

Millennium Challenge Corporation
Program Procurement Guidance

Guidance on Over-Specification in the Procurement of Goods

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This paper provides guidance to the MCA Entity¹ on preparing specifications for the procurement of goods² in compliance with the MCC Program Procurement Guidelines³:

Background

As part of the procurement process, MCA Entities shall provide technical specifications for goods to be procured, including associated goods incorporated into procurements for works, consultant services or non-consultant services, that accurately reflect the minimum needs of the MCA Entity. They must be impartial, transparent and fiscally responsible. MCA Entities must be sensitive to – and work to avoid – any instances where proposed technical specifications require goods which exceed the minimum essential characteristics and standards to which they must conform to satisfy the intended use. These instances are defined as “over-specification”.

Definition

A good is over-specified when it exceeds the minimum standards necessary to complete the intended task. Goods which meet the minimum standards do not have to be goods of the lowest possible quality, but must have the minimum physical, functional and/or performance characteristics required to complete the intended work in an effective and efficient manner.

Examples of Over-Specification

The following scenarios provide examples of over-specification in goods procurements. These scenarios are included for illustrative purpose only, and it must be noted that since over-specification can manifest itself in many ways, each procurement must be assessed on a case by case basis against the standard definition provided above and the requirements of the MCC Program Procurement Guidelines.

Scenario One

An MCA Entity requires the procurement of several vehicles in order to inspect sections of a road under construction. Year round fog resulting in poor visibility along the length of the road demands that, for reasons of safety, the vehicles are sufficiently visible to construction personnel. In order to meet this requirement, the MCA

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 Part 1, Section 1.A, Paragraphs 2.19-2.20.

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 Regulation, not the MCC Program Procurement Guidelines.

Entity management instructs the Procurement Agent(s)⁴ to include the following statement in the technical specifications for the required vehicles:

“Exterior Color: Sun Burst Yellow”

This statement necessarily excludes submission of a bid for any vehicle other than Sun Burst Yellow. While there may be instances when color is part of the requirement to meet specific programmatic considerations, in this case the requirement for sufficiently visible vehicles could be met by a range of brightly painted exteriors. In addition to unnecessarily supplying color requirements, the specification in this scenario introduces a particular type of yellow, which could indicate preference of a particular brand or supplier. The specification is therefore over-specified, as it disqualifies available alternatives which would meet the necessary standard for the task intended.

The Procurement Agent(s) should question the specification as written. A properly written specification would achieve the same result by requiring the necessary performance characteristic:

“Vehicle visibility: must be visible at 150 meters to the unaided eye in conditions of 50% visibility.”

Scenario Two

An MCA Entity requires the procurement of several computer printers for standard office use. After an assessment by Information Technology personnel, it is documented that print speeds of 20 pages per minute represent the minimum requirement for efficient functioning of the printer based on the number of users, the volume of work anticipated, and reasonable considerations of technological advancement from the time of specifications to the expected award of the contract.

On receiving this estimate, the MCA Entity management instructs the Procurement Agent(s) to include a specification for 80 pages per minute. In this scenario, such a speed represents that required by operations on scale much larger and for a purpose beyond that of standard office use, as required by the MCA Entity. Their justification for the increase is that printer technology is continually advancing, and in several years 20 pages per minute may not be as fast as newer machines. This proposal represents over-specification as the goods that it calls for exceed the minimum standards necessary to complete the intended task in an efficient manner, and must be rejected by the Procurement Agent(s).

Consequences of Over-Specification

In both of the scenarios above, as with all instances of over-specification, the primary consequences are a restriction of competition and the potential for excessive expenditure of MCC funds. Competition is restricted because

⁴ MCC Program Procurement Guidelines Part 1, Section 1.A, Paragraph 1.16.1-1.16.3; MCC Program Procurement Guidelines Part 1, Section 1.B, Paragraph 1.24.1-1.24.3.

over-specification excludes viable alternatives that could meet the minimum standards of the intended use without inhibiting program efficiency. This not only limits the number of bids that could be received and considered, but represents the potential for intentional manipulation and fraud. There is also the potential for waste of MCC funds because over-specification can also result in unnecessary price increases. This is particularly true in cases similar to Scenario Two of this guidance paper where viable alternatives are not allowed to be submitted and considered on the basis of price.

Procedures for Verifying Proper Specification in the Procurement of Goods

MCA Entities must propose specifications for the procurement of goods that are consistent with the standards detailed in the MCC Program Procurement Guidelines and this guidance paper. The Procurement Agent(s) of the MCA Entity is then responsible for verifying the specification against the same standard, and questioning any instances where over-specification is indicated.

Extraordinary circumstances which may require specifications above minimum requirements, and are acceptable in the opinion of the Procurement Agent, should be documented and, if applicable, noted when submitted for MCC approval.