

Millennium Challenge Corporation
Program Procurement Guidance

Guidance on Contract Payments

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MCC Guidance on Contract Payments

This paper provides guidance to the MCA Entity¹ for developing contract payment schedules in accordance with the terms of payment provisions² of the MCC Program Procurement Guidelines:³

Partial Payments

Payment terms that provide for multiple payments, each upon acceptable partial performance of the contract, are the preferred form of payment for all MCC-funded contracts, whether for goods, works or services. Although payments for partial performance generally are treated as a method of payment and not as a method of contract financing, payment for partial performance can provide suppliers and contractors, including consultants, with needed working capital to perform the contract without use of an advance payment to provide contract financing. When appropriate, the contract deliverables and the payment schedule should be designed to permit acceptance and payment for discrete portions of contract performance that comply with applicable contract terms as soon as accepted. During the early stages of contract performance, payments may be scheduled for deliverables of such tasks or items of work as (1) a work plan or inception report, (2) achievement of defined milestones, such as orders placed or staff mobilized, (3) establishment of an office, and (4) deposits on goods or services required for contract performance. Once the contractor has mobilized, the payments would most likely be less frequent and the deliverables to trigger payment would be tied to performance of the programmatic work, such as a percentage or stage of completion, accomplishment of defined milestones or other quantifiable measures of results. Final payment is made only after all contract performance is completed and accepted. Normally, a percentage of the contract amount is retained for a period of time after physical completion and delivery of goods or works. Retentions are not normally used under contracts for services.

Note that the MCC Program Procurement Guidelines require that procurement contracts provide for payment of interest for late payment in certain cases,⁴ thereby promoting timely payment and reducing the need for suppliers and contractors to self-finance for extended periods of time.

Mobilization/Advance Payments

Mobilization payments are payments of funds to a supplier or contractor before, in anticipation of, and for the purpose of performance under the contract. Since these payments are not measured by contract performance, they differ from partial payments which are based on actual performance of tasks in furtherance of the contract.

¹ 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.

² MCC Program Procurement Guidelines at Section 1.A, Paragraphs 2.34-2.36 and Section 1.B, Paragraph 4.8.

³ 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 Regulations, not this policy.

⁴ MCC Program Procurement Guidelines at Section 1.A, Par. 2.34 and Section 1.B, Par. 4.9(b).

Advance payments may, for example, be advisable to cover the initial mobilization expenses for large civil works or custom-made goods. Any advance payments are to be liquidated from payments made to the supplier or contractor during performance of the contract, usually by deducting a percentage from each scheduled payment for performance.

Because advance payments are made before the MCA Entity receives any value for the funds, advance payments must be justified under the circumstances of the procurement and the justification must be included in the procurement files.

Where advance payments have been properly justified and approved in accordance with this guidance paper and the MCC Program Procurement Guidelines, the related bidding documents are to specify (a) the amount of the advance payment (as a percentage of the contract value determined in accordance with this guidance paper), (b) the form of security required in connection with the advance payment (as discussed more fully in the next section of this guidance paper), and (c) the manner in which such advance payment will be liquidated against future invoice payments.

It is recommended that the advance payment be limited to 15% of the contract value for goods and for works procurements and 10% for consulting services procurements; however if circumstances warrant, higher percentages may be requested as a waiver to the MCC Program Procurement Guidelines, subject to MCC approval.

Mobilization/Advance Payment Guarantees

In all cases, payment made in advance of work done, including payment made upon signature of a contract for goods, works, or consultant services requires a commitment from the supplier or contractor of an unconditional security guarantee from a reputable commercial bank in an amount equal to the amount of the advance payment.⁵

Performance Guarantees

In addition to the unconditional security guarantee that is required in connection with any advance payments in any type of procurement, contractors and suppliers may also be required to provide a guarantee with respect to their general performance of the contract. In an effort to prevent confusion between the requirements for guarantees with respect to advance payments and guarantees in connection with performance, this section briefly outlines the requirements of the MCC Program Procurement Guidelines with respect to performance guarantees.

In the case of a works procurement, performance security must be provided by the contractor in an amount sufficient to protect the MCA Entity in case of breach of contract by the contractor.⁶

⁵ MCC Program Procurement Guidelines at 1.A, Par. 2.35.

⁶ MCC Program Procurement Guidelines at 1.A, Par. 2.39.

In the case of a goods procurement, performance security may be required depending on the market conditions and commercial practice for the particular kind of goods.⁷

In the case of procurements for consultant services, however, performance guarantees are generally not appropriate and such a requirement should not be included in a request for proposals or contract for consultant services without the prior approval of MCC.⁸

Progress Payments Based on Costs

Progress payments based on costs are appropriate only in the case of cost-reimbursement type of contracts. MCC generally recommends against cost-reimbursement contracts because they are extremely difficult for the MCA Entity to administer. In accordance with the “Cost Principles for Cost Reimbursement Contracts under MCC-Financed Grants,”⁹ the MCA Entity must ensure that all costs under the contract are appropriately recorded and justified. Progress payments based on costs would be made based on the documentation supporting the costs incurred by the supplier or contractor as work progresses under the contract.

⁷ MCC Program Procurement Guidelines at 1.A, Par. 2.40.

⁸ MCC Program Procurement Guidelines at 1.B, Par. 4.10.

⁹ See http://www.mcc.gov/countries/tools/fiscalaccountability/Cost_Principles.pdf.