

² See para. 1.6, 1.7 and 1.8.22 For purposes of these Guidelines, "plant" refers to installed equipment, as in a production facility.

³ See paras. 2.4 – 9-2.54 for the bid evaluation procedures.

2.5 In certain cases the 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 under one contract. Alternatively, the Grantee 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 contracting⁴ contracts are also acceptable where appropriate.⁵

Two-Stage Bidding

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 unpriced 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 documents⁶ and the submission of final technical proposals and priced bids in the second stage.

Notification and Advertising

2.7 Timely notification of bidding opportunities is essential in competitive bidding. For projects that include ICB, the Grantee shall be responsible for placing timely notifications in English at the MCA-Cape Verde Website and in UN Development Business online (www.devbusiness.com) and the Development Gateways dg Market online (www.dgmarket.com)⁷ Notifications shall contain information concerning the counterpart, amount and purpose of the contract opportunity, the scope of the procurement, and the name, telephone number, physical address and website address of the entity responsible for the procurement. If known, the scheduled date for availability of pre-qualification or bidding documents should be indicated.

2.8 Invitations to prequalify or to bid, as the case may be, shall be advertised as Specific Procurement Notices in at least one newspaper of national circulation in Cape Verde (or in the official gazette, or in an electronic portal with free access). Such invitations shall also be

⁴ In construction, a management contractor usually does not perform the work directly but contracts out and manages the work of other contractors, taking on the full responsibility and risk for price, quality, and timely performance. Conversely, a construction manager is a consultant for, or agent of, the grantee, but does not take on such risks. (If financed by the MCC, the services of the construction manager should be procured under the Consultant Guidelines.)

⁵ Also see paras. 3.14 and 3.15 for performance-based contracting.

⁶ In revising the bidding documents in the second stage the Grantee should respect the confidentiality of the bidders' technical proposals used in the first stage, consistent with requirements of transparency and intellectual property rights.

⁷ UNDB is a publication of the United Nations. Subscription information is available from: Development Business, United Nations, GCPO Box 5850, New York, NY 101635850, USA (Website: www.devbusiness.com; email: dbsubscribe@un.org); Development Gateway Market is an electronic portal of Development Gateway Foundation, 1889 F Street, N.W. Washington, DC 20006, USA (Website: www.dgmarket.com).

published in MCA-Cape Verde Website, in UNDB online and in dgMarket. Notification shall be given in sufficient time to enable prospective bidders to obtain prequalification or bidding documents and prepare and submit their responses.

Prequalification of Bidders

2.9 Prequalification is usually necessary 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 plant, 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. Prequalification shall be based entirely upon the capability and resources of prospective bidders to perform the particular contract satisfactorily, taking into account their (a) experience and past performance on similar contracts, (b) capabilities with respect to personnel, equipment, and construction or manufacturing facilities, and (c) financial position.

2.10 The invitation to prequalify for bidding on specific contracts or groups of similar contracts shall be advertised and notified as described in paragraphs 2.7 and 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. All such applicants that meet the specified criteria shall be allowed to bid. The Grantee shall inform all applicants of the results of prequalification. As soon as prequalification is completed, the bidding documents shall be made available to the qualified prospective bidders. For prequalification 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 updated periodically. Verification of the information provided in the submission for prequalification shall be confirmed at the time of award of contract, and award may be denied to a bidder that is judged to no longer have the capability or resources to successfully perform the contract.

B. Bidding Documents

General

2.11 The bidding documents shall furnish all information necessary for a prospective bidder to prepare a bid for the goods and works 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 to bid; instructions to bidders; form of bid; form of contract; conditions of contract, both general and special; 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 Grantee may use an electronic system to distribute bidding documents, provided that the 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.

2.12 Cape Verde shall use the appropriate Standard Bidding Documents (SBDs) issued by the World Bank as modified to reflect the exceptions set out in the Procurement Agreement with MCC and changes to address project-specific conditions, subject to MCC approval when the change is significant.. Where no relevant standard bidding documents have been issued, MCA-Cape Verde shall use other internationally recognized standard conditions of contract and contract forms acceptable to the MCC.

Validity of Bids and Bid Security

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 Grantee to complete the comparison and evaluation of bids, review the recommendation of award with the MCC (if required), and obtain all the necessary approvals so that the contract can be awarded within that period.

2.14 The Grantee has the option of requiring a bid security. When used, the bid security shall be in the amount and form specified in the bidding documents⁸ and shall remain valid for a period of four weeks beyond the validity period for the bids, in order to provide reasonable time for the Grantee to act if the security is to be called. Bid security shall be released to unsuccessful bidders once the contract has been signed with the winning bidder. In place of a bid security, the Grantee may require bidders to sign a declaration accepting that if they withdraw or modify their bids during the period of validity or they are awarded the contract and they fail to sign the contract or to submit a performance security before the deadline defined in the bidding documents, the bidder will be suspended for a period of time from being eligible for bidding in any contract with the Grantee.

Language

2.15 All documents and the bids shall be prepared:

(a) in the Portuguese language estimated to be less than USD 100,000, but may also be in English; and

(b) in the English language in procurements estimated to be USD100,000 or more, but may also be in Portuguese.

The contract signed with the winning bidder that is priced at USD100,000 or greater shall be written in the English language and this version shall govern contractual relations between MCA-Cape Verde and the winning bidder. Bidders shall not be required nor permitted to sign contracts in two languages.

⁸ 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 Cape Verde, it shall have a correspondent financial institution located in Cape Verde to make it enforceable.

Clarity of Bidding Documents

2.16 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.

2.17 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, payment terms, etc., are permitted, conditions for their acceptability and the method of their evaluation shall be expressly stated.

2.18 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 Grantee 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 the Grantee's representatives to seek clarifications (in person or online). Minutes of the conference shall be provided to all prospective bidders with a copy to the MCC (in hard copy or sent electronically). 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. The MCC shall receive a copy (in hard copy format or sent electronically) and be consulted for issuing a "no objection" when the contract is subject to prior review.

Standards

2.19 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 and/or works under procurement. As far as possible, the Grantee 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 other standards, which promise at least substantial equivalence, will also be accepted.

Use of Brand Names

2.20 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.

Pricing

2.21 Bids for goods shall be invited on the basis of CIP⁹ (place of destination) for all goods manufactured abroad, including those previously imported, and EXW¹⁰ (ex works, exfactory, or off the shelf) plus cost of in land transportation and insurance to the place of destination for goods manufactured or assembled in Cape Verde. Bidders shall be allowed to arrange for ocean and other transportation and related insurance from any eligible source.¹¹ 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.

2.22 In the case of turnkey contracts, the bidder shall be required to quote the price of the installed plant at site, including all costs for supply of equipment, marine and local transportation and insurance, installation, and commissioning, as well as associated works and all other services included in the scope of contract such as design, maintenance, operation, etc. Unless otherwise specified in the bidding documents, the turnkey price shall include all duties, taxes, and other levies.¹²

2.23 Bidders for works contracts shall be required to quote unit prices or lump sum prices for the performance of the works, and such prices shall include all duties, taxes, and other levies. Bidders shall be allowed to obtain all inputs (except for unskilled labor) from any eligible source so that they may offer their most competitive bids.

Price Adjustment

2.24 Price adjustment provisions are usually not necessary in simple contracts involving delivery of goods or completion of works within eighteen months, but may be included in contracts which extend beyond eighteen months with the approval of MCC.

⁹ Refer to INCOTERMS 2000 for further definitions. Published by the International Chamber of Commerce, Cours Albert 1er, 75008 Paris, France. CIP is carriage and insurance paid to (named place of destination). This term may be used irrespective of the mode of transport, including multimodal transport. CIP term is for custom duties and other import taxes unpaid, payment for which is the responsibility of the Grantee, either for goods previously imported or that will be imported. For previously imported goods, the quoted CIP price shall be distinguishable from the original import value of these goods declared to customs and shall include any rebate or mark-up of the local agent or representative and all local costs except import duties and taxes, which will be paid by the purchaser.

¹⁰ The EXW price shall include all duties, sales, and other taxes already paid or payable for the components and raw materials used in the manufacture or assembly of the equipment, offered in the bid.

¹¹ See para. 1.6, 1.7 and 1.8.

¹² Goods in bids for turnkey contracts may be invited on the basis of DDP (named place of destination) and Bidders should be free to choose the best arrangement between imported goods or goods manufactured in Cape Verde, in the preparation of their bids.

2.25 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

2.26 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. 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 Grantee, in which case the Grantee shall seek competition for such insurance.

2.27 This paragraph allowing reservation of transportation and insurance for imported goods to national companies is DELETED.

Currency Provisions

2.28 Bidding documents shall state the currency or currencies in which bidders are to state their prices, All bids are to be denominated and paid only in United States dollars or the local currency of Cape Verde as stated in the bidding documents. No other currency is permitted.

Currency of Bid

2.29 The Bidding Documents shall caution bidders that the bid price must be expressed in the currency requested. Only one of two currency may be requested, either United States dollars or the local currency of Cape Verde. Bids may not be requested or express in any other currency.

2.30 The Bidding Documents shall caution bidders that the bid price must be expressed in the currency requested. Only one of two currency may be requested, either United States dollars or the local currency of Cape Verde. Bids may not be requested or express in any other currency.

Currency Conversion for Bid Comparison

2.31 This paragraph defining rules for currency conversion for bid comparison is DELETED.

Currency of Payment

2.32 Payment of the contract price shall be made in the currency or currencies in which the bid price is expressed in the bid of the successful bidder.

2.33 This paragraph defining rules for making payments in currency other than the currency of the bid price is DELETED. [*Payments shall be made in same currency of the bid price.*]

Terms and Methods of Payment

2.34 Payment terms shall be in accordance with the international commercial practices applicable to the specific goods and works.

(a) Contracts for 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 and commissioning, 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 equipment and plant, provision shall be made for suitable advances and, in contracts of long duration, for progress payments during the period of manufacture or assembly.

(b) Contracts for works shall provide in appropriate cases for mobilization advances, advances on contractor's equipment and materials, regular progress payments, and reasonable retention amounts to be released upon compliance with the Contractor's obligations under contract.

2.35 Any advance payment for mobilization and similar expenses, made upon signature of a contract for goods or works, shall be related to the estimated amount of these expenses and be specified in the bidding documents. Amounts and timing of other advances to be made, such as for materials delivered to the site for incorporation in the works, shall also be specified. The bidding documents shall specify the arrangements for any security required for advance payments.

2.36 Bidding documents shall specify the payment method. [*Payment terms shall not affect the bid evaluation.*]

Alternative Bids

2.37 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.

Conditions of Contract

2.38 The contract documents shall clearly define the scope of work to be performed, the goods to be supplied, the rights and obligations of the Grantee and of the supplier or contractor, and the functions and authority of the engineer, architect, or construction manager, if one is employed by the Grantee, in the supervision and administration of the contract. In addition to the general conditions of contract, any special conditions particular to the specific goods or works to be procured and the location of the project shall be included. The conditions of contract shall provide a balanced allocation of risks and liabilities.

Performance Security

2.39 Bidding documents for works shall require security in an amount sufficient to protect the Grantee in case of breach of contract by the Contractor. This security shall be provided in an appropriate form and amount, as specified by the Grantee in the bidding document.¹³ 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 Grantee; alternatively, contracts may provide for a percentage of each periodic payment to be held as retention money until final acceptance. Contractors may be allowed to replace retention money with an equivalent security after provisional acceptance.

2.40 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 guarantee to protect against nonperformance of the contract. Such security in an appropriate amount may also cover warranty obligations or, alternatively, a percentage of the payments may be held as retention money to cover warranty obligations, and any installation or commissioning requirements. The security or retention money shall be reasonable in amount.

Liquidated Damages and Bonus Clauses

2.41 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 or works to meet performance requirements would result in extra cost, or loss of revenue or loss of other benefits to the Grantee. 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 Grantee.

Force Majeure

2.42 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

2.43 The conditions of contract shall include provisions dealing with the applicable law and the forum for the settlement of disputes. International commercial arbitration has practical advantages over other methods for the settlement of disputes. Therefore, the MCC recommends that the Grantee use this type of arbitration in contracts for the procurement of goods and works.

¹³ The format of the performance 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 Cape Verde, it shall have a correspondent financial institution located in Cape Verde to make it enforceable

The MCC shall not be named arbitrator or be asked to name an arbitrator.¹⁴ In case of works contracts, supply and installation contracts, and turnkey contracts, the dispute settlement provision shall also include mechanisms such as dispute review boards or adjudicators, which are designed to permit a speedier dispute settlement.

C. Bid Opening, Evaluation, and Award of Contract

Time for Preparation of Bids

2.44 The time allowed for the preparation and submission of bids shall be determined with due consideration of the particular circumstances of the project and the magnitude and complexity of the contract. Generally, not less than six weeks from the date of the invitation to bid or the date of availability of bidding documents, whichever is later, shall be allowed for ICB. Where large works or complex items of equipment are involved, this period shall generally be not less than twelve weeks to enable prospective bidders to conduct investigations before submitting their bids. In such cases, the Grantee is encouraged to convene pre-bid conferences and arrange site visits. Bidders shall be permitted to submit bids by mail or by hand. The Grantee may also use electronic systems permitting bidders to submit bids by electronic means, provided the 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, uses an electronic signature system or equivalent to keep bidders bound to their bids, and only allows bids to be opened with due simultaneous electronic authorization of the bidder and the Grantee. 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

2.45 The time for the bid opening shall be the same as for the deadline for receipt of bids or promptly¹⁵ thereafter, and shall be announced, together with the place for bid opening, in the invitation to bid. The Grantee shall open all bids at the stipulated time and place. Bids shall be opened in public; bidders or their representatives shall be allowed to be present (in person or online, when electronic bidding is used). 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 and a copy of this record shall be promptly sent to the MCC and to all bidders who submitted bids in time. Bids received after the time stipulated, as well as those not opened and read out at bid opening, shall not be considered.

Clarifications or Alterations of Bids

2.46 Except as otherwise provided in paragraphs 2.63 and 2.64 of these Procurement Guidelines, bidders shall not be requested or permitted to alter their bids after the deadline for receipt of bids. The Grantee shall ask bidders for clarification needed to evaluate their bids but

¹⁴ It is understood, however, that officials of the International Centre for Settlement of Investment Disputes (ICSID) shall remain free to name arbitrators in their capacity as ICSID officials.

¹⁵ To allow sufficient time to take the bids to the place announced for public bid opening.

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 or by an electronic system satisfactory to the MCC.¹⁶

Confidentiality

2.47 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

2.48 The Grantee shall ascertain whether the bids (a) meet the eligibility requirements specified in paragraph 1.6, 1.7 and 1.8 of these Procurement Guidelines, (b) have been properly signed, (c) are accompanied by the required securities or required declaration signed as specified in paragraph 2.14 of the Procurement Guidelines, (d) are substantially responsive to the bidding documents, and (v) 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.¹⁷

Evaluation and Comparison of Bids

2.49 The purpose of bid evaluation is to determine the cost to the Grantee of each bid in a manner that permits a comparison on the basis of their evaluated cost. Subject to paragraph 2.58, the bid with the lowest evaluated cost,¹⁸ but not necessarily the lowest submitted price, shall be selected for award.

2.50 The bid price read out 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. Price adjustment provisions applying to the period of implementation of the contract shall not be taken into account in the evaluation.

2.51 The evaluation and comparison of bids shall be on CIP (place of destination) prices for the supply of imported goods¹⁹ and EXW prices, plus cost of inland transportation and insurance

¹⁶ See paragraph 2.44

¹⁷ See para. 2.50 regarding corrections.

¹⁸ See para. 2.52.

¹⁹ The Grantee 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.

to the place of destination, for goods manufactured within Cape Verde, together with prices for any required installation, training, commissioning, and other similar services.²⁰

2.52 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 factors other than price to be used for determining the lowest evaluated bid shall, to the extent practicable, be expressed in monetary terms, or given a relative weight in the evaluation provisions in the bidding documents.

2.53 Under works and turnkey contracts, contractors are responsible for all duties, taxes, and other levies,²¹ and bidders shall take these factors into account in preparing their bids. The evaluation and comparison of bids shall be on this basis. Bid evaluation for works shall be strictly in monetary terms. Any procedure under which bids above or below a predetermined assessment of bid values are automatically disqualified is not acceptable. If time is a critical factor, the value of early completion to the Grantee 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.

2.54 The Borrower 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

2.55 This paragraph defining requirements for use of Domestic Preferences is DELETED. [*Application of domestic preferences for nationality or local content shall not be permitted.*]

2.56 This paragraph defining requirements for use of Domestic Preferences is DELETED. [*Application of domestic preferences for nationality or local content shall not be permitted.*]

Extension of Validity of Bids

2.57 The Grantee 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. In the case of fixed price contracts, requests for second and subsequent extensions will be permissible only if the request for extension provides for an appropriate adjustment mechanism of the quoted price to reflect

²⁰ 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); (b) sales and similar taxes levied in connection with the sale or delivery of the goods

²¹ Unless bidding documents specify otherwise for some turnkey contracts (see para. 2.22).

changes in the cost of inputs for the contract over the period of extension. 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. Bidders 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.

Postqualification of Bidders

2.58 If bidders have not been prequalified, the Grantee shall determine whether the bidder whose bid has been determined to offer the lowest evaluated cost 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 Grantee shall make a similar determination for the next-lowest evaluated bidder.

Award of Contract

2.59 The Grantee 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 cost.²² 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

2.60 Within two weeks of receiving the MCC's "no objection" to the recommendation of contract award, the Grantee shall publish in MCA-Cape Verde-Country Website, in UNDB online and in dgMarket the results identifying the bid and lot numbers and the following information: (a) name of each bidder who submitted a bid; (b) bid prices as read out at bid opening; (c) name and evaluated prices of each bid that was evaluated; (d) name of bidders whose bids were rejected and the reasons for their rejection; and (e) name of the winning bidder, and the price it offered, as well as the duration and summary scope of the contract awarded.

Rejection of All Bids

2.61 Bidding documents usually provide that the Grantee may reject all bids. Rejection of all bids is justified when there is lack of effective competition, or bids are not substantially responsive or when bid prices are substantially higher than existing budget. 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 Grantee may, after the MCC's prior approval, reject all bids. If all bids are rejected, the Borrower shall review the causes

²² Referred to as "lowest evaluated bidder" and "lowest evaluated bid," respectively.

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.

2.62 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 the agreement of the MCC from only those that submitted bids in the first instance.

2.63 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 Grantee's pre-bid cost estimates by a substantial margin, the Grantee shall investigate causes for the excessive cost and consider requesting new bids as described in the previous paragraphs. Alternatively, the Grantee 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 may require rebidding.

2.64 The MCC's prior approval shall be obtained before rejecting all bids, soliciting new bids, or entering into negotiations with the lowest evaluated bidder.

Debriefing

2.65 In the publication of Contract Award referred to in paragraph 2.60 the Grantee shall specify that any bidder who wishes to ascertain the grounds on which its bid was not selected, should request an explanation from the Grantee. The Grantee 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 Grantee. The requesting bidder shall bear all the costs of attending such a debriefing.

D. Modified ICB

Operations Involving a Program of Imports

2.66 These two paragraphs defining modified ICB procedures for a program of imports are DELETED.

2.67 These two paragraphs defining modified ICB procedures for a program of imports are DELETED.

Procurement of Commodities

2.68 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. The currency shall be specified in the bidding document. Bidding documents may permit telexed or faxed bids or bids submitted by electronic means, and in such cases either no bid security is required, or standing bid securities valid over a specified period of time have been submitted by prequalified bidders. Standard contract conditions and forms consistent with market practices shall be used.

III. OTHER METHODS OF PROCUREMENT

General

3.1 This Section describes the methods of procurement that can be used where ICB would not be the most economic and efficient method of procurement, and where other methods are deemed more appropriate.²³ Paragraphs 3.2 to 3.7 describe the generally used methods in descending order of preference and the remaining paragraphs the methods used in specific circumstances.

Limited International Bidding

3.2 Limited International Bidding (LIB) is essentially ICB 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 ICB procedures. Under LIB, The Grantee shall seek bids from a list of potential suppliers broad enough to assure competitive prices, such list to include all suppliers when there are only a limited number. Domestic preferences are not applicable in the evaluation of bids under LIB. In all respects other than advertisement and preferences, ICB procedures shall apply, including the publication of the Award of Contract as indicated in paragraph 2.60.

National Competitive Bidding

3.3 National Competitive Bidding (NCB) is the competitive bidding procedure normally used for public procurement in the country of the Grantee, and may be the most appropriate way of procuring goods or works which, by their nature or scope, are unlikely to attract foreign competition. To be acceptable for use in MCC financed procurement, these procedures shall be reviewed and modified as necessary to assure economy, efficiency, transparency, and broad consistency with the provisions included in these Procurement Guidelines. NCB may be the most appropriate method of procurement where foreign bidders are not expected to be interested because (a) the contract values are less than 100,000 USD, (b) works are scattered geographically or spread over time, (c) works are labor intensive, or (d) the goods or works are available locally at prices below the international market. NCB procedures may also be used where the advantages of ICB are clearly outweighed by the administrative or financial burden involved.

²³ Contracts shall not be divided into smaller units in order to make them less attractive for ICB procedures; any proposal to divide a contract into smaller packages shall require the prior approval of the MCC.

3.4 All procurements valued at 30,000 USD or above shall be advertised in UNDB online, in MCA-Cape Verde-Country website, and in dg Market (Procurements valued at 100,000 USD and above must also be posted at UNDB online.) For procurements less than the threshold amount as specified (30,000USD), advertising may be limited to the MCA-Cape Verde-Country Website, the national press or official gazette, or a free and open access website. Bidding documents may be only in a national language of Cape Verde and the currency of Cape Verde. In addition, the bidding documents shall provide clear instructions on how bids should be submitted, how prices should be offered, and the place and time for submission of bids. Adequate response time for preparation and submission of bids shall be provided. The procedures shall provide for adequate competition in order to ensure reasonable prices, and methods used in the evaluation of bids and the award of contracts shall be objective and made known to all bidders in the bidding documents and not be applied arbitrarily. The procedures shall also include public opening of bids, publication of results of evaluation and of the award of contract and provisions for bidders to protest. If foreign firms wish to participate under these circumstances, they shall be allowed to do so.

Shopping

3.5 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, 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. (Small value is defined as procurements valued at less than 30,000USD.) Requests for quotations shall indicate the description and quantity of the goods or specifications of works, as well as desired delivery (or completion) time and place. Quotations may be submitted by letter, facsimile or by electronic means. The evaluation of quotations shall follow the same principles as of open bidding. The terms of the accepted offer shall be incorporated in a purchase order or brief contract.

Direct Contracting

3.6 Direct contracting is contracting without competition (single source) and may be an appropriate method under the following circumstances:

(a) An existing contract for goods or works, awarded in accordance with procedures acceptable to the MCC, may be extended for additional goods or works of a similar nature. The 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.

(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 the MCC.

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

(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.

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

3.7 After the contract signature, the Grantee shall publish in MCA-Cape Verde-Country Website, in UNDB online and in dgMarket for all procurements valued above 2,000 USD 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

3.8 Force account, that is, construction by the use of the Grantee's own personnel and equipment,²⁴ may be the only practical method for constructing some kinds of works. The use of force account may be justified where:

- (a) quantities of work involved cannot be defined in advance;
- (b) works are small and scattered or in remote locations for which qualified construction firms are unlikely to bid at reasonable prices;
- (c) work is required to be carried out without disrupting ongoing operations;
- (d) risks of unavoidable work interruption are better borne by the Grantee than by a Contractor; and
- (e) there are emergencies needing prompt attention.

Procurement from United Nations Agencies

3.9 There may be situations in which procurement directly from specialized agencies of the United Nations (UN), acting as suppliers, pursuant to their own procedures, may be the most appropriate way of procuring: (a) small quantities of off the shelf goods, primarily in the fields of education and health; and (b) specialized products where the number of suppliers is limited such as for vaccines or drugs.

Procurement Agents

3.10 Where the Grantee lacks the necessary organization, resources, and experience, the Grantee may wish (or be required by the MCC) to employ, as their agent, a firm specializing in handling procurement. The agent shall follow all the procurement procedures provided for in the Compact and Supplemental Agreements, including the Procurement Agreement, and as further elaborated in the Procurement Plan approved by the MCC on behalf of the Grantee, including use of the accepted SBDs, review procedures, and documentation. This also applies in cases

²⁴ A government-owned construction unit that is not managerially and financially autonomous shall be considered a force account unit. "Force account" is otherwise known as "direct labor," "departmental forces," or "direct work."

where UN agencies act as procurement agents.²⁵ 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

3.11 Preshipment inspection and certification of imports is one of the safeguards for the Grantee, particularly where the country has a large import program. The inspection and certification usually covers quality, quantity, and reasonableness of price. Imports procured through ICB procedures shall not be subject to price verification, but only verification for quality and quantity. However, imports not procured through ICB may additionally be subjected to price verification. The inspection agents are ordinarily 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 ICB.

Procurement in Loans to Financial Intermediaries

3.12 Where the loan provides funds to an intermediary institution such as an agricultural credit institution or a development finance company, to be re-lent to beneficiaries such as individuals, private sector enterprises, small and medium enterprises, or autonomous commercial enterprises in the public sector for the partial financing of subprojects, the procurement is usually undertaken by the respective beneficiaries in accordance with established private sector or commercial practices, which are acceptable to the MCC. However, even in these situations, ICB may be the most appropriate procurement method for the purchase of large single items or in cases where large quantities of like goods can be grouped together for bulk purchasing.

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

3.13 Where the MCC is participating in financing the cost of a project procured under a BOO/BOT/BOOT,²⁶ concessions or similar type of private sector arrangement, either of the following procurement procedures shall be used, as provided for in the Compact including the Supplemental Agreements and further elaborated in the Procurement Plan approved by the MCC:

(a) The concessionaire or entrepreneur under the BOO/BOT/BOOT or similar type of contract²⁷ shall be selected under ICB procedures acceptable to the 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,

²⁵ The Consultant Guidelines shall apply for the selection of procurement and inspection agents. The cost or fee of the procurement or inspection agent is eligible for financing from the MCC grant, if so provided in the Compact and in the Procurement Plan, and provided the terms and conditions of selection and employment are acceptable to the MCC.

²⁶ BOO: Build, Own, Operate; BOT: Build, Operate, Transfer; BOOT: Build, Own, Operate, Transfer

²⁷ For projects such as toll roads, tunnels, harbors, bridges, power stations, waste disposal plants, and water distribution systems.

the cost charged to the user or purchaser, other income generated for the Grantee or purchaser by the facility, and the period of the facility's depreciation. The said entrepreneur selected in this manner shall then be free to procure the goods, works, and services required for the facility from eligible sources, using its own procedures. In this case, the Project Appraisal Document, shall specify the type of expenditures incurred by the said entrepreneur towards which MCC financing will apply.

Or,

(b) If the said concessionaire or entrepreneur has not been selected in the manner set forth in subparagraph above, the goods, works, or services required for the facility and to be financed by the MCC shall be procured in accordance with ICB procedures defined in Section II.

Performance Based Procurement

3.14 Performance Based Procurement,²⁸ also called Output Based Procurement, refers to competitive procurement processes (ICB or NCB) 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 level of outputs and, in certain cases; premiums may be paid for higher quality level 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.

3.15 Performance Based Procurement (or Output 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 borrower; 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.²⁹ For the cases where design, supply and/or construction are required, prequalification is normally required and the use of Two Stage Bidding as indicated in paragraph 2.6 shall apply.

3.16 is DELETED.

²⁸ The use of Performance Based Procurement in MCC financed projects should be the result of the satisfactory technical analysis of the different options available and should be either included in the PAD or subject to prior approval by the MCC for incorporation into the procurement plan.

²⁹ 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.

Community Participation in Procurement

3.17 DELETED [*Evaluation criteria that fostered locally based initiative will not be used*].

Indefinite Quantity Contracts

3.18 These contracts are used when the MCA-Cape Verde needs to have “on call” orders for works or goods but the extent and timing of which cannot be defined in advance. The contract provides for an indefinite quantity, within stated maximum or minimum limits of specific goods, works or services to be furnished during a fixed period by placing orders with the contractor. These contracts shall be procured through a Competitive Bidding process. When multiple contracts are awarded, orders shall be placed only after the contractors have competed in a limited bidding process for the order. MCC prior approval is required before beginning a procurement that contemplates an indefinite quantity contract.

APPENDIX 1: REVIEW BY THE MCC OF PROCUREMENT DECISIONS

Prior Review

The MCC shall take prior review of the procurement actions and decisions according to the Schedule of Approvals set out in Schedule II.

Post Review

The Grantee shall retain all documentation with respect to each contract not governed by paragraph two during Project implementation and up to five years after the closing date of the Compact. This documentation would include, but not be limited to, the signed original of the contract, the analysis of the respective proposals, and recommendations for award, for examination by the MCC or by its consultants. The Grantee shall also furnish such documentation to the MCC upon request. If the MCC determines that the goods, works or services were not procured in accordance with the agreed procedures, as reflected in the Compact including the Supplemental Agreements and further detailed in the Procurement Plan approved by the MCC or that the contract itself is not consistent with such procedures, it may declare misprocurement as established in paragraph 1.12 of the Procurement Guidelines. The MCC shall promptly inform the Grantee of the reasons for such determination.

APPENDIX 2: DOMESTIC PREFERENCES

Preference for Domestically Manufactured Goods

This appendix defining the requirements and rules for using domestic preferences is DELETED.

APPENDIX 3: GUIDANCE TO BIDDERS

This appendix providing guidance on policies and procedures of The MCC in the operation of its program is deleted. [*Bidders can learn about the Millennium Challenge Corporation and its programs at www.mcc.gov and about the Millennium Challenge Cape Verde Fund.*]

Annex 2

Procurement Guidelines: Procurement of Consultants and Consulting Services

The principles, rules and procedures set out in The World Bank Guidelines: Selection and Employment of Consultants by World Bank Borrowers, May 2004 (WB Procurement Guidelines) as modified in the text that follows shall govern the conduct and administration of the procurement of the consultant services that need to be acquired to implement the projects and programs under the Compact.

I. INTRODUCTION

Purpose

- 1.1 DELETED
- 1.2 DELETED
- 1.3 DELETED

General Considerations

- 1.4 DELETED
- 1.5 DELETED.
- 1.6 The particular methods to be followed for the selection of consultants under the Compact shall be set out in the semi-annual Procurement Plans.

Applicability of Guidelines

- 1.7 DELETED
- 1.8 DELETED

Conflict of Interest

1.9 MCC requires that consultants provide professional, objective, and impartial advice and at all times hold the client's interests paramount, without any consideration for future work, and that in providing advice they 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 Grantee. Without limitation on the generality of the forgoing, consultants shall not be hired under the circumstances set forth below:

- (a) Conflict between consulting activities and procurement of goods, works or services (other than consulting services covered by these Procurement Guidelines): A firm that has been engaged by the Grantee to provide goods, works, or services (other than consulting services covered by these Procurement Guidelines) for a project, and each of its affiliates, shall

be disqualified from providing consulting services related to those goods, works or services. Conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and each of its affiliates, shall be disqualified from subsequently providing goods, works or services (other than consulting services covered by these Procurement Guidelines) resulting from or directly related to the firm's consulting services for such preparation or implementation.

(b) Conflict among consulting 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 to prepare engineering design for an infrastructure project shall not be engaged to prepare an independent environmental assessment for the same project, and consultants assisting a client in the privatization of public assets shall neither purchase, nor advise purchasers of, such assets. Similarly, consultants hired to prepare Terms of Reference (TOR) for an assignment shall not be hired for the assignment in question.

(c) Relationship with Grantee's staff: Consultants (including their personnel and sub-consultants) that have a business or family relationship with a member of the Grantee's staff (or of the project implementing agency's staff, or of a beneficiary of the grant) who are directly or indirectly involved in any part of: (i) the preparation of the TOR of the contract, (ii) the selection process for such contract, or (iii) supervision of such contract may not be awarded a contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the MCC throughout the selection process and the execution of the contract.

Unfair Competitive Advantage

1.10 Fairness and transparency in the selection process require that consultants or their affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to the assignment in question. To that end, the Grantee shall make available to all the short listed consultants together with the request for proposals all information that would in that respect give a consultant a competitive advantage.

Eligibility

1.11 To foster competition MCC permits firms and individuals from almost all countries to offer consulting services for MCC -financed projects. Any conditions for participation shall be limited to those that are essential to ensure the firm's capability to fulfill the contract in question. However,

(a) Consultants may be excluded if (i) as a matter of law or official regulations, Cape Verde prohibits commercial relations with the consultant's country, provided that MCC is satisfied that such exclusion does not preclude effective competition for the procurement of the consulting 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, Cape Verde prohibits any payments to any country, person, or entity. Where the Cape Verde prohibits payments to a particular firm or for particular goods by such an act of compliance, that firm may be excluded.

(b) Government- owned enterprises or institutions in Cape Verde 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 Cape Verde.

(c) As an exception to (b), when the services of government owned universities or research centers in Cape Verde are of unique and exceptional nature, and their participation is critical to project implementation, MCC may agree on the hiring of those institutions on a case-by-case basis.

(d) Government officials and civil servants may only be hired under consulting contracts, either as individuals or as members of a team of a consulting 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

(i) their employment would not create a conflict of interest (see paragraph 1.9).

(e) A firm declared ineligible by MCC in accordance with subparagraph (d) of paragraph 1.22 of these Procurement Guidelines shall be ineligible to be awarded a MCC financed contract during such period of time as the MCC shall determine.

(f) Any person or entity that has been blacklisted from participation in procurements funded with The World Bank assistance or debarred or suspended from participation in procurements funded by the US Federal Government or otherwise prohibited by applicable United States law or Executive Order or United States policies shall be excluded from procurements awarded under the Compact; including under any then-existing anti-terrorist policies. Without limiting the foregoing, this would remove from eligibility any consultant, sub-consultant or personnel who or which are nationals of any country that is subject to sanction or restriction by United States law or policy. As of the date hereof, this list includes Cuba, Iran, Libya, North Korea, Sudan and Syria.

Advance Contracting and Retroactive Financing

1.12 In certain circumstances, such as to accelerate project implementation, the Grantee may, with the MCC's approval, wish to proceed with the selection of consultants before the Compact comes into force.. This process is referred to as advance contracting. In such cases, the selection procedures, including advertisement, shall be in accordance with these Procurement Guidelines, and the MCC shall review the process used by the Grantee. The Grantee undertakes such advance contracting at its own risk, and any "no objection" issued by the MCC with regard to the procedures, documentation, or proposal for award does not commit the MCC to make a grant for the project in question. Under no circumstances will MCC reimburse the Grantee for any contract costs if the contract is signed prior to entry into effect of the Grant and any required MCC approval.

Associations between Consultants

1.13 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, to offer lower prices. Such an association may be for the long term (independent of any particular assignment) or for a specific assignment. If the Grantee employs an association in the form of a joint venture, the association should appoint one of the firms to represent the association; all members of the joint venture shall sign the contract and shall be jointly and severally liable for the entire assignment. Once the short list is finalized, and Requests for Proposals (RFP) are issued, any association in the form of joint venture or sub-consultancy among short-listed firms shall be permissible only with the approval of the Grantee. The Grantee shall not require consultants to form associations with any specific firm or group of firms, but may encourage association with qualified national firms.

MCC Review, Assistance, and Monitoring

1.14 The MCC reviews the Grantee's hiring of consultants to satisfy itself that the Selection process is carried out in accordance with the provisions of these Procurement Guidelines. The review procedures are described in Schedule II of the Procurement Guidelines.

1.15 is DELETED [*The MCC will not furnish any lists of suggested consultants.*]

1.16 The Grantee is responsible for supervising the consultants' performance and ensuring that they carry out the assignment in accordance with the contract. Without assuming the responsibilities of the Grantee or the consultants, MCC staff shall monitor the work as necessary to satisfy themselves that it is being carried out according to appropriate standards and is based on acceptable data. As appropriate, the MCC may take part in discussions between the Grantee and consultants and, if necessary, may help the Grantee 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 the Grantee's agreement, visit these offices to review the consultants' work.

Misprocurement

1.17 The MCC does not finance expenditures for consulting services if the consultants or consulting services selected have not been contracted in accordance with the agreed provisions of the Compact and the Procurement Plan as approved by the MCC. In such cases, the MCC will declare misprocurement, and cancel the portion of funds allocated to services that have been misprocured if corrective measures satisfactory to the MCC are not taken. The Grantee may exercise other remedies, and the MCC may temporarily suspend or permanently cancel re-disbursement. Even once the contract is awarded after obtaining a "no objection" from the MCC, the MCC may still declare misprocurement if it concludes that the "no objection" was issued on the basis of incomplete, inaccurate, or misleading information furnished by the Grantee or the terms and conditions of the contract had been modified without MCC approval.

1.18 The Grantee shall use the following language when referring to the MCC in the RFP and contract documents:

"The Millennium Challenge Corporation signed a Millennium Challenge Compact with the Government of Cape Verde in July 2005. This Compact proposes to reduce poverty and spur economic growth in Cape Verde. Payment by MCC under the Compact will be made only at the

request of MCA-Cape Verde and upon approval by MCC, and will be subject, in all respects, to the terms and conditions of the Compact.”

Training or Transfer of Knowledge

1.19 If the assignment includes an important component for training or transfer of knowledge to Grantee 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

1.20 The RFP and the proposals shall be prepared:

(a) in the Portuguese language in procurements estimated to be less than \$100,000, but may also be in English;

(b) in the English language in procurements estimated to be \$100,000 or more, but may also be in Portuguese.

The contract signed with the winning offeror that is priced at USD100,000 or greater shall be written in the English language and this version shall govern contractual relations between Cape Verde and the winning consultant.

1.21 Consultants shall not be required or permitted to sign contracts in two languages

Fraud and Corruption

1.22 MCC requires that Grantees (including beneficiaries of MCC grants), as well as consultants under MCC financed contracts, observe the highest standard of ethics during the selection and execution of such contracts. In pursuance of this requirement, the MCC:

(a) defines, for the purposes of this provision, the terms set forth below as follows: the knowledge of the Grantee, designed to establish prices at artificial, noncompetitive levels;

(i) “corrupt practice” means the offering, giving, receiving, or soliciting of, directly or indirectly, any thing of value to influence the action of a public official³⁰ in the selection process or in contract execution;

(ii) “fraudulent practice” means a misrepresentation or omission of facts in order to influence a selection process or the execution of a contract;

(iii) “collusive practices” means a scheme or arrangement between two or more consultants, with or without the knowledge of the Grantee, designed to establish prices at artificial, noncompetitive levels;

³⁰ Includes MCC staff and employees of other organizations taking or reviewing procurement decisions.

(iv) “coercive practices” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract.

(b) will reject a proposal for award if it determines that the consultant recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the contract in question;

(c) will cancel the portion of the grant allocated to a contract if it determines at any time that representatives of the Grantee or of a beneficiary of the grant were engaged in corrupt, fraudulent, collusive, or coercive practices during the selection process or the execution of that contract, without the Grantee having taken timely and appropriate action satisfactory to MCC to remedy the situation;

(d) will sanction a consultant, including declaring ineligible, either indefinitely or for a stated period of time, to be awarded a MCC financed contract if it at any time determines that the consultant has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for, or in executing, a MCC financed contract; and

(e) will have the right to require that, in contracts financed by a MCC grant, a provision be included requiring consultants to permit the MCC to inspect their accounts and records and other documents relating to the submission of proposals and contract performance and to have them audited by auditors appointed by the MCC.

1.23 With the specific agreement of the MCC, a Grantee may introduce, into the RFP for large contracts financed by the MCC, a requirement that the consultant include in the proposal an undertaking of the consultant to observe, in competing for and executing a contract, the country’s laws against fraud and corruption (including bribery), as listed in the RFP.³¹ The MCC will accept the introduction of such a requirement at the request of Cape Verde, provided the arrangements governing such undertaking are satisfactory to the MCC.

Procurement Plan

1.24 DELETED [*The rules for preparing and implementing the Procurement Plan are set out in the Procurement Agreement.*]

II. QUALITY AND COST BASED SELECTION (QCBS)

The Selection Process

2.1 QCBS uses a competitive process among short-listed firms 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.

³¹ As an example, such an undertaking might read as follows: “We undertake that, in competing for (and, if the award is made to us, in executing) the above contract, we will observe the laws against fraud and corruption in force in Cape Verde, as such laws have been listed by Cape Verde in the RFP for this contract.”

2.2 The steps of the selection process shall include the following steps unless MCC specifically approves a modification in the procedure that is justified under the circumstances of a particular procurement:

- (a) preparation of the TOR;
- (b) preparation of cost estimate and the budget;
- (c) advertising;
- (d) preparation of the short list of consultants;
- (e) preparation and issuance of the RFP[*which should include: the Letter of Invitation (LOI); Instructions to Consultants (ITC); the TOR and the proposed draft contract*];
- (f) receipt of proposals;
- (g) evaluation of technical proposals: consideration of quality;
- (h) public opening of financial proposals;
- (i) evaluation of financial proposal;
- (j) final evaluation of quality and cost; and
- (k) negotiations and award of the contract to the selected firm.

Terms of Reference (TOR)

2.3 The Grantee shall be responsible for preparing the TOR for the assignment. TOR shall be prepared by a 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. 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. TOR shall list the services and surveys necessary to carry out the assignment and the expected outputs (for example, reports, data, maps, surveys). However, TOR should not be too detailed and inflexible, so that competing consultants may propose their own methodology and staffing. Firms shall be encouraged to comment on the TOR in their proposals. The Grantee's and consultants' respective responsibilities should be clearly defined in the TOR.

Cost Estimate (Budget)

2.4 Preparation of a well thought -through cost estimate is essential if realistic budgetary resources are to be earmarked. The cost estimate shall be based on the Grantee's assessment of the resources needed to carry out the assignment: staff time, logistical support, and physical inputs (for example, vehicles, laboratory equipment). Costs shall be divided into two broad

categories: (a) fee or remuneration (according to the type of contract used) and (b) reimbursables, and further divided into foreign and local costs. The cost of staff time shall be estimated on a realistic basis for foreign and national personnel.

Advertising

2.5 Each procurement shall be open to foreign and national participants without restrictions or preferences. General notice of anticipated procurements for consultant services shall be included in procurement plan which is published semi-annually as a General Procurement Notice. Specific procurement notices of consultant contracts expected to cost more than 30,000 USD shall be advertised in MCA-Cape Verde website and in dgMarket. In addition, contracts expected to cost more than 100,000 USD shall be advertised in UN Development Business Online as well as at the MCA-Cape Verde website and in dgMarket³². The Grantee may also advertise the procurements in national and international paper publications or electronic media. The text of the advertisement, whether a Request for Expressions of Interest or a Request for Proposals may be subject to review by the MCC.

Short List of Consultants

2.6 The Grantee is responsible for preparation of the short list which is expected to include six to ten firms or organizations unless a smaller number of firms is justified under the circumstances of the particular procurement. Consideration will be given to all firms or organizations— national and international—expressing interest and possessing the relevant qualifications. The method for developing a shortlist shall be fair and objective according to pre-announced criteria. In the case of procurements valued over a threshold amount set out in Schedule II, the short list shall be subject to review and “no objection” by MCC.

2.7 The Grantee is responsible for preparation of the short list which is expected to include six to ten firms or organizations unless a smaller number of firms is justified under the circumstances of the particular procurement. Consideration will be given to all firms or organizations— national and international—expressing interest and possessing the relevant qualifications. The method for developing a shortlist shall be fair and objective according to pre-announced criteria. In the case of procurements valued over a threshold amount set out in Schedule II, the short list shall be subject to review and “no objection” by MCC.

2.8 The Grantee is responsible for preparation of the short list which is expected to include six to ten firms or organizations unless a smaller number of firms is justified under the circumstances of the particular procurement. Consideration will be given to all firms or organizations— national and international—expressing interest and possessing the relevant qualifications. The method for developing a shortlist shall be fair and objective according to pre-announced criteria. In the case of procurements valued over a threshold amount set out in Schedule II, the short list shall be subject to review and “no objection” by MCC.

³² UNDB is a publication of the United Nations. Subscription information is available from: Development Business, United Nations, GCPO Box 5850, New York, NY 101635850, USA (Website: www.devbusiness.com; email: dbsubscribe@un.org); Development Gateway Market is an electronic portal of Development Gateway Foundation, 1889 F Street NW, Washington, DC 20006, USA (Website: www.dgmarket.com).

Preparation and Issuance of the Request for Proposals (RFP)

2.9 The RFP shall include (a) a Letter of Invitation, (b) Information to Consultants, (c) the TOR, and (d) the proposed contract. The Grantee shall use the applicable standard RFPs issued by The World Bank as modified to reflect the exceptions set out in the Procurement Agreement with MCC and changes to address project-specific conditions, subject to MCC approval when the change is significant. The Grantee shall list all the documents included in the RFP. The Grantee may use an electronic system to distribute the RFP, provided that the 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 restrict the access of short-listed consultants to the RFP.

Letter of Invitation (LOI)

2.10 The LOI shall state the intention of the Grantee to enter into a contract for the provision of consulting services, the source of funds, the details of the Grantee and the date, time, and address for submission of proposals.

Instructions to Consultants (ITC)

2.11 The ITC shall contain all necessary information that would help consultants prepare responsive proposals, and shall bring as much transparency as possible to the selection procedure by providing information on the evaluation process and by indicating the evaluation criteria and factors and their respective weights and the minimum passing quality score. The ITC shall indicate an estimate of the level of key staff inputs (in staff time) required of the consultants or the total budget but not both. Consultants, however, shall be free to prepare their own estimates of staff time to carry out the assignment and to offer the corresponding cost in their proposals. The ITC shall specify the proposal validity period, which should be adequate for the evaluation of proposals, decision on award, MCC review, and finalization of contract negotiations. A detailed list of the information that should be included in the ITC is provided in Appendix 2 of this Section.

Contract

2.12 Section IV of these Procurement Guidelines briefly discusses the most common types of contracts. The Grantee shall use an appropriate Standard Form of Contract, acceptable to the MCC, as necessary to address specific country and project issues. Any such changes shall be introduced generally through Contract Data Sheets or through Special Conditions of Contract rather than by introducing changes in the wording of the General Conditions of Contract included in the Standard Forms. These forms of contract cover the majority of consulting services. When these forms are not appropriate (for example, for preshipment inspection, procurement services, training of students in universities, advertising activities in privatization, or twinning) the Grantee shall use other contract forms acceptable to the MCC.

Receipt of Proposals

2.13 The Grantee shall allow enough time for the consultants to prepare their proposals. The time allowed shall depend on the assignment, but normally shall not be less than four weeks or

more than three months (for example, for assignments requiring establishment of a sophisticated methodology, preparation of a multidisciplinary master plan). During this interval, the firms may request clarifications about the information provided in the RFP. The Grantee shall provide these clarifications in writing and copy them to all firms on the short list (who intend to submit proposals). If necessary, the Grantee shall extend the deadline for submission of proposals. The technical and financial proposals shall be submitted at the same time. No amendments to the technical or financial proposal 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. The technical envelopes shall be opened immediately by a committee of officials drawn from the relevant departments (technical, finance, legal, as appropriate), after the closing time for submission of proposals. The financial proposals shall remain sealed and shall be deposited with a reputable public auditor or independent authority until they are opened publicly. Any proposal received after the closing time for submission of proposals shall be returned unopened. The Grantee may use electronic systems permitting consultants to submit proposals by electronic means, provided the MCC is satisfied with the adequacy of the system, including, inter alia, that the system is secure, maintains the confidentiality and authenticity of proposals submitted, uses an electronic signature system or equivalent to keep consultants bound to their proposals, and only allows proposals to be opened with due simultaneous electronic authorization of the consultant and the Grantee. In this case, consultants shall continue to have the option to submit their proposals in hard copy.

Evaluation of Proposals: Consideration of Quality and Cost

2.14 The evaluation of the proposals shall be carried out in two stages: first the quality, and then the cost. Evaluators of technical proposals shall not have access to the financial proposals until the technical evaluation, including any MCC reviews and no objection, is concluded. Financial proposals shall be opened only thereafter. The evaluation shall be carried out in full conformity with the provisions of the RFP.

Evaluation of the Quality

2.15 *[This has been modified to delete all references to the use of "transfer of knowledge" and "participation of nationals" to evaluate the quality of proposals]* The Grantee shall evaluate each technical proposal (using an evaluation committee of three or more specialists in the sector), taking into account several criteria: (a) the consultant's relevant experience for the assignment, (b) the quality of the methodology proposed, (c) the qualifications of the key staff proposed. Each criterion shall be marked on a scale of 1 to 100. Then the marks shall be weighted to become scores. The following weights are indicative. The actual percentage figures to be used shall fit the specific assignment and shall be within the ranges indicated below, except with the approval of the MCC. The proposed weights shall be disclosed in the RFP.

Consultant's specific experience: 0 to 10 points

Methodology: 20 to 50 points

Key personnel: 30 to 60 points

Total: 100 points

2.16 The Grantee shall normally divide these criteria into sub criteria. For example, sub criteria under methodology might be innovation and level of detail. However, the number of sub criteria should be kept to the essential. The MCC recommends against the use of exceedingly detailed lists of sub criteria that may render the evaluation a mechanical exercise more than a professional assessment of the proposals. The weight given to experience can be relatively modest, since this criterion has already been taken into account when short-listing the consultant. More weight shall be given to the methodology in the case of more complex assignments (for example, multidisciplinary feasibility or management studies).

2.17 Evaluation of only the key personnel is recommended. Since key personnel ultimately determine the quality of performance, more weight shall be assigned to this criterion if the proposed assignment is complex. The Grantee shall review the qualifications and experience of proposed key personnel in their curricula vitae, which must be accurate, complete, and signed by an authorized official of the consulting firm and the individual proposed.

The individuals shall be rated in the following three sub criteria, as relevant to the task:

(a) general qualifications: general education and training, length of experience, positions held, time with the consulting firm as staff, experience in developing countries, and so forth;

(b) adequacy for the assignment: education, training, and experience in the specific sector, field, subject, and so forth, relevant to the particular assignment; and

(c) experience in the region: knowledge of the local language, culture, administrative system, government organization, and so forth.

2.18 The Grantee shall evaluate each proposal on the basis of its responsiveness to the TOR. A proposal shall be considered unsuitable and shall be rejected at this stage if it does not respond to important aspects of the TOR or it fails to achieve a minimum technical score specified in the RFP.

2.19 At the end of the process, the Grantee shall prepare a Technical Evaluation Report of the “quality” of the proposals and, in the case of contracts subject to prior review, submit it to the MCC for its review and “no objection”. The report shall substantiate the results of the evaluation and describe the relative strengths and weaknesses of the proposals. All records relating to the evaluation, such as individual mark sheets, shall be retained until completion of the project and its audit.

Evaluation of Cost

2.20 After the evaluation of quality is completed and the required reviews, approvals and no-objections have been issued, the Grantee shall inform the consultants who have submitted proposals, 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 TOR that their financial proposals will be returned unopened after the signature of the contract. The Grantee shall simultaneously notify the consultants that have secured the minimum qualifying mark, the date, time, and place set for opening the financial proposals. The

opening date should be defined to allow some time for 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 posted online when electronic submission of proposals is used) and recorded when the financial proposals are opened, and a copy of this record shall be promptly sent to the MCC. The Grantee shall also prepare the minutes of the public opening and a copy of this record shall be promptly sent to the MCC and to all consultants who submitted proposals.

2.21 *[These rules for review of the financial proposals shall not be interpreted to permit bids in any currency other than United States dollars or the local currency. All contracts must be denominated and paid in either US dollars or the local currency].* The Grantee 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 to be stated in the same currency (local currency, or USD or a combination of the two) as selected by the Grantee. 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.

2.22 *[These rules for evaluating cost proposals shall be subordinated to all related provisions of the Compact and Supplemental Agreements]* For the purpose of evaluation, “cost” shall exclude local identifiable indirect taxes on the contract and income tax payable to the country of the Grantee on the remuneration of services rendered in the country of the Grantee by non-resident staff of the consultant. The cost shall include all consultant’s remuneration and other expenses such as travel, translation, report printing, or secretarial expenses. The proposal with the lowest cost may be given a financial score of 100 and other proposals given financial scores that are inversely proportional to their prices. Alternatively, a directly proportional or other methodology may be used in allocating the marks for the cost. The methodology to be used shall be described in the RFP.

Combined Quality and Cost Evaluation

2.23

2.23.1 The total score shall be obtained by weighting the quality and cost scores and adding them. The weight for the “cost” shall be chosen, taking into account the complexity of the assignment and the relative importance of quality. Except for the type of services specified in Section III, the weight for cost shall normally be 20 points out of a total score of 100. The proposed weightings for quality and cost shall be specified in the RFP. The firm obtaining the highest total score shall be invited for negotiations.

2.23.2 Before inviting the firm obtaining the highest total score for negotiations, the Grantee shall furnish to the MCC for its review and “no objection” a full description of the procurement process including an account of all significant problems or defects during the process and a description of how these were resolved.

Negotiations and Award of Contract

2.24 Negotiations shall include discussions of the TOR, the methodology, staffing, Grantee's inputs, and special conditions of the contract. These discussions shall not substantially alter the original TOR or the terms of the contract, lest the quality of the final product, its cost, and the relevance of the initial evaluation be affected. Major reductions in work inputs should not be made solely to meet the budget. The final TOR and the agreed methodology shall be incorporated in "Description of Services," which shall form part of the contract.

2.25 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.

2.26 Financial negotiations shall include clarification of the consultants' tax liability in the Cape Verde (if any) and how this tax liability has been or would be reflected in the contract. As Lump Sum Contracts payments are based on 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 Lump sum 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, like for example, staff rates offered are much higher than typically charged rates by consultants for similar contracts. Consequently, the prohibition of negotiation does not preclude the right of the client to ask for clarifications, and, if fee are very high, to ask for change of fees, after due consultation with the MCC. Reimbursables are to be paid on actual expenses incurred at cost upon presentation of receipts and therefore are not subject to negotiations. However, if the Grantee wants to define ceilings for unit prices of certain reimbursables (like travel or hotel rates), they 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 cost principles.

2.27 If the negotiations fail to result in an acceptable contract, the Grantee shall terminate the negotiations and invite the next ranked firm for negotiations. The Grantee shall consult with the 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 Grantee shall not reopen the earlier negotiations. After negotiations are successfully completed and all required reviews, approvals and no-objections have been issued, the Grantee shall promptly notify other firms on the short list that they were unsuccessful.

Publication of the Award of Contract

2.28 After the award of contract, the Grantee shall publish in MCA-Cape Verde website, UNDB online and in dgMarket the following information: (a) the names of all consultants who

submitted proposals; (b) the technical points assigned to each consultant; (c) the evaluated prices of each consultant; (d) the final point ranking of the consultants; (e) the name of the winning consultant and the price, duration, and summary scope of the contract. The same information shall be sent to all consultants who have submitted proposals. For contracts valued less than 100,000, the publication in UNDB online and in dgMarket may be done quarterly and in the MCA-Cape Verde website at least weekly and in a format of a summarized table covering the previous period.

Debriefing

2.29 In the publication of contract award referred to in paragraph 2.28 the Grantee shall specify that any consultant who wishes to ascertain the grounds on which its proposal was not selected, should request an explanation from the Grantee. The Grantee shall promptly provide the explanation as to why such proposal was not selected, either 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

2.30 The Grantee will be justified in rejecting all proposals only if all proposals are nonresponsive because they present major deficiencies in complying with the TOR or if they involve costs substantially higher than the original estimate. In the latter case, the feasibility of increasing the budget, or scaling down the scope of services with the firm should be investigated in consultation with the MCC. Before all the proposals are rejected and new proposals are invited, the Grantee shall notify the MCC, indicating the reasons for rejection of all proposals, and shall obtain the MCC's "no objection" 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.

Confidentiality

2.31 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, **until the publication of the award of contract, except as provided in paragraph 2.20 and 2.27.**

III. OTHER METHODS OF SELECTION

General

3.1 This section describes the selection methods other than QCBS, and the circumstances under which they are acceptable. All the relevant³³ provisions of Section II (QCBS) shall apply whenever competition is used.

³³ All provisions of Section II shall be applied with the modifications and suppressions required by the method for selecting consultants used in the specific case. Advertisement for expression of interest is not required when single source selection is used.

Quality Based Selection (QBS)

3.2 QBS is appropriate for the following types of assignments:

(a) complex or highly specialized assignments for which it is difficult to define precise TOR and the required input from the consultants, and for which the client expects the consultants to demonstrate innovation in their proposals (for example, country economic or sector studies, multi-sectoral feasibility studies, design of a hazardous waste remediation plant or of an urban master plan, financial sector reforms);

(b) assignments that have a high downstream impact and in which the objective is to have the best experts (for example, feasibility and structural engineering design of such major infrastructure as large dams, policy studies of national significance, management studies of large government agencies); and

(c) assignments that can be carried out insubstantially different ways, such that proposals will not be comparable (for example, management advice, and sector and policy studies in which the value of the services depends on the quality of the analysis)

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 envelope system). The RFP shall provide either the estimated budget or the estimated number of key staff time, specifying that this information is given as an indication only and that consultants shall be free to propose their own estimates.

3.4 If technical proposals alone were invited, after evaluating the technical proposals using the same methodology as in QCBS, the Grantee shall ask the consultant with the highest ranked technical proposal to submit a detailed financial proposal. The Grantee 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 2.28 except that only the price of the winning firm is published. 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 the price proposal of only the selected firm is opened and the rest returned unopened, after the negotiations are successfully concluded.

Selection under a Fixed Budget (FBS)

3.5 This method is appropriate only when the assignment is simple and can be precisely defined and when the budget is fixed. The RFP shall indicate the available budget and request the consultants to provide their best technical and financial proposals in separate envelopes, within the budget. TOR should be particularly well prepared to make sure that the budget is sufficient for the consultants to perform the expected tasks. Evaluation of all technical proposals shall be carried out first as in the QCBS method. Then the price proposals shall be opened in public and prices shall be read out aloud. Proposals that exceed the indicated budget shall be rejected. The Consultant who has submitted the highest ranked technical proposal among the rest shall be selected and invited to negotiate a contract. The publication of the Award of Contract shall be as described in paragraph 2.28.

Least-Cost Selection (LCS)

3.6 This method is only appropriate for selecting consultants for assignments of a standard or routine nature (audits, engineering design of noncomplex works, and so forth) where well established practices and standards exist. Under this method, a “minimum” qualifying mark for the “quality” is established. Proposals, to be submitted in two envelopes, are invited from a short list. Technical proposals are opened first and evaluated. Those securing less than the minimum qualifying mark³⁴ 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 2.28. Under this method, the minimum qualifying mark shall be established, understanding that all proposals above the minimum compete only on “cost.” The minimum qualifying mark shall be stated in the RFP.

Selection Based on the Consultants’ Qualifications (CQS)

3.7 This method may be used for small³⁵ assignments for which the need for preparing and evaluating competitive proposals is not justified. In such cases, the Grantee shall prepare the TOR, request expressions of interest and information on the consultants’ experience and competence relevant to the assignment, establish a short list, and select the firm with the most appropriate qualifications and references. The selected firm shall be asked to submit a combined technical and financial proposal and then be invited to negotiate the contract.

3.8 The Grantee shall publish in MCA-Cape Verde Website, in UNDB online and in dgMarket the name of the consultant to which the contract was awarded, and the price, duration, and scope of the contract. This publication in UNDB online and in dgMarket may be done quarterly, and in MCA-Cape Verde at least weekly, and in the format of a summarized table covering the previous period.

Single- Source Selection (SSS)

3.9 Single source selection of consultants does not provide the benefits of competition in regard to quality and cost, lacks transparency in election, and could encourage unacceptable practices. Therefore, single source selection shall be used only in exceptional cases. The justification for single source selection shall be examined in the context of the overall interests of the client and the project, and the MCC’s responsibility to ensure economy and efficiency and provide equal opportunity to all qualified consultants.

3.10 Single-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 next paragraph), (b) in emergency cases, such as in response to disasters and for

³⁴ This method shall not be used as a substitute for QCBS and shall be used only for the specific cases of very standard and routine technical nature where the intellectual component is minor. For this method the minimum qualifying mark shall be 70 points or higher.

³⁵ Dollar thresholds defining “small” shall be determined and justified in writing in each case, taking into account the nature and complexity of the assignment, but shall not exceed US\$200,000 except in exceptional circumstances and specifically approved by MCC.

consulting services required during the period of time immediately following the emergency, (c) for very small³⁶ assignments, or (d) when only one firm is qualified or has experience of exceptional worth for the assignment.

3.11 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 Grantee shall ask the initially selected consultant to prepare technical and financial proposals on the basis of TOR furnished by the Grantee, which shall then be negotiated.

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

3.13 The Grantee shall publish in UNDB online and in dg Market the name of the consultant to which the contract was awarded and the price, duration, and scope of the contract. This publication may be done quarterly and in the format of a summarized table covering the previous period.

Commercial Practices

3.14 In the case of loans on lent by a financial intermediary to private sector enterprises or autonomous commercial enterprises in the public sector, the Sub Borrower may follow well established private sector or commercial practices that have been determined by the MCC to be acceptable to it. Consideration shall also be given to the use of competitive procedures outlined earlier, particularly for large assignments.

Selection of Particular Types of Consultants

3.15 Selection of UN Agencies as Consultants. UN agencies may be hired as the consultants, where they are qualified to provide technical assistance and advice in their area of expertise. However, they shall not receive any preferential treatment in a competitive selection process, except that the Grantee may accept the privileges and immunities granted to UN agencies and their staff under existing international conventions and may agree with UN agencies on special payment arrangements required according to the agency's charter, provided these are acceptable to the MCC. To neutralize the privileges of UN Agencies, as well as other advantages such as tax exemption and facilities, and special payment provisions, the QBS method shall be used. UN

³⁶ Dollar thresholds defining "very small" shall be determined in each case, taking into account the nature and complexity of the assignment, but shall not exceed USD10,000.

agencies may be hired on a single source selection basis if the criteria outlined in paragraph 3.10 of these Procurement Guidelines are fulfilled.

3.16 Use of Nongovernmental Organizations (NGOs). NGOs are voluntary nonprofit organizations that may be uniquely qualified to assist in the preparation, management, and implementation of projects, essentially because of their involvement and knowledge of local issues, community needs, and/or participatory approaches. NGOs may be included in the short list if they express interest and provided that the Grantee and the MCC are satisfied with their qualifications. The Grantee should preferably not include consulting firms in the short list for services for which NGOs are better qualified. For assignments that emphasize participation and considerable local knowledge, the short list may comprise entirely NGOs. If so, the QCBS procedure shall be followed, and the evaluation criteria shall reflect the unique qualifications of NGOs, such as voluntarism, nonprofit status, local knowledge, scale of operation, and reputation. The Grantee may select the NGO on a single source basis, provided the criteria outlined in paragraph 3.10 of these Procurement Guidelines are fulfilled.

3.17 Procurement Agents (PAs). When a Grantee lacks the necessary organization, resources, or experience, it may be efficient and effective for it to employ, as its agent, a firm that specializes in handling procurement. When PAs are specifically used as “agents” handling the procurement of specific items and generally working from their own offices, they are usually paid a percentage of the value of the procurements handled, or a combination of such a percentage and a fixed fee. In such cases PAs shall be selected using QCBS procedures with cost being given a weight up to 50 percent. However, when PAs provide only advisory services for procurement or act as “agents” for a whole project in a specific office for such project they are usually paid on a time basis, and in such cases, they shall be selected following the appropriate procedures for other consulting assignments using QCBS procedures and time based contract, specified in these Procurement Guidelines. The agent shall follow all the procurement procedures outlined in the Compact including the Supplemental Agreements and in the Procurement Plan approved by the MCC on behalf of the Grantee, including use of Standard Request for Proposals, review procedures, and documentation.

3.18 Inspection Agents. The Grantee may wish to employ inspection agencies to inspect and certify goods prior to shipment or on arrival in Cape Verde. The inspection by such agencies usually covers the quality and quantity of the goods concerned and reasonableness of price. Inspection agencies shall be selected using QCBS procedures giving cost a weight up to 50 percent and using a contract format with payments based on a percentage of the value of goods inspected and certified.

3.19 Banks. Investment and commercial banks, financial firms, and fund managers hired by Grantees for the sale of assets, issuance of financial instruments, and other corporate financial transactions, notably in the context of privatization operations, shall be selected under QCBS. The RFP shall specify selection criteria relevant to the activity—for example, experience in similar assignments or network of potential purchasers—and the cost of the services. In addition to the conventional remuneration (called a “retainer fee”), the compensation includes a “success fee”; this fee can be fixed, but is usually expressed as a percentage of the value of the assets or other financial instruments to be sold. The RFP shall indicate that the cost evaluation will take into account the success fee, either in combination with the retainer fee or alone. If alone, a

standard retainer fee shall be prescribed for all short listed consultants and indicated in the RFP, and the financial scores shall be based on the success fee. For the combined evaluation (notably for large contracts), cost may be accorded a weight higher than recommended in paragraph 2.23 or the selection may be based on cost alone among those who secure a minimum passing mark for the quality of the proposal. The RFP shall specify clearly how proposals will be presented and how they will be compared.

3.20 Auditors. Auditors typically carry out auditing tasks under well defined TOR and professional standards. They shall be selected according to QCBS, with cost as a substantial selection factor (4050 points) or by the “Least-Cost Selection” outlined in paragraph 3.6. For very small assignments CQS may be used.

3.21 “Service Delivery Contractors.” Projects in the social sectors in particular may involve hiring of large numbers of individuals who deliver services on a contract basis (for example, social workers, such as nurses and paramedics). The job descriptions, minimum qualifications, terms of employment, selection procedures, and the extent of MCC review of these procedures and documents shall be described in the project documentation and the contract shall be included in the Procurement Plan approved by MCC.

IV. TYPES OF CONTRACTS AND IMPORTANT PROVISIONS

Types of Contracts

4.1 *Lump Sum Contract.*³⁷ Lump sum contracts are used mainly for assignments in which the content and the 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 outputs (deliverables), such as reports, drawings, bills of quantities, bidding documents, and software programs. Lump sum contracts are easy to administer because payments are due on clearly specified outputs.

4.2 *Time-Based Contract.*³⁸ This type of 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. This type of contract is widely used for complex studies, supervision of construction, advisory services, and most training assignments. 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. The rates for staff include salary, social costs, overhead, fee (or profit), and, where appropriate, special allowances. This type of contract shall include a maximum amount of total payments to be made to the consultants. This ceiling amount should include a contingency allowance for unforeseen work and duration, and provision for price adjustments, where appropriate. Time based contracts need to be closely monitored and administered by the client to

³⁷ Standard form of Contract for Consultants’ Services (Lump Sum Remuneration)

³⁸ Standard form of Contract for Consultants’ Services (Complex Time Based Assignments). These documents are available on The World Bank’s website at <http://www.worldbank.org/procure>.

ensure that the assignment is progressing satisfactorily and that payments claimed by the consultants are appropriate

4.3 *Retainer and/or Contingency (Success) Fee Contract.* Retainer and contingency fee contracts are widely used when consultants (banks or financial firms) are preparing companies for sales or mergers of firms, notably in privatization operations. The remuneration of the consultant includes a retainer and a success fee, the latter being normally expressed as a percentage of the sale price of the assets.

4.4 *Percentage Contract.* These contracts are commonly used for architectural services. They may be also used for procurement and inspection agents. Percentage contracts directly relate the fees paid to the consultant to the estimated or actual project construction cost, or the cost of the goods procured or inspected. 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 (for example, not works supervision).

4.5 *Indefinite Delivery Contract (Price Agreement).* These contracts are used when Grantee's need to have "on call" specialized services to provide advice on a particular activity, the extent and timing of which cannot be defined in advance. These are commonly used to retain "advisers" for implementation of complex projects (for example, dam panel), expert adjudicators for dispute resolution panels, institutional reforms, procurement advice, technical troubleshooting, and so forth, normally for a period of a year or more. The Grantee and the firm agree on the unit rates to be paid for the experts, and payments are made on the basis of the time actually used.

Important Provisions

4.6 *Currency.* [These rules shall not be interpreted to permit bids in any currency other than United States dollars or the local currency. All contracts shall be denominated and paid only in United States dollars or the local currency of the Republic of Cape Verde.] 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 US dollars or the local currency of the Republic of Cape Verde. The Grantee may require consultants to state the portion of the price representing costs in the local currency of the Republic of Cape Verde. Payment under the contract shall be made in the currency or currencies in which the price is expressed in the proposal.

4.7 *Price Adjustment.* To adjust the remuneration for foreign and/or local inflation, a price adjustment provision shall be included in the contract if its duration is expected to exceed 18 months. Contracts of shorter duration may include a provision for price adjustment when local or foreign inflation is expected to be high and unpredictable.

4.8 *Payment Provisions.* [These rules defining payment provisions shall be subordinated to the disbursement provisions set out in the Disbursement Agreement] Payment provisions, including amounts to be paid, schedule of payments, and payment procedures, shall be agreed upon during negotiations. Payments may be made at regular intervals (as under time based contracts) or for agreed outputs (as under lump sum contracts). Payments for advances (for

example, for mobilization costs) exceeding 10 percent of the contract amount should normally be backed by advance payment securities.

4.9 Payments shall be made promptly in accordance with the contract provisions. To that end,

(a) consultants can be paid directly by the Fiscal Agent at the request of the Grantee or exceptionally through a Letter of Credit;

(b) only disputed amounts shall be withheld, with the remainder of the invoice paid in accordance with the contract; and

(c) the contract shall provide for the payment of financing charges if payment is delayed due to the Grantee's fault beyond the time allowed in the contract; the rate of charges shall be specified in the contract.

4.10 *Bid and Performance Securities.* Bid and performance securities are not recommended 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 consulting industry without evident benefits, which are eventually passed on to the Grantee.

4.11 *Borrower's Contribution.* DELETED

4.12 *Conflict of Interest.* 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 consulting or other activities that conflict with the interest of the Grantee 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 consulting services in accordance with the requirements of paragraphs 1.9 and 1.10 of the Procurement Guidelines.

4.13 *Professional Liability.* The consultant is expected to carry out its assignment with due diligence and in accordance with prevailing standards of the profession. As the consultant's liability to the Grantee will be governed by the applicable law, the contract need not deal with this matter unless the parties wish to limit this liability. If they do so, they should ensure that (a) there must be no such limitation in case of the consultant's gross negligence or willful misconduct; (b) the consultant's liability to the Grantee 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);³⁹ and (c) any such limitation may deal only with the consultant's liability toward the client and not with the consultant's liability toward third parties.

4.14 *Staff Substitution.* 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 Grantee.

³⁹ The Grantee is encouraged to secure insurance for potential risks above these limits.

4.15 *Applicable Law and Settlement of Disputes.* The contract shall include provisions dealing with the applicable law and the forum for the settlement of disputes. Consultants' contracts shall always include a clause for settlement of disputes. International commercial arbitration may have practical advantages over other methods for the settlement of disputes. The Grantee is, therefore, encouraged to provide for this type of arbitration. The MCC shall not be named an arbitrator or be asked to name an arbitrator.⁴⁰

V. SELECTION OF INDIVIDUAL CONSULTANTS

5.1 Individual consultants are employed on assignments for which (a) teams of personnel are not required, (b) no additional outside (home office) professional support is 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

5.2 Individual consultants are selected on the basis of their qualifications for the assignment. Advertisement is required for contracts valued at 30,000USD and above unless there are circumstances to justify a limited competitive process.. Consultants do not need to submit proposals but shall be selected through comparison of qualifications of at least three candidates among those who have expressed interest in the assignment or have been approached directly by the Grantee. Individuals considered for comparison of qualifications shall meet the minimum relevant qualifications and those selected to be employed by the Grantee shall be the best qualified and shall be fully capable of carrying out the assignment. Capability is judged on the basis of academic background, experience, and, as appropriate, knowledge of the local conditions, such as local language, culture, administrative system, and government organization.

5.3 From time to time, permanent staff or associates of a consulting firm may be available as individual consultants. In such cases, the conflict of interest provisions described in these Procurement Guidelines shall apply to the parent firm.

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

APPENDIX 1: REVIEW BY THE BANK OF THE SELECTION OF CONSULTANTS

Scheduling the Selection Process

1. The MCC shall review the selection process for the hiring of consultants proposed by the Grantee in the Procurement Plan to ensure compliance with the Compact and the Supplemental Agreements including this Procurement Agreement. The Procurement Plan shall cover an initial

⁴⁰ It is understood, however, that officials of the International Centre for Settlement of Investment Disputes (ICSID) shall remain free to name arbitrators in their capacity as ICSID officials.

period of at least six months. The Grantee shall update the Procurement Plan on a semi-annual basis or as needed always covering the next six months period of project implementation. Any revisions proposed to the Procurement Plan shall be furnished to the MCC for its prior approval.

Prior Review

[The thresholds for review of procurement decisions prior to award of a contract are set out in Schedule II of this Procurement Agreement.]

Post Review

The Borrower shall retain all documentation with respect to each contract for at least five years after the closing date of the Compact. This documentation would include, but not be limited to, the signed original of the contract, the analysis of the respective proposals, and recommendations for award, for examination by the MCC or by its consultants, except that for contracts awarded on the basis of single source selection, it shall include the record of justification, the qualifications and experience of the consultants, and the signed original of the contract. The Grantee shall also furnish such documentation to the MCC upon request. The MCC shall, if it determines that the contract was not awarded in accordance with the agreed procedures, as reflected in the Compact including the Procurement Agreement and further elaborated in the Procurement Plan approved by the MCC or the contract itself is not consistent with such procedures, promptly inform the Grantee that paragraph 1.17 (Misprocurement) of the Procurement Guidelines shall apply and state the reasons for such determination.

APPENDIX 2: INSTRUCTIONS TO CONSULTANTS (ITC)

The Grantee shall use the applicable standard RFPs accepted by the MCC as modified to reflect the exceptions set out in the Procurement Agreement with MCC and the circumstances of the procurement. This includes ITC as modified to reflect the MCC exceptions and special circumstances of the procurement. The ITC shall include adequate information on the following aspects of the assignment:

- (a) a very brief description of the assignment;
- (b) standard formats for the technical and financial proposals;
- (c) the names and contact information of officials to whom clarifications shall be addressed and with whom the consultants' representative shall meet, if necessary;
- (d) details of the selection procedure to be followed, including (i) a description of the two stage process, if appropriate; and (ii) a listing of the technical evaluation criteria and weights given to each criterion; (iii) the details of the financial evaluation; (iv) the relative weights for quality and cost in the case of QCBS; (v) the minimum pass score for quality; and (vi) the details on the public opening of financial proposals;

- (e) an estimate of the level of key staff inputs (in staff months) required of the consultants or the total budget, but not both;
- (f) indication of minimum experience, academic achievement, and so forth, expected of key staff;
- (g) DELETED
- (h) information on negotiations; and financial and other information that shall be required of the selected firm during negotiation of the contract;
- (i) the deadline for submission of proposals;
- (j) currency(ies) in which the costs of services shall be expressed, compared, and paid;
- (k) reference to any laws of Cape Verde that may be particularly relevant to the proposed consultants' contract;
- (l) a statement that the firm and any of its affiliates shall be disqualified from providing downstream goods, works, or services under the project if, in the MCC's judgment, such activities constitute a conflict of interest with the services provided under the assignment;
- (m) the method in which the proposal shall be submitted, including the requirement that the technical proposals and price proposals be sealed and submitted separately in a manner that shall ensure that the technical evaluation is not influenced by price;
- (n) a request that the invited firm (i)acknowledges receipt of the RFP and (ii) informs the Grantee whether or not it will be submitting a proposal;
- (o) the short list of consultants being invited to submit proposals and whether or not associations between short listed consultants are acceptable;
- (p) the period for which the consultants' proposals shall be held valid and during which the consultants shall undertake to maintain, without change, the proposed key staff, and shall hold to both the rates and total price proposed; in case of extension of the proposal validity period, the right of the consultants not to maintain their proposal;
- (q) the anticipated date on which the selected consultant shall be expected to commence the assignment;
- (r) a statement indicating (i) whether or not the consultants' contract and personnel shall be tax free or not; if not, (ii) what the likely tax burden will be or where this information can be obtained in a timely basis and a statement requiring that the consultant shall include in its financial proposal a separate amount clearly identified, to cover taxes;
- (s) if not included in the TOR or in the draft contract, details of the services, facilities, equipment, and staff to be provided by the Grantee;

- (t) phasing of the assignment, if appropriate; and likelihood of follow up assignments;
- (u) the procedure to handle clarifications about the information given in the RFP; and
- (v) any conditions for subcontracting part of the assignment

APPENDIX 3: GUIDANCE TO CONSULTANTS

DELETED [*Consultants can learn about the Millennium Challenge Corporation and its programs at www.mcc.gov and about the Millennium Challenge Cape Verde Fund at its Website.*]