



**Millennium Challenge Account – Nepal
(MCA-Nepal)**

BID CHALLENGE SYSTEM

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Contents

BACKGROUND	2
GOVERNING PRINCIPLES	2
PART I - PROTEST PROCEEDINGS	3
Rule 1. Protests	3
Rule 2. Level 1 Review of Bid Challenge	5
PART II – APPEAL PROCEEDINGS	6
Rule 3. Appeal	6
Rule 4. Level 2 Authority Master List and Selection	8
Rule 5. Level 2 Authority Review	9
Rule 6. MCC as Observer	10
PART III – GENERAL PROVISIONS	11
Rule 7. Basis and Application	11
Rule 8. Documents	11
Rule 9. Definitions, Interpretation and Modification	12
Annex A.....	15
Annex B.....	17
Annex C.....	19
Annex D	21
Annex E	23
Annex F	24

BACKGROUND

On the 14th day of September, 2017, the United States of America, acting through the Millennium Challenge Corporation, and the Government of Nepal (the “**Government**”) signed a Millennium Challenge Compact pursuant to which MCC agreed to provide a grant of up to Five Hundred Million United States Dollars (US\$500,000,000) to the Government for a program to reduce poverty through economic growth in Nepal. The Government has designated the Millennium Challenge Account – Nepal (“**MCA-Nepal**”) to oversee and implement the compact program in accordance with the terms of the Compact. 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 MCA-Nepal establish and publish a bid challenge system that provides Bidders on MCA-Nepal procurements with the ability to challenge and seek review of MCA-Nepal procurement actions and decisions.

To comply with these requirements, MCA-Nepal has established the rules and procedures set forth in this document, also referred to as its Bid Challenge System or BCS, to govern the review of all challenged MCA-Nepal 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 **Rule 9**.

GOVERNING PRINCIPLES

The purpose of this BCS is to provide Bidders who believe that they have been harmed by an MCA-Nepal Procurement Action or decision and have the ability to seek a prompt, impartial and cost-effective review of the action or decision in order to promote and maintain the integrity and transparency of the MCA-Nepal compact procurement process. This BCS is not intended to examine or review the implementation or conduct of any contract once awarded. To that end, this BCS is based on the following principles:

- a) MCA-Nepal must provide clear explanations of why Bidders are disqualified or not selected.
- b) A procedurally simple and expeditious process is essential to address concerns about the application of procurement rules and procedures to specific procurement actions.
- c) While a bid challenge remains outstanding, the related procurement proceedings should be suspended to prevent, in normal circumstances, the signing of a contract.
- d) A challenge should be initially reviewed and a decision issued by the awarding authority (in this case, MCA-Nepal) with the opportunity for an Appeal to a knowledgeable and impartial third-party.

MILLENNIUM CHALLENGE ACCOUNT-NEPAL BID CHALLENGE SYSTEM

PART I - PROTEST PROCEEDINGS

Rule 1. Protests

Rule 1.1. (a) 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; (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).

Rule 1.2. (a) The following Procurement Actions may not be the subject of a Protest:

- (i) the choice of the method of procurement (e.g., QCBS, QBS, etc.);
- (ii) the choice of the type of procurement (e.g., goods, works, non-consultant services, or consultant services);
- (iii) 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
- (iv) a decision to cancel a procurement or reject all bids, proposals or quotations.

Any Bidder that submits a Protest is referred to herein as a "Challenger."

(b) Bidders are strongly advised to request a Debriefing before initiating a formal Protest by submitting a written request for Debriefing to MCA-Nepal 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. The MCA-Nepal shall provide a written explanation of why the Bidder was not selected within two (2) Business Days of receiving the request for Debriefing.

Notwithstanding the foregoing, in the case of Shopping, any Bidder wanting a Debriefing must submit the written request for Debriefing to MCA-Nepal within one (1) Business Day after receipt of the notice of intent to award; MCA-Nepal shall provide a written explanation of why the Bidder was not selected within one (1) Business Day of receiving the request for Debriefing.

A request for Debriefing is not a bid challenge.

Rule 1.3. 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.

Rule 1.4. Protests must be filed in accordance with the procedures of this **Rule 1.4**. Any Protest that is not filed in accordance with such procedures will be rejected, and immediately returned to the Challenger with a notice of rejection citing the violation.

1.4.1. A Challenger must file its Protest with the Secretariat by the Protest Deadline, which shall be by the MCA-Nepal's close of the Business Day on or before the date set forth below, to be considered timely filed:

- (a) For Protests of Procurement Actions in pre-qualification or short listing proceedings, on or before the fifth (5th) Business Day after notification of the pre-qualification or short listing decision or action;
- (b) For Protests of the solicitation documents, on or before the tenth (10th) Business Day after MCA-Nepal issues an invitation to prequalify or issues an invitation to submit a bid or a proposal;
- (c) For Protest of a Request for Quotations (RFQ) or an invitation to submit a quotation related to Shopping, on or before the second (2nd) Business Day after MCA-Nepal issues the RFQ or invitation.

- (d) For Protests of any two-envelope procurement proceedings (i.e., separate technical and financial bid or proposal), on or before the fifth (5th) Business Day after notification of the technical rankings or results;
- (e) For Protests of any Procurement Action under Shopping, on or before the third day (3rd) Business Day after notification of the awarding decision; and

- (f) For Protests of all other Procurement Actions, on or before the fifth (5th) Business Day after the Challenger became, or should have become, aware of the circumstances giving rise to the Protest.

1.4.2. A Protest must be substantially in the form set forth in **Annex A**, and must state at least the information required in said form. Such information includes: (a) the provisions of the PPG that allegedly were violated, (b) the justification for relief, and (c) the remedy sought.

Rule 1.5. No later than 5:00 p.m. (local time at MCA-Nepal location) on the first Business Day after the date that a Protest is filed, the Secretariat will:

- (a) Post a Notice of the Filing of the Protest and, if applicable, the issuance of any written instruction by the Level 1 Authority (as defined in **Rule 2.1**) regarding the suspension of the Challenged Procurement on the MCA-Nepal website; and
- (b) Send to the Procurement Agent and the MCA-Nepal Procurement Manager, and all Bidders who submitted bids for the Challenged Procurement a copy of such Notice and instructions (if any), a copy of the Protest, and if the automatic suspension of the Challenged Procurement was lifted by the Level

1 Authority prior to such Business Day, Notice thereof. The Notice to Bidders will advise Bidders (including the apparent winning Bidder) of their ability to file a Comment in accordance with **Rule 1.6** and that failure to file a Comment in the required time period will prevent any future participation in the Protest.

- Rule 1.6. Any Bidder, other than the Challenger, that believes that it may be affected by the decision to be made by the Level 1 Authority with respect to the Protest may join and participate in the Protest by Filing a Comment with the Secretariat (with a copy previously or simultaneously provided to the Challenger) (each, an “**Interested Party**”) by the Comment Deadline. The Comment must be substantially in the form set forth in **Annex B**, and must state at least the information required in said form. Any Interested Party that does not join the Protest in accordance with this **Rule 1.6** cannot thereafter file a Comment related to the Protest or otherwise participate in the Protest.
- Rule 1.7. 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) MCA-Nepal 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 compromise public interest; or
 - (e) there are urgent or compelling reasons not to suspend the Challenged Procurement, including potential harm to MCA-Nepal

For the avoidance of doubt, any Protest that was not filed in accordance with the procedures of **Rule 1.4** and that was rejected as a result of such failure, will not result in any suspension of the relevant Procurement Action.

- Rule 1.8. If not lifted earlier, the automatic suspension will be lifted five Business Days after the written decision of the Level 1 Authority has been sent in accordance with **Rule 2.4**, or if an Appeal has been filed, immediately after a written decision of the Level 2 Authority has been sent in accordance with **Rule 5.3**. During any suspension period, the MCA-Nepal either Procurement Agent or the Procurement Manager will suspend the procurement proceedings to the extent necessary to ensure that the Challenger’s potential remedies are not compromised should the Protest be upheld.

Rule 2. Level 1 Review of Bid Challenge

- Rule 2.1. Each Protest decision will be issued by the MCA-Nepal Executive Director (in this capacity, the “**Level 1 Authority**”), and will be decided in consultation with the MCA-Nepal Procurement Manager and General Counsel, the Procurement Agent and such other technical experts as the Executive Director deems appropriate.

- 2.1.1. The Protest decision issued by the Level 1 Authority will be based on review and consideration of the applicable principles and provisions of the Procurement Rules, the Protest and the Comments, if any.
 - 2.1.2. After reviewing the Protest, the Level 1 Authority will issue a decision:
 - (a) To dismiss the Protest because (i) the Procurement Action is not subject to protest under **Rule 1.2**, or (ii) the Challenger has failed to meet its burden of proof under **Rule 1.3**; or
 - (b) If the Challenger has met its burden of proof under **Rule 1.3**, to uphold the Protest (in whole or in part) and grant one or more of the remedies referenced in **Rule 2.2**.
 - 2.1.3. The Level 1 Authority decision will become final, and any suspension of the Challenged Procurement will be lifted in accordance with **Rule 1.8**, if no party files an Appeal within the period prescribed by this BCS.
- Rule 2.2. The Level 1 Authority can require the MCA-Nepal to revise the procurement proceedings to conform to the applicable guidelines, terminate the procurement, order a new procurement, or require the MCA-Nepal to compensate a successful Challenger for loss or damage suffered to the extent of the cost of preparation of the bid challenge, provided that any monetary compensation will be subject to a price reasonableness analysis in accordance with the PPG and will not include attorney fees or lost profits.
- Rule 2.3. The Level 1 Authority will issue its decision no later than five Business Days after the Comment Deadline, provided that the Level 1 Authority may extend this period for an additional five Business Days with sufficient cause. The decision must be in writing, delivered to the Secretariat, and must state: (a) the date of the decision; (b) the reasons for the decision and the facts that were relevant and considered in reaching the decision; (c) the remedy granted; and (d) the date by which an Appeal must be filed.
- Rule 2.4. No later than one Business Day after the date of the Level 1 Authority decision, the Secretariat will:
- (a) Post a Notice of the decision and the issuance of any written instruction by the Level 1 Authority related to the Challenged Procurement (including any instructions for Appeals of the decision in accordance with the terms of this BCS) on the MCA-Nepal website; and
 - (b) Send a copy of such Notice to all parties who participated in the Protest proceedings.
- Rule 2.5. Prior to issuing a decision, the Level 1 Authority may, at its discretion, (a) consolidate the Protest with other relevant Protests involving either the same Procurement Action or related Procurement Actions; and (b) take such actions and issue such orders as may be necessary or desirable for a prompt decision on the Protest.

PART II – APPEAL PROCEEDINGS

Rule 3. Appeal

Rule 3.1. Any Challenger or Interested Party who is dissatisfied with the decision of the Level 1 Authority may seek review of that decision by Filing an Appeal to the Level 2 Authority; provided that:

- (a) an Appeal may only allege that the decision of the Level 1 Authority was inconsistent with the Procurement Rules or was in some way clearly erroneous; and
- (b) the Level 2 Authority review is limited to a review of the record before the Level 1 Authority, except that a Challenger or Interested Party may introduce new evidence on appeal (i) if the Challenger or Interested Party establishes that such evidence could not have been obtained by all reasonable diligence before commencement of the Level 1 Authority's review, or (ii) on the basis of some other exceptional circumstances, in each case as determined by the Level 2 Authority.

Rule 3.2. Appeals must be filed in accordance with the procedures of this **Rule 3.2**. Any Appeal that is not filed in accordance with such procedures will be rejected, and immediately returned to the Challenger with a notice of rejection citing the violation.

- 3.2.1. The Challenger or Interested Party (as applicable) must file the Appeal with the Secretariat by the MCA-Nepal's close of the Business Day on or before the fifth (5th) Business Day after notice of the Level 1 Authority decision was posted in accordance with **Rule 2.4** to be considered as timely filed.
- 3.2.2. An Appeal (a) must be substantially in the form set forth in **Annex C**, (b) must state at least the information required in said form, (c) must include all the documents submitted by the Challenger or Interested Party (as applicable) to the Level 1 Authority, (d) must not allege any theory or argument that was not alleged in the Protest or Comment, (e) must not assert any new information or include any new documents that were not provided to the Level 1 Authority, except as provided in **Rule 3.1(b)**, and (d) must be accompanied by proof that the Challenger or Interested Party (as applicable) has paid the appropriate Appeal Fee.
- 3.2.3. The Challenger or Interested Party must pay any Appeal Fee established by the MCA-Nepal before or at the time it files the Appeal by depositing the same in accordance with the instructions provided by the Secretariat in its Notice to such party of the Level 1 Authority decision. The Appeal Fee will be a reasonable amount, which may be to the extent possible determined in accordance with the PPG Price-Reasonableness Analysis (P1.A1.18) and the country specific context.
 - 3.2.3.1. If the Challenger or Interested Party (as applicable) prevails in the Appeal, the Appeal Fee will be refunded to such party. If the Challenger or Interested Party (as applicable) does not prevail in the Appeal, the Appeal Fee will be forfeited and shall be applied to the actual expenses of the Appeal. Any remaining funds shall be returned to the Appellant. If the Appeal Fee is paid in the currency of Nepal, the Appeal Fee amount will be converted from United States Dollars to the currency of Nepal based on the exchange rate of the Nepal Rastra Bank as of the Business Day immediately preceding the date of payment.

- Rule 3.3. No later than one Business Day after the Appeal is filed, the Secretariat will:
- (a) Post a Notice of the Filing of the Appeal on the MCA-Nepal website; and
 - (b) Send a copy of such Notice and a copy of the Appeal to all parties who participated in the Protest.
- Rule 3.4. No later than three (3) Business Days after the Appeal is filed, (a) the Level 1 Authority will submit the record of the Protest proceedings to the Secretariat, who will promptly forward the record to the Level 2 Authority once identified in accordance with **Rule 4**; and (b) MCA-Nepal will provide a response to the Appeal.
- Rule 3.5. Any other party who participated in the Protest proceedings who believes that it may be affected by the decision to be made by the Level 2 Authority with respect to the Appeal may join and participate in the Appeal by Filing a Comment with the Secretariat (with a copy to the party that filed the Appeal) by the Comment Deadline. The Comment must be substantially in the form set forth in **Annex D**, must state at least the information required in said form. Any party that does not join the Appeal in accordance with this **Rule 3.5** cannot thereafter file a Comment to the Appeal or otherwise participate in the Appeal.
- Rule 3.6. The Challenged Procurement will remain suspended, if it has been suspended, and no award will be made while the Appeal is pending.

Rule 4. Level 2 Authority Master List and Selection

- Rule 4.1. MCA-Nepal will maintain a list of competent and qualified persons, which may include natural persons or an arbitration center, who will serve as independent reviewers of Appeals (the “**Master List**”). The Master List will contain a minimum of six (6) independent reviewers, and each person serving as a reviewer must meet certain qualifications set by MCA-Nepal, including but not limited to, that each person:
- (a) is impartial and independent;
 - (b) is well-versed in procurement rules, principles and processes under one or more of the following: (i) law of Nepal, or (ii) rules of multilateral development banks or organizations (e.g., World Bank, Asian Development Bank, European Bank for Reconstruction and Development, African Development Bank or Inter-American Development Bank), or (iii) rules of foreign official development agencies (e.g., MCC, USAID, JICA, AusAID); and
 - (c) is trained in MCC procurement principles, practices and procedures.
- 4.1.1. MCA-Nepal may develop the Master List by procuring the services of individuals on a competitive basis and entering into service agreements with each reviewer, relying upon a pre-established list of individuals identified by a local arbitration center, or in such other manner as may be agreed with MCC. MCA-Nepal will post the Master List on its website, along with a copy of each person’s curriculum vitae.
- Rule 4.2. No later than the five (5) Business Days after an Appeal is filed, the Secretariat will randomly select three individuals from the Master List to review and decide the Appeal

(collectively, the “**Level 2 Authority**”), by assigning a number to each name on the Master List, placing and shuffling the numbers in a container, and then drawing three (3) numbers. The Secretariat will also draw a first alternate number, and a second alternate number.

- 4.2.1. The Secretariat will provide the names of the parties to the Appeal and the underlying documents for the Procurement Action to the individuals selected to serve as the Level 2 Authority within two Business Days of the selection, and request that the individuals identify any conflicts of interest or other reasons why they would not be able to serve as Level 2 Authority. In particular, each individual must confirm that he/she has no interest (through financial, family, business, beneficial ownership, or otherwise) in the outcome of any MCA-Nepal procurement, and is not involved in or related to any MCA-Nepal procurement.
- 4.2.2. If the individuals selected can serve, each will execute a declaration substantially in the form of **Annex E**, and the Secretariat will then notify the parties to the Appeal of the names of the individuals, and charge each individual with service as the Level 2 Authority.
- 4.2.3. A party to the Appeal may object to any individual selected by the Secretariat by Filing an objection notice with the Secretariat no later than two (2) Business Days after the selection notice is sent in accordance with **Rule 4.2.2**, which objection notice must be substantially in the form of **Annex F**, and cite the reason that the individual does not meet the qualifications for service set forth in **Rule 4.1**. The Secretariat will rule on the objection no later than two (2) Business Days after the objection notice is filed.
- 4.2.4. If any individual selected by the Secretariat to serve as Level 2 Authority declines or is otherwise unable to serve, or if the Secretariat grants an objection Filed by a party to the Appeal, the Secretariat will proceed to the first alternate individual, and then to the second alternate individual if necessary. The Secretariat will repeat this random appointment process until three individuals from the Master List can serve consistent with these rules.

Rule 5. Level 2 Authority Review

Rule 5.1. Each Appeal will be decided by the Level 2 Authority selected in accordance with **Rule 4**. The Level 2 Authority will have the authority to decide procedural and organizational matters in consultation with the MCA-Nepal Procurement Manager and such other technical experts as the Level 2 Authority deems appropriate.

- 5.1.1. The Level 2 Authority decision will be based on review and consideration of the applicable principles and provisions of the Procurement Rules, the bid challenge record from the Protest proceedings and the written decision of the Level 1 Authority.
- 5.1.2. After reviewing the Appeal, the Level 2 Authority will issue a decision:
 - (a) To uphold the Level 1 Authority decision; or

- (b) To overturn the Level 1 Authority decision (in whole or in part) if it determines that the decision has no reasonable basis or is a clear error of judgment in the application of the Procurement Rules, and grant one or more of the remedies set forth in Rule 2.2.

5.1.3. The Level 2 Authority decision will be:

- (a) Final and binding on all parties to the Appeal with no further recourse (including but not limited to writs) available in any other forum, or jurisdiction; and
- (b) Implemented by the MCA-Nepal Procurement Manager no later than six (6) Business Days from the date that the Level 2 Authority decision is sent in accordance with **Rule 5.3**.

5.1.4. In accordance with **Rule 1.8**, any suspension of the Challenged Procurement will be automatically lifted immediately after the Level 2 Authority decision has been sent by the Secretariat pursuant to **Rule 5.3**.

Rule 5.2. The Level 2 Authority will issue its decision no later than five (5) Business Days after the Comment Deadline for the Appeal, provided that the Level 2 Authority may extend this period for an additional five (5) Business Days with sufficient cause. The decision must be in writing, delivered to the Secretariat and must state: (a) the date of the decision; (b) the reasons upon which the decision is based; and (c) the remedy awarded to the successful party.

Rule 5.3. No later than the by the MCA-Nepal's close of the business day fifth (5th) Business Day after the date of the Level 2 Authority decision:

- (a) the Secretariat will (i) post a Notice of the decision on the MCA-Nepal website, and (ii) send a copy of such Notice to all parties who participated in the Appeal; and
- (b) the responsibilities of the Level 2 Authority will be considered complete.

Rule 6. MCC as Observer

Rule 6.1. Bidders will have no right to appeal to MCC regarding decisions resulting from this BCS and its procedures. Upon submission of a bid challenge/filing of an appeal, the MCA-Nepal shall notify MCC within 3 days after such submission. Also, the MCA-Nepal 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 or (b) if there is an Appeal, within 3 days after receipt of the decision of the Level 2 Authority.

Rule 6.2. MCC, in its sole discretion, has the right to be an observer to all Protest and Appeal proceedings, but does not have the obligation to participate in any proceeding in any capacity. MCC's exercise of its right to be an observer to any proceeding will not constitute consent to the jurisdiction of the courts or any other body of the Nepal or any other jurisdiction. Consistent with the PPG, MCC may determine to withhold funding

for a contract if MCC determines that a challenged Procurement Action was not resolved appropriately.

PART III – GENERAL PROVISIONS

Rule 7. Basis and Application

- Rule 7.1. This BCS is issued by MCA-Nepal on the basis of Section 3.6 of the Compact and, upon signature, Section 2.1(d) of the Program Implementation Agreement (PIA). The provisions of the Compact, the PIA, and the PPG will prevail, in the order stated, if any provision of this BCS conflicts with the provisions of any of said documents.
- Rule 7.2. The rules and procedures of this BCS will apply to the acceptance, review and disposition of all Protests and Appeals.
- Rule 7.3. The provisions of this BCS will be construed in accordance with the laws of Nepal.
- Rule 7.4. This BCS will be interpreted in a manner that will: (a) achieve the purpose of this BCS and (b) preserve MCA-Nepal’s rights under the Procurement Rules, including its right to provide additional information, make clarifications, corrections or modifications to the solicitation documents, reject all bids in the Challenged Procurement, and cancel the Challenged Procurement.

MCA-Nepal may modify this BCS at any time with the prior written approval of MCC. The version of this BCS that is in force at the time of the issuance of the solicitation documents for a particular MCA-Nepal procurement will govern any Protest or Appeal with respect to said procurement, unless the solicitation documents are modified, formally amended and Bidders have been notified, in which case, such modified version will apply.

Rule 8. Documents

- Rule 8.1. The English language will be used for all documents filed or provided in accordance with this BCS.
- Rule 8.2. All notices, Filings 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.
- 8.2.1. A notice or document is “Filed” on a particular day when it is received by the Secretariat by 5:00 p.m., (local time at MCA-Nepal location), on that day. All other notices, documents and communications hereunder will be deemed sent or delivered (a) on the scheduled date of delivery if sent by courier; (b) on the fifth (5th) Business Day following the mailing date if sent by mail; or (c) on the date sent by facsimile or electronic mail if sent during normal business hours of the recipient during a Business Day, and otherwise on the next Business Day if sent after normal business hours of the recipient.

- 8.2.2. All notices, Filings and other communications hereunder must be addressed to the physical, facsimile or electronic address provided by the addressee under this BCS 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 MCA-Nepal website with specific reference to this BCS):

Millennium Challenge Account–Nepal (MCA-Nepal)

Attention: The Secretariat

Copy to: The Executive Director

Copy to: The Chief Legal Officer

Copy to: The Procurement Manager

Subject: Bid Challenge

Address: Yak & Yeti Hotel Convention Center, Durbar Marg, Kathmandu, Nepal

Telephone Number: +977-01-4238353/+977-01-4238392

Email address: Secretariat@mcanp.org

Rule 9. Definitions, Interpretation and Modification

Capitalized terms used in this BCS will have the following meanings:

Appeal: a challenge to a Level 1 Authority decision and request for review of that decision by the Level 2 Authority.

Appeal Fee: an amount deposited with the MCA-Nepal at the time an Appeal is filed and as a condition to the Filing of the Appeal.

BCS: this Bid Challenge System and the rules and procedures set forth herein.

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

Business Day: has the same meaning as working day, and means any day when MCA-Nepal is open for general business, meaning any day 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.

Comment: a Filing made by (i) an Interested Party, in the case of a Protest or (ii) any party that participated in a Protest proceeding, in the case of an Appeal, pursuant to which the filer argues in favor of, or against, upholding the Protest or decision of the Level 1 Authority, as applicable.

Comment Deadline: the last date by which a person wishing to join and participate in a Protest or Appeal may file its Comment, which is (a) in the case of Filing a Comment to a Protest, no later than 5 Business Days after the Secretariat sends Notice of the Protest pursuant to **Rule 1.5**, and (b)

in the case of Filing a Comment to an Appeal, no later than five (5) Business Days after the Secretariat sends Notice of the Appeal pursuant to **Rule 3.3**.

Compact: the Millennium Challenge Compact between the Government of Nepal and the United States of America, acting through MCC, signed on 14th September 2017, as the same may be amended from time to time.

Debriefing: A mechanism by which Bidders have an opportunity to meet with the MCA-Nepal 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.

Interested Party: as defined in **Rule 1.6**.

Level 1 Authority: as defined in **Rule 2.1**.

Level 2 Authority: as defined in **Rule 4.2**.

Master List: as defined in **Rule 4.1**.

MCA-Nepal: Millennium Challenge Account Nepal.

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.

PIA: the Program Implementation Agreement to be entered into between Nepal and the United States of America, acting through MCC, as the same may be amended from time to time.

Potential Bidder: the Bidders who would have participated in the solicitation process but for an alleged mistake of the MCA-Nepal.

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

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

Procurement Agent: means the natural or legal person engaged by MCA-Nepal as procurement agent in accordance with the Compact and the PIA.

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 BCS.

Protest Deadline: means the date by which a Bidder must submit its Protest for the Protest to be considered timely filed, as more particularly described in **Rule 1.3.1**.

Secretariat: the MCA-Nepal personnel designated by the MCA-Nepal Executive Director to act as the secretariat for proceedings under this BCS.

Shopping: has the meaning set forth in paragraph P1.A.3.4. of the PPG.

Annex A

Form of Protest

Challenger		
Name:		
Choose one: <input type="checkbox"/> Bidder <input type="checkbox"/> Potential Bidder		
(For legal persons only) Country under whose laws Challenger was organized:		
Postal address for Protest purposes:		
Email address for Protest purposes:	Telephone number for Protest purposes:	Fax number for Protest purposes:
Name of authorized representative for the Protest (if any):		
Signature of Challenger or authorized representative:		

Challenged Procurement
Name:
Number:

Protest	
Date when Challenger became aware of Procurement Action:	Date of Filing of Protest:
Description of Procurement Action:	
Procurement Rules provisions violated by Procurement Action:	
Explanation of reason why Procurement Action constitutes a violation of the Procurement Rules provisions:	

Explanation of reason why Challenger has been harmed by Procurement Action:
If Challenger requests suspension of the Challenged Procurement, explanation of reason why Challenger will suffer irreparable harm if the Challenged Procurement is not suspended:

Relief Sought
Description of relief sought:
Explanation of reason why Challenger is entitled to relief sought:

Instructions:

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

Annex B

Form of Comment to the Protest

Interested Party		
Name:		
(For legal persons only) Country under whose laws Interested Party was organized:		
Postal address for Protest purposes:		
Email address for Protest purposes:	Telephone number for Protest purposes:	Fax number for Protest purposes:
Name of authorized representative for the Interested Party (if any):		
Signature of Interested Party or authorized representative:		

Challenged Procurement
Name:
Number:

Comment	
Date when Interested Party received a copy of the Protest:	Date of Filing of Comment:
Explanation of why the Interested Party believes that the Protest should/should not be upheld:	
<p>If Interested Party requests that the Challenged Procurement not be suspended, an explanation of the reason why:</p> <ul style="list-style-type: none"> (a) the Protest does not clearly show that the Challenger will suffer irreparable harm if the Challenged Procurement is not suspended; or (b) the Interested Party may sustain disproportionately greater harm by the suspension, compared to the harm to be possibly sustained by the Challenger; or (c) the suspension of the Challenged Procurement will compromise public interest; or (d) there are urgent or compelling reasons not to suspend the Challenged Procurement. 	

Relief Sought
Description of relief sought:
Explanation of reason why Interested Party is entitled to relief sought:

Instructions:

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

Annex C

Form of Appeal

Challenger or Interested Party Filing an Appeal in accordance with Rule 3.1		
Name:		
Postal address for Appeal purposes (if different from postal address for Protest purposes):		
Email address for Appeal purposes:	Telephone number for Appeal purposes:	Fax number for Appeal purposes:
Name of authorized representative for the Challenger or Interested Party (if any):		
Signature of Challenger or Interested Party or authorized representative:		

Challenged Procurement
Name:
Number:

Appeal	
Date when Challenger or Interested Party became aware of Level 1 Authority Decision:	Date of Filing of Appeal:
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:	

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Relief Sought
Description of relief sought:
Explanation of reason why the Challenger or Interested Party is entitled to relief sought:

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, (b) the Level 1 Authority decision, and (c) proof of timely payment of the appropriate Appeal Fee.
2. Please use additional sheets for the required information if necessary.

Annex D

Form of Comment to the Appeal

Challenger or Interested Party Filing a Comment in accordance with Rule 3.5		
Name:		
Postal address for Appeal purposes (if different from postal address for Protest purposes):		
Email address for Appeal purposes:	Telephone number for Appeal purposes:	Fax number for Appeal purposes:
Name of authorized representative of Challenger or Interested Party (if any):		
Signature of Challenger or Interested Party or authorized representative:		

Challenged Procurement
Name:
Number:

Comment	
Date when Challenger or Interested Party received a copy of the Appeal:	Date of Filing of Comment:
Explanation of reason why the Challenger or Interested Party believes that the Appeal should/should not be upheld:	

Relief Sought
Description of relief sought:

Explanation of reason why the Challenger or Interested Party is entitled to relief sought:

Instructions:

- 1. Please attach a copy of the proof of timely payment of the Appeal Fee.
- 2. Please use additional sheets for the required information if necessary.

Annex E

Level 2 Authority Declaration

1. Except for the reasons stated in the attachment, I am not aware of any reason why I should not serve as the Level 2 Authority constituted under the Bid Challenge System (the “**BCS**”) of Millennium Challenge Account Nepal (“MCA-Nepal”), with respect to the Appeal filed by _____. Capitalized terms used herein and not defined herein have the respective meanings given to such terms in the BCS.
2. I will keep confidential all information coming to my knowledge as a result of my participation in this proceeding, as well as the contents of any decision made by the Level 2 Authority.
3. I will be fair to the parties, and will exercise impartiality and independence in deciding the Appeal. I will not accept any instruction with regard to this proceeding, or receive any compensation with regard to this proceeding from any source except as provided in the BCS and my services agreement with MCA-Nepal.
4. Attached is a statement of (a) my past and present professional, business and other relationships (if any) with the parties and (b) any other circumstance that might cause doubt as to my ability to exercise impartiality and independence in deciding the Appeal. By signing this declaration, I pledge to promptly notify MCA-Nepal of any such relationship or circumstance that subsequently arises during this proceeding.

Signature:

Name:

Date:

[With attachment]

Annex F

Form of Objection to the Appointment of a Level 2 Authority

Party Filing the Objection	
Name (Indicate whether Challenger, MCA-Nepal or other Party):	
Name of authorized representative for the Party Filing the Objection (if any):	
Signature of Party Filing the Objection or authorized representative:	
Challenged Procurement	
Name:	
Number:	
Objection	
Name of objected Level 2 Authority:	
Date when Party Filing the Objection became aware of the ground for Objection:	Date of Filing of Objection:
Ground for Objection:	
Factual basis to support the ground for Objection:	

Instructions:

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