



# **EQUIPE TECHNIQUE DE FORMULATION DU COMPACT RÉGIONAL**

## **INTERIM BID CHALLENGE SYSTEM**

**Revised Date: April 06, 2023**

## **BACKGROUND**

The United States of America, acting through the Millennium Challenge Corporation (“MCC”), and the Government of Benin (the “Government”), signed on **December 14, 2022** a Compact for a program pursuant to which MCC agreed to provide a grant of up to **two hundred two million dollars (\$ 202,000,000)** (« MCC Funds ») to the Government, as well as a **fifteen million one hundred fifty thousand (\$15,150,000)** contribution from the Government, to reduce poverty through economic growth in Benin. The Government has designated the Compact Development Team (“**CDT**”), to oversee and implement the compact program in accordance with the terms of the Compact until the establishment of MCA-Bénin Régional. The Compact requires the Government (including any designee) to ensure that it procures all goods, works and services to implement the compact program in accordance with the MCC Program Procurement Guidelines (“**PPG**”). The PPG further require that **CDT** establish and publish a Bid Challenge System (“**BCS**”) that provides Bidders on **CDT** procurements with the ability to challenge and seek review of **CDT** procurement actions and decisions.

To comply with these requirements and until the period before the BCS has been adopted and becomes operational, **CDT** has established the rules and procedures set forth in this document, also referred to as its interim BCS (“**IBCS**”), to govern the review of all challenged **CDT** procurement actions and decisions, and which will be incorporated in all solicitation documents distributed to Potential Bidders.

Capitalized terms used in this BCS have the meanings set forth in the Definitions section.

## **Protests**

The **CDT** shall consider a Protest from any Bidder or Potential Bidder that claims to have suffered or that it may suffer loss or injury due to a breach of a duty by the **CDT** in the conduct of this procurement. The IBCS is not intended to examine or review the implementation or conduct of any contract once awarded. A Protest shall:

- (a) Identify the procurement out of which the bid challenge arises;
- (b) Describe the nature of the bid challenge and supporting facts, including the bidding documents or portion of the procurement process that was allegedly in non-compliance;
- (c) Identify the specific provision(s), as set forth in the PPG or the bidding documents, which were allegedly breached;
- (d) Indicate the requested remedy or relief, which may include (1) compensation for any reasonable and verifiable cost of bid preparation and Appeal, subject to a price

reasonableness analysis in accordance with the PPG and excluding attorney fees or lost profits; (2) revision of the procurement proceedings to conform to the applicable guidelines; (3) termination of the procurement; or (4) order a new procurement;

(e) Explain why the bid challenge was timely; and

(f) Include the name, address, telephone and facsimile numbers, as well as the email address of the Challenger.

The English language will be used for all documents Filed or provided in accordance with this IBCS.

Any Bidder that claims to have suffered or that it may suffer loss or injury because of a Procurement Action may File a Protest, except that: (a) sub-contractors, sub-consultants and members of the general public are not permitted to File a Protest; (b) a Protest cannot be used to cure a deficiency in the Challenger's bid or proposal; and (c) a Protest cannot be used to allege fraud, corruption or intent of wrong doing in the procurement process, which allegation must be processed in accordance with MCC's Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations, a copy of which is available on MCC's website ([www.mcc.gov](http://www.mcc.gov)).

All notices, documents filed, and other communications hereunder will be in writing, and may be sent by hand delivery, mail (if mailed by registered or certified mail, return receipt requested, postage prepaid commercial carrier, facsimile transmission, or electronic mail).

All notices, documents filed, and other communications hereunder must be addressed to the physical, facsimile, or electronic address provided by the addressee under this IBCS or the relevant solicitation documents. The following address will be used for the Secretariat (unless such other address is indicated by the Secretariat through the **CDT** website with specific reference to this IBCS):

The Compact Development Team ("CDT"), Regional Compact – Benin  
Attention: The Secretariat of the IBCS

Copy to: National Coordinator

Copy to: Interim Finance and Administration Director

Copy to: Interim Procurement Director

Subject: Bid Challenge

Address: Bureau 416 du Cabinet du Ministère du Développement et de la Coordination de l'Action Gouvernemental

Telephone Number: +229 58 58 18 18

Email address: [recours@ucfbenin.bj](mailto:recours@ucfbenin.bj)

The following Procurement Actions may not be the subject of a Protest:

- (i) the selection of a method of procurement (e.g., QCBS, QBS, etc.);
- (ii) the selection of the type of procurement (e.g., goods, works, non-consultant services, or consultant services); and
- (iii) the decision by **CDT** to reject all bids, proposals, or quotations; and
- (iv) scores assigned by the technical evaluation panel, unless the determination of such scores is alleged to have been arbitrary or capricious or characterized by an abuse of discretion.

Bidders are strongly advised to request a Debriefing before initiating a formal Protest by submitting a written request for Debriefing to **CDT** within two (2) Business Days after receipt of the notice of intent of award, notice of pre-qualification/shortlisting results, or (in the case of a two-stage selection process) notice of the results of the first stage. **CDT** shall provide a written explanation of why the Bidder was not selected within two (2) Business Days of receiving the request for Debriefing. Such a request is not a bid challenge.

The Secretariat shall no later than 5:00 p.m. (local time at **CDT** location) on the first Business Day after the date that a Protest is Filed:

- (a) Send a Notice of the Filing of the Protest; and
- (b) Send to the [Procurement Agent or **CDT** Procurement Director, as applicable], and all Bidders who submitted bids for the Challenged Procurement a copy of such Notice and

instructions (if any), and if the automatic suspension of the Challenged Procurement was lifted by the Level 1 Authority prior to such Business Day, notice thereof. A copy of the Protest itself shall also be provided to the [Procurement Agent or **CDT** Procurement Director, as applicable].

A Protest shall be submitted to **CDT**, in writing, within five (5) Business Days of the date of: 1. the issuance of the original bidding document, 2. the modification to the original bidding document, or 3. when the Bidder learned or should have learned of the results of the pre-qualification or short listing, technical evaluation or other decision or action including but not limited to the written explanation giving rise to the challenge.

Upon the Filing of a Protest, the Challenged Procurement will be automatically suspended until a final decision with respect to the Protest is issued, unless the Level 1 Authority lifts the suspension after determining that:

- (a) the Protest does not clearly show that the Challenger will suffer irreparable harm if the Challenged Procurement is not suspended;
- (b) the claim is frivolous;
- (c) **CDT** or Bidders other than the Challenger may sustain disproportionately greater harm by the suspension, compared to the harm to be possibly sustained by the Challenger;
- (d) the suspension of the Challenged Procurement will be detrimental to public interest; or
- (e) there are urgent or compelling reasons not to suspend the Challenged Procurement, including potential harm to **CDT**.

For the avoidance of doubt, any Protest that was not Filed in accordance with the procedures under Bid Challenges (a-f) or Appeals (a-e) and in a timely manner and that was rejected as a result of such failure, will not result in any suspension of the relevant Procurement Action.

For a Protest to prevail, a Challenger must prove by clear and convincing evidence that: (a) the Procurement Action (i) violates the Procurement Rules; or (ii) is arbitrary or capricious or

characterized by an abuse of discretion; and (b) the Challenger has suffered or will suffer loss or injury because of the Procurement Action.

**CDT** shall, within fifteen (15) Business Days after submission of the Protest, issue a written decision to the Challenger stating the reasons for the decision and, if the bid challenge is upheld in whole or in part, indicating the corrective measures that are to be taken. **CDT** must submit a report of the handling and disposition of any bid challenge to MCC. The report must be submitted to MCC (a) if there is no Appeal, within 3 days after the deadline for Filing an Appeal.

### **Appeals**

In certain cases, a Bidder or potential Bidder may seek review by MCC after it has exhausted all remedies with **CDT**. MCC's review will be limited to claims that (a) **CDT** failed to consider its Protest, (b) **CDT** failed to issue a written decision on the Protest within the time specified in this system, or (c) **CDT** violated the procedures set out in the solicitation documents. The appeal to MCC must be received in writing (may be in electronic form) within five (5) Business Days of the date the Bidder or Potential Bidder learned or should have learned of an adverse decision by **CDT**. MCC will issue a final decision within (15) Business Days of the submission of the Appeal.

A bid Appeal shall:

- a. Identify the procurement out of which the bid challenge arises;
- b. Describe the nature of the Appeal and supporting facts, including full correspondence and decision of **CDT**;
- c. Indicate the requested remedy or relief, which may include (1) compensation for any reasonable and verifiable cost of bid preparation and Appeal, subject to a price reasonableness analysis in accordance with the PPG and excluding attorney fees or lost profits; (2) revision of the Procurement Action to conform to the PPG; (3) termination of the procurement; or (4) order a new procurement;
- d. Explain why the Appeal is timely; and
- e. Include the name, address, telephone and facsimile numbers, as well as the email address of the Challenger.

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The Appeal should be addressed to:

Millennium Challenge Corporation  
Attention: Vice President, Department of Compact Operations  
(with a copy to the Vice President and General Counsel)

1099 14th Street NW  
Suite 700  
Washington, DC 20005-3550

United States of America  
Fax: (202) 521-3700  
Email: [VPOperations@mcc.gov](mailto:VPOperations@mcc.gov) (Vice President for Compact Operations)  
[VPGeneralCounsel@mcc.gov](mailto:VPGeneralCounsel@mcc.gov) (Vice President and General Counsel)

## **Definitions**

**Appeal:** a challenge to a Level 1 Authority decision and request for review of that decision by the Millennium Challenge Corporation.

**Bidder:** any consultant, contractor or supplier that (i) participates in an **CDT** procurement process to provide goods, works or services in furtherance of the Compact or (ii) would have participated in an **CDT** procurement process to provide goods, works or services in furtherance of the Compact but for an alleged mistake or violation of **CDT** in the application of the Procurement Rules.

**Business Day:** means any day in **Bénin** that is not a (i) public holiday, (ii) weekend, or (iii) day when work is suspended by public authorities due to natural calamities.

**Challenged Procurement:** the procurement out of which a Protest arises.

**Challenger:** a Bidder who Files a Protest.

**Compact:** the proposed Millennium Challenge Compact between the Republic of **Bénin** and the United States of America, acting through MCC, as the same may be amended from time to time.

**Debriefing:** A mechanism by which Bidders have an opportunity to meet or discuss with **CDT** to ascertain the grounds on which its bid was not selected.

**Filed or Filing:** means the receipt, either by mail services or other delivery services (fax and email), of any document by the addressee before the close of its Business Day.

**Interim Bid Challenge System (IBCS):** this Interim bid challenge system and the rules and procedures set forth herein.

**Level 1 Authority:** **CDT** National Coordinator. Each Protest decision will be issued by **CDT** National Coordinator (in this capacity, the “**Level 1 Authority**”), and will be decided in consultation with **CDT** Procurement Director and Legal Counsel **and the Procurement Agent** and such other technical experts as National Coordinator deems appropriate.

**Equipe Technique de Formulation du Compact Régional:** the Government has designated the Equipe Technique de Formulation du Compact Régional Bénin-Niger.

**MCC:** Millennium Challenge Corporation.

**Notice:** means a written communication sent to participating Bidders when a Protest is received by the MCA Entity. The Notice shall contain the nature of the Protest, the name of the Challenger and if applicable, the issuance of any written instruction by the Level 1 Authority regarding the suspension of the Challenged Procurement.

**Potential Bidder:** the Bidders who would have participated in the solicitation process but for an alleged mistake of **CDT**.

**PPG:** the MCC Program Procurement Guidelines, as the same may be amended from time to time

**Procurement Action:** means any action or decision by **CDT** relating to **CDT** process of procuring goods, works, or services in furtherance of the Compact.



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***Procurement Agent:*** means the natural or legal person engaged by ***CDT*** as procurement agent in accordance with the Compact.

***Procurement Rules:*** the PPG, or the solicitation documents applicable to the challenged Procurement Action, or both.

***Protest:*** the initial challenge to a Procurement Action and request that such Procurement Action be reviewed in accordance with this IBCS.

***Secretariat:*** ***CDT*** personnel designated by ***CDT Managing or National Coordinator, as appropriate*** to act as the secretariat for proceedings under this IBCS.

**Annex A**

**Form of Protest**

<b>Name:</b>		
<b>Choose one:</b> <input type="checkbox"/> Bidder <input type="checkbox"/> Potential Bidder		
<b>(For legal persons only) Country under whose laws Challenger was organized:</b>		
<b>Postal address for Protest purposes:</b>		
<b>Email address for Protest purposes:</b>	<b>Telephone number for Protest purposes:</b>	<b>Fax number for Protest purposes:</b>
<b>Name of authorized representative for the Protest (if any):</b>		
<b>Signature of Challenger or authorized representative:</b>		
<b>Name:</b>		
<b>Number:</b>		
<b>Date when Challenger became aware of Procurement Action:</b>	<b>Date of Filing of Protest:</b>	
<b>Description of Procurement Action:</b>		
<b>Procurement Rules provisions violated by Procurement Action:</b>		
<b>Explanation of reason why Procurement Action constitutes a violation of the Procurement Rules provisions:</b>		

<b>Explanation of reason why Challenger has been harmed by Procurement Action:</b>
<b>If Challenger requests suspension of the Challenged Procurement, explanation of reason why Challenger will suffer irreparable harm if the Challenged Procurement is not suspended:</b>
<b>Description of relief sought:</b>
<b>Explanation of reason why Challenger is entitled to relief sought:</b>

**Instructions:**

1. Please use additional sheets for the required information if necessary.
2. Please attach copies of the relevant documents if available.

## Form of Comment to the Protest

<b>Name:</b>		
<b>(For legal persons only) Country under whose laws Interested Party was organized:</b>		
<b>Postal address for Protest purposes:</b>		
<b>Email address for Protest purposes:</b>	<b>Telephone number for Protest purposes:</b>	<b>Fax number for Protest purposes:</b>
<b>Name of authorized representative for the Interested Party (if any):</b>		
<b>Signature of Interested Party or authorized representative:</b>		
<b>Name:</b>		
<b>Number:</b>		
<b>Date when Interested Party received a copy of the Protest:</b>	<b>Date of Filing of Comment:</b>	
<b>Explanation of why the Interested Party believes that the Protest should/should not be upheld:</b>		
<b>If Interested Party requests that the Challenged Procurement not be suspended, an explanation of the reason why:</b> <ul style="list-style-type: none"> <li>(a) the Protest does not clearly show that the Challenger will suffer irreparable harm if the Challenged Procurement is not suspended; or</li> <li>(b) the Interested Party may sustain disproportionately greater harm by the suspension, compared to the harm to be possibly sustained by the Challenger; or</li> <li>(c) the suspension of the Challenged Procurement will compromise public interest; or</li> <li>(d) there are urgent or compelling reasons not to suspend the Challenged Procurement.</li> </ul>		

<b>Description of relief sought:</b>
<b>Explanation of reason why Interested Party is entitled to relief sought:</b>

Instructions:

1. Please use additional sheets for the required information if necessary.
2. Please attach copies of the relevant documents if available.

## Form of Appeal

<b>Name:</b>		
<b>Postal address for Appeal purposes (if different from postal address for Protest purposes):</b>		
<b>Email address for Appeal purposes:</b>	<b>Telephone number for Appeal purposes:</b>	<b>Fax number for Appeal purposes:</b>
<b>Name of authorized representative for the Challenger or Interested Party (if any):</b>		
<b>Signature of Challenger or Interested Party or authorized representative:</b>		
<b>Name:</b>		
<b>Number:</b>		
<b>Date when Challenger or Interested Party became aware of Level 1 Authority Decision:</b>	<b>Date of Filing of Appeal:</b>	
<b>Explanation of reason why the Challenger or Interested Party believes that the Level 1 Authority failed to decide the Protest in accordance with the Level 1 Authority's duty:</b>		

<b>Description of relief sought:</b>
<b>Explanation of reason why the Challenger or Interested Party is entitled to relief sought:</b>

Instructions:

1. Please attach a copy of each of the following documents, if available to the Challenger or Interested Party: (a) the Protest and its attachments, and any Comment and their attachments, if any, and (b) the Level 1 Authority decision.
2. Please use additional sheets for the required information if necessary.