

**PROCUREMENT AGREEMENT**

**BY AND AMONG THE**

**MILLENNIUM CHALLENGE CORPORATION,**

**THE**

**MINISTRY OF ECONOMY, FINANCE AND BUDGET,  
ON BEHALF OF THE GOVERNMENT OF THE REPUBLIC OF MADAGASCAR**

**AND**

**MCA-MADAGASCAR**

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Schedule 1: Procurement Guidelines

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## PROCUREMENT AGREEMENT

This PROCUREMENT AGREEMENT (the “*Agreement*”) is made this 27<sup>th</sup> day of July, 2005 by and among the Millennium Challenge Corporation, a United States Government corporation (“*MCC*”), the Ministry of Economy, Finance, and Budget (the “*Ministry*”), on behalf of the Government of the Republic of Madagascar (the “*Government*”), and MCA-Madagascar, and shall become effective as provided herein. MCC, the Ministry and MCA-Madagascar 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 Washington, D.C. on April 18, 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 Madagascar (“*Madagascar*”) and achieve the Compact Goal and Objectives; and

WHEREAS, prior to the entry into force of the Compact, the Government must deliver to MCC an executed copy of this Agreement, in form and substance satisfactory to MCC, which further specifies the terms and conditions for procurements of goods, services and works made in furtherance of the Compact and using MCC Funding;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements set forth herein, the Parties hereby agree as follows:

### ARTICLE I.

#### PROCUREMENT PLAN

Section 1.1 Procurement Plan Development. The Ministry and MCA-Madagascar shall ensure that MCA-Madagascar 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 the proposed budget for such procurement and such other information as may be requested in writing by MCC from time to time.

The Procurement Plan shall be submitted to MCC for approval no less than five (5) business days prior to the 40 day publication period referenced in Section 1.2. MCC may, in its sole discretion, extend its review period an additional five (5) business days and notify MCA-Madagascar in writing of this extension.

Section 1.2 Publication of Procurement Plans. Unless MCC requests in writing an extension of its review period pursuant to Section 1.1, MCA-Madagascar shall publicize, in a model format approved by MCC, each proposed Procurement Plan, as approved by MCC, at least forty (40) days prior to the beginning of the six-month period to be covered by such plan, which publication shall include posting on the MCA-Madagascar Website, posting to the Development Gateway Market website at [www.dgmarket.com](http://www.dgmarket.com), publication in a daily newspaper of wide circulation in Madagascar, and public announcement in such other media outlets as appropriate or as requested from time to time by MCC. Each publication under this Section, including in the local media and on the MCA-Madagascar Website, shall be in English and in French and shall include a summary of such notice in Malagasy.

Section 1.3 Procurement Plan Implementation. The Ministry and MCA-Madagascar shall ensure that all procurements of goods, services and works shall be substantially consistent with each Procurement Plan, unless the value of the procurement is less than USD \$10,000 or the Parties otherwise agreed in writing. Satisfactory 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-Madagascar 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-Madagascar 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-Madagascar 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-

Madagascar 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-Madagascar or any other Permitted Designee. MCA-Madagascar 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-Madagascar 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 Bidding and Proposal Documents (defined in Schedule 1). 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-Madagascar shall deliver or cause the delivery of quarterly reports to MCC of all procurement actions since the prior quarter, including written explanations of any variance from the Procurement Plan for that quarterly period.

Section 2.6 Other Responsibilities. The Ministry and MCA-Madagascar 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-Madagascar 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-Madagascar Representations. MCA-Madagascar provides the following representations to MCC as of the date of its execution of this Agreement:

(a) Powers; Authorization. MCA-Madagascar 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-Madagascar 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-Madagascar. 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-Madagascar.

### **ARTICLE III.**

#### **APPROVALS**

Section 3.1 Approvals. MCA-Madagascar 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 2 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-Madagascar prior to the expiration of the period of the extension of MCC's approval period for an additional 20 business days.

### **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-Madagascar and any other Permitted Designee.

Section 4.2 Initial Operating Period. Notwithstanding any other provision of this Agreement, during the first 180 days following entry into force of the Compact, (i) any authorization, certification or other action required to be taken by, or obligation of, the Chairman of the Steering Committee may be taken by, and shall become obligations of, the Principal Representative of the Government; (ii) any certificates or other action required to be taken by, or obligations of, the Managing Director or any officer of MCA-Madagascar may be taken by, and shall become obligations of, the Principal Ministry Representative, and (iii) any action required of MCA-Madagascar may be taken by, and shall become an obligation of, the Ministry.

Section 4.3 Communications. Any notice, request, document or other communication required, permitted, or submitted by either Party to the other 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 Country Relations, with a copy to the General Counsel

875 Fifteenth Street, N.W.

Washington, D.C. 20005

United States of America

Facsimile: (202) 521-3700

Email: [VPCountryRelations@mcc.gov](mailto:VPCountryRelations@mcc.gov) (Vice President for Country Relations);

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

To the Ministry:

Ministry of Economy, Finance and Budget

BP 61, Antaninarenina

Antananarivo 101

Republic of Madagascar

Attention: Secretary General of the Ministry of Economy, Finance and Budget

Facsimile: (261) 20 22 382 94

E-mail: [mca@mefb.gov.mg](mailto:mca@mefb.gov.mg)

To MCA-Madagascar: at the address to be provided upon its entry into this Agreement.

Section 4.4 Amendments. The Parties may amend this Agreement by entering into a written amendment to this Agreement signed by the Principal Representatives of the Parties; *provided*, that prior to entry into this Agreement by MCA-Madagascar this Agreement may be amended by written agreement of MCC and the Ministry.

Section 4.5 Publicity. Subject to Section 3.13 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-Madagascar Website in English, French, and a summary in Malagasy.

Section 4.6 Nonwaiver of Remedies. The Parties agree that no delay or omission to exercise any right, power or remedy accruing to either Party, upon any breach, default or noncompliance by the other 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 either 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 either Party, shall be cumulative and not alternative.

Section 4.7 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 4.8 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 4.9 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 4.10 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 4.11 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 Antananarivo, Madagascar. 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 4.12 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 4.3 shall be deemed an original signature, and the Parties hereby waive any objection to such signature or to the validity of the underlying agreement, instrument or document 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 4.13 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-Madagascar. MCC shall provide written notice to the Ministry upon the effectiveness of such assignment, delegation or contract. Neither the Ministry nor MCA-Madagascar may assign, delegate or contract its rights and obligations under this Agreement without the prior written consent of MCC. In accordance with Section 3.2(c) of the Compact, MCC hereby consents to the designation of the Ministry to act on behalf of the Government in

connection with this Agreement consistent with the Designated Rights and Responsibilities designated by the Government to the Ministry on or before the date hereof, so long as such designation is not modified or revoked.

Section 4.14 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 4.15 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-Madagascar.

Section 4.16 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-Madagascar or Government to implement their respective obligations and responsibilities under the Compact Documents;

(iii) The Ministry or MCA-Madagascar, 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-Madagascar 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 4.17 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 Madagascar.

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, the Minister of Economy, Finance and Budget of the Ministry of Economy, Finance and Budget (the "**Ministry Principal Representative**"), MCC shall be represented by the individual holding the position of, or acting as, Vice President for Country Relations (the "**MCC Principal Representative**"), and MCA-Madagascar shall be represented by the individual holding the position of, or acting as, Managing Director (the "**MCA-Madagascar 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 Compact. 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-Madagascar 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 5.4(a). 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 Madagascar; 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, MCC and the Ministry, each acting through its duly authorized representative, have caused this Agreement to be executed in their names and delivered as of the date first written above.

MILLENNIUM CHALLENGE  
CORPORATION

MINISTRY OF ECONOMY, FINANCE  
AND BUDGET, ON BEHALF OF THE  
GOVERNMENT OF THE REPUBLIC OF  
MADAGASCAR

By: \_\_\_\_\_  
Name: John Hewko  
Title: Vice President for Country Relations

By: \_\_\_\_\_  
Name: Benjamin Andriamparany Radavidson  
Title: Minister of Economy, Finance and Budget

MCA-Madagascar, acting through its duly authorized representative, has joined this Agreement and shall be subject to its provisions as of the date first written below.

MCA-MADAGASCAR

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## SCHEDULE 1

### PROCUREMENT GUIDELINES

#### ARTICLE I. PROCUREMENT PROCEDURES

##### 1. Conduct and Administration.

The principles, rules and procedures set out in the Madagascar Law Nr 2004-009 Dated July 26, 2004 on Public Contracts (Madagascar Law on Public Contracts) shall govern the conduct and administration of the procurement of the goods, works and services that need to be acquired to implement the projects and programs under the Compact subject to the following exceptions:

(a) **Articles 5, 6 and 7** defining the organs of public procurement shall not apply. The organs of public procurement shall be defined in the Procurement Agent Agreement. It shall be understood that the organs and agents as defined in the procurement agent agreement shall be substituted for all reference in the Madagascar Law on Public Contracts to the organs and agents defined in Article 5, 6 and 7.

(b) **Article 9** defining the conditions for exclusion from public contracts shall be modified as follows:

(i) The failure to fulfill tax and tax-related liabilities shall not be justification *per se* for exclusion from participation in any procurement but may be considered in assessing the qualifications of any participant.

(ii) A violation of the Penal Code or being named by the Public Contract Regulatory Authority as having violated the public contract regulations shall not be justification *per se* for exclusion from participation in any procurement but may be considered in assessing the qualifications of any participant.

(iii) 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 US Federal Government or otherwise prohibited by applicable United States law or Executive Order or United States policies shall be excluded from procurements awarded under the Compact; including under any then-existing anti-terrorist policies.

(iv) No bidder shall be required to submit a formal document issued by a public body of Madagascar to prove that it is not excluded from public contracts for any of the conditions set out in Article 9.

(c) **Article 12** governing bid selection criteria and conditions shall be modified as follows:

(i) Paragraph I:

(1) Delete reference to “payment schedule”. Payment schedule shall not be used as a selection criterion.

(2) Delete reference to “qualifying criteria”. Qualifying criteria shall not be an acceptable form (method) of selection.

(ii) Paragraph IV: Delete paragraph. Foreign participants shall not be excluded from participation in any procurement and there shall be no preference in selection for national bidders or for any degree of local content.

(d) **Article 15** governing the advertisement of procurements shall be modified as follows:

(i) Paragraph I: The general notice of all procurements implementing the Compact shall be published semiannually in accordance with a model format approved by MCC.

(ii) Paragraph II: The notice of public invitation for bids shall be prepared in accordance with a model format approved by MCC.

(iii) Paragraph III: Publication of the general notices of procurement and the specific invitations to bid shall include posting on the MCA-Madagascar Website, posting to the Development Gateway Market website, publication in a daily newspaper of wide circulation in Madagascar, and public announcement in other media outlets as appropriate or as requested by MCC. Published notices in local media, including posting to the MCA-Madagascar Website, shall be in English and in French and shall include a summary notice in Malagasy.

(e) **Article 18** governing the open tendering method of procurement shall be modified as follows:

(i) A specific invitation to tender shall be published and posted at least 40 days prior to the deadline for submission of bids if the procurement is for goods or services with an estimated value over USD \$400,000 or for works with an estimated value over USD \$5,000,000 unless MCC approves a shorter period of notice for good cause.

(f) **Article 20** authorizing a two-phase method of procurement shall be disregarded. This method of procurement shall not be used for procuring goods, works or services under the Compact unless MCC specifically approves the use of this method for good cause.

(g) **Article 21** authorizing a limited call for tenders as a method of procurement (sometimes referred to a selective or restricted procedure) shall be modified as follows:

(i) The conditions for use as set out in Paragraph II shall be limited only to cases when the estimated value of the procurement is less than USD \$50,000 or when only a small number of companies are likely to execute the contract.

(ii) The method used for selecting candidates to invite to bid must be fair and objective.

(h) **Article 24** authorizing limited consultation of suppliers or companies (commonly referred to as Request for Quotations) shall be modified as follows:

(i) This method of procurement may be used for procuring goods, works or services when the estimated value of the procurement is less than USD \$30,000.

(ii) The method used for selecting candidates to invite for bids must be fair and objective.

(i) **Article 25** authorizing mutual agreement contracts (commonly referred to as direct procurements or single source procurements) shall be modified as follows:

(i) Paragraph II, subparagraph 6, shall be deleted. This condition (“services that, because of economic or social considerations, have to be entrusted to an authorized entity”) shall not justify use of this method of procurement.

(ii) Paragraph II, subparagraph 7, shall be modified to limit the use of this procurement method to add-on contracts that do not exceed fifty percent of the amount of the original contract.

(iii) Paragraph II shall be modified to add a condition permitting the use of this method of procurement for very small purchases of good, works and services, when the estimated value is less than USD \$2,000.

(j) **Article 26** setting out special procedures for contracting for consultant services shall be modified as follows:

(i) Paragraph II shall be modified as follows:

(1) Delete the condition stating that services below a threshold set by regulation do not need to be officially advertised.

(2) Add that procurements for services with an estimated value less than USD \$30,000 need to be posted on the MCC web site, published in a daily newspaper of general circulation in Madagascar and publicly announced in other media outlets as appropriate or as requested by MCC. Published notices in local media, including posting to the MCA-Madagascar Website shall be in English and in French and shall include a summary notice in Malagasy. Notice of procurements for services with an estimated value equal or greater than USD \$30,000 shall be posted at the Development Gateway Market web site, the UN Development Business web site, and the MCA-Madagascar Website, and shall be published in a daily newspaper of general circulation in Madagascar, and publicly announced in other media outlets as appropriate or as requested by MCC.

(ii) Paragraph IV sets out the possible criteria and methodologies that may be used for selecting consultants. In applying these provisions, quality based contracting should not be used. Cost should be selection criterion and generally of significant weight in the selection procedure.

(k) **Article 30** providing for the presentation of the bid in the implementing contract shall be modified by adding a condition that all bids shall be denominated and paid either in United States Dollars or in the local currency of Madagascar.



(l) The references “temporary” price in **Article 39** shall be understood to mean “estimated” price. This form of pricing shall apply only when the procurement contract allows for reimbursement of certain defined expenses.

(m) **Article 40**, Paragraph III, permitting adjustments to offered prices in the event there is delay in the award decision shall be deleted.

(n) **Article 42** providing for bid security shall be modified as follows:

(i) Bid security may also be in the form of a surety bond or other insured form so long as the surety or insurer is deemed qualified to extend the guarantee.

(ii) Bid security shall be returned or released promptly when due.

(o) **Article 43** providing for performance guarantee shall be modified as follows:

(i) Performance guarantee may also be in the form of a surety bond or other insured form so long as the surety or insurer is deemed qualified to extend the guarantee.

(ii) Performance guarantee should not be requested for contracts for goods except in exceptional circumstances for good cause. The performance guarantee should not be retained as a form of warranty.

(iii) Performance guarantee for procurement of works projects should be released in stages during the course of performance according to milestones set out in the bidding documents. The schedule of milestones shall provide that at least 90 percent of the bond shall be released within 30 days after the certificate of final completion is issued unless retaining a greater percentage of the bond is justified for good cause. The performance guarantee should not be retained as a form of warranty.

(p) Section VI, Settlement of Public Contracts, including **Articles 45, 46, 47, 48, 49 and 50** shall not apply to the payment of procurement contracts under the Compact. The rules and procedures defining payment shall be set out in the Fiscal Agent Agreement and in the Procurement Agent Agreement.

(q) Section VII, The Authority Regulating Public Contracts, **Articles 53 and 54** shall not apply to the regulation of procurement under the Compact.

(r) **Article 55** providing for the notification of awards shall be modified to provide that the form of notice shall be approved by MCC.

(s) **Articles 58 and 59** providing for settlement boards for public contracts shall not apply to disputes arising under procurement contracts made under the Compact. The procedures for pursuing and settling contract disputes shall be set out in the conditions of contract at set forth in the Bidding Documents.

(t) **Article 60** providing for a Code of Ethics for Public Contracts shall be subject to approval by MCC.

2. **Records.**

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

3. **Bidding and Proposal Documents.**

Standard bidding and proposal documents (“*Bidding and Proposal Documents*”) shall be developed and subject to review by MCC. The Bidding and Proposal Documents must be available in the English language and a local language in Madagascar. The English language version will control. The instructions to bidders and consultants in the Bidding and Proposal Documents must set out or reference the rules and procedures governing the procurement. The data sheet accompanying the instructions to bidders and consultants must also state the currency or currencies for the offers and shall require that payment be made in the same currency as the offer.

4. **Interpretation.**

The Madagascar Law on Public Contracts shall be interpreted consistent with the principles established in the Procurement Guidelines and any gaps in the law shall be filled in consistent with the procurement rules and procedures that regulate procurements funded by The World Bank.

**ARTICLE II. REVIEW AND APPROVAL REQUIREMENTS**

Certain important procurement actions and decisions shall be subject to prior review or approval by levels of authority within MCA-Madagascar or by MCC, as provided in the charts below. This system of review and approval requirements is intended to ensure adequate oversight over Compact-related procurement activities, help detect errors when they can be easily corrected and to otherwise avoid problems in such procurement activities, and is subject to modification or exception at any time, which modification or exception shall be subject to MCC approval.

**ARTICLE III. BID CHALLENGE SYSTEM**

MCA-Madagascar shall establish a bid challenge system that provides suppliers and contractors the ability to seek review of procurement actions and decisions. Such bid challenge system shall be subject to MCC approval. 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 or involved in or related to the procurement process. The review body must follow clear, written, and transparent 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 any loss or damage suffered by a successful challenger, at least to the extent of the cost of preparation of the bid and the challenge. 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. MCC reserves the right to review and comment on the organization and operation of the bid challenge system.

#### **ARTICLE IV. SUBCONTRACTING**

1. Every contract or subcontract for goods, services or works with any party that receives at least USD \$50,000 in the aggregate of MCC Funding shall require the contracting party to follow the Procurement Principles set out in the Compact to the maximum extent consistent with the objectives and requirements of the contract when subcontracting for goods, services or works.
2. In every contract or subcontract valued in excess of USD \$1,000,000, the contracting party shall be required to have written procurement procedures that may be subject to review by MCA-Madagascar, MCC, the Government and any of their respective agents or representatives.
3. Any contractor or subcontractor planning to subcontract for a major item of supply, services, or works (deemed major if valued in excess of USD \$100,000) shall seek MCA-Madagascar prior written approval of the subcontractor.

## SCHEDULE 2 - APPROVALS

SELECTION of PROCUREMENT METHOD					
Procurement Method	Reference to Madagascar Law	Thresholds		Conditions of Use under Compact	Approvals required for using method of procurement other than Open Tendering
		Threshold	USD	(As expressed in the terms of Madagascar Law)	
Direct Contracting (Single Source)	Art. 25 – Mutual agreement contracts			Contracts for which, following the call for tenders, there were no offers or for which only offers that were unacceptable according to the terms of Article 22 of Madagascar Law	Management of MCA-Madagascar (MCAM), above 100,000USD to Steering Committee (SC), above 500,000USD to (Millennium Challenge Corporation) MCC
				Contracts meant to fulfill needs that, for reasons linked to possessing an exclusive right, can only be fulfilled by a specific provider	MCAM, above 100,000USD to SC, subject to MCC approval
				Services that complete those that were previously the object of a first contract executed by the same holder; resorting to additional contracts is only possible if the initial contract was executed in accordance with the Invitation for tenders procedure	MCAM, above 100,000USD to SC, subject to MCC approval
		below	2,000	Estimated contract value of goods, works or services is below threshold	
Request for Quotations	Art. 24 – Limited consultation of suppliers or companies	below	30,000	Estimated contract value of goods, works or non-professional services is below threshold (and above 2,000USD)	MCAM approves shortlist
Limited Tender	Art. 21 – Limited call for tenders			Only a small number of companies are likely to execute the contract	MCAM, MCAM approves shortlist
		below	50,000	The estimated value of the contract is less than the threshold set by law	MCAM approves shortlist
Open Tender with Pre-qualification	Art. 19 – Open Call for Tenders with Pre-qualification			The object of the contract is the performance of work or the delivery of supplies that are of a specific importance or complexity, or the rendering of specialized services	MCAM approves use of prequalification

## SCHEDULE 2 - APPROVALS

SELECTION of PROCUREMENT METHOD					
		Thresholds		Conditions of Use under Compact	
Procurement Method	Reference to Madagascar Law	Threshold	USD	(As expressed in the terms of Madagascar Law)	Approvals required for using method of procurement other than Open Tendering
Open Tender	Art. 18 – Open call for tenders	at or above	50,000	Preferred method of procurement for goods and works	
Request for Proposals	Art. 26 – Conditions specific to intellectual service contracts	at or above	2,000	Preferred method of procurement for professional services	MCAM approves shortlist

SELECTION of SUPPLIER or CONTRACTOR					
		Thresholds		Conditions of Use under Compact	
Procurement Method	Reference to Madagascar Law	Threshold	USD	(As expressed in the terms of Madagascar Law)	Approvals required before announcing Contract Awards

## SCHEDULE 2 - APPROVALS

SELECTION of SUPPLIER or CONTRACTOR					
Procurement Method	Reference to Madagascar Law	Thresholds		Conditions of Use under Compact	Approvals required before announcing Contract Awards
Procurement Method	Reference to Madagascar Law	Threshold	USD	(As expressed in the terms of Madagascar Law)	Approvals required before announcing Contract Awards
<b>Direct Contracting (Single Source)</b>	<b>Art. 25 – Mutual agreement contracts</b>			Contracts for which, following the call for tenders, there were no offers or for which only offers that were unacceptable according to the terms of Article 22 of Madagascar Law	Management of MCA-Madagascar (MCAM), above 20,000USD to Steering Committee (SC), above 50,000USD to Millennium Challenge Corporation (MCC)
				Contracts meant to fulfill needs that, for reasons linked to possessing an exclusive right, can only be fulfilled by a specific provider	
				Services that complete those that were previously the object of a first contract executed by the same holder; resorting to additional contracts is only possible if the initial contract was executed in accordance with the open tendering procedure	
		below	2,000	Estimated contract value of goods, works or services is below threshold	None before award but MCAM reviews record of purchases weekly, SC reviews record of purchases monthly
<b>Request for Quotations</b>	<b>Art. 24 – Limited consultation of suppliers or companies</b>	below	30,000	Estimated contract value of goods, works or non-professional services is below threshold (and above 2,000USD)	None before award but MCAM reviews record of purchases weekly, SC reviews record of purchases monthly
<b>Limited Tender</b>	<b>Art. 21 – Limited call for tenders</b>			Only a small number of companies are likely to execute the contract	MCAM, above 20,000USD to SC, above 100,000USD to MCC
		below	50,000	The estimated value of the contract is less than the threshold set by law	MCAM, above 20,000USD to SC
<b>Open Tender with Pre-qualification</b>	<b>Art. 19 – Open Call for Tenders with Pre-qualification</b>			The object of the contract is the performance of work or the delivery of supplies that are of a specific importance or complexity, or the rendering of specialized services	MCAM, above 20,000USD to SC, above 250,000USD to MCC
<b>Open Tender</b>	<b>Art. 18 – Open call for</b>	at or above	50,000	Preferred method of procurement for goods and works	MCAM, above 100,000USD to SC,

**SCHEDULE 2 - APPROVALS**

<b>SELECTION of SUPPLIER or CONTRACTOR</b>					
Procurement Method	Reference to Madagascar Law	Thresholds		Conditions of Use under Compact (As expressed in the terms of Madagascar Law)	Approvals required before announcing Contract Awards
		Threshold	USD		
	<b>tenders</b>				above 250,000USD to MCC
<b>Request for Proposals</b>	<b>Art. 26 – Conditions specific to intellectual service contracts</b>	at or above	2,000	Preferred method of procurement for professional services	MCAM, above 10,000 USD to SC, above 100,000 USD to MCC