

MCC Procurement Guidance Note:

Ex-Post Waivers

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Ex Post Waivers

1. Context and Purpose

In exceptional cases and when a miss-procurement is not warranted, MCC may consider the approval of ex-post actions taken by the MCA Entity during the procurement process or during contract administration that deviated from the PPG. For those instances, the MCA Entity may submit a request for an Ex-Post Waiver for the unauthorized actions to MCC for ex-post approval consideration.

Requests for ex post waivers should be a rare occurrence, in which the MCA Entity accepts that a PPG violation has occurred, intentionally or not, and identify the steps MCA Entity shall take to ensure that it will not reoccur. This Guidance Note clarifies the PPG and enables a consistent approach to be followed when requesting ex-post waivers during either procurement or contract administration.

1. Determining the Procurement Action

Each Ex-Post Waiver request shall be in writing. An Ex-Post Waiver does not affect permanent change to the PPG, but, rather, is a one-time exception necessary to support a specific procurement or contract administration activity and applies only to the specific MCA Entity requesting the approval.

The MCA Entity Procurement Director will be responsible and accountable for the request for an Ex-Post Waiver and subsequent actions to be taken. MCC evaluates each request for an Ex-Post Waiver on a case by case basis. In addition to other factors, MCC will review the request based on the following:

1. Goods, works or services have been provided to and accepted by the MCA Entity, or the MCA Entity has otherwise obtained or will obtain a benefit resulting from performance of the goods, works or services that are the subject of the violation
2. The resulting contract would have been accepted by MCC if proper PPG procedures were followed
3. The contract prices are fair and reasonable
4. Funds are available and were available at the time of violation
5. MCA Entity Board shall be notified in writing prior to seeking MCC approval, and at the Board’s next meeting MCA Entity shall inform the Board of the violation and measures that have been put in place to ensure that it would not happen again.

If MCC does not approve the Ex-Post waiver request, MCC funds cannot be used for the resulting contract.

1. Conducting Due Diligence

Take positive action to prevent the need for Ex-Post Waivers requests. However, if an action in violation has been taken by any MCA Entity staff, task the Procurement Director with seeking approval for an Ex-Post Waiver from MCC. In addition to preparing the required justification, address the following key factors prior to submitting the request for an Ex-Post Waiver:

1. Has the root cause been identified?
2. Was there a conflict of interest?
3. Was any firm or individual harmed by the action that violated the PPG in terms of missing or losing a business opportunity?
4. Why would it be detrimental to the compact if the Ex-Post were denied?
5. Is there any reputational risk to the MCA Entity or MCC?
6. Does this involve a perception of or actual fraudulent or corrupt practice per the PPG?

Submit the required the following form (Request for Ex-Post Waiver for Unauthorized Action) along with the request for the Ex-Post Waiver.

Request for Ex-Post Waiver for Unauthorized Action

|  |  |
| --- | --- |
| In the amount of : | [insert total amount for procurements done under non-approved methods] |
| For *(Goods/Works/Services)*: |  |
| MCA Entity name and address: |  |

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| Part I - Description of Unauthorized Action |
| Section A –Action Circumstances |
| 1. Describe circumstances that led to the violation of PPG. |
| 1. Explain why PPG procedures were not followed and why this perceived as in the best interests of the MCA Entity. Also describe any efforts made to ensure that principles of transparency and competition were still observed in undertaking this action outside of normal procurement procedures. |
| 1. Describe the process that was followed for conducting the procurement. |

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| Part I - Section A - Procurement Circumstances (Continued) | | |
| 1. Describe the goods, works or services received by the MCA Entity | | |
| 1. List and attach all relevant documents. Include orders, invoices, and other evidence of the transaction. | | |
| Title  Name  Subtitle (if applicable) | Signature | Date  [mm/dd/yyyy] |
| MCA Entity official with overall responsibility for procurement: |  |  |
| MCA Entity Procurement Director:  [Name]  [subtitle if applicable] |  |  |
| MCA Entity Procurement Agent: [Name]  [subtitle if applicable] |  |  |
| MCA Entity CEO/Head of MCA:  [Name]  [subtitle if applicable] |  |  |
| Copy sent to MCA Board by:  [Name]  [subtitle] |  |  |

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| Part I - Section B - Contractual Ex post waiver | | |
| 1. Describe attempts to resolve unauthorized action prior to requesting the approval for an Ex-Post Waiver. | | |
| 1. Describe to the measures that have been put in place to prevent recurrence of similar unauthorized actions. | | |
| 1. Describe why MCC should approve this Ex-Post Waiver. For example, how would the compact be damaged if MCC does not fund the resulting contract? | | |
| Name (typed)/Title | Signature | Date |
| MCA Entity official with overall responsibility for procurement: |  |  |
| MCA Entity Procurement Director: |  |  |
| MCA Entity Procurement Agent: |  |  |
| MCA Entity CEO/Head of MCA: |  |  |
| Copy sent to MCA Board by:  [Name]  [subtitle] |  |  |

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| Part II - MCC Approval | | |
| 1. Approval of recommended corrective action to preclude recurrence:   Yes  No *(Explain non-concurrence)* | | |
| Name (typed)/Title | Signature | Date |
| MCC Procurement Director and as relevant per Table 2. Waiver Approval of the PPG:: |  |  |
| MCC Sector Lead (s) and as relevant per Table 2. Waiver Approval of the PPG: |  |  |
| MCC Legal Counsel to be informed: |  |  |