

EXECUTION VERSION

PROCUREMENT AGREEMENT

BETWEEN

MILLENNIUM CHALLENGE CORPORATION

AND

MCA-VANUATU

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	3
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 MCA-Vanuatu Representations	3
Section 2.8 Procurement Agent.....	4
ARTICLE III. APPROVALS.....	4
Section 3.1 Approvals	4
Section 3.2 MCC Approvals	4
ARTICLE IV. GENERAL PROVISIONS.....	5
Section 4.1 MCA-Vanuatu Responsibility.....	5
Section 4.2 Communications.....	5
Section 4.3 Amendment	6
Section 4.4 Publicity	6
Section 4.5 Nonwaiver of Remedies	6
Section 4.6 Attachments.....	7
Section 4.7 Inconsistencies	7
Section 4.8 Headings.....	7
Section 4.9 Severability.....	7
Section 4.10 Rules of Construction.....	7
Section 4.11 Counterparts; Signatures	8
Section 4.12 Assignment.....	8
Section 4.13 Entire Agreement	8
Section 4.14 Termination; Suspension.....	9
Section 4.15 Effect of Termination	9
Section 4.16 MCC Status	9
Section 4.17 Representatives.....	9
Section 4.18 Reports	10
Section 4.19 Consultation	10
Section 4.20 Implementing Agreement.....	10

Section 4.21 Effective Date; Term 10
Section 4.22 Relationship of the Parties..... 10

Schedule 1: Procurement Guidelines

Schedule 2: Approvals

Exhibit A: Definitions

PROCUREMENT AGREEMENT

This **PROCUREMENT AGREEMENT** (the "*Agreement*") is entered into as of April 28, 2006 (the "*Effective Date*") between the Millennium Challenge Corporation, a United States Government corporation ("*MCC*"), and MCA-Vanuatu, an independent unit established within the Ministry of Finance and Economic Management under the laws of the Republic of Vanuatu ("*MCA-Vanuatu*"), on behalf of the Government of the Republic of Vanuatu (the "*Government*"). MCC and MCA-Vanuatu are sometimes referred to herein individually as a "*Party*" and together as the "*Parties*."

Capitalized terms that are used but not defined herein shall have the meanings given to such terms in that certain Millennium Challenge Compact by and between the United States of America, acting through MCC, and the Government, signed in Port Vila, Vanuatu on March 2, 2006 (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 implement the Program in Vanuatu and achieve the Compact Goal and Objectives contemplated by the Compact; and

WHEREAS, it is a condition precedent to the Entry into Force that this Agreement is executed by the Parties; and

WHEREAS, the Parties wish to enter into this Agreement to further specify 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. MCA-Vanuatu shall develop and adopt a procurement plan on a semi-annual basis for acquiring the goods, works and services needed to implement the Compact (each, a "*Procurement Plan*"), each of which Procurement Plans shall be subject to MCC approval and shall:

(a) Identify the purchasing needs for the goods, works, and services required to implement the Compact for at least the six (6) month period immediately following the effective date of such Procurement Plan;

(b) Identify the proposed method of procurement for each purchase according to the procedures set out in Schedule 1 and in Schedule 2 of this Agreement; and

(c) Estimate the proposed budget for such procurement, and such other information as may be requested in writing by MCC from time to time.

Each Procurement Plan shall be submitted to MCC for prior written approval no less than five (5) business days prior to its publication in accordance with Section 1.2.

Section 1.2 Publication of Procurement Plans. Immediately upon receipt of MCC's written approval of a Procurement Plan, MCA-Vanuatu shall publicize, at least on a semi-annual basis, procurements planned for the upcoming period identified in the approved Procurement Plan. Publication by MCA-Vanuatu of a Procurement Plan shall provide reasonable notice of planned procurements and shall include a posting on the MCA-Vanuatu Website, or such other appropriate website designated by MCA-Vanuatu and approved by MCC, the Development Gateway Market website at www.dgmarket.com (*dgMarket*) and the United Nations Development Business online website at www.devbusiness.com (*UNDB Online*), publication in a daily newspaper of wide circulation in Vanuatu, 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 on the MCA-Vanuatu Website, or such other website designated by MCA-Vanuatu and approved by MCC, shall be in English and, at the discretion of MCA-Vanuatu in French.

Section 1.3 Procurement Plan Implementation. MCA-Vanuatu shall ensure that all goods, services and works shall be procured using the procurement method as approved in each Procurement Plan, unless MCC otherwise agrees in writing. Compliance (satisfactory to MCC) with the approved Procurement Plan shall be a condition precedent to MCC Disbursements or Re-Disbursements, as applicable, for the related Program or Project expense.

Section 1.4 Deviations from Procurement Plan. If MCA-Vanuatu proposes to deviate from, or to use a procurement method different than the one approved in the applicable Procurement Plan, MCA-Vanuatu shall request the written approval of MCC at least ten (10) business days prior to initiating the procurement. If MCC does not object to the change, the applicable Procurement Plan shall be modified to reflect the approved change(s).

ARTICLE II.

OBLIGATIONS AND REPRESENTATIONS

Section 2.1 Procurement Principles. MCA-Vanuatu 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**. MCA-Vanuatu 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 in **Schedule 1** attached hereto, as such procurement guidelines may be amended (a) by MCC from time to time with prior written notice to MCA-Vanuatu, or (b) as the Parties may otherwise agree in writing; such Procurement Guidelines and any amendments thereto shall be published on the MCA-Vanuatu Website or such other website designated by MCA-Vanuatu and approved by MCC (the "***Procurement Guidelines***"). MCA-Vanuatu shall ensure that (a) all Providers are notified of the terms of this Agreement and the Procurement Principles, and (b) that the Procurement Guidelines are incorporated in any relevant Supplemental Agreement with any such Providers.

Section 2.3 **Bid Challenge**. MCA-Vanuatu shall ensure that any bid challenges are conducted under a bid challenge system that complies with the terms set forth in **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 and other Compact Documents, including (i) the limitations on use and treatment of MCC Funding set forth in Section 2.3 of the Compact, (ii) the audit, access and records requirements set forth in Section 3.8 of the Compact, as applicable, (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 and 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-Vanuatu 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 period.

Section 2.6 **Other Responsibilities**. MCA-Vanuatu shall comply with all applicable terms and conditions and fulfill all applicable Government Responsibilities in the other Compact Documents, including any audit or reporting requirements.

Section 2.7 **MCA-Vanuatu Representations**. MCA-Vanuatu hereby represents and warrants to MCC that, as of the Effective Date, it has the power and authority to execute, deliver and perform its obligations and each other agreement, certificate, or instrument contemplated hereby on behalf of the Government. The execution, delivery and performance by MCA-Vanuatu of this Agreement (a) have been duly authorized by all necessary action on the part of the Government and MCA-Vanuatu and (b) will not violate (i) any applicable law or regulation or

(ii) any obligation of MCA-Vanuatu, the Government, any other 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 MCA-Vanuatu.

Section 2.8 Procurement Agent. MCA-Vanuatu shall engage one or more procurement agents (each, a "**Procurement Agent**") to carry out and/or certify specified procurement activities in furtherance of this Compact on behalf of the Government, MCA-Vanuatu, the Project Manager or Implementing Entity. The role and responsibilities of each such Procurement Agent and the criteria for selection of a Procurement Agent shall be as set forth in the applicable Implementation Letter or Supplemental Agreement. MCA-Vanuatu shall enter into an agreement with the Procurement Agent, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Procurement Agent with respect to the conduct, monitoring and review of procurements and other appropriate terms and conditions, such as payment of the Procurement Agent (the "**Procurement Agent Agreement**"). Any Procurement Agent shall adhere to the procurement standards set forth in this Agreement and Procurement Guidelines and ensure procurements are consistent with the procurement plan adopted by MCA-Vanuatu pursuant to the Procurement Agreement.

ARTICLE III.

APPROVALS

Section 3.1 Approvals. MCA-Vanuatu shall ensure that, unless otherwise agreed by the Parties in writing, all procurement actions described in Schedule 2 for goods, services or works in furtherance of the Compact and funded in whole or in part by MCC Funding shall be subject to the prior approval of the authorized entity, officer(s) or bodies designated on Schedule 2.

Section 3.2 MCC Approvals. Notwithstanding Section 3.1, nothing in this Agreement shall limit the right of MCC to approve Material Agreements, Material Re-Disbursements, Material Terms of Reference or any other action or document in accordance with Section 3(c) 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 approval rights under this Agreement, MCC shall exercise its right of approval within five (5) business days of receipt of such request for approval or inform MCA-Vanuatu prior to the expiration of such five (5) business day period of the extension (at MCC's sole discretion) of MCC's approval period for an additional five (5) business days.

ARTICLE IV.
GENERAL PROVISIONS

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

Section 4.2 Communications. Any notice, certificate, request, report, approval, document or other communication required, permitted, or submitted by any Party to the other under this Agreement shall be (a) in writing, (b) in English, and (c) deemed duly given: (i) upon personal delivery to the Party or Parties to be notified; (ii) 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 (iii) two (2) business days after deposit with an internationally recognized overnight courier, specifying next day delivery with written verification of receipt, to the Party or Parties to be notified at the address indicated below, or at such other address as such Party may designate by notice to the other Parties:

To MCC:

Millennium Challenge Corporation
Attention: Vice President of Operations
(with a copy to the Vice President and General Counsel)
875 Fifteenth Street, N.W.
Washington, D.C. 20005
United States of America
Tel: (202) 521-3600
Fax: (202) 521-3700
Email: VPOperations@mcc.gov (Vice President of Operations);
VPGeneralCounsel@mcc.gov (Vice President and General Counsel)

With a copy to:

Resident Country, Millennium Challenge Corporation
At the Address to be Provided.

To MCA-Vanuatu:

Attention: Director-General of the Office of the Prime Minister, as the Chair of the
MCA-Vanuatu Steering Committee
PMB 9053 Port Vila
Republic of Vanuatu
Tel: (678) 22413
Fax: (678) 26708
Email: mcachair@vanuatu.gov.vu

With a copy to:

Director-General of the Ministry of Finance and Economic Management
PMB 9058
Port Vila, Republic of Vanuatu
Tel: (678) 23032
Fax: (678) 27937
Email: smathy@vanuatu.gov.vu

Director-General of the Ministry of Foreign Affairs
PMB 9051
Port Vila, Republic of Vanuatu
Tel: (678) 22913
Fax: (678) 27045
Email: gmaniuri@vanuatu.gov.vu

Director of the Management Unit of MCA-Vanuatu
P.O. Box 192
Port Vila, Republic of Vanuatu
Tel: (678) 26918
Fax: (678) 23087
Email: lvuti@vanuatu.gov.vu

Whenever under the terms hereof the time for giving a notice or performing an act falls on a day that is not a business day, such time shall be extended to the next day that is a business day.

Section 4.3 Amendment. The Parties may amend this Agreement by entering into a written amendment to this Agreement signed by the Principal Representatives of the Parties.

Section 4.4 Publicity. Subject to Section 5.17 of the Compact, MCA-Vanuatu shall post, or cause to be posted, a copy of this Agreement and such other materials as MCC may request, in each case on the MCA-Vanuatu Website, or such other website designated by MCA-Vanuatu and approved by MCC, in English and, at the discretion of MCA-Vanuatu, in French.

Section 4.5 Nonwaiver of Remedies. The Parties agree that no delay or omission to exercise any right, power or remedy accruing to any Party, upon any breach, default or noncompliance by another Party under this Agreement, 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 any Party's part of any breach, default or noncompliance under this Agreement or any waiver on such Party's part of any provisions or conditions of this Agreement must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement, by law, or otherwise afforded to any Party, shall be cumulative and not alternative.

Section 4.6 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 4.7 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 4.8 Headings. The Article and Section headings used in this Agreement are included for convenience only and are not to be considered in construing or interpreting this Agreement.

Section 4.9 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 4.10 Rules of Construction. The following rules of construction shall be followed when interpreting this Agreement:

- (a) Words importing the singular also include the plural and vice versa;
- (b) References to natural persons or parties include firms or any other entity having legal capacity;
- (c) Words importing one gender include the other gender;
- (d) The words "include," "including," and variants thereof mean "includes, but not limited to" and corresponding variant expressions;
- (e) Except as otherwise set forth herein, all references contained herein to contracts, agreements, or other documents shall be deemed to mean such contracts, agreements or documents, as the same may be modified, supplemented, or amended from time to time;
- (f) Each reference to any applicable law shall be construed as a reference to such applicable law as it may have been, or may from time to time be, amended, replaced, extended or re-enacted and shall include any subordinate legislation, rule or regulation promulgated under any such applicable law and all protocols, codes, proclamations and ordinances issued or otherwise applicable under any such law;

(g) The terms “hereof,” “herein,” “hereto,” “hereunder” and words of similar or like import, refer to this entire Agreement and not any one particular Article, Section, Schedule, or other subdivision of this Agreement;

(h) Any reference to “business day” shall mean any day except Saturday, Sunday or any day which is a legal holiday or a day on which banking institutions are authorized or required by law or other government action to close in Washington, D.C. or Port Vila, Vanuatu; and any reference to “day” shall mean a calendar day; and

(i) Any reference to “month,” “quarter” or “year” shall have the common meaning given such terms based on a calendar year beginning on January 1 and ending on December 31 and divided into four approximately equal quarters beginning on each January 1, April 1, July 1 and October 1 of each such respective calendar year.

Section 4.11 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 4.2 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 4.12 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 fullest extent permitted by the laws of the United States of America, without the prior consent of MCA-Vanuatu. MCC shall provide written notice to MCA-Vanuatu upon the effectiveness of such assignment, delegation or contract. MCA-Vanuatu may not assign, delegate, revoke, rescind or contract its rights and obligations under this Agreement without the prior written consent of MCC *provided* that the Parties agree that MCA-Vanuatu shall delegate certain duties and responsibilities under this Procurement Agreement to a Procurement Agent as set forth in Section 2.8 hereof. MCA-Vanuatu and MCC acknowledge that MCA-Vanuatu has been designated by the Government as a “Permitted Designee,” as described in Section 3.2(c) of the Compact, pursuant to the terms of the Governance Agreement.

Section 4.13 Entire Agreement. 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 4.14 Termination; Suspension.

(a) MCC 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 (or any Government Affiliate), MCC may suspend or terminate this Agreement, in whole or in part, upon giving MCA-Vanuatu 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 one hundred twenty (120) days following the termination, suspension or expiration of the Compact, or such other period as may be determined by MCC, in accordance with Section 4.21;

(ii) Any event that would be a basis for termination or suspension of the Compact or MCC Funding under Section 5.4 of the Compact has occurred; or

(iii) Any other event has occurred, or circumstance has arisen, which in the sole opinion of MCC, constitutes a Material Adverse Change.

Section 4.15 Effect of Termination. Notwithstanding any expiration, suspension or termination of this Agreement pursuant to this Article IV, the following provisions of this Agreement shall survive: Sections 4.5, 4.12, 4.15, 4.16 and 4.19.

Section 4.16 MCC Status. MCA-Vanuatu recognizes and agrees that 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 MCA-Vanuatu 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 Vanuatu or any other jurisdiction.

Section 4.17 Representatives. For all purposes relevant to this Agreement, MCA-Vanuatu shall be represented by the individual holding the position of, or acting as, the Director-General of the Office of the Prime Minister, who shall serve as Chair of the Steering Committee of MCA-Vanuatu and MCC shall be represented by the individual holding the position of, or acting as, Vice President of Operations (each, a "**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 Agreement. The names of each Party's Principal Representative and its respective Additional Representatives shall be provided, with specimen signatures, to the other Party, and each Party may accept as duly authorized any instrument signed by such Principal Representative or Additional Representative relating to the implementation of this Agreement, until receipt of written notice of revocation of their authority. A Party may replace its Principal Representative with a new representative of equivalent or higher rank upon written notice to the other Party, which notice shall include the specimen signature of the new Principal Representative.

Section 4.18 Reports.

(a) 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 and in substance acceptable to MCC to afford reasonable and appropriate review of such reports and in no event more than thirty (30) business days from the end of the prior reporting period.

(b) MCA-Vanuatu 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.

(c) 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 relating to the Compact or MCC.

Section 4.19 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 Party shall endeavor to designate a representative of equal or comparable rank. If such representatives are unable to resolve the matter within twenty (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 forty-five (45) days from date of commencement. If the matter is not resolved within such time period, MCC may terminate this Agreement upon written notice to MCA-Vanuatu. The Parties shall enter any such consultations guided by the principle of achieving the Compact Goal in a timely and cost-effective manner.

Section 4.20 Implementing Agreement. The Parties agree and acknowledge that this Agreement is an international agreement entered into for the purposes of implementing the Compact.

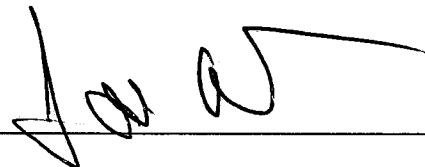
Section 4.21 Effective Date; Term. This Agreement shall (a) become effective and enter into force as of the Effective Date, and (b) end one hundred twenty (120) days following the termination or expiration of the Compact (unless terminated earlier pursuant to the provisions of this Agreement); *provided, however*, no new procurements shall be made or obligations incurred after the termination or expiration of the Compact; and *provided, further*, that the term of this Agreement may be extended for a period that is longer than one hundred twenty (120) days following the termination or expiration of the Compact if MCC determines that obligations incurred prior to the expiration or termination of the Compact remain to be carried out.

Section 4.22 Relationship of the Parties. This Agreement does not create a joint venture, partnership, or other similar relationship between the Parties.

SIGNATURE PAGE BEGINS ON THE NEXT PAGE.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by a duly authorized representative as of the day and year first written above.

MILLENNIUM CHALLENGE CORPORATION

By:  _____

Name: John Hewko
Title: Vice President of Operations

MCA-VANUATU

By: _____

Name: Jean Sese
Title: Director-General of the Office of
the Prime Minister's Office, as
Chair of the Steering Committee

**SIGNATURE PAGE TO PROCUREMENT AGREEMENT BETWEEN THE MILLENNIUM
CHALLENGE CORPORATION AND MCA-VANUATU**

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by a duly authorized representative as of the day and year first written above.

MILLENNIUM CHALLENGE CORPORATION

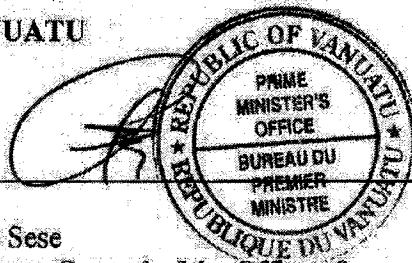
By: _____

Name: John Hewko
Title: Vice President of Operations

MCA-VANUATU

By: _____

Name: Jean Sese
Title: Director-General of the Office of
the Prime Minister's Office, as
Chair of the Steering Committee



**SIGNATURE PAGE TO PROCUREMENT AGREEMENT BETWEEN THE MILLENNIUM
CHALLENGE CORPORATION AND MCA-VANUATU**

SCHEDULE 1
PROCUREMENT GUIDELINES

1. Conduct and Administration of Procurement.

The principles, rules and procedures set out in The World Bank's "Guidelines: Selection and Employment of Consultants by World Bank Borrowers, May 2004," and The World Bank's "Guidelines: Procurement Under IBRD Loans and IDA Credits, May 2004," (together, the "**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 under the Compact, subject to the following exceptions:

(a) General Exceptions.

(i) References to the "**Bank**" unless otherwise noted refer to the Millennium Challenge Corporation (MCC).

(ii) References to the "**Borrower**" unless otherwise noted refer to the Government of the Republic of Vanuatu as signatory to the Compact and [MCA-Vanuatu] or the applicable Implementing Entity or Procurement Agent acting as a Permitted Designee with respect to procurement under the Compact (collectively, MCA-Vanuatu).

(iii) References to the "**Loan Agreement**" unless otherwise noted refer to the Compact.

(iv) References to "**loan**" refer to grant.

(v) References to the "**Guidelines**" refer to these Procurement Guidelines.

(b) Specific Exceptions for Procurement of Consultant Services.

"The World Bank Guidelines: Selection and Employment of Consultants by World Bank Borrowers, May 2004"¹

(i) Introduction.

(1) **Paragraphs 1.1 and 1.2** defining the purpose of the guidelines are deleted.

(2) **Paragraph 1.3** is changed to: The term "consultants" includes a wide variety of entities, such as consulting firms, engineering firms, construction managers, management firms, procurement agents, inspection agents, auditors, investment and merchant banks, universities, research institutions, nongovernmental organizations (NGOs) and individuals. Consultants help in a wide range of activities such as policy advice; institutional

¹ Modifying instructions and text of modifications are set out in regular type. [*Explanatory text is set out in italics type within brackets.*]

reforms; management; engineering services; construction supervision; financial services; procurement services; and social and environmental studies.

(3) **Paragraphs 1.4 and 1.5** describing the procurement principles underlying the guidelines are deleted.

(4) **Paragraph 1.6** is changed to: The particular methods to be followed for the selection of consultants under the Compact shall be set out in the semi-annual Procurement Plans.

(5) **Paragraph 1.7** is changed to: The consulting services to which these Guidelines apply are of an intellectual and advisory nature. These Guidelines do not apply to other types of services in which the physical aspects of the activity predominate. As to these latter services, the *Guidelines: Procurement under IBRD Loans and IDA Credits* (as modified by this Schedule 1) shall apply.

(6) **Paragraph 1.8** defining the applicability of the guidelines in certain circumstances is deleted.

(7) **Paragraph 1.11** defining eligibility requirements is modified to add the following paragraph: (f) Any person or entity that has been blacklisted from participation in procurements funded with World Bank assistance or debarred or suspended from participation in procurements funded by the United States 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 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, these countries include, but are not limited to, Cuba, Iran, North Korea and Syria.

(8) Footnote 9 is deleted.

(9) **Paragraph 1.12** defining rules for advance contracting and retroactive funding is changed to the following text:

In certain circumstances, such as to accelerate project implementation, MCA-Vanuatu may, with MCC's approval, wish to proceed with the selection of consultants before the Compact enters 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 MCC shall review the process used by MCA-Vanuatu. MCA-Vanuatu undertakes such advance contracting at its own risk, and any "no objection" issued by MCC with regard to 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 MCA-Vanuatu for any contract costs if the contract is signed prior to entry into force of the Compact and any required MCC approval.

(10) **Paragraph 1.14** providing for MCC review is modified by changing the last sentence to the following text:

(11) The thresholds for MCC review are described in Schedule 2 of this Procurement Agreement.

(12) **Paragraph 1.15** providing for the Bank's assistance in identifying consultants is deleted.

(13) **Paragraph 1.18** defining how to reference The World Bank's role in the procurement is changed to: MCA-Vanuatu shall use the following language when referring to MCC in the RFP and contract documents:

The Millennium Challenge Corporation ("**MCC**") and the Government of the Republic of Vanuatu (the "**Government**") have entered into a Millennium Challenge Compact for Millennium Challenge Account assistance to help facilitate poverty reduction through economic growth in Vanuatu (the "**Compact**") in the amount of 65,690,000 USD ("**MCC Funding**"). MCA-Vanuatu, on behalf of the Government, intends to apply a portion of the proceeds of the MCC Funding to eligible payments under this contract. Payment by MCC will be made only at the request of MCA-Vanuatu ("**MCA-Vanuatu**") and, if applicable, upon approval by MCC, and will be subject, in all respects, to the terms and conditions, including restrictions on the use of MCC Funding, of the Compact. No party other than the Government and MCA-Vanuatu shall derive any rights from the Compact or have any claim to any proceeds of the MCC Funding.

(14) **Paragraphs 1.20 and 1.21** defining rules for use of language are revised to a single section that states:

(15) All advertisements and publications of awards for contracts at or above 30,000 USD, whether on the MCA-Vanuatu Website, dgMarket, or UN Development Business Online shall be published in English. Advertisements and publications of awards for contracts valued at less than 30,000 USD shall be published in English or in French or both at the discretion of MCA-Vanuatu, provided that in case of discrepancies the English version will control. At the discretion of MCA-Vanuatu, advertisements for contracts between 30,000 USD and 100,000 USD may also be published in French.

(16) The RFPs and the proposals for contracts valued at or above 100,000 USD shall be prepared in English. All contracts at or above 100,000 USD shall be written in English and this language shall govern contractual relations between MCA-Vanuatu and the Provider. At the discretion of MCA-Vanuatu, the RFP also may be prepared in French, provided that in case of discrepancies the English version will control. For contracts valued at less than 100,000 USD, any solicitations and responding documents, as well as contracts, may be prepared in English or in French or both at the discretion of MCA-Vanuatu, provided that in case of discrepancies the English version will control. Consultants shall not be permitted or required to sign contracts in two languages.

(17) **Paragraph 1.22** defining rules to deter fraud and corruption is modified in the first paragraph to: MCC requires that MCA-Vanuatu and any other beneficiaries of MCC Funding, including consultants under MCC financed contracts, observe the highest standard of ethics during the selection and execution of such contracts. In accordance with this requirement, MCC:

(18) **Paragraph 1.24** defining the rules for providing a Procurement Plan is deleted.

(ii) Quality-and-Cost Based Selection (QCBS).

(1) **Paragraph 2.2** setting out the steps of the procurement procedure is modified in the introductory sentence to: 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:

(2) **Paragraph 2.4** providing rules for developing cost estimates is changed in the third sentence to state: If requested in the solicitation documents, costs shall be divided

(3) **Paragraph 2.5** providing rules for advertising procurements is changed to: Every procurement shall be open to foreign and national participants without restrictions or preferences, except as provide in Paragraph 1.11. General notice of anticipated procurements for consultant services shall be included in the Procurement Plan which is published semi-annually as a General Procurement Notice (the "**General Procurement Notice**") in accordance with Article I of the Procurement Agreement.

(4) Specific procurement notices of consultant contracts shall be advertised at the MCA-Vanuatu Website, or such other appropriate website designated by MCA-Vanuatu and approved by MCC. If the contract is expected to exceed 30,000 USD, it shall be published on the MCA-Vanuatu Website and at dgMarket in English and, at the discretion of MCA-Vanuatu, on the MCA-Vanuatu Website in French. In addition, contracts expected to cost more than 100,000 USD shall be advertised in English in UN Development Business Online as well as at dgMarket. MCA-Vanuatu 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 MCC.

(5) Footnote 19 is retained unchanged.

(6) Footnote 20 is deleted.

(7) **Paragraphs 2.6, 2.7 and 2.8** providing rules for preparing the short list of consultants are revised to a single paragraph that states: MCA-Vanuatu 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 short list shall be fair and objective according to pre-announced criteria.

(8) Footnotes 21, 22 and 23 are deleted.

(9) **Paragraph 2.9** defining the contents of the RFP is modified in the second sentence to: MCA-Vanuatu shall use the applicable standard RFPs issued by the World Bank as modified to reflect the exceptions set out in these Procurement Guidelines and changes to address project-specific conditions, subject to MCC approval when the change is significant. The third sentence of Paragraph 2.9 is deleted.

(10) **Paragraph 2.12** defining rules for contracts is changed to: Section IV of these Procurement Guidelines briefly discusses the most common types of contracts. MCA-Vanuatu shall use an appropriate Standard Form of Contract, acceptable to 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 MCA-Vanuatu shall use other contract forms acceptable to MCC.

(11) **Paragraph 2.15** defining the rules for evaluating quality is modified to delete all references to the use of “transfer of knowledge” and “participation of nationals” to evaluate the quality of the proposals.

(12) **Paragraph 2.21** providing rules for review of the financial proposals shall be changed to: MCA-Vanuatu shall then review the financial proposals. If there are any arithmetical errors, they shall be corrected. For the purpose of comparing proposals, the RFP shall require that all proposals be stated in the same currency (local currency, USD or a combination of the two) as selected by MCA-Vanuatu. 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.

(13) **Paragraph 2.22** providing rules for evaluating cost proposals is subordinated to all related provisions of the Compact and Supplemental Agreements.

(14) **Paragraph 2.23** defining the procedures for developing the total score and determining the winning proposal is renumbered Paragraph 2.23.1 and a new paragraph is added that states:

(15) **Paragraph 2.23.2.** Before inviting the firm obtaining the highest total score for negotiations, MCA-Vanuatu shall, if required by the thresholds set forth in Schedule 2, furnish to 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.

(16) **Paragraph 2.26** providing rules for financial negotiations is subordinated to all related provisions of the Compact and Supplemental Agreements. This Paragraph 2.26 also is modified by adding the following sentence at the end of the paragraph: If the contract permits reimbursement of any costs, the reimbursement amounts shall be limited by applicable MCC cost principles that will be provided by MCC upon request by MCA-Vanuatu.

(17) **Paragraph 2.28** defining requirements for publishing notice of award of the contract is modified to require that notice shall also be posted on the MCA-Vanuatu Website, or such other appropriate website designated by MCA-Vanuatu and approved by MCC. Paragraph 2.28 is also modified by adding the following sentence at the end of the paragraph: For contracts valued less than 100,000 USD, the publication in UNDB online and in dgMarket may be done quarterly and on the MCA-Vanuatu Website, or such other appropriate website designated by MCA-Vanuatu and approved by MCC, at least weekly and in the format of a summarized table covering the previous period.

(iii) Other Methods of Selection.

(1) **Paragraph 3.7**, Footnote 32 is changed to: Dollar thresholds defining "small" shall be determined in each case, taking into account the nature and complexity of the assignment, but shall not exceed 200,000 USD, except in exceptional circumstances and specifically approved by MCC.

(2) **Paragraphs 3.8** defining the requirements for publishing notice of award when selection is based on the consultant's qualifications is changed to: MCA-Vanuatu shall publish in *UNDB online*, on the MCA-Vanuatu Website, or such other appropriate website designated by MCA-Vanuatu and approved by MCC, and in *dgMarket*, the name of the consultant to which the contract was awarded, and the price, duration, and scope of the contract. The publication in *UNDB online* and in *dgMarket* may be done quarterly, and on the MCA-Vanuatu Website, or such other appropriate website designated by MCA-Vanuatu and approved by MCC, at least weekly, and in the format of a summarized table covering the previous period. All such publications shall be in English. At the discretion of MCA-Vanuatu, publication on the MCA-Vanuatu Website, or such other appropriate website designated by MCA-Vanuatu and approved by MCC, may also be in French.

(iv) Types of Contracts and Important Provisions.

(1) **Paragraph 4.6** defining currency related rules shall be changed to: RFPs shall state clearly 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, the local currency of Vanuatu or a combination thereof. MCA-Vanuatu may require consultants to state the portion of the price representing costs in the local currency of Vanuatu. Payment under the contract shall be made in the currency or currencies in which the price is expressed in the proposal.

(2) **Paragraph 4.7** dealing with price adjustment is deleted.

(3) **Paragraphs 4.8 and 4.9** defining payment provisions are subordinated to the disbursement provisions set out in the Compact and the Supplemental Agreements.

(4) **Paragraph 4.9**, subparagraph (a) relating to payment provisions is changed to: (a) consultants will be paid directly by the Fiscal Agent;

(5) **Paragraph 4.11** relating to Borrower's contribution is deleted.

(6) **Paragraph 4.15** relating to applicable law and settlement of disputes shall be changed to: The contract shall include provisions dealing with the applicable law and the forum for the settlement of disputes. Settlement of disputes shall take place in Vanuatu, with the possibility for international arbitration in the case of non-Vanuatu consultants.

(v) Selection of Individual Consultants.

(1) **Paragraph 5.2** defining procedures for selection of individual consultants shall be modified by changing the first three sentences to: Individual consultants are selected on the basis of their qualifications for the assignment. Advertisement is required for contracts valued at 30,000 USD 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 MCA-Vanuatu.

(vi) Appendix 1: Review by MCC of the Selection of Consultants.

(1) **Paragraph 1** is changed to: 1. If required by the thresholds set forth in Schedule 2, MCC shall review the selection process for the hiring of consultants proposed by MCA-Vanuatu 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 period of at least six months unless a shorter period is approved. MCA-Vanuatu shall update the Procurement Plan on a semi-annual basis or as needed always covering at least the next six months period of project implementation. Any revisions proposed to the Procurement Plan shall be furnished to MCC for its prior approval.

(2) **Prior Review:** The thresholds for review of procurement decisions prior to award of a contract and any modification to such contract are set out in Schedule 2.

(3) **Post Review:** The second sentence shall be modified to require that documents shall be retained for 5 years after the expiration or termination of the Compact.

(vii) Appendix 2: Instructions to Consultants (ITC).

(1) **Paragraph 1** relating to use of the World Bank standard proposal documents is changed in the introductory sentences to: MCA-Vanuatu 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 the circumstances of the procurement. This includes the ITC as modified to reflect MCC exceptions and special circumstances of the procurement. The ITC shall include adequate information on the following aspects of the assignment:

(2) **Paragraph 1(g)** referring to external financing is deleted.

(viii) Appendix 3: Guidance to Consultants.

(1) **Appendix 3:** Guidance to Consultants, providing guidance on policies and procedures of the World Bank in the operation of its programs is deleted. Consultants can learn about the Millennium Challenge Corporation and its programs at *www.mcc.gov* and about the MCC Program in Vanuatu at the website established by MCA-Vanuatu, or such other appropriate website designated by MCA-Vanuatu and approved by MCC.

(c) Specific Exceptions for Procurement of Goods, Works and Non-Consultant Services.

“The World Bank Guidelines: Procurement Under IBRD Loans and IDA Credits, May 2004”

(i) Introduction.

(1) **Paragraph 1.1** defining the purpose of the guidelines is deleted.

(ii) General Considerations.

(1) **Paragraph 1.2** describing the procurement principles underlying the guidelines is deleted.

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

(3) **Paragraph 1.4** is modified to change the third sentence to: The particular methods that may be followed for procurements under the Compact shall be set out in the semi-annual Procurement Plans. The fourth sentence is deleted.

(4) **Paragraph 1.5** is changed to: The procedures outlined in these Guidelines apply to all contracts for goods and works funded by MCC in accordance with the Compact and the Procurement Agreement. References to “goods” and “works” in these Guidelines include related services such as transportation, insurance, installation, commissioning, training and initial maintenance. “Goods” includes commodities, raw material, machinery, equipment and industrial plant. These Guidelines also apply to services which are bid and contracted on the basis of performance of a measurable physical output, such as drilling, mapping and similar operations. These Guidelines do not refer to “consultants’ services,” to which the *Guidelines: Selection and Employment of Consultants by World Bank Borrowers* (as modified by this Schedule 1) apply.

(5) **Paragraph 1.6**, Footnote 10 is deleted.

(6) **Paragraph 1.8** defining eligibility requirements is modified to add the following paragraph: (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 United States 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 principal 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, these countries include, but are not limited to, Cuba, Iran, North Korea and Syria.

(7) **Paragraph 1.9** defining rules for advance contracting and retroactive funding is changed to: MCA-Vanuatu may wish to proceed with the initial steps of procurement before the Compact enters into force. In such cases, the procurement procedures, including advertising shall be in accordance with these Procurement Guidelines in order for the eventual contracts to be eligible for MCC financing, and MCC shall review the process used by MCA-Vanuatu. MCA-Vanuatu undertakes such advance contracting at its own risk, and any concurrence by MCC with the procedures, documentation, or proposal for award does not commit MCC to make a grant for the project in question. Under no circumstances will MCC reimburse MCA-Vanuatu for any contract costs if the contract is signed prior to entry into force of the Compact and any required MCC approval.

(8) **Paragraph 1.13** defining how to reference The World Bank role in the procurement is changed to: MCA-Vanuatu shall use the following language when referring to MCC in the RFP and contract documents:

The Millennium Challenge Corporation ("**MCC**") and the Government of the Republic of Vanuatu (the "**Government**") have entered into a compact for Millennium Challenge Account assistance to help facilitate poverty reduction through economic growth in Vanuatu (the "**Compact**") in the amount of 65,690,000 USD ("**MCC Funding**"). MCA-Vanuatu, on behalf of the Government intends to apply a portion of the proceeds of the MCC Funding to eligible payments under this contract. Payment by MCC will be made only at the request of [MCA-Vanuatu] ("**MCA-Vanuatu**") and, if applicable, upon approval by MCC, and will be subject, in all respects, to the terms and conditions, including restrictions on the use of MCC Funding, of the Compact. No party other than the Government and MCA-Vanuatu shall derive any rights from the Compact or have any claim to any proceeds of the MCC Funding.

(9) **Paragraph 1.14** defining rules to deter fraud and corruption is modified in the first paragraph to: MCC requires that MCA-Vanuatu and any other beneficiaries of MCC Funding, including bidders, suppliers, and contractors under MCC financed contracts; observe the highest standard of ethics during the procurement and execution of such contracts. In accordance with this requirement, MCC:

(10) **Paragraph 1.16** defining the rules for providing a Procurement Plan is deleted. [*The rules for preparing and implementing the Procurement Plan are set out in Article 1 of the Procurement Agreement.*]

(iii) International Competitive Bidding (ICB).

(1) **Paragraph 2.7** defining the requirements for publication of a General Procurement Notice is deleted. [*The requirements for publication of a general notice in the form of a semi-annual Procurement Plan are set out in Article 1 of the Procurement Agreement.*]

(2) Footnotes 26 and 27 are not deleted.

(3) **Paragraph 2.8** defining the requirements for notification and advertising is modified to require publication at the MCA-Vanuatu Website, or such other appropriate website designated by MCA-Vanuatu and approved by MCC, in addition to the *UNDB online* and *dgMarket*.

(4) **Paragraph 2.12** prescribing use of the Standard Bidding Documents is changed in the first two sentences to: MCA-Vanuatu shall use the appropriate Standard Bidding Documents (SBDs) issued by the World Bank as modified to reflect the exceptions set out in these Procurement Guidelines and changes to address project-specific conditions, subject to MCC approval when the change is significant. The third sentence of Paragraph 2.12 remains unchanged.

(5) **Paragraph 2.15** defining the rules for use of language is changed to:

All advertisements and publications of awards for contracts at or above 30,000 USD, whether on the MCA-Vanuatu Website, dgMarket, or UN Development Business Online shall be published in English. Advertisements and publications of awards for contracts valued at less than 30,000 USD shall be published in English. At the discretion of MCA-Vanuatu, advertisements for contracts between 30,000 USD and 100,000 USD may also be published in French.

Prequalification and bidding documents and the bids for contracts valued at or above 100,000 USD shall be prepared in English. All contracts at or above 100,000 USD shall be written in English and this language shall govern contractual relations between MCA-Vanuatu and the Provider. At the discretion of MCA-Vanuatu, the prequalification and bidding documents also may be prepared in French, provided that in case of discrepancies the English version will control. For contracts valued less than 100,000 USD, any solicitations and responding documents, as well as contracts, may be prepared in English or French or both at the discretion of MCA-Vanuatu, provided that in case of discrepancies the English version will control. Bidders shall not be permitted or required to sign contracts in two languages.

(6) **Paragraph 2.26** defining requirements for transportation and insurance is changed in the third sentence to: The indemnity payable under transportation insurance shall be at least 110 percent of the contract amount denominated in United States dollars.

(7) **Paragraph 2.27** allowing reservation of transportation and insurance for imported goods to national companies is deleted.

(8) **Paragraph 2.28** setting out the currency provisions is changed to: 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 Vanuatu as stated in the bidding documents. No other currency is permitted.

(9) **Paragraphs 2.29 and 2.30** defining rules for the currency of bids is changed to: The Bidding Documents shall caution bidders that the bid price must be expressed in the currency requested. Only one of two currencies may be requested, either United States dollars or the currency of Vanuatu. Bids may not be requested or expressed in any other currency.

(10) **Paragraph 2.31** defining rules for currency conversion for bid comparison is changed in the first two sentences to: The bid price is the sum of all payments in United States dollars or the currency of Vanuatu as applicable. For the purpose of comparing prices, bid prices shall be converted to either one of the currencies selected by MCA-Vanuatu and stated in the bidding documents.

(11) **Paragraph 2.33** defining rules for making payment in currency other than the currency of the bid price is deleted.

(12) **Paragraph 2.36** defining the rules for payment method and terms is changed to: Bidding documents shall specify the payment method.

(13) **Paragraph 2.43** relating to applicable law and settlement of disputes shall be modified to change the first four sentences with the following text: The conditions of contract shall include provisions dealing with the applicable law and the forum for the settlement of disputes. Settlement of disputes shall take place in Vanuatu, with the possibility for international arbitration in the case where non-Vanuatu entities are parties to the contract.

(14) **Paragraph 2.50** defining read out bid price adjustment is modified by deleting the last sentence.

(15) **Paragraph 2.52** defining rules for determining the lowest evaluated bid is modified to delete the use of "payment schedule" from the list of permitted evaluation factors.

(16) **Paragraphs 2.55 and 2.56** defining requirements for use of domestic preferences are deleted.

(17) **Paragraph 2.60** defining the requirements for publication of the notices of contract award is modified to require publication at the MCA-Vanuatu Website, or such other appropriate website designated by MCA-Vanuatu and approved by MCC, in addition to *UNDB online* and *dgMarket*.

(18) **Paragraphs 2.66 and 2.67** defining modified ICB procedures for a program of imports are deleted.

(19) **Paragraph 2.68** defining the rules for procurement of commodities is modified to require that the bid prices must be denominated and paid in either United States dollars or the currency of Vanuatu.

(iv) **Other Methods of Procurement.**

(1) **Paragraph 3.1** defining the general rules for choosing a procurement method is modified by deleting the second sentence related to domestic preferences.

(2) **Paragraphs 3.3 and 3.4** related to National Competitive Bidding are deleted.

(3) **Paragraph 3.5** defining the conditions for using Shopping is modified to limit use of Shopping to procurements valued at less than 30,000 USD.

(4) **Paragraph 3.7** defining the publication requirements for notice of Direct Contracting awards is changed to: After contract signature, MCA-Vanuatu shall publish on the MCA-Vanuatu Website, or such other appropriate website designated by MCA-Vanuatu and approved by MCC, 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 contract. This publication may be done quarterly and in the format of a summarized table covering the previous period.

(5) **Paragraph 3.16** defining rules for loans guaranteed by the World Bank is deleted.

(6) **Paragraph 3.17** defining the rules for community participation in procurement is deleted.

(v) **Appendix 1: Review by MCC of Procurement Decisions.**

(1) **Paragraph 1** is changed to: 1. If required by the thresholds set forth in Schedule 2, MCC shall review the selection process for the hiring of consultants proposed by MCA-Vanuatu 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 period of at least six months unless a shorter period is approved. MCA-Vanuatu shall update the Procurement Plan on a semi-annual basis or as needed always covering at least the next six months period of project implementation. Any revisions proposed to the Procurement Plan shall be furnished to MCC for its prior approval.

(2) **Prior Review:** The thresholds for review of procurement decisions prior to award of a contract and any modification to such contracts are set out in Schedule 2.

(3) **Post Review:** The first sentence shall be modified to require that documents shall be retained for 5 years after the expiration or termination of the Compact.

(vi) Appendix 2: Domestic Preferences.

(1) **Appendix 2** defining the requirements and rules for using domestic preferences is deleted.

(vii) Appendix 3: Guidance to Bidders.

(1) **Appendix 3:** Guidance to Bidders, providing guidance on policies and procedures of the World Bank in the operation of its programs is deleted. Bidders can learn about the Millennium Challenge Corporation and its programs at *www.mcc.gov* and about the MCC Program in Vanuatu at the website established by MCA-Vanuatu, or such other appropriate website designated by MCA-Vanuatu and approved by MCC.

2. **Records.**

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

3. **Bidding and Proposal Documents.**

Standard bidding and proposal documents ("***Bidding and Proposal Documents***") shall be developed by MCA-Vanuatu and subject to review by MCC. The Bidding Documents must be available in English and, at the discretion of MCA-Vanuatu, in French. The English version will control. 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 currency of Vanuatu.

4. **Review and Approval Requirements.**

Certain important procurement actions and decisions shall be subject to prior review or approval by levels of authority within MCA-Vanuatu or by MCC, as provided in Schedule 2. 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.

5. **Bid Challenge System.**

MCA-Vanuatu shall establish, subject to MCC approval, a bid challenge system that provides suppliers and contractors the ability to seek review of procurement actions and decisions. The system must provide that the review body:

(a) Must be impartial and independent and have no 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.

(b) Must follow clear, written, and transparent procedures and issue a timely, written decision on any bid challenge that is timely and properly filed.

(c) Must have the authority to order a correction of a violation of the procurement principles and procedures or, if no other remedy is available, to order compensation for any loss or damage suffered by a successful challenger, at least to the extent of the cost of preparation of the bid and the challenge.

(d) Must have the power to order suspension of a procurement that is under challenge in order to preserve the commercial opportunity pending the outcome of the review.

(e) In addition to MCC approval of the bid challenge system, MCC reserves the right to review and comment on the organization and operation of the bid challenge system.

6. Subcontracting.

(a) Every contract or subcontract for goods, services or works with any party that receives at least 50,000 USD 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.

(b) In every contract or subcontract valued in excess of 1,000,000 USD, the contracting party shall be required to have written procedures governing subcontracting and purchasing that may be subject to review by MCA-Vanuatu, MCC, the Government and any of their respective agents or representatives.

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

SCHEDULE 2 - APPROVALS

REVIEW OF PROCUREMENT DECISIONS - CONSULTANT SERVICES				
		LEVEL OF REVIEW (Thresholds expressed in USD)		
Procurement Procedure or Method	Decision¹	Director	Steering Committee²	MCC
Quality and Cost Based Selection	Request for Expression of Interest	All	Above 500,000	Above 500,000
	Shortlist	All	Above 100,000	Above 100,000
	Proposal Documents	All	Above 500,000	Above 500,000
	Technical Evaluation Report	All	Above 100,000	Above 100,000
	Proposed Award and Final Contract	All	Above 100,000	Above 100,000
	Handling of Protest	All	All	All
Quality Based Selection and Selection under Fixed Budget	Choice of this selection procedure	All	All	All
	Request for Expression of Interest	All	Above 500,000	Above 500,000
	Shortlist	All	Above 100,000	Above 100,000
	Proposal Documents	All	Above 500,000	Above 500,000
	Technical Evaluation Report for QBS only	All	Above 100,000	Above 100,000
	Proposed Award and Final Contract	All	Above 100,000	Above 100,000
	Handling of Protest	All	All	All
Least-Cost Selection	Choice of this selection procedure because procurement is valued under 200,000	All	None	None
	Request for Expression of Interest	All	None	None
	Shortlist	All	Above 100,000	Above 100,000

¹ Within each "Procurement Procedure or Method," each separate "Decision" shown is an independent requirement, and all requisite approvals must be received for each such "Decision" before proceeding, sequentially from top to bottom, to the next "Decision" requirement.

² Notwithstanding the thresholds set forth in this Schedule 2 with respect to the Steering Committee, the Steering Committee may exercise its authority to review any procurement decision with prior notice to the Director of the Management Unit.

REVIEW OF PROCUREMENT DECISIONS - Consulting Services

Procurement Procedure or Method	Decision ¹	LEVEL OF REVIEW (Thresholds expressed in USD)		
		Director	Steering Committee ²	MCC
	Proposal Documents	All	None	None
	Proposed Award and Final Contract	All	Above 100,000	Above 100,000
	Handling of Protest	All	All	All
Selection Based on Consultant's Qualifications	Choice of this selection procedure because procurement is valued under 100,000	All	None	None
	Request for Expression of Interest	All	None	None
	Shortlist	All	Above 50,000	Above 50,000
	Proposal Documents	All	None	None
	Technical Evaluation Report	All	None	None
	Proposed Award and Final Contract	All	Above 50,000	Above 50,000
	Handling of Protest	All	All	All
Single Source Selection	Choice of this selection procedure	All	Above 50,000	Above 50,000
	Proposed Award and Final Contract	All	Above 50,000	Above 50,000
	Handling of Protest in respect of choosing Single Source Selection Procedure	All	All	All
Selection of Individual Consultants	Choice of this selection procedure	All	Above 50,000	Above 50,000
	Shortlist	All	Above 50,000	Above 50,000
	Technical Evaluation Report	All	None	None
	Proposed Award and Final Contract	All	Above 50,000	Above 50,000
	Handling of Protest	All	All	All

¹ Within each "Procurement Procedure or Method," each separate "Decision" shown is an independent requirement, and all requisite approvals must be received for each such "Decision" before proceeding, sequentially from top to bottom, to the next "Decision" requirement.

² Notwithstanding the thresholds set forth in this Schedule 2 with respect to the Steering Committee, the Steering Committee may exercise its authority to review any procurement decision with prior notice to the Director of the Management Unit.

REVIEW OF PROCUREMENT DECISIONS - Consultant Services				
		LEVEL OF REVIEW (Thresholds expressed in USD)		
Procurement Procedure or Method	Decision ¹	Director	Steering Committee ²	MCC
All Procurement Actions	Contract Modifications and Change Orders	All	For all contract awards approved previously if increases value of Contract, or raises a contract which did not require approval above an approval threshold or if extends Contract original term by 25% or more without value increase.	If increases value of Contract by 10% or more

REVIEW OF PROCUREMENT DECISIONS - Goods, Works and Non-Consultant Services				
		LEVEL OF REVIEW (Thresholds expressed in USD)		
Procurement Procedure or Method	Decision ¹	Director	Steering Committee ²	MCC
Pre-qualification	Pre-qualification documents and advertising procedures	All	Above 1,000,000	Above 1,000,000
	Evaluation Report with proposed list of entities qualified	All	Above 500,000	Above 500,000
	Handling of Protest	All	All	All
International Competitive Bidding	Bidding Documents	All	Above 1,000,000 Goods Above 5,000,000 Works	Above 1,000,000 Goods Above 5,000,000 Works
	Extension of Bid Validity	All	Above 1,000,000	Above 1,000,000
	Evaluation Report with Proposed Award and Final Contract	All	Above 250,000	Above 250,000
	Handling of Protest	All	All	All
Limited Bidding	Selection of limited bidding because only limited number of suppliers	All	Above 100,000	Above 100,000

¹ Within each "Procurement Procedure or Method," each separate "Decision" shown is an independent requirement, and all requisite approvals must be received for each such "Decision" before proceeding, sequentially from top to bottom, to the next "Decision" requirement.

² Notwithstanding the thresholds set forth in this Schedule 2 with respect to the Steering Committee, the Steering Committee may exercise its authority to review any procurement decision with prior notice to the Director of the Management Unit.

LEVEL OF REVIEW (Thresholds expressed in USD)				
Procurement Procedure or Method	Decision ¹	Director	Steering Committee ²	MCC
	Other justification	All	Above 50,000	Above 50,000
	Shortlist	All	Above 100,000	Above 100,000
	Bidding Documents	All	Above 500,000	Above 500,000
	Extension of Bid Validity	All	Above 1,000,000	Above 1,000,000
	Evaluation Report with Proposed Award and Final Contract	All	Above 1,000,000	Above 1,000,000
	Handling of Protest	All	All	All
Shopping	Selection of Shopping because procurement is valued under 30,000	All	None	None
	Shortlist	Over 2,000	None	None
	Record of Purchases	Weekly	Monthly	None
	Handling of Protest	All	All	Quarterly record of decisions
Direct Contracting	Selection of Direct Contracting to add to or extend existing contract	All	Above 100,000	Above 100,000
	Selection of Direct Contracting to be compatible with existing equipment	All	Above 50,000	Above 50,000
	Selection of Direct Contracting because obtainable only from one source	All	Above 100,000	Above 100,000
	Selection of Direct Contracting because procurement is valued under 2,000	None	None	None
	Selection of Direct Contracting on any other grounds	All	Above 50,000	Above 50,000

¹ Within each "Procurement Procedure or Method," each separate "Decision" shown is an independent requirement, and all requisite approvals must be received for each such "Decision" before proceeding, sequentially from top to bottom, to the next "Decision" requirement.

² Notwithstanding the thresholds set forth in this Schedule 2 with respect to the Steering Committee, the Steering Committee may exercise its authority to review any procurement decision with prior notice to the Director of the Management Unit.

REVIEW OF PROCUREMENT DECISIONS, Goods, Works and/or Consulting Services				
Procurement Procedure or Method	Decision ¹	LEVEL OF REVIEW (Thresholds expressed in USD)		
		Director	Steering Committee ²	MCC
	Proposed Contract	Over 2,000 (Under 2,000 review monthly report)	Above 50,000	Above 50,000
	Handling of Protest in respect of selection of Direct Contracting	All	All	All
Force Account	Selection of using equipment owned by or employees of Government of Vanuatu for performing works	All	All	All
	Proposed contracts	All	All	All
All Procurement Actions	Contract Modifications and Change Orders	All	For all contract awards approved previously if increases value of Contract by 10% or more, or raises a contract which did not require approval threshold or if extends Contract original term by 25% or more without value increase.	If increases value of Contract by 10% or more

¹ Within each "Procurement Procedure or Method," each separate "Decision" shown is an independent requirement, and all requisite approvals must be received for each such "Decision" before proceeding, sequentially from top to bottom, to the next "Decision" requirement.

² Notwithstanding the thresholds set forth in this Schedule 2 with respect to the Steering Committee, the Steering Committee may exercise its authority to review any procurement decision with prior notice to the Director of the Management Unit.

EXHIBIT A
DEFINITIONS

- Additional Representative shall have the meaning as set forth in Section 4.17.*
- Agreement shall have the meaning as set forth in the Preamble.*
- Attachments shall have the meaning as set forth in Section 4.6.*
- Bank shall have the meaning as set forth in Schedule 1 of this Agreement.*
- Bidding and Proposal Documents shall have the meaning as set forth in Schedule 1 of this Agreement.*
- Borrower shall have the meaning as set forth in Schedule 1 of this Agreement.*
- Compact shall have the meaning as set forth in the Preamble.*
- Effective Date shall have the meaning as set forth in the Preamble.*
- General Procurement Notice shall have the meaning as set forth in Schedule 1 of this Agreement.*
- Government shall have the meaning as set forth in the Preamble.*
- Guidelines shall have the meaning as set forth in Schedule 1 of this Agreement.*
- loan shall have the meaning as set forth in Schedule 1 of this Agreement.*
- Loan Agreement shall have the meaning as set forth in Schedule 1 of this Agreement.*
- MCA-Vanuatu shall have the meaning as set forth in the Preamble.*
- MCC (Millennium Challenge Corporation) shall have the meaning as set forth in the Preamble.*
- MCC Funding shall have the meaning as set forth in Schedule 1 of this Agreement.*
- Parties and Party shall have the meaning as set forth in the Preamble.*
- Principal Representative shall have the meaning as set forth in Section 4.17.*
- Procurement Agent shall have the meaning as set forth in Section 2.8.*
- Procurement Agent Agreement shall have the meaning as set forth in Section 2.8.*
- Procurement Guidelines shall have the meaning as set forth in Section 2.2.*
- Procurement Plan shall have the meaning as set forth in Section 1.1.*
- Procurement Principles shall have the meaning as set forth in Section 2.1.*
- WB Procurement Guidelines shall have the meaning as set forth in Schedule 1 of this Agreement.*