



## **MCA- HONDURAS THRESHOLD PROGRAM BID CHALLENGE SYSTEM**

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### **PREAMBLE**

In accordance with the Threshold Program Grant Agreement (the "Agreement") signed between the Republic of Honduras and the United States of America, acting through the Millennium Challenge Corporation ("MCC"), dated August 28, 2013, MCA-Honduras is required to establish a Bid Challenge System that provides bidders<sup>1</sup> the ability to seek review of procurement actions and decisions.

Accordingly, MCA-Honduras shall entertain complaints from any bidder that claims to have suffered or that may suffer loss or injury due to a breach of a duty by MCA-Honduras under the MCC Program Procurement Guidelines in the conduct of any procurement. Capitalized terms that are not defined herein shall have the meanings given to such terms in the Agreement.

The Bid Challenge System is established to provide bidders who believe that they have been damaged by a procurement action taken in violation of the MCC Program Procurement Guidelines, the ability to seek a prompt, impartial and cost-effective review of said Procurement Action in order to promote and maintain the integrity and transparency of the MCA-H process of procuring goods, works, or services in furtherance of the Threshold Program.

An effective Bid Challenge System is one that reviews alleged incorrect acts and decisions taken by MCA-Honduras, ensures the proper functioning of the procurement process and promotes confidence in the process. This document sets forth provisions establishing a right to review and governs the exercise of that right.

The principles of the Bid Challenge System are to:

- a) Clearly and openly state the basis on which decisions are made to accept and evaluate bids and proposals in the requests for bids or proposals;
- b) Provide unsuccessful bidders, upon request, clear explanations of why their bids or proposals were rejected or not selected; and
- c) Establish and implement a formal Bid Challenge System to address complaints about how procurement rules and procedures were applied to specific procurement actions.

The rules set forth below (these "Rules") shall govern MCA-Honduras's Bid Challenge System except where any of the Rules are in conflict with the provisions of the Agreement (including the MCC Program Procurement Guidelines), in which case the provisions of such documents shall prevail in the order in which they are referred to herein.

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<sup>1</sup> The term "bidder" is used herein to generally describe any consultant, contractor, supplier or other person or entity that participates in a procurement process to provide goods, works or services in furtherance of the Threshold Agreement.



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### **RULES**

#### **Section 1. General right to review.**

- 1.1 Except as set forth in paragraph 1.2 of this Section, any bidder that claims to have suffered, or that may suffer loss or injury due to a breach by MCA-Honduras of the procurement provisions of the Agreement, including the MCC Program Procurement Guidelines, in the course of a procurement process, may seek review in accordance with Section 2. Such a bidder shall be referred to as a “Claimant” and the claim shall be referred to a “Complaint”.
- 1.2 The following shall not be the subject of a Complaint entitled to the review provided for in paragraph (1.1) of this Section:
  - a) The selection of a procurement method (QCBS, QBS, etc.) or the type of procurement (goods, works, non-consultant services, consultant services); or
  - b) A decision by MCA-Honduras to reject all bids, proposals, offers or quotations or to otherwise terminate a procurement process.

#### **Section 2. Review by MCA-Honduras.**

- 2.1 Each Complaint submitted by a Claimant in accordance with these Rules will be subject to a review by a panel (the “Technical Panel”) comprised by the following staff members of MCA-Honduras: Deputy General Director, Procurement Specialist and General Counsel.
- 2.2 The purpose of providing this review by MCA-Honduras is essentially to determine and correct defective acts, decisions or procedures in case they might exist in the procurement process. Such an approach can avoid unnecessarily burdening higher levels of review with cases that might have been resolved by the parties at an earlier, less disruptive stage.
- 2.3 The duties, functions and powers of the Technical Panel are to receive and review Complaints from Claimants, conduct inquiries into Complaints, determine whether Complaints are valid and, if so, recommend the proper corrections to be adopted by the General Director. The determination of the review will be made in accordance with these Rules. See below for timelines of actions.
- 2.4 The Technical Panel at its discretion can also convoke additional experts in the field to assist with the review. When appointing additional experts, the Technical Panel shall use its best efforts to select and appoint experts who are best qualified about the matter at hand and who do not have any direct or perceived conflict of interest in the outcome of the Complaint and shall not have been involved in the procurement process at issue.



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- 2.5 A Complaint may be initiated by the Claimant by submission in writing to the Procurement Specialist of MCA-Honduras (which may be by e-mail or fax received at the address given below) at the following times:
- i. Within five (5) working days of the date of (a) issuance or modification of a request for proposals/bids or (b) a decision to extend the time for submission of proposals/bids;
  - ii. In the event that the procurement process requires a technical evaluation prior to the opening of financial proposals/bids, within five (5) working days of the date that the results of the technical evaluation are notified to bidders; and
  - iii. Within five (5) working days of the date that the proposed award is notified to bidders.
  - iv. Solely to the extent that a Complaint is based on facts or information that was not available to a Claimant at the times set forth above, a Claimant may also file a Complaint within five (5) working days of the date that the Claimant knows or should reasonably be expected to know (whichever is earlier) of the fact that gives rise to the Complaint. Untimely Complaints shall be dismissed. Only lead bidders shall be eligible to file a Complaint (not the sub-bidders, sub-contractors, sub-consultants or any other person/entity from the general public).

The Complaint submitted by the Claimant shall:

- a) Identify the procurement action out of which the Complaint arises;
  - b) Describe the nature of the Complaint and the facts supporting such Complaint including references to the provisions of MCC Program Procurement Guidelines that were allegedly violated;
  - c) Mention and include all information required to demonstrate the timeliness of the Complaint;
  - d) Provide a justification for the requested cure and/or compensation.
  - e) Indicate name, address, telephone and e-mail address of the Claimant in order to receive notifications;
- 2.6 All Complaints should be submitted by written to any of the following addresses:

MCA-Honduras  
Procurement Specialist  
Boulevard Morazán Edificio Los Castaños 5to piso,  
Tegucigalpa, Honduras  
By Tel: (504) 2232 3513/2232 3514/ 2232 3786.  
By e-mail: iordonez@ mcahonduras.hn



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- 2.7 Once the Complaint has been received by the Procurement Specialist of MCA-Honduras it shall be handled in the following manner:
- 2.7.1 The Complaint will be sent via a formal letter or by e-mail by the Procurement Specialist to the General Director of MCA-Honduras within two (2) working days after receiving the Complaint, and the General Director will promptly forward such Complaint to the Technical Panel.
  - 2.7.2 The Technical Panel shall have five (5) working days from the time it receives such Complaint to issue a written recommendation, which period may be extended at the discretion of the Technical Panel for five (5) additional working days.
  - 2.7.3 The timely submission of a Complaint shall justify the suspension of the procurement process temporarily, provided that the Complaint is not frivolous (as determined by the Technical Panel), and contains a declaration which, if proven, demonstrates that the Claimant will suffer irreparable injury in the absence of a suspension. In the event that the Technical Panel determines that the procurement process should be suspended, the Technical Panel shall inform all bidders of the suspension of the procurement process (by means of a written notification issued by the Procurement Specialist of MCA-Honduras) and take such other measures as it deems necessary to maintain the integrity of the procurement process pending a resolution of the Complaint.
  - 2.7.4 The Technical Panel will determine whether the Claimant has an interest in the procurement concerned, whether the information provided demonstrates that the procurement/contracting process has not been carried out in accordance with the MCC Program Procurement Guidelines and whether the Claimant has filed sufficient information to support its Complaint. The Technical Panel at any time following receipt of the Complaint may request additional information relating to the relevant procurement/contracting process, indicating the time in which the Claimant shall provide such information.
  - 2.7.5 If a Complaint fulfills the conditions set forth above, the Technical Panel shall recommend a decision to be adopted by the General Director. This recommendation shall state:
    - a) the reasons for a decision, and/or
    - b) the remedial measures, if any, to be taken.

The remedial measures may include:

- a) Require MCA-Honduras to issue the eligible relief (in whole or in part) requested by the Claimant;



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- b) Determine that MCA-Honduras was at fault (but not issue the relief), and require a corrective action;
- c) Annul in whole or in part the procurement proceedings, and require MCA-Honduras to take specific actions that the Procurement Panel may consider appropriate;
- d) Require that the procurement process be terminated, provided that if the procurement proceedings are terminated pursuant to this paragraph, MCA-Honduras may initiate new procurement processes; or
- e) Recommend amending the bid documents that set forth the terms and conditions applicable to the procurement process.
- f) Reevaluate

2.7.6 The General Director will review the recommendations of the Technical Panel and render a decision in relation with the Complaint. Notification of this decision shall be made in writing (which may be by e-mail) by the Procurement Specialist of MCA-Honduras to the Claimant within two (2) working days of the decision.

**Section 3. Appeal for an administrative review by a Procurement Panel.**

- 3.1 If the Claimant is not satisfied with the decision of the General Director rendered in accordance with Section 2 above, the Claimant will be entitled to request that the Complaint be subject to an administrative review (a "Review") by an independent procurement panel (the "Procurement Panel") that will be established in accordance with this Section 3. The following procedures shall be followed in this case of a Review.
- 3.2 A Review can be initiated by the Claimant by submission in writing (which may be by e-mail) to MCA-Honduras General Director within five (5) working days from the date when the decision per 2.7.6 above is notified to the Claimant in writing (which may be by e-mail).
- 3.3 In the request for Review, the Claimant shall:
  - a) Identify the decision and procurement process for which it is requesting a Review;
  - b) Describe the nature and the facts supporting the Review, including references to the provisions of MCC Program Procurement Guidelines that were allegedly violated;
  - c) Mention and include all information required to demonstrate the timeliness of the request for Review;
  - d) Indicate the form of compensation requested with the Review;



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- e) Indicate name, address, telephone and e-mail address of the Claimant in order to receive notifications.

Only lead bidders shall be eligible to file a request for Review (not the sub-bidders, sub-contractors, sub-consultants or any other person/entity from the general public).

- 3.4 All requests for Review should be submitted in writing to the following:

MCA-Honduras  
General Director  
Boulevard Morazán Edificio Los Castaños 5to piso,  
Tegucigalpa, Honduras  
By Tel: (504) 2232 3513/2232 3514/ 2232 3786.  
By e-mail: [mbogran@mcahonduras.hn](mailto:mbogran@mcahonduras.hn)

- 3.5 In the case of a Review, an independent procurement panel (the "Procurement Panel") comprised of three (3) members shall be established within seven (7) calendar days from the date the request is received by the MCA-Honduras General Director. These members shall be selected from a list of experts from the Center of Conciliation and Arbitration of Tegucigalpa Chamber of Industry and Commerce (the "Center") who do not have any direct or perceived conflict of interest in the outcome of the Complaint and shall not have been involved in the procurement process at issue. This list will be provided by the Center to each party (MCA-Honduras and the Claimant, the "Parties") so that one member of the Procurement Panel can be selected by MCA-Honduras and one can be selected by the Claimant. The third member, who will act as the Chairman of the Panel, will be appointed by the Center. These three (3) members may include professors, lawyers or any other qualified professionals, provided by the Center as experts in working on Procurement Panels. The three (3) members must have sufficient command of the language of the bidding documents. The members of the Procurement Panel will be paid stipends for the time served on the panel. The costs of the Review (including the stipend of the panelists, but excluding any legal and travel costs of the Parties) shall be covered by the Parties in the proportion that the Procurement Panel determines is reasonable under the circumstances. The costs of the proceedings shall be reasonable and consistent costs for similar proceedings in Honduras. MCA-Honduras shall provide to the Claimant the estimated costs of the Review based on the public rates that should be available on the center's website, such estimate will not have any binding effect on the actual cost determined by the Parties.
- 3.6 The Procurement Panel shall be convened no later than five (5) working days from the date the Procurement Panel has been accepted by both MCA-Honduras and the Claimant, and in no case later than ten (10) working days from the date the request for the Review is received by MCA- Honduras Director General.
- 3.7 The timely submission of a request for Review shall justify the suspension of the procurement process temporarily, provided that the request for Review is not



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frivolous (as determined by the Procurement Panel), and contains a declaration which, if proven, demonstrates that the Claimant will suffer irreparable injury in the absence of a suspension. In the event that the Procurement Panel determines that the procurement process should be suspended, MCA H shall inform all bidders of the suspension of the procurement process and take such other measures as it deems necessary to maintain the integrity of the procurement process pending completion of the Review.

- 3.8 The Procurement Panel will have authority to consider the facts of the Complaint and the request for Review, and all written representations made by the Parties to determine whether or not the procurement process was conducted in accordance with the MCC Program Procurement Guidelines.
- 3.9 The Procurement Panel at any time following receipt of a request for Review may request, in writing, additional information relating to the relevant procurement process, and must include the deadline in which the Claimant or MCA-Honduras shall provide such information. Each party must furnish the information requested by the Procurement Panel; provided that the Claimant may refuse to disclose certain information if it would be contrary to the public interest; would prejudice the legitimate commercial interests or fair competition between bidders; or would be in breach of a legal professional privilege or a confidentiality agreement to which the Claimant is a party.
- 3.10 Any refusal to disclose information is to be accompanied by reasons in writing.
- 3.11 In case the Claimant does not provide such requested information, the Procurement Panel shall continue with the review process without the information. However, if the Procurement Panel believes that the Review cannot be continued without this information, it may decide to terminate the Review process, and declare the Complaint invalid.
- 3.12 If any confidential information of the Claimant is disclosed by the Claimant to the Procurement Panel at the Procurement Panel's request, the Claimant may request that such information only be made available to members of the Procurement Panel. In such cases, a statement is to be provided by the Claimant identifying the Claimant's confidential information, together with a copy of the confidential information (which is to be provided to the Procurement Panel only; the address will be given to the Claimant at the time of the Review) and one copy of the documents where the confidential information has been deleted.
- 3.13 In case the Procurement Panel may consider necessary, the Procurement Panel may ask the Claimant or any staff of MCA-Honduras with prior notice to the General Director to appear in person and present his or her Complaint and/or responses orally. Such proceedings shall take place in Tegucigalpa, Honduras. The Procurement Panel may address the Claimant or MCA-Honduras by asking questions.



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- 3.14 After hearing and reviewing all documents and statements, the Procurement Panel will discuss the facts and merits of the Complaint and the request for Review. The Procurement Panel may decide to meet as many times as necessary.
- 3.15 If the Procurement Panel reaches the conclusion that a Complaint is valid, then it may recommend such remedy as it considers appropriate to the MCA-Honduras General Director. The Procurement Panel is then obliged to make a written report of its opinions or recommendations and to issue a statement describing the basis of the opinion or recommendation to be undertaken. The Procurement Panel shall issue this decision within fifteen (15) working days with possibility of an extension of 5 day extension from the date the Procurement Panel convened for the first time, stating the reasons for the decision and the remedies granted, if any. Further, the Procurement Panel will determine the distribution of the costs between both Parties, unless otherwise, the costs will be covered by the unsuccessful party.
- 3.16 . This decision of the Procurement Panel shall be final and binding upon both Parties.
- 3.17 If the Procurement Panel finds that a Complaint is valid (in whole or in part), it may grant one or more of the following as compensation or remedies:
- g) Require MCA-Honduras to issue the eligible relief (in whole or in part) requested by the Claimant;
  - h) Determine that MCA-Honduras was at fault (but not issue the relief), and require a corrective action;
  - i) Annul in whole or in part the procurement proceedings, and require MCA-Honduras to take specific actions that the Procurement Panel may consider appropriate;
  - j) Require that the procurement process be terminated, provided that if the procurement proceedings are terminated pursuant to this paragraph, MCA-Honduras may initiate new procurement processes; or
  - k) Recommend amending the bid documents that set forth the terms and conditions applicable to the procurement process.
  - l) Reevaluate
- 3.18 In the case that the Complaint is considered not to be valid, the Procurement Panel will render its decision explaining the reasons of such decision.
- 3.19 The decision of the Procurement Panel will be final and binding upon both Parties. Notification of the decision shall be made in writing (which may be by e-mail) by the MCA-Honduras Procurement Specialist to the Claimant within two (2) working



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days after receiving the decision. The decision of the Procurement Panel shall be carried out by MCA-Honduras within fifteen (15) working days.

**Section 4. Certain Rules Applicable to the Bid Challenge System Proceedings by MCA-Honduras or by the Procurement Panel**

- 4.1 A copy of each decision of the Procurement Panel, shall be posted on the MCA-Honduras website within three (3) working days after the issuance of the decision. However, this posting shall not be undertaken if its disclosure would be contrary to Honduran law or the Agreement, would impede law enforcement, would not be in the public interest, would prejudice legitimate commercial interest of the Parties or would inhibit fair competition in the future.
- 4.2 The process set forth in these Rules shall be the exclusive process for resolving Claims related to procurement processes under the Agreement and all decisions of the Procurement Panel shall be final.
- 4.3 In accordance with the MCC Program Procurement Guidelines, the Claimant shall have no right to Complain or appeal to MCC.
- 4.4 All documents and proceedings under these Rules shall be in the English or Spanish languages; provided that the Claimant may, at its own cost, provide for official translation services at any oral hearings or when providing statements for the record.
- 4.5 MCA-Honduras must submit a report of the handling and disposition of any Complaint and Review to MCC. The report must be submitted to MCC (a) if there is no request for Review within three (3) days after the deadline for filing a request for Review or (b) if there is a request for Review, within three (3) days after receipt of the decision of the Procurement Panel.