Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations

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Submitted by:

Department of Compact Implementation

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Table of Contents

1. PURPOSE 3
2. SCOPE 3
3. AUTHORITIES 3
4. KEY DEFINITIONS 4
5. POLICIES 5
6. EFFECTIVE DATE 8

1. PURPOSE

Good governance is a keystone of poverty reduction. A major element of good governance is the control of corruption. For that reason, controlling corruption has been a key indicator for the Millennium Challenge Corporation (MCC) in selecting countries for eligibility for Compacts. Fraud and corruption in MCC funded Threshold Programs and Compacts are particularly harmful in that they undermine the core principle on which MCC is built.

MCC's success in fulfilling its mission of poverty reduction through economic growth requires effective assessment and management of risk through a comprehensive approach to prevent, detect and remediate instances of fraud and corruption in MCC-financed activities.

2. SCOPE

This policy outlines principles to which MCC will adhere with respect to preventing, detecting and remediating the risk of fraud and corruption in the threshold program, in compact development and in compact implementation. Allegations against MCC employees and direct MCC contractors are not covered by this policy and instead are handled pursuant to applicable federal laws and federal regulations.

3. AUTHORITIES

MCC's operations are governed by Acts of Congress and MCC's own Policies and Procedures. MCC has adopted the various policies and guidelines listed below to comply with its Congressional mandate and to ensure basic accountability from Accountable Entities.

3.1 Acts

a. Millennium Challenge Act of 2003 (P.L. No. 108- 199, codified at 22 U.S.C. 7701, et seq.)

b. Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. 78a, et seq.)

3.2 Related MCC Policies and Procedures

a. *MCC Program Procurement Guidelines* creates safeguards in an effort to ensure that all MCC-funded contracts are subject to open, fair and competitive procurement processes. The Guidelines have been patterned after World Bank Procurement Guidelines.

b. *Cost Principles for Government Affiliates Involved in Compact Implementation* requires that all costs incurred by the Accountable Entity in the implementation of a particular compact be allowable, allocable and reasonable.

c. *Guidelines for Accountable Entities and Implementation Structures* dictate certain rules that need to be followed for the corporate governance of all MCC-funded Accountable Entities. The Guidelines cover topics such as Accountable Entity board structure, voting and membership; requirements for transparency of board decisions; parameters to determine which documents and

agreements require board approval; the structure and composition of management units; remuneration of management unit and other key staff.

d. *Character Risk Due Diligence: Screening of MCA Personnel* sets forth procedures for conducting security screenings on key Accountable Entity staff and board members.

e. *General Provisions Annex* contains certain contractual provisions regarding fraud and corruption that the Accountable Entity is required to include in each of its contracts.

f. *Procedures for Responding to Inspector General Audits* includes provisions implementing MCC's responsibility to protect the rights of employees who contact the Inspector General to report an allegation of fraud, waste or abuse.

4. KEY DEFINITIONS

Accountable Entity – the local unit that implements each country's MCC Compact.

coercive practice - impairing or harming or threatening to impair or harm, directly or indirectly, persons or their property, to influence their participation in a procurement process, or affect the execution of a contract.

collusive practice - a scheme or arrangement between two or more parties, with or without the knowledge of the Accountable Entity, designed to establish prices at artificial, noncompetitive levels or to otherwise deprive the Accountable Entity of the benefits of free and open competition.

corrupt practice - the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of a public official (including Accountable Entity, host government and MCC staff, and employees of other organizations taking or reviewing selection decisions) in the selection process or in contract execution, or the making of any payment to any third party, in connection with or in furtherance of a contract, in violation of (a) the Foreign Corrupt Practices Act (FCPA), or any other actions taken that otherwise would be in violation of the FCPA if the FCPA were applicable, or (b) any applicable law in the Accountable Entity's country.

fraud and corruption – collectively, any corrupt practice, fraudulent practice, collusive practice, coercive practice, obstructive practice, or prohibited practice, as each is defined herein. Examples include collusion on bid prices, favoritism in procurement, manipulation of project implementation strategies for fraudulent purposes, and lack of performance on contracts.

fraudulent practice - any act or omission, including any misrepresentation, in order to influence (or attempt to influence) a selection process or the execution of a contract, to obtain a financial or other benefit, or avoid (or attempt to avoid) an obligation.

obstructive practice - (a) any act that results in the destroying, falsifying, altering or concealing of evidence or making false statements to investigators in order to impede an investigation into allegations of a corrupt, fraudulent, collusive, coercive, or prohibited practice; and threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (b) acts intended to impede the exercise of the inspection and audit rights of MCC provided under the Compact.

prohibited practice - any action that violates Section E (Compliance with Anti-Corruption Legislation), Section F (Compliance with Anti-Money Laundering Legislation) or Section G (Compliance with Terrorist Financing Statutes and Other Restrictions) of the "General Provisions Annex" found on the MCC website at <www.mcc.gov/guidance/compact/general_provisions.pdf>.

5. POLICIES

5.1. Guiding Principles for Preventing, Detecting and Remediating Fraud and Corruption

MCC adheres to the following key principles in its effort to prevent, detect and remediate fraud and corruption:

- Fraud and corruption diminish benefits to intended recipients and impede economic growth and poverty reduction.
- MCC will develop and follow a comprehensive and consistent approach to preventing, detecting and remediating incidents of fraud and corruption in its programs. MCC recognizes that the risks of fraud and corruption also may occur outside the procurement context and its approach to prevention, detection and remediation will address these risks.
- MCC will help Accountable Entities (including boards thereof and implementing entities) to do the same.
- MCC will promote the highest standards of integrity and ethical behavior in its staff and that of its country counterparts.
- MCC, through its implementing partners, will require that companies and entities receiving MCC funds have processes in place to address fraud and corruption.
- MCC will draw upon diagnostic assessments of the risks of fraud and corruption in potential partner countries from the partner government, the private sector, non-governmental organizations, and other bilateral and multilateral donors.
- MCC will adopt the lessons learned and best practices from other institutions, donors, governments and civil society to the greatest extent possible.
- MCC will share information about fraud and corruption with governments in partner countries, other donors, and with civil society consistent with its responsibilities as a U.S. government agency.
- The U.S. government agency administering a threshold program has the initial responsibility to safeguard against fraud and corruption in the program that it administers, but MCC retains ultimate responsibility to ensure that MCC funds are used for their intended purposes.
- In compact development and implementation, prevention of fraud and corruption is the direct responsibility of the host country or the Accountable Entity, as the case may be. MCC is responsible for taking all reasonable measures outlined in this policy to ensure that the host country or Accountable Entity is meeting these duties effectively, including, but not limited to, remediation measures.

- MCC management will demonstrate leadership under this policy by clearly communicating roles and responsibilities, providing adequate resources and supporting training on this policy, continuous learning and evaluation (including for managers) as may be necessary to motivate and empower MCC staff to implement this policy effectively.
- Accountable Entities, through their employees, have a fiduciary responsibility to guard the resources entrusted to them. This responsibility is not limited in any way by an employee's function or location, and as such, all are expected to take reasonable measures to prevent, detect and remediate fraud and corruption and to ensure that MCC funding is used consistent with its purpose.

5.2. Actions

MCC's existing policies and current practices related to fiscal accountability, technical due diligence, monitoring and evaluation and the structure of legal agreements governing its grants provide for systems, controls and transparency that contribute to its ability to exercise its fiduciary responsibilities. The measures MCC will undertake to enhance its capacity to prevent, detect and remediate instances of fraud and corruption include, but are not limited to, the following:

5.2.1. Prevention and Detection

- ***Tools and Techniques to Prevent Fraud and Corruption***, to provide guidance to MCC and Accountable Entity staff by creating and maintaining a package of material (a "toolkit") containing basic information and suggested methods and strategies staff may use in preventing fraud and corruption.

- ***Compact-Specific Fraud and Corruption Risk Assessments,*** to identify specific risks of fraud and corruption which could affect the implementation of a particular Compact, Project or Activity by the Accountable Entity due to unique project, institutional and country contexts. These assessments will be used to design and structure relevant aspects of the compact and related agreements, and, in implementation, to establish an Accountable Entity action plan to reasonably address identified risks.

- ***Accountable Entity Action Plans***, to articulate how the Accountable Entity can supplement MCC-mandated controls and introduce new methods to prevent fraud and corruption specific to its operating environment. These Action Plans will be based on the findings of the compact-specific fraud and corruption risk assessments and will be drafted and implemented by the applicable Accountable Entity. MCC will approve the Action Plans, monitor their implementation and refine its oversight strategy in relation to the Action Plans, when necessary.

- ***Formalizing Lines of Internal MCC Reporting***, to ensure that allegations are adequately and consistently addressed internally by MCC staff and referred to the Office of the Inspector General for investigation.

5.2.2. Remediation

- ***Use of administrative interventions*****,** in the event that fraud and corruption are detected, may include:

  a) Declaration of misprocurements for procurements over which MCC has an oversight role;
  b) Heightened oversight of particular transactions determined to be most at-risk, by assigning MCC staff or procurement of MCC consulting services for outside expertise;
  c) In consultation with the Office of the Inspector General, performance of additional audits, or focusing existing audit requirements on areas of concern; and
  d) Imposition of a modification of thresholds for MCC approvals at stages of the contracting or contract administration process.

- ***Sanctions,*** in the event that fraud and corruption are detected, may include:

  a) Prohibition from further participation in any MCC funded programs if contractors and third parties (excluding the Accountable Entity) commits the fraud and/or corruption;
  b) Administrative measures such as temporary or permanent ineligibility, removal from competition in a procurement activity, assignment of an adverse performance rating, withholding of MCC disbursements for payments on affected contracts, and other similar actions;
  c) In the event an Accountable Entity employee commits an act of fraud or corruption, recommendation to the Accountable Entity or other appropriate government official to take administrative action; and
  d) Termination of the Threshold program or compact if the government or the Accountable Entity commits the fraud and/or corruption.

MCC does not impose legal sanctions such as fines, imprisonment, or payment of damages, which may be imposed by the appropriate state, federal or local authorities.

5.2.3. Further Guidance

Details regarding the further development and implementation of the measures set forth in this Section 5.2 will be set forth in separate guidance for implementation of this policy. MCC recognizes that effective risk management will require flexible, responsive, continuous learning and adaptation of its practices, incentives, and skills. As a result,

management will (i) update as relevant the specific objectives of the above-listed measures; and (ii) introduce additional measures as may become relevant.

6. EFFECTIVE DATE

6.1. This policy shall become effective on the day it is approved by the Chief Executive Officer, and supersedes all previous versions.