

EFFECTIVE: 07-May-2021



West African Power Pool

BID CHALLENGE SYSTEM

Effective Date: 07-May-2021

BACKGROUND

The **West African Power Pool** (hereinafter called “Grantee”) has received financing from (i) the Millennium Challenge Corporation (“MCC”) in the form of a grant provided pursuant to that certain Cooperative Agreement, dated *May 7, 2021*, by and between MCC and the Grantee (the “Cooperative Agreement”) toward the cost of **3,000,000 USD**. This financing shall be referred to as the “Project Support Funding”.

The Procurement Process Manual (“*PPM*”) agreed between MCC and the Grantee via the Cooperative Agreement (available on WAPP website : www.ecowapp.org) further requires that the Grantee establish and publish a Bid Challenge System (“*BCS*”) that provides Bidders on the Grantee procurements with the ability to challenge and seek review of the Grantee procurement actions and decisions.

To comply with these requirements the Grantee has established the rules and procedures set forth in this document (“*BCS*”), to govern the review of all challenged Grantee procurement actions and decisions, and which will be incorporated in the solicitation document distributed to Potential Bidders.

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

Protests

The Grantee shall consider a Protest from any Bidder that claims to have suffered or that it may suffer loss or injury due to a breach of a duty by the Grantee in the conduct of this procurement. The BCS 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 PPM 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 PPM 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 French language will be used for all documents Filed or provided in accordance with this BCS.

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, potential bidders 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; (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).

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);
- (iii) the decision by the Grantee to reject all bids, proposals or quotations;
- (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; and

Bidders are strongly advised to request a Debriefing before initiating a formal Protest by submitting a written request for Debriefing to the Grantee within two (2) Business Days after receipt of the notice of intent of award, or (in the case of a two-stage selection process) notice of

the results of the first stage. The Grantee 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 the Grantee 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 Grantee Procurement Office, 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 Protest shall be submitted to the Grantee, 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 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) the Grantee 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 the Grantee.

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.

The Grantee 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. The Grantee must submit a report of the handling and disposition of any bid challenge to MCC. If there is no Appeal the report must be submitted to MCC within 3 days after the deadline for Filing an Appeal.

Appeals

In certain cases, a Bidder may seek review by MCC after it has exhausted all remedies with the Grantee. MCC's review will be limited to claims that (a) the Grantee failed to consider its Protest, (b) the Grantee failed to issue a written decision on the Protest within the time specified in this system, or (c) the Grantee violated the procedures set out in the solicitation documents. The appeal to MCC must be received in writing (in electronic form) within five (5) Business Days of the date the Bidder learned or should have learned of an adverse decision by the Grantee. 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 the Grantee;
- 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 PPM and excluding attorney fees or lost profits; (2) revision of the Procurement Action to conform to the PPM; (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.

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 (Vice President for Compact Operations)

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.

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

Bidder: any consultant, that participates in the Grantee procurement process by submitting a bid or proposal.

Business Day: means any day in the Grantee's country or countries of focus 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.

Debriefing: A mechanism by which Bidders have an opportunity to meet or discuss with the Grantee 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.

Level 1 Authority: The Grantee Chief Executive Officer. Each Protest decision will be issued by the Grantee Chief Executive Officer (in this capacity, the "**Level 1 Authority**"), and will be decided in consultation with the Grantee Procurement Office and Legal Counsel and such other technical experts as the Chief Executive Officer deems appropriate.

MCC: Millennium Challenge Corporation.

Notice: means a written communication sent to participating Bidders when a Protest is received by the Grantee. 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.

PPM: the Procurement Process Manual, which provides guidance on the procurement process and procedure used by the Grantee.

Procurement Action: means any action or decision by the Grantee relating to the Grantee procurement process.

Procurement Rules: the PPM, 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 BCS.

Secretariat: the Grantee personnel designated to act as the secretariat for proceedings under this BCS.