

# Program Procurement Guidelines

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MILLENNIUM  
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## 1. PURPOSE AND SCOPE

The principles, rules, and procedures set out in these Program Procurement Guidelines (Guidelines or PPG) shall govern the conduct and administration by the Millennium Challenge Account Entity (MCA Entity) or other entity, excluding Millennium Challenge Corporation (MCC) of the procurement of the goods, works, information technology, consulting, and non-consulting services that need to be acquired to implement the Projects funded by MCC (Project or Projects) under “Millennium Challenge Compacts” and “Grant Agreements” entered into pursuant to Section 609(g) of the Millennium Challenge Act (Act), unless MCC specifically agrees to the application of alternative procurement procedures. These Guidelines do not apply to purchases defined in the *MCC Procurement Guidance Note: MCA Non-PPG Covered (NPC) Purchases* that are covered by guidance provided by the Procurement Operations Manual (POM) and Procurement Handbook, which are guidance notes applicable and available to MCA Entities. Unless stipulated otherwise in the relevant Threshold Program Grant Agreement, these Guidelines will apply to MCC threshold programs funded pursuant to Section 616 of the Act.

These Guidelines do not apply to Grants, which include all forms of cooperative or cooperation agreements and Program Partnership Solicitations (or PPS), issued by MCA Entities, which are covered through a separate Guideline called Program Grants Guidelines or PGG.

## 2. AUTHORITIES

### 2.1 Statutory Authority

- a) Section 609(b)(1)(I) of the Millennium Challenge Act of 2003, as amended (Public Law [P.L.] No. 108-199, codified at 22 United States Code [U.S.C.] 7701, et seq.)

### 2.2 Federal Government Regulations, Standards, and Other Guidance

- a) Not applicable

### 2.3 Related MCC Policies and Procedures

- a) Guidance on Reporting and Considering Past Performance by Contractors in MCA Entity Program Procurements
- b) Cost Principles for Cost-Reimbursement Contracts under MCC-Financed Grants
- c) Cost Principles for Government Affiliates
- d) Policy on Preventing, Detecting, and Remediating Fraud and Corruption in MCC Operations
- e) Guidelines for Accountable Entities and Implementation Structures

## 3. EFFECTIVE DATE

These Guidelines shall become effective 30 days after publication and shall supersede all previous versions.

## 4. GUIDELINES

### PART 1 CONDUCT AND ADMINISTRATION OF PROCUREMENT

#### Section 1.A Program Procurement Guidelines: Procurement of Goods, Works, and Non-consulting Services (including Information Systems)

##### I. Introduction

##### Applicability of Section 1.A of these Guidelines

P1.A.1.1 Section 1.A sets forth the principles, rules, and procedures generally applicable to the procurement of goods, works, and non-consulting services (including information systems) funded by MCC.

##### General Considerations

P1.A.1.2 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 a Project depend on the circumstances of the particular case, the following four considerations known as the MCC Program Procurement Principles generally guide the application of these Guidelines:

P1.A.1.2 (a) Open, fair, and competitive procedures shall be used in a transparent manner to solicit, award, and administer contracts to procure goods, works, and non-consulting services (including information systems).

P1.A.1.2 (b) Solicitations for goods, works and non-consulting services (including information systems) shall be based on a clear and accurate description of the goods, works, and non-consulting services to be acquired.

P1.A.1.2 (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.

P1.A.1.2 (d) Only 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-consulting services (including information systems).

P1.A.1.3 The MCA Entity shall ensure that all the procurements for goods, works, and non-consulting services (including information systems) undertaken in furtherance of the Compact and funded in whole or in part, directly or indirectly, with MCC funding shall comply with these MCC Program Procurement Principles.

P1.A.1.4 Open competition is the basis for efficient public procurement. In most cases therefore, MCC requires that MCC-funded goods, works and non-consulting services (including information systems) be obtained through an open and competitive bidding process (Competitive Bidding) open to eligible suppliers and contractors as set out in Sub-Section II. Competitive Bidding below.

P1.A.1.5 Where Competitive Bidding is not the most appropriate method of procurement, other methods of procurement may be used. Sub-Section III. Other Methods of Procurement below 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 as approved by MCC.

### **Conflict of Interest**

P1.A.1.6 Firms and individuals shall not have any conflicts with other assignments and their own corporate interests. Firms and individuals 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 limiting the generality of the foregoing, firms or individuals shall not be hired under the circumstances set forth below:

Conflict between consultant activities and procurement of goods, works or non-consulting services (including information systems): A firm or individual that has been engaged by MCC, the MCA Entity or another donor to provide goods, works, or non-consulting services (including information systems) for a Project (including the firm's personnel, subcontractors, and affiliates), shall be disqualified from providing consulting services related to those goods, works or non-consulting services (including information systems). Similarly, a firm or individual hired to provide consulting services for the preparation or implementation of a Project (including the firm's personnel, subcontractors, and affiliates), shall be disqualified from subsequently providing goods, works, or non-consulting services (including information systems) resulting from or directly related to the firm's consulting services for such preparation or implementation.

Relationships with the MCA Entity staff: If a firm or individual has been engaged by the MCA Entity to provide goods, works or services (including the firm's personnel, subcontractors, and affiliates) and are themselves or have a business or family relationship with (i) a member of the MCA Entity board of directors or staff, (ii) the Project-implementing entity's staff, or (iii) the Procurement Agent or Fiscal Agent hired by the MCA Entity in connection with the Compact, any of whom are directly or indirectly involved in any part of the following: (A) the preparation of the solicitation documents related to the procurement, including the contract; (B) the selection process for such procurement; or (C) the supervision of any contract awarded in the procurement, then this aforementioned firm or individual may not be awarded the contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to MCC throughout the process of preparing the documents related to the procurement, the selection process, and the award and execution of the contract.

## Unfair Competitive Advantage

Bidders (including the bidder's personnel, sub-contractor and affiliates) competing for a specific assignment shall not derive an unfair competitive advantage from having provided services related to the assignment in question. To that end, the MCA Entity shall make available to the bidders, together with the Bidding Document, all information that would give a bidder an unfair competitive advantage. If the MCA Entity, in consultation with MCC, determines that it is inappropriate or impractical to release information sufficient to cure a potential unfair advantage, the bidder with the potentially unfair advantage may be disqualified for the purposes of the particular procurement.

## Eligibility

P1.A.1.7 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.

P1.A.1.8 To foster competition, MCC permits firms and individuals to offer goods, works consulting services and non-consulting services (including information systems) for MCC-funded Projects, except firms and individuals that (i) are declared ineligible by the World Bank for any reason, during the period of time that the firm or individual is sanctioned by the World Bank; (ii) are debarred by the World Bank; or (iii) are 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.

P1.A.1.9 Furthermore:

- 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 with such exclusion; 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.
- b) As stated in A.1.6.(b), a firm or individual that has been engaged to provide consulting services for the preparation or implementation of a Project (including the firm's personnel, subcontractors, and affiliates), shall be disqualified from subsequently providing goods, works, or non-consulting services (including information systems) resulting from or directly related to the firm's consulting 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. See paragraph **P1.A.2.5** for discussion of the use of turnkey or design and build contracts.



- c) The eligibility of Government-Owned Enterprises to offer goods and works for MCC-funded Projects will be determined in accordance with **Part 13**. Government-Owned Enterprises of these Guidelines.
- d) A firm or individual declared ineligible in accordance with **Part 10**. Eligibility Verification Procedures<sup>1</sup> shall be ineligible to be awarded an MCC-funded contract. This would also remove from eligibility any bid from a country or from a firm or individual 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.
- e) Government officials and civil servants may only be hired by a Bidder of goods, works or non-consulting services 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 **P1.A.1.6**). In addition, no current employee of any MCC-funded accountable entity (or a former employee that has left the MCA Entity within a period of less than twelve (12) months) that is (or has been) responsible for managing or administering any contract, grant, or other agreement between the Bidder and such other MCC-funded accountable entity shall be proposed or work as, or on behalf of, any Bidder. In the case where a Bidder seeks to engage the services of any person who may have left the MCA Entity (or such other MCC-funded accountable entity, as the case may be) within a period of less than twelve (12) months, it must obtain a “no-objection” from the MCA Entity for the inclusion of such a person, prior to the Bidder’s submission of its Bid. The MCA Entity must also obtain a “no-objection” from MCC before replying to the Bidder.

### Funding Availability for Planned Procurements

P1.A.1.10 In exceptional circumstances, the MCA Entity may, with the approval of MCC, initiate the procurement of goods, works, or non-consulting services (including information systems) before the obligation of Compact funds that are budgeted for such procurement. In requesting this approval, each MCA Entity should consider and mitigate the risks associated with such action and the potential for it not resulting in a successful contract award. These risks include but are not limited to the risk associated with whether contract pricing could be affected by additional uncertainty as well as negative market reactions and impact on future procurements if the approach results in a failure to award a contract in a timely manner. MCC’s approval determination will consider these factors, the level of uncertainty involved, and the MCA Entity’s proposed mitigating actions. In such cases, the procurement procedures, including advertisement, shall be in accordance with these Guidelines, and MCC shall review the process used by the MCA Entity according to this PPG’s approval matrix. The MCA Entity undertakes such procurement action 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. While such procurement can be initiated, a contract or any portion of a contract utilizing MCC funds cannot be signed until MCC grant funds have been obligated by MCC and all applicable conditions necessary for the MCA Entity to commit the intended funds have been met. Particular care in this regard must be taken in cases where procurements may be initiated prior to a Compact’s “Entry into Force” (EIF) due to the statutory requirement that Compacts have a term of only five years after EIF. Under no circumstances will MCC reimburse the MCA Entity

<sup>1</sup> Eligibility Verification Form can be modified or amended from time to time by the MCC Program Procurement Practice Group

for any contract costs incurred prior to EIF from the Compact funds, or if any action was taken without MCC's approval. If the contract is signed, reimbursement by MCC of any payments made by the MCA Entity under the contract prior to obligation of the related Compact funds would be considered as retro-active financing, which is prohibited.

### **Joint Ventures**

P1.A.1.11 Any firm may bid independently or in joint venture (as long as all firms participating in the joint venture are jointly and severally liable) with domestic firms or with foreign firms, but MCC does not accept conditions of bidding that require mandatory joint ventures or other forms of mandatory association between firms.

### **MCC Review**

P1.A.1.12 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 A of these Guidelines.

### **Misprocurement**

P1.A.1.13 MCC does not fund expenditures for goods, works, or non-consulting services (including information systems) that have not been procured in accordance with the agreed provisions as detailed in the Compact, any Supplemental Agreement, these Guidelines, and the approved Procurement Plans. In such cases, MCC will declare a misprocurement and may cancel disbursement of that portion of the Compact funds allocated to the goods, works, or non-consulting services (including information systems) 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 a misprocurement if it concludes that the approval was issued on the basis of incomplete, inaccurate, or misleading information furnished by the MCA Entity or that the terms and conditions of the contract had been modified without MCC approval.

### **References to MCC**

P1.A.1.14 The MCA Entity shall use the following language (or similar language acceptable to MCC) when referring to MCC in procurement documents:

The United States of America acting through the Millennium Challenge Corporation (MCC) and [insert country] acting through the government thereof (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 approximately [insert amount of Compact] USD (MCC Funding). The Government, acting through [insert full legal name of the MCA Entity] (MCA-[insert as appropriate]) intends to apply a portion of the MCC Funding to eligible payments under a contract for which this [insert type of Bidding Document] is issued. Any payments made under the Proposed Contract will be subject, in all respects, to the terms and conditions of the Compact and re-

lated documents, including restrictions on the use and distribution of MCC Funding. 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.

### **Fraud and Corruption**

P1.A.1.15 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. MCC's *Policy on Preventing, Detecting, and Remediating Fraud and Corruption in MCC Operations* is applicable to all procurements involving MCC funding and can be found on the MCC website. In pursuance of this policy, the following provisions shall apply:

P1.A.1.16 (a) For the purposes of these provisions, the terms “coercion”, “collusion”, “corruption”, “fraud”, “obstruction of investigation into allegations of fraud or corruption” and “prohibited practice” have the meaning set forth in MCC's [Policy on Preventing, Detecting, and Remediating Fraud and Corruption in MCC Operations](#).

P1.A.1.16 (b) The MCA Entity will reject a bid (and MCC will deny approval of a Proposed Contract award) if it determines that the bidder recommended for award has, directly or through an agent, engaged in coercion, collusion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or prohibited practices in competing for the contract in question.

P1.A.1.16 (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 coercion, collusion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or prohibited practices in competing for, or in executing, such a contract.

P1.A.1.16 (d) MCC and the MCA Entity have the right to require that 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 an MCC-funded contract and to have them audited by auditors appointed by MCC or the MCA Entity with the approval of MCC.

P1.A.1.16 (e) MCC has the right to cancel any portion or all of the MCC funding allocated to a contract if it determines at any time that representatives of a beneficiary of the MCC funding engaged in coercion, collusion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or prohibited practices during the selection process or the execution of an MCC-funded contract, without the MCA Entity having taken timely and appropriate action satisfactory to MCC to remedy the situation.

P1.A.1.17 With the specific approval of MCC, the MCA Entity may introduce into bid forms for 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. 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.

### **Price-Reasonableness Analysis**

P1.A.1.18 The MCC Program Procurement Principles state “only a commercially reasonable price shall be paid to procure goods, works, and non-consulting services.” To ensure compliance with this principle, the MCA Entity shall conduct a price-reasonableness analysis of the prices offered in a procurement process (both for competitive and Direct Contracting procurements) for goods, works, and non-consulting services (including information systems). The MCA Entity will not make any award without making a positive determination that the price is reasonable in accordance with the [MCC Procurement Guidance Note: Price-Reasonableness Analysis](#)<sup>2</sup>.

### **Best Value for Money**

P1.A.1.19 MCC requires the MCA Entity to follow the principle of achieving best value for money through consideration of suitable price and non-price criteria as outlined in the Standard Bidding Documents (SBD) relative to the procurement.

## **II. Competitive Bidding**

### **A. General**

#### **Introduction**

P1.A.2.1 The objective of Competitive Bidding, as described in these Guidelines, is to provide all eligible prospective bidders with timely and adequate notification of the MCA Entity's requirements and an equal opportunity to bid for the required goods, works, and non-consulting services (including information systems).

#### **Type and Size of Contracts**

P1.A.2.2 The solicitation documents shall clearly state the type of contract to be entered into and shall 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. Requirements contracts, Indefinite Delivery-Indefinite Quantity Contracts, and Blanket Purchase Agreements are also permitted.

P1.A.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

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<sup>2</sup> As may be modified from time to time by the MCC Program Procurement Practice Group

for the supply and/or installation of different goods and for works. The choice of contract will depend on procurement efficiency, overhead minimization, mobilization costs, contract administration and oversight burden easing, market considerations, and availability of funding.

P1.A.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 lots or for a group of similar lots. All bids and combinations of bids shall be received by the same deadline and opened and evaluated simultaneously, to determine the bid or combination of bids offering the best value to the MCA Entity.

P1.A.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 within 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 service contracts, are also acceptable where appropriate.

### **Two-Stage Bidding**

P1.A.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 unpriced technical proposals on the basis of a conceptual design or performance specifications are invited, subject to technical clarifications and adjustments, to be followed by the issuance of amended solicitation documents and the submission of final technical proposals and priced bids in the second stage.

### **Budget**

P1.A.2.7 Preparation of a thorough and realistic budget estimate is essential to ensure MCC funding is to be managed properly. This budget should be carefully considered during the preparation of the Procurement Plan between the MCA Entity's Procurement Director, Fiscal Director, and the relevant Sector Director and should correspond to the funds available for that sector and the activity. Based on this budget, the MCA Entity's Procurement Director will decide the procurement methodology to be used, which will be submitted to MCC during the approval of the Procurement Plan. Any modification of the budget or the procurement methodology after the approval of the Procurement Plan must be approved by MCC (see PART 2 Procurement Planning, Implementation, and Reporting, below, for guidance on developing the Procurement Plan). The budget estimate shall be based on the MCA Entity's assessment (with input from the implementing entity) of the resources needed to carry out the assignment, including staff time, logistical support, and physical inputs. With MCC approval, the MCA Entity may choose to disclose the budget estimate in the bidding document. In this case, the MCA Entity shall explain that the budget estimate is indicative, and bidders are allowed to propose their own prices that will be assessed to determine price reasonableness.



## Notification and Advertising

P1.A.2.8 Timely notification of procurement opportunities is essential in Competitive Bidding. Every quarter and upon updates to the approved Procurement Plan, the MCA Entity shall publicize the Procurement Plan through a General Procurement Notice (GPN)<sup>3</sup>, which shall include procurements planned for the upcoming period. The GPN shall provide reasonable notice of planned procurements to potential suppliers and contractors.

P1.A.2.8.1 Advertisement of the GPN 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 United Nations Development Business Online (UNDB Online) website at <http://www.devbusiness.com/>, and any website that MCC may decide from time to time. In addition, MCC may post such notices on <https://beta.sam.gov/> and/or any other U.S. Government publication.. The MCA Entity shall also publish the GPN 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, unless otherwise agreed with MCC the GPN may 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 and on the MCA Entity's website or any other website in the country with approval from MCC.

P1.A.2.9 Invitations to pre-qualify or to bid, as the case may be, shall be advertised as Specific Procurement Notices (SPN)<sup>4</sup> For contracts for goods and non-consulting services with an estimated value at or more than United States Dollars (USD) 200,000 and contracts for works valued at or more than USD1,000,000, 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), UNDB Online, and any website that MCC may decide from time to time. The PA shall also send the published SPNs to the U.S. Embassy (office designated per MCC) for wider distribution. In addition, MCC may post such notices on <https://beta.sam.gov/> and/or any other U.S. government publication. Contracts valued below the respective thresholds can be advertised in the venue of preference of the MCA Entity—local, regional, and/or international. Publication in local print and broadcast and other national and international media is encouraged. If the publication will be done locally and internationally, the MCA Entity shall use its best efforts to publish all postings simultaneously so that the additional posting does not pre-date the required postings. The MCA Entity will publish an SPN in sufficient time to enable prospective bidders 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 GPN. MCC reserves the right to approve the content of an SPN.

## Pre-qualification of Bidders

P1.A.2.10 Pre-qualification is not mandatory, but may be conducted 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

<sup>3</sup> As it may be modified or amended from time to time by the MCC Program Procurement Practice Group.

<sup>4</sup> As it may be modified or amended from time to time by the MCC Program Procurement Practice Group.

ensures that invitations to bid are extended only to those who have adequate capabilities and resources. Pre-qualification shall be based entirely on the capability and resources of prospective bidders to perform the particular contract satisfactorily.

P1.A.2.11 The invitation to pre-qualify shall be advertised according to the guidance provided in the POM and as agreed with MCC.

## B. Solicitation Documents

### General

P1.A.2.12 The solicitation documents shall furnish all information necessary for a prospective bidder to prepare a bid for the goods, works, or non-consulting services (including information systems) to be provided. While the details and complexity of these documents may vary with the size and nature of the proposed bid package and contract, they generally include: invitation for bids; instructions to bidders and a bid data sheet; evaluation and qualification criteria, bidding forms; form of contract, including both general and specific conditions; 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 highest combined technical and financial score in procurements using Quality and Price-Based Selection (QPBS) or the lowest evaluated bid in procurements using conventional competitive bidding procedures, as applicable, shall be clearly outlined in the instructions to bidders, evaluation and qualification criteria 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 solicitation documents, provided that MCC is satisfied with the adequacy of such system. If solicitation documents are distributed electronically, the electronic system shall be secure to avoid modifications to the solicitation documents and shall not restrict the access of bidders to the bidding documents. Guidance on critical components of the solicitation documents is given in the following paragraphs.

P1.A.2.13 The MCA Entity shall use SBDs made available by MCC pursuant to Part 3. Standard Bidding Documents (SBD), whenever appropriate. In case there is no SBD appropriate to meet specific circumstance of the MCA Entity, the MCA Entity may use another solicitation document with approval from MCC. The SBDs may be modified to address Project-specific conditions, subject to approval by MCC when the change is material. Such changes shall be introduced only through the Bid Data Sheet (BDS), Appendix to Bid, or through the Special Conditions of Contract (SCC) and not by introducing changes in the Instructions to Bidders (ITB) or General Conditions of Contract (GCC).

### Validity of Bids and Bid Security

P1.A.2.14 Bidders shall be required to submit a bid valid for the time period specified in the bidding documents, which shall be sufficient to enable the MCA Entity to complete the 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.

P1.A.2.15 The MCA Entity may require a bid security per the SBD used. When used, the bid security shall be in the amount and form specified in the solicitation documents and shall remain valid for a sufficient time beyond the validity period of the bids, to provide reasonable time for the MCA Entity to act if the security is to be called. The format of the bid security shall be in accordance with the solicitation document 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 corresponding financial institution located in the country of the MCA Entity. Except under certain circumstances (e.g., where a bidder withdraws its bid during the period of bid validity, where a bidder does not accept certain corrections to its bid, or where an otherwise successful bidder fails to sign the contract or provide the performance security within the time specified) that are to be clearly stated in the bidding documents, bid security shall be released to unsuccessful bidders once the contract has been signed with the winning bidder.

### Language

P1.A.2.16 All advertisements for contracts and notices of contract awards for contracts valued at or above USD100,000, whether posted at the MCA Entity's website, *UNDB Online*, or any website that MCC may decide from time to time, shall be posted in English, and, at the discretion of the MCA Entity, may also be published in the local newspaper and the MCA Entity's website in the official language of the country of the MCA Entity (if different from English). Advertisements for contracts and notices of contract awards for contracts valued at less than USD100,000 may 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. The English version will govern in the event of discrepancies between the English version and a local language version.

P1.A.2.17 For all contracts at or above USD100,000, the solicitation documents, the documents responding to these solicitations (including the bids), and the contracts themselves shall be prepared in English, and English 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 USD100,000, 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; if the documents are prepared in both languages, the English version will govern. However, contractors and suppliers shall not be permitted or required to sign contracts in two languages.

P1.A.2.17.1 The MCA Entity may seek a limited waiver from the language requirements of paragraphs P1.A.2.16 and P1.A.2.17 as described below in Part 9. Language.

### Clarity of Solicitation Documents

P1.A.2.18 Solicitation 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 perti-



ment 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 items 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.

P1.A.2.19 The solicitation 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.

P1.A.2.20 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 representatives of the MCA Entity to seek clarifications (in person or online). Minutes of the conference shall be provided to all prospective bidders and posted on the MCA Entity website (when one exists), with a copy included in the record of the procurement. Any additional information, clarification, correction of errors, or modifications of solicitation documents shall be sent to each recipient of the original solicitation documents with sufficient time before the bid deadline to enable bidders to take appropriate action. If necessary, the deadline shall be extended. For any solicitation documents originally approved by MCC, MCC will provide final approval for modifications made after initial approval through the issuance of addenda, and before being sent by the MCA Entity to the prospective bidders.

### **Standards and Technical Specification**

P1.A.2.21 Standards and technical specifications quoted in solicitation documents shall promote the broadest possible competition, while assuring the critical performance or other requirements for the goods, works, or non-consulting services (including information systems) under procurement. The MCA Entity shall specify internationally accepted standards, with which the equipment or materials or workmanship shall comply. References to specific standards developers or catalogue numbers should be avoided and determination on which standards the MCA Entity will use should not be based on location of the standards developer or their status as a non-governmental or inter-governmental standards developing body. When such references are unavoidable, specifications should not preclude acceptance of international standards which promise equal performance. Where such international standards are unavailable or are inappropriate, national standards may be specified. In all cases, the solicitation documents shall state that equipment, material, or workmanship meeting the industry standards, which substantially demonstrates similar or better performance, will also be accepted.

### **Use of Brand Names**

P1.A.2.22 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 that have similar characteristics and that provide performance at least substantially equivalent to those specified.

### **Over-Specification Definition**

P1.A.2.23 Over-specification occurs when a specification exceeds the minimum standards necessary to complete the intended task.

### **Procedures for Verifying Proper Specification**

P1.A.2.24 MCA Entities must propose specifications for the procurement of goods that meet the minimum requirements necessary to complete the intended task. Goods that meet the minimum standards do not have to be goods of the lowest possible quality but must have the minimum physical, functional, and/or performance characteristics required to complete the intended work in an effective and efficient manner. The Procurement Agent of the MCA Entity is responsible for verifying the specifications and questioning any instances where it believes over-specification may have occurred. Extraordinary circumstances that may require specifications above minimum requirements must be documented and noted when submitted for MCC approval.

### **Consequences of Over-Specification**

P1.A.2.25 In all instances of over-specification, the primary consequences are restriction of competition and the potential for excessive and inefficient expenditure of funds. Competition is restricted because over-specification excludes viable alternatives that could meet the minimum standards of the intended use without inhibiting program efficiency. This not only limits the number of bids that could be received and considered but also represents the potential for intentional manipulation and fraud. There is also the potential for waste of funds because over-specification can result in unnecessary price increases.

### **Pricing**

P1.A.2.26 Unless otherwise specified in the solicitation documents, bids for goods shall be invited on the basis of (a) Carriage and Insurance Paid (CIP) for all goods manufactured abroad, including those previously imported, and (b) Ex Works (EXW) for goods manufactured or assembled in the country of the MCA Entity, plus the cost of inland transportation and insurance to the place of destination (or other International Commercial Terms [INCOTERMS] as indicated in the solicitation document). Bidders shall be allowed to arrange for ocean and other transportation and related insurance from any eligible source. 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.

P1.A.2.27 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.

P1.A.2.28 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**

P1.A.2.29 Solicitation documents shall state either (a) that bid prices will be fixed or (b) that price adjustments will be made to reflect any changes (upward or downward) 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 non-consulting services, or completion of works within 18 months but might be included in contracts that extend beyond 18 months with the approval of MCC.

P1.A.2.30 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.

### **Transportation and Insurance**

P1.A.2.31 Solicitation documents shall permit suppliers and contractors to arrange transportation and insurance from any eligible source. Solicitation 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 USD or local currency of the country of the MCA Entity, depending on 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.

### **Allowable Currencies for Bids**

P1.A.2.32 Solicitation documents shall state the currency or currencies in which bidders are to state their prices. Bidders must comply with the currency restrictions as set out in the solicitation documents. Any bid or proposal that deviates from the currency requirement as stated in the solicitation documents may be rejected as non-responsive.

P1.A.2.33 In stating the currency or currencies:

- a) The MCA Entity may allow bidders to submit bids using USD, the local currency of the country of the MCA Entity, or, if justified by sound business reasons, a combination of the two. No other currency or combinations of currencies are allowed.
- b) The MCA Entity may restrict bidders to use only one currency and not a combination of the two, or even to one particular currency of the MCA Entity's choice, even if it is the local currency of the country of the MCA Entity.

### **Currency Conversion for Bid Evaluation**

P1.A.2.34 The bid price is the sum of all payments in USD 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 the MCA Entity or the OANDA website: <http://www.oanda.com/convert/classic>), by a commercial bank or by an internationally circulated newspaper for similar transactions on a date selected in advance. Such source and date shall be specified in the bidding documents, provided that the date shall not be earlier than four (4) weeks prior to the deadline for the receipt of bids and no later than the original date for the expiration of the period of bid validity.

### **Allowable Currencies for Contract Denomination and Payment**

P1.A.2.35 Contracts can be denominated either in USD, the local currency of the country of the MCA Entity, or, if justified by sound business reasons, a combination of the two.

P1.A.2.36 Payments will be made in the currency denominated in the bid documents. Contracts can be payable either in USD, the local currency of the country of the MCA Entity, or, if justified by sound business reasons, a combination of the two.

P1.A.2.37 In all cases where the currency denominated in the proposal or bid differs from the currency for payment, a specific exchange rate must be fixed at the date of contract signing and clearly defined at that time in the contract itself.

P1.A.2.38 The MCA Entity may not require foreign bidders to be paid in the local currency of the country of the MCA Entity; the foreign bidder must be paid in USD unless, at its option, it requests to be paid in the local currency of the country of the MCA Entity.

### **Terms and Methods of Payment**

P1.A.2.39 Solicitation documents shall specify the terms and methods of payment. Terms of payment may not be used as an evaluation criterion and may not affect the bid evaluation unless so specified in the solicitation documents.

P1.A.2.40 Payment terms shall be in accordance with the international commercial practices applicable to the specific goods, works, or non-consulting services (including information systems). 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, and the rate of charges shall be specified in the contract.

- a) Contracts for the 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, to ensure 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 the contract.

P1.A.2.41 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 later incorporation in the works, shall also be specified.

### **Advance Payments**

P1.A.2.42 Advance payments are advances of funds to a supplier or contractor before, in anticipation of, and for the purpose of performance under the contract. Because advance payments are not measured by contract performance, they differ from progress payments, which are based on actual performance of tasks in furtherance of the contract. Advance payments may be advisable to cover the initial mobilization expenses for large civil works or custom-made goods.

P1.A.2.43 Because advance payments are made before the MCA Entity receives any value for the funds, advance payments may be authorized only when progress payments are not viable because of the difficulty in establishing an appropriate payment schedule. Advance payment shall be limited to 15 percent of the contract value for goods and for works procurements and 10 percent for non-consulting services procurements, unless MCC approves a waiver for a higher percentage. The justification and approval of advance payments must be included in the procurement files.

P1.A.2.44 Where advance payments have been properly justified and approved, the related solicitation documents shall specify (a) the amount of the advance payment (as a percentage of the contract value determined in accordance with these Guidelines), (b) the form of security required in connection with the advance payment (as discussed more fully in P1.A.2.45), and (c) the manner in which such advance payment will be liquidated against future invoice payments. Generally, advance payments are liquidated from payments made to the supplier or contractor during performance of the contract, usually by deducting a percentage from each scheduled payment for performance.

### **Advance Payment Security Guarantees**

P1.A.2.45 In all cases where advance payments are authorized, including payment made upon signature of a contract for goods, works, or non-consulting services (including information systems), an advance payment security guarantee is required. This security shall be provided in an appropriate form and amount, as specified by the MCA Entity in the bidding document, and shall be valid until the advance payment has been fully recovered.

### **Progress Payments**

P1.A.2.46 Progress payments are the preferred form of payment for all MCC-funded contracts, whether for goods, works, or services (including information systems). Progress payments are multiple payments, each payable upon acceptable partial performance of the contract. Although progress payments for partial performance generally are treated as a method of payment and not as a method of contract financing, payment for partial performance can provide suppliers and contractors with needed working capital to perform the contract without use of an advance payment to provide contract financing.

P1.A.2.47 Whenever appropriate, the contract deliverables and the payment schedule should be designed to permit acceptance and payment for discrete portions of contract performance that comply with applicable contract terms as soon as accepted. During the early stages of contract performance, payments may be scheduled for deliverables of such tasks or items of work as (a) a work plan or inception report, (b) achievement of defined milestones, such as orders placed or staff mobilized, (c) establishment of an office, and (d) deposits on goods or services required for contract performance. Once the contractor has mobilized, the payments would most likely be less frequent and the deliverables to trigger payment would be tied to performance of the scheduled works, such as a percentage or stage of completion, accomplishment of defined milestones, or other quantifiable measures of results.

P1.A.2.48 Progress payments based on costs are appropriate only in the case of cost-reimbursement type of contracts. Progress payments based on costs would be based on the documentation supporting the costs incurred by the supplier or contractor as work progresses under the contract. Cost-reimbursement contracts are extremely difficult to administer. In all cases where progress payments based on costs are used, the MCA Entity must ensure that all costs under such contracts are allowable and appropriately recorded and justified in accordance with the relevant MCC Cost Principles.

### **Final Payment**

P1.A.2.49 Final payment is made only after all contract performance is completed and accepted. Normally, a percentage of the contract amount is retained for a period of time after physical completion and delivery of goods or works. Retentions are not normally used under contracts for services.

P1.A.2.50 Reserved



**Alternative Bids**

P1.A.2.51 The solicitation 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.

**Performance Security**

P1.A.2.52 Solicitation documents for works shall require performance 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. 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. A foreign institution providing a Performance Security shall have a correspondent financial institution located in the Employer's country.

P1.A.2.53 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 security to protect against nonperformance of the contract and to cover warranty obligations. The security shall be reasonable in amount. The solicitation documents shall specify the arrangements for required performance securities.

**Liquidated Damages and Bonus Clauses**

P1.A.2.54 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-consulting services (including information systems) 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 (also called an incentive payment) 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**

P1.A.2.55 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**

P1.A.2.56 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. In the case of works contracts, supply and instal-

lation 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**

P1.A.2.57 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 advance notice provided by the GPN. 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. The MCA Entity shall use electronic systems permitting bidders to submit bids by electronic means, if so provided for in the solicitation documents. The deadline and place for receipt of bids shall be specified in the solicitation documents.

#### **Bid Opening Procedures**

P1.A.2.58 The time for the bid opening shall be the same as for the deadline for receipt of bids or promptly thereafter, i.e., to allow sufficient time to take the bids to the place announced for public bid opening 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 received after the time stipulated shall not be considered. All bids will be opened publicly in a manner that any interested party is able to attend in person or online as notified in the solicitation documents.

#### **Clarifications or Alterations of Bids**

P1.A.2.59 Except as otherwise provided in paragraphs P1.A.2.76 and P1.A.2.77 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 as noted in the solicitation documents. Unsolicited clarifications shall not be taken into consideration.

#### **Confidentiality**

P1.A.2.60 Confidentiality refers primarily to the information relating to the examination, clarification, and evaluation of bids that the panel members and all parties involved in the evaluation may become aware of during their review of the bids. Any information that is not intended for public use, as determined by the Procurement Agent, shall not be disclosed to anyone outside the evaluation panel; other than as set forth in the following sentence. Access to bids shall be limited to the panel members, and other attendees such as observers and/or MCC staff and consultants if so agreed with MCC, provided all attendees have signed confidentiality and non-disclosure agreements. Any sensitive documents and information shall be distributed strictly on a need-to-know basis. Any attempt by a bidder to influence the process in any way



(whether by initiating contact with panel members or otherwise) will result in the immediate exclusion of their bid from further consideration.

### **Examination of Bids**

P1.A.2.61 The MCA Entity shall ascertain whether the bids (a) meet the eligibility requirements specified in paragraphs P1.A.1.7, P1.A.1.8 and P1.A.1.9 of these Guidelines, (b) have been properly signed, (c) are accompanied by the required securities or declaration as specified in paragraph P1.A.2.15 of these Guidelines, (d) are substantially responsive to the bidding documents, and (e) 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.

### **Evaluation of Bids**

P1.A.2.62 The purpose of bid evaluation is to determine the price to the MCA Entity of each bid in a manner that permits a comparison on the basis of its evaluated price. The MCA Entity shall use a Bid Review Panel (BRP) to review each bid. MCC requires the use at least one competitively hired expert to evaluate bids for procurements of goods, works, and non-consulting services (including information systems) valued at \$1,000,000 and above. MCC has created template bid documents using QPBS and encourages the MCA Entity to follow this approach as a preferred method to evaluate bidders.

P1.A.2.63 The bid price read aloud at the bid opening or financial opening, as applicable, 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.

P1.A.2.64 For the procurement of goods, the evaluation of bids shall be on the basis of International Commercial Terms (INCOTERMS) as specified in the solicitation documents. The evaluation of bids shall take into account customs duties and other taxes levied on imported goods quoted along the provisions specified in the solicitation documents.

P1.A.2.65 Solicitation 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 technical responsiveness factors other than price to be used for determining the lowest evaluated bid shall be given a relative weight in the evaluation provisions in the bidding documents.

P1.A.2.66 Any evaluation procedure under which bids above or below a predetermined Project Price estimate are automatically disqualified is not acceptable unless the procurement is conducted on a fixed budget selection methodology and the price exceeds the fixed budget amount. The MCA Entity is encouraged to publish an estimated budget for all solicitations if so agreed with MCC. If time is a critical factor,

the incentives for early completion in the works contracts 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.

P1.A.2.67 The MCA Entity shall prepare a detailed report on the evaluation of bids, setting forth the specific reasons on which the recommendation is based for the award of the contract.

### **Margin of Preference**

P1.A.2.68 Application of any margin of preference for domestic or any other nationality preferences shall not be permitted.

### **Extension of Validity of Bids**

P1.A.2.69 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, unless specified in the bidding documents. Bidders shall have the right to refuse to grant such an extension. If the solicitation 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.

### **Post-qualification of Bidders**

P1.A.2.70 In all cases MCA Entities reserve the right to request additional information or request an update of the information to ensure that the bidder continues to have capability and resources to effectively carry out the contract as offered in the bid.

P1.A.2.71 Reserved.

### **Award of Contract**

P1.A.2.72 After the completion of the evaluation report and having obtained all the necessary approvals per Attachment A PPG Approvals Matrix, the MCA Entity shall promptly send the Notice of Intent to Award (or NOITA) to the successful bidder. The MCA Entity shall use the Notice of Intent to Award form provided in the relevant SBD. Delivery of the Notice of Intent to Award shall not constitute the formation of a contract between the MCA Entity and the successful bidder, and no legal or equitable rights will be created through the delivery of the Notice of Intent to Award. At the same time it issues the Notice of Intent to Award, the MCA Entity shall also notify, in writing, all other bidders of the results of the bidding. The MCA Entity shall promptly respond in writing to any unsuccessful bidder who, after receiving notifi-

cation of the bidding results, makes a written request for a debriefing, or submits a formal Bid challenge per the MCA Entity's BCS.

P1A.2.73 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 solicitation documents and (ii) to offer the highest combined technical and financial score in procurements using Quality and Price Based Selection or the lowest evaluated price, as applicable. A bidder shall not be required, as a condition of award, to undertake responsibilities for work not stipulated in the solicitation documents or otherwise to modify the bid as originally submitted.

### **Publication of the Award of Contract**

P1A.2.74 After the award of contract, the MCA Entity shall post the results, identifying the procurement, the name of the winning bidder and the price, duration, and summary scope of the contract at the same sites that hosted the SPN, and at the MCA Entity's website. The posting at the SPN websites and at the MCA Entity's website (or such other appropriate website designated by the MCA Entity and approved by MCC) shall be done at least monthly. The posting shall be in a format of a summarized table covering the previous period. All such postings shall be in English, unless a waiver in accordance with Section P9.3 below has been granted. 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**

P1A.2.75 The MCA Entity will be justified in rejecting all bids only if all bids are nonresponsive, when prices are unreasonable or are substantially higher than the original estimate, or if contracting for the services is no longer in the best interest of implementation of the Compact. 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 (if required under Attachment A. PPG Approval Matrix), 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.

P1A.2.76 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 pre-qualified firms, or with approval of MCC from only those that submitted bids in the first instance.

P1A.2.77 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, with prior approval of MCC, 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. These reductions shall be agreed upon with MCC. Within two (2) weeks of the rejection of all bids, the MCA Entity shall post notification of the rejection of all bids, at the same sites and other locations that had hosted the SPN. The notification shall identify the procurement and state briefly the reasons for rejection. The same information shall be sent to all those who have submitted proposals. All such postings shall be in the language used in the original solicitation documents. 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.

### **Cancellation of Procurement**

P1.A.2.78 The MCA Entity may cancel a procurement with prior approval of MCC (if required under Attachment A. PPG Approval Matrix) at any time. After receiving MCC approval, and within one (1) week of the cancellation of the procurement, the MCA Entity shall post a notification of the cancellation on the same site that hosted the SPN, and the MCA Entity's website (or such other appropriate website designated by the MCA Entity and approved by MCC). The notification shall identify the procurement and state briefly the reason for canceling the procurement. All such postings shall be in the language used in the original solicitation documents. 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**

P1.A.2.79 The solicitation 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 provide an explanation of why such bid was not selected, either in writing 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 Competitive Bidding**

### **Quality and Price Based Selection (QPBS) Procurement**

P1.A.2.80 As a potential best value improvement over the lowest evaluated bid principle, QPBS provides a process to consider non-price criteria in the evaluation of bids for goods, works, and non-consulting services in circumstances where the MCA Entity considers that fitness for purpose could be better achieved through such considerations. Through the QPBS procurement, the MCA Entity can apply Competitive Bidding procurement procedures modified to reflect the introduction of such non-price criteria. A two-envelope (technical and financial) bidding procedure shall be used. The appropriate SBDs for QPBS shall be used. The contract shall be awarded to the qualified bidder whose bid has been determined to have the highest combined technical and financial score.

## **Procurement of Commodities**

P1.A.2.81 Market prices of commodities, such as grain, animal feed, cooking oil, fuel, fertilizer, and metals, fluctuate depending on the demand and supply at any particular time. Many are quoted in established commodity markets. Procurement often involves multiple awards for partial quantities to ensure 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 pre-qualified bidders to whom periodic invitations are issued may be drawn up. 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 USD or the local currency of the country of the MCA Entity. The currency shall be specified in the bidding document. Solicitation documents may permit faxed bids or bids submitted by electronic means. In such cases either no bid security is required or standing bid securities that are valid for a specified period of time will have been submitted by pre-qualified bidders. Standard contract conditions and forms consistent with market practices shall be used.

## **III. Other Methods of Procurement**

### **General**

P1.A.3.1 This section describes, in descending order of preference, the methods of procurement that can be used where QPBS or conventional Competitive Bidding would not be the most economic and efficient method of procurement, and where other methods are deemed more appropriate. Contracts shall not be divided into smaller units to make them less attractive for Competitive Bidding procedures; any proposal to divide a contract into smaller packages shall require the prior approval of MCC.

### **Limited Bidding**

P1.A.3.2 Limited Bidding (LB) is essentially QPBS or conventional Competitive Bidding 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) there are other exceptional reasons that justify departure from full Competitive Bidding procedures. Under LB, the MCA Entity shall seek bids from a list of potential suppliers or contractors broad enough to ensure competitive prices; such list shall include all suppliers or contractors when there are only a limited number. In all respects other than advertisement, QPBS or conventional Competitive Bidding procedures, as applicable, shall apply, including the publication of the contract award as indicated in paragraph P1.A.2.74 of these Guidelines.

### **National Competitive Bidding**

P1.A.3.3 National Competitive Bidding is not an authorized method of procurement under these Guidelines.

### **Shopping**

P1.A.3.4 Shopping is a procurement method based on comparing price quotations obtained from several suppliers (in the case of goods and non-consulting services) or from several contractors (in the case of

civil works), with a minimum of three, to ensure competitive prices, and is an appropriate method for procuring readily available off-the-shelf goods or standard specification commodities of lower value, or standard non-consulting services, or simple civil works of lower value. If the MCA Entity receives less than the three quotations required, the bidding process may be considered valid if the quotation(s) were satisfactorily advertised and/or distributed and prices are determined to be reasonable in comparison to market values. MCA Entities are encouraged to use the QPBS evaluation methodology for procurements conducted through shopping.

P1.A.3.4.1 Shopping may be used when a contract has an estimated value of USD200,000 or less or USD300,000 or less for vehicles. The MCA Entity may request a waiver to use shopping for higher value contracts on a case-by-case basis.

P1.A.3.4.2 Requests for quotations shall indicate the description and quantity of the goods or specifications of works or non-consulting services, as well as desired delivery (or completion) time and place. Quotations may be submitted by letter, facsimile, or electronic means. The evaluation of quotations shall follow the same principles as Sub-Section II. Competitive Bidding above. The terms of the accepted offer shall be incorporated in a purchase order or brief contract.

### **Direct Contracting**

P1.A.3.5 Direct Contracting is contracting without competition and may be an appropriate method under the circumstances set forth below:

- (a) An existing contract for goods, works, or non-consulting services (including information systems), awarded in accordance with procedures acceptable to MCC, may be extended, within reasonable limits, for additional goods, works, or non-consulting services (including information systems) 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 have been 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.



P1.A.3.5.1 Lack of time to conduct a competitive procurement is not an acceptable justification for Direct Contracting.

P1.A.3.5.2 Any goods, works, or non-consulting services (including information systems) contract that cannot be competitively procured shall be justified and documented through the use of a Direct Contracting Justification Form. Once the justification for Direct Contracting is approved per Attachment A. PPG Approval Matrix, the MCA Entity shall request the selected firm to prepare an offer on the basis of the specifications, requirements, and scope of works furnished by the MCA Entity. The firm shall use the applicable bidding forms provided (including the applicable standard contract) by the MCA Entity.

P1.A.3.5.3 The MCA Entity shall prepare a report documenting the results of the review of the proposal, and if required by Attachment A PPG Approval Matrix, submit the report to MCC for its review and approval. The evaluation report shall include eligibility checks, technical responsiveness, and price reasonableness of the offer.

P1.A.3.6 For all Direct Contracting procurements valued above USD5,000, 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, the name of the contractor, price, duration, and summary scope of the contract procured using Direct Contracting. This information may be published quarterly and in the format of a summarized table covering the previous period. In some cases, MCC may require the MCA Entity to publish the intent to use Direct Contracting, to obtain input from the market prior to giving further consideration.

### **Force Account**

P1.A.3.7 Force Account, that is, construction using the government's own personnel and equipment, may be the only practical method for constructing some kinds of works. A government-owned construction unit that is not legally, operationally, and financially autonomous shall be considered a Force Account unit. Force Account is otherwise known as direct labor, departmental forces, or direct work. For purposes of these Guidelines, Force Account and the units that carry out Force Account activities will be defined solely as the Force Account units of the government of the MCA Entity's country. The use of Force Account may be justified in circumstances set forth below:

- (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 the MCA Entity than by a contractor.
- (e) There are emergencies needing prompt attention.

**Procurement Agents, Fiscal Agents**

P1.A.3.8 Where the MCA Entity lacks the necessary organization, resources, and experience, the MCA Entity may wish (or be required by MCC) to employ, as its agents, firms specializing in handling procurement, and financial management (*Procurement Agent, Fiscal Agent services*). Such agents shall be selected following the appropriate procedures as approved by MCC and set out in the Request for Proposal (RFP) requesting such agent services. The Procurement Agent shall follow all the procurement procedures provided for in the Compact and any Supplemental Agreements, including these Guidelines; conduct procurement in conformance with a Procurement Plan approved by MCC; use appropriately the SBDs or other forms provided by MCC; follow review procedures; and properly document the procurement activity. Termination of a Procurement or Fiscal Agent contract requires approval by the MCA Entity's board of directors and MCC no objection.

**Inspection Agents**

P1.A.3.9 Pre-shipment 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 cover quality, quantity, and reasonableness of price. Imports procured through Competitive Bidding procedures shall not be subject to price verification, but only verification for quality and quantity. However, imports not procured through Competitive Bidding may also 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 Competitive Bidding and the cost of this certification shall be paid separately by the MCA Entity.

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

P1.A.3.10 Where MCC is participating in funding the cost of a Project procured under a Build, Own, Operate (BOO)/Build, Operate, Transfer (BOT)/Build, Own, Operate, Transfer (BOOT), concessions, or similar types of public-private sector arrangements, either of the following procurement procedures shall be used, as provided for in the Compact, including any Supplemental Agreements and further elaborated in the Procurement Plan approved by MCC:

- (a) The concessionaire or entrepreneur under the BOO/BOT/BOOT or a similar type of contract for Projects, such as toll roads, tunnels, harbors, bridges, power stations, waste disposal plants, and water distribution systems, shall be selected under Competitive Bidding procedures acceptable to MCC. Such Competitive Bidding procedures may include several stages 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, or non-consulting services (including information systems)



required for the Project and to be funded by MCC shall be procured in accordance with Competitive Bidding procedures defined in **Sub-Section II. Competitive Bidding.**

### **Performance-Based Procurement/Output-Based Procurement**

P1.A.3.11 Performance-Based Procurement, 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 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 solicitation 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 solicitation documents will be achieved. The use of Performance-Based Procurement in MCC-funded Projects should be the result of a satisfactory technical analysis of the different options available and shall be subject to prior approval by MCC for incorporation into the Procurement Plan.

P1.A.3.12 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. Examples of such type of procurement are (i) for the case of procurement of services: provision of medical services such as payments for specific services, like office visits, or defined laboratory tests; (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. For the cases where design, supply, and/or construction are required, pre-qualification is normally required and the use of Two-Stage Bidding as indicated in paragraph P1.A.2.6 of these Guidelines will usually apply.

### **Procurements and contracting with UN bodies and other Public Sector organizations such as the World Bank and West Africa Power Pool (WAPP)**

P1.A.3.13 MCC does not provide any special arrangement for such agreements. All public sector bodies are to be treated the same as all other entities seeking to contract with the MCA Entity and comply with these Guidelines. For the avoidance of doubt, MCA Entities may seek to engage with such entities pursuant to the *MCC Program Grant Guidelines* or through other partnership arrangements that may be approved by MCC.

## SECTION 1.B PROGRAM PROCUREMENT GUIDELINES: PROCUREMENT OF CONSULTING SERVICES

### I. Introduction

#### **Purpose**

P1.B.1.1 This Section 1.B sets forth the principles, rules, and procedures generally applicable to the procurement of consultants and consulting services.

P1.B.1.2 For the purpose of these Guidelines, the term “consultants” applies to a wide variety of entities, including consulting firms, engineering firms, construction managers, project and program managers, management firms, Procurement Agents, Fiscal Agents, inspection agents, auditors, investment and merchant banks, universities, research institutions, nongovernmental organizations, and individuals. 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**

P1.B.1.3 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 four MCC Program Procurement Principles shall generally guide the application of these Guidelines:

- (a) Open, fair, and competitive procedures shall be used in a transparent manner to solicit, award, and administer contracts to procure consulting services.
- (b) Solicitations for consulting services shall be based on a clear and accurate description of the consulting 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.
- (d) Only a commercially reasonable price (as determined, for example, by a comparison of price quotations and market prices) shall be paid to procure the consulting services.

P1.B.1.4 The MCA Entity shall ensure that all the procurements for consulting services undertaken in furtherance of the Compact and funded in whole or in part, directly or indirectly, by MCC funding shall comply with these MCC Program Procurement Principles.

P1.B.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

price 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. Because Quality and Cost-Based Selection (QCBS) is the most commonly recommended method, Sub-Section 1.B.II. Quality and Cost-Based Selection, of these Guidelines describes the procedures in detail. However, QCBS is not the most appropriate method of selection for all cases; therefore, Sub-Section 1.B.III. Other Methods of Selection, describes other methods of selection and the circumstances in which they are more appropriate.

### **Applicability of Section 1.B of these Guidelines**

P1.B.1.6 The consulting 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 maintenance of facilities or plants, surveys, exploratory drilling, aerial photography, satellite imagery, and services contracted on the basis of performance of measurable physical output; all these are considered to be non-consulting services and their procurement shall follow the provisions of Section 1.A of these Guidelines).

### **Conflict of Interest**

P1.B.1.7 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 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 limiting the generality of the foregoing, consultants shall not be hired under the circumstances set forth below:

- (a) Conflict between consultant activities and procurement of goods, works, or non-consulting services (including information systems): A firm or individual that has been engaged by MCC, the MCA Entity or another donor to provide goods, works, or non-consulting services (including information systems) for a Project (including the firm's personnel sub-consultants and affiliates), shall be disqualified from providing consulting services related to those goods, works, or non-consulting services (including information systems). Similarly, a firm or individual hired to provide consulting services for the preparation or implementation of a Project (including the firm's personnel subconsultants and affiliates), shall be disqualified from subsequently providing goods, works, or non-consulting services (including information systems) resulting from or directly related to the firm's consulting 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 by MCC, the MCA Entity, or another donor to prepare engineering design for an infrastructure Project generally should not be engaged to prepare an independent envi-

ronmental 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: If a firm or individual has been engaged by the MCA Entity to **provide** consulting services (including the firm's personnel subconsultants and affiliates) and are themselves or have a business or family relationship with (i) a member of the MCA Entity board of directors or staff, (ii) the Project-implementing entity's staff, or (iii) the Procurement Agent or Fiscal Agent hired by the MCA Entity in connection with the Compact, any of whom are directly or indirectly involved in any part of the following: (A) the preparation of the solicitation documents related to the procurement, including the contract; (B) the selection process for such procurement; or (C) the supervision of any contract awarded in the procurement, then this aforementioned firm or individual may not be awarded the contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to MCC throughout the process of preparing the documents related to the procurement, the selection process, and the award and execution of the contract.
- (d) The consultant shall not receive any remuneration in connection with the assignment except as provided in the contract. The consultant and each of its personnel, sub-consultants, and 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 consulting services in accordance with the requirements of this paragraph P1.B.1.7 and paragraph P1.B.1.8 of these Guidelines.

### Unfair Competitive Advantage

P1.B.1.8 Consultants (including the consultant's personnel, sub-consultants and affiliates) competing for a specific assignment shall not derive an unfair competitive advantage from having provided services related to the assignment in question. To that end, the MCA Entity shall make available to the consultants, together with the RFP, all information that would give a consultant an unfair competitive advantage. If the MCA Entity, in consultation with MCC, determines that it is inappropriate or impractical to release information sufficient to cure a potential unfair advantage, the consultant with the potentially unfair advantage may be disqualified for the purposes of the particular procurement.

### Eligibility

P1.B.1.9 To foster competition, MCC permits firms and individuals to offer goods, works, consulting services, and non-consulting services (including information systems) for MCC-funded Projects, except firms and individuals that (i) are declared ineligible by the World Bank for any reason during the period of time that the firm or individual is sanctioned by the World Bank; (ii) are debarred by the World Bank; or (iii) are 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.

- (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 with such exclusion; 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.

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 **P1.B.1.7**). In addition, no employee of any MCC-funded accountable entity in any other country that is (or has been) responsible for managing or administering any contract, grant, or other agreement between the Consultant and such other MCC-funded accountable entity shall be proposed or work as, or on behalf of, any Consultant. In the case where a Consultant seeks to engage the services of any person who may have left the MCA Entity (or such other MCC-funded accountable entity, as the case may be) within a period of less than twelve (12) months, it must obtain a "no-objection" from the MCA Entity for the inclusion of such a person, prior to the Bidder's submission of its Bid. The MCA Entity must also obtain a "no-objection" from MCC before replying to the Bidder.

- (b) A firm or an individual declared ineligible in accordance with Part 10. Eligibility Verification Procedures, shall be ineligible to be awarded an MCC-funded contract. This would also remove from eligibility any procurement from a country or from a firm or individual 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.

### **Advance Contracting and Retroactive Financing**

**P1.B.1.10** 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 obligation of Compact funds that will finance such procurement. This process is referred to as advance contracting. In such cases, the selection procedures, including advertisement, shall be in accordance with these 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 obligation of the related Compact funds 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. If the contract is signed, reimbursement by MCC of any payments made by the MCA Entity under the contract prior to obligation of the related Compact funds would be considered as retroactive financing, which is prohibited.



### **Associations Between Consultants**

P1.B.1.11 Consultants may associate with each other in the form of a joint venture, association, or sub-consulting arrangement, if so permitted in the respective RFP. The evaluation of the proposal will consider these arrangements as per the criteria given in the RFP. The winning consultant, having won on the strength of its arrangement as above, will not be permitted to change its arrangement unless there are exceptional circumstances, and may only do so with the approval of the MCA Entity, which in turn will seek MCC approval. Failure to seek this approval will result in the rejection of the proposal or if done after the contract award rescinding the contract. The MCA Entity shall not require consultants to form associations with any specific firm or group of firms without the prior approval of MCC.

### **MCC Review, Assistance, and Monitoring**

P1.B.1.12 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 these Guidelines. The thresholds for MCC review are described in Attachment A. PPG Approval Matrix of these Guidelines.

P1.B.1.13 MCC does not furnish a short list or a long list of firms or individuals to the MCA Entity, except for the list provided by MCC for audit services. 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 A of these Guidelines.

P1.B.1.14 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. At times it may be appropriate for MCC to review and approve deliverables from consultants (e.g., those that are critical to the implementation of the program/Project or those that have been expressly called for in conditions precedent, set forth in any Supplemental Agreement or other documents associated with the Compact). 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 in the consultants' home offices, MCC staff may visit these offices to review the consultants' work.

### **Misprocurement**

P1.B.1.15 MCC does not fund expenditures for consulting services if the consultants or consulting services selected have not been contracted in accordance with the agreed provisions as detailed in the Compact and any Supplemental Agreements, these Guidelines, and the approved Procurement Plans. MCC will declare a misprocurement and may cancel the disbursement of that portion of the Compact funds 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

P1.B.1.16 The MCA Entity shall use the following language (or similar language acceptable to MCC) when referring to MCC in procurement documents:

The United States of America, acting through the Millennium Challenge Corporation (MCC) and [insert country], acting through the government thereof (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 approximately [insert amount of Compact] USD (MCC Funding). The Government, acting through [insert full legal name of the MCA Entity] (MCA-[insert as appropriate]) intends to apply a portion of the MCC Funding to eligible payments under a contract for which this Request for Proposals is issued. Any payments made under the Proposed Contract will be subject, in all respects, to the terms and conditions of the Compact and related documents, including restrictions on the use and distribution of MCC Funding. No party other than the Government and MCA- [insert as appropriate] shall derive any rights from the Compact or have any claim to the proceeds of MCC Funding.

### Training or Transfer of Knowledge

P1.B.1.17 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, scope, and goals of the training program, including details on trainers and trainees, skills to be transferred, timeframe, 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

P1.B.1.18 All advertisements for contracts and notices of contract awards for contracts valued at or above USD100,000, whether posted at the MCA Entity's website, *UNDB Online*, or any website that MCC may decide from time to time, shall be posted in English; and, at the discretion of the MCA Entity may also be published in the local newspaper and the MCA Entity's website in the official language of the country of the MCA Entity (if other than English). Advertisements for contracts and notices of contract awards for contracts valued at less than USD100,000 may 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. The English version will govern in the event of discrepancies between the English version and a local language version.

P1.B.1.19 For all contracts at or above USD100,000, the solicitation documents, the documents responding to these solicitations (including the proposals), and the contracts themselves shall be prepared 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 USD100,000, any solicitation document, responding documents, and contracts may be prepared in English, the local official language of the MCA Entity (if different from English), or both at the discretion of the MCA Entity. However, consultants shall not be permitted or required to sign contracts in two languages. The English version will govern in the event of discrepancies between the English version and a local language version.

P1.B.1.19.1 The MCA Entity may seek a limited waiver from the language requirements of paragraph P1.B.1.18 and P1.B.1.19, as described below in Part 9. Language.

### **Fraud and Corruption**

P1.B.1.20 MCC requires that all beneficiaries of MCC funding, including the MCA Entity and any consultant and sub-consultants under any MCC-funded contracts, observe the highest standards of ethics during the procurement and execution of such contracts. MCC's *Policy on Preventing, Detecting, and Remediating Fraud and Corruption in MCC Operations* P1.B.1.21 (a) For the purposes of these provisions, the terms "coercion", "collusion", "corruption", "fraud", "obstruction of investigation into allegations of fraud or corruption" and "prohibited practice" have the meaning set forth in MCC's [\*Policy on Preventing, Detecting, and Remediating Fraud and Corruption in MCC Operations\*](#).

P1.B.1.21 (b) The MCA Entity will reject a proposal (and MCC will deny approval of a Proposed Contract award) if it determines that the consultant recommended for award has, directly or through an agent, engaged in coercion, collusion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or prohibited practices in competing for the contract in question.

P1.B.1.21 (c) MCC and the MCA Entity have the right to sanction a consultant or sub-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 consultant or sub-consultant has, directly or through an agent, engaged in coercion, collusion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption or prohibited practices in competing for, or in executing, such a contract.

P1.B.1.21 (d) MCC and the MCA Entity have the right to require that a bidder, consultant or sub-consultant 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 an MCC-funded contract and to have them audited by auditors appointed by MCC or the MCA Entity with the approval of MCC.

P1.B.1.21 (e) MCC has the right to cancel any portion or all of the MCC funding allocated to a contract if it determines at any time that representatives of a beneficiary of the MCC funding engaged in coercion, collusion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption or prohibited practices during the selection process or the execution of an MCC-funded contract, without the MCA Entity having taken timely and appropriate action satisfactory to MCC to remedy the situation.



P1.B.1.22 With the specific approval of MCC, the MCA Entity may introduce into the proposal forms for 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). 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.

### **Price-Reasonableness Analysis**

P1.B.1.23 One of the MCC Program Procurement Principles is that “only a commercially reasonable price shall be paid to procure the consulting services.” To ensure compliance with this principle, the MCA Entity shall conduct a price-reasonableness analysis of the prices offered in a procurement process (both for competitive and sole source procurements) for consulting services in accordance with the [MCC Procurement Guidance Note: Price-Reasonableness Analysis](#)<sup>5</sup> and will not make any award without making a positive determination that the price is reasonable.

### **Best Value for Money**

P1.B.1.24 MCC requires the MCA Entity to follow the principle of achieving best value for money through consideration of suitable price and non-price criteria as outlined in the SBDs relative to the procurement.

## **II. Quality and Cost-Based Selection**

### **The Selection Process**

P1.B.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.

### **Terms of Reference**

P1.B.2.2 The MCA Entity shall be responsible for ensuring that the TOR for the assignment is prepared by one or more competent person(s). The scope of the services described in the TOR shall be sufficiently detailed, clear and compatible with the available budget as approved by MCC in the Procurement Plan or the budget will need to be modified per Attachment A PPG Approvals Matrix. 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.

<sup>5</sup> As it may be modified or amended from time to time by the MCC Program Procurement Practice Group.

## Budget

P1.B.2.3 Preparation of a thorough and realistic budget estimate is essential if MCC funding is to be managed properly. This budget should be carefully considered during the preparation of the Procurement Plan between the MCA Entity's Procurement Director, Fiscal Director, and the relevant Sector Director and should correspond to the funds available for that sector and the activity. Based on this budget, the MCA Entity's Procurement Director will decide the procurement methodology to be used, which will be approved by MCC during the approval of the Procurement Plan. Any modification of the budget or the procurement methodology after the approval of the Procurement Plan must be approved by MCC (see **PART 2** Procurement Planning, Implementation, and Reporting, below, for guidance on developing the Procurement Plan). The budget estimate shall be based on the MCA Entity's assessment (with input from the implementing entity) of the resources needed to carry out the assignment, including staff time, logistical support, and physical inputs (e.g., vehicles and equipment). The budget should be rechecked before releasing the RFP to ensure its applicability with the TOR requirements. MCC allows for the MCA Entity to provide either, but never both, the estimated budget or the estimated level of effort of key staff. MCC encourages providing the estimated budget.

## Advertising

P1.B.2.4 Timely notification of procurement opportunities is essential in competitive bidding. Every quarter and upon any update to the approved Procurement Plan, the MCA Entity shall publicize a General Procurement Notice (GPN), which shall include procurements planned for the upcoming period. The GPN shall provide reasonable notice of planned procurements to potential consultants.

P1.B.2.4.1 Advertisement of the GPN 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), UNDB Online, and any website that MCC may decide from time to time. In addition, MCC may post such notices on <https://beta.sam.gov/> and/or any other U.S. Government publication. The MCA Entity shall also publish the GPN in a newspaper of wide circulation in the country of the MCA Entity and/or 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, unless otherwise agreed with MCC, the GPN may 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 and also on the MCA Entity's website or on any other website as agreed with MCC.

P1.B.2.5 Invitations for specific procurements shall be advertised as a Specific Procurement Notice (SPN). For consultant contracts valued at or above USD100,000, 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), UNDB Online, and any website that MCC may decide from time to time. In addition, the PA shall send the published SPN to the US Embassy (office designated per MCC) for wider distribution. In addition, MCC may post such notices on <https://beta.sam.gov/> and/or any other U.S. Government publication. Consultant contracts valued at less than USD100,000 may be advertised in the venue of preference of the MCA Entity—local, regional, and/or international. Publication in local print and broadcast and other national and international media is encouraged. If the publication will be done locally and internationally; the MCA Entity shall use their best efforts to publish simultaneously so that the additional posting does not

pre-date the required postings. The MCA Entity will publish an SPN 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 GPN. MCC reserves the right to approve the content of an SPN.

### **Short List of Consultants**

P1.B.2.6 The MCA Entity may begin the procurement with an open Request for Proposals for consultant qualifications or, if provided for in the Procurement Plan, the MCA Entity may advertise for Request for Expression of Interest (REOI). If the MCA Entity advertises for REOI, based on the review of the submissions, it may prepare a short list and invite only shortlisted firms or individuals to submit proposals or qualifications as appropriate for the selection procedure chosen for the particular procurement. 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 shortlisted, 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 the criteria pre-announced in the REOI. After completing the short list evaluation report and before issuing the RFP; the MCA Entity shall obtain all the applicable approvals per Attachment A PPG Matrix.

### **Preparation and Issuance of the Request for Proposals**

P1.B.2.7 The RFP shall include (a) a Letter of Invitation (LOI); (b) Instructions to Consultants (ITC), together with a proposal data sheet; (c) a description of the qualifications and evaluation criteria to be used in considering the proposals received; (d) forms to be used to prepare both the technical and financial proposals; (e) contract forms; and (f) the TOR. The MCA Entity shall use the SBDs for Consulting Services provided by MCC pursuant to Part 3. Standard Bidding Documents. The SBDs may be modified to address Project-specific conditions, subject to approval by MCC when the change is material. Such changes shall be introduced only through the Proposal Data Sheet (PDS) or through the Special Conditions of Contract (SCC) and not by introducing changes in the Instructions to Consultants (ITC) or General Conditions of Contract (GCC). The MCA Entity shall use an electronic system to distribute the 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. When the SBDs are not appropriate (for example, for pre-shipment inspection and procurement services), the MCA Entity shall use other contract forms acceptable to MCC. The deadline and place for receipt of proposals shall be specified in the RFP.

### **Clarity of Solicitation Documents**

P2.B.2.8 Solicitation documents shall be so worded as to permit and encourage international competition and shall set forth clearly and precisely the scope and quality of services to be delivered, schedule of deliverables, location of performance, as well as any other pertinent terms and conditions. Application of margin of preference for domestic or any other nationality preferences shall not be permitted.

P1.B.2.9 All potential consultants shall be provided the same information and shall be assured of equal opportunities to obtain additional information on a timely basis. For services with dependencies or complex managed service contracts, a pre-proposal conference may be arranged whereby potential consultants may meet with representatives of the MCA Entity to seek clarifications of the solicitation documents (in person or online).

P1.B.2.10 Minutes of the conference shall be provided to all potential consultants and posted on the MCA Entity website. Any additional information, clarification, correction of errors, or modifications of solicitation documents shall be sent to each recipient of the original solicitation documents with sufficient time before the deadline for receipt of proposals to enable consultants to take appropriate action. If necessary, the deadline for receipt of proposals shall be extended. For any solicitation documents originally approved by MCC, MCC will provide final approval for modifications made after initial approval through the issuance of addenda, and before being sent by the MCA Entity to the prospective consultants.

### **Receipt of Proposals**

P1.B.2.11 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 GPN. 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. Any proposal received after the closing time for submission of proposals shall be returned unopened (if such proposal was submitted as a hard copy) after the time for protest has expired. Immediately following the closing time for submission of proposals; the technical proposals shall be publicly opened in the presence of any interested party. The financial proposals shall remain sealed and shall be properly secured until they are opened in accordance with paragraph P1.B.2.13 of these Guidelines. The MCA Entity shall use electronic systems permitting consultants to submit proposals by electronic means, if so provided in the solicitation documents. The name of the consultant of each proposal shall be read aloud and recorded when opened. A copy of this record shall be provided to the consultants and posted on MCA Entity website (if one exists), in accordance with the provisions of the solicitation documents.

### **Evaluation of Proposals: Consideration of Technical Quality and Cost**

P1.B.2.12 The evaluation of the proposals shall be carried out in two stages: (1) technical quality and (2) cost. The MCA Entity shall use a Technical Evaluation Panel (TEP) to evaluate each technical proposal. MCC requires the use at least one competitively hired expert to evaluate proposals for procurements valued at \$250,000 and above. 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. The evaluation shall be carried out in full conformity with the provisions of the RFP. All TEP members, auxiliary members, and observers including MCC staff shall be required to sign a Technical Evaluation Impartiality and Confidentiality Agreement<sup>6</sup>.

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<sup>6</sup> As it may be modified or amended from time to time by the MCC Program Procurement Practice Group.

### **Evaluation of Financial Proposals**

P1.B.2.13 After the evaluation of quality is completed and the required reviews and approvals have been issued, the MCA Entity shall inform 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 (if such proposal was submitted as a hard copy) at the request and cost of the respective consultant and after the signature of the contract. The MCA Entity shall simultaneously notify the consultants that have secured at least the minimum qualifying mark, the total technical scores of each consultant that met the minimum qualifying mark, the date, time, and place set for opening the financial proposals and notify them that their attendance at the opening of the financial proposals is not mandatory. Based on the financial proposal opening date, unavoidable constraints may allow for a very short notice to consultants to make arrangements to attend the opening of the financial proposals. The financial proposals shall be opened publicly in the presence of any interested party (in person or online). The name of the consultant, the technical points, and the proposed prices shall be read aloud and recorded. A copy of the record will be provided to all consultants who submitted proposals and posted on the MCA Entity's website if one exists.

P1.B.2.14 The MCA Entity shall 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 or currencies (local currency of the country of the MCA Entity, or USD, or a combination of the two). 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.

P1.B.2.15 For the purpose of evaluation, the financial proposals shall include or exclude local identifiable direct or indirect taxes, 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. The evaluation methodology to be used shall be described in the RFP.

### **Combined Technical Quality and Price Evaluation**

P1.B.2.16 The total score shall be obtained by weighting the technical quality and price scores using the methodology as described in the RFP. The firm obtaining the highest total score shall be invited for negotiations.

P1.B.2.17 When the procurement is subject to MCC prior review for proposed award (see Attachment A PPG Approvals Matrix), the MCA Entity shall furnish a combined evaluation report to MCC for its review and approval before the MCA Entity commences negotiations with the selected bidder. The combined evaluation report must contain a complete history of the procurement process, culminating with a recommendation for award.



## Negotiations and Award of Contract

P1.B.2.18 After completing the evaluation report and obtaining all the necessary approvals per Attachment A PPG Approvals Matrix, the MCA Entity shall promptly send the Notice of Intent to Award to the successful consultant. The MCA Entity shall use the Notice of Intent to Award form provided in the relevant SBD. Delivery of the Notice of Intent to Award shall be issued before entering into negotiations and shall not constitute the formation of a contract between the MCA Entity and the successful consultant and no legal or equitable rights will be created through the delivery of the Notice of Intent to Award. At the same time it issues the Notice of Intent to Award, the MCA Entity shall also notify, in writing, all other bidders of the results of the bidding. The MCA Entity shall promptly respond in writing to any unsuccessful bidder who, after receiving notification of the bidding results, makes a written request for a debriefing, or submits a formal Bid challenge per the MCA Entity's BCS.

P1.B.2.19 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, because doing so could invalidate the procurement process. The final TOR and the agreed methodology shall be incorporated into the Description of Services, which shall form part of the contract.

P1.B.2.20 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. 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.

P1.B.2.21 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 any Supplemental Agreement. Because 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. Upon presentation of receipts, reimbursables are to be paid on actual expenses incurred at cost, subject to limitations set out in the applicable MCC Cost Principles, and therefore are not subject to negotiations. However, if the MCA Entity wants to define ceilings for unit prices of certain reimbursables (such as travel or hotel rates), it should indicate the maximum levels of those rates in the RFP or 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 found at the MCC website, [www.mcc.gov](http://www.mcc.gov).

P1.B.2.22 If the negotiations fail to result in an acceptable contract within a reasonable time, the MCA Entity shall terminate the negotiations and invite the next ranked consultant for negotiations. If there



is no next ranked consultant for the procurement, the procurement may be canceled and re-competed. 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 consultant, 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 consultants that they were unsuccessful.

### **Publication of the Award of Contract**

P1.B.2.23 After the award of contract, the MCA Entity shall post the results, identifying the procurement, the name of the winning consultant, and the price, duration, and summary scope of the contract at the same sites that hosted the SPN and the MCA Entity's website. The posting at the SPN websites and at the MCA Entity's website (or such other appropriate website designated by the MCA Entity and approved by MCC) shall be done at least monthly. The posting at the SPN sites 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, unless a waiver in accordance with Section P9.3 below has been granted. 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**

P1.B.2.24 The solicitation documents shall specify that any consultant who wishes to ascertain the grounds on which its proposal was not selected may 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 MCA Entity. The requesting consultant shall bear all the costs of attending such a debriefing.

### **Rejection of All Proposals, and Re-invitation**

P1.B.2.25 The MCA Entity will be justified in rejecting all proposals only if all proposals are nonresponsive, when prices are unreasonable or are 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 (if required under Attachment A PPG Approvals Matrix), indicating the reasons for rejection of all proposals, and if required by Attachment A, 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 2 weeks of the rejection of all proposals, the MCA Entity shall post notification of the rejection of all proposals, at the same site and other locations that had hosted the SPN. The notification shall identify the procurement and state briefly the reasons for rejection. The same information shall be sent to all those who have submitted proposals. All such postings shall be in English or in the language used in the original

bidding documents. 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.

### **Cancellation of Procurement**

P1.B.2.26 The MCA Entity may cancel a procurement with prior approval of MCC (if required under Attachment A. PPG Approval Matrix) at any time. After receiving MCC approval, and within one (1) week of the cancellation of the procurement, the MCA Entity shall post a notification of the cancellation of the procurement at the same sites that hosted the SPN, and the MCA Entity's website (or such other appropriate website designated by the MCA Entity and approved by MCC). The notification shall identify the procurement and state briefly the reason for canceling the procurement. All such postings shall be in English or in the language used in the original bidding documents. 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**

P1.B.2.27 Confidentiality refers primarily to the information relating to the examination, clarification, and evaluation of proposals that the panel members and all parties involved in the evaluation may become aware of during their review of the bids. Any information that is not intended for public use, except as provided in paragraphs **P1.B.2.13** and **P1.B.2.22** of these Guidelines and as determined by the Procurement Agent, shall not be disclosed to anyone outside the evaluation panel; other than as set forth in the following sentence. Access to bids shall be limited to the panel members, and other attendees such as observers and/or MCC staff and consultants if so agreed with MCC, provided all attendees have signed confidentiality and non-disclosure agreements. Any sensitive documents and information shall be distributed strictly on a need-to-know basis. Any attempt by a bidder to influence the process in any way (whether by initiating contact with panel members or otherwise) will result in the immediate exclusion of their bid from further consideration.

## **III. Other Methods of Selection**

### **General**

P1.B.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 relevant<sup>7</sup> provisions of Sub-Section 1.B.II (QCBS) shall apply whenever competition is used. All provisions of Section 1.B.II shall be applied with the modifications and suppressions required by the method for selecting consultants used in the specific case.

### **Quality-Based Selection**

P1.B.3.2 Quality-Based Selection (QBS) may be appropriate for the following types of assignments:

<sup>7</sup> All provisions of Section 1.B.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 sole source selection is used.

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

P1.B.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 P1.B.2.4 and P1.B.2.5, and may, at the discretion of the MCA Entity, be preceded by a shortlisting procedure (see paragraph P1.B.2.6). The RFP shall provide either, but never both, the estimated price budget or the estimated level of effort of key staff.

P1.B.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 proposal (including the reasonableness of proposed fees and prices) 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 P1.B.2.23. 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 the financial proposal of only the selected consultant is opened and the rest either destroyed or returned unopened (if such proposal was submitted as a hard copy) at the request and cost of the respective consultant and after the negotiations are successfully concluded.

### **Selection Under a Fixed Budget**

P1.B.3.5 The Fixed Budget Selection (FBS) method is appropriate when the assignment 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 P1.B.2.4 and P1.B.2.5, and may, at the discretion of the MCA Entity, be preceded by a shortlisting procedure (see paragraph P1.B.2.6). Evaluation of all technical proposals shall be carried out first as in the QCBS method. The financial proposals then shall be opened in public and prices shall be read aloud. Proposals that exceed the fixed 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 P1.B.2.23.

### **Least-Cost Selection**

P1.B.3.6 The Least-Cost Selection (LCS) method is appropriate for selecting consultants for assignments of a standard or routine nature (audits, architectural design of noncomplex works, etc.) where well-established practices and standards exist. This method shall not be used as a substitute for QCBS and shall be used only for the specific cases of procurements that are of a very standard and routine technical nature, where the intellectual component is minor. Under this method, a minimum qualifying mark for the quality shall be established in the RFP, understanding that all proposals above the minimum compete only on price. Proposals, to be submitted in two envelopes, are invited. The procurement shall be advertised according to the requirements set out in paragraphs P1.B.2.4 and P1.B.2.5, and may, at the discretion of the MCA Entity, be preceded by a shortlisting procedure (see paragraph P1.B.2.6). Technical proposals are opened first and evaluated. Those securing less than the minimum qualifying mark 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 P1.B.2.23.

### **Selection Based on the Consultants' Qualifications**

P1.B.3.7 The Consultants' Qualifications Selection (CQS) method may be used where 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 P1.B.2.4 and P1.B.2.5. The selected firm shall be asked to submit a combined technical and financial proposal and then be invited to negotiate the contract.

P1.B.3.8 The publication of the award of contract shall be as described in paragraph P1.B.2.23.

### **Individual Consultants**

P1.B.3.9 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) qualifications of the individual are the paramount requirements. When coordination, administration, or collective responsibility may become difficult because of the number of individuals, it would be advisable to employ a firm.

P1.B.3.10 Individual consultants are selected on the basis of their qualifications for the assignment. Application of margin of preference for domestic or any other nationality preferences shall not be permitted. The procurement shall be advertised according to the requirements set out in paragraphs P1.B.2.4 and P1.B.2.5 and may, at the discretion of the MCA Entity, be preceded by a shortlisting procedure (see paragraph P1.B.2.6). Consultants do not typically need to submit proposals and shall be selected through evaluation and comparison of qualifications, based on the information provided in their CVs and references. 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, as laid out in the solicitation documents. For complex, large value and multiyear contracting of an individual, the MCA Entity shall also consider requesting a technical and financial proposal from the top-ranked individual.

P1.B.3.11 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.

P1.B.3.12 TEP members can be selected as individual consultants. However, MCA Entities are encouraged to create framework agreements with qualified individuals to reduce administrative costs and save time. MCA Entities also have the option to select TEP members from a database of individuals maintained by MCC.

P1.B.3.13 Recruitment of MCA Entity staff is not considered a procurement for purposes of these Guidelines and therefore are not covered hereby.

### **Sole Source Selection**

P1.B.3.14 Sole Source Selection (SSS) 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, SSS shall be used only in exceptional cases. The justification for SSS 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.

P1.B.3.15 Sole 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 or individual (see paragraph P1.B.3.16), (b) in emergency cases, such as in response to disasters and for consulting services required during the period of time immediately following the emergency, or (c) when only one firm or individual is qualified or has experience of exceptional worth for the assignment. Lack of time to conduct a competitive procurement is not an acceptable justification to use SSS.

P1.B.3.16 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.

P1.B.3.17 If the initial assignment was not awarded on a competitive basis or if the downstream assignment is substantially<sup>8</sup> larger in value, a competitive process acceptable to MCC shall be followed in which the consultant carrying out the initial work is not excluded from consideration if the consultant expresses interest; provided that there is no conflict of interest. MCC will consider exceptions to this rule only under special circumstances.

P1.B.3.18 Any consulting services that cannot be competitively bid shall be justified and documented through the use of a Sole Source Justification Form. Once the justification for Sole Source Selection is approved per Attachment A PPG Approval Matrix, the MCA Entity shall request the selected firm or

<sup>8</sup> Substantially is considered 10 percent or above of the initial contract value per Attachment A PPG Approvals Matrix



consultant to prepare a proposal using the SBD bidding forms and on the basis of the TOR. At the end of the proposal review process, the MCA Entity shall prepare a report documenting the results of the review and, if required by Attachment A PPG Approvals Matrix, submit the report to MCC for its review and approval. The report shall include eligibility checks, technical responsiveness, and price reasonableness of the proposal.

P1.B.3.19 For all SSS procurements valued above USD5,000, 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, the name of the consultant, price, duration, and summary scope of the SSS contract. This information may be published quarterly and in the format of a summarized table covering the previous period. In some cases, MCC may require the MCA Entity to publish the intent to use SSS prior to entering into a contract and obtain input from the market.

### **Procurements and contracting with UN bodies and other Public Sector organizations such as the World Bank and West Africa Power Pool (WAPP)**

P1.B.3.20 MCC does not provide any special arrangement for such agreements. All public sector bodies are to be treated the same as all other entities seeking to contract with the MCA Entity and comply with these Guidelines. For the avoidance of doubt, MCA Entities may seek to engage with such entities pursuant to the MCC Program Grant Guidelines or through other partnership arrangements that may be approved by MCC.

## **IV. Other Provisions**

### **Allowable Currencies for Proposals**

P1.B.4.1 RFPs shall clearly state that consultants must express the price for their services in the currency stated in the RFP or LOI, which in every case must be either USD or the local currency of the country of the MCA Entity or a combination thereof. Consultants must comply with the currency restrictions as set out in the RFPs. Any proposal that deviates from the currency requirement as stated in the solicitation documents may be rejected as non-responsive.

### **Currency Conversion for Proposal Evaluation**

P1.B.4.2 The proposal price is the sum of all payments in USD or the currency of the country of the MCA Entity as applicable. Where the RFP allows the proposal price to be stated in more than one currency, for the purpose of comparing prices, proposal prices shall be converted to either one of the two currencies as selected by the MCA Entity and stated in the RFP. 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 the MCA Entity or the OANDA website: <http://www.oanda.com/convert/classic>), by a commercial bank, or by an internationally circulated newspaper for similar transactions on a date selected in advance. Such source and date shall be specified in the RFP, provided that the date shall not be earlier than four (4) weeks prior to the deadline for the receipt of proposals and no later than the original date for the expiration of the period of proposal validity.



### **Allowable Currencies for Contract Denomination and Payment**

P1.B.4.3 **Contract Denomination.** Contracts can be denominated either in USD, the local currency of the country of the MCA Entity, or, if justified by sound business reasons, a combination of the two.

P1.B.4.4 **Contract Payment.** Contracts can be payable either in USD, the local currency of the country of the MCA Entity, or a combination of both.

P1.B.4.5 In all cases where the currency denominated in the proposal or bid differs from the currency for payment, a specific exchange rate must be fixed at the date of contract signing and clearly defined at that time in the contract itself.

P1.B.4.6 The MCA Entity may not require foreign bidders to be paid in the local currency of the country of the MCA Entity; the foreign bidder must be paid in USD unless, at its option, it requests to be paid in the local currency of the country of the MCA Entity.

### **Terms and Methods of Payment**

P1.B.4.7 The RFP shall specify the terms and methods of payment. Terms of payment may not be used as an evaluation criterion and may not affect the proposal evaluation. Substantial deviations from the terms proposed in the solicitation documents will require MCC approval per **Attachment A** PPG Approval Matrix.

### **Advance Payments**

P1.B.4.8 Advance payments are advances of funds to a consultant before, in anticipation of, and for the purpose of performance under the contract. Because advance payments are not measured by contract performance, they differ from progress payments, which are based on actual performance of tasks in furtherance of the contract. Advance payments for long-term contracts involving considerable front-end setup costs may be appropriate for consulting services.

P1.B.4.9 Because advance payments are made before the MCA Entity receives any value for the funds, advance payments to consultants may be authorized only with explicit written permission from MCC, which will be granted only in exceptional circumstances such as force majeure in the Compact or the consultant's country.

P1.B.4.10 The solicitation documents shall specify (a) the amount of the advance payment (as a percentage, not to exceed 10% of the contract value), (b) the form of security required in connection with the advance payment (as discussed more fully as follows in P1.B.4.11), and (c) the manner in which such advance payment will be liquidated against future invoice payments. Generally, advance payments are liquidated from payments made to the consultant during performance of the contract, usually by deducting a percentage from each scheduled payment for performance.

### **Advance Payment Guarantees**

P1.B.4.11 Under the exceptional circumstances where an advance payment is authorized, including payment made upon signature of a contract for consulting services, a commitment from the consultant of an advance security guarantee is required. This security shall be provided in an appropriate form and amount, as specified by the MCA Entity in the solicitation documents, and shall be valid until the advance payment has been fully recovered.

### **Progress Payments**

P1.B.4.12 Progress payments are the preferred form of payment for all MCC-funded contracts for consultants in cases where the preferred delivery-based payments are not possible. Progress payments are multiple payments, each payable upon acceptable partial performance of the contract.

### **Final Payment**

P1.B.4.13 Final payment is made only after all contract performance is completed and accepted. Retentions are not used under contracts for consulting services.

### **Performance Guarantees**

P1.B.4.14 Performance guarantees are not allowed for consulting services.

### **Interest on Late Payments**

P1.B.4.15 The contract shall provide for the payment of interest at specific rates when payment is delayed beyond the time allowed in the contract for payment due to the fault of the MCA Entity or its agents. This rate will be specified in the solicitation documents.

### **Staff Substitutions**

P1.B.4.16 During an assignment, if substitution becomes necessary (for example, because of ill health or because a key staff member's performance is unsatisfactory to MCA Entity's satisfaction), the consultant shall propose other key staff of at least the same level of qualifications for approval by the MCA Entity. Failure to provide an acceptable replacement within a reasonable time after the notice from the MCA Entity, usually within 30 days, may lead to the termination of the contract.

### **Professional Liability**

P1.B.4.17 The consultant is expected to carry out its assignment with due diligence and in accordance with prevailing standards of the profession. If the parties wish to limit the consultant's liability to the MCA Entity, this must be provided for in the contract. In addition, (a) any such limitation shall be subject to applicable law, (b) there must be no such limitation in case of the consultant's gross negligence or willful misconduct, (c) the consultant's liability to the MCA Entity may in no case be limited to less than 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), the MCA Entity is encouraged to secure insurance for potential risks above these limits, and (d) 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.

#### **Applicable Law and Settlement of Disputes**

P1.B.4.18 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 and in other cases where the parties so agree.

## PART 2 PROCUREMENT PLANNING, IMPLEMENTATION, AND REPORTING

### P2.1 Procurement Plan

#### Purpose

P2.1.1 The MCA Entity shall prepare periodic procurement plans for acquiring goods, works, consulting services, and non-consulting services (including information systems) needed to implement the Compact (each, a Procurement Plan). The Procurement Plan is a key program planning and implementation document prepared by the MCA Entity. The primary function of the Procurement Plan is to serve as a managing tool by which the MCA Entity oversees the procurement activities of the Procurement Agent and by which MCC monitors the MCA Entity's approach to implementation.

#### Requirements and Approvals

P2.1.2 The MCA Entity shall ensure that all goods, works, consulting services, and non-consulting services (including information systems) shall be procured using the procurement methods approved in the Procurement Plan. The MCA Entity shall periodically prepare a Procurement Plan for acquiring goods, works, consulting services, and non-consulting services (including information systems) needed to implement the Compact. Compliance, satisfactory to MCC, with the approved Procurement Plan shall be a condition precedent to the MCA Entity to begin any procurement and for MCC disbursements or payments. Each Procurement Plan shall be adopted by the governing body of the MCA Entity according to Attachment A PPG Approval Matrix and shall be submitted to MCC for its approval.

#### Period Covered

P2.1.3 Each Procurement Plan will cover a specific minimum period of time, which shall be at least 12 months in duration, and shall be updated, at a minimum, quarterly, and be submitted as part of the quarterly disbursement request.

#### Contents and Organization

P2.1.4 The Procurement Plan shall (a) list all (regardless of the threshold amount) the particular contracts for the goods, works, consulting services, and non-consulting services (including information systems) required to implement the Compact for the period covered in such Procurement Plan; (b) identify the proposed method of procurement for such contracts as determined according to the rules set out in these Guidelines; and (c) set forth the estimated value for each contract. The Procurement Plan shall be organized as follows: each procurement action shall be categorized under goods, works, consulting services, or non-consulting services (including information systems). Each procurement action shall then be linked to the Project for which it is being procured, using a numbering system or other system of identification. For example, the numbering system FIN001 and FIN002 may be used for the first two procurement actions for a finance project. There shall be a column for procurement action descriptions, prices, and procurement methods.

### **Direct Contracting/Sole Source Selection**

P2.1.5 If the MCA Entity wishes to use Direct Contracting or Sole Source Selection, it must submit justification for it at the time of submission of the Procurement Plan. If the MCA Entity does not submit the justification, MCC may, at its discretion, approve the plan conditionally, subject to receipt of adequate justification, or MCC may require that the procurement method be changed to competitive.

### **Amending Procurement Plans**

P2.1.6 If the MCA Entity determines that a Material Change, as defined as follows in P2.1.7, from the approved Procurement Plan is necessary or appropriate, the MCA Entity shall propose an amendment and secure approval from the Governing Body of the MCA Entity and MCC before beginning the new or changed procurement action. Changes to a Procurement Plan that are not Material Changes shall be recorded and approved by the MCA Entity Director of Procurement and updated into the Procurement Plan. If MCC approves the amendment to the approved Procurement Plan, the MCA Entity shall comply with any instructions contained in the approval, including any publication requirements (e.g., update of the GPN). The MCA Entity shall send the MCC Procurement Director the version of the updated Procurement Plan that includes the new modifications so that MCC has a record of the new version for its files and can provide the corresponding oversight. The updated Procurement Plan shall contain a column that specifies whenever the line activity is under the authority of approvals of the MCA Entity Procurement Director per the Attachment A. PPG Approvals Matrix.

P2.1.7 A change to a Procurement Plan is a Material Change when:

- a) A new procurement is added with an estimated value of USD25,000 or more, and a method other than Direct Contracting or Sole Source Selection will be used to select the contractor or consultant.
- b) A new procurement is added with an estimated value of USD5,000 or more, and the contractor or consultant will be selected by Direct Contracting or Sole Source Selection.
- c) The estimated value of a particular procurement is increased or decreased by 25 percent or greater.
- d) The method of procurement or selection procedure is changed to a less open or more subjective process for selecting the contractor or consultant. Changing from Competitive Bidding to Limited Bidding or Shopping is an example of a change to a less open procedure. Changing from QCBS to QBS or from a CQS to individual consultant selection are examples of a change to a more subjective procedure.

P2.1.8 If a particular procurement results in the recommendation for award at a price significantly higher (more than 25 percent) than the budgeted amount in the approved Procurement Plan, the MCA Entity will not amend the Procurement Plan but will ensure the documentation submitted for approval of the resulting proposed award explicitly identifies the difference between the budgeted and proposed award values. The MCA Entity shall ensure that it receives all corresponding approvals for contracts above the budget and otherwise in accordance with Attachment A PPG Approvals Matrix.

## P2.2 Procurement Implementation Plan

### Purpose and Requirement

P2.2.1 The principal purposes of the Procurement Implementation Plan (PIP) are to identify timelines for key milestones in the procurement process and to provide details of the planned strategy for successful completion of each procurement action. The Procurement Agent is required to prepare a separate PIP for each procurement in the Procurement Plan.

### Contents and Organization

P2.2.2 As appropriate for the procurement, the PIP shall identify and define (a) the procurement method or selection procedure to be used; (b) the timelines for procurement, including approvals by MCC and the MCA Entity; (c) the advertising strategy to be used to maximize competition; (d) the plan for conducting pre-bid/proposal conferences; (e) the strategy for appointing members of TEPs; (f) the methodology to be used by the TEP for reviewing bids or evaluating proposals; (g) any auxiliary requirements or prerequisites to planned procurements, as well as proper sequencing; and (h) the source and status of the TOR or specifications.

### PIP Checklist

P2.2.3 The elements of a PIP described in paragraph P2.2.2 are captured in Table 1, which presents the Procurement Agent with a series of questions to be answered. While not every question will be applicable in every case, each question shall be considered in constructing the PIP:

**Table 1. Checklist for Procurement Agent**

Elements of the PIP	Includes:
Procurement Method or Selection Procedure	What procurement method (such as Competitive Bidding) or selection procedure (such as Quality and Cost-Based Selection, Quality Based Selection, Fixed Budget Selection, Least Cost Selection, or Selection Based on Consultants Qualifications) will be used to determine the winner?
Procurement Timeline and Approvals	What are the major procurement milestones (with dates) required to finalize each contract? This should include time for review and approval by the MCA Entity and MCC, as laid out in Attachment A. PPG Approval Matrix of the MCC Program Procurement Guidelines as part of the planning.



Elements of the PIP	Includes:
Advertising Strategy	<ul style="list-style-type: none"> <li>• In which newspaper or other media outlets will notices be placed to maximize competition consistent with the requirements of the procurement?</li> <li>• What will be the timing of these notices?</li> <li>• Text of notices should be included as an annex to the PIP.</li> </ul>
Pre-bid/Proposal Conference	<ul style="list-style-type: none"> <li>• Is a pre-bid/proposal conference necessary to clarify the requirement and gather market feedback?</li> <li>• What is the timeframe for providing responses to questions and issues raised in the pre-bid/proposal conference?</li> </ul>
Technical Evaluation Panel or Technical Review Panel Selection Plan	<ul style="list-style-type: none"> <li>• What expertise will be sought for panel members?</li> <li>• How many will be required?</li> <li>• What procedures will be undertaken to ensure there is no conflict of interest?</li> <li>• What is the training plan for TEP members?</li> </ul>
Auxiliary or Prerequisite Procurements and Sequencing	<p>Will this procurement require additional procurements to accept or verify deliverables or supervise the processes that have not been anticipated previously? Is the sequencing with related procurements appropriately structured?</p>

## **P2.3 Procurement Operations Manual**

P2.3.1 The MCA Entity will establish a Procurement Operations Manual (POM). MCC provides MCA Entities with a template for the POM that needs to be adopted by the Procurement Agent within the time period specified in the Procurement Agent agreement secure MCC's no objection.

P2.3.2 The POM provides guidance and procedures for the procurement of goods, works, consulting services, and non-consulting services (including information systems) for procurements implemented by the MCA Entity. If there is a conflict between the POM and the PPG, the PPG takes precedence. The POM identifies the activities to be performed or initiated by each responsible party for the selection of suppliers, contractors and consultants.

P2.3.3 The Procurement Director of the MCA Entity is responsible for reviewing the POM prepared by the Procurement Agent and recommending any necessary changes or improvements to ensure it responds to the operational reality of the MCA Entity, before obtaining the non-objection of MCC to the POM. The Procurement Director is responsible for ensuring that the Procurement Agent acts consistently with the approved POM.

## **P2.4 Procurement Performance Report**

### **Purpose**

P2.4.1 The information in the Procurement Performance Report (PPR) is used for implementation oversight and is prepared by the MCA Entity. The primary function of the PPR is to serve as a managing tool by which the MCA Entity oversees the procurement activities of the Procurement Agent and by which MCC monitors the MCA Entity's approach to implementation and progress on the specific milestones achieved in the procurement process. The objective is to assist MCC in monitoring the MCA Entity's compliance with these Guidelines.

### **Submission Requirements**

P2.4.2 The MCA Entity shall prepare the PPR by entering data into the relevant MCC system for all procurements valued above \$25,000. The MCA Entity shall submit the PPR together with the regular quarterly reporting submissions required to be included as part of each Disbursement Request.

## **P2.5 Contractor Past Performance Reporting System**

### **Policy**

P2.5.1 MCC's Contractor Past Performance Reporting System (CPPRS) mandates regular reporting on contractor performance, thereby facilitating information sharing and standardized use of information relating to contractor performance, so that better informed decisions can be made across MCC partner countries regarding awarding new contracts or maintaining current contracts with specific contractors. To that end, the MCA Entity shall:

- a) Ensure that, for each procurement resulting in a total contract awarded that is valued or estimated to be valued at or above the thresholds set forth in P2.5.2 a past performance report on the suppliers, contractor's or consultant's performance is submitted at least annually (quarterly if one or more aspects of performance are problematic) during the period of contract performance.
- a) Consult the MCC local office in the MCA Entity's country at specific stages in the procurement process to seek relevant CPPRS information on bidders or potential bidders and use such information in its evaluation and review panels.
- a) Include a provision within its solicitation documents, and contracts, as the case may be, to ensure that contractors are aware of the CPPRS obligation and how information gathered as a result of compliance with the CPPRS might be used. Further information regarding the procedures and forms for use by the MCA Entity in performing these tasks is provided in [\*MCC Procurement Guidance Note: Reporting and Considering Past Performance by Contractors in MCA Entity Program Procurements\*](#)<sup>9</sup>.

### Applicability

P2.5.2 The CPPRS procedures apply to any procurement resulting in a total contract awarded that is valued or estimated to be valued at (a) USD5,000,000 or more for any works and (b) USD200,000 or more for any consulting services, supply of goods and non-consulting services. Total value or estimated total value is based on the base period of performance as well as any option periods of performance.

## PART 3. STANDARD BIDDING DOCUMENTS

P3.1 MCC has developed SBDs that are required to be used by all MCA Entities in procuring the goods, works, consulting services, and non-consulting services (including information systems) needed to implement their Compacts. These SBDs are the procurement standards to be used by all MCA Entities.

P3.1.1 The latest MCC-approved SBDs are available on MCC's website. Unless otherwise agreed by MCC, the MCA Entities will use the applicable SBDs for all procurements and revise any existing draft documents that have not yet been submitted to MCC for approval to conform to the SBD.

P3.1.2 Each SBD includes an Introduction providing specific guidance on the use of the SBD, including guidance on which sections are to be used in procurement documents without modification. In situations where a modification to these sections may be necessary to address unique situations in a particular country (e.g., tax arrangements), the MCA Entity must consult MCC before making the modification.

P3.1.3 French and Spanish versions of the SBDs also are posted on the MCC website. These SBDs may only be used if MCC has waived the English language requirements of these Guidelines as described in Part 9. Language.

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<sup>9</sup> As it may be modified or amended from time to time by the MCC Program Procurement Practice Group.

## **PART 4. REVIEW AND APPROVAL REQUIREMENTS**

P4.1 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 A PPG Approvals Matrix of these 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.

P4.1.1 The MCA Entity shall ensure that all procurement actions described in Attachment A for goods, works, consulting services, and non-consulting services (including information systems) in furtherance of the Compact and funded in whole or in part by MCC funding shall be subject to the prior approval of the MCA Entity's Procurement Director or board of directors (or equivalent governing body) for the corresponding type of action or dollar amount threshold in Attachment A, unless MCC has granted a written exception to the approval requirement set out in Attachment A.

P4.1.2 Approvals from MCC and, depending upon the terms of the MCA Entity's governing document, the MCA Entity Board will be required for any modifications to material agreements as noted under the specific MCA Entity's Program Implementation Agreement (PIA). Material agreements typically include Fiscal and Procurement Agent Agreements, Banking Services Agreement and the Auditor's contract. Notwithstanding the approval requirements set out in Attachment A, MCC shall have the right to review and require prior approval of any other procurement action, decision, or document.

## **PART 5. BID CHALLENGE SYSTEM**

### **Purpose**

P5.1 The MCA Entity must establish and publish a Bid Challenge System (BCS) within six (6) months of Compact signing that provides bidders on MCA Entity procurements with the ability to challenge and seek review of the MCA Entity procurement actions and decisions. No procurements may be issued unless an approved BCS or Interim Bid Challenge System (IBCS) is in place and bidders and potential bidders have been given notice of it. The MCA Entity shall ensure that all bid challenges are accepted, reviewed, and processed in accordance with the rules and procedures of the MCA Entity's BCS, as approved by MCC.

### **Interim Bid Challenge System**

P5.2 During the period before the BCS has been adopted and becomes operational, the MCA Entity shall use the IBCS.

## **PART 6. SUBCONTRACTING**

P6.1 Every contract or subcontract for goods, works, consulting services, or non-consulting services (including information systems) with any party that receives 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, consulting services, or non-consulting services (including information systems).

P6.2 All planned subcontracting arrangements by a bidder or consultant must be disclosed in response to the solicitation documents, which shall be evaluated in accordance with the evaluation criteria. Once accepted as part of the evaluation, these arrangements cannot be modified without prior permission of the MCA Entity, which in turn must seek approval from MCC. After the contract award, if any contractor or subcontractor decides to subcontract an additional major item of goods, works, consulting services, or non-consulting services (including information systems) (deemed major if valued in excess of USD100,000) shall seek the MCA Entity's prior written approval before proceeding.

## **PART 7. AMENDMENTS AND WAIVERS**

### **Amendments**

P7.1 These Guidelines may be superseded from time to time by the issuance of new editions or may be amended from time to time through the issuance of interim amendments. Such new editions and Interim Amendments shall apply with prior notice to the MCA Entities or as MCC and any MCA Entity may otherwise agree.

P7.1.1 An Interim Amendment is a significant change to these Guidelines that occurs between editions. Among other things, it may introduce improved procedures, correct errors or omissions, or temporarily waive a specific provision. Interim Amendments will be announced in an Interim Amendment Notice posted on MCC's website and will take effect on the date specified in the notice.

### **Waivers**

P7.2 On a case-by-case basis, MCC may grant waivers of specific provisions of these Guidelines for a particular procurement. Each waiver shall be in writing and shall be effective only to the extent specifically set forth in such writing. Unless issued as an Interim Amendment, a waiver does not affect permanent change to these Guidelines but, rather, functions as a one-time exception necessary to support one or more procurements and applies only to the specific MCA Entity requesting the waiver. All waiver requests will be generated by the MCA Entity.

### **Types of Waivers**

P7.2.1 Ex-Ante Waiver procedures are as follows:

#### **Initiation and Required Content**

P7.2.1(a) Waivers are initiated by the MCA Entity. Waiver requests must include a description of the anticipated impact the waiver would have on the MCA Entity's procurement activities and the program objectives supported by those procurement activities. It must contain sufficient detail to explain the basis of

the request, the procedures to be waived, and any recommended alternative action. The request must also detail why granting such a waiver is in the interest of the country’s Compact program, and why it would be detrimental to the program if the waiver were denied. See [Ex-Ante Waiver Request Form<sup>10</sup>](#).

**Review and Approval**

P7.2.1(b) All waivers require formal MCC approval prior to implementation. Waiver requests must be submitted by the MCA Entity to the MCC Resident Country Director in country, who forwards it to the appropriate MCC Procurement Director. The MCC Procurement Director makes a determination in accordance with Table 2. Waiver Approval on the level of approval within MCC required for the waiver. As noted in the table, the required approval level depends on the nature of the waiver and its potential impact on the overall MCC procurement policy. Waiver requests may be denied if the MCA Entity’s interests in requesting the waiver do not outweigh the interests of proceeding under these Guidelines without variation.

**Table 2. Waiver Approval**

Nature of Requested Waiver	Approver
Minor deviation from the requirements of these Guidelines affecting one MCA Entity	Director, MCC Procurement for country of the requesting MCA Entity and; Relevant Sector Lead for country of the requesting MCA Entity
Minor deviation from the requirements of these Guidelines, potentially affecting all MCA Entities (e.g., correction of conflict between these Guidelines and SBDs)*	MCC Procurement Practice Lead and Senior Director
Significant deviation affecting one MCA Entity (e.g., pilot program for use of insurance bonds instead of bank guarantees)	Deputy Vice President, Sector Operations

<sup>10</sup> As it may be modified or amended from time to time by the MCC Program Procurement Practice Group.



Nature of Requested Waiver	Approver
Agency-wide significant change potentially affecting the majority of MCA Entities*	Vice President Operations, Department of Compact Operations

\* Waivers of this nature result in an Interim Amendment

**Waiver Tracking**

P7.2.2 Each MCA Entity, either alone or in conjunction with its Procurement Agent, is responsible for maintaining copies in the MCA Entity’s procurement files of all waiver requests and the associated MCC approvals or rejections. MCC retains a final approved copy of all waivers.

**Ex-Post Waivers**

P7.2.3 In exceptional cases and when a misprocurement is not warranted, the MCC may approve 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. See [Ex-Post Waiver Request Form<sup>11</sup>](#). In all respects other than the form used, approvals and the timing, the Ex-Ante Waiver procedures shall apply.

<sup>11</sup> As it may be modified or amended from time to time by the MCC Program Procurement Practice Group.

## **PART 8. PUBLICATION OF MCC PROGRAM PROCUREMENT GUIDELINES AND ADDITIONAL INFORMATION**

### **Publication**

P8.1 MCC will post these Guidelines (including any amendments thereto) on the MCC website. The MCA Entity will also ensure that these are published on the MCA Entity's website (or such other appropriate website designated by the MCA Entity, if so approved by MCC).

P8.1.1 Information about MCC and its programs can be found at [www.mcc.gov](http://www.mcc.gov). Information about MCC programs in the country of the MCA Entity is to be included on the website established by the MCA Entity (or other appropriate website designated by the MCA Entity and approved by MCC).

## **PART 9. LANGUAGE**

### **Official Language**

P9.1 English is the official operating language of MCC-funded procurement documents.

### **Advertising Documents Solicitation, Procurement, and Contract Documents**

P9.2 The language requirements for these documents are in paragraphs **P1.A.2.16** and **P1.A.2.17** of Section 1.A and paragraphs **P1.B.1.18** and **P1.B.1.19** of Section 1.B of these Guidelines.

### **Procurement Records and Reports**

P9.3 Any document that is subject to MCC approval according to Attachment A. PPG Approval Matrix of these Guidelines, and any reports required under Part 2. Procurement Planning, Implementation, and Reporting of these Guidelines, must be in English unless a waiver has been granted for the use of French or Spanish. No other language shall be used.

## **PART 10. ELIGIBILITY VERIFICATION PROCEDURES**

### **Introduction**

P10.1 Part 10 provides guidance on performing eligibility verification procedures during the evaluation of bids and proposals for MCA Entity program procurements.

P10.1.1 A firm or individual declared ineligible by the World Bank for any reasons, including in accordance with the World Bank Group anti-corruption policies, shall be ineligible to be awarded an MCC-funded contract during the period of time that the firm is sanctioned by the World Bank.

P10.1.2 In addition, any person or entity that is 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 ineligible to be awarded an MCC-funded contract.

P10.1.3 The MCA Entity shall recognize as ineligible any firm or individual listed on any of the following:

- System for Award Management (SAM) Excluded Parties List - <https://sam.gov/content/exclusions>
- World Bank Debarred List - <https://www.worldbank.org/debarr>
- US Treasury, Office of Foreign Assets Control, Specially Designated Nationals (SDN) List - <https://sanctionssearch.ofac.treas.gov/>
- US Department of Commerce, Bureau of Industry and Security, Denied Persons List - <https://www.bis.doc.gov/index.php/the-denied-persons-list>
- US State Department, Directorate of Defense Trade Controls, AECA Debarred List - [https://www.pmdt.state.gov/ddtc\\_public?id=ddtc\\_kb\\_article\\_page&sys\\_id=c22d1833dbb8d300da370131f9619fo](https://www.pmdt.state.gov/ddtc_public?id=ddtc_kb_article_page&sys_id=c22d1833dbb8d300da370131f9619fo)
- US State Department, Foreign Terrorist Organizations (FTO) List - <https://www.state.gov/foreign-terrorist-organizations/>
- US State Department, Executive Order 13224 - <https://www.state.gov/executive-order-13224/>
- US State Sponsors of Terrorism List - <https://www.state.gov/state-sponsors-of-terrorism/>

P10.1.4 Under no circumstance shall the MCA Entity award a contract prior to verifying the eligibility of a listed firm or individual. It is the responsibility of the MCA Entity to ensure all websites identified above are working and immediately notify MCC if they are unable to verify the eligibility and gain access to the associated requirements.

### **Eligibility Verification Procedures**

P10.2 The MCA Entity (or through its Procurement Agent) shall perform and document the eligibility verification procedures as agreed between MCC and the MCA Entity in the MCA Entity's Procurement Operations Manual, or POM, that may be modified from time to time.

## PART 11. CONTRACT TYPES

### Fixed-Price Contract

P11.1 Fixed-Price Contracts may take various forms such as lump sum, unit price, and percentage fees. Fixed-Price Contracts are used mainly for assignments in which the content and 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 because payments are due on clearly specified outputs. MCC favors the use of Fixed-Price Contracts over reimbursable-cost contracts for MCC-funded procurements.

### Time-Based Contract

P11.2 The Time-Based 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 any Supplemental Agreements.

### Reimbursable-Cost Contracts

P11.3 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. Reimbursable-Cost Contracts shall include appropriate incentives to limit costs and shall reference and be subject to the relevant MCC Cost Principles found at the MCC website, [www.mcc.gov](http://www.mcc.gov).

### Percentage Contract

P11.4 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. The contracts are negotiated on the basis of market norms for the services, estimated staff-month costs for the services, and/or competitive bid. 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.

### **Indefinite Delivery and Indefinite Quantity Contract**

P11.5 Indefinite Delivery and Indefinite Quantity (IDIQ) contracts are used when the MCA Entity requires goods, simple works, and/or services for which delivery and quantity cannot be defined in advance. In the procurement document, delivery and quantity limits (expressed as number of units or currency value) may be set as estimates and/or minimum/maximum bands. While minimum limits are mandatory for IDIQ procurement, maximum limits are optional. Some IDIQs provide an average or roughly estimated quantity statement. After award and contract signature, the selected contractor, consultant, service provider, or supplier will be issued task orders to perform work under the contract. The IDIQ contract is normally for a period of a year or more.

### **Blanket Purchase Agreements**

P11.6 A Blanket Purchase Agreement (BPA) is a simplified method of filling anticipated repetitive needs for supplies or services by establishing credit accounts with qualified sources of supply or services. BPAs are designed to reduce administrative costs in accomplishing small purchases by streamlining the need for issuing individual procurement actions. The MCA Entity may use these agreement types for reoccurring needs.

## **PART 12. RECORDS, POST REVIEW, AND CONTRACT ADMINISTRATION**

### **Procurement Records**

P12.1 The MCA Entity shall maintain complete and uniform procurement records according to a standard format approved by MCC. The procurement records will be retained by the MCA Entity for at least 5 years after the expiration or termination of the Compact as part of the procurement records, the MCA Entity shall retain all documentation with respect to each contract during implementation of the Compact, which 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 Contract File Index Sample<sup>12</sup> contains the essential elements that must be included as part of a procurement file.

### **Post Review**

P12.2 The procurement records are subject to examination by MCC, its oversight agencies, and by its agents and consultants. The MCA Entity shall furnish such documentation to MCC upon request. If MCC determines that the goods, works, consulting services, or non-consulting services (including information systems) were not procured in accordance with the agreed procedures, as reflected in the Compact, including any 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 P1.A.1.13 of Section 1.A or paragraph P1.B.1.15 of Section 1.B of these Guidelines. MCC shall promptly inform the MCA Entity of the reasons for such determination.

<sup>12</sup> As it may be modified or amended from time to time by the MCC Program Procurement Practice Group

## Contract Administration

P12.3 The MCA Entity shall maintain a contract administration system that ensures that contractors, suppliers, consultants, or service providers perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Contract administration includes all administrative matters (e.g., contract amendments, contract termination, administration of contract securities/guarantees, monitoring milestone schedules, contract end-dates, options for extension; and record keeping), handled by the Procurement Agent and user department relative to a specific contract after the award of the contract is made.

## Contract Administration and Management Manual

P12.4 The MCA Entity shall establish a Contract Administration and Management Manual (CAMM) by adopting the CAMM template developed by MCC. This CAMM should be developed by the Procurement Agent of the MCA Entity and approved by the respective MCC Procurement Director within the time specified in the Procurement Agent agreement. The CAMM identifies the activities to be performed or initiated by each responsible person or entity in tracking, amending, and closing out the contracts. CAMM covers contracts for goods, works, consulting services, and non-consulting services (including information systems).

P12.5 The Procurement Director of the MCA Entity is responsible for reviewing the CAMM prepared by the Procurement Agents and recommending any necessary changes or improvements to ensure it responds to the operational reality of the MCA Entity, before obtaining the no-objection of MCC to the CAMM. The MCA Entity shall report and document all contract administration actions as required under the CAMM.

## Procurement Closeout

P12.6 To ensure an orderly and efficient closure to the Program, the MCA Entity must develop a Program Closure Plan that describes the schedule and steps it will take to close each Project and activity of a Compact. The MCA Entity Procurement Director and the MCA Entity Procurement Agent play an important role during the closeout stage, including initiating administrative closeout of all Compact implementation contracts and ensuring that all active contracts have met all of their respective terms and conditions, all administrative actions have been completed, all disputes settled, and final payment under all active contracts has been made. An overview of the process and procedures for the closeout stage and the requirements for a Program Closure Plan are set forth in the [Program Closure Guidelines<sup>13</sup>](#). The MCA Entity through the MCA Procurement Director is required to fill out a Procurement Closure Checklist no later than 30 days after a contract has closed. The Procurement Agent is required to have this form as part of the procurement files.

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<sup>13</sup> As it may be modified or amended from time to time by the MCC Program Procurement Practice Group.



## PART 13. GOVERNMENT-OWNED ENTERPRISES

### Defined Terms

P13.1 For purposes of these provisions, the terms set forth below are defined as follows:

P13.1.1 “Government-Owned Enterprise” or “GOE” is any enterprise established for a commercial or business purpose that is owned and/or controlled by a Government (whether directly or indirectly).

P13.1.2 “Government” means one or more governments, including any agency, instrumentality, subdivision or other unit of government at any level of jurisdiction (national or subnational).

P13.1.3 “Owned” means a majority or controlling interest (whether by value or voting interest) of the shares or other ownership interest of the entity is owned (whether directly or indirectly and whether through fiduciaries, agents, or other means).

P13.1.4 “Controlled by” necessarily is determined on a case-by-case basis, but means material support for or the power by any means to control an enterprise (regardless of (i) the level of ownership, or (ii) whether the power is exercised). Indicative criteria relevant to determining whether an enterprise is controlled by a Government include, but are not limited to, the following:

- a) Whether a Government holds a direct or indirect controlling interest in the enterprise’s capital or voting rights
- b) The extent to which the enterprise receives subsidies and other support from a Government
- c) Whether a Government has granted to the enterprise any special or exclusive legal or economic rights or benefits that may alter the competitiveness of the enterprise’s goods, works, or services (including information systems) in a commercial market or otherwise influence the enterprise’s business decisions
- d) The extent to which a Government has the power to direct or decide significant matters affecting the enterprise including, but not limited to, the following matters:
  - (i) The reorganization, merger, or dissolution of the enterprise or the formation or acquisition of a subsidiary or other affiliate of the enterprise
  - (ii) Any sale, lease, mortgage, pledge, or other transfer of any of the principal assets of the enterprise, whether tangible or intangible, and whether or not in the ordinary course of business
  - (iii) The closing, relocation, or substantial alteration of the production, operational, or other material activities of the enterprise
  - (iv) The execution, termination, or non-fulfillment by the enterprise of material contracts
  - (v) The appointment or dismissal of managers, directors, officers, or senior personnel, or other participation in the management or control of the enterprise.

P13.1.5 Additional evidence of control may be found in the organizational history of the enterprise regardless of its current status. In some cases, a GOE may be privatized or otherwise reorganized in such manner that it loses its status as a GOE. In other cases, a GOE may purportedly have been privatized, but continue to receive subsidies or other forms of support from a Government to such a degree that it can effectively be considered to be controlled by the Government<sup>14</sup>.

P13.1.6 “Force Account” and the units that carry out Force Account activities have the meaning specified in Section P1.A.3.7 of these Guidelines.

### Eligibility of Government-Owned Enterprises

P13.2 GOEs are not eligible to compete for MCC-funded contracts for goods or works. Accordingly, GOEs (i) may not be party to any MCC-funded contract for goods (which includes contracts for the supply and installation of information systems) or works procured through an open solicitation process, Limited Bidding, or Direct Contracting; and (ii) may not be pre-qualified for any MCC-funded contract for goods or works anticipated to be procured through these means.

P13.2.1 This prohibition does not apply to Government-owned Force Account units, educational institutions and research centers, or any statistical, mapping, or other technical entities not formed primarily for a commercial or business purpose, or where a waiver is granted by MCC in accordance with Part 7. Amendments and Waivers of these Guidelines.

P13.2.2 Notwithstanding paragraph **P7.2.3 of Part 7. Amendment and Waivers** of these Guidelines, any waiver of the provisions of this Part 13 requires the approval of the Vice President for Compact Operations with the concurrence of the Vice President and General Counsel and the Vice President for Policy and Evaluation and following notice to the Office of the Chief Executive Officer.

### Compliance and Penalties

P13.3 Each entity submitting a bid, or participating in any pre-qualification process, for any MCC-funded contract for goods or works must make, as part of its bid, a certification, in form and substance satisfactory to MCC, that it is not a GOE. This certification will include the completion of a checklist or questionnaire based on the definition of *owned and the criteria set out in the definition of controlled by in Section 13.1* above and will include any supporting documentation as MCC may, from time to time, require.

P13.3.1 As part of an MCA Entity’s obligation to confirm eligibility of entities in connection with the examination of bids for any MCC-funded contract for goods or works, the MCA Entity will review the certification and any supporting material submitted by each entity submitting a bid in accordance with the immediately preceding clause P13.3. If the procurement begins with a pre-qualification of bidders, the MCA Entity will have the same obligation to confirm eligibility of each entity qualified.

<sup>14</sup> Evidence of control may also be assumed by MCC for enterprises from countries that have been deemed nonmarket economies by either the US Department of Commerce or the World Trade Organization

P13.3.2 Prior to announcing the winning bidder in a procurement related to any MCC-funded contract for goods or works, or any list of pre-qualified bidders in respect of a contemplated procurement related to any MCC-funded contract for goods or works, the MCA Entity will verify the eligibility of such bidders with MCC. MCC will maintain a database (internally, through subscription services, or both) of known GOEs and each winning or pre-qualified bidder will be compared against the database and subject to such further due diligence as MCC may determine necessary under the circumstances, prior to the winning bidder being announced.

P13.3.3 Any violation of the provisions of this Part 13 by any entity submitting a bid, or participating in any pre-qualification process, for any MCC-funded contract may be deemed to be *fraud for purposes of these Guidelines and any other applicable MCC policy or guidance, including MCC's [Policy on Preventing, Detecting, and Remediating Fraud and Corruption in MCC Operations](#)*.

P13.3.4 The GOE policy shall not apply to subcontractors. Furthermore, any entity that is determined by MCC to have organized itself, subcontracted any part of its MCC-funded contract, or otherwise associated itself with any other entity for the purpose of, or with the actual or potential effect of, avoiding or otherwise subverting the provisions of this Part 13, may be deemed to be a GOE for all purposes of these and other provisions of these Guidelines.

P13.3.5 Any reasonable allegation that any entity submitting a bid for any MCC-funded contract has violated the provisions of this Part 13 shall be subject to review in a bid challenge in accordance with these Guidelines and the MCA Entity's BCS.

## PART 14. COMBATING TRAFFICKING IN PERSONS

### Background

P14.1 MCC has a zero tolerance policy with regard to Trafficking in Persons (TIP). TIP is the crime of using force, fraud, and/or coercion to exploit another person. Human trafficking can take the form of domestic servitude, peonage, forced labor, sexual servitude, bonded labor, and the use of child soldiers. This practice deprives people of their human rights and freedoms, increases global health risks, fuels growing networks of organized crime, and can sustain levels of poverty and impede development. The U.S. Government, led by the Department of State, is committed to making progress against the global crime and human rights abuse of TIP. MCC is committed to working with partner countries to ensure appropriate steps are taken to prevent, mitigate, and monitor TIP risks in the countries it partners with and Projects it funds. For more on MCC's approach to combating TIP, please visit: <http://www.mcc.gov/documents/reports/issuebrief-2010002011002-mccandtip.pdf>

### Defined Terms

P14.2 For purposes of these provisions, the terms set forth below are defined as follows:

P14.2.1 "Coercion" means (a) threats of serious harm to or physical restraint against any person; (b) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result

in serious harm to or physical restraint against any person; or (c) the abuse or threatened abuse of the legal process.

P14.2.2 “Commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

P14.2.3 “Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

P14.2.4 “Employee” means an employee of a bidder, supplier, contractor, subcontractor, consultant, or sub-consultant directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

P14.2.5 “Forced labor” means knowingly providing or obtaining the labor or services of a person (a) by threats of serious harm to, or physical restraint against, that person or another person; (b) by means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or (c) by means of the abuse or threatened abuse of law or the legal process.

P14.2.6 “Fraud” means any act or omission, including any misrepresentation, in order to influence (or attempt to influence) any person to engage (knowingly or unknowingly) in any of the activities prohibited by this Part 14. Examples of fraud include, but are not limited to, false promises for specific employment; promises of money or other compensation that is never paid; working conditions that are not as promised; and a person being told he or she would receive legitimate immigration papers or legal authorizations necessary to work that are never received.

P14.2.7 “Involuntary servitude” includes a condition of servitude induced by means of (a) any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or (b) the abuse or threatened abuse of the legal process.

P14.2.8 “Trafficking in persons” means (a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

P14.2.9 “Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

**Prohibition**

P14.3 MCC has adopted a zero tolerance policy regarding TIP. Bidders, MCA Entity staff, suppliers, contractors, subcontractors, consultants, sub-consultants, and any of their respective employees shall not:

- a) Engage in trafficking in persons during the period of performance of any contract funded, in whole or in part, with MCC funding;
- b) Procure commercial sex acts during the period of performance of any contract funded, in whole or in part, with MCC funding;
- c) Use forced labor in the performance of any contract funded, in whole or in part with MCC funding.

**Requirements**

P14.4. Each bidder, supplier, contractor, subcontractor, consultant, or sub-consultant shall:

- a) Notify its employees of (i) MCC's zero tolerance policy with regard to TIP and the prohibited activities described in Section P14.3; and (ii) the actions that will be taken against employees for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and
- b) Take appropriate action, up to and including termination, against employees or subcontractors or sub-consultants that violate the prohibitions set out in Section P14.3.

P14.4.1. Each bidder (whether to be a supplier or contractor) or consultant, as part of its bid or proposal, shall:

- a) Certify that it is not engaged in, facilitating, or allowing any of the prohibited activities described in Section P 14.3 for the duration of the contract;
- a) Provide assurances that the prohibited activities described in Section P14.3 will not be tolerated on the part of employees or subcontractors, or sub-consultants (as the case may be), or their respective employees;
- a) Acknowledge that engaging in such activities is cause for suspension or termination of employment or of the contract.

**Notification**

P14.5 A bidder, supplier, contractor, subcontractor, consultant or sub-consultant shall inform the MCA Entity within 24 hours or as soon as reasonably possible of:

- a) Any information it receives from any source (including law enforcement) that alleges its employee, subcontractor, sub-consultant, or the employee of a subcontractor or sub-consultant, has engaged in conduct that violates this policy;
- a) Any actions taken against any employee, subcontractor, sub-consultant, or the employee of a subcontractor or sub-consultant, pursuant to these requirements.

## **Remedies**

P14.6 In addition to other remedies available to the MCA Entity or MCC, a bidder, supplier, contractor, subcontractor, consultant, or sub-consultant's failure to comply with the requirements of this Part 14 may result in:

- a) Requiring the supplier, contractor, subcontractor, consultant, or sub-consultant to remove the involved employee or employees from the performance of the contract;
- b) Requiring the supplier, contractor, subcontractor, consultant, or sub-consultant to terminate a subcontract;
- c) Suspension of contract payments;
- d) Loss of incentive payment, consistent with the incentive plan set out in the contract, if any, for the performance period in which the MCA Entity or MCC determined non-compliance;
- e) Termination of the contract for default or cause, in accordance with the termination clause of the contract;
- f) Suspension or debarment of the bidder, supplier, contractor, subcontractor, consultant, or sub-consultant from any contract funded, in whole or in part, with MCC funding.

## **Subcontracts**

P14.7 The supplier, contractor, subcontractor, consultant, or sub-consultant shall include the substance of all of the provisions of this Part 14, including this paragraph, P14.7, in all subcontracts.

## **Mitigating Factor**

P14.8 The MCA Entity and MCC may consider whether the bidder, supplier, contractor, subcontractor, consultant, or sub-consultant had a TIP awareness program at the time of any violation as a mitigating factor when determining remedies.



## ATTACHMENT A. PPG APPROVAL MATRIX

Procurement Procedure or Method	Decision	MCA Entity Director of Procurement	Governing Body of MCA Entity	MCC
	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.		Notwithstanding the thresholds for the Governing Body of the MCA Entity set forth in these Approval Requirements, the Governing Body may exercise its authority to review any procurement decision with prior notice to the principal officer of the MCA Entity. With MCC's approval, the Governing Body may delegate part or all responsibility to a sub-committee.	Notwithstanding the thresholds for the MCC set forth in these Approval Requirements, MCC may exercise its authority to review and approve any procurement decision with prior notice to the principal officer of the MCA Entity.
	Procurement Plans	All	All	All
	Amendments to the Procurement Plan	All	Material Change [as defined in Amending Procurement Plans]	Material Change [as defined in Amending Procurement Plans]

**Goods, Works, and Non-consulting Services (including Information Systems)**

Procurement Procedure or Method	Decision	MCA Entity Director of Procurement	Governing Body of MCA Entity	MCC
Pre-qualification for Works	Pre-qualification documents and advertising procedures	All	None	None
	Report with proposed list of entities qualified	All	None	None
	GOE determination of proposed pre-qualification list	All	None	All
	Record of Bid Challenges	All	All	All
Competitive Bidding, QPBS Procurement and Limited Bidding	Bidding documents	All	None	Goods: Above USD1,000,000 Non-consulting Services: Above USD200,000 Works: Above USD5,000,000
	Bid Review Panel membership	All	None	None
	Bid technical evaluation report (for QPBS Procurement only)	All	None	Goods: Above USD1,000,000 Non-consulting Services: Above USD200,000 Works: Above USD5,000,000
	Bid Review Report with proposed award	All	None	Goods: Above USD1,000,000 Non-consulting Services: Above USD200,000 Works: Above USD5,000,000
	Cancellation or Rejection of all bids	All	None	All
	GOE determination of proposed winner	All	None	All
	Proposed Contract	All	None Exceptions: (i) The value of the Proposed Contract is estimated at more than USD250,000 and 10 percent higher than the estimated budget in the approved Procurement Plan (ii) The value of the Proposed Contract is USD250,000 or less and USD25,000 higher than the estimated budget in the approved Procurement Plan, or (iii) The contract has a substantial change in the legal clauses or technical requirements from the terms or requirements stated in the bidding documents	None Exception: The contract has a substantial change in the legal clauses or technical requirements from the terms or requirements stated in the bidding documents.
	Record of Bid Challenges	All	All	All

Procurement Procedure or Method	Decision	MCA Entity Director of Procurement	Governing Body of MCA Entity	MCC
Shopping	Evaluation Report	All	None	None
	Record of Purchases	Weekly	None Qualification: If published on the MCA Entity website.	None
	Record of Bid Challenges	All	All	All
Direct Contracting	GOE determination of proposed contractor	All	None	All
	Proposed Contract	All	None Exception: The value of the Proposed Contract is more than 10 percent higher than the estimated budget in the approved Procurement Plan.	Above USD50,000
	Record of Bid Challenges	All	All	All
Force Account	Use of government equipment and employees for performing works	All	All	All
	Proposed Contract	All	None Exception: The value of the Proposed Contract is more than 10 percent higher than the estimated budget in the approved Procurement Plan.	All

Procurement Procedure or Method	Decision	MCA Entity Director of Procurement	Governing Body of MCA Entity	MCC
All Procurement Actions	Contract modifications and change orders for contracts valued at up to USD250,000	All  (Exception: For civil works, if approval authority has been delegated to the Engineer under and as defined in the applicable bidding documents, only approval of the Engineer shall be required for changes within the Engineer's delegated authority. Notice of such modification or change order shall be sent to the MCA Entity Director of Procurement)	None  Exceptions: If an individual contract modification or change order:  (i) Raises the value of a contract that did not require approval above an approval threshold  (ii) Extends the original contract duration by 25 percent or more.  (iii) Increases the original contract value by USD25,000 or more; or  (iv) Increases the original combined Base and Options value of a contract by 10 percent	None  Exceptions: If an individual contract modification or change order:  (i) Raises the value of a contract that did not require approval above an approval threshold  (ii) Extends the original contract duration by 25 percent or more.  (iii) Increases the original contract value by USD25,000 or more; or  (iv) Increases the original combined Base and Options value of a contract by 10 percent. Once the 10 percent threshold for modifications or change orders has been reached for the combined Base and Options value of a contract, any subsequent contract modification or change order that individually or collectively exceeds 3 percent of the original combined Base and Options value of a contract also requires MCC approval.
	Contract modifications and change orders for contracts valued at more than USD250,000		None  Exceptions: If an individual contract modification or change order:  (i) Raises a contract that did not require approval above an approval threshold  (ii) Extends the original contract duration by 25 percent or more. Any subsequent contract modification or change order that individually or collectively exceeds 10 percent of the new contract duration.  (iii) Increases the original contract value by 10 percent or USD1,000,000 or more (whichever may apply); or  (iv) Increases the original combined Base and Options value of a contract by 10 percent or USD 1,000,000 or more (whichever may apply)	None  Exceptions: If an individual or collective contract modifications or change orders:  (i) Raise the contract value of a contract that did not require approval above an approval threshold  (ii) Extend the original contract duration by 25 percent or more. Any subsequent contract modification or change order that individually or collectively exceeds 10 percent of the new contract duration.  (iii) Increase the original contract value by 10 percent or USD1,000,000 or more (whichever may apply).  Once the 10 percent contract (or USD1,000,000) threshold for modifications or change orders has been reached for a contract, any subsequent contract modification or change order that individually or collectively exceed 3 percent of the original contract value also requires MCC approval. Or  (iv) Increases the original combined Base and Options value of a contract by 10 percent or USD 1,000,000 or more (whichever may apply). Once the 10 percent contract (or USD 1,000,000) threshold for modifications or change orders has been reached for the combined Base and Options value of a contract, any subsequent contract modification or change order that individually or collectively exceed 3 percent of the original combined Base and Options value of a contract, such modification or change order also requires MCC approval.

Consulting Services

Procurement Procedure or Method	Decision	MCA Entity Director of Procurement	Governing Body of MCA Entity	MCC
Quality and Cost-Based Selection (QCBS)	Request for Expression of Interest	All	None	None
	Technical Evaluation Panel membership	All	None	None
	Short-List Report	All	None	Above USD500,000
	Request for Proposal	All	None	Above USD500,000
	Technical Evaluation Report	All	None	Above USD500,000
	Cancellation or Rejection of all proposals	All	None	All
	Combined Evaluation Report	All	None	Above USD500,000
	Proposed Contract	All	None  Exceptions:  (i) The value of the Proposed Contract is estimated at more than USD250,000 and 10 percent higher than the estimated budget in the approved Procurement Plan  (ii) The value of the Proposed Contract is USD250,000 or less and USD25,000 higher than the estimated budget in the approved Procurement Plan; or  (iii) The contract has a substantial change in the legal clauses or technical requirements from the terms or requirements stated in the bidding documents	None  Exception:  The contract has a substantial change in the legal clauses or technical requirements from the terms or requirements stated in the bidding documents.
	Record of Bid Challenges	All	All	All
Quality- Based Selection (QBS)	Request for Expression of Interest	All	None	None
	Technical Evaluation Panel membership	All	None	None
	Short-List Report	All	None	Above USD500,000
	Request for Proposal	All	None	Above USD500,000
	Cancellation or Rejection of all proposals	All	None	All
	Review Report with proposed award	All	None	Above USD500,000
	Proposed Contract	All	None  Exceptions:  (i) The value of the Proposed Contract is estimated at more than USD250,000 and 10 percent higher than the estimated budget in the approved Procurement Plan  (ii) the value of the Proposed Contract is USD250,000 or less and USD25,000 higher than the estimated budget in the approved Procurement Plan; or  (iii) the contract has a substantial change in the legal clauses or technical requirements from the terms or requirements stated in the bidding documents	None  Exception:  The contract has a substantial change in the legal clauses or technical requirements from the terms or requirements stated in the bidding documents.
	Record of Bid Challenges	All	All	All
	Fixed Budget Selection	Request for Expression of Interest	All	None
Technical Evaluation Panel membership		All	None	None
Short-List Report		All	None	Above USD500,000
Request for Proposal		All	None	Above USD500,000
Evaluation Report and proposed award		All	None	Above USD500,000
Cancellation or Rejection of all proposals		All	None	All
Proposed Contract		All	None  unless the contract has a substantial change in the legal clauses or technical requirements from the terms or requirements stated in the bidding documents.	None  unless the contract has a substantial change in the legal clauses or technical requirements from the terms or requirements stated in the bidding documents.
Record of Bid Challenges		All	All	All

Procurement Procedure or Method	Decision	MCA Entity Director of Procurement	Governing Body of MCA Entity	MCC
Least Cost Selection	Request for Expression of Interest	All	None	None
	Technical Evaluation Panel membership	All	None	None
	Short-List Report	All	None	Above USD500,000
	Request for Proposal	All	None	Above USD500,000
	Evaluation Report with Proposed Award	All	None	Above USD500,000
	Cancellation or Rejection of all proposals	All	None	All
	Proposed Contract	All	None Exceptions: (i) The value of the Proposed Contract is estimated at more than USD250,000 and 10 percent higher than the estimated budget in the approved Procurement Plan (ii) The value of the Proposed Contract is USD250,000 or less and USD25,000 higher than the estimated budget in the approved Procurement Plan; or (iii) The contract has a substantial change in the legal clauses or technical requirements from the terms or requirements stated in the bidding documents	None Exception: The contract has a substantial change in the legal clauses or technical requirements from the terms or requirements stated in the bidding documents.
Record of Bid Challenges	All	All	All	
Selection Based on Consultant's Qualifications	Request for Expression of Interest	All	None	None
	Technical Evaluation Panel membership	All	None	None
	Short-List Report	All	None	None
	Cancellation or Rejection of all proposals	All	None	All
	Review Report with proposed award	All	None	Above USD200,000
	Proposed Contract	All	None Exceptions: (i) The value of the Proposed Contract is estimated at more than USD250,000 and 10 percent higher than the estimated budget in the approved Procurement Plan (ii) The value of the Proposed Contract is USD250,000 or less and USD25,000 higher than the estimated budget in the approved Procurement Plan; or (iii) The contract has a substantial change in the legal clauses or technical requirements from the terms or requirements stated in the bidding documents	None Exception: The contract has a substantial change in the legal clauses or technical requirements from the terms or requirements stated in the bidding documents.
Record of Bid Challenges	All	All	All	
Sole Source Selection	Proposed Contract	All	None Exception: The value of the Proposed Contract is more than 10 percent higher than the estimated budget in the approved Procurement Plan	Above USD50,000
	Record of Bid Challenges	All	All	All
Individual Consultants	Technical Evaluation Panel	All	None	None
	Evaluation Report with proposed award	All	None	Above USD200,000
	Proposed Contract	All	None Exception: (i) The value of the Proposed Contract is estimated at more than USD250,000 and 10 percent higher than the estimated budget in the approved Procurement Plan; or (ii) The value of the Proposed Contract is USD250,000 or less and USD25,000 higher than the estimated budget in the approved Procurement Plan	
	Record of Bid Challenges	All	All	All

Procurement Procedure or Method	Decision	MCA Entity Director of Procurement	Governing Body of MCA Entity	MCC
All Procurement Actions	Contract modifications and change orders for contracts valued at up to USD250,000.	All	<p>None</p> <p>Exceptions:</p> <p>If an individual contract modification or change order:</p> <ul style="list-style-type: none"> <li>(i) Raises the value of a contract that did not require approval above an approval threshold</li> <li>(ii) extends the original contract duration by 25 percent or more.</li> <li>(iii) Increases the original contract value by USD25,000 or more; or</li> <li>(iv) Increases the original combined Base and Options value of a contract by 10 percent</li> </ul>	<p>None</p> <p>Exceptions<sup>15</sup>:</p> <p>If an individual contract modification or change order:</p> <ul style="list-style-type: none"> <li>(i) Raises the value of a contract that did not require approval above an approval threshold</li> <li>(ii) extends the original contract duration by 25 percent or more.</li> <li>(iii) Increases the original contract value by USD25,000 or more; or</li> <li>(iv) Increases the original combined Base and Options value of a contract by 10 percent. Once the 10 percent threshold for modifications or change orders has been reached for the combined Base and Options value of a contract, any subsequent contract modification or change order that individually or collectively exceeds 3 percent of the original combined Base and Options value of a contract, such modification or change order also requires MCC approval.</li> </ul>
	Contract modifications and change orders for contracts valued at more than USD250,000		<p>None</p> <p>Exceptions:</p> <p>If an individual contract modification or change order:</p> <ul style="list-style-type: none"> <li>(i) Raises a contract that did not require approval above an approval threshold</li> <li>(ii) Extends the original contract duration by 25 percent or more. Any subsequent contract modification or change order that individually or collectively exceed 10 percent of the new contract duration.</li> <li>(iii) Increases the original contract value by 10 percent or USD1,000,000 or more; or</li> <li>(iv) Increases the original combined Base and Options value of a contract by 10 percent or USD 1,000,000 or more</li> </ul>	<p>None</p> <p>Exceptions<sup>16</sup>:</p> <p>If an individual or collective contract modification or change order:</p> <ul style="list-style-type: none"> <li>(i) Raises the value of a contract that did not require approval above an approval threshold</li> <li>(ii) Extends the original contract duration by 25 percent or more. Any subsequent contract modification or change order that individually or collectively exceed 10 percent of the new contract duration.</li> <li>(iii) Increases the original contract value by 10 percent or USD1,000,000 or more</li> <li>(iv) Once the 10 percent contract (or USD1,000,000) threshold for modifications or change orders has been reached for a contract, any subsequent contract modification or change order that individually or collectively exceeds 3 percent of the original contract value also requires MCC approval. Or</li> <li>(v) Increases the original combined Base and Options value of a contract by 10 percent or USD 1,000,000 or more (whichever may apply). Once the 10 percent contract (or USD 1,000,000) threshold for modifications or change orders has been reached for the combined Base and Options value of a contract, any subsequent contract modification or change order that individually or collectively exceed 3 percent of the original combined Base and Options value of a contract, such modification or change order also requires MCC approval.</li> </ul>

<sup>15</sup> For exceptions where the contract modification goes beyond the program end date, this approval will apply only to the portion of the contract modification that is funded with MCC Funding.

<sup>16</sup> For exceptions where the contract modification goes beyond the program end date, this approval will not apply unless it refers to a closure expense according to the Program Closure Guidelines.



## ATTACHMENT B. GLOSSARY OF TERMS

**Bid Challenge System** or **BCS** has the meaning set forth in [Part 5](#).

**Blanket Purchase Agreement** or **BPA** has the meaning set forth in paragraph [P11.6](#).

**BOO** or **Build Own Operate** means a financing arrangement in which a developer (1) designs and builds a complete Project or facility, (2) operates the facility as a business for a specified period.

**BOOT** or **Build, Own, Operate, Transfer** means a financing arrangement in which a developer (1) designs and builds a complete Project or facility, (2) owns and operates the facility as a business for a specified period after which (3) transfers it to the government or partner at a previously agreed-upon or market-price.

**BOT** or **Build, Operate, Transfer** means a financing arrangement in which a developer (1) designs and builds a complete Project or facility, (2) operates the facility as a business for a specified period after which (3) transfers it to the government or partner at a previously agreed-upon or market-price.

**Contract Administration and Management Manual** or **CAMM** has the meaning set forth in paragraph [P12.4](#).

**Consultants' Qualifications Selection** or **CQS** has the meaning set forth in paragraph [P1.B.3.7](#).

**Contractors Past Performance Reporting System** or **CPPRS** has the meaning set forth in paragraph [P2.5.1](#).

**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.

**Compact End Date** is the last day of the Compact Term (as defined in the Compact). The Compact End Date for a Compact with a 5-year or lesser Compact Term will be the date that is the anniversary of the date of entry into force.

**Competitive Bidding** has the meaning set forth in [Part 1, Section 1A, II](#).

**Direct Contracting** has the meaning set forth in paragraphs [P1.A.3.5](#) and [3.6](#).

**Disbursement Request** means a request for disbursement of the proceeds of the Compact funding made in accordance with the terms of the Compact and related documents.

**Fiscal Agent** has the meaning set forth in paragraph [P1.A.3.8](#).

**Fixed Budget Selection** or **FBS** has the meaning set forth in paragraph [P1.B.3.5](#).

**Fixed-Price Contract** has the meaning set forth in paragraph [P11.1](#).

**Force Account** has the meaning set forth in paragraph [P1.A.3.7](#).

**General Procurement Notice (GPN)** has the meaning set forth in paragraph [P1.A.2.8](#).

**Guidelines** has the meaning set forth in Part 1, [Purpose and Scope](#).

**Indefinite Delivery and Indefinite Quantity Contract** or **IDIQ Contract** has the meaning set forth in paragraph [P11.5](#).

**Instructions to Consultants** or **ITC** has the meaning set forth in paragraph [P1.B.2.7](#).

**Interim Bid Challenge System** or **IBCS** has the meaning set forth in [Part 5](#).

**Least-Cost Selection** or **LCS** has the meaning set forth in paragraph [P1.B.3.6](#).

**Letter of Invitation** or **LOI** has the meaning set forth in paragraph [P1.B.2.7](#).

**Limited Bidding** has the meaning set forth in paragraph [P1.A.3.2](#).

**Material Change** has the meaning set forth in Part 2 subsection [Amending Procurement Plans](#).

**MCA Entity** or **Accountable 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** has the meaning set forth in Part 1. [Purpose and Scope](#).

**MCC Cost Principles** means *MCC's Cost Principles for Cost-Reimbursement Contracts under MCC-Financed Grants* and *Cost Principles for Government Affiliates*, both located on MCC's website at <https://www.mcc.gov/resources/doc/guidance-cost-principles-for-government-affiliates>

**MCC Program Procurement Principles** has the meaning set forth in paragraph [P1.A.1.2](#).

**Non-PPG-covered purchases** refer to the purchase of items that are needed by the MCA Entities to perform their day-to-day operations, including certain commodities, operational services, and utilities, etc. These items will be referred to as non-PPG-covered purchases as defined in the MCA Entities' Fiscal Accountability Plans (FAP).

**Eligibility Verification** has the meaning set forth in [Part 10](#).

**Percentage Contract** has the meaning set forth in paragraph [P11.4](#).

**Performance-Based Procurement** or **Output-Based Procurement** has the meaning set forth in paragraph [P1.A.3.11](#).

**Procurement Agent** has the meaning set forth in paragraph [P1.A.3.8](#).

**Procurement Director** means the officer of the MCA Entity responsible for the overall management of procurement activities of the MCA Entity.

**Procurement Implementation Plan** or **PIP** has the meaning set forth in [Part P2.2](#).

**Procurement Operations Manual** or **POM** has the meaning set forth in [Part P2.3](#).

**Procurement Performance Report** or **PPR** has the meaning set forth in [Part P2.4](#).

**Procurement Plan** has the meaning set forth in [Part P2.1](#).

**Projects** has the meaning set forth in Part 1, [Purpose and Scope](#).

**Proposed Contract** means a negotiated contract between the two parties and that will not have any subsequent substantial change in terms, conditions, or price after the MCC no-objection.

**Quality-Based Selection** or **QBS** has the meaning set forth in paragraphs [P1.B.3.2](#) through 3.4.

**Quality and Cost-Based Selection** or **QCBS** has the meaning set forth in [Sub-Section 1.B.II](#).

**Quality and Price Based Selection** or **QPBS** has the meaning set forth in paragraph [P1.A.2.80](#).

**Reimbursable Cost Contract** has the meaning set forth in paragraph [P11.3 Reimbursable Cost Contracts](#)

**Request for Expression of Interest** or **REOI** has the meaning set forth in paragraph [P1.B.2.6](#).

**Request for Proposals** or **RFP** has the meaning set forth in paragraph [P1.B.2.7](#).

**Shopping** has the meaning set forth in paragraph [P1.A.3.4](#).

**Sole Source Selection** has the meaning set forth in paragraph [P1.B.3.14](#) through 3.18.

**Specific Procurement Notice** or **SPN** has the meaning set forth in paragraph [P1.A.2.9](#).

**Standard Bidding Documents** or **SBDs** has the meaning set forth in [Part 3](#).

**Supplemental Agreement** means any agreement executed in connection with the Compact.

**Technical Evaluation Panel** or **TEP** has the meaning set forth in paragraph [P1.B.2.12](#).

**Terms of Reference** or **TOR** has the meaning set forth in paragraph [P1.B.2.2](#).

**Time-Based Contract** has the meaning set forth in paragraph [P11.2](#).

**Two-Stage Bidding** has the meaning set forth in paragraph [P1.A.2.6](#).

**United Nations Development Business Online** or **UNDB Online** has the meaning set forth in paragraph [P1.A.2.8.1](#).

**USD** means United States dollars.



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