

Information on Procurements Related to Large Works Contracts

Introduction:

The procurement of goods, works or services funded under Millennium Challenge Corporation (MCC) compacts utilizes open, fair, transparent, and competitive procedures. To achieve this, MCC has developed procurement policies based on internationally recognized standards for all Millennium Challenge Account (MCA) procurements. These international standards permit consistency across MCC-funded procurements and provide efficiency, both for those countries implementing projects and for bidders.

General Background:

MCC enters into compacts with the government of partner countries. Each compact country establishes a local entity that is responsible for implementation of the entire compact program. The nature of this entity differs in legal form and regulation by country. In this document, this entity is referred to as the “MCA entity.”

How does MCC reach out to companies and ensure business opportunities can be accessed in MCC countries?

MCC-funded projects offer potential business opportunities for American, international, and local companies in all countries where MCC has entered into compacts. Procurements are publically advertised on the websites of each MCA entity, as well as on MCC’s website (www.mcc.gov) and other publically available websites. Individual MCA entities host events to market their respective projects. In addition, MCC conducts outreach programs in the United States and internationally to ensure that the private sector is aware of upcoming business opportunities.

The following questions relate to large works bids/contracts:

Does MCC conduct construction procurements in its partner countries?

It is the MCA entities that conduct procurements for the projects that have been approved and funded as part of their MCC compact, and they do so in accordance with MCC Program Procurement Guidelines (PPG). These guidelines are available at, among other places, www.mcc.gov. The method for conducting the procurement is explained in the terms of the bid documents that are developed for each procurement and is based on the MCC PPGs. The bid documents for each procurement are furnished to each firm that requests them.

For large construction works, MCC requires that all MCA entities utilize standard bidding documents developed based on the FIDIC form of contract that has been used world-wide for over fifty years. MCC has added appropriate provisions to the standard FIDIC large works contract to ensure compliance with MCC guidelines for eligibility, environmental, health and safety, and anticorruption initiatives.

What are the various factors used in assessing bids?

The terms of the Invitation for Bids (IFB) list the criteria for evaluation and qualification. These factors include:

1. Eligibility regarding conflicts of interest, which involves a determination that the bidder is in compliance with US Government requirements for country of origin, and is not otherwise ineligible after a review of the World Bank and US Government sources. See further discussion below in the question related to a bidder's past performance.
2. Adequacy of Technical Offer with Works Requirements, meaning that the contractor's bid is examined to ensure that the contractor has presented a bid that complies with the technical specifications and engineering drawings, and with the requirement to comply with the environmental, health, and safety policies.
3. Financial resources, to ensure the bidder's ability to complete the works.
4. Key Personnel, to assess their qualifications to perform the work.
5. Equipment, to ensure technical compliance with the key equipment in the schedule.
6. Responsiveness to the IFB.
7. Price, which is evaluated against other bidders and benchmarked against market-reasonableness.

Are the factors used in assessing bids weighted equally?

There is no weight assigned to any factor. The bidder must pass each factor in order to receive an award.

Is the lowest bid always accepted as the winning bid?

No, the lowest bid is not always accepted as the winning bid because price is only one consideration in the assessment of all bids. Assessment of bids is undertaken in two stages. First, bids are evaluated for

responsiveness and technical factors as discussed above. Only if the bidder meets all of the exacting evaluation requirements does the lowest price become the deciding factor. Prices are also evaluated for market-reasonableness, as explained in factor (7) above.

How is project construction monitored to ensure specific design, quality and progress are adhered to during construction?

Following the award of a construction contract, the MCA entity retains the services of an independent construction supervision firm to assist it in monitoring the quality, cost, compliance, and progress of the works in accordance with the terms of the contract. Generally, this means that a third-party firm oversees on a daily basis the constructions works being performed under the contract. In addition, both MCC staff and an independent engineer answerable to MCC conduct periodic oversight of the works.

What level of review is conducted on a bidder's past performance?

The MCA entity conducts three levels of review of past performance in accordance with MCC Program Procurement Guidelines and Guidance Papers (as listed in the bidding documents and on MCC's website).

1. There is an eligibility check of seven websites to ensure that all contractors are eligible for an award. As stated in MCC's guidance on Excluded Parties Verification Procedures:
 - ★ Excluded Parties List System (EPLS)
 - ★ World Bank Debarred List
 - ★ US Treasury, Office of Foreign Assets Control, Specially Designated Nationals List (SDN)
 - ★ US Department of Commerce, Bureau of Industry and Security, Denied Persons List (DPL)
 - ★ US Department of Commerce, Bureau of Industry and Security, The Entity List
 - ★ US State Department, Directorate of Defense Trade Controls, Debarred Parties List
 - ★ US State Department, Terrorist Exclusion List

The MCA Entity must recognize as ineligible any firm found on any of the lists.

2. There is a review of past performance in accordance with the MCC guidance on "Reporting and Considering Past Performance in MCA Entity Program Procurements". Under this procedure, MCC maintains a database of past performance of MCA contractors; this database is searched at the pre-qualification phase and again at the evaluation of the bids. The results are provided to the evaluation panel for their consideration.
3. The standard bidding documents require bidders to submit references, and the MCA entity retains the right to check any and all references during the procurement process. Information obtained in the reference checks is considered by the evaluation panel.

Do MCC-required procurement procedures take into account societal benefits regarding which bids present a better “value” for the country?

Not only do procurement procedures take into account societal benefits, but the Compact procedures take these into account as well. MCC and the MCA entities conduct a rigorous, comprehensive ex-ante economic analysis to assess economic value and contribution, and consider the full range of societal benefits for the projects. Program procurements are designed and structured to achieve those benefits. Specific quantified targets, goals and objectives are specified up front and monitored during implementation of the compact program.

Is the use of local labor required for work on MCC-funded projects and is it weighted in the assessment of competing bids?

The MCC Program Procurement Guidelines do not provide for any preference in bids for the use of local labor and there are no specified requirements related solely to local labor. As such, the use of local labor is not required nor is it an evaluation criterion for work on MCC-funded projects. The standard contract requires contractors to comply with all relevant labor laws including any required visas or work permits, and to pay prevailing wages and offer working conditions as required by the specific country’s policies and industry where the work is carried out. However, MCC experience has shown that local labor is often used to perform the contracts.

Do MCC-funded procurements in MCA countries include preferences or requirements for US materials/technology/equipment/labor?

When MCC enters into a compact, it is the MCA entity that is responsible, on behalf of the recipient government, for implementing the projects within the compact, including selecting the contractors and suppliers, and awarding the contracts. As such, the contracts are performed in the respective individual compact countries. In keeping with the best international practices, the procurements are generally open to international competition, and there are no preferences or requirements for US materials, technology, equipment, or labor. There are also no preferences for local content. This practice is also in keeping with the Buy America Act and the Small Business Act that exempt contracts awarded and performed outside of the United States.

Do MCC-funded procurements have requirements for local materials, technology, equipment or labor?

Compact procurements are generally conducted by the MCA entity, as discussed in the preceding answer. To foster full competition, the MCA entity’s procurements are open to international competition, and there are no preferences, or requirements for local materials, technology, equipment or labor. MCC’s Program Procurement Guidelines stipulate that the standards and specifications of MCA entity procurements should promote the broadest competition, while ensuring critical performance. As much as possible, the MCA entity will specify internationally-accepted standards for equipment, materials and workmanship, such as those issued by the International Standards Organization.

What restrictions, if any, must bidders comply with regarding bringing in foreign laborers or foreign materials, services or equipment?

Contractors may bring into the country any foreign personnel who are necessary to perform the contract, to the extent allowed by the applicable laws of the specific country, and subject to sanction or restriction by law or policy of the United States. In doing so, it is the contractor's responsibility to ensure that these personnel are provided with the required residence visas and work permits and obtain any local, state, national, or government permissions required, although in some cases the MCA entity may assist in this effort. The contractor is also responsible for the return of foreign personnel to the place where they were recruited or to their domicile.

Additionally, no company or its associates or personnel, nor any materials, services or equipment supplied under the contract may have their origin in any country that is subject to sanction or restriction by applicable law or policy of the United States. The countries subject to these sanctions and restrictions are subject to change from time to time, and it is necessary to follow the process outlined in the MCC Program Procurement "Guidance on Excluded Parties Verification Procedures in MCA Entity Program Procurements" which is available on MCC's website to determine the current listing of sanctioned and restricted countries.

In addition, persons and entities not otherwise found to be ineligible through this process, may, nonetheless, be excluded pursuant to applicable law in the country of the MCA entity, as the result of certain actions taken by the United Nations or other MCC guidance that may be in effect from time to time and available on MCC's website.

Qualifications and eligibility for bidders and materials are specifically and more fully discussed in the bidding documents issued by an MCA entity for a particular procurement.

What is MCC's oversight of or requirements on labor rates and treatment of laborers? How are these considered in the bid evaluation process?

Labor rates are part of the contractor's bid and are reviewed during the bid evaluation process.

All works contractors must agree to comply with the terms of the contract that contain provisions protecting the laborers' health and safety, and compliance with the country's relevant labor laws, including paying the prevailing wages and offering working conditions as required by the country's policies and the industry where the work is carried out. The provisions regarding laborers are based on international standards, as found in the FIDIC contract, and strengthened by additional MCC-required provisions on health and safety.

Regarding oversight of labor rates, the standard works contracts require the contractor to keep complete and accurate records of the employment of labor at the site, including hours worked and wages paid to all

workers. The records are summarized on a monthly basis and submitted to the supervising engineer, and are available for inspection by auditors.

Regarding oversight of treatment of laborers, for works contracts, the MCA entity generally retains an independent supervision firm that oversees on a daily basis the work being performed, which includes health, safety and environmental conditions. Additionally, MCC staff and an independent engineer answerable to MCC also review site conditions as deemed necessary.

What are the requirements for bidders that are government-subsidized and/or government-owned?

Government-owned or government-subsidized enterprise must comply with all requirements in the bidding documents. There are no additional requirements. The one exception is that a government-owned enterprise in the country of the MCA entity may participate only if the enterprise can establish that it (i) is legally and financially autonomous, (ii) operates under commercial law, and (iii) is not a dependent agency of the country of MCA entity. These requirements apply unless the procurement is for a works contract that is to be conducted by a “force account” unit of the government in compliance with MCC’s Program Procurement Guidelines.

What assessment, if any, is done to determine how the winning contractor will add value to the local supply chain or the local economy?

Monitoring and evaluation of MCC-funded projects is a fundamental part of MCC’s compacts, and each compact program has a plan to measure the performance at the goal, objective, outcome and output levels of compact funded projects and activities. Monitoring and evaluation is performed on all projects by the MCA entity, with oversight by MCC. In some countries, an objective of the program may be to strengthen the local supply chain, so for those projects the supply chain would be measured.

What is the process for a bidder to challenge the results of procurement?

The process for a bidder to file a challenge is defined in the bid challenge system of the MCA entity conducting the procurement, and it is specified in the bid documents. Any bidder has the right to complaint and appeal, but it must be filed in accordance with the applicable bid challenge system.

Each MCA entity establishes its own a bid challenge system; the organization, rules and procedures of such bid challenge system are subject to MCC approval prior to finalization thereof. The bid challenge system must include a first level of review by the MCA entity, with the opportunity for an appeal to an impartial and independent review body. The review body must follow transparent written procedures and must issue a timely written decision on any bid challenge that is timely and properly filed.

In the event a procurement is conducted prior to the establishment of an MCA's bid challenge system, any challenges are handled in accordance with an interim bid challenge system, which is described on MCC's public website under the "Guidance on Bid Challenge Systems," as well as in the applicable bid documents.