

Millennium Challenge Corporation

# **MCC Procurement Guidance Note**

## **Price-Reasonableness Analysis**

Date: October 2023



## **Purpose**

This document provides guidance to the AE on conducting price-reasonableness analysis (“PRA”) in accordance with the applicable provisions of the MCC PPG.

## **MCC Program Procurement Principles**

According to the MCC PPG, only a commercially reasonable price shall be paid to procure goods, works, consultant and non-consultant services. To ensure compliance with this principle, MCC requires that all AEs ensure that all prices to be contracted are reasonable.

The PRA ensures that the quoted prices of the Offeror proposed for contract award are neither unreasonably high (which could happen for example in instances of poor competition or collusion) nor unreasonably low (which would cast doubts on the Offeror's understanding of the scope of the procurement and its ability to perform the contract successfully). This analysis provides a secondary check by the AE that the MCC funds will be used in a cost-effective manner, and that the contracted party will be able to meet the requirements of the procurement as set out in the solicitation documents.

## **Definition**

The PRA is a review of the prices proposed by an Offeror (when the PRA is conducted as part of the procurement process) or a contracted party (when the PRA refers to an existing contract being amended) to ensure that the offered prices are fair to both parties (neither too high nor too low) considering without limitation factors such as the complexity of the task and the comparability of the prices on similar projects in local and international markets.

## **Mitigating the risk of unreasonably priced Offers**

There are several steps that AEs can take upfront to pro-actively mitigate the risk of receiving unreasonably priced Offers. Some of the routine risk mitigation measures include the following.

- Identifying and assessing the pool of potential Offerors as well as any industry- or market-specific constraints that may apply (e.g., a limited number of qualified Offerors; large number of failed similar projects; higher prices in the local market when compared with other markets due to special country conditions like access, security issues etc.). For large and critical procurements, this can be accomplished by conducting comprehensive market analysis and outreach events. The use of RFIs is also encouraged as it may be an effective tool to gauge the market.
- Reviewing competing projects in the local market that may limit the pool of qualified contractors.
- Preparing clear, value-driven, and biddable solicitation documents, i.e., specifications or Terms of Reference that Offerors can fully understand and use to prepare adequately responsive technical proposals and reasonably calibrated financial proposals.
- Including in the solicitation documents, clear qualification and evaluation criteria that would encourage qualified Offerors to participate in the solicitation.
- Remaining engaged with the market to encourage as wide a participation as possible. This is an on-going process that starts with market outreach as mentioned above and continues with

advertising the procurement opportunity via sufficient means and platforms to maximize the chances of a healthy competition; allowing sufficient time for the preparation of Offers; facilitating Offerors' access to relevant information that would help them better understand the scope of procurement and therefore prepare fully informed Offers (pre-offer conferences, site visits); responding promptly, clearly and fully to all clarification requests that are submitted within the timeframe indicated in the solicitation documents; allowing for adequate extensions of time for submission in the case of newly surfaced information or changes in the solicitation documents;

- Ensuring that budget estimates are realistic and correspond to the requirements of the solicitation documents, and not just to the budget estimates in the procurement plan. To the extent possible estimated budgets should be based on independent, reliable sources and market data and should adequately reflect the particulars of the country situation, industry, and project.

These safeguards are obviously not failproof and AEs are sometimes faced with unreasonably priced Offers. Whenever this happens, the AE should analyze each case by its own merits, as there is no one-size-fits-all approach that would work for every conceivable situation. The process and methods described below are provided by MCC to assist the AEs in conducting the PRA.

## **Methodology for conducting the PRA**

### ***A. PRA for Competitive Procurements***

#### **Goods**

For competitive procurements<sup>1</sup> where a minimum of 3 offers were received and procurements under Shopping where at least 2 quotations were received, the lowest evaluated price suffices as the basis of price reasonableness.

#### **Works, Non-Consultant and Consultant Services**

For Works, Non-Consultant and Consultant Services, where a minimum of 3 offers were received, price reasonableness is considered successfully verified if the prices of the potential awardee are no more than an undisclosed percentage point disparate both from the mean of the prices received and from the procurement budget.

Where less than 3 offers are received, the PRA method for less-competitive procurements below apply.

### ***B. PRA for Less Competitive Procurements***

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<sup>1</sup> This refers to procurements where a competitive procurement methodology was used, e.g.. CB, QPBS, etc.

For all procurements that were less competitive or non-competitive<sup>2</sup>, the prices of the potential awardee shall be assessed to have been reasonable across at least two of the following pillars:

- 1. Historical Prices**
- 2. Catalogue Prices**
- 3. Published Prices**
- 4. Comparison with Prices of Similar Items**
- 5. Industry Data**
- 6. Competitive Prices**
- 7. Standard Deviation:** To be relevant, this should be used when there are at least five (5) qualified Offerors.
- 8. The AE's Budget Estimate**

### *C. PRA for Individual Consultants*

For the hiring of individual consultants under the Individual Consultants' Selection (ICS) method, only the price of the successful consultant is evaluated. The viable PRA methods therefore center on comparing the remuneration rates proposed by the successful individual consultant (in order of importance):

- i. the salary or remuneration history of the successful individual consultant him/herself;
- ii. the budget/PP estimate;

At the end of the exercise, the remuneration rates submitted by the individual consultant should be considered reasonable across both methods cited above.

The PRA for individual consultants should include geographical experience considerations. The PRA should consider if the price disparity is attributable (either partly or entirely) to the fact that a consultant is local, regional, or international.

It is a principle of individual consultant procurement that the PRA be applied only to remuneration rates (or fees). Allowances, incidental expenses, travel costs, miscellaneous items and other such costs should not be considered part of the PRA, but these should undergo separate due diligence along with the travel allowance policy of the AE.

### *PRA for Panel Members*

For the hiring of Panel members, the prices of more than one successful consultant could be evaluated. The viable PRA methods therefore center on comparing the remuneration rates (and

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<sup>2</sup> For the purposes of the PRA, less competitive procurements are those where the offers received were not more than 2, while non-competitive procurements refer to those where the methodology was not price-competitive (under Direct Contracting or Sole Source methods).

reimbursables for iv. below) proposed by the successful individual consultant or calculated by the AE:

- i. the salary or remuneration history of the successful Panel member(s);
- ii. the budget/PP estimate;
- iii. similar assignments in the past (Historical Prices), including some factor for inflation; and
- iv. Total cost of assignment across Panel members, i.e. the total cost to the AE to hire one Panel member against another. This will include a geographical analysis of the rates, where a successful Panel member in question is applying to work in his/her country of residence, against a foreign consultant who would fly in to render the same services. This geographical analysis will include an assessment of not just remuneration but the reasonableness of other incidental costs (where a foreign consultant is being hired), to include airfare, accommodation and per diem.

At the end of the exercise, the remuneration rates submitted by the successful Panel members should be considered reasonable across at least two of the above four methods. It is important to understand that the PRA for Panel members leans towards the assessment of abnormally high rates.

### **PRA for Contract Amendments and Options**

To the extent possible, contract amendments and options shall use existing rates and prices from the original contract (including daywork rates in civil works contracts). If this is not possible due to the different nature of the additional scope, then PRA should consider the following, if and as applicable:

- a) comparison with rates and prices of similar items in the original contract;
- b) comparison with rates and prices of similar items in other similar contracts;
- c) any other PRA method presented above.

### **Clarifications and analysis**

Regardless of the methods used for identifying unreasonably low or high prices, the AE should request clarifications from the Offeror before rejecting its Offer on the grounds of unreasonable PRA. The AE should request the Offeror to provide clarifications to understand if there are justified reasons for the price being too high or too low. Such request for clarifications may include the following:

- a) detailed price (or cost) breakdown of the entire Offer price or of certain sections or items, particularly those items that are quoted on a lump-sum basis;
- b) justification for anomalies such as price discrepancies within the Offer, or the delivery schedule, staffing schedule or work method;
- c) confirmation that the Offeror fully understands the requirements of the project, including environmental, social, health and safety obligations, as well as the requirements for the compliance with all applicable laws, regulations and standards;

- d) confirmation from suppliers, service providers or subcontractors that is low (if it is a low PRA) that unusually low prices are not related to certain favorable business terms that the Offeror enjoys with its suppliers or subcontractors.

In certain situations, requests for clarifications may go as far as requesting detailed breakdown of the Offer price based on a typical structure like cost (labor, materials, equipment) + overheads + contingencies + profit.

The Offerors should be given a reasonable time to prepare and submit such clarifications. Depending on the type and complexity of the project and the number of clarifications required, this time should be between 5-10 working days.

The Offerors' response should provide satisfactory evidence, explanations or justification and should include additional materials if requested (documentary evidence of previous contracts delivered under similar price terms, quotations from suppliers or subcontractors, hire purchase agreements, employment contracts etc.)

If the Offeror fails to respond, or if the justifications are not satisfactory to the AE, then its Offer may be rejected (and its bid security if submitted should be returned upon completion of the procurement process) after one round of clarification; MCC does not require protracted exchanges with the Offerors on PRA-related issues. Further, these clarifications will not be used to change the Offer price or to substantially change any material element of the Offers, unless the AE has received MCC's approval for such negotiations.

*It should be noted that mathematical or statistical calculations alone should not be used as the sole basis for the rejection of an Offer, but rather as a starting point for further investigating the price reasonableness. Otherwise, one may fall in the trap of a false sense of objectivity that numbers and formulas usually convey.*

If there are significant discrepancies between the prices of Offers or quotations, the AE should investigate potential causes of such discrepancies (e.g., ensure that the description of the procurement was not vague that could have been misinterpreted by some Offerors, and that there were no calculation errors etc.). When most Offers are grouped within a close price range (e.g., within one standard deviation from the mean) and there are a few outliers (either significantly higher or lower price than one standard deviation), then the offered prices within the close price range may be assumed to be reasonable and the outliers may be assumed to be unreasonable.

## **PRA decision**

Following analysis of the clarifications submitted by the Offeror, the AE will determine, with due consideration of all available information, if the price is reasonable or not. A negative PRA determination constitutes grounds for rejection of Offer, subject to MCC's No Objection if so required. In such case, the second lowest responsive Offeror or the next ranked Offeror will be subject to PRA.

## **Responsibility and Documentation**

The PRA should be conducted (a) during the financial evaluation of the Offer or quotation of the potential winner of the contract; or (b) during the preparation of any contract amendment that would result in an increase of the Contract Price.

The responsible party for conducting the PRA is the PA, who can be assisted by the AE, the Fiscal Agent, the consultant firm that prepared the technical specifications/bills of quantities, or by any other party with relevant expertise in this area and with no conflict of interest.

The PRA should be documented in the record of the procurement (including the Evaluation Report if applicable) or in the document/memorandum justifying the contract amendment, as applicable.

## **Increase of Performance Security following an unreasonable PRA**

MCC SBDs for the procurement of goods, works and non-consultant services contain specific language allowing AEs to request the increase of the Performance Security amount to be submitted by awarded Offerors in certain situations when the PRA analysis indicates an implementation risk in the offered prices. These provisions are described in the following sequence:

- a) PRA shall consider not only the total Offer Price (as being unreasonably low or high), but it should also look at the internal consistency of the Offer Price to determine if the Offer is *front loaded* or *unbalanced* in any significant way.

A Offer can be unbalanced in several ways, including without limitation:

Front loading - when a Offeror submits significantly higher prices for items to be paid during the early stages of contract implementation (e.g., for obtaining permits and approvals, for mobilization, site clearance, etc.), compared to the other Offerors. For example, if the cashflow projection for the rest of the Offerors shows around 10%-15% of the Offer Price to be paid during the first weeks of the project, while the Offeror proposed for award would require 30% of the Offer Price, this would constitute front loading.

Windfall - when a Offeror is better informed than the AE and the rest of the Offerors (or makes a better educated guess) about the final volume of work/quantities to be executed and paid under the project. To benefit from windfall, the Offeror submits unusually high prices for items that are traditionally subject to upward re-measurement or variation orders; and submits unusually low prices for items that may be substantially reduced or even cancelled during contract implementation. For example, a Offeror for a roads contract may significantly inflate the unit prices for earthworks if they anticipate a lot of changes in quantities due to poor design or changing site conditions. Again, the comparison shall be done with the unit prices for the same items as quotes by other Offerors.

- b) If there is any indication of an unreasonably priced or unbalanced Offer, the AE should require the Offeror to submit evidence and calculations (detailed price analyses, work

methods, etc.) for any items that fall under such a suspicion. The explanations should be able to support the internal consistency of the quoted prices with the Offeror's implementation methods and proposed work schedule.

Not all price discrepancies are unreasonable. Sometimes price discrepancies between Offerors may be well justified. For example, a Offeror may be in a better competitive position by being the manufacturer of critical equipment and materials, or by possessing a superior technology or a patented method that brings significant efficiencies. A Offeror may have very low mobilization costs if they are already mobilized in the same area on another project etc.

- c) After reviewing the information provided by the Offeror, the AE may accept the Offer and proceed with the contract award if the justifications are solid.
- d) If the information provided by the Offeror leads to a negative determination (i.e., the Offer is materially unbalanced), the AE should reject the Offer and the Offeror should not be allowed to revise their Offer after such negative determination. The AE should move to the next ranked Offeror and repeat the PRA process described here.
- e) In some exceptional circumstances, an alternative to rejecting the Offer (if such rejection would result in a failed procurement) may be to increase the amount of the Performance Security as provided in the solicitation document. However, while it may diminish risk to the AE, simply increasing the performance security does not balance an unbalanced price, and this could be prejudicial to other Offerors with higher (but still reasonable) prices that are not unbalanced.
- f) If MCC and the AE agree to this alternative, the requirement for an increased performance security amount shall be clearly stipulated in the NOITA and the letter of acceptance to the awarded Offeror (and in the minutes of contract negotiations or contract finalization, as applicable). The Offeror shall bear all additional costs associated with obtaining the increased performance security. Refusal to provide the increased performance security shall result in rejection of the Offer (but the bid security will be returned upon completion of the procurement process).