



Millennium Challenge Corporation

Reducing Poverty Through Growth

PROGRAM AGREEMENT

BETWEEN THE

MILLENNIUM CHALLENGE CORPORATION (MCC)

AND THE

U.S. ARMY CORPS OF ENGINEERS

I. AUTHORITY AND PURPOSE

A. Under Section 614(d) of the Millennium Challenge Act of 2003 (Pub. L. 108-199, Division D) the Millennium Challenge Corporation (“MCC”) is authorized to enter into interagency agreements using the authorities found in the Foreign Assistance Act of 1961, as amended.

B. Under section 632(b) of the Foreign Assistance Act of 1961, as amended, MCC may utilize the services and facilities of, or procure commodities from, any federal agency. MCC wishes to obtain the services requested herein from the U.S. Army Corps of Engineers (“Corps”) for the purpose of assisting in the evaluation of proposed infrastructure projects submitted by MCC eligible countries. Under 10 U.S.C. 3036(d) the Chief of Engineers is authorized to accept orders from another department, agency or instrumentality of the United States.

C. Accordingly, MCC and the Corps (“parties”) hereby conclude a program agreement for a period of five years, beginning with the date of this agreement. Funding, however, shall be provided in increments, and accordingly, MCC shall obligate an amount of \$1.5 million (“Obligated Amount”) for services requested herein from the Corps. Additional amounts will be determined on a periodic basis. All MCC funds are “no year” funds and do not need to be expended in any given fiscal year.

II. REQUESTED SERVICES

A. **Background:** As a part of the process of concluding Compacts with eligible countries and in awarding grants, the MCC performs due diligence activities to ensure the viability of an eligible country’s proposed program. In addition, the MCC will be performing oversight consistent with its monitoring and evaluation activities as infrastructure projects reach the implementation stage. The MCC intends to turn to other agencies, such as the Corps, that have the expertise in a given field to assess infrastructure elements of an eligible country’s proposal and to assist in these oversight activities.

B. **General Scope of Work:** Services that the Corps may provide under this agreement include independent engineering services, including assessing project feasibility and engineering, assessing project

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environmental impacts, assessing project economics including project first costs, operation and maintenance costs, and economic benefits, monitoring projects during funding period, integrated water resources management studies, (navigation and shore protection, port facilities, flood damage reduction, environmental restoration, water supply, recreation, water quality, hydropower); sedimentation studies; dam safety analyses and recommendations for national dam safety programs; planning methods and tools for water resources managers; participatory and consensus building methods for water resources management; institutional and organizational arrangements for infrastructure and water resources management; environmental assessments; environmental planning and mitigation; socioeconomic impact and risk assessments; flood hydrology and forecasting and floodplain management recommendations; ecosystem restoration; toxic and hazardous waste remediation; disaster planning and response; preparation of hurricane and typhoon evacuation plans; remote sensing and geographic information systems (GIS); control of nuisance aquatic vegetation; infrastructure analysis; and design and construction management services, and such other related services as may be agreed upon in the future.

C. **Specific Projects:** MCC shall periodically request the Corps, in writing, to perform specific tasks in accordance with the general scope of work, described above. In this regard:

1. MCC (the Program Official) shall provide the Corps a statement of work to be performed as well as the reports required (See Attachment 1 for an example of a task order).
2. The Corps shall endeavor to respond to these requests within 5 working days.
3. The response shall contain a detailed budget that identifies estimated resources by calendar quarter and beneficiary country, and establish a start and end date for the completion of the work.
4. The Corps shall make its best effort to keep the total budgeted value of task orders within the total obligated amount.
5. 90 days after a task order is completed, the Corps shall submit a final billing with regard to each individual task order. Such a billing in no manner limits the MCC's duty to pay for costs which may become known after such billings.

III. FUNDING TERMS AND CONDITIONS

A. Signature of this Agreement by MCC and the Corps constitutes an obligation of funds for MCC.

B. Except as MCC may otherwise agree in writing, the Corps must, not later than ninety days following the completion of a task order, submit to MCC a request for reimbursement under that task order.

C. The Corps will bill MCC monthly through the IPAC system, using accounting classification information specified at the end of this agreement.

D. The Corps will administer the funds it receives under this agreement in accordance with all applicable laws, regulations, directives, and procedures of the United States. Unless otherwise required by law, all contract work undertaken by the Corps shall be governed by Corps policies and procedures. To the extent consistent with U.S. law, all work performed under this agreement shall conform to applicable host nation laws. In the event applicable U.S. law conflicts with host nation law, the Corps may terminate any task order. In the event the Corps terminates a task order, the MCC shall remain responsible for all costs, including liabilities incurred by the Corps pursuant to that task order.

E. The MCC shall pay all actual costs associated with the provision of goods or services under this agreement. If the Corps forecasts at any time that its actual costs under a task order may exceed the amount of funds available under the task order, it shall promptly notify the MCC of the amount of additional funds necessary to complete the work. The MCC shall either provide the additional funds to the Corps, or require that the scope of work be limited to that which can be paid for by the then-available funds, or direct termination of the work under the task order.

IV. RESPONSIBILITIES

A. MCC

The MCC shall:

1. Ensure that an authorized MCC program official signs each task order.
2. Draft task orders/supporting agreements to include specific scope of work statements.
3. Obtain for the Corps any necessary real estate interests and access to all work sites and support facilities.
4. Except as otherwise agreed in a task order/supporting agreement, shall be primarily responsible for performing all coordination with and obtaining any permits from U.S. and host nation agencies, as necessary during the execution of each task order/supporting agreement.
5. Where allowed by the host nation, obtain in an expeditious manner duty free importations of materials, equipment, supplies and services, and other items that may be provided by the Corps or its contractors for the purposes of performing work under task orders/supporting agreements. The MCC shall reimburse the Corps for any duties or other charges imposed.
6. Where allowed by the host nation, ensure exemption of any U.S. or third country contractors that may be employed by the Corps for purposes of this agreement and subsequent task orders from host nation corporate, personal and other tax liabilities. The MCC shall reimburse the Corps for any duties or other charges imposed that the host nation does not exempt.
7. Where allowed by the host nation, ensure that all Corps contractors shall be exempt from value added taxes. In the event such taxes are imposed, the MCC shall reimburse the Corps for any taxes or other charges imposed.
8. Shall make any material and equipment available to the MCC available to the Corps to expedite execution of task orders/supporting agreements. Equipment procured by the Corps in the course of performing a task order shall become the property of the Corps.
9. Assist the Corps, where necessary, in obtaining logistical and administrative services to include office space, housing, transportation, and similar services.
10. Seek accreditation for Corps personnel, including contractor personnel, (unless existing agreements otherwise provide for the status of Corps personnel in country), at the same level that would be sought for the MCC personnel performing similar functions and duties in the host nation;

provided, however, that the MCC shall notify the Corps in any case when the Corps personnel, including contractor personnel cannot be accredited, at a minimum, as members of the administrative and technical staff of the diplomatic mission of the United States in the host nation.

11. Except as otherwise agreed in a task order, provide security necessary to protect the work site, material, equipment, and Corps personnel and contractors present in the host nation to perform work pursuant to this agreement. The MCC shall pay all of the costs related to reasonable requests by the Corps for adequate protection. In the case that adequate protection is not provided by the MCC, the Corps shall provide the same and the MCC shall pay the costs.

12. Reimburse the Corps for all actual costs associated with the Corps provision of goods or services under this agreement.

13. Provide the Corps with a designated program official to consult with the Corps contracting officer and its program official concerning the services requested. The MCC program official will not be in direct contact with any of the Corps' contractors unless the Corps specifically approves the terms and conditions of such contacts in writing.

B. The U.S. Army Corps of Engineers

The Corps shall:

1. Provide the MCC with services in accordance with the purpose, terms, and conditions of the agreement and the specific requirements set forth in the task order.
2. Identify for each task order a contact person who will have signatory authority for that task order.
3. Use its best efforts to provide services either by contract or by in-house effort.
4. Provide detailed periodic progress, financial and other reports to the MCC as agreed in the task order.
5. Inform the MCC of all contracts entered into under each task order.
6. Submit for MCC review, the credentials and/or qualifications of all proposed contractors/subcontractors, as a part of the Corps task order estimate.

V. CONTRACT CLAIMS AND DISPUTES

All claims and disputes by contractors arising under or relating to contracts awarded by the Corps in the course of providing services under this agreement shall be resolved in accordance with Federal law and the terms of the individual contract. The Corps shall have dispute resolution authority for these claims. Any contracting officer's final decision may be appealed by the contractor pursuant to the Contract Disputes Act of 1978 (41 U.S.C. § 601-613). The Armed Services Board of Contract Appeals (ASBCA) or its successor is designated as the appropriate board of contract appeals. In lieu of appealing to the ASBCA or its successor, the contractor may bring an action directly to the United States Court of Federal Claims.

The Corps shall be responsible for handling all litigation involving disputes and appeals, and for coordinating with the Department of Justice as appropriate. The Corps shall notify the MCC of any such litigation and afford the MCC an opportunity to review and comment on the litigation proceedings and any resulting settlement negotiations.

VI. REPORTS

The Corps shall prepare and submit detailed periodic progress, technical and financial and other reports as required by this agreement, including as specified in each task order. Financial reports shall include information on all funds received, expended and forecast expenditures.

A. The title page of all reports submitted shall include a descriptive title, the author's name(s), task order reference number and the MCC Program Official's name.

B. Unless otherwise provided in a task order, the Corps shall prepare and submit copies of the following report to the persons and offices as stated:

1. Monthly Billing Report: The monthly billing report should be directed to the MCC Program Official and the Department of the Interior's National Business Center (NBC) which provides financial services to MCC. The address for NBC is as follows:

Mail: National Business Center
Attn. Heidi Pratt, MCC Accounting
7301 W. Mansfield Avenue
Mail Stop: D2773
Denver, CO 80235-2230
Tel: 303-969-7780, Ext. 2617

E-mail: MCC_Accounting_NBCDenver@nbc.gov (Preferred method of communication.)

Fax: 303-969-7220

2. Quarterly Report: Within 15 days following the end of the quarterly period being covered, the Corps shall submit a report which shall address the status of the work under each task order. Expenditure status should include actual (or estimated, if actual expenditures are not available) expenditures during the quarter and anticipated expenditures for the next quarter.

Distribution: MCC Comptroller
Program Official
Acquisitions

3. Final Report: Within 30 days following the completion of a task order, the Corps shall submit a final report that summarizes the Corps' accomplishments under the task order.

Distribution: Program Official
Director, Acquisitions

VII. RECORDS

At a minimum, the Corps will maintain documentation:

- Supporting all expenditures;
- Related to any reports;
- Related to any contract support in its delivery of services to the MCC.

VIII. ORDER OF PRECEDENCE

In the event of conflicts between this agreement and a task order, the terms of this agreement shall prevail, except as the Parties may otherwise agree explicitly in writing.

IX. DEFINITION OF TERMS

Program Official means the MCC employee who is responsible to see that the Corps provides its services consistent with the statement of work incorporated in the task order. The Program Official functions both as a contracting officer's technical representative and as the MCC's primary contact on all substantive program issues on a given task order.

X. FISCAL INFORMATION

MCC Agency Locator Code: 95-77-0000

Appropriation to be charged (MCC): 95X2750

Obligation Document Number: MCC-05-004-CFD

XI. DESIGNATION OF POINTS OF CONTACT

A. MCC Contracting Officers

For MCC

Director, Acquisitions

B. Program Officials

For MCC

Managing Director, Infrastructure

For the Corps

Chief, Interagency and International Services
Community of Practice

XII. AMENDMENT, MODIFICATION AND TERMINATION

This agreement may be modified or amended only by written, mutual agreement of the parties, either by the signatories or their delegees. Either party may terminate this agreement by providing written notice to the other party. The termination shall be effective upon the thirtieth calendar day following notice, unless a later date is set forth. In the event of termination of this agreement or a task order created hereunder, the MCC shall continue to be responsible for all costs the Corps incurs under this agreement or the terminated task order and for the costs of closing out or transferring any on-going contracts.

**MILLENNIUM CHALLENGE
CORPORATION (MCC)**

G. Quent Williams

G. Quent Williams
Director, Acquisitions

Date 2/15/05

U.S. ARMY CORPS OF ENGINEERS

James A. Cheatham

James A. Cheatham
Major General, US Army
Acting Director of Military Programs

Date 15 FEB 2005