

Millennium Challenge Corporation  
Program Procurement Guidance

# Guidance on the Bid Challenge System

August 2007



## MCC Guidance on the Bid Challenge System

This paper provides guidance to the MCA Entity<sup>1</sup> on developing a Bid Challenge System (BCS) in accordance with the applicable provisions<sup>2</sup> of the MCC Program Procurement Guidelines.<sup>3</sup> It also provides guidance for implementing an Interim Bid Challenge System (IBCS) to be utilized until the BCS is operational.

### Rule

No procurements may be issued unless a proper bid challenge system is in place and bidders and potential bidders have been given notice of it.

### Bid Challenge System

Within six months of Compact signing, the MCA Entity must establish a Bid Challenge System (BCS) that provides bidders<sup>4</sup> or potential bidders<sup>5</sup> who believe they have been wronged the ability to seek review of the procurement process. The particular organization, rules and procedures of the BCS are largely up to the discretion of the MCA Entity, but must comply with the parameters set forth in the MCC Program Procurement Guidelines and be approved in writing by MCC. Furthermore, MCC reserves the right to review and comment on the organization and operation of the Bid Challenge System.

### Required Elements of the BCS

Under the MCC Program Procurement Guidelines, the BCS must include 1) a first level of review by the MCA Entity and 2) appeal to a review body. The review body shall be impartial, independent, have no interest (through financial, family, business, beneficial ownership, or otherwise) in the outcome of the procurement, nor be involved in or related to the procurement process. The review body can be a procurement panel composed of outside procurement experts, an administrative body or a court. The MCA Entity must adopt clear and transparent written procedures which must be followed by the review body. The Procurement Agent<sup>6</sup> or the MCA Entity will be responsible for recruitment, training and certification of the review board. The review board members must be well-versed in procurement, but the MCA Entity must ensure that they are trained in MCC procure-

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<sup>1</sup> The MCA Entity is the entity designated by the government of the country receiving assistance from the Millennium Challenge Account as responsible for the oversight and management of implementation of the Compact on behalf of the government.

<sup>2</sup> MCC Program Procurement Guidelines, Part 5.

<sup>3</sup> The Millennium Challenge Corporation (“MCC”) provides funding to foreign governments under the authority of Section 605 of the Millennium Challenge Act of 2003 (the “MCA”) (each a “Compact”) or under Section 609(g) of the MCA (each a “609g Grant Agreement”). The MCC Program Procurement Guidelines are set out in supplemental agreements between the MCC and foreign governments and apply to MCC-funded contracts between the MCA Entity and contractors, suppliers and consultants. Contracts entered into directly by MCC are governed by the Federal Acquisition Regulation, not the MCC Program Procurement Guidelines.

<sup>4</sup> “Bidder” means any Consultant, Contractor or Supplier that participates in the procurement process to provide goods, works or services in furtherance of the Compact. Subcontractors or members of the general public are not eligible to file bid challenges.

<sup>5</sup> “Potential bidder” means the bidders who would have participated in the solicitation process but for the mistake of the MCA Entity.

<sup>6</sup> MCC Program Procurement Guidelines Part 1, Section 1.A, Paragraph 3.10; MCC Program Procurement Guidelines Part 1, Section 1.B, Paragraph 3.17.

ment principles, practices and procedures. Non-governmental review board members may receive reasonable compensation for this service based on local market conditions.

### **MCA Entity Review Process**

The bid challenge must be filed<sup>7</sup> within a reasonable time, to be specified by the MCA Entity, after the Challenger<sup>8</sup> became aware of, or should have become aware of, the circumstances giving rise to the claim. The bid challenge must specify: 1) the provisions of the MCC Program Procurement Guidelines which were violated, 2) the justification for relief, and 3) the remedy sought. The MCA Entity shall ensure that all bid challenges are accepted, reviewed and processed in accordance with the rules and procedures of the MCA Entity's Bid Challenge System as approved by MCC.

As soon as the bid challenge has been filed, the procurement will be suspended for the duration of the bid challenge process *unless* there are urgent or compelling reasons not to. However, the procurement will *not* be suspended if: the claim is frivolous, there will be no irreparable harm to the Challenger, or the granting of the suspension will cause disproportionate harm to the MCA Entity. The MCA Entity will review and issue a written decision on the bid challenge by a specified deadline. The decision shall state the reasons for the decision and the corrective measure to be taken.

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

- Eligibility to file a bid challenge
- Deadline to file a bid challenge
- Filing fees, if any
- Required elements of bid challenge document
- Language requirements
- Procedure for accepting a bid challenge claim
- Suspension considerations
- Issues subject to review
- Possible remedies
- Timeframe for issuing written decision

<sup>7</sup> "Filed" or "filing" shall mean the receipt, either by mail services or other delivery services (fax and email), of any document by the entity in question before the close of its business day.

<sup>8</sup> "Challenger" shall mean any bidder or potential bidder who submits a bid challenge.

## Appeal Process

If the MCA Entity's decision is not submitted by the deadline, or if the Challenger is not satisfied with the decision, the Challenger may appeal the decision to the review body. The review body shall then issue, by a specified deadline, a written decision on any bid challenge that is timely and properly filed.

The review board must have the authority to require the MCA Entity to revise the procurement proceedings to conform to the applicable guidelines, suspend the procurement in order to preserve the commercial opportunity pending the outcome of the review, terminate the procurement, order a new procurement, or require the MCA Entity to compensate a successful Challenger for loss or damage suffered to the extent of the cost of preparation of the bid challenge. Anticipated profits may not be recovered.

Under the BCS certain acts by the MCA Entity are not subject to review, such as the selection of a method of procurement, the choice of a selection procedure, or the decision to reject all offers. The Challenger shall have no right to appeal to MCC under a BCS. However, the MCA Entity must submit to MCC within 3 days after the decision, a report of the handling and disposition of any bid challenge.

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

- Identification of independent appeal body
- Eligibility to file appeal
- Deadline to file appeal
- Location to file appeal
- Filing fees, if any
- Required elements of appeal document
- Language requirements
- Procedure for accepting an appeal
- Suspension considerations
- Oral hearing options, if any
- Deadline to issue written decision
- Possible Remedies

**Language**

The BCS shall determine the language for the bid challenge proceedings. Such languages include English, Spanish, French, or Portuguese at the discretion of the MCA Entity.

**Interim Bid Challenge System**

During the six-month period before the BCS has been adopted, the MCA Entity must have in place an Interim Bid Challenge System (IBCS) which may be used until the BCS is operational. In contrast to the BCS, the design of the IBCS is *not* up to the discretion of the MCA Entity, but *must follow* the directions below. Furthermore, it must be presented to bidders and potential bidders in the solicitation documents precisely as follows:

**Bid Challenges**

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

Coordinator  
MCA Entity  
Address  
Fax  
Email

**Appeals**

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

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

[VPGeneralCounsel@mcc.gov](mailto:VPGeneralCounsel@mcc.gov) (Vice President and General Counsel)