

AMENDED AND RESTATED PROCUREMENT AGREEMENT

BY AND AMONG THE

MILLENNIUM CHALLENGE CORPORATION,

THE

MINISTRY OF FINANCE AND PUBLIC ADMINISTRATION,

ON BEHALF OF THE GOVERNMENT OF THE REPUBLIC OF CAPE
VERDE

AND

MCA-CAPE VERDE

DATED AS OF APRIL 25TH, 2008

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SCHEDULE 1 -- MCC PROGRAM PROCUREMENT GUIDELINES

PROCUREMENT AGREEMENT

This AMENDED AND RESTATED PROCUREMENT AGREEMENT (the “*Agreement*”) is made by and among the Millennium Challenge Corporation, a United States Government corporation (“*MCC*”), the Ministry of Finance and Public Administration (the “*Ministry*”), on behalf of the Government of the Republic of Cape Verde (the “*Government*”), and MCA-Cape Verde, an independent unit established under the laws of Cape Verde (“*MCA-Cape Verde*”), and shall become effective as of April 25, 2008 (the “*Effective Date*”). MCC, the Ministry and MCA-Cape Verde are sometimes referred to herein individually as a “*Party*” and together as the “*Parties*.” All capitalized terms that are used but not defined herein shall have the meaning given such terms in that certain Millennium Challenge Compact by and between the United States of America, acting through MCC, and the Government signed in Praia, Cape Verde on July 4, 2005 (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 use to implement the Program in the Republic of Cape Verde (“*Cape Verde*”) and achieve the Compact Goal and Objectives;

WHEREAS, pursuant to Section 3.2 of the Compact, the Government may designate MCA-Cape Verde to assume and carry out certain government rights, responsibilities and duties under the Compact;

WHEREAS, as a condition precedent to Entry into Force of the Compact under Section 4.1(c) of the Compact, the Parties executed a Procurement Agreement dated July 4, 2005, as modified on November 2, 2006, (“*Original Procurement Agreement*”), which specifies the terms and conditions for procurements of goods, services and works made in furtherance of the Compact and using MCC Funding;

WHEREAS, in accordance with Section 4.4 of the Original Procurement Agreement, the Parties wish to amend and restate the Original Procurement Agreement; and

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements set forth herein, as of the Effective Date, this Agreement shall amend and restate in its entirety the Original Procurement Agreement, and the Parties hereby agree as follows:

ARTICLE I

PROCUREMENT PLAN

Section 1.1 Procurement Plan Development. The Ministry and MCA-Cape Verde shall ensure that MCA-Cape Verde develops and adopts a procurement plan on a semi-annual basis for acquiring the goods, works and services needed to implement the Compact (each, a “*Procurement Plan*”), which Procurement Plans shall be subject to MCC approval and shall:

(a) identify how purchasing needs for such period will be bundled into specific procurements;

(b) for each type of procurement identified therein, identify the method of procurement anticipated to be used for selecting the supplier(s) or contractor(s); and

(c) for each type of procurement identified therein, estimate (i) the proposed budget for such procurement; (ii) the time period required to conduct such procurement; and (iii) the date by which such procurement is expected to be completed.

Each Procurement Plan shall be submitted to MCC for approval before publishing the General Procurement Notice (as defined in Schedule 1) for the period of the Procurement Plan.

Section 1.2 Publication of Procurement Plans. Following receipt of MCC's approval of a Procurement Plan, and following due adoption of the Procurement Plan by MCA-Cape Verde in accordance with its Bylaws and Governing Documents, MCA-Cape Verde shall publicize the procurements planned for the upcoming period identified in the approved Procurement Plan in accordance with the procedures set forth in Schedule 1.

Section 1.3 Procurement Plan Implementation. The Ministry and MCA-Cape Verde shall ensure that all procurements of goods, services and works shall be consistent with each Procurement Plan, unless MCC otherwise agrees, and shall comply with the methods of procurement outlined in such Procurement Plan. As set forth in the Disbursement Agreement, compliance with the Procurement Plan shall be a condition precedent to MCC Disbursements or Re-Disbursements for the related Program or Project expense.

Section 1.4 Deviations from Procurement Plan. For any procurement the value of which exceeds USD \$10,000, the Ministry or MCA-Cape Verde shall notify MCC at least ten (10) days prior to using a procurement method different from the method identified in a Procurement Plan, which deviation shall be subject to MCC approval on a no-objection basis.

ARTICLE II

OBLIGATIONS AND REPRESENTATIONS

Section 2.1 Procurement Principles. The Ministry and MCA-Cape Verde 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. The Ministry and MCA-Cape Verde 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 on Schedule 1 attached hereto or as the Parties may otherwise agree in writing (the "***Procurement Guidelines***"). The Ministry shall ensure that (i) all Government Affiliates, MCA-Cape Verde and any other Permitted Designees are notified of the terms of this Agreement and the Procurement Principles and that each adopts and complies with the Procurement Guidelines

and (ii) that the Procurement Guidelines are incorporated in any relevant Supplemental Agreement with any Government Affiliate, MCA-Cape Verde or any other Permitted Designee. MCA-Cape Verde shall ensure that (i) any Provider not referenced in the preceding sentence is notified of the terms of this Agreement and the Procurement Principles and that each adopts and complies with the Procurement Guidelines and (ii) that the Procurement Guidelines are incorporated in any relevant Supplemental Agreement with any such Providers.

Section 2.3 Bid Challenge. The Ministry and MCA-Cape Verde shall ensure that any bid challenges are conducted in accordance with the terms set forth on 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 **“Standard Solicitation 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 or other Compact Documents, including (i) the limitations on use and treatment of MCC Funding set forth in Section 2.3, (ii) as applicable, the audit, access and records requirements set forth in Section 3.8 of the Compact, (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 or 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-Cape Verde shall deliver or cause the delivery of quarterly reports to MCC and the Procurement Review Commission of all procurement actions since the prior quarter, including written explanations of any variance from the Procurement Plan for that quarterly period.

Section 2.6 Other Responsibilities. The Ministry and MCA-Cape Verde shall comply with all applicable terms and conditions and fulfill all applicable Government Responsibilities in the other Compact Documents, including requirements set forth in Section 3.6 of the Compact and any audit or reporting requirements.

Section 2.7 Ministry Representations as of the Effective Date. The Ministry hereby provides the following representations to MCC that as of the Effective Date:

(a) Powers; Authorization. The Ministry has the power and authority to execute, deliver and perform its obligations and, pursuant to Section 4.2, any obligations of MCA-Cape Verde under this Agreement and each other agreement, certificate, or instrument contemplated hereby on behalf of the Government. The execution, delivery and performance by the Ministry of this Agreement and the transactions contemplated herein (i) have been duly authorized by all necessary action on the part of the Government and (ii) will not violate (a) any applicable law or regulation or (b) any obligation of the Ministry, the Government, any 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 the Ministry.

Section 2.8 MCA-Cape Verde Representations. MCA-Cape Verde provides the following representations to MCC as of the date of its execution of this Agreement:

(a) Powers; Authorization. MCA-Cape Verde has the power and authority to execute, deliver and perform its obligations under this Agreement and each other agreement, certificate, or instrument contemplated hereby. The execution, delivery and performance by MCA-Cape Verde of this Agreement and the transactions contemplated herein (i) have been duly authorized by all necessary action and (ii) will not violate (a) any applicable law or regulation or (b) any obligation of MCA-Cape Verde. No other action, consent, approval, registration or filing with or any other action by any person, entity or 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 the MCA-Cape Verde.

ARTICLE III

APPROVALS

Section 3.1 Approvals. MCA-Cape Verde shall ensure that procurement actions regarding terms of reference, selection of procurement method, and selection, award and formation of contracts for goods, services or works in furtherance of the Compact and funded in whole or in part by MCC Funding shall be approved by the authorized entity, officer or body as designated on Schedule 1 for the corresponding type of action or dollar amount threshold, unless otherwise agreed in writing by the Parties.

Section 3.2 MCC. Notwithstanding Section 3.1, nothing in this Agreement shall limit the rights of MCC to approve Material Agreements, Material Re-Disbursements, Material Terms of Reference or any other action or document in accordance with Section 3(b) 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 approvals rights under this Agreement, MCC shall exercise its right of approval within 20 business days or inform MCA-Cape Verde prior to the expiration of the period of the extension of MCC's approval period for an additional 20 business days.

Section 3.3 Procurement Review Commission Approvals. The Ministry and MCA-Cape Verde shall ensure that only members approved by the Procurement Review Commission are appointed to technical evaluation panels for procurement.

ARTICLE IV

GENERAL PROVISIONS

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

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

To MCC:

Millennium Challenge Corporation
Attention: Vice President for Compact Implementation,
with a copy to the Vice President and General Counsel
875 15th Street, N.W.
Washington, D.C. 20005
United States of America
Facsimile: (202) 521-3700
Email: VPIImplementation@mcc.gov; VPGeneralCounsel@mcc.gov

To the Ministry:

Ministry of Finance and Public Administration
Attention: Minister of Finance and Public Administration
Avenida Amilcar Cabral, CP30
Praia, Republic of Cape Verde
Facsimile: (238) 261-3897
Phone: (238) 260-7644
E-mail: cristina.duarte@govcv.gov.cv; alicia.brito@govcv.gov.cv

To MCA-Cape Verde:

MCA-Cape Verde
Attention: Managing Director
Meio Achada de Santo António

C.P. 30-A, Praia

Republic of Cape Verde
Tel: 238-262 49 73 Fax: (238) 262 46 33
E-mail: Laurent.brito@mca.cv

Section 4.3 Amendments. 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, the Ministry shall give, or cause to be given, appropriate publicity to this Agreement, including by posting a copy of this

Agreement and the Procurement Plan (updated semi-annually) on the MCA-Cape Verde Website in English and Portuguese.

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 or any other Compact Document, 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 other Compact Document or any waiver on such Party's part of any provisions or conditions of this Agreement or any other Compact Document must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or any other Compact Document, 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 Section and Subsection 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 Interpretation; Definitions. Any reference to the term "including" in this Agreement shall be deemed to mean "including without limitation" except as expressly provided otherwise. Any reference to "business days" shall mean any day that is business day in Washington, D.C and Praia, Cape Verde. Any reference to "Compact Documents" shall mean this Agreement, the Compact, any Supplemental Agreement between MCC and the Government, and any Supplemental Agreement between the Parties.

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 full extent permitted by the laws of the United States of America, without the prior consent of the Ministry or MCA-Cape Verde. MCC shall provide written notice to the Ministry upon the effectiveness of such assignment, delegation or contract. Neither the Ministry nor MCA-Cape Verde may assign, delegate or contract its rights and obligations under this Agreement without the prior written consent of MCC.

Section 4.13 Entire Agreement. Except as otherwise expressly provided in the Compact or as may be subsequently agreed by the Parties in writing from time to time, 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 Further Assurances. The Ministry shall promptly do and perform such other and further acts, and take all necessary and appropriate actions to bring into effect this Agreement with respect to MCA-Cape Verde.

Section 4.15 Termination; Suspension.

(a) Either Party 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, MCC may suspend or terminate this Agreement, in whole or in part, and any obligation or sub-obligation related thereto, upon giving the Government 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 ninety (90) days following the termination or expiration of the Compact;

(ii) Any Supplemental Agreement has been suspended or terminated in whole or in part, and such termination or suspension will have a materially adverse effect on the purpose of this Agreement or the ability of the Ministry, MCA-Cape Verde or Government to implement their respective obligations and responsibilities under the Compact Documents;

(iii) The Ministry or MCA-Cape Verde, in MCC's sole opinion, has materially breached one or more of its representations or any other covenants, obligations or responsibilities under the Compact Documents, including without limitation Section 1.3 of this Agreement;

(iv) Any event that would be a basis for termination or suspension of a Supplemental Agreement in accordance with Section 5.4 of the Compact has occurred.

(v) There has occurred, in MCC's sole opinion, a failure to meet a condition precedent or series of conditions precedent to MCC Disbursement as set out in and in accordance with this Agreement or any other Supplemental Agreement between the Parties or any Supplemental Agreement between the Government and MCC.

(vi) The Government, Ministry or MCA-Cape Verde or any Government Affiliate or Permitted Designee, in MCC's sole opinion, has materially breached one or more of its representations or any other covenants, obligations or responsibilities under this Agreement or any of the Compact Documents.

Section 4.16 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 4.2, 4.5, 4.7, 4.9, 4.10, 4.11, 4.13, 4.15, 4.16, 4.17, 4.19(c), 4.20, and 4.21.

Section 4.17 MCC Status. 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 the Ministry 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 Cape Verde.

Section 4.18 Representatives. For all purposes relevant to this Agreement, the Ministry shall be represented by the individual holding the position of, or acting as, Minister of Finance and Planning of the Ministry of Finance and Public Administration (the "**Ministry Principal Representative**"), MCC shall be represented by the individual holding the position of, or acting as, Vice President for Compact Implementation (the "**MCC Principal Representative**"), and MCA-Cape Verde shall be represented by the individual holding the position of, or acting as, Managing Director (the "**MCA-Cape Verde 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 Ministry hereby designates the Chief of the Office of the Minister of Finance and Public Administration as an Additional Representative of the Ministry. The names of the Ministry Principal Representative and any Additional Representative of the Ministry shall be provided, with specimen signatures, to MCC and the name of the MCC Principal Representative shall be provided with specimen signature to the Ministry, and the Parties may accept as duly authorized any instrument signed by such representatives relating to the implementation of this Agreement, until receipt of written notice of revocation of their authority. A Party may change its Principal Representative to a new representative of equivalent or higher rank and seniority upon written notice to the other Party, which notice shall include the specimen signature of the new Principal Representative.

Section 4.19 Reports. 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 acceptable to MCC to afford reasonable and appropriate review of such reports and in no event less than 20


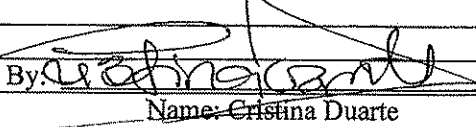

business days from end of the prior reporting period. MCA-Cape Verde shall deliver to MCC in a timely manner any information or document that arises under or is related to this Agreement that may be required for the fulfillment of the Government's obligations under the reporting and audit requirements 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. 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.

Section 4.20 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 Parties shall endeavor to designate a representative of equal or comparable rank. If such representatives are unable to resolve the matter within 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 45 days from date of commencement. If the matter is not resolved within such time period, any Party may terminate this Agreement pursuant to Section 4.15. The Parties shall enter any such consultations guided by the principle of achieving the Compact Goal in a timely and cost-effective manner.

Section 4.21 Effective Date; Term. This Agreement shall (i) become effective and enter into force as of the date hereof upon the signature of duly authorized representatives of MCC and the Ministry (the "*Effective Date*") and (ii) end ninety (90) days following the termination or expiration of the Compact; *provided, however*, no new procurements shall be made or obligations incurred after the termination or expiration of the Compact; *provided, further*, that this Agreement may be effective for no more than 180 days prior to the execution of this Agreement by the Principal Representative of MCA-Cape Verde; and *provided, further*, that the term of this Agreement may be extended for a period that is longer than ninety (90) days following the termination or expiration of the Compact if MCC determines that Re-Disbursements related to obligations incurred prior to the expiration or termination of the Compact remain to be carried out.

[Signature page begins on the next page.]

IN WITNESS WHEREOF, each of the Parties each acting through its duly authorized representative, has caused this Amended and Restated Agreement to be executed in their names and delivered as of the Effective Date written above.

| | |
|---|---|
| MILLENNIUM CHALLENGE CORPORATION | MINISTRY OF FINANCE AND PUBLIC ADMINISTRATION, ON BEHALF OF THE GOVERNMENT OF THE REPUBLIC OF CAPE VERDE |
| | |
| By:  Name: Darius Mans | By:  Name: Cristina Duarte |
| Title: Vice President for Compact Implementation | Title: Minister of Finance and Public Administration |
| | |
| MCA-CAPE VERDE | |
| | |
| By:  Name: Laurent Mehdi Brito | |
| Title: Managing Director | |

SCHEDULE 1

MCC PROGRAM PROCUREMENT GUIDELINES

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PART 1. CONDUCT AND ADMINISTRATION OF PROCUREMENT

The principles, rules and procedures set out herein (“*MCC Program Procurement Guidelines*” or “*Guidelines*”) shall govern the conduct and administration by the MCA Entity of the procurement of the goods, works, consultant and non-consultant services that need to be acquired to implement the projects funded under the Compact (“*Project*” or “*Projects*”), unless the Millennium Challenge Corporation (“*MCC*”) specifically agrees to the application of alternative procurement procedures.¹

Section 1. A. PROGRAM PROCUREMENT GUIDELINES: PROCUREMENT OF GOODS, WORKS AND NON-CONSULTANT SERVICES

I. INTRODUCTION

Purpose

1.1 The principles, rules and procedures set out in this Section 1.A of these Guidelines shall govern the conduct and administration of the procurement of the goods, works and non-consultant services² that need to be acquired to implement the Projects under the Compact.³

General Considerations

1.2.1 The MCA Entity is responsible for implementing the Projects, and therefore for selecting the contractors and suppliers, and awarding and subsequently administering the contracts. While in practice the specific procurement rules and procedures to be followed in the implementation of

¹ The MCC Program Procurement Guidelines are based on “Guidelines: Procurement Under IBRD Loans and IDA Credits, May 2004, revised October 2006” and “Guidelines: Selection and Employment of Consultants by World Bank Borrowers, May 2004, revised October 2006”, © 2004 by the International Bank for Reconstruction and Development/The World Bank. All rights reserved. For further information, please visit <http://www.worldbank.org>.

² 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 materials, machinery, equipment, and industrial plants. The provisions of 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. The Guidelines governing consultant services are set out below at Section 1.B.

³ Reserved

a Project depend on the circumstances of the particular case, the following four considerations (“*MCC Program Procurement Principles*”) generally guide the application of these Guidelines:⁴

- a) Open, fair and competitive procedures used in a transparent manner to solicit, award and administer contracts to procure goods, works and non-consultant services;
- b) Solicitations for goods, works and non-consultant services shall be based upon a clear and accurate description of the goods, works or non-consultant services to be acquired;
- c) Contracts shall be awarded only to qualified and capable suppliers and contractors that have the capability and willingness to perform the contracts in accordance with the terms and conditions of the applicable contracts and on a cost-effective and timely basis; and
- d) No more than a commercially reasonable price (as determined, for example, by a comparison of price quotations and market prices) shall be paid to procure goods, works and non-consultant services.^{5 6}

1.2.2 The MCA Entity shall ensure that all the procurements for goods, works and non-consultant services in furtherance of the Compact and funded in whole or in part, directly or indirectly, with MCC funding shall comply with these MCC Procurement Principles.

1.3 Open competition is the basis for efficient public procurement. In most cases therefore, MCC requires that MCC-funded goods, works, and non-consultant services be obtained through a competitive bidding process (“*Competitive Bidding*”) open to eligible suppliers and contractors⁷ as set out in Sub-Section 1.A.II below.⁸

1.4 Where Competitive Bidding is not the most appropriate method of procurement, other methods of procurement may be used. Sub-Section 1.A.III describes these other methods of procurement and the circumstances under which their application would be more appropriate. The particular methods to be followed for procurements under the Compact shall be set out in Procurement Plans approved by MCC.

⁴ These four principles are set out in Section 3.6 of the Compact.

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Applicability of Section 1.A of these Guidelines

1.5 The procedures outlined in this Section 1.A of these Guidelines apply to all contracts for goods, works and non-consultant services funded by MCC under the Compact.⁹

Eligibility

1.6 To foster competition MCC permits firms and individuals from almost all countries¹⁰ to offer goods, works, and non-consultant services for MCC-funded Projects. Any conditions for participation shall be limited to those that are essential to ensure the firm's capability to fulfill the contract in question.

1.7 In connection with any MCC-funded contract, MCC does not permit the MCA Entity to deny pre- or post- qualification to a firm for reasons unrelated to its capability and resources to perform the contract successfully; nor does it permit the MCA Entity to disqualify any bidder for such reasons. Consequently, the MCA Entity should carry out due diligence on the legal, technical and financial qualifications of bidders to be assured of their capabilities in relation to the specific contract.

1.8 As exceptions to the foregoing:

(a) Firms of a country or goods manufactured in a country may be excluded if, (i) as a matter of law or official regulation, the country of the MCA Entity prohibits commercial relations with that country, provided that MCC is satisfied that such exclusion does not preclude effective competition for the supply of goods or works required, or (ii) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the country of the MCA Entity prohibits any import of goods from, or payments to, a particular country, person, or entity. Where the country of the MCA Entity prohibits payments to a particular firm or for particular goods by such an act of compliance, that firm may be excluded.

(b) A firm which has been engaged to provide consultant services for the preparation or implementation of a Project, and any of its affiliates, shall be disqualified from subsequently providing goods, works, consultant or non-consultant services resulting from or directly related

⁹ This includes those cases where the MCA Entity employs an independent procurement agent.

¹⁰ Firms and individuals from any country subject to sanction or restriction by law or policy of the United States are not eligible to compete for MCC-funded contracts. See Paragraph 1.8(e) of Section 1.A of these Guidelines.

to the firm's consultant services for such preparation or implementation. This provision does not apply to the various firms (consultants, contractors, or suppliers) which together are performing the contractor's obligations under a turnkey or design and build contract.¹¹

(c) Government-owned enterprises in the country of MCA Entity may participate only if they can establish that they (i) are legally and financially autonomous, (ii) operate under commercial law, and (iii) are not dependent agencies of the country of MCA Entity¹²

(d) A firm declared ineligible by The World Bank for any reasons including in accordance with The World Bank Group Anti-Corruption policies,¹³ shall be ineligible to be awarded an MCC-funded contract during the period of time the firm is sanctioned by The World Bank.

(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 Federal 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 law or policy of the United States.¹⁴

Advance Contracting and Retroactive Financing

1.9 The MCA Entity 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 MCC Program Procurement Guidelines in order for the eventual contracts to be eligible for MCC funding, and MCC shall review the process used by the MCA

¹¹ See Paragraph 2.5 of Section 1.A of these Guidelines.

¹² Other than Force Account units, as permitted under Paragraph 3.8 of Section 1.A of these Guidelines.

¹³ For purposes of this Sub-paragraph, the relevant World Bank Group Anti-Corruption policies are set forth in the Guidelines On Preventing and Combating Fraud and Corruption in Projects financed by IBRD Loans and IDA Credits and Grants, and in the Anti-corruption Guidelines for IFC, MIGA, and World Bank Guarantee Transactions.

¹⁴ As of April, 2007, this list includes Cuba, Iran, North Korea, Sudan and Syria.

Entity. The MCA Entity 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 fund the contract in question. Under no circumstances will MCC reimburse the MCA Entity for any contract costs if the contract is signed prior to obligation of funds by MCC and any required MCC approval.

Joint Ventures

1.10 Any firm may bid independently or in joint venture confirming joint and several liability, with domestic firms and/or with foreign firms, but MCC does not accept conditions of bidding which require mandatory joint ventures or other forms of mandatory association between firms.

MCC Review

1.11 MCC shall review the MCA Entity procurement procedures, documents, bid evaluations, award recommendations, and contracts to ensure that the procurement process is carried out in accordance with the agreed procedures. These review procedures are described in Attachment 1 of these MCC Program Procurement Guidelines.

Misprocurement

1.12 MCC does not fund expenditures for goods, works and non-consultant services which have not been procured in accordance with the agreed provisions as detailed in the Compact, these MCC Program Procurement Guidelines and the approved Procurement Plans.¹⁵ In such cases, MCC will declare misprocurement, and may cancel that portion of the Compact allocated to the goods, works or non-consultant services that have been misprocured if corrective measures satisfactory to MCC are not taken. MCC may, in addition, exercise other remedies provided for under the Compact. Even once the contract is awarded after obtaining an approval from MCC, MCC may still declare misprocurement if it concludes that the approval was issued on the basis of incomplete, inaccurate, or misleading information furnished by the MCA Entity or the terms and conditions of the contract had been modified without MCC approval.

References to MCC

1.13 The MCA Entity shall use the following language when referring to MCC in procurement documents:

¹⁵ See Paragraphs 1.16.1, 1.16.2 and 1.16.3 of Section 1.A of these Guidelines.

The Millennium Challenge Corporation (“MCC”) and the Government of [Insert Country] (the “Government”) have entered into a Millennium Challenge Compact for Millennium Challenge Account assistance to help facilitate poverty reduction through economic growth in [Insert Country] (the “Compact”) in the amount of [Insert amount of Compact] USD (“MCC Funding”). [The MCA Entity] on behalf of the Government intends to apply a portion of the proceeds of MCC Funding to eligible payments under this contract. Payments by [the MCA Entity] 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 [the MCA Entity] shall derive any rights from the Compact or have any claim to the proceeds of MCC Funding.^{16 17}

Fraud and Corruption

1.14 MCC requires that all beneficiaries of MCC funding, including the MCA Entity and any bidders, suppliers, contractors, and subcontractors under any MCC-funded contracts observe the highest standards of ethics during the procurement and execution of such contracts. In pursuance of this policy, the following provisions shall apply.¹⁸

(a) For the purposes of these provisions, the terms set forth below are defined as follows:

(i) “corrupt practice”¹⁹ means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of a public official (including MCA Entity and MCC staff and employees of other organizations taking or reviewing selection decisions) in the selection process or in contract execution or the making of any payment to any third party, in connection with or in furtherance of a contract, in violation of (A) the United States Foreign Corrupt Practices Act of 1977, as amended (15 USC 78a et seq.) (“FCPA”), or any other actions taken that otherwise would be in violation of the FCPA if the FCPA were applicable, or (B) any applicable law in the MCA Entity’s country;

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(ii) “fraudulent practice”²⁰ means any act or omission, including any misrepresentation, in order to influence (or attempt to influence) a selection process or the execution of a contract to obtain a financial or other benefit, or to avoid (or attempt to avoid) an obligation;

(iii) “collusive practice”²¹ means a scheme or arrangement between two or more parties, with or without the knowledge of the MCA Entity, designed to establish prices at artificial, noncompetitive levels or to otherwise deprive the MCA Entity of the benefits of free and open competition;

(iv) “coercive practice”²² means impairing or harming or threatening to impair or harm, directly or indirectly, persons or their property, to influence their participation in a procurement process, or affect the execution of a contract;

(v) “obstructive practice” means

(aa) destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to impede an investigation into allegations of a corrupt, fraudulent, coercive, collusive, or prohibited practice; and threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, and

(bb) acts intended to impede the exercise of the inspection and audit rights of MCC provided under a Compact; and

(vi) “prohibited practice” means any action that violates Section E (Compliance with Anti-Corruption Legislation), Section F (Compliance with Anti-Money Laundering Legislation) and Section G (Compliance with Terrorist Financing Statutes and Other Restrictions) of the “General Provisions Annex” that will be made a part of MCC-funded contracts and may be found on the MCC website at http://www.mcc.gov/guidance/compact/general_provisions.pdf.

(b) The MCA Entity will reject a bid (and MCC will deny approval of a proposal for contract award) if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, obstructive or prohibited practices in competing for the contract in question.

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(c) MCC and the MCA Entity have the right to sanction a bidder, supplier, contractor, or subcontractor, including declaring such party ineligible, either indefinitely or for a stated period of time, to be awarded an MCC-funded contract if at any time either the MCA Entity or MCC determines that the bidder, supplier, contractor, or subcontractor has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, obstructive or prohibited practices in competing for, or in executing, such a contract.

(d) MCC and the MCA Entity have the right to require that a provision be included in solicitation documents and in MCC-funded contracts requiring a bidder, supplier, contractor, or subcontractor to permit the MCA Entity, MCC, or any designee of MCC, to inspect its accounts, records and other documents relating to the submission of a bid or performance of a MCC-funded contract and to have them audited by auditors appointed by MCC or the MCA Entity with the approval of MCC.

(e) MCC has the right to cancel the portion of MCC funding allocated to a contract if it determines at any time that representatives of a beneficiary of the MCC funding engaged in corrupt, fraudulent, collusive, coercive, obstructive or prohibited practices during the selection process or the execution of a MCC-funded contract, without the MCA Entity having taken timely and appropriate action satisfactory to MCC to remedy the situation.

1.15 With the specific approval of MCC, the MCA Entity may introduce, into bid forms for large contracts funded by MCC, an undertaking of the bidder to observe, in competing for and executing a contract, the country's laws against fraud and corruption (including bribery), as listed in the solicitation documents.²³ MCC will accept the introduction of such undertaking at the request of the MCA Entity, provided the arrangements governing such undertaking are satisfactory to MCC.

Procurement Plan

Section 1.16.1 The MCA Entity shall prepare periodic procurement plans, that are updated at least semi-annually, for acquiring goods, works and non-consultant services needed to implement the Compact (each a "***Procurement Plan***"). Each Procurement Plan shall be adopted by the governing body of the MCA Entity and shall be submitted to MCC for its approval. Each

²³ As an example, such an undertaking might read as follows: "We undertake that, in competing for (and, if the award is made to us, in executing) the above contract, we will strictly observe the laws against fraud and corruption in force in the country of [Insert Country], as such laws have been listed in the bidding documents for this contract."

Procurement Plan²⁴, typically covering a six (6) month period, (a) lists the particular contracts for the goods, works, and/or non-consultant services required to implement the Compact for the period covered in such Procurement Plan; (b) identifies the proposed method of procurement for such contracts as determined according to the rules set out in these Guidelines; and (c) sets forth the estimated value for each contract.

Section 1.16.2 The MCA Entity shall ensure that all goods, works and non-consultant services shall be procured using the procurement method approved in each Procurement Plan. Compliance, satisfactory to MCC, with the approved Procurement Plan shall be a condition precedent to MCC Disbursements or payments.

Section 1.16.3 The MCA Entity shall not initiate any procurement action that deviates in any way from the applicable adopted and approved Procurement Plan without the prior approval of MCC. If the MCA Entity determines that such a deviation is necessary or appropriate, the MCA Entity shall submit a request to MCC for its approval of an amended Procurement Plan. If approved by MCC, the MCA Entity shall comply with any instructions contained in the MCC approval, including any publication requirements. Any substantial deviation from a Procurement Plan as approved and adopted shall be submitted to the governing body of the MCA Entity for adoption of the amended Procurement Plan.

II. COMPETITIVE BIDDING (“CB”)

A. General

Introduction

2.1 The objective of Competitive Bidding, as described in these Guidelines, is to provide all eligible prospective bidders²⁵ with timely and adequate notification of the MCA Entity’s requirements and an equal opportunity to bid for the required goods, works and non-consultant services.

²⁴ When consultant services also need to be procured, the Procurement Plan must also include such procurements in accordance with the requirements at Section 1.B Par. 1.24 of these Guidelines.

²⁵ See Paragraphs 1.6, 1.7 and 1.8 of Section 1.A of these Guidelines.

Type and Size of Contracts

2.2 The solicitation documents shall clearly state the type of contract to be entered into and contain the proposed contract provisions appropriate for the type of contract to be used. The most common types of contracts provide for payments on the basis of a lump sum, unit prices, reimbursable cost plus fees, or combinations thereof. Reimbursable cost contracts are acceptable to MCC only in exceptional circumstances such as conditions of high risk or where costs cannot be determined in advance with sufficient accuracy. Such contracts shall include appropriate incentives to limit costs and shall reference MCC Cost Principles (“*MCC Cost Principles*”) found at the MCC website, www.mcc.gov. Requirements contracts, indefinite delivery-indefinite quantity (“*IDIQ*”) contracts and blanket purchase agreements are also permitted.

2.3 The size and scope of individual contracts will depend on the magnitude, nature, and location of the Project. For Projects requiring a variety of goods and works, separate contracts generally are awarded for the supply and/or installation of different items of equipment and plant²⁶ and for the works.

2.4 For a Project requiring similar but separate items of goods or works, bids may be invited under alternative contract options that would attract the interest of both small and large firms which could be allowed, at their option, to bid for individual contracts (slices) or for a group of similar contracts (package). All bids and combinations of bids shall be received by the same deadline and opened and evaluated simultaneously so as to determine the bid or combination of bids offering the lowest evaluated cost to the MCA Entity.²⁷

2.5 In certain cases MCC may accept or require a turnkey contract under which the design and engineering, the supply and installation of equipment, and the construction of a complete facility or works are provided under one contract. Alternatively, the MCA Entity may remain responsible for the design and engineering, and invite bids for a single responsibility contract for the supply and installation of all goods and works required for the Project component. Design and build, and management contracting²⁸ contracts are also acceptable where appropriate.²⁹

²⁶ For purposes of these Guidelines, “plant” refers to installed equipment, as in a production facility.

²⁷ See Paragraphs. 2.4 – 2.54 of Section 1.A of these Guidelines for the bid evaluation procedures.

²⁸ In construction, a management contractor usually does not perform the work directly but contracts out and manages the work of other contractors, taking on the full responsibility and risk for price, quality, and timely performance. Conversely, a construction manager is a

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Two-Stage Bidding

2.6 In the case of turnkey contracts or contracts for large complex facilities or works of a special nature, or complex information and communication technology, it may be undesirable or impractical to prepare complete technical specifications in advance. In such a case, a Two-Stage Bidding procedure may be used, under which first un-priced technical proposals on the basis of a conceptual design or performance specifications are invited, subject to technical as well as commercial clarifications and adjustments, to be followed by amended bidding documents³⁰ and the submission of final technical proposals and priced bids in the second stage.

Notification and Advertising

2.7 Timely notification of bidding opportunities is essential in competitive bidding. On at least a semi-annual basis, the MCA Entity shall publicize the procurements planned for the upcoming period as identified in the adopted Procurement Plan which was approved by MCC (each a “**General Procurement Notice**”). The General Procurement Notice shall be in a form acceptable to MCC and include information derived from the Procurement Plan and the name, telephone (or fax) number, and email and postal address of the MCA Entity agent responsible for procurement and the address of the website(s) where Specific Procurement Notices will be posted. If known, the scheduled date for availability of solicitation documents for each procurement (including prequalification or bidding documents) should be indicated. Such solicitation documents shall not be released to the public earlier than the date of publication of the General and Specific Procurement Notices. The General Procurement Notice shall be advertised in a manner to provide reasonable notice of planned procurements to potential suppliers and contractors. Advertisement of the General Procurement Notice shall include posting in English at the MCA Entity’s website (or such other appropriate website designated by the MCA Entity and approved by MCC), the Development Gateway Market website at www.dgmarket.com (“**dgMarket**”) and the United Nations Development Business online

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consultant for, or agent of, the MCA Entity, but does not take on such risks. (If funded by MCC, the services of the construction manager should be procured under the procedures for procuring consultant services at Section 1.B of these Guidelines.)

²⁹ Also see Paragraphs 3.14 and 3.15 of Section 1.A of these Guidelines for performance-based contracting.

³⁰ In revising the bidding documents in the second stage the MCA Entity should respect the confidentiality of the bidders’ technical proposals used in the first stage, consistent with requirements of transparency and intellectual property rights.

website at www.devbusiness.com (“*UNDB Online*”).³¹ The MCA Entity shall also publish the General Procurement Notice in a newspaper of wide circulation in the country of the MCA Entity and in such other media outlets as appropriate or as requested from time to time by MCC. In countries where the official language is other than English, the General Procurement Notice shall be published in the official local language of the country of the MCA Entity in at least one newspaper of wide circulation in the country.

2.8 Invitations to prequalify or to bid, as the case may be, shall be advertised as Specific Procurement Notices (each, a “*Specific Procurement Notice*”). For contracts valued at or over 50,000USD, such invitations shall be published in at least one newspaper of national circulation in the country of the MCA Entity and posted at the MCA Entity’s website (or such other appropriate website designated by the MCA Entity and approved by MCC) and at the *dgMarket* website. For contracts valued at or over 100,000USD, the MCA Entity must also post the Specific Procurement Notice at *UNDB Online*. Publication in local print and broadcast and other national and international media is encouraged as long as the posting does not pre-date the required postings. The text of the notice may be subject to prior approval by MCC. Notification shall be given in sufficient time to enable prospective bidders to obtain prequalification or bidding documents and prepare and submit their responses taking into consideration the estimated value of the contract and period of advance notice given with the General Procurement Notice.³²

Prequalification of Bidders

2.9 Prequalification is usually necessary for large or complex works, or in any other circumstances in which the high costs of preparing detailed bids could discourage competition, such as custom designed equipment, industrial plants, specialized services, some complex information and technology and contracts to be let under turnkey, design and build, or management contracting. This also ensures that invitations to bid are extended only to those who have adequate capabilities and resources. Prequalification shall be based entirely upon the capability and resources of prospective bidders to perform the particular contract satisfactorily, taking into account their (a) experience and past performance on similar contracts, (b)

³¹ UNDB is a publication of the United Nations. Subscription information is available from: Development Business, United Nations, GCPO Box 5850, New York, NY 10163-5850, USA (Website: www.devbusiness.com; e-mail: dbsubscribe@un.org); Development Gateway Market is an electronic portal of Development Gateway Foundation, 1889 F Street, N.W. Washington, DC 20006, USA (Website: www.dgmarket.com).

³² Also see Paragraph 2.44 of Section 1.A of these Guidelines.

capabilities with respect to personnel, equipment, and construction or manufacturing facilities, and (c) financial position.³³

2.10 The invitation to prequalify for bidding on specific contracts or groups of similar contracts shall be advertised as described in Paragraphs 2.7 and 2.8 above. The scope of the contract and a clear statement of the requirements for qualification shall be sent to those who responded to the invitation. All such applicants that meet the specified criteria shall be allowed to bid. The MCA Entity shall inform all applicants of the results of prequalification. As soon as prequalification is completed, the bidding documents shall be made available to the qualified prospective bidders. For prequalification for groups of contracts to be awarded over a period of time, a limit for the number or total value of awards to any one bidder may be made on the basis of the bidder's resources. The list of prequalified firms in such instances shall be updated periodically. Verification of the information provided in the submission for prequalification shall be confirmed at the time of award of contract, and award may be denied to a bidder that is judged no longer to have the capability or resources to perform the contract successfully.

B. Bidding Documents

General

2.11 The bidding documents shall furnish all information necessary for a prospective bidder to prepare a bid for the goods, works and non-consultant services to be provided. While the detail and complexity of these documents may vary with the size and nature of the proposed bid package and contract, they generally include: invitation to bid; instructions to bidders; form of bid; form of contract; conditions of contract, both general and special; specifications and drawings; relevant technical data (including of geological and environmental nature); list of goods or bill of quantities; delivery time or schedule of completion; and necessary appendices, such as formats for various securities. The basis for bid evaluation and selection of the lowest evaluated bid shall be clearly outlined in the instructions to bidders and/or the specifications. If a fee is charged for the bidding documents, it shall be reasonable and reflect only the cost of their printing and delivery to prospective bidders, and shall not be so high as to discourage qualified bidders. The MCA Entity may use an electronic system to distribute bidding documents, provided that MCC is satisfied with the adequacy of such system. If bidding documents are distributed electronically, the electronic system shall be secure to avoid modifications to the bidding documents and shall not restrict the access of bidders to the bidding documents. Guidance on critical components of the bidding documents is given in the following paragraphs.

³³ Reserved

2.12 The MCA Entity shall use the appropriate Standard Solicitation Documents, including the Standard Bidding Documents, as approved by MCC pursuant to Part 3 of these MCC Program Procurement Guidelines, and as may be modified to address Project-specific conditions, subject to approval by MCC when the change is material. To the extent possible, such changes shall be introduced through bid or contract data sheets or through special conditions of contract, and not by introducing changes in the standard wording of the MCA Entity's Standard Solicitation Documents.

Validity of Bids and Bid Security

2.13 Bidders shall be required to submit bids valid for a period specified in the bidding documents which shall be sufficient to enable the MCA Entity to complete the comparison and evaluation of bids, review the recommendation of award with MCC (if required), and obtain all the necessary approvals so that the contract can be awarded within that period.

2.14 The MCA Entity has the option of requiring a bid security. When used, the bid security shall be in the amount and form specified in the bidding documents³⁴ and shall remain valid for a sufficient time beyond the validity period of the bids, in order to provide reasonable time for the MCA Entity to act if the security is to be called. Bid security shall be released to unsuccessful bidders once the contract has been signed with the winning bidder. In place of a bid security, the MCA Entity may require bidders to sign a declaration accepting that if they withdraw or modify their bids during the period of validity or they are awarded the contract and they fail to sign the contract or to submit a performance security before the deadline defined in the bidding documents, the bidder will be suspended for a period of time from being eligible for bidding in any contract with the MCA Entity.

Language

2.15.1 All advertisements for contracts and notices of contract awards for contracts valued at or above 50,000USD, whether posted at the MCA Entity's website, at *dgMarket*, or *UNDB Online* shall be posted in English. Advertisements for contracts and notices of contract awards for contracts valued at less than 100,000 USD shall be published in English or the official local language of the country of the MCA Entity (if different from English) or in both languages at the discretion of the MCA Entity provided that when contracts are prepared in both languages, the

³⁴ The format of the bid security shall be in accordance with what was approved by MCC with its approval of the MCA Entity's Standard Bidding Documents and shall be issued by a reputable bank or financial institution selected by the bidder. If the institution issuing the security is located outside the MCA Entity, it shall have a correspondent financial institution located in the country of the MCA Entity to make it enforceable.

English version will control. At the discretion of the MCA Entity, advertisements for contracts at or above 100,000USD may also be published in the local language of the country of the MCA Entity.

2.15.2 For all contracts at or above 100,000USD, the solicitation documents as well as the documents responding to these solicitations, including the bids, shall be prepared in English. All contracts at or above 100,000USD shall be written in English and this language shall govern contractual relations between the MCA Entity and the supplier or contractor. At the discretion of the MCA Entity, the solicitation documents also may be prepared in the local official language of the country of the MCA Entity (if different from English). For contracts valued at less than 100,000USD, any solicitation document, responding documents and contracts may be prepared in English or the local official language of the country of the MCA Entity (if different from English) or both at the discretion of the MCA Entity, provided that if the documents are prepared in both languages, the English version will control. However, contractors and suppliers shall not be permitted or required to sign contracts in two languages.³⁵

Clarity of Bidding Documents

2.16 Bidding documents shall be so worded as to permit and encourage international competition and shall set forth clearly and precisely the work to be carried out, the location of the work, the goods to be supplied, the place of delivery or installation, the schedule for delivery or completion, minimum performance requirements, and the warranty and maintenance requirements, as well as any other pertinent terms and conditions. In addition, the bidding documents, where appropriate, shall define the tests, standards, and methods that will be employed to judge the conformity of equipment as delivered, or works as performed, with the specifications. Drawings shall be consistent with the text of the specifications, and an order of precedence between the two shall be specified.

2.17 The bidding documents shall specify any factors, in addition to price, which will be taken into account in evaluating bids, and how such factors will be quantified or otherwise evaluated. If bids based on alternative designs, materials, completion schedules, etc., are permitted, conditions for their acceptability and the method of their evaluation shall be expressly stated.

2.18 All prospective bidders shall be provided the same information, and shall be assured of equal opportunities to obtain additional information on a timely basis. The MCA Entity shall provide reasonable access to Project sites for visits by prospective bidders. For works or complex supply contracts, particularly for those requiring refurbishing existing works or equipment, a pre-bid conference may be arranged whereby potential bidders may meet with

³⁵ Reserved

representatives of the MCA Entity to seek clarifications (in person or online). Minutes of the conference shall be provided to all prospective bidders with a copy included in the record of the procurement. Any additional information, clarification, correction of errors, or modifications of bidding documents shall be sent to each recipient of the original bidding documents in sufficient time before the deadline for receipt of bids to enable bidders to take appropriate actions. If necessary, the deadline shall be extended. MCC shall receive a copy of modifications to the bidding documents and be consulted for issuing its approval when the contract is subject to prior review by MCC.

Standards

2.19 Standards and technical specifications quoted in bidding documents shall promote the broadest possible competition, while assuring the critical performance or other requirements for the goods and/or works under procurement. As far as possible, the MCA Entity shall specify internationally accepted standards such as those issued by the International Standards Organization with which the equipment or materials or workmanship shall comply. Where such international standards are unavailable or are inappropriate, national standards may be specified. In all cases, the bidding documents shall state that equipment, material, or workmanship meeting other standards, which promise at least substantial equivalence, will also be accepted.

Use of Brand Names

2.20 Specifications shall be based on relevant characteristics and/or performance requirements. References to brand names, catalog numbers, or similar classifications shall be avoided. If it is necessary to quote a brand name or catalog number of a particular manufacturer to clarify an otherwise incomplete specification, the words “or equivalent” shall be added after such reference. The specification shall permit the acceptance of offers for goods which have similar characteristics and which provide performance at least substantially equivalent to those specified.

Pricing

2.21 Bids for goods shall be invited on the basis of (a) CIP³⁶ for all goods manufactured abroad, including those previously imported, and (b) EXW³⁷ for goods manufactured or

³⁶ Refer to INCOTERMS 2000, published by the International Chamber of Commerce, Cours Albert 1er, 75008 Paris, France, for definition of CIP.

³⁷ Refer to INCOTERMS 2000, published by the International Chamber of Commerce, Cours Albert 1er, 75008 Paris, France, for definition of EXW.

assembled in the country of the MCA Entity, plus the cost of inland transportation and insurance to the place of destination, subject to any modifications set forth in the solicitation documents. Bidders shall be allowed to arrange for ocean and other transportation and related insurance from any eligible source.³⁸ Where installation, commissioning, or other similar services are required to be performed by the bidder, as in the case of “supply and installation” contracts, the bidder shall be required to quote for these services, in addition.

2.22 In the case of turnkey contracts, the bidder shall be required to quote the price of the installed plant at site, including all costs for supply of equipment, marine and local transportation and insurance, installation, and commissioning, as well as associated works and all other services included in the scope of contract such as design, maintenance, operation, etc.³⁹

2.23 Bidders for works contracts shall be required to quote unit prices or lump sum prices for the performance of the works. Bidders shall be allowed to obtain all inputs from any eligible source so that they may offer their most competitive bids.

Price Adjustment

2.24 Bidding documents shall state either (a) that bid prices will be fixed or (b) that price adjustments will be made to reflect any changes (upwards or downwards) in major cost components of the contract, such as labor, equipment, materials, and fuel. Price adjustment provisions are usually not necessary in simple contracts involving delivery of goods or completion of works within eighteen months, but might be included in contracts which extend beyond eighteen months with the approval of MCC. However, when it is normal commercial practice to obtain firm prices for some types of equipment regardless of the delivery time, price adjustment provisions are not needed.

2.25 Prices may be adjusted by the use of a prescribed formula (or formulae) which breaks down the total price into components that are adjusted by price indices specified for each component or, alternatively, on the basis of documentary evidence (including actual invoices) provided by the supplier or contractor. The use of the formula method of price adjustment is preferable to that of documentary evidence. The method to be used, the formula (if applicable), and the base date for application shall be clearly defined in the bidding documents. If the payment currency is different from the source of the input and corresponding index, a correction factor shall be applied in the formula, to avoid incorrect adjustment.

³⁸ See Paragraphs 1.6, 1.7 and 1.8 of Section 1.A of these Guidelines.

³⁹ Reserved

Transportation and Insurance

2.26 Bidding documents shall permit suppliers and contractors to arrange transportation and insurance from any eligible source. Bidding documents shall state the types and terms of insurance to be provided by the bidder. The indemnity payable under transportation insurance shall be at least 110 percent of the contract amount denominated in United States dollars or local currency of the country of the MCA Entity depending upon the currency of the contract. For works, a contractor's "all risk" form of policy usually shall be specified. For large Projects with several contractors on a site, a "wrap up" or total Project insurance arrangement may be obtained by the MCA Entity, in which case the MCA Entity shall seek competition for such insurance.

2.27 Reserved⁴⁰

Currency Provisions

2.28 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, the local currency of the country of the MCA Entity, or a combination of the two as stated in the bidding documents. No other currency is permitted.

Currency of Bid

2.29 The bidding documents shall caution bidders that the bid price must be expressed in the currency requested. The requested currency may be either United States dollars, the local currency of the country of the MCA Entity, or a combination of the two. Bids may not be requested or expressed in any other currency.⁴¹

2.30 Reserved

Currency Conversion for Bid Comparison

2.31 The bid price is the sum of all payments in United States dollars or the currency of the country of the MCA Entity as applicable. For the purpose of comparing prices, bid prices shall be converted to either one of the two currencies as selected by the MCA Entity and stated in the bidding documents. The MCA Entity shall make this conversion by using the selling (exchange) rates for those currencies quoted by an official source (such as the Central Bank of the country of

⁴⁰ Reserved

⁴¹ Reserved

the MCA Entity), by a commercial bank or by an internationally circulated newspaper for similar transactions on a date selected in advance. Such source and date to be specified in the bidding documents, provided that the date shall not be earlier than four weeks prior to the deadline for the receipt of bids, nor later than the original date for the expiration of the period of bid validity.

Currency of Payment

2.32 Payment of the contract price shall be made in the currency (or currencies) as stated in the bidding documents.

2.33 Reserved

Terms and Methods of Payment

2.34 Payment terms shall be in accordance with the international commercial practices applicable to the specific goods, works and non-consultant services. The contract shall provide for the payment of interest if payment is delayed due to the fault of the MCA Entity or its agents beyond the time allowed in the contract; the rate of charges shall be specified in the contract.

(a) Contracts for supply of goods shall provide for full payment on the delivery and inspection, if so required, of the contracted goods except for contracts involving installation, commissioning and testing, in which case a portion of the payment may be made after the supplier has complied with all its obligations under the contract. The use of letters of credit is encouraged so as to assure prompt payment to the supplier. In major contracts for goods and plants, provision shall be made for partial payments for work done and, in contracts of long duration, for partial payments during the period of manufacture or assembly.

(b) Contracts for works shall provide in appropriate cases for partial payments for work done in furtherance of contract performance and reasonable retention amounts to be released upon compliance with the contractor's obligations under contract.

2.35 Any payment for work done in furtherance of the contract shall be related to the estimated amount of these expenses and be specified in the bidding documents. Amounts and timing of other payments to be made, such as for materials delivered to the site for incorporation in the works, shall also be specified. Payment made in advance of work done, including payment made upon signature of a contract for goods or works (advance payments) requires prior approval of MCC and a commitment of a security guarantee or bond in the amount of the advance payment. The bidding documents shall specify the arrangements for any security required for advance payments.

2.36 Bidding documents shall specify the payment method. Terms of payment may not be used as an evaluation criterion and may not affect the bid evaluation.

Alternative Bids

2.37 The bidding documents shall clearly indicate when bidders are allowed to submit alternative bids, how alternative bids should be submitted, how bid prices should be offered and the basis on which alternative bids shall be evaluated.

Conditions of Contract

2.38 The contract documents shall clearly define the scope of work to be performed, the goods to be supplied, the rights and obligations of the MCA Entity and of the supplier or contractor, and the functions and authority of the engineer, architect, or construction manager, if one is employed by the MCA Entity, in the supervision and administration of the contract. In addition to the general conditions of contract, any special conditions particular to the specific goods, works or non-consultant services to be procured and the location of the Project shall be included. The conditions of contract shall provide a balanced allocation of risks and liabilities.

Performance Security

2.39 Bidding documents for works shall require a security in an amount sufficient to protect the MCA Entity in case of breach of contract by the contractor. This security shall be provided in an appropriate form and amount, as specified by the MCA Entity in the bidding document.⁴² The amount of the security may vary, depending on the type of security furnished and on the nature and magnitude of the works. A portion of this security shall extend sufficiently beyond the date of completion of the works to cover the defects liability or maintenance period up to final acceptance by the MCA Entity.

2.40 In contracts for the supply of goods, the need for performance security depends on the market conditions and commercial practice for the particular kind of goods. Suppliers or manufacturers may be required to provide a security to protect against nonperformance of the contract and to cover warranty obligations. The security shall be reasonable in amount.

⁴² The format of the performance security shall be in accordance with the Standard Bidding Documents and shall be issued by a reputable bank or financial institution selected by the bidder. If the institution issuing the security is located outside the country of the MCA Entity, it shall have a correspondent financial institution located in the country to make it enforceable.

Liquidated Damages and Bonus Clauses

2.41 Provisions for liquidated damages or similar provisions in an appropriate amount shall be included in the conditions of contract when delays in the delivery of goods, completion of works or failure of the goods, works or non-consultant services to meet performance requirements would result in extra cost or loss of revenue or loss of other benefits to the MCA Entity. With prior approval of MCC, provision may also be made for a bonus to be paid to suppliers or contractors for completion of works or delivery of goods ahead of the times specified in the contract when such earlier completion or delivery would be of benefit to the MCA Entity.

Force Majeure

2.42 The conditions of contract shall stipulate that failure on the part of the parties to perform their obligations under the contract will not be considered a default if such failure is the result of an event of force majeure as defined in the conditions of contract.

Applicable Law and Settlement of Disputes

2.43 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 the country of the MCA Entity with the possibility for international arbitration in the case where foreign entities are parties to the contract and in other cases where the parties so agree.⁴³ In the case of works contracts, supply and installation contracts, and turnkey contracts, the dispute settlement provision might also include mechanisms such as dispute review boards or adjudicators, which are designed to permit a speedier dispute settlement.

C. Bid Opening, Evaluation, and Award of Contract

Time for Preparation of Bids

2.44 The time allowed for the preparation and submission of bids shall be determined with due consideration of the particular circumstances of the Project, the magnitude and complexity of the contract, and the period of advanced notice provided by the General Procurement Notice. Where large works or complex items of equipment are involved, the period shall be long enough to enable prospective bidders to conduct investigations before submitting their bids. In such cases, the MCA Entity is encouraged to convene pre-bid conferences and arrange site visits. Bidders shall be permitted to submit bids by mail or by hand. The MCA Entity may also use electronic systems permitting bidders to submit bids by electronic means, provided MCC is satisfied with

⁴³ reserved

the adequacy of the system, including, inter alia, that the system is secure, maintains the confidentiality and authenticity of bids submitted, uses an electronic signature system or equivalent to keep bidders bound to their bids, and only allows bids to be opened with due simultaneous electronic authorization of the bidder and the MCA Entity. In this case, bidders shall continue to have the option to submit their bids in hard copy. The deadline and place for receipt of bids shall be specified in the invitation to bid.

Bid Opening Procedures

2.45 The time for the bid opening shall be the same as for the deadline for receipt of bids or promptly⁴⁴ thereafter, and shall be announced, together with the place for bid opening, in the invitation to bid. The MCA Entity shall open all bids at the stipulated time and place. Bids shall be opened in public; bidders or their representatives shall be allowed to be present (in person or online, when electronic bidding is used) and the general public, at the discretion of the MCA Entity. The name of the bidder and total amount of each bid, and of any alternative bids if they have been requested or permitted, shall be read aloud (and posted online when electronic bidding is used) and recorded when opened and a copy of this record shall be sent to all bidders who submitted bids in time. Bids received after the time stipulated, as well as those not opened and read aloud at bid opening, shall not be considered.

Clarifications or Alterations of Bids

2.46 Except as otherwise provided in Paragraphs 2.63 and 2.64 of Section 1.A of these Guidelines, bidders shall not be requested or permitted to alter their bids after the deadline for receipt of bids. The MCA Entity shall ask bidders for clarification needed to evaluate their bids but shall not ask or permit bidders to change the substance or price of their bids after the bid opening. Requests for clarification and the bidders' responses shall be made in writing, in hard copy and/or by an electronic system satisfactory to MCC.⁴⁵

Confidentiality

2.47 After the public opening of bids, information relating to the examination, clarification, and evaluation of bids and recommendations concerning awards shall not be disclosed to bidders or other persons not officially concerned with this process until the publication of contract award.

⁴⁴ To allow sufficient time to take the bids to the place announced for public bid opening.

⁴⁵ See Paragraph 2.44 of Section 1.A of these Guidelines.

Examination of Bids

2.48 The MCA Entity shall ascertain whether the bids (a) meet the eligibility requirements specified in Paragraphs 1.6, 1.7 and 1.8 of Section 1.A of these Guidelines, (b) have been properly signed, (c) are accompanied by the required securities or required declaration signed as specified in Paragraph 2.14 of Section 1.A of these Guidelines, (d) are substantially responsive to the bidding documents, and (v) are otherwise generally in order. If a bid is not substantially responsive, that is, it contains material deviations from or reservations to the terms, conditions, and specifications in the bidding documents, it shall not be considered further. The bidder shall not be permitted to correct or withdraw material deviations or reservations once bids have been opened.⁴⁶

Evaluation and Comparison of Bids

2.49 The purpose of bid evaluation is to determine the cost to the MCA Entity of each bid in a manner that permits a comparison on the basis of their evaluated cost. Subject to Paragraph 2.58 of Section 1.A of these Guidelines, the bid with the lowest evaluated cost,⁴⁷ but not necessarily the lowest submitted price, shall be selected for award.

2.50 The bid price read aloud at the bid opening shall be adjusted to correct any arithmetical errors. Also, for the purpose of evaluation, adjustments shall be made for any quantifiable nonmaterial deviations or reservations.

2.51 The evaluation and comparison of bids shall be on CIP prices for the supply of imported goods⁴⁸ and EXW prices, plus cost of inland transportation and insurance to the place of

⁴⁶ See Paragraph 2.50 of Section 1.A of these Guidelines regarding corrections.

⁴⁷ See Paragraph 2.52 of Section 1.A of these Guidelines.

⁴⁸ The MCA Entity may ask for prices on a CIF basis (and bids compared on that same basis) only when the goods are carried by sea and the goods are not containerized. CIF shall not be used for anything other than sea transport. In the case of manufactured goods, it is unlikely that the choice of CIF will be appropriate, because these goods are usually containerized. CIP can be used for any mode of transport, including sea and multimodal transport.

destination, for goods manufactured within the country of the MCA Entity, together with prices for any required installation, training, commissioning, and other similar services.⁴⁹

2.52 Bidding documents shall also specify the relevant factors in addition to price to be considered in bid evaluation and the manner in which they will be applied for the purpose of determining the lowest evaluated bid. For goods and equipment, other factors may be taken into consideration including, among others, delivery time, operating costs, efficiency and compatibility of the equipment, availability of service and spare parts, and related training, safety, and environmental benefits. The factors other than price to be used for determining the lowest evaluated bid shall, to the extent practicable, be expressed in monetary terms, or given a relative weight in the evaluation provisions in the bidding documents.

2.53 Bid evaluation for works shall be strictly in monetary terms.⁵⁰ Any procedure under which bids above or below a predetermined assessment of bid values are automatically disqualified is not acceptable. If time is a critical factor, the value of early completion to the MCA Entity may be taken into account according to criteria presented in the bidding documents, only if the conditions of contract provide for commensurate penalties for noncompliance and MCC has granted prior approval.

2.54 The MCA Entity shall prepare a detailed report on the evaluation and comparison of bids setting forth the specific reasons on which the recommendation is based for the award of the contract.

Domestic Preferences

2.55 Application of domestic preferences for nationality or local content shall not be permitted.⁵¹

2.56 Reserved

⁴⁹ The evaluation of bids shall not take into account: (a) customs duties and other taxes levied on imported goods quoted CIP (which are excluded of custom duties); (b) sales and similar taxes levied in connection with the sale or delivery of the goods.

⁵⁰ Reserved

⁵¹ Reserved

Extension of Validity of Bids

2.57 The MCA Entity shall complete evaluation of bids and award of contract within the initial period of bid validity so that extensions are not necessary. An extension of bid validity, if justified by exceptional circumstances, shall be requested in writing from all bidders before the expiration date. The extension shall be for the minimum period required to complete the evaluation, obtain the necessary approvals, and award the contract. Whenever an extension of bid validity period is requested, bidders shall not be requested or be permitted to change the quoted (base) price or other conditions of their bid. Bidders shall have the right to refuse to grant such an extension. If the bidding documents require a bid security, bidders may exercise their right to refuse to grant such an extension without forfeiting their bid security, but those who are willing to extend the validity of their bid shall be required to provide a suitable extension of bid security.

Postqualification of Bidders

2.58 If bidders have not been prequalified, the MCA Entity shall determine whether the bidder whose bid has been determined to offer the lowest evaluated cost has the capability and resources to effectively carry out the contract as offered in the bid. The criteria to be met shall be set out in the bidding documents, and if the bidder does not meet them, the bid shall be rejected. In such an event, the MCA Entity shall make a similar determination and also confirm eligibility of the next-lowest evaluated bidder.

Award of Contract

2.59 The MCA Entity shall award the contract, within the period of the validity of bids, to the bidder who meets the appropriate standards of capability and resources and whose bid has been determined (i) to be substantially responsive to the bidding documents and (ii) to offer the lowest evaluated cost.⁵² A bidder shall not be required, as a condition of award, to undertake responsibilities for work not stipulated in the bidding documents or otherwise to modify the bid as originally submitted.

Publication of the Award of Contract

2.60 After the award of contract, the MCA Entity shall post at *UNDB Online*, at *dgMarket* and at the MCA Entity's website (or such other appropriate website designated by the MCA Entity and approved by MCC) the results, identifying the procurement, the name of the winning bidder and the price, duration, and summary scope of the contract. The same information shall

⁵² Referred to as "lowest evaluated bidder" and "lowest evaluated bid," respectively.

be sent to all bidders who have submitted bids. The posting at *UNDB Online* and at *dgMarket* shall be done monthly and at the MCA Entity's website (or such other appropriate website designated by the MCA Entity and approved by MCC) at least weekly. The posting shall be in a format of a summarized table covering the previous period. All such postings shall be in English. At the discretion of the MCA Entity, posting on the MCA Entity's website (or such other appropriate website designated by the MCA Entity and approved by MCC) may also be in the local language of the country of the MCA Entity.

Rejection of All Bids

2.61 Bidding documents usually provide that the MCA Entity may reject all bids. Rejection of all bids is justified when there is lack of effective competition, or bids are not substantially responsive or when bid prices are unreasonable or are substantially higher than existing budget. Lack of competition shall not be determined solely on the basis of the number of bidders. Even when only one bid is submitted, the bidding process may be considered valid if the bid was satisfactorily advertised and prices are reasonable in comparison to market values. The MCA Entity may, after approval by MCC, reject all bids. If all bids are rejected, the MCA Entity shall review the causes justifying the rejection and consider making revisions to the conditions of contract, design and specifications, scope of the contract, or a combination of these, before inviting new bids.

2.62 If the rejection of all bids is due to lack of competition, wider advertising shall be considered. If the rejection is due to most or all of the bids being non responsive, new bids may be invited from the initially prequalified firms, or with approval of MCC from only those that submitted bids in the first instance.

2.63 All bids shall not be rejected and new bids invited on the same bidding and contract documents solely for the purpose of obtaining lower prices. If the lowest evaluated responsive bid exceeds the MCA Entity pre-bid cost estimates by a substantial margin, the MCA Entity shall investigate causes for the excessive cost and consider requesting new bids as described in the previous paragraphs. Alternatively, the MCA Entity may negotiate with the lowest evaluated bidder to try to obtain a satisfactory contract through a reduction in the scope and/or a reallocation of risk and responsibility which can be reflected in a reduction of the contract price. However, substantial reduction in the scope or modification to the contract documents generally will require rebidding.

2.64 The prior approval of MCC shall be obtained before rejecting all bids, soliciting new bids, or entering into negotiations with the lowest evaluated bidder. Within two weeks of the rejection of all bids, the MCA Entity shall post at *dgMarket* and the MCA Entity's website (or such other appropriate website designated by the MCA Entity and approved by MCC) notification of the cancellation of the procurement. The notification shall identify the procurement and state briefly the reason for cancelling the procurement. The same information shall be sent to all bidders who have submitted bids. All such postings shall be in English. At the discretion of the MCA Entity, posting on the MCA Entity's website, or such other appropriate

website designated by the MCA Entity and approved by MCC, may also be in the local language of the country of the MCA Entity.

Debriefing

2.65 The bidding documents shall specify that any bidder who wishes to ascertain the grounds on which its bid was not selected, may request an explanation from the MCA Entity. The MCA Entity shall promptly provide an explanation of why such bid was not selected, either in writing and/or in a debriefing meeting, at the option of the MCA Entity. The requesting bidder shall bear all the costs of attending such a debriefing.

D. Modified CB

2.66 Reserved⁵³

2.67 Reserved⁵⁴

Procurement of Commodities

2.68 Market prices of commodities, such as grain, animal feed, cooking oil, fuel, fertilizer, and metals, fluctuate depending upon the demand and supply at any particular time. Many are quoted in established commodity markets. Procurement often involves multiple awards for partial quantities to assure security of supply and multiple purchases over a period of time to take advantage of favorable market conditions and to keep inventories low. A list of prequalified bidders may be drawn up to whom periodic invitations are issued. Bidders may be invited to quote prices linked to the market price at the time of or prior to the shipments. Bid validities shall be as short as possible. Bid prices must be denominated and paid in either United States dollars or the local currency of the country of the MCA Entity. The currency shall be specified in the bidding document. Bidding documents may permit telexed or faxed bids or bids submitted by electronic means, and in such cases either no bid security is required, or standing bid securities valid over a specified period of time have been submitted by prequalified bidders. Standard contract conditions and forms consistent with market practices shall be used.

⁵³ Reserved

⁵⁴ Reserved

III. OTHER METHODS OF PROCUREMENT

General

3.1 This Section describes the methods of procurement that can be used where CB would not be the most economic and efficient method of procurement, and where other methods are deemed more appropriate.⁵⁵ Paragraphs 3.2 to 3.7 of Section 1.A of these Guidelines describe the generally used methods in descending order of preference and the remaining paragraphs describe the methods used in specific circumstances.

Limited Bidding (“LB”)

3.2 Limited Bidding is essentially CB by direct invitation without open advertisement. It may be an appropriate method of procurement where (a) there are only a limited number of suppliers, or (b) other exceptional reasons may justify departure from full CB procedures. Under LB, the MCA Entity shall seek bids from a list of potential suppliers or contractors broad enough to assure competitive prices, such list to include all suppliers or contractors when there are only a limited number. In all respects other than advertisement, CB procedures shall apply, including the publication of the contract award as indicated in Paragraph 2.60 of Section 1.A of these Guidelines.

National Competitive Bidding

3.3 National Competitive Bidding is not an authorized method of procurement.⁵⁶

3.4 Reserved

Shopping

3.5 Shopping is a procurement method based on comparing price quotations obtained from several suppliers (in the case of goods) or from several contractors (in the case of civil works), with a minimum of three, to assure competitive prices, and is an appropriate method for procuring readily available off the shelf goods or standard specification commodities of small value, or simple civil works of small value. (Small value is defined as procurements valued at

⁵⁵ Contracts shall not be divided into smaller units in order to make them less attractive for CB procedures; any proposal to divide a contract into smaller packages shall require the prior approval of MCC.

⁵⁶ Reserved

less than 50,000USD in the aggregate). Requests for quotations shall indicate the description and quantity of the goods or specifications of works or non-consultant services, as well as desired delivery (or completion) time and place. Quotations may be submitted by letter, facsimile or by electronic means. The evaluation of quotations shall follow the same principles as of Competitive Bidding. The terms of the accepted offer shall be incorporated in a purchase order or brief contract.

Direct Contracting

3.6 Direct contracting is contracting without competition (single-source) and may be an appropriate method under the following circumstances:

- (a) An existing contract for goods, works or non-consultant services, awarded in accordance with procedures acceptable to MCC, may be extended, within reasonable limits, for additional goods, works or non-consultant services of a similar nature. MCC shall be satisfied in such cases that no advantage could be obtained by further competition and that the prices on the extended contract are reasonable. Provisions for such an extension, if considered likely in advance, shall be included in the original contract.
- (b) Standardization of equipment or spare parts, to be compatible with existing equipment, may justify additional purchases from the original supplier. For such purchases to be justified, the original equipment shall be suitable, the number of new items shall generally be less than the existing number, the price shall be reasonable, and the advantages of another make or source of equipment shall have been considered and rejected on grounds acceptable to MCC.
- (c) The required equipment is proprietary and obtainable only from one source.
- (d) The contractor responsible for a process design requires the purchase of critical items from a particular supplier as a condition of a performance guarantee.
- (e) In exceptional cases, such as in response to natural disasters.
- (f) The value of the contract is under 2,000USD.

3.7 For all procurements valued above 2,000USD, the MCA Entity, after the contract signature, shall post at the MCA Entity's website or such appropriate website designated by the MCA Entity and approved by MCC, at *dgMarket* and at *UNDB Online* the name of the contractor, price, duration, and summary scope of the direct contract. This publication may be done quarterly and in the format of a summarized table covering the previous period.

Force Account

3.8 Force Account, that is, construction by the use of the government's own personnel and equipment,⁵⁷ may be the only practical method for constructing some kinds of works. The use of Force Account may be justified where:

- (a) quantities of work involved cannot be defined in advance;
- (b) works are small and scattered or in remote locations for which qualified construction firms are unlikely to bid at reasonable prices;
- (c) work is required to be carried out without disrupting ongoing operations;
- (d) risks of unavoidable work interruption are better borne by MCA Entity than by a contractor; and
- (e) there are emergencies needing prompt attention.

3.9 Reserved

Procurement Agents and Fiscal Agents

3.10 Where the MCA Entity lacks the necessary organization, resources, and experience, the MCA Entity may wish (or be required by MCC) to employ, as their agents, firms specializing in handling procurement and/or financial management services. Such agents shall be selected following the appropriate procedures as approved by MCC and set out in the RFP requesting such agent services.⁵⁸ The procurement agent shall follow all the procurement procedures provided for in the Compact and Supplemental Agreements, including these MCC Program Procurement Guidelines, conduct procurement in conformance with a Procurement Plan approved by MCC, use appropriately the Standard Solicitation Documents as approved by MCC, follow review procedures, and properly document the procurement activity. Management contractors may be employed in a similar manner for a fee to contract for miscellaneous works involving reconstruction, repairs, rehabilitation, and new construction in emergency situations, or where large numbers of small contracts are involved.

⁵⁷ A government-owned construction unit that is not managerially and financially autonomous shall be considered a force account unit. "Force account" is otherwise known as "direct labor," "departmental forces," or "direct work."

⁵⁸ Reserved

Inspection Agents

3.11 Preshipment inspection and certification of imports is one of the safeguards for the MCA Entity, particularly where the country has a large import program. The inspection and certification usually covers quality, quantity, and reasonableness of price. Imports procured through CB procedures shall not be subject to price verification, but only verification for quality and quantity. However, imports not procured through CB may additionally be subjected to price verification. The inspection agents ordinarily are paid for on a fee basis levied on the value of the goods. Costs for certification of imports shall not be considered in the evaluation of bids under CB.

3.12 Reserved

Procurement under BOO/BOT/BOOT, Concessions and Similar Private Sector Arrangements

3.13 Where MCC is participating in funding the cost of a Project procured under a BOO/BOT/BOOT,⁵⁹ concessions or similar types of private sector arrangements, either of the following procurement procedures shall be used, as provided for in the Compact including the Supplemental Agreements and further elaborated in the Procurement Plan approved by MCC:

(a) The concessionaire or entrepreneur under the BOO/BOT/BOOT or similar type of contract⁶⁰ shall be selected under CB procedures acceptable to MCC, which may include several stages in order to arrive at the optimal combination of evaluation criteria, such as the cost and magnitude of the financing offered, the performance specifications of the facilities offered, the cost charged to the user or purchaser, other income generated for the MCA Entity or purchaser by the facility, and the period of the facility's depreciation.

Or,

(b) If the said concessionaire or entrepreneur has not been selected in the manner set forth in Subparagraph (a) above, the goods, works, consultant or non-consultant services required for the facility and to be funded by MCC shall be procured in accordance with CB procedures defined in Sub-Section 1.A. II.

⁵⁹ BOO: Build, Own, Operate; BOT: Build, Operate, Transfer; BOOT: Build, Own, Operate, Transfer

⁶⁰ For projects such as toll roads, tunnels, harbors, bridges, power stations, waste disposal plants, and water distribution systems.

Performance Based Procurement (“Performance Based Procurement” or “Output Based Procurement”)

3.14 Performance Based Procurement,⁶¹ also called Output Based Procurement, refers to competitive procurement processes resulting in a contractual relationship where payments are made for measured outputs instead of the traditional way where inputs are measured. The technical specifications define the desired result and which outputs will be measured including how they will be measured. Those outputs aim at satisfying a functional need both in terms of quality, quantity and reliability. Payment is made in accordance with the quantity of outputs delivered, subject to their delivery at the level of quality required. Reductions from payments (or retentions) may be made for lower-quality levels of outputs and, in certain cases, premiums may be paid for higher quality levels of outputs. The bidding documents do not normally prescribe the inputs, nor a work method for the contractor. The contractor is free to propose the most appropriate solution, based on mature and well proven experience and shall demonstrate that the level of quality specified in the bidding documents will be achieved.

3.15 Performance Based Procurement can involve: (a) the provision of services to be paid on the basis of outputs; (b) design, supply, construction (or rehabilitation) and commissioning of a facility to be operated by the MCA Entity; or (c) design, supply, construction (or rehabilitation) of a facility and provision of services for its operation and maintenance for a defined period of years after its commissioning.⁶² For the cases where design, supply and/or construction are required, prequalification is normally required and the use of Two-Stage Bidding as indicated in Paragraph 2.6 of Section 1.A of these Guidelines will usually apply.

3.16 Reserved

3.17 Reserved

⁶¹ The use of Performance Based Procurement in MCC funded projects should be the result of the satisfactory technical analysis of the different options available and should be subject to prior approval by MCC for incorporation into the Procurement Plan.

⁶² Examples of such type of procurement are: (i) for the case of procurement of services: provision of medical services, i.e. payments for specific services, like office visits, or defined laboratory tests, etc. ; (ii) for the case of procurement of a facility: Design, Procurement, Construction, and Commissioning of a thermal power plant to be operated by a grantee; (iii) for the case of procurement of a facility and services: Design, Procurement, Construction (or Rehabilitation) of a road and operation and maintenance of the road for 5 years after construction.

APPENDIX 1: REVIEW BY MCC OF PROCUREMENT DECISIONS

Procurement Plans

1. MCC shall review procurement arrangements proposed by the MCA Entity in the Procurement Plan for its conformity with the Compact and these Guidelines. The MCA Entity shall update the Procurement Plan at least on a semi-annual basis. Any amendment to the Procurement Plan shall be submitted to MCC for approval.

Prior Review

2. The thresholds for review of procurement decisions prior to award of a contract and any modification to such contracts are set out in Attachment 1 of these MCC Program Procurement Guidelines.

Post Review

3. The MCA Entity shall retain all documentation with respect to each contract during implementation of the Compact and up to five years after the expiration or termination of the Compact. This documentation is subject to examination by MCC, its oversight agencies and by its consultants and should include, but is not to be limited to, the signed original of the contract, the analysis of the respective proposals, recommendations for award, the record of MCC approvals, and the record of any bid challenge. The MCA Entity shall also furnish such documentation to MCC upon request. If MCC determines that the goods, works or non-consultant services were not procured in accordance with the agreed procedures, as reflected in the Compact including the Supplemental Agreements and further detailed in the Procurement Plan approved by MCC, or that the contract itself is not consistent with such procedures, it may declare misprocurement as established in Paragraph 1.12 of Section 1.A of these Guidelines. MCC shall promptly inform the MCA Entity of the reasons for such determination.

APPENDIX 2:

Reserved

APPENDIX 3: GUIDANCE TO BIDDERS

Bidders may learn about the Millennium Challenge Corporation and its programs at www.mcc.gov and about the MCC program in the country of the MCA Entity at the website established by the MCA Entity or such other appropriate website designed by the MCA Entity and approved by MCC.

Section 1.B. PROGRAM PROCUREMENT GUIDELINES: PROCUREMENT OF CONSULTANTS AND CONSULTANT SERVICES

I. INTRODUCTION

Purpose

1.1 The principles, rules and procedures set out in this Section 1.B of these Guidelines¹ shall govern the conduct and administration of the procurement of the consultants and consultant services that need to be acquired to implement the Projects under the Compact.²

1.2 Reserved^{3 4}

1.3 For the purpose of these Guidelines, the term *consultants* includes a wide variety of entities, including consulting firms, engineering firms, construction managers, management firms, procurement agents, inspection agents, auditors, multinational organizations, investment and merchant banks, universities, research institutions, nongovernmental organizations, and individuals.⁵ Consultants assist in a wide range of activities such as policy advice, institutional reforms, management, engineering services, construction supervision, financial services, procurement services, and social and environmental studies.

General Considerations

1.4.1 The MCA Entity is responsible for implementing the Projects, and therefore for selecting the consultants, and awarding and subsequently administering the contracts. While in practice the specific procurement rules and procedures to be followed in the implementation of a Project depend on the circumstances of the particular case, the following MCC Program Procurement Principles shall generally guide the application of these Guidelines:

¹ Reserved

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⁵ See Paragraphs 3.15-3.20 of Section 1.B of these Guidelines for particular types of consultants. Individual consultants are covered in Sub- Section 1.B.V.

- a) Open, fair and competitive procedures used in a transparent manner to solicit, award and administer contracts to procure consultant services;
- b) Solicitations for consultant services shall be based upon a clear and accurate description of the consultant services to be acquired;
- c) Contracts shall be awarded only to qualified and capable consultants that have the capability and willingness to perform the contracts in accordance with the terms and conditions of the applicable contracts and on a cost-effective and timely basis; and
- d) No more than a commercially reasonable price (as determined, for example, by a comparison of price quotations and market prices) shall be paid to procure the consultant services.⁶

1.4.2 The MCA Entity shall ensure that all the procurements for consultant services in furtherance of the Compact and funded in whole or in part, directly or indirectly, by MCC funding shall comply with these MCC Procurement Principles.

1.5 MCC considers that, in the majority of cases, these considerations can best be addressed through competition among qualified firms in which the selection is based on the quality of the proposal and the cost of the services to be provided. Sub-Sections 1.B.II and III of these Guidelines describe the different methods of selection of consultants and the circumstances in which they are appropriate. Since Quality and Cost Based Selection (“*QCBS*”) is the most commonly recommended method, Sub-Section 1.B.II of these Guidelines describes in detail the procedures for QCBS. However, QCBS is not the most appropriate method of selection for all cases; therefore, Sub-Section 1.B.III describes other methods of selection and the circumstances in which they are more appropriate.

1.6 The particular methods to be followed for the selection of consultants under the Compact shall be set out in the Procurement Plans.

Applicability of Guidelines

1.7 The consultant services to which Section 1.B of these Guidelines apply are of an intellectual and advisory nature. This section of these Guidelines does not apply to other types of services in which the physical aspects of the activity predominate (for example, operation and

⁶ These four principles are set out in Section 3.6 of the Compact.

maintenance of facilities or plants, surveys, exploratory drilling, aerial photography, satellite imagery, and services contracted on the basis of performance of measurable physical output).⁷

1.8 Reserved⁸

Conflict of Interest

1.9 Consultants shall provide professional, objective, and impartial advice and at all times hold the interests of the MCA Entity paramount, without any consideration for future work, and that in providing advice consultants shall avoid conflicts with other assignments and their own corporate interests. Consultants shall not be hired for any assignment that would be in conflict with their prior or current obligations to other clients, or that may place them in a position of being unable to carry out the assignment in the best interest of the MCA Entity. Without limitation on the generality of the forgoing, consultants shall not be hired under the circumstances set forth below:

- (a) Conflict between consultant activities and procurement of goods, works or non-consultant services: A firm that has been engaged by the MCA Entity to provide goods, works, or non-consultant services for a Project, and each of its affiliates, shall be disqualified from providing consultant services related to those goods, works or non-consultant services. Conversely, a firm hired to provide consultant services for the preparation or implementation of a Project, and each of its affiliates, shall be disqualified from subsequently providing goods, works or non-consultant services resulting from or directly related to the firm's consultant services for such preparation or implementation.
- (b) Conflict among consultant assignments: Neither consultants (including their personnel and sub-consultants) nor any of their affiliates shall be hired for any assignment that, by its nature, may be in conflict with another assignment of the consultants. As an example, consultants hired to prepare engineering design for an infrastructure Project generally should not be engaged to prepare an independent environmental assessment for the same Project. Similarly, consultants hired to prepare Terms of Reference (TOR) for an assignment shall not be hired for that assignment.
- (c) Relationships with the MCA Entity staff: Consultants (including their personnel and sub-consultants) that have a business or family relationship with a member of the MCA Entity staff (or of the Project implementing agency's staff, or of a beneficiary of the Compact) who are

⁷ As to these latter services, Section 1.A of these Guidelines shall apply.

⁸ Reserved

directly or indirectly involved in any part of: (i) the preparation of the TOR of the contract, (ii) the selection process for such contract, or (iii) the supervision of such contract may not be awarded a contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to MCC throughout the selection process and the execution of the contract.

Unfair Competitive Advantage

1.10 Fairness and transparency in the selection process require that consultants or their affiliates competing for a specific assignment do not derive a competitive advantage from having provided consultant services related to the assignment in question. To that end, the MCA Entity shall make available to all the short-listed consultants, together with the Request for Proposals (RFP), all information that would in that respect give a consultant a competitive advantage.

Eligibility

1.11 To foster competition MCC permits firms and individuals from almost all countries⁹ to offer consultant services for MCC-funded Projects. Any conditions for participation shall be limited to those that are essential to ensure the firm's or individual's capability to fulfill the contract in question. However,

(a) Consultants may be excluded if: (i) as a matter of law or official regulation, the country of the MCA Entity prohibits commercial relations with the consultant's country, provided that MCC is satisfied that such exclusion does not preclude effective competition for the consultant services required, or (ii) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the country of the MCA Entity prohibits any payments to a particular firm or person or for particular goods by such an act of compliance, that the firm or individual may be excluded.

(b) Government-owned enterprises in the country of the MCA Entity may participate only if they can establish that they (i) are legally and financially autonomous, (ii) operate under commercial law, and (iii) are not dependent agencies of the country of the MCA Entity.

(c) As an exception to (b), government-owned universities or research centers may participate.

⁹ Firms and individuals from any country subject to sanction or restriction by law or policy of the United States are not eligible to compete for MCC-funded contracts. See Sub-paragraph 1.11(f) below.

(d) Government officials and civil servants may only be hired under consultant contracts, either as individuals or as members of a team of a consultant firm, if they (i) are on leave of absence without pay; (ii) are not being hired by the agency they were working for immediately before going on leave; and (iii) their employment would not create a conflict of interest (see Paragraph 1.9).

(e) A firm declared ineligible by the World Bank for any reason, including in accordance with The World Bank Group Anti-Corruption policies¹⁰ shall be ineligible to be awarded a MCC-funded contract during the period of time the firm is sanctioned by The World Bank.

(f) 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 Federal 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 principle place of business or a significant portion of its operations in any country that is subject to sanction or restriction by law or policy of the United States.¹¹

Advance Contracting and Retroactive Financing

1.12 In certain circumstances, such as to accelerate Project implementation, the MCA Entity may, with the approval of MCC, 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 MCC Program Procurement Guidelines, and MCC shall review the process used by the MCA Entity. The MCA Entity 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 fund the contract in question. If the contract is signed, reimbursement by MCC of any payments made by the MCA Entity under the contract prior to Compact signing is referred to as retroactive financing. Under no circumstances will MCC reimburse the MCA Entity for any contract costs if the contract is signed prior to obligation of funds by MCC and any required MCC approval.

¹⁰ For purposes of this Sub-paragraph, the relevant World Bank Group Anti-Corruption policies are set forth in the Guidelines On Preventing and Combating Fraud and Corruption in Projects financed by IBRD Loans and IDA Credits and Grants, and in the Anti-corruption Guidelines for IFC, MIGA, and World Bank Guarantee Transactions.

¹¹ As of April, 2007, this list includes Cuba, Iran, North Korea, Sudan and Syria.

Associations between Consultants

1.13 Consultants may associate with each other in the form of a joint venture or of a sub-consultancy agreement to complement their respective areas of expertise, strengthen the technical responsiveness of their proposals and make available bigger pools of experts, provide better approaches and methodologies, and, in some cases, to offer lower prices. Such an association may be for the long term (independent of any particular assignment) or for a specific assignment. If the MCA Entity employs an association in the form of a joint venture, the association should appoint one of the firms to represent the association; all members of the joint venture shall sign the contract and shall be jointly and severally liable for the entire assignment. Once the solicitation documents, including Requests for Proposals, are issued, any association in the form of joint venture or sub-consultancy among short-listed firms, if applicable, shall be permissible only with the approval of the MCA Entity, unless specifically permitted in the terms of the Request for Proposals. The MCA Entity shall not require consultants to form associations with any specific firm or group of firms.

MCC Review, Assistance, and Monitoring

1.14 MCC reviews the hiring of consultants by the MCA Entity to satisfy itself that the selection process is carried out in accordance with the provisions of MCC Program Procurement Guidelines. The thresholds for MCC review are described in Attachment 1 of these MCC Program Procurement Guidelines.

1.15 MCC does not furnish a short list or a long list¹² of firms or individuals to the MCA Entity. However, if the MCA Entity undertakes a shortlisting procedure before inviting proposals, the record of the shortlisting procedure together with the final short list shall be submitted to MCC for approval before the MCA Entity issues the RFP if the estimated value of the anticipated contract exceeds the thresholds in Attachment 1 of these MCC Program Procurement Guidelines.

1.16 The MCA Entity is responsible for supervising the performance of the consultants and ensuring that they carry out the assignments in accordance with the contract. Without assuming the responsibilities of the MCA Entity or the consultants, MCC shall monitor the work as necessary to satisfy itself that it is being carried out according to appropriate standards and is based on acceptable data. As appropriate, MCC may take part in discussions between the MCA Entity and the consultants and, if necessary, may help the MCA Entity in addressing issues related to the assignment. If a significant portion of Project preparation work is being carried out

¹² Short list: see Paragraphs 2.6, 2.7 and 2.8 of 1.B of these Guidelines; Long list: a preliminary list of potential firms from which the short list would be established.

in the consultants' home offices, MCC staff may, with approval of the MCA Entity, visit these offices to review the consultants' work.

Misprocurement

1.17 MCC does not fund expenditures for consultant services if the consultants or consultant services selected have not been contracted in accordance with the agreed provisions as detailed in the Compact and Supplemental Agreements, these MCC Program Procurement Guidelines and the approved Procurement Plans.¹³ In such cases, MCC will declare misprocurement and cancel that portion of the Compact allocated to the services that have been misprocured if corrective measures satisfactory to MCC are not taken. MCC may, in addition, exercise other remedies provided for under the Compact. Even once the contract is awarded after obtaining an approval from MCC, MCC may still declare misprocurement if it concludes that the approval was issued on the basis of incomplete, inaccurate, or misleading information furnished by the MCA Entity or the terms and conditions of the contract had been modified without MCC approval.

References to MCC

1.18 The MCA Entity shall use the following language¹⁴ when referring to MCC in procurement documents:

The Millennium Challenge Corporation (“MCC”) and the Government of [Insert Country] (the “Government”) have entered into a Millennium Challenge Compact for Millennium Challenge Account assistance to help facilitate poverty reduction through economic growth in [Insert Country] (the “Compact”) in the amount of [Insert amount of Compact] USD (“MCC Funding”). [The MCA Entity] on behalf of the Government intends to apply a portion of the proceeds of MCC Funding to eligible payments under this contract. Payments by [the MCA Entity] 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 [the MCA Entity] shall derive any rights from the Compact or have any claim to the proceeds of MCC Funding.

Training or Transfer of Knowledge

1.19 If the assignment includes an important component for training or transfer of knowledge to the MCA Entity staff or national consultants, the TOR shall indicate the objectives, nature,

¹³ See Paragraph 1.24 of Section 1.B of these Guidelines.

¹⁴ Reserved

scope, and goals of the training program, including details on trainers and trainees, skills to be transferred, time frame, and monitoring and evaluation arrangements. The cost for the training program shall be included in the consultant's contract and in the budget for the assignment.

Language

1.20 All advertisements for contracts and notices of contract awards for contracts valued at or above 50,000USD, whether posted at the MCA Entity's website, at *dgMarket*, or *UNDB Online*, shall be posted in English. Advertisements for contracts and notices of contract awards for contracts valued at less than 50,000 USD shall be published in English or the official local language of the country of the MCA Entity (if different from English) or in both languages at the discretion of the MCA Entity provided that in case of discrepancies the English version will control. At the discretion of the MCA Entity, advertisements for contracts at or above 50,000USD may also be published in the local language in the country of the MCA Entity.

1.21 For all contracts at or above 100,000USD, the solicitation documents as well as the documents responding to these solicitations, including the proposals, shall be prepared in English. All contracts at or above 100,000USD shall be written in English and this language shall govern contractual relations between the MCA Entity and the consultant. At the discretion of the MCA Entity, the solicitation documents also may be prepared in the local official language of the country of the MCA Entity (if different from English). For contracts valued at less than 100,000USD, any solicitation document, responding documents and contracts may be prepared in English or the local official language of the MCA Entity (if different from English) or both at the discretion of the MCA Entity, provided that if the documents are prepared in both languages, the English version will control. However, consultants shall not be permitted or required to sign contracts in two languages.¹⁵

Fraud and Corruption

1.22 MCC requires that the MCA Entity (and other beneficiaries of MCC funding), as well as consultants and their subcontractors under any MCC-funded contracts, observe the highest standards of ethics during the procurement and execution of such contracts.¹⁶ In pursuance of this policy, the following provisions shall apply.

(a) For the purposes of these provisions, the terms set forth below are defined as follows:

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¹⁶ Reserved

(i) “corrupt practice”¹⁷ means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of a public official (including MCA Entity and MCC staff and employees of other organizations taking or reviewing selection decisions) in the selection process or in contract execution or the making of any payment to any third party, in connection with or in furtherance of a contract, in violation of (A) the United States Foreign Corrupt Practices Act of 1977, as amended (15 USC 78a et seq.) (“FCPA”), or any other actions taken that otherwise would be in violation of the FCPA if the FCPA were applicable, or (B) any applicable law in the MCA Entity’s country;

(ii) “fraudulent practice”¹⁸ means any act or omission, including any misrepresentation, in order to influence (or attempt to influence) a selection process or the execution of a contract to obtain a financial or other benefit, or to avoid (or attempt to avoid) an obligation;

(iii) “collusive practice”¹⁹ means a scheme or arrangement between two or more parties, with or without the knowledge of the MCA Entity, designed to establish prices at artificial, noncompetitive levels or to otherwise deprive the MCA Entity of the benefits of free and open competition;

(iv) “coercive practice”²⁰ means impairing or harming or threatening to impair or harm, directly or indirectly, persons or their property, to influence their participation in a procurement process, or affect the execution of a contract;

(v) “obstructive practice” means

(aa) destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to impede an investigation into allegations of a corrupt, fraudulent, coercive, collusive, or prohibited practice; and threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, and

(bb) acts intended to impede the exercise of the inspection and audit rights of MCC provided under a Compact; and

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¹⁹ Reserved

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(vi) “prohibited practice” means any action that violates Section E (Compliance with Anti-Corruption Legislation), Section F (Compliance with Anti-Money Laundering Legislation) and Section G (Compliance with Terrorist Financing Statutes and Other Restrictions) of the “General Provisions Annex” that will be made a part of MCC-funded contracts and may be found on the MCC website at http://www.mcc.gov/guidance/compact/general_provisions.pdf.

(b) The MCA Entity will reject a proposal (and MCC will deny approval of a proposal for contract award) if it determines that the consultant recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, obstructive or prohibited practices in competing for the contract in question.

(c) MCC has the right to cancel the portion of MCC funding allocated to a contract if it determines at any time that representatives of a beneficiary of the MCC funding engaged in corrupt, fraudulent, collusive, coercive, obstructive or prohibited practices during the selection process or the execution of a MCC-funded contract, without the MCA Entity having taken timely and appropriate action satisfactory to MCC to remedy the situation.

(d) MCC and the MCA Entity have the right to sanction a consultant, including declaring such party ineligible, either indefinitely or for a stated period of time, to be awarded an MCC-funded contract if at any time either the MCA Entity or MCC determines that the bidder, supplier, contractor, or subcontractor has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, obstructive or prohibited practices in competing for, or in executing, such a contract.

(e) MCC and the MCA Entity have the right to require that a provision be included in solicitation documents and in MCC-funded contracts requiring a consultant to permit the MCA Entity, MCC, or any designee of MCC, to inspect its accounts, records and other documents relating to the submission of a proposal or performance of a MCC-funded contract and to have them audited by auditors appointed by MCC or the MCA Entity with the approval of MCC.

1.23 With the specific agreement of MCC, the MCA Entity may introduce into the proposal forms for large contracts funded by MCC, an undertaking of the consultant to observe, in competing for and executing a contract, the country’s laws against fraud and corruption (including bribery), as listed in the solicitation documents.²¹ MCC will accept the introduction of

²¹ As an example, such an undertaking might read as follows: “We undertake that, in competing for (and, if the award is made to us, in executing) the above contract, we will strictly observe the laws against fraud and corruption in force in Cape Verde, as such laws have been listed in the RFP for this contract.”

such undertaking at the request of the MCA Entity, provided the arrangements governing such undertaking are satisfactory to MCC.

Procurement Plan

1.24.1 The MCA Entity shall prepare periodic procurement plans, that are updated at least semi-annually, for acquiring consultant services needed to implement the Compact. (“**Procurement Plan**”). Each Procurement Plan shall be adopted by the governing body of the MCA Entity and shall be submitted to MCC for its approval. Each Procurement Plan, typically covering a six (6) month period, (a) lists the particular contracts for the consultant services required to implement the Compact for the period covered in such Procurement Plan; (b) identifies the proposed method of procurement and selection procedure for such contracts as determined according to the rules set out in these Guidelines; and (c) sets forth the estimated value for each consultant contract.

1.24.2 The MCA Entity shall ensure that all consultant services shall be procured using the procurement method and selection procedure approved in each Procurement Plan. Compliance, satisfactory to MCC, with the approved Procurement Plan shall be a condition precedent to MCC Disbursements or Re-Disbursements.

1.24.3 The MCA Entity shall not initiate any procurement action that deviates in any way from the applicable adopted and approved Procurement Plan without the prior approval of MCC. If the MCA Entity determines that such a deviation is necessary or appropriate, the MCA Entity shall submit a request to MCC for its approval of an amended Procurement Plan. If approved by MCC, the MCA Entity shall comply with any instructions contained in the MCC approval, including any publication requirements. Any substantial deviation from a Procurement Plan as approved and adopted shall be submitted to the governing body of the MCA Entity for adoption of the amended Procurement Plan.

II. QUALITY AND COST BASED SELECTION (“QCBS”)

The Selection Process

2.1 QCBS uses a competitive process that takes into account the quality of the proposal and the cost of the services in the selection of the successful firm. Cost as a factor of selection shall be used judiciously. The relative weight to be given to the quality and cost shall be determined for each case depending on the nature of the assignment.

2.2 The selection process includes the following steps unless MCC approves a modification in the procedure that is justified under the circumstances of a particular procurement:

- (A) preparation of the Terms of Reference;
- (B) preparation of a cost estimate and the budget;
- (C) advertising;

- (D) preparation of the short list of consultants; *(This step is not mandatory. The MCA Entity may at its discretion issue the Request for Proposals to all consultants expressing interest in the procurement.)*
- (E) preparation and issuance of the Request for Proposals which should include: the Letter of Invitation; Instructions to Consultants; the Terms of Reference and the proposed draft contract;
- (F) receipt of proposals;
- (G) evaluation of technical proposals: consideration of quality;
- (H) public opening of financial proposals;
- (I) evaluation of financial proposals;
- (J) final evaluation of quality and cost; and
- (K) negotiations and award of the contract to the selected firm.

Terms of Reference (“TOR”)

2.3 The MCA Entity shall be responsible for preparing the TOR for the assignment. The TOR shall be prepared by a person(s) or a firm specialized in the area of the assignment. The scope of the services described in the TOR shall be compatible with the available budget. The TOR shall define clearly the objectives, goals, and scope of the assignment and provide background information (including a list of existing relevant studies and basic data) to facilitate the consultants’ preparation of their proposals. If transfer of knowledge or training is an objective, it should be specifically outlined along with details of number of staff to be trained, and so forth, to enable consultants to estimate the required resources. The TOR shall list the services and surveys necessary to carry out the assignment and the expected outputs (for example, reports, data, maps, surveys). However, the TOR should not be too detailed or inflexible, so as to prevent competing consultants from proposing their own methodology and staffing. Firms shall be encouraged to comment on the TOR in their proposals. The respective responsibilities of the MCA Entity, the implementing entity (if relevant) and the consultant should be defined clearly in the TOR.

Cost Estimate (Budget)

2.4 Preparation of a well thought-through cost estimate is essential if MCC funding is to be managed properly. The cost estimate shall be based on the MCA Entity’s assessment of the resources needed to carry out the assignment: staff time, logistical support, and physical inputs (e.g. vehicles and laboratory equipment).

Advertising

2.5.1 Timely notification of the opportunities to provide consultant services is essential in competitive bidding. On at least a semi-annual basis, the MCA Entity shall publicize in the General Procurement Notice (GPN) the procurements planned for consultant services for the upcoming period as identified in the adopted Procurement Plan which was approved by MCC. The General Procurement Notice shall be in the form acceptable to MCC and shall include information derived from the Procurement Plan and the name, telephone (or fax) number, and address of the MCA Entity agent responsible for procurement and the address of the website(s) where Specific Procurement Notices will be posted. If known, the scheduled date for availability of solicitation documents for each procurement should be indicated. Such solicitation documents shall not be released to the public earlier than the date of publication of the General and Specific Procurement Notices. The General Procurement Notice shall be advertised in a manner to provide reasonable notice of planned procurements to potential consultants. Advertisement of the General Procurement Notice shall include posting in English at the MCA Entity's website (or such other appropriate website designated by the MCA Entity and approved by MCC), *dgMarket* and *UNDB Online*.²² The MCA Entity shall also publish the General Procurement Notice in a newspaper of wide circulation in the country of the MCA Entity and in such other media outlets as appropriate or as requested from time to time by MCC. In countries where the official language is other than the English language, the General Procurement Notice shall be published in the local language of the country of the MCA Entity in at least one newspaper of wide circulation in the country.

2.5.2 Request for Expressions of Interest (EOI), Request for Proposals (RFP) or Request for Consultant Qualifications (RCQ) shall be advertised as Specific Procurement Notices (SPN). For contracts valued at or over 50,000USD, such requests shall be published in at least one newspaper of national circulation in the country of the MCA Entity and posted at the MCA Entity's website (or such other appropriate website designated by the MCA Entity and approved by MCC) and at the *dgMarket* website. For contracts valued at or over 100,000USD, the MCA Entity must also post the Specific Procurement Notice at *UNDB Online*. Publication in local print and broadcast and other national and international media is encouraged as long as the posting does not pre-date the required postings. For contracts valued at or over 400,000USD, the text of the notice, whether an EOI, an RFP or an RCQ may be subject to review by MCC.

²² UNDB is a publication of the United Nations. Subscription information is available from: Development Business, United Nations, GCPO Box 5850, New York, NY 10163-5850, USA (Website: www.devbusiness.com; e-mail: dbsubscribe@un.org); Development Gateway Market is an electronic portal of Development Gateway Foundation, 1889 F Street, N.W. Washington, DC 20006, USA (Website: www.dgmarket.com).

Notification shall be given in sufficient time to enable prospective consultants to obtain information, or the relevant solicitation documents, and prepare and submit their responses, taking into consideration the estimated value of the contract and period of advance notice given with the General Procurement Notice.²³

Short List of Consultants

2.6 The shortlisting procedure is not mandatory. At its discretion, the MCA Entity may advertise for expressions of interest and invite only short-listed firms or individuals to submit proposals or qualifications as appropriate for the selection procedure chosen for the particular procurement, or the MCA Entity may begin the procurement with an open request for proposals or consultation qualifications. When the MCA Entity chooses to begin a procurement with a shortlisting procedure, the MCA Entity is responsible for preparation of the short list. There is no maximum limit to the number of firms that may be short-listed and care should be taken not to eliminate qualified participants from competing for the consultant contract. Consideration must 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.

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2.8 Selection based upon Consultants Qualifications is generally used for small assignments.²⁶

Preparation and Issuance of the Request for Proposals (“RFP”)

2.9 The RFP shall include (a) a Letter of Invitation, (b) Information to Consultants, (c) the TOR, and (d) the proposed contract. The MCA Entity shall use the applicable Standard Proposal Documents, as approved by MCC pursuant to Part 3 of these MCC Program Procurement Guidelines, as may be modified to address Project-specific conditions, subject to MCC approval when the change is material. The MCA Entity may use an electronic system to distribute the

²³ Also see Paragraph 2.13 of Section 1.B of these Guidelines.

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²⁶ Dollar thresholds defining “small” shall be determined in each case, taking into account the nature and complexity of the assignment, but generally will not exceed US\$200,000.

RFP, provided that MCC is satisfied with the adequacy of such system. If the RFP is distributed electronically, the electronic system shall be secure to avoid modifications to the RFP and shall not unfairly restrict the access of consultants to the RFP.

Letter of Invitation (“LOI”)

2.10 The LOI shall state the intention of the MCA Entity to enter into a contract for the provision of consultant services, the source of funds, the details of the MCA Entity and the date, time, and address for submission of proposals.

Instructions to Consultants (“ITC”)

2.11 The ITC shall contain all necessary information that would help consultants prepare responsive proposals, and shall bring as much transparency as possible to the selection procedure by providing information on the evaluation process and by indicating the evaluation criteria and methodology and their relative weights and the minimum passing quality score. The ITC may indicate an estimate of the level of key staff inputs (in staff time) required of the consultants or may provide the total budget, but neither item of information is required. The ITC shall specify the proposal validity period, which should be adequate for the evaluation of proposals, decision on award, MCC review, and finalization of contract negotiations. A detailed list of the information that should be included in the ITC is provided in Appendix 2 of this Section 1.B.

Contract

2.12 Sub-Section 1.B.IV of these Guidelines briefly discusses the most common types of contracts. The MCA Entity shall use an appropriate form of contract acceptable to MCC. Any changes to standard conditions shall be introduced generally through the forms and procedures defined in the Standard Proposal Documents. When the Standard Proposal Documents are not appropriate (for example, for preshipment inspection and procurement services), the MCA Entity shall use other contract forms acceptable to MCC.

Receipt of Proposals

2.13 The MCA Entity shall allow enough time for the consultants to prepare their proposals. The time allowed shall depend on the assignment, the value of the contract, the difficulty of preparing a technical proposal and the duration of the advance notice given with posting of the General Procurement Notice. During this interval, the firms may request clarifications about the information provided in the RFP. The MCA Entity shall provide these clarifications in writing and copy them to all firms either registered or on the short list (who intend to submit proposals). If necessary, the MCA Entity shall extend the deadline for submission of proposals. The technical and financial proposals shall be submitted at the same time. No amendments to the technical or financial proposals shall be accepted after the deadline. To safeguard the integrity of the process, the technical and financial proposals shall be submitted in separate sealed envelopes. The technical envelopes shall be opened immediately by a committee of officials drawn from the relevant departments (technical, finance or legal, as appropriate), after the closing time for

submission of proposals. The financial proposals shall remain sealed and shall be properly secured until they are opened publicly. Any proposal received after the closing time for submission of proposals shall be returned unopened after the time for protest has expired. The MCA Entity may use electronic systems permitting consultants to submit proposals by electronic means, provided MCC is satisfied with the adequacy of the system, including, *inter alia*, that the system is secure, maintains the confidentiality and authenticity of proposals submitted, uses an electronic signature system or equivalent to keep consultants bound to their proposals, and only allows proposals to be opened with due simultaneous electronic authorization of the consultant and the MCA Entity. In this case, consultants shall continue to have the option to submit their proposals in hard copy.

Evaluation of Proposals: Consideration of Quality and Cost

2.14 The evaluation of the proposals shall be carried out in two stages: 1. quality, 2. cost. Evaluators of technical proposals shall not have access to the financial proposals until the technical evaluation, including any required MCC reviews and approvals, is concluded. Financial proposals shall be opened only thereafter. The evaluation shall be carried out in full conformity with the provisions of the RFP.

Evaluation of the Quality

2.15 The MCA Entity shall evaluate each technical proposal (using a technical evaluation panel of generally three or more technical specialists in the sector), taking into account appropriate evaluation criteria as set out in the RFP. Evaluation criteria may include a) the consultant's relevant experience for the assignment, (b) the quality of the methodology proposed, and (c) the qualifications of the key staff proposed. The relative weight of each criterion shall be disclosed in the RFP. The score for each proposal may be determined based upon the total point system or other methodology for evaluating and comparing responses fairly. When applying the total point method, each criterion is marked on a scale of 1 to 100 according to the specific needs of the assignment.^{27 28}

2.16 The MCA Entity shall normally divide these criteria into sub-criteria. For example, sub-criteria under methodology might be innovation and level of detail. However, the number of sub-criteria should be limited to the essential. MCC recommends against the use of exceedingly detailed lists of sub-criteria that may render the evaluation a mechanical exercise more than a professional assessment of the proposals. If the shortlisting procedure was applied, the weight

²⁷ Reserved

²⁸ Reserved

given to experience can be relatively modest, since this criterion has already been taken into account during the shortlisting process. More weight might be given to the methodology in the case of more complex assignments (for example, multidisciplinary feasibility or management studies).

2.17 Evaluation limited to key personnel is recommended. Since key personnel ultimately determine the quality of performance, more weight shall be assigned to this criterion if the proposed assignment is complex. The MCA Entity shall review the qualifications and experience of proposed key personnel in their curricula vitae, which must be accurate, complete, and signed by an authorized official of the consultant firm and the individual proposed. The individuals might be rated in the following three sub-criteria, as relevant to the task:

- (a) general qualifications: general education and training, length of experience, positions held, time with the consultant firm as staff, experience in developing countries, and so forth;
- (b) adequacy for the assignment: education, training, and experience in the specific sector, field, subject, and so forth, relevant to the particular assignment; and
- (c) experience in the region: knowledge of the local language, culture, administrative system, government organization, and so forth.

2.18 The MCA Entity shall evaluate each proposal on the basis of its responsiveness to the TOR. A proposal shall be considered unsuitable and shall be rejected at this stage if it does not respond to important aspects of the TOR or it fails to achieve a minimum technical score specified in the RFP.

2.19 At the end of the process, the MCA Entity shall prepare a technical evaluation report of the “quality” of the proposals and, in the case of contracts subject to prior review, submit it to MCC for its review and approval. The report shall substantiate the results of the evaluation and describe the relative strengths and weaknesses of the proposals. All records relating to the evaluation, such as individual mark sheets, shall be retained until completion of the Project and its audit.

Evaluation of Financial Proposals

2.20 After the evaluation of quality is completed and the required reviews and approvals have been issued, the MCA Entity shall inform the consultants who have submitted proposals of the technical points assigned to each consultant and shall notify those consultants whose proposals did not meet the minimum qualifying mark or were considered nonresponsive to the RFP and the TOR that their financial proposals will be returned unopened after the signature of the contract. The MCA Entity shall simultaneously notify the consultants that have secured at least the minimum qualifying mark of the date, time, and place set for opening the financial proposals. If the procurement is on the critical path for implementation of the Compact, the opening date may be defined to allow very short notice for consultants to make arrangements to attend the opening of the financial proposals. In such case, the MCA Entity shall arrange for the record of the

proceedings of the opening to be signed by at least two independent witnesses. The financial proposals shall be opened publicly in the presence of representatives of the consultants who choose to attend (in person or online). The name of the consultant, the technical points, and the proposed prices shall be read aloud (and posted online when electronic submission of proposals is used) and recorded when the financial proposals are opened. The MCA Entity shall also prepare the minutes of the public opening and a copy of this record shall be included in the record of the procurement and provided to all consultants who submitted proposals. A copy of the record shall be sent to MCC when the proposed award is subject to prior review by MCC.

2.21 The MCA Entity 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 of the country of the MCA Entity, or USD or a combination of the two) as required in the RFP. 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.

2.22 For the purpose of evaluation, the financial proposals shall include or exclude local identifiable direct or indirect taxes²⁹ as instructed in the RFP. The financial proposal shall include all consultants' remuneration and other expenses such as travel, translation, report printing, or secretarial expenses. When the total point evaluation methodology is used, the financial proposal with the lowest price may be given a financial score of 100 and other proposals given financial scores that are inversely proportional to their prices. Alternatively, a directly proportional or other methodology may be used in allocating the marks for the financial proposal. The methodology to be used shall be described in the RFP.

Combined Quality and Price Evaluation

2.23.1 The total score shall be obtained by weighing the quality and price scores and adding them. The weight for the financial proposal shall be assigned, taking into account the complexity of the assignment and the relative importance of quality. The proposed weightings for quality and price shall be specified in the RFP. The firm obtaining the highest total score shall be invited for negotiations.

2.23.2 When the procurement is subject to MCC prior review for proposed award, the MCA Entity, before inviting the firm obtaining the highest total score for negotiations, shall furnish to

²⁹ Reserved

MCC for its review and approval a full description of the procurement process including an account of all protests and appeals and other significant problems or defects during the process and a description of how these were resolved.

Negotiations and Award of Contract

2.24 Negotiations shall include discussions of the TOR, the methodology, staffing, inputs by the MCA Entity and special conditions of the contract. These discussions shall not substantially alter the original TOR or the terms of the contract, lest the procurement process be invalidated. Major reductions in work inputs should not be made solely to meet the budget. The final TOR and the agreed methodology shall be incorporated into “Description of Services,” which shall form part of the contract.

2.25 The selected firm should not be allowed to substitute key staff, unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment.³⁰ If this is not the case and if it is established that key staff were included in the proposal without confirming their availability, the firm may be disqualified and the process continued with the next ranked firm. The key staff proposed for substitution shall have qualifications equal to or better than the key staff initially proposed.

2.26 Financial negotiations shall include clarification of the consultants’ tax liability in the country of the MCA Entity (if any) to ensure that the contract is consistent with the provisions of the Compact and Supplemental Agreement. As payments under fixed-price contracts are based on work done and delivery of outputs (or products), the offered price shall include all costs (staff time, overhead, travel, hotel, etc.). Consequently, if the selection method for a fixed-price contract included price as a component, this price shall not be negotiated. In the case of Time-Based Contracts, payment is based on inputs (staff time and reimbursables) and the offered price shall include staff rates and an estimation of the amount of reimbursables. When the selection method includes price as a component, negotiations of staff rates should not take place, except in special circumstances, such as when staff rates offered are much higher than rates typically charged by consultants in similar circumstances for similar contracts. Consequently, the prohibition of negotiation does not preclude the right of the MCA Entity to ask for clarifications, and, if fees are very high, to ask for change of fees, after due consultation with MCC. Reimbursables are to be paid on actual expenses incurred at cost, subject to limitations set out in MCC Cost Principles, upon presentation of receipts and therefore are not subject to negotiations. However, if the MCA Entity wants to define ceilings for unit prices of certain reimbursables (like travel or hotel rates), it should indicate the maximum levels of those rates in the RFP or

³⁰ Reserved

define a per diem in the RFP. If the contract permits reimbursement of any costs, the reimbursement rates shall be limited by applicable MCC Cost Principles (“*MCC Cost Principles*”) found at the MCC website, www.mcc.gov.

2.27 If the negotiations fail to result in an acceptable contract, the MCA Entity shall terminate the negotiations and invite the next ranked firm for negotiations. The MCA Entity shall consult with MCC prior to taking this step. The consultant shall be informed of the reasons for termination of the negotiations. Once negotiations are commenced with the next ranked firm, the MCA Entity shall not reopen the earlier negotiations. After negotiations are successfully completed and all required reviews and approvals have been issued, the MCA Entity shall promptly notify other firms on the short list that they were unsuccessful.

Publication of the Award of Contract

2.28 After the award of contract, the MCA Entity shall post at *UNDB Online*, at *dgMarket* and at the MCA Entity’s website (or such other appropriate website designated by the MCA Entity and approved by MCC) the results, identifying the procurement, the name of the winning consultant and the price, duration, and summary scope of the contract. The same information shall be sent to all consultants who have submitted proposals. The posting at *UNDB Online* and at *dgMarket* must be done monthly and at the MCA Entity’s website (or such other appropriate website designated by the MCA Entity and approved by MCC) at least weekly. The posting shall be in a format of a summarized table covering the previous period. All such postings shall be in English. At the discretion of the MCA Entity, posting on the MCA Entity’s website, or such other appropriate website designated by the MCA Entity and approved by MCC, may also be in the local language of the country of the MCA Entity.

Debriefing

2.29 In the publication of contract award referred to in Paragraph 2.28 above, the MCA Entity shall specify that any consultant who wishes to ascertain the grounds on which its proposal was not selected should request an explanation from the MCA Entity. The MCA Entity shall promptly provide the explanation as to why such proposal was not selected, in writing and/or in a debriefing meeting, at the option of the consultant. The requesting consultant shall bear all the costs of attending such a debriefing.

Rejection of All Proposals, and Re-invitation

2.30 The MCA Entity will be justified in rejecting all proposals only if all proposals are nonresponsive because they present major deficiencies in complying with the TOR, if they involve prices substantially higher than the original estimate, or if contracting for the services is no longer in the best interest of implementation of the Compact. In the case of a higher price, the feasibility of increasing the budget, or scaling down the scope of services with the firm should be investigated in consultation with MCC. Before all the proposals are rejected and new proposals are invited, the MCA Entity shall notify MCC, indicating the reasons for rejection of all proposals, and shall obtain MCC’s approval before proceeding with the rejection and the new

process. The new process may include revising the RFP (including the short list) and the budget. These revisions shall be agreed upon with MCC. Within two weeks of the rejection of all proposals, the MCA Entity shall post at *dgMarket* and the MCA Entity's website (or such other appropriate website designated by the MCA Entity and approved by MCC) notification of the cancellation of the procurement. The notification shall identify the procurement and state briefly the reasons for cancellation. The same information shall be sent to all those who have submitted proposals. All such postings shall be in English. At the discretion of the MCA Entity, posting on the MCA Entity's website (or such other appropriate website designated by the MCA Entity and approved by MCC) may also be in the local language of the country of the MCA Entity.

Confidentiality

2.31 Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the consultants who submitted the proposals, or to other persons not officially concerned with the process, until the publication of the award of contract, except as provided in Paragraphs 2.20 and 2.27 of Section 1.B of these Guidelines.

III. OTHER METHODS OF SELECTION

General

3.1 This Sub-Section 1.B.III describes the selection methods other than QCBS, and the circumstances under which they are acceptable. All the relevant³¹ provisions of Sub-Section 1.B.II (QCBS) shall apply whenever competition is used.

Quality Based Selection (“QBS”)

3.2 QBS may be appropriate for the following types of assignments:

- (a) complex or highly specialized assignments for which it is difficult to define precise TORs and the required input from the consultants, and for which the MCA Entity expects the consultants to demonstrate innovation in their proposals;
- (b) assignments that have a high downstream impact and in which the objective is to have the best experts; and

³¹ All provisions of Section II shall be applied with the modifications and suppressions required by the method for selecting consultants used in the specific case. Advertisement is not required when single source selection is used.

(c) assignments that can be carried out in substantially different ways, such that proposals will not be comparable.

3.3 In QBS, the RFP may request submission of a technical proposal only (without the financial proposal), or request submission of both technical and financial proposals at the same time, but in separate envelopes (two-envelope system). The procurement shall be advertised according to the requirements set out in Paragraphs 2.5.1 and 2.5.2 of Section 1.B, and may, at the discretion of the MCA Entity, be preceded by a shortlisting procedure (see Paragraphs 2.6 to 2.8 of Section 1.B). The RFP may provide either the estimated budget or the estimated number of key staff time, specifying that this information is given as an indication only and that consultants shall be free to propose their own estimates.

3.4 If technical proposals alone were invited, after evaluating the technical proposals using the same methodology as in QCBS, the MCA Entity shall ask the consultant with the highest ranked technical proposal to submit a detailed financial proposal. The MCA Entity and the consultant shall then negotiate the financial proposal³² and the contract. All other aspects of the selection process shall be identical to those of QCBS, including the publication of the award of contract as described in Paragraph 2.28. If consultants were requested to provide financial proposals initially together with the technical proposals, safeguards shall be built in as in QCBS to ensure that, after the negotiations are successfully concluded, the financial proposal of only the selected firm is opened and the rest are returned unopened.

Selection under a Fixed Budget (“FBS”)

3.5 This method is appropriate when the assignment is simple and can be precisely defined. The RFP shall indicate the available budget and request the consultants to provide their best technical and financial proposals, which stay within the budget, in separate envelopes. The TOR should be particularly well prepared to make sure that the budget is sufficient for the consultants to perform the expected tasks. The procurement shall be advertised according to the requirements set out in Paragraphs 2.5.1 and 2.5.2 of Section 1.B, and may, at the discretion of the MCA Entity, be preceded by a shortlisting procedure (see Paragraphs 2.6 to 2.8 of Section 1.B). Evaluation of all technical proposals shall be carried out first as in the QCBS method. Then the financial proposals shall be opened in public and prices shall be read aloud. Proposals that exceed the indicated budget shall be rejected. The consultant who has submitted the highest ranked technical proposal shall be selected and invited to negotiate a contract. The publication of the Award of Contract shall be as described in Paragraph 2.28.

³² Reserved

Least-Cost Selection (“LCS”)

3.6 This method is appropriate for selecting consultants for assignments of a standard or routine nature (audits, engineering design of noncomplex works, etc.) where well established practices and standards exist. Under this method, a “minimum” qualifying mark for the “quality” is established. Proposals, to be submitted in two envelopes, are invited. The procurement shall be advertised according to the requirements set out in Paragraphs 2.5.1 and 2.5.2 of Section 1.B, and may, at the discretion of the MCA Entity, be preceded by a shortlisting procedure (see Paragraphs 2.6 to 2.8 of Section 1.B). Technical proposals are opened first and evaluated. Those securing less than the minimum qualifying mark³³ are rejected, and the financial proposals of the rest are opened in public. The firm with the lowest price shall then be selected and the publication of the award of contract shall be as described in Paragraph 2.28. Under this method, the minimum qualifying mark shall be established, understanding that all proposals above the minimum compete only on “price.” The minimum qualifying mark shall be stated in the RFP.

Selection Based on the Consultants’ Qualifications (“CQS”)

3.7 This method may be used for small³⁴ assignments for which the need for preparing and evaluating competitive proposals is not justified. In such cases, the MCA Entity shall prepare the TOR, request information on the consultants’ experience and competence relevant to the assignment, and select the firm with the most appropriate qualifications and references. The procurement shall be advertised according to the requirements set out in Paragraphs 2.5.1 and 2.5.2 of Section 1.B and may, at the discretion of the MCA Entity, be preceded by a shortlisting procedure (see Paragraphs 2.6 to 2.8 of Section 1.B). The selected firm shall be asked to submit a combined technical and financial proposal and then be invited to negotiate the contract.

3.8 The publication of the award of contract shall be as described in Paragraph 2.28.

³³ This method shall not be used as a substitute for QCBS and shall be used only for the specific cases of very standard and routine technical nature where the intellectual component is minor. For this method the minimum qualifying mark shall be 70 points or higher.

³⁴ Dollar thresholds defining “small” shall be determined and justified in writing in each case, taking into account the nature and complexity of the assignment, but shall not exceed US\$200,000 except in exceptional circumstances and specifically approved by MCC.

Single-Source Selection (“SSS”)

3.9 Single-source selection of consultants does not provide the benefits of competition with regard to quality and cost, lacks transparency in selection, and could encourage unacceptable practices. Therefore, single-source selection shall be used only in exceptional cases. The justification for single-source selection shall be examined in the context of the overall interests of the MCA Entity and implementation of the Compact and the responsibility of MCC to ensure economy and efficiency and provide equal opportunity to all qualified consultants.

3.10 Single-source selection may be appropriate only if it presents a clear advantage over competition: (a) for tasks that represent a natural continuation of previous work carried out by the firm (see Paragraph 3.11), (b) in emergency cases, such as in response to disasters and for consultant services required during the period of time immediately following the emergency, (c) for very small³⁵ assignments, or (d) when only one firm is qualified or has experience of exceptional worth for the assignment.

3.11 When continuity for downstream work is essential, the initial RFP shall outline this prospect, and if practical, the factors used for the selection of the consultant shall take the likelihood of continuation into account. Continuity in the technical approach, experience acquired, and continued professional liability of the same consultant may make continuation with the initial consultant preferable to a new competition, subject to satisfactory performance in the initial assignment. For such downstream assignments, the MCA Entity shall ask the initially selected consultant to prepare technical and financial proposals on the basis of the TOR furnished by the MCA Entity, which shall then be negotiated.

3.12 If the initial assignment was not awarded on a competitive basis or if the downstream assignment is substantially larger in value, a competitive process acceptable to MCC shall normally be followed in which the consultant carrying out the initial work is not excluded from consideration if it expresses interest. MCC will consider exceptions to this rule only under special circumstances and only when a new competitive process is not practicable.

3.13 The publication of the award of contract shall be as described in Section 1.B, Paragraph 2.28.

3.14 Reserved

³⁵ Dollar thresholds defining “very small” shall be determined in each case, taking into account the nature and complexity of the assignment, but shall not exceed USD2,000.

Selection of Particular Types of Consultants

3.15 Reserved

3.16 Reserved

3.17 *Procurement Agents and Fiscal Agents.* When the MCA Entity lacks the necessary organization, resources, or experience, it may be efficient and effective for it to employ, as its agents, firms that specialize in handling procurement and/or financial management services. Such agents shall be selected following the appropriate procedures as approved by MCC and set out in the RFP requesting such agent services. When performing procurement agent services, the procurement agent shall follow the procurement procedures outlined in the Compact and Supplemental Agreements, in the Procurement Plan approved by MCC, and in these MCC Program Procurement Guidelines.

3.18 *Inspection Agents.* The MCA Entity may wish to employ inspection agencies to inspect and certify goods prior to shipment or on arrival in the country of the MCA Entity. The inspection by such agencies usually covers the quality and quantity of the goods concerned and reasonableness of price. Inspection agencies shall be selected using the procedures set out in the approved and adopted Procurement Plan.

3.19 *Banks.* The MCA Entity may require the services of investment and commercial banks, financial firms, and fund managers to implement the Compact. To procure these services, the RFP shall specify clearly how proposals will be presented and how they will be compared.

3.20 *Auditors.* Auditors typically carry out auditing tasks under well defined TOR and professional standards. The MCA Entity shall select auditors according to the instructions provided to it by MCC including MCC's Standard Proposal Document for auditor services.

3.21 *Service Delivery Contractors.* Projects in the social sectors in particular may involve hiring of large numbers of individuals who deliver services on a contract basis (for example, social workers, such as nurses and paramedics). The job descriptions, minimum qualifications, terms of employment, selection procedures, and the extent of MCC review of these procedures and documents shall be described in the Project documentation, and the contract shall be included in the Procurement Plan approved by MCC.

IV. TYPES OF CONTRACTS AND IMPORTANT PROVISIONS

Types of Contracts

4.1 *Fixed-Price Contract (“Fixed-Price Contract”).*³⁶ Fixed-Price Contracts may take various forms such as lump sum, unit price and percentage fees.³⁷ Fixed-Price Contracts are used mainly for assignments in which the content and the duration of the services and the required output of the consultants are clearly defined. They are widely used for simple planning and feasibility studies, environmental studies, detailed design of standard or common structures, preparation of data processing systems, and so forth. Payments are linked to work done in performance of the contract and to outputs (deliverables), such as reports, drawings, bills of quantities, bidding documents, and software programs. Fixed-Price Contracts are easier to administer than Time-Based Contracts (defined below) because payments are due on clearly specified outputs.

4.2 *Time-Based Contract (“Time-Based Contract”).*³⁸ This type of contract is appropriate when it is difficult to define the scope and the length of services, either because the services are related to activities by others for which the completion period may vary, or because the input of the consultants required to attain the objectives of the assignment is difficult to assess. Payments are based on agreed hourly, daily, weekly, or monthly rates for staff (who are normally named in the contract) and on reimbursable items using actual expenses and/or agreed unit prices. Time-based contracts need to be closely monitored and administered by the MCA Entity to ensure that the assignment is progressing satisfactorily and that payments claimed by the consultants are appropriate. For contracts that permit reimbursement of any costs, the reimbursement rates shall be limited by applicable MCC Cost Principles. The costs shall also be subject to audit in accordance with the requirements set out in the Compact and the Supplemental Agreements.

4.3 Reserved

³⁶ Reserved

³⁷ Percentage contracts directly relate the fees paid to the consultant to the estimated or actual project construction cost, the cost of the goods procured or inspected or other measure of service such as in the case of Procurement Agent, the value of contracts procured or for Fiscal Agent the amount of funds disbursed. Percentage contracts must be distinguished from cost-plus-percentage-of-cost type contracts which are prohibited as such contracts motivate a supplier, contractor or consultant to increase its profits by increasing cost of performance.

³⁸ Reserved

4.4 *Percentage Contract.* These contracts are commonly used for architectural services. They may also be used for procurement and inspection agents. Percentage Contracts directly relate the fees paid to the consultant to the estimated or actual Project construction cost, or the cost of the goods procured or inspected. The contracts are negotiated on the basis of market norms for the services and/or estimated staff-month costs for the services, or competitively bid. It should be borne in mind that in the case of architectural or engineering services, Percentage Contracts implicitly lack incentive for economic design and are hence discouraged. Therefore, the use of such a contract for architectural services is recommended only if it is based on a fixed target cost and covers precisely defined services (for example, not works supervision.).

4.5.1 *Indefinite Delivery and Indefinite Quantity (“IDIQ”) Contract.* These contracts are used when the MCA Entity needs to have “on call” specialized services to provide advice on a particular activity, the extent and timing of which cannot be defined in advance. These are commonly used to retain “advisers” for implementation of complex Projects, expert adjudicators for dispute resolution panels, institutional reforms, procurement advice, technical troubleshooting, and so forth, normally for a period of a year or more.

4.5.2 *Requirements and Blanket Purchase Agreements (“BPA”) Contracts.* The MCA Entity may use these contract types for reoccurring needs.

Important Provisions

4.6 RFPs shall clearly state 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 or the local currency of the country of the MCA Entity or a combination thereof. The MCA Entity may require consultants to state the portion of the price representing costs in the local currency of the country of the MCA Entity. Payment under the contract shall be made in the currency or currencies as stated in the RFP.

4.7 Reserved

4.8 *Payment Provisions.* Payment provisions, including amounts to be paid, schedule of payments, and payment procedures, shall be set out in the RFP to the extent possible. Payments may be made at regular intervals, milestones and outputs as described in the RFP and agreed in the contract.

4.9 Except as otherwise stated in any related provision of the Compact and Supplemental Agreements, payments shall be made promptly in accordance with the contract provisions. To that end,

- (a) consultants will be paid directly by the Fiscal Agent; and,
- (b) the contract shall provide for the payment of interest if payment is delayed beyond the time allowed in the contract due to the fault of the MCA Entity or its agents; the rate of charges shall be specified in the contract.

4.10 *Bid and Performance Securities.* Bid and performance securities are not recommended for consultants' services. Their enforcement is often subject to judgment calls, they can be easily abused, and they tend to increase the costs to the consultant industry without evident benefits, which are eventually passed on to the MCA Entity.

4.11 Reserved

4.12 *Conflict of Interest.* The consultant shall not receive any remuneration in connection with the assignment except as provided in the contract. The consultant and its affiliates shall not engage in consultant or other activities that conflict with the interest of the MCA Entity under the contract. The contract shall include provisions limiting future engagement of the consultant or other services resulting from or directly related to the firm's consultant services in accordance with the requirements of Paragraphs 1.9 and 1.10 of Section 1.B of these Guidelines.

4.13 *Professional Liability.* The consultant is expected to carry out its assignment with due diligence and in accordance with prevailing standards of the profession. As the consultant's liability to the MCA Entity will be governed by the applicable law, the contract need not deal with this matter unless the parties wish to limit this liability. If they do so, they should ensure that (a) there must be no such limitation in case of the consultant's gross negligence or willful misconduct; (b) the consultant's liability to the MCA Entity may in no case be limited to less than a multiplier of the total value of the contract to be indicated in the RFP and in the special conditions of the contract (the amount of such limitation will depend on each specific case);³⁹ and (c) any such limitation may deal only with the consultant's liability toward the MCA Entity and not with the consultant's liability toward third parties.

4.14 *Staff Substitution.* During an assignment, if substitution is necessary (for example, because of ill health or because a staff member proves to be unsuitable), the consultant shall propose other staff of at least the same level of qualifications for approval by the MCA Entity.

4.15 *Applicable Law and Settlement of Disputes.* 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 the country of the MCA Entity with the possibility for international arbitration in the case of foreign consultants.

V. SELECTION OF INDIVIDUAL CONSULTANTS

5.1 Individual consultants are employed on assignments for which (a) teams of personnel are not required, (b) additional outside (home office) professional support is not required, and (c) the

³⁹ The MCA Entity is encouraged to secure insurance for potential risks above these limits.

experience and qualifications of the individual are the paramount requirement. When coordination, administration, or collective responsibility may become difficult because of the number of individuals, it would be advisable to employ a firm.

5.2 Individual consultants are selected on the basis of their qualifications for the assignment. The procurement shall be advertised according to the requirements set out in Paragraphs 2.5.1 and 2.5.2 of Section 1.B and may, at the discretion of the MCA Entity, be preceded by a shortlisting procedure (see Paragraphs 2.6 to 2.8 of Section 1.B). Consultants do not need to submit proposals but shall be selected through evaluation and comparison of qualifications. Individuals considered for comparison of qualifications shall meet the minimum relevant qualifications and those selected to be contracted by the MCA Entity shall be the best qualified and shall be fully capable of carrying out the assignment. Capability is judged on the basis of evidence of knowledge and past experience relevant to the services to be provided and past performance based upon references and recommendations.

5.3 From time to time, permanent staff or associates of a consultant firm may be available as individual consultants. In such cases, the conflict of interest provisions described in these Guidelines shall apply to the parent firm.

5.4 Individual consultants may be selected on a sole-source basis with due justification in exceptional cases such as for: (a) tasks that are a continuation of previous work that the consultant has carried out and for which the consultant was selected competitively; (b) certain assignments with total expected duration of less than six months; (c) emergency situations resulting from natural disasters; and (d) when the individual is the only consultant qualified for the assignment.

APPENDIX 1: REVIEW BY MCC OF THE SELECTION OF CONSULTANTS

Scheduling the Selection Process

1. If required by the thresholds set forth in Attachment 1 of these MCC Program Procurement Guidelines, MCC shall review the selection process for the hiring of consultants proposed by the MCA Entity in the Procurement Plan to ensure compliance with the Compact and the Supplemental Agreements. Each Procurement Plan typically covers a period of at least six months and is updated at least semi-annually. Any amendment to the Procurement Plan shall be furnished to MCC for approval.

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 Attachment 1 of these MCC Program Procurement Guidelines.

Post Review

The MCA Entity shall retain all documentation with respect to each contract for at least five years after the closing date of the Compact for examination by MCC, its auditors, its oversight authorities and independent auditors of the MCA Entity. This documentation shall include, but shall not be limited to, the signed original of the contract, the analysis of the respective proposals, and recommendations for award. For contracts awarded on the basis of single-source selection, documentation shall include the record of justification, the qualifications and experience of the consultants, and the signed original of the contract. The MCA Entity shall also furnish such documentation to MCC upon request. MCC shall, if it determines that the contract was not awarded in accordance with the agreed procedures as reflected in the Compact, including the Supplemental Agreements and further elaborated in the Procurement Plan approved by MCC, or the contract itself is not consistent with such procedures, promptly inform the MCA Entity that Paragraph 1.17 (Misprocurement) of Section 1.B of these Guidelines shall apply and state the reasons for such determination.

APPENDIX 2: INSTRUCTIONS TO CONSULTANTS

1. When procuring consultant services, the MCA Entity shall use the MCA Entity Standard Solicitation Documents including the Standard Proposal Document accepted by MCC. These documents shall include Instructions to Consultants and TORs providing adequate information on the following aspects of the assignment and the procurement process:

- (a) a description of the assignment;
- (b) standard formats for the technical and financial proposals;
- (c) the names and contact information of officials to whom clarifications shall be addressed and with whom the consultants' representative shall meet, if necessary;
- (d) details of the selection procedure to be followed, including (i) a description of the two-stage process, if appropriate; (ii) a listing of the technical evaluation criteria and weight given to each criterion; (iii) the details of the financial evaluation; (iv) the relative weight given to quality and price in the case of QCBS; (v) the minimum pass score for quality; and (vi) the details on the public opening of financial proposals;
- (e) estimate of the level of key staff inputs (in staff months) required of the consultants or an indicative value of the proposed contract, but generally not both;
- (f) indication of minimum experience, academic achievement, and so forth, expected of key staff;
- (g) details and status of MCC funding;
- (h) information on negotiations; financial and other information that shall be required of the selected firm during negotiation of the contract;

- (i) deadline for submission of proposals;
- (j) currency(ies) in which the costs of services shall be expressed, compared, and paid;
- (k) reference to any local laws that may be particularly relevant to the proposed consultants' contract;
- (l) statement that the firm and any of its affiliates shall be disqualified from providing downstream goods, works, consultant or non-consultant services under the Project if, in the judgment of the MCA Entity or MCC, such activities constitute a conflict of interest with the services provided under the assignment;
- (m) method in which the proposal shall be submitted, including the requirement that the technical proposals and financial proposals be sealed and submitted separately in a manner that shall ensure that the technical evaluation is not influenced by price;
- (n) request that the invited firm (i) acknowledges receipt of the RFP and
 - (ii) informs the MCA Entity whether or not it will be submitting a proposal;
- (o) if applicable, the short list of consultants being invited to submit proposals and whether or not associations between short-listed consultants are acceptable;
- (p) period for which the consultants' proposals shall be held valid and during which the consultants shall undertake to maintain, without change, the proposed key staff, and shall hold to both the rates and total price proposed; in case of extension of the proposal validity period, the right of the consultants not to maintain their proposal;
- (q) anticipated date on which the selected consultant shall be expected to commence the assignment;
- (r) statement regarding tax liabilities in reference to and accordance with the Compact and the Supplemental Agreements;
- (s) details of the services, facilities, equipment, and staff to be provided by the MCA Entity;
- (t) phasing of the assignment, if appropriate; likelihood of follow up assignments;
- (u) procedure to handle clarifications about the information given in the RFP;
- (v) any conditions for subcontracting part of the assignment; and
- (w) notice of Bid Challenge System.

APPENDIX 3: GUIDANCE TO CONSULTANTS

Consultants can find information about the Millennium Challenge Corporation and its programs at www.mcc.gov and about MCC Programs in the country of the MCA Entity at the website established by the MCA Entity (or such other appropriate website designated by the MCA Entity and approved by MCC).

PART 2. REPORTS AND RECORDS

Complete and uniform procurement records shall be maintained according to a standard format approved by MCC. The MCA Entity shall also maintain and submit quarterly to MCC a cumulative report of all procurement activity (“*Procurement Performance Report*”), including explanations of any variance from the Procurement Plan, in the format mandated by MCC. The standard form with instructions is found on the MCC website, www.mcc.gov.

PART 3. STANDARD SOLICITATION DOCUMENTS

The MCA Entity shall develop standard documents to invite quotations, bids, proposals and qualifications (“*Standard Solicitation Documents*”) including standard bidding and proposal documents (“*Standard Bidding Documents*” and “*Standard Proposal Documents*”). Any Standard Solicitation Document used to procure contracts valued over 100,000USD must be available in English and is subject to review and approval by MCC. The instructions to bidders and consultants in Standard Solicitation Documents must set out or reference the rules and procedures governing the procurement. The instructions to bidders and instructions to consultants must also state the currency or currencies for the quotes, bids or financial proposals, as appropriate, and shall specify that payment be made in either United States dollars or the local currency of the country of the MCA Entity.

The terms and conditions of procurement contracts shall be set out in the applicable solicitation documents. The terms and conditions shall include a provision stipulating the governing law and the procedures for resolving contract disputes. The term and conditions also shall include provisions as required or specified by these MCC Program Procurement Guidelines and other Compact documents including provisions that stipulate (A) MCC status and rights; (B) limitations on use or treatment of MCC funding; (C) procurement requirements; (D) records and information, access, audits and reviews, and reports; (E) compliance with rules on prohibited activities, restricted parties, and eligibility requirements of prohibited source provisions in accordance with then-applicable US law, regulations and policy; (F) publicity, information and marketing; (G) insurance requirements; (H) conflict of interest; and (I) inconsistencies, as well as any other terms and conditions as applicable to a contract or agreement of that nature or otherwise as the MCA Entity, solely upon the written instructions of MCC, may require from time to time. A summary of the applicable provisions described in (A) through (I) of this Section may be found on the MCC website at www.mcc.gov/guidance/compact/general_provisions.pdf. MCC has the right to review and approve any proposed contracts and any material modifications to any executed contract.

PART 4. REVIEW AND APPROVAL REQUIREMENTS

Certain important procurement actions and decisions shall be subject to prior review or approval by levels of authority within the MCA Entity or by MCC, as provided in Attachment 1 of these MCC Program Procurement Guidelines. This system of review and approval requirements is intended to ensure adequate oversight and monitoring of MCC-funded procurement activities, help detect errors when they can be easily corrected and to otherwise avoid problems in such procurement activities. It is subject to modification or exception at any time by MCC.

The MCA Entity shall ensure that all procurement actions described in Attachment 1 for goods, works, consultant and non-consultant services 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 Attachment 1 for the corresponding type of action or dollar amount threshold, unless MCC has granted a written exception to the approval requirement set out in Attachment 1.

Notwithstanding the approval requirements set out in Attachment 1, MCC shall have the right to take review and require prior approval of any other procurement action, decision or document.

PART 5. BID CHALLENGE SYSTEM

The MCA Entity shall establish a bid challenge system that provides suppliers, contractors and consultants the ability to seek review of procurement actions and decisions (“*Bid Challenge System*”). The organization, rules and procedures of such Bid Challenge System shall be subject to MCC approval. The Bid Challenge System must include a first level of review by the MCA Entity with an appeal to a review body. The review body must be impartial and independent and shall have no interest (through financial, family, business or beneficial ownership or otherwise) in the outcome of the procurement, nor be involved in or related to the procurement process. The review body must follow clear and transparent written procedures and shall issue a timely written decision on any bid challenge that is timely and properly filed. The review body must have the authority to order a correction of a violation of the procurement principles and procedures or to order compensation for loss or damage suffered by a successful challenger, to the extent of the cost of preparation of the bid and the challenge. The review body must also 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. Notice of the Bid Challenge System must be set out in the solicitation documents. Standard notice provisions shall be subject to MCC approval. The MCA Entity shall ensure that all bid challenges are accepted, reviewed and processed in accordance with the rules and procedures of the Bid Challenge System as approved by MCC.

PART 6. SUBCONTRACTING

(a) Every contract or subcontract for goods, works, consultant or non-consultant services with any party that receives at least 50,000USD in the aggregate of MCC funding shall require the contracting party to follow the fundamental procurement principles promoting transparency,

openness, competition and fairness to the maximum extent possible, remaining consistent with the objectives and requirements of the contract when subcontracting for goods, works, consultant or non-consultant services.

(b) In every contract or subcontract valued in excess of 1,000,000USD, the contracting party shall be required to have written procurement procedures that may be subject to review by the MCA Entity and MCC.

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

PART 7. AMENDMENTS AND EXCEPTIONS

The MCC Program Procurement Guidelines may be amended by MCC from time to time. Such amendments shall apply with prior notice to the MCA Entity or as MCC and a MCA Entity may otherwise agree. On a case by case basis, the MCC may grant a waiver or exception to the MCC Program Procurement Guidelines. Such waiver or exception must be in writing and shall be effective only to the extent specifically set forth in such writing.

PART 8. PUBLICATION OF MCC PROGRAM PROCUREMENT GUIDELINES

The MCA Entity shall ensure that the MCC Program Procurement Guidelines (including any amendments thereto) are published on the MCA Entity's website (or such other appropriate website designated by the MCA Entity and approved by MCC).

MCC PROGRAM PROCUREMENT GUIDELINES ATTACHMENT 1

APPROVAL REQUIREMENTS

| REVIEW OF PROCUREMENT DECISIONS: Goods, Works and Non-Consultant Services | | | | |
|--|---|--|-------------------------------------|--|
| Procurement Procedure or Method | Decision¹⁰² | LEVEL OF REVIEW (Thresholds expressed in USD) | | |
| | | MCA Entity Director of Procurement | MCA Entity Managing Director | MCC |
| | Procurement Plans | All | All | All |
| | Amendments to Procurement Plans | All | Substantial Deviation | All |
| Pre-qualification | Pre-qualification documents and advertising procedures | All | None | Above 1,000,000 |
| | Report with proposed list of entities qualified | All | Above 500,000 | Above 500,000 |
| | Record of Bid Challenges | All | All | All |
| Competitive Bidding | Bidding Documents | All | None | Above 1,000,000 Goods Above 5,000,000 Works |
| | Technical Evaluation or Review Report with Proposed Award | All | Above 100,000 | Above 250,000 |
| | Final Contract | All | Above 100,000 | Above 250,000 |
| | Record of Bid Challenges | All | All | All |
| Limited Bidding | Short list | All | Above 50,000 | Above 100,000 |
| | Bidding Documents | All | Above 100,000 | Above 500,000 |

¹⁰² 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.

| REVIEW OF PROCUREMENT DECISIONS: Goods, Works and Non-Consultant Services | | | | |
|--|---|--|--|---|
| Procurement Procedure or Method | Decision¹⁰² | LEVEL OF REVIEW (Thresholds expressed in USD) | | |
| | | MCA Entity Director of Procurement | MCA Entity Managing Director | MCC |
| | Technical Evaluation or Review Report with Proposed Award | All | Above 100,000 | Above 1,000,000 |
| | Final Contract | All | Above 500,000 | Above 1,000,000 |
| | Record of Bid Challenges | All | All | All |
| | | | | |
| | | | | |
| Shopping | Short list | Over 2,000 | None | None |
| | Record of Purchases | Weekly | Monthly | None |
| | Record of Bid Challenges | All | All | Quarterly record of decisions |
| Direct Contracting | Proposed Award | Over 2,000 | Over 25,000 | Above 50,000 |
| | Final Contract | Over 2,000 (Under 2,000 review monthly report) | Above 25,000 | Above 50,000 |
| | Record of Bid Challenges | All | All | All |
| Force Account | Selection of using equipment owned by or employees of Government for performing works | All | All | All |
| | Proposed contract | All | None | All |
| | Final contract | 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 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: Consultant Services | | | | |
|---|--|--|-------------------------------------|---------------|
| | | LEVEL OF REVIEW (Thresholds expressed in USD) | | |
| Procurement Procedure or Method | Decision | MCA Entity Director of Procurement | MCA Entity Managing Director | MCC |
| | Procurement Plans | All | All | All |
| | Amendments to Procurement Plans | All | Substantial Deviation | All |
| Quality and Cost Based Selection | Request for Expression of Interest | All | Above 100,000 | Above 400,000 |
| | Technical Evaluation Panel | All | Above 100,000 | None |
| | Short list | All | Above 100,000 | Above 400,000 |
| | Proposal Documents | All | Above 100,000 | Above 400,000 |
| | Technical Evaluation Report | All | Above 100,000 | Above 400,000 |
| | Proposed Award | All | Above 100,000 | Above 400,000 |
| | Final Contract | All | Above 100,000 | Above 400,000 |
| | Record of Bid Challenges | All | All | All |
| Quality Based Selection and Selection under Fixed Budget | Request for Expression of Interest | All | Above 100,000 | Above 400,000 |
| | Technical Evaluation Panel | All | Above 100,000 | None |
| | Short list | All | Above 100,000 | Above 400,000 |
| | Proposal Documents | All | Above 100,000 | Above 400,000 |
| | Technical Evaluation Report for QBS only | All | Above 100,000 | Above 400,000 |
| | Proposed Award | All | Above 100,000 | Above 400,000 |
| | Final Contract | All | Above 100,000 | Above 400,000 |
| | Record of Bid Challenges | All | All | All |
| Least-Cost Selection | Request for Expression of Interest | All | Above 100,000 | None |
| | Technical Evaluation Panel | All | None | None |

| REVIEW OF PROCUREMENT DECISIONS: Consultant Services | | | | |
|---|------------------------------------|--|-------------------------------------|---------------|
| | | LEVEL OF REVIEW (Thresholds expressed in USD) | | |
| Procurement Procedure or Method | Decision | MCA Entity Director of Procurement | MCA Entity Managing Director | MCC |
| | Short list | All | Above 100,000 | Above 400,000 |
| | Proposal Documents | All | Above 100,000 | Above 400,000 |
| | Proposed Award | All | Above 100,000 | Above 400,000 |
| | Final Contract | All | Above 100,000 | Above 400,000 |
| | Record of Bid Challenges | All | All | All |
| Selection Based on Consultant's Qualifications | Request for Expression of Interest | All | Above 100,000 | None |
| | Technical Evaluation Panel | All | None | None |
| | Short list | All | Above 100,000 | None |
| | Standard Solicitation Documents | All | Above 100,000 | None |
| | Technical Evaluation Report | All | Above 100,000 | None |
| | Proposed Award | All | Above 100,000 | None |
| | Final Contract | All | Above 100,000 | None |
| Single-Source Selection | Proposed Award | All | Above 25,000 | Above 50,000 |
| | Final Contract | All | Above 25,000 | Above 50,000 |
| | Record of Bid Challenges | All | All | All |
| Selection of Individual Consultants | Short list | All | None | Above 50,000 |
| | Technical Evaluation Panel | All | None | None |
| | Technical Evaluation Report | All | None | 50,000 |
| | Proposed Award | All | None | None |
| | Final Contract | All | Above 50,000 | Above 50,000 |
| | Record of Bid Challenges | All | All | All |

| REVIEW OF PROCUREMENT DECISIONS: Consultant Services | | | | |
|---|--|--|---|---|
| | | LEVEL OF REVIEW (Thresholds expressed in USD) | | |
| Procurement Procedure or Method | Decision | MCA Entity Director of Procurement | MCA Entity Managing Director | 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 |

MCC PROGRAM PROCUREMENT GUIDELINES ATTACHMENT 2

GLOSSARY OF TERMS

Bid Challenge System shall have the meaning set forth in Part 5.

Consultant's Qualifications or CBS shall have the meaning set forth in Section 1.A, Par. 3.7.

Compact means the Millennium Challenge Compact entered into between the United States of America, acting through the Millennium Challenge Corporation, and the government of the country receiving assistance from the Millennium Challenge Account.

Competitive Bidding or CB shall have the meaning set forth in Section 1A, Par. 1.3.

Direct Contracting shall have the meaning set forth in Section 1.A, Pars. 3.6 and 3.7.

dgMarket shall have the meaning set forth in Section 1A, Par 2.7. and Section 1B, Par. 2.5.1.

Fixed Budget or FBS shall have the meaning set forth in Section 1.A, Par. 3.5.

Fixed Price Contract shall have the meaning set forth in Section 1.B, Par. 4.1.

Force Account shall have the meaning set forth in Section 1.A, Par.3.8.

General Procurement Notice shall have the meaning set forth in Section 1A, Par. 2.7 and Section 1B, Par. 2.5.1.

Indefinite Delivery and Indefinite Quantity Contract or IDIQ Contract shall have the meaning set forth in Section 1.A, Par. 2.2 and 1.B, Par. 4.5.

Instructions to Consultants or ITC shall have the meaning set forth in Section 1B, Par. 2.11 and Appendix 2.

Least-Cost Selection or LCS shall have the meaning set forth in Section 1.A, Par. 3.6.

Letter of Invitation or LOI shall have the meaning set forth in Section 1.A, Par. 2.10.

Limited Bidding or LB shall have the meaning set forth in Part 1A, Par.3.2.

MCA Entity means 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.

MCC means the Millennium Challenge Corporation..

MCC Cost Principles shall have the meaning set forth in Section 1.A, Par. 2.2 and Section 1.B, Par. 2.26.

MCC Program Procurement Guidelines or Guidelines shall have the meaning set forth in Part 1, Preamble.

MCC Procurement Principles shall have the meaning set forth in Section 1A, Par 1.2 and Section 1B, Par. 1.4.

Performance Based Procurement or Output Based Procurement shall have the meaning set forth in Section 1A, Par. 3.14.

Procurement Plan shall have the meaning set forth in Section 1A, Par. 1.16 and Section 1B, Par. 1.24.

Procurement Performance Report shall have the meaning set forth in Part 2.

Project shall have the meaning set forth in Part 1, Preamble.

Quality Based Selection or QBS shall have the meaning set forth in Section 1A, Pars.3.2 thru 3.2.

Quality Cost Based Selection or QCBS shall have the meaning set forth in Section 1.B, Subsection II.

Request for Expression of Interest or EOI shall have the meaning set forth in Section 1.B, Par. 2.5.2.

Request for Proposals or RFP shall have the meaning set forth in Section 1.B, Par. 2.9.

Single-Source Selection or SSS shall have the meaning set forth in Section 1.A, Pars. 3.9 thru 3.13.

Shopping shall have the meaning set forth in Section 1.A, Par. 3.5.

Specific Procurement Notice shall have the meaning set forth in Section 1.A, Par. 2.8 and Section 1.B, Par. 2.5.2.

Standard Bidding Documents shall have the meaning set forth in Part 3.

Standard Proposal Documents shall have the meaning set forth in Part 3.

Standard Solicitation Documents shall have the meaning set forth in Part 3.

Terms of Reference or TOR shall have the meaning set forth in Section 1.B, Par. 2.3.

Time-Based Contract shall have the meaning set forth in Section 1B, Par. 4.2.

Two-Stage Bidding shall have the meaning set forth in Section 1.A, Par. 2.6.

UNDB Online shall have the meaning set forth in Section 1A, Par. 2.7 and Section 1B, Par. 2.5.1.