

**Notice of The Decision of Level 1 Authority Bid Challenge System  
under  
“Procurement of Consulting Services for Preparation and  
Implementation of Resettlement Action Plans (RAP) and  
Preparation, Supervision of Implementation of Livelihood  
Restoration Plans (LRP) for the Transmission Line Alignment of  
Electricity Transmission Project (ETP)”**

\*\*\*

**MCA-N/ETP/QCBS/010**

This is to notify all Consultants that submitted a proposal for the above-described procurement MCA-N/ETP/QCBS/010 that Level 1 Authority of MCA-Nepal has made a decision on the protest/bid challenge to the results of the technical evaluation of the above referenced procurement.

**The nature of the protest was:** The Challenger believes that the sub-consultant, without fulfilling the mandatory requirement mentioned in Section III, Qualification and Evaluation Criteria, 3.7. Qualification Table, 3.7.4.2 General and Specific Experience (See Criteria table under 3.4 and specific areas of TOR), Sub-Consultant column states, “Must meet at least one specialized requirement stated below as note #1” and Note 1 states “Experience of Sub-Consultant: The Sub-Consultant must satisfy the Specific Experience requirements for the task for which the consultant is proposing the sub-consultant. The Consultant must submit the required experience certificate of the Sub-Consultant in support of the intended task to be sub-consulted for MCA-Nepal approval, and subsequent clarification 1 dated 31<sup>st</sup> March 2022, S. No.18, should not be qualified and proposal submitted by the firm with such sub-consultant should be non-responsive and should not be considered in detail evaluation for Technical Proposal”.

**Name of Challenger:** Environment and Resource Management Consultant (P) Ltd., Nepal

**Interested Party:** SA Infrastructure Consultants Pvt. Ltd. (SAICPL), India in Joint Venture with BOTEK Bosphorus Technical Consulting Corporation (BOTEK), Turkey and GOEC Nepal (Pvt.) Ltd.,(GOEC), Nepal and Total Management Services Pvt. Ltd. (TMS) Nepal, in association with WeKreate International (Pvt.) Ltd. (WEKI), Nepal and Map Nepal Engineering Consultancy (P) Ltd. (MNEC), Nepal as a form of Sub-Consultant submitted the Comment.

**Decision of the Level 1 Authority:**

The Level 1 Authority went through the challenge submitted and the comment received in detail and finds that the Bid Challenge submitted by Environment and Resource Management Consultant (P) Ltd. in respect of Consulting Services for Preparation and Implementation of Resettlement

Action Plans (RAP) and Preparation, Supervision of Implementation of Livelihood Restoration Plans (LRP) for the Transmission Line Alignment of Electricity Transmission Project (ETP) is without any merits, both on facts and claims.

The Level 1 Authority considers that the Challenger erroneously submitted a protest with the intention to disqualify any one or all other firms without any substantive grounds or evidence. The acceptance of such arguments without any evidence could deprive MCA-Nepal of the benefits of healthy competition harming the interest of MCA-Nepal and other participants in the procurement process and will be contrary to MCC PPG. MCA-Nepal has acted in accordance with the provisions of the RFP and evaluated all the submitted technical proposals not considering the experience of the sub-consultants in the evaluation as per the RFP requirements and, hence, disqualify the protest, based on the following BCS provisions in the paragraphs below.

As per Rule 1.3 of the BCS, 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.

Further, as per Rule 2.1.2 (a) and after reviewing the submitted challenge the Level 1 Authority has decided to reject the Protest because the Challenger has failed to meet its burden of proof under Rule 1.3

Further, the Level 1 Authority finds that the evaluation processes and the technical evaluation report results are consistent with the evaluation requirements laid out in the Request for Proposal document and that there were no flaws in the process to necessitate rejection of technical evaluation report.

In summary, the Level 1 Authority concludes that this protest/bid challenge is without basis and upholds the decisions and actions taken by MCA-Nepal and rejects the protest/Bid Challenge on Consulting Services for Preparation and Implementation of Resettlement Action Plans (RAP) and Preparation, Supervision of Implementation of Livelihood Restoration Plans (LRP) for the Transmission Line Alignment of Electricity Transmission Project (ETP). As per the provisions in Rule 1.8, the procurement suspension shall be lifted five Business Days after this decision has been sent in accordance with Rule 2.4.

**Attachment:** Determination of the Bid Challenge by Review Committee of MCA-Nepal Level 1 Authority.

**DETERMINATION OF THE BID CHALLENGE BY REVIEW COMMITTEE OF MCA-  
NEPAL LEVEL 1 AUTHORITY**

**ON A BID CHALLENGE SUBMITTED BY**

**ENVIRONMENT AND RESOURCE MANAGEMENT CONSULTANT PVT LTD.  
(hereafter "Challenger") FOR "CONSULTING SERVICES FOR PREPARATION AND  
IMPLEMENTATION OF RESETTLEMENT ACTION PLANS (RAP) AND  
PREPARATION, SUPERVISION OF IMPLEMENTATION OF LIVELIHOOD  
RESTORATION PLANS (LRP) FOR THE TRANSMISSION LINE ALIGNMENT OF  
ELECTRICITY TRANSMISSION PROJECT (ETP) (MCA-N/ETP/QCBS/010)  
PROJECT PROCUREMENT**

**1.0 BACKGROUND**

1.1 The Specific Procurement Notice for The "Procurement of Consulting Services for Preparation and Implementation of Resettlement Action Plans (RAP) and Preparation, Supervision of Implementation of Livelihood Restoration Plans (LRP) for the Transmission Line Alignment of Electricity Transmission Project (ETP)" was published internationally (online, DgMarket, UNDB, MCA-Nepal Web Page and USA Embassy to Nepal Web Page) and in a local newspaper through advertisement in the Kantipur National daily on 08 March 2022.

By the deadline for submission of 15 April 2022, 4 (four) Proposals were submitted and publicly opened on the same day. The Technical Evaluation of the four proposals submitted were carried out by a Technical Evaluation Panel (TEP) comprised by 3 members, one of which is an external consultant, appointed to be in the Panel of Technical Evaluation (TEP). The hiring of such external TEP member is done by following a competitive bidding process under MCC Program Procurement Guidelines.

1.2 The Technical Evaluation Report of the Proposals submitted was first cleared by MCA-Nepal Management and finally by the Millennium Challenge Corporation (MCC) on 7 June 2022, as required under MCC Program Procurement Guidelines (PPG). All four consultants passed the Technical Evaluation stage, and they were:

1. Environment and Resource Management Consultant (P) Ltd. (ERMC)
2. SA Infrastructure Consultants Pvt. Ltd. (SAICPL), India in Joint Venture with BOTEK Bosphorus Technical Consulting Corporation (BOTEK), Turkey and GOEC Nepal (Pvt.) Ltd. (GOEC), Nepal and Total Management Services Pvt. Ltd. (TMS) Nepal in association with WeKreate International (Pvt.) Ltd. (WEKI), Nepal and Map Nepal Engineering Consultancy (P) Ltd. (MNEC), Nepal as a form of Sub - Consultant.



3. GOPA International Energy Consultants GmbH with Consulting Services for Social and Infrastructural Development (CSSID) (P) Ltd., Kathmandu, Nepal and GEOCE Consultants (P.) Ltd., Kathmandu, Nepal and Subcontractors
4. EcoConServ Environmental Solutions (EcoConServ), Egypt in Joint Venture with SILT Consultants (P) Ltd. (SILT), Nepal and in Association with Consulting Services or Social and Infrastructural Development (P) Ltd. (CSSID) , Nepal

- 1.3 On 8 June 2022, notices of the outcome of the cleared Technical Evaluation Report (TER) were sent to all Bidders, including the Challenger. Through the same notification of results all the four bidders passing the technical evaluation stage were invited to the opening of Financial Proposals to take place on 15 June 2022, at 3.30 PM (Nepal Local Time).
- 1.4 On 9 June 2022, as per Rule 1.2 (b) of the BCS, the Challenger requested a Debriefing on why certain Subconsultants (not mentioned by name in the request) have been qualified by MCA-Nepal. As per same rule above, MCA-Nepal was required to provide a written explanation against the debriefing request within two (2) Business Days of receiving the request for Debrief.
- 1.5 On 13 June 2022 MCA-Nepal sent the Challenger the requested Debriefing indicating that (i) as per the Procurement rules MCA-Nepal is not allowed to provide information on the evaluation of other bidders (except the information that is publicly available as per the PPG and Standard Bidding Documents) and (ii) no written explanation on why the Consultant “was not selected” can be provided by MCA-Nepal as the Challenger was already selected for passing to the next stage of the procurement process, as the top ranked Consultant, (iii) clarified that the Sub-Consultant experience is not considered as part of the evaluation except as part of the methodology and (iv) MCA-Nepal indicated that the evaluation was conducted in compliance with the RFP requirements.
- 1.6 Notwithstanding the above clarification provided, on 14 June 2022, Environment and Resource Management Consultant (P) Ltd. submitted a protest/bid challenge against MCA-Nepal’s decision and the findings of the TER, stating that the Challenger believes that the sub-consultants, without fulfilling the mandatory requirement mentioned in Section III, Qualification and Evaluation Criteria, 3.7. Qualification Table, 3.7.4.2 General and Specific Experience (See Criteria table under 3.4 and specific areas of TOR), Sub-Consultant column states, “Must meet at least one specialized requirement stated below as note #1” and Note 1 states “Experience of Sub-Consultant: The Sub-Consultant must satisfy the Specific Experience requirements for the task for which the consultant is proposing the Sub-Consultant. The Consultant must submit the required experience certificate of the Sub-Consultant in support of the intended task to be sub-consulted for MCA-Nepal approval, and subsequent clarification 1 dated 31st March 2022, S. No.18, should not be qualified and proposal submitted by the firm with such Sub-Consultant should be non-responsive and should not be considered in detail evaluation for Technical Proposal. MCA-Nepal received the protest/bid challenge on 14 June 2022, though the



protest/bid challenge mentions the date of filing of protest as 9 June 2022.

- 1.7 On 14 June 2022, The Secretariat notified all bidders of the submitted Bid Challenge, and hence (i) the opening of Financial Proposals was postponed until the bid challenge issue is resolved and (ii) the remaining stages of the procurement process were suspended until a final decision with respect to the Protest/Challenge is issued or the Level 1 Authority lifts the suspension.
- 1.8 On 21 June 2022, the Joint Venture SAICPL-BOTEK-GOEC-TMS in association with WEKI-MNEC joined the protest by filing a comment as per Rule 1.6 of the BCS.

## **2.0 LEVEL 1 AUTHORITY MEETINGS WITH HIS TEAM**

- 2.1 In line with the Bid Challenge System Procedures, the MCA-Nepal Executive Director in his capacity as the “Level 1 Authority” initiated a thorough review of the protest/bid challenge in consultation with his team.
- 2.2 The Level 1 Authority met with his team on 22, 23 and 24 June 2022 to review and discuss on the merits of the points and claims raised by the Challenger and the comments filed by an “Interested Party” as described in 1.8 above.
- 2.3 The Level 1 Authority looked at the whole procurement process, and specifically looked at the Technical Evaluation Process in respect of which the challenge arose in order to determine if due procurement processes were followed, as outlined in the MCC Program Procurement Guidelines and the Request for Proposal (RFP) Document.
- 2.4 The Level 1 Authority noted the following:
  - a) The Protest was submitted within the timeline stated under Rule 1.4.1.
  - b) The Protest was submitted as per Rule 1.4.
  - c) The Protest was submitted in the Annex A as per Rule 1.4.2
  - d) The Comments were filed within the timeline stated under Rule 1.6.
- 2.5 The Level 1 Authority also noted that the Challenger has raised mainly two points as the basis of their challenge, which are as follows:
  - a) Non-Consideration of RFP requirements during Technical Evaluation.
  - b) Consultants with no right credentials should have been disqualified.

## **3.0 CONSIDERATIONS OF ENVIRONMENT AND RESOURCE MANAGEMENT CONSULTANT (P) LTD PROTEST**

The Level 1 Authority summarized the Challenger’s areas of concern, as follows:



**3.1 Non-Consideration of RFP requirements during Technical Evaluation.**

- 3.1.1 Under this point, the Challenger claims that “MCA-Nepal fails to comply with the “Procurement Rules” Section III. Qualification and Evaluation Criteria, 3.7. Qualification Table, 3.7.4.2 General and Specific Experience, Note 1”, which is violation of Procurement Action. The procurement authority neglected these important aspects. This clause provides for mandatory requirement and without fulfilling which a firm cannot be responsive and should be rejected out rightly before entering into detail technical evaluation”.
- 3.1.2 “Firms associated with other firms passed the technical evaluation, though these firms were not meeting the minimum requirements of Sub-Consultant. The Challenger believes that the requirement prescribed has been overlooked during the Technical Evaluation. This would cause the Challenger tremendous loss as they could not strengthen their consortium, as aimed due to their adherence to the evaluation criteria. Further, the Challenger states that they will have negligible harm”.
- 3.1.3 A firm without any prior experience of this size and complexity should not win the Contract.
- 3.1.4 The Challenger states that "the violation on procurement guidelines of MCC was unforeseen and it didn't help to provide equal ground to all firms who submitted the proposal. If the constriction on sub-consultants was not sought in the RFP document, we would have strengthened our consortium which would have help us get better positions on the technical evaluation. Since the sub-consultants were needed to be qualified for the similar assignments, which was further clarified in the Clarification I as explained earlier, we could not strengthen our consortium as aimed".

**3.2 Consultant with no right credentials should have been disqualified**

Under this point, the Challenger has claimed that it is their **belief** that those sub-consultants who did not have right credentials for this complex and challenging job should have been disqualified during the technical evaluation.

**4.0 THE COMMENT FILED BY, SA INFRASTRUCTURE CONSULTANTS PVT. LTD. (SAICPL), INDIA IN JOINT VENTURE WITH BOTEK BOSPHORUS TECHNICAL CONSULTING CORPORATION (BOTEK), TURKEY AND GOEC NEPAL PVT.) LTD. (GOEC), NEPAL AND TOTAL MANAGEMENT SERVICES PVT. LTD., (TMS) NEPAL IN ASSOCIATION WITH WEKREATE INTERNATIONAL (PVT.) LTD. (WEKI), NEPAL AND MAP NEPAL ENGINEERING CONSULTANCY (P) LTD. (MNEC), NEPAL AS A FORM OF SUB – CONSULTANT (hereafter "The Interested Party").**



- 4.1 The Interested Party has filed a comment on 16 June 2022. However, the Secretariat noted and informed the Interested Party that the submitted comment is not in the form set forth in Annex B and they should submit copy of protest to the Challenger. On 22 June 2022, the Interested Party submitted a revised comment using the required Forms and submitted a copy of its comment to the Challenger.
- 4.2 The relevant aspects of the Comment filed by the Interested Party are described below:
- 4.2.1 “The Challenger’s protest should not be valid because they are selected in first stage, it is clearly stated in the rule that the protest can only be filed if in case they are not selecting in first stage (i.e. below the pass mark/not scoring the minimum mark)”.
- 4.2.2 “We believe that the process of protest should be filed in right time otherwise it should be considered as influence activities and should attract the Section I. Instruction to the Consultant (ITC) clause 22.2. In our opinion, the Bid Challenger attempted misinterpretation of RFP clauses and clarifications thereafter too, along with they violated the process of protest rule of MCA-Nepal as well”.
- 4.2.3 “The Protest does not clearly show that the Challenger will suffer irreparable harm if the Challenged Procurement is not suspended; it is clearly stated that the sub-consultants experience was not considered for evaluation, that means the Bid Challenger’s understanding of the RFP clauses was not proper. Please refer page 47 of RFP where Mandatory Criteria is stated as “NONE” and page 55 of RFP where it is clearly stated that Sub-Consultant experience shall not be considered for evaluation except a part of methodology. Hence, it is all equal ground for all the participated bidders. The Bid Challenger also violated the protest rules by filing the protest beforehand even eligible for second stage. They could file the protest during notice of intent of award if any. The Bid Challenger’s misinterpretation of the RFP Clauses and subsequent clarification should not be valid as they explained.

## **Relief**

- 4.2.4 Description of relief sought: The misinterpretation of the Bid Challenger should be invalid and dismiss the protest and MCA-Nepal shall notify the new date for Financial Opening. Also need to demotivate such kind of activities in the name of “rights”.

## **5.0 THE LEVEL 1 AUTHORITY DETERMINATION ON THE ISSUES RAISED BY ENVIRONMENT AND RESOURCE MANAGEMENT CONSULTANT (P) LTD IN THE CHALLENGE**

The Level 1 Authority considered the points raised by the Challenger and the Comments filed by the Interested Party in consultation with MCA-Nepal Procurement Manager, General Counsel (Chief Legal Officer) and Procurement Agent, and determined as follows:



## 5.1 On non-Consideration of RFP requirements during Technical Evaluation.

5.1.1 The Level 1 Authority considered the Challenge under this heading, and noted that the referred clauses that is Procurement Rules” Section III. Qualification and Evaluation Criteria, 3.7. Qualification Table, 3.7.4.2 General and Specific Experience, Note 1 and clarification related to this provisions states:

Note 1: The Sub-Consultant must satisfy the Specific Experience requirements for the task for which the consultant is proposing the Sub-Consultant. The Consultant must submit the required experience certificate of the Sub-Consultant in support of the intended task to be sub-consulted for MCA-Nepal approval.

Clarification:

*Requirement 3.7.4.2 General & Specific Experience, requirement for Sub-Consultant, states “Must meet at least one specialized requirement stated below as note #1”. Further the note #1 states “Experience of Sub-Consultant: The Sub-Consultant must satisfy the Specific Experience requirements for the task for which the consultant is proposing the Sub-Consultant. The Consultant must submit the required experience certificate of the Sub-Consultant in support of the intended task to be sub-consulted for MCA-Nepal approval. 2. The Consultant must satisfy requirements under 3.7 Qualification Table to be awarded the Contract.”*

As per this requirement, If a Consultant is proposing a subconsultant to carry out a particular task (specialized requirement related to experience requirement stated under 3.4, 1.1 to 1.5) under this assignment, then the Consultant must submit the experience certificate of the Sub-Consultant in support of the subconsultants technical capacity and experience to perform the intended task to be sub-consulted, for MCA-Nepal approval. This is to ascertain that the proposed Sub-Consultant has the required experience to carry out the specialized task under this assignment.

This requirement is related to the approval of the specialized Sub-Consultant and not about approval or rejection of the Consultant. The requirement stated under 3.7.4.2 guides all Consultants that in case they want to carry out a specialized task related to experiences stated under 3.4, 1.1 to 1.5, in that case, the Consultant must seek approval of MCA-Nepal by submitting the experience certificate of the Sub-Consultant. This clause provides the provision of approval of the specialized Sub-Consultant by MCA-Nepal. This clause does not state any specified criteria to be fulfilled by the Sub-Consultant, but states “If the Consultant is proposing a Sub-Consultant to carry out a particular task (specialized requirement related to experience requirement stated under 3.4, 1.1 to 1.5) under this assignment, then the Consultant must submit the experience certificate of the Sub-Consultant in support of the Subconsultants technical capacity and experience to perform the intended task to be sub-consulted, for MCA-Nepal approval”.





Thus, if any Consultant wants to sub-consult any specialized part of the assignment, they should have included the experience of the Sub-Consultant for MCA-Nepal approval as per Section III Qualification and Evaluation Criteria Note #1 to 3.7 Qualification Table and as per GCC 5.1 in the General Condition of Contract. If a consultant is qualified to carry out all the specialized requirements of the assignments, they can do by themselves. All the Consultants has fulfilled the requirements stated under Section III. 3.7 Qualification Table.

The Level 1 Authority also noted the following:

- A Consultant may associate with a Sub-Consultant who not necessarily will be in charge of undertaking specialized tasks. A Sub-Consultant may provide to the Association for example: (i) experts, (ii) logistic support, (iii) office space and equipment in Nepal, (iv) vehicles, (v) knowledge of local languages, (vi) knowledge of cultural aspects and business environment and (vii) similar inputs etc.
- In this context, the Challenger failed to provide clear and convincing evidence on (i) which Sub-consultants (by name) will undertake specialized tasks requiring the submission of experience certificates and (ii) the list of specialized tasks to be undertaken by subconsultants, and (iii) evidence- beyond Challenger's opinion- that such subconsultants are not qualified for undertaking such tasks.
- RFP does not provide any provision that if Sub-Consultant is not qualified the Consultant shall be disqualified.
- The Level 1 Authority has not received any information relating to the allegation presented by the Challenger detailed in the above paragraphs and the Challenger has failed to establish a link between alleged facts about other sub-consultants and its claim on the Protest.
- With no detailed information, specific provisions and supporting evidence which would disqualify a Consultant if the associated Sub-Consultant is not qualified, the Level 1 Authority is unable to accept the relief sought by the Challenger, which is to proceed to reject the technical Proposals submitted by all other Consultants and subconsultants participating in the procurement process, and in such a way depriving MCA-Nepal of the benefits of a strong and healthy competition.

Level 1 Authority concluded that the Challenger has not proven clearly and convincing evidence that the procurement rules were violated and failed to document and support its claims.



5.1.2 Under this point, the Challenger has claimed that the firms associated with other firms passed the technical evaluation, though these firms were not meeting the minimum requirements for Sub-Consultant. The Challenger believes that the requirement set are being overlooked during the Technical Evaluation. This would cause the Consultant tremendous loss as they could not strengthen their consortium, as aimed due to their adherence to the evaluation criteria. Further, the Consultant states that they will have negligible harm.

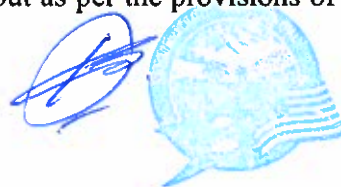
The Level 1 Authority reviewed the claim and noted that the Consultant's claim is without any merit and lacks justification based on following reasonings:

- It is not clearly described in the submitted Challenge/protest how the Challenger may sustain "tremendous loss" when MCA-Nepal Technical Evaluation Panel has determined the proposal submitted by the Challenger as the Top Ranked amongst all submitted technical proposals.
- The scores obtained by each Consultant is independent of the sub-consultants qualifications. The Sub-Consultant is required to be evaluated if they were proposed for specialized requirement for an intended task to be sub-consulted by the Consultant and the submission is for MCA-Nepal approval
- From this perspective, the claim of the Challenger is without any merit and Level 1 Authority concludes that, all relevant criteria of the RFP were used and consistently applied during the technical evaluation. Thus, all Consultants were able to equally participate with or without any Sub-Consultant.

Level 1 Authority concludes that the Challenger has not suffered or will suffer loss or injury because of the MCA-Nepal procurement actions as the Challenger has emerged as the top ranked Consultant and the competition/evaluation was performed by applying same criteria for all the Consultants.

5.1.3 Under this point, the Challenger has claimed that the firm without any prior experience of this size and complexity should not win the Contract.

The Level 1 Authority reviewed the claim and noted that the Challenger claim that a firm without any prior experience of this size and complexity has been selected to win the Contract is inaccurate and without any substance. No information or evidence on the Challenger's claim has been submitted, thus MCA-Nepal cannot accept the Challenger's statement that a firm with no experience in implementing contracts of this size and complexity could win this contract. As per the scores attained by the four firms participating in this procurement, all of them are technically qualified to undertake the assignment. It shall also be noted that as per Rule 1.2 (iii) of the BCS the "scores assigned by the technical evaluation panel may not be subject of a Protest, unless the determination of such scores is alleged to have been arbitrary or capricious or characterized by an abuse of discretion". The evaluation was carried out as per the provisions of the RFP and only



the proposals satisfying both the administrative requirements as well as the requirements in Section III Qualification and Evaluation Criteria were selected for financial opening.

Level 1 Authority concluded that the Procurement action was taken as per the provisions in the RFP and scored the Consultants based on their qualifications, experience and other requirements of the RFP.

- 5.1.4 Under this point, the Challenger has claimed that the violation on procurement guidelines of MCC was unforeseen and it didn't help to provide equal ground to all firms who submitted the proposals. If the constriction on sub-consultants was not sought in the RFP document, we would have strengthened our consortium which would have help us get better positions on the technical evaluation. Since the sub-consultants were needed to be qualified for the similar assignments, which was further clarified in the Clarification 1 as explained earlier, we could not strengthen our consortium as aimed.

The Level 1 Authority reviewed the Consultant's claim on the protest and noted that there is no violation of any procurement guidelines of MCC as the procurement was strictly carried out as per the provision of RFP and MCC Program Procurement Guidelines. There was no constraint stated in the RFP for any Consultant for association with any Sub-Consultant and the Challenger cannot make MCA-Nepal responsible for not being able to establish a satisfactory (for the Challenger) association with a Sub-Consultant. Further, as the sub-consultants experience cannot be scored during the technical evaluation, and the requirement stated under 3.7.4.2 for sub-consultants only requires MCA-Nepal approval (or rejection) of the proposed Sub-Consultant, the Consultant's claim that they could have improved their scoring by adding the experience of the Sub-Consultant is without any regard to RFP Section III Qualification and Evaluation Criteria.

Level 1 Authority also noted that there is no provision in the RFP that prevents the Consultants to associate (as JV or Sub-consultancy agreements) with other Consultants as they may consider needed to enhance their capabilities. Furthermore, P1.B.1.11 of the MCC Program Procurement Guidelines encourages Bidders and Consultants to have associations between them. Level 1 Authority further noted that except the challenger, no other consultant has the wrong understanding of the provision of the RFP.

Level 1 Authority concluded that there is no violation of any procurement rules and all consultants have been provided equal opportunity while submitting the bid and were evaluated based on RFP provisions.



## 5.2 Consultant with no right credentials should have been disqualified

Under this point, the Challenger has claimed that it is their belief that those sub-consultants who did not had right credentials for this complex and challenging job should have been disqualified during the technical evaluation.

Section III. Qualification and Evaluation Criteria, 3.7. Qualification Table, 3.7.4.2 General and Specific Experience, including Note 1, includes a provision for approval of a specialized Sub-Consultant if proposed by the Consultant. In case the Consultant proposes a Sub-Consultant for specialized task(s), that Sub-Consultant should be approved by MCA-Nepal.

Further, the RFP does not include any provision, which states that if the Sub-Consultant does not have right Credential (not defined by the Challenger how right credentials are defined in this case), the Consultant will be disqualified.

Here it was also noted that Section III. Qualification and Evaluation Criteria, 3.4 Evaluation Criteria, Note 2, below the table, states “Sub-Consultant experience shall not be considered for Evaluation, except as part of methodology”, and thus clearly directs the Technical Evaluation Panel not to consider Sub-Consultant experience in the evaluation. Since, all Consultants are evaluated based on their own credentials, there is no question of “no right credentials” and thus there should not be any disqualification.

Level 1 Authority concluded that the Challenger has submitted a protest without any substantial evidence in support of its challenge and the protest is liable to be dismissed.

Level 1 Authority concluded that the Procurement action was as per RFP provision.

## 6.0 CONCLUSION

The Level 1 Authority went through the challenge submitted and the comment received in detail and finds that the Bid Challenge submitted by Environment and Resource Management Consultant (P) Ltd. in respect of Consulting Services for Preparation and Implementation of Resettlement Action Plans (RAP) and Preparation, Supervision of Implementation of Livelihood Restoration Plans (LRP) for the Transmission Line Alignment of Electricity Transmission Project (ETP) is without any merits, both on facts and claims.

The Level 1 Authority considers that the Challenger erroneously submitted a protest with the intention to disqualify any one or all other firms without any substantive grounds or evidence. The acceptance of such arguments without any evidence could deprive MCA-Nepal of the benefits of healthy competition harming the interest of MCA-Nepal and other participants in the procurement process and will be contrary to MCC PPG. MCA-Nepal has acted in accordance with the provisions of the RFP and evaluated all the submitted technical proposals not considering the



experience of the sub-consultants in the evaluation as per the RFP requirements and, hence, disqualify the protest, based on the following BCS provisions in the paragraphs below.

As per Rule 1.3 of the BCS, 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.

Further, as per Rule 2.1.2 (a) and after reviewing the submitted challenge the Level 1 Authority has decided to reject the Protest because the Challenger has failed to meet its burden of proof under Rule 1.3

Further, the Level 1 Authority finds that the evaluation processes and the technical evaluation report results are consistent with the evaluation requirements laid out in the Request for Proposal document and that there were no flaws in the process to necessitate rejection of technical evaluation report.

In summary, the Level 1 Authority concludes that this protest/bid challenge is without basis and upholds the decisions and actions taken by MCA-Nepal and rejects the protest/Bid Challenge on Consulting Services for Preparation and Implementation of Resettlement Action Plans (RAP) and Preparation, Supervision of Implementation of Livelihood Restoration Plans (LRP) for the Transmission Line Alignment of Electricity Transmission Project (ETP). As per the provisions in Rule 1.8, the procurement suspension shall be lifted five Business Days after this decision has been sent in accordance with Rule 2.4.

Dated this 28<sup>th</sup> day of June 2022





Khadga B. Bisht: .....



Level I Authority (Executive Director of MCA-Nepal)

Copy to: Secretariat, Bid Challenge System, MCA-Nepal (For circulation to all bidders)

## ANNEXES

Annex	Document	Attachment
Annex – 1	Protest/Bid Challenge Submitted by ERMC	 Form of Protest.pdf
Annex – 2	Notice of Filing Protest - Published on MCA Nepal website	 Notice of Filing Protes - Published on
Annex – 3	Comment received	  Comments on Protest - SAIPL.pdf      Annex B - Comment.pdf



**Annex – 1      Protest/Bid Challenge Submitted by ERM**



**ERMCM (P) Ltd.**

*(Environment & Resource Management Consultant)*

An ISO 9001:2015 Certified Company

Ref:- 728/078/079

Date: June 14, 2022

To,  
Millennium Challenge Account Nepal  
2<sup>nd</sup> and 3<sup>rd</sup> Floor, East Wing,  
Lal Durbar Convention Centre,  
Yak and Yeti Complex, Durbar Marg,  
Kathmandu, Nepal

**Ref:** Consulting Services for Preparation and Implementation of Resettlement Action Plans (RAP) and Preparation, Supervision of Implementation of Livelihood Restoration Plans (LRP) for the Transmission Line Alignment of Electricity Transmission Project (ETP), MCA-N/ETP/QCBS/010

**Subject: Protest on Result of Technical Evaluation.**

Dear Madam or Sir



We refer to the letters written by the Procurement Agent of MCA-Nepal dated June 8, 2022 regarding Notification of Technical Evaluation Result and June 13, 2022 regarding Clarification and the letter written by us dated June 9, 2022 regarding Debriefing on Technical Evaluation Result.

We note the reference to Section III, Note 2 below the table for Evaluation Criteria 3.4 made by the Procurement Agent in its latest letter. It states "Sub-consultant experience shall not be considered for evaluation, except as part of methodology."

For the sake of simplicity and to reduce repetitiveness of long provisions of Qualification and Evaluation Criteria in following discussion we denote as:

**Provision A:**

Section III. Qualification and Evaluation Criteria, 3.7. Qualification Table, 3.7.4.2 General and Specific Experience. Here 'Requirement' column states "See Criteria table under 3.4 and specific areas of TOR". The 'Subconsultant' column states "**Must meet at least one specialized requirement stated below as note # 1**". The 'Note: 1. Experience of Sub-Consultant' states "The Sub-Consultant must satisfy the Specific Experience requirements for the task for which the consultant is proposing the sub-consultant. The Consultant must submit the required experience certificate of the Sub-Consultant in support of the intended task to be sub-consulted for MCA-Nepal approval."







# ERMC (P) Ltd.

(Environment & Resource Management Consultant)

An ISO 9001:2015 Certified Company

## Provision B:

Section 3 Note 2 below the table for Evaluation Criteria 3.4 which states; “Sub-consultant experience shall not be considered for evaluation , except as part of methodology.”

CLARIFICATION 1 during the proposal preparation dated 31<sup>st</sup> March 2022, S.No 18 states “If the Consultant is proposing a sub-consultant to carry out a particular task (specialized requirement related to experience requirement stated under 3.4, 1.1 to 1.5) under this assignment, then the Consultant **must submit the experience certificate of the Sub-consultant in support of the Sub-consultants technical capacity and experience to perform the intended task to be sub-consulted**, for MCA-Nepal approval. This is to ascertain that the proposed sub-consultant has the required experience to carry out the specialized task under this assignment.”

## Discussion:

Before receipt of CLARIFICATION 1 dated 31<sup>st</sup> March 2022, S.No 18 it could be argued that there is a controversy between ‘Provision A’ and ‘Provision B’. Although there is no any controversy between ‘Provision A’ and ‘Provision B’. They complement each other. The ‘Provision A’ states about mandatory requirement and without fulfilling which a firm cannot be responsive and should be rejected out rightly before entering into detail technical evaluation. The ‘Provision B’ states that score of sub consultant can not be considered in Evaluation.

CLARIFICATION 1 dated 31<sup>st</sup> March 2022, S.No 18 support ‘Provision A’. It even explains in detail how the mandatory provision should be used to find responsiveness of the Proposal.

In the letter dated June 13 regarding Clarification by Procurement Agent of MCA-Nepal, nothing have been mentioned about the CLARIFICATION 1 dated 31<sup>st</sup> March 2022, S.No 18.

Due to the seriousness of evaluation of sub-consultants, Firm’s were seeking clarification regarding ‘Provision A’. Due to observing compliance of the ‘Provision A’ and its subsequent clarification we could not enhance our Technical Proposal as aimed by associating with other firms.

Please refer the attached Form of Protest as part of the discussion as well.

## Conclusion:

We again strongly believe that the sub-consultant, without fulfilling the mandatory requirement mentioned in ‘Provision A’ and its subsequent CLARIFICATION 1 dated 31<sup>st</sup> March 2022, S.No 18, should not be qualified and the proposal submitted by the firm with such sub-consultant should be non- responsive and should not be considered in detail evaluation of Technical Proposal.

## Register of Protest

Hinged on above discussion and conclusion, we here by register our protest based upon Rule 1.4 of Bid Challenge System of MCA-Nepal. We have included the Form of Protest as per the Rule 1.4.2. All the justifications required in Rule 1.3 and rule 1.4.2 have been mentioned in the Form of Protest and in this letter.





**ERMC (P) Ltd.**

*(Environment & Resource Management Consultant)*


An ISO 9001:2015 Certified Company

Hence again we kindly request you to register our protest and review the Evaluation of Technical Proposal with respect to Mandatory 'Provision A' and its subsequent CLARIFICATION 1 dated 31<sup>st</sup> March 2022, S.No 18.

We hope our protest would be taken genuinely because we have suffered although we have been ranked first.

Yours Sincerely,

For and on behalf of ERMC



Pashupati Bhandari

Chief Executive Officer

Attachments:

Attachment 1: Form of Protest

Attachment 2: As-Submitted Debriefing on Technical Evaluation Results

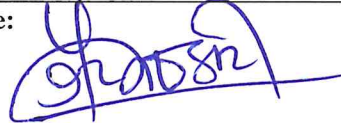
Attachment 3: Clarification on Debriefing by MCA-Nepal

Attachment 4: Provision A, Section III. Qualification and Evaluation, 3.7. Qualification Table

Attachment 5: Provision B, Evaluation Criteria 3.4

Attachment 6: Clarification 1 on RFP dated 31<sup>st</sup> March 2022 clarifying the issue

## Form of Protest

Challenger		
<b>Name:</b> Environment and Resource Management (P.) Ltd.		
<b>Choose one:</b> <input checked="" type="checkbox"/> Bidder <input type="checkbox"/> Potential Bidder		
<b>(For legal persons only) Country under whose laws Challenger was organized:</b> Federal Democratic Republic of Nepal		
<b>Postal address for Protest purposes:</b> Puja Pratisthan Marga-31, New Baneshwor, Kathmandu, Nepal		
<b>Email address for Protest purposes:</b> ermc@ermcnepal.com	<b>Telephone number for Protest purposes:</b> +977 01 4483064, 4465863	<b>Fax number for Protest purposes:</b> +977 01 4479361
<b>Name of authorized representative for the Protest (if any):</b> Pashupati Bhandari		
<b>Signature of Challenger or authorized representative:</b> 		

Challenged Procurement
<b>Name:</b> Millennium Challenge Account Nepal, 2nd & 3rd Floor, East Wing, Lal Durbar Convention Centre, Yak & Yeti Complex, Durbar Marg, Kathmandu, Nepal
<b>Number:</b> +977 01 4238353, 4238392
<b>(For legal persons only) Country under whose laws Challenger was organized:</b> Federal Democratic Republic of Nepal

Protest	
<b>Date when Challenger became aware of Procurement Action:</b> 8 <sup>th</sup> June 2022	<b>Date of Filing of Protest:</b> 9 <sup>th</sup> June 2022
<b>Description of Procurement Action:</b> Procurement of Consulting Services for Preparation and Implementation of Resettlement Action Plans (RAP) and Preparation, Supervision of Implementation of Livelihood Restoration Plans (LRP) for the Transmission Line Alignment of Electricity Transmission Project (ETP) RFP Ref: MCA-N/ETP/QCBS/010	
<b>Procurement Rules provisions violated by Procurement Action:</b> Section III. Qualification and Evaluation Criteria, 3.7. Qualification Table, 3.7.4.2 General and Specific Experience, Note: 1. Experience of Sub-Consultant, which states "The Sub-Consultant must satisfy the Specific Experience requirements for the task for which the consultant is proposing the sub-consultant. The Consultant must submit the required experience certificate of the Sub-Consultant in support of the intended task to be sub-consulted for MCA-Nepal approval. 2. The Consultant must satisfy requirements under 3.7 Qualification Table to be awarded the Contract. It was further clarified through CLARIFICATION 1 dated 31 <sup>st</sup> March 2022, S.No 18. which states "If the Consultant is proposing a subconsultant to carry out a particular task (specialized requirement related to experience requirement stated under 3.4, 1.1 to 1.5) under this assignment, then the Consultant <b>must submit the experience certificate of the Sub-consultant in support of the Subconsultants technical capacity and experience to perform the intended task to be sub-consulted</b> , for MCA-Nepal approval. This is to ascertain	



that the proposed sub-consultant has the required experience to carry out the specialized task under this assignment.”

**Explanation of reason why Procurement Action constitutes a violation of the Procurement Rules provisions:**

The last line page 40 of this guidelines state “**the evaluation shall be carried out in full conformity with the provision of the RFP**”. However, in this case, a very important aspect has been overlooked which could cause irreparable harm during project implementation.

**Explanation of reason why Challenger has been harmed by Procurement Action:**

We were approached by few firms who wanted to join us as sub-consultant during the proposal stage, which we denied due to those firms not meeting the minimum requirements for a sub-consultant. However, we were very surprised to see those firms associate with other firms and pass the technical evaluation. We believe that the requirement set being overlooked during the technical evaluation, would cause us tremendous loss as we could not strengthen our consortium as aimed due to our adherence to the evaluation criteria.

We believe those sub-consultants who did not had right credentials for this complex and challenging job should have been disqualified during the technical evaluation.

**If Challenger requests suspension of the Challenged Procurement, explanation of reason why Challenger will suffer irreparable harm if the Challenged Procurement is not suspended:**

If the procurement authority neglect this important aspect even after our protests, it might cause us some harm since we had expended our immense time and efforts assembling the best possible team of international and national experts, but the harm to us would be negligible that the harm it would cause the to procurement authority themselves The project constitutes of tremendous local inputs, in which case if a firm without any prior experience of this size and complexity wins the job, it could cause irreparable harm to the project implementation itselfes.

**Relief Sought**

**Description of relief sought:**

The issue should be carefully and seriously considered by the evaluation committee, and if it is found that the proposed sub-consultant do not have the expertise to carry the job of this size, they should be disqualified and financial proposals of only qualified firms should be opened.

**Explanation of reason why Challenger is entitled to relief sought:**

If the constricton on sub-consultants was not sought in the RFP document, we would have strengthened our consortium which would have help us get better positions on the technical evaluation. Since the sub-consultants were needed to be qualified for the similar assignments, which was further clarified in the Clarification 1 as explained earlier, we could not strengthen our consortium as aimed.

The violation on procurement guidelines of MCC was unforeseen and it didn't helped to provide equal ground to all firms who submitted the proposal.





# ERMCO (P) Ltd.

(Environment & Resource Management Consultant)

An ISO 9001:2015 Certified Company

Date: 9<sup>th</sup> June 2022

To,  
Millennium Challenge Account Nepal  
2nd & 3rd Floor, East Wing,  
Lal Durbar Convention Centre,  
Yak & Yeti Complex, Durbar Marg,  
Kathmandu, Nepal

Ref: Procurement of Consulting Services for Preparation and Implementation of Resettlement Action Plans (RAP) and Preparation, Supervision of Implementation of Livelihood Restoration Plans (LRP) for the Transmission Line Alignment of Electricity Transmission Project (ETP) RFP Ref: MCA-N/ETP/QCBS/010

Subject: Debriefing on Technical Evaluation Results

Dear Madam or Sir,

We, Environment and Resource Management Consultant (P) Ltd. (ERMCO), would like to express our sincere thanks and gratitude for your Notification of Technical Evaluation result dated 8<sup>th</sup> June 2022 for the above-referred contract.

We believe that we may suffer loss by the evaluation of the Technical Proposals done by the MCA-Nepal although we have been ranked 'first' in the same. Before submitting formal protest we are submitting here by our request for debriefing as per Part I – Protest Proceedings, Rule 1. Protests, Rule 1.2 (b) of MCA-Nepal, Bid Challenge System. The reason for the request is mentioned below:

We refer to Section III. Qualification and Evaluation Criteria, 3.7. Qualification Table, 3.7.4.2 General and Specific Experience, Note: 1. Experience of Sub-Consultant, which states "The Sub-Consultant must satisfy the Specific Experience requirements for the task for which the consultant is proposing the sub-consultant. The Consultant must submit the required experience certificate of the Sub-Consultant in support of the intended task to be sub-consulted for MCA-Nepal approval. 2. The Consultant must satisfy requirements under 3.7 Qualification Table to be awarded the Contract."

It was further clarified through CLARIFICATION 1 dated 31<sup>st</sup> March 2022, S.No 18. which states "If the Consultant is proposing a subconsultant to carry out a particular task (specialized requirement related to experience requirement stated under 3.4, 1.1 to 1.5) under this assignment, then the Consultant must submit the experience certificate of the Sub-consultant in support of the Subconsultants technical capacity and experience to perform the intended task to be sub-consulted, for MCA-Nepal approval. This is to ascertain that the proposed sub-consultant has the required experience to carry out the specialized task under this assignment."

Some national firms were interested to associate as sub-consultants with ERMCO for this bid, which we denied due to them not meeting the above requirements. However, we are very surprised to see few of them associated with





**ERMCO (P) Ltd.**

*(Environment & Resource Management Consultant)*

An ISO 9001:2015 Certified Company

other firms, and having passed the technical evaluations.

Due to exclusion of few of sub-consultant, we could not strengthen our proposal as aimed due to our strict adherence to the evaluation criteria and the clarification. However, other consortium proposed sub-consultant (who didn't met the minimum sub-consultant criteria) to enhance their capability.

We feel that such serious aspect has been overlooked in the technical evaluation. This is against the spirit of Program Procurement Guidelines of MCC. Third last line page 40 of this guidelines state "the evaluation shall be carried out in full conformity with the provision of the RFP".

We hope that this issue will be properly examined and responded.

Yours Sincerely,

For and on behalf of ERMCO

Mr. Pashupati Bhandari  
Chief Executive Officer



# Clarification - Procurement of Consulting Services for Preparation and Implementation of Resettlement Action Plans (RAPs) and Preparation, Supervision of Implementation of Livelihood Restoration Plans (LRPs) for the Transmission Line Alignment of Electric

External  
Inbox

Procurement Agent-Millennium Challenge Account Nepal

Jun 13, 2022,  
3:00 PM (19  
hours ago)

to me, Luis, Rakesh, ram.regmi@cddid.com, Gokul, Shankar, Mahendra

To,  
Environment and Resource Management Consultant (P) Ltd., Nepal  
P.O. Box:12419, New Baneshwor, Kathmandu, Nepal  
Phone:977-01-4483064; 977-01-4465863  
Email: [ermc@ermcnepal.com](mailto:ermc@ermcnepal.com)  
K/A: Mr. Pashupati Bhandari, Chief Executive Officer (CEO)

**Sub: Clarification - Procurement of Consulting Services for Preparation and Implementation of Resettlement Action Plans (RAPs) and Preparation, Supervision of Implementation of Livelihood Restoration Plans (LRPs) for the Transmission Line Alignment of Electricity Transmission Project (ETP) (MCA-N/ETP/QCBS/010)**

Dear Sir,

Many thanks for your letter dated 9 June 2022, requesting debrief on the Technical Evaluation of the 'Procurement of Consulting Services for Preparation and Implementation of Resettlement Action Plans (RAPs) and Preparation, Supervision of Implementation of Livelihood Restoration Plans (LRPs) for the Transmission Line Alignment of Electricity Transmission Project (ETP) (MCA-N/ETP/QCBS/010)' as per Part I – Protest Proceedings, Rule 1. Protests, Rule 1.2 (b) of MCA-Nepal Bid Challenge System which states:

*“(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.”*



Please note that your proposal was selected for financial opening as the appointed Technical Evaluation Panel found that your proposal satisfied the material requirements of the Request for Proposals (RFP) and has obtained a total technical point above the minimum technical score to pass which is 320 points.

Thus, MCA-Nepal Bid Challenge System does not mandate MCA-Nepal to provide debriefing because your proposal has been selected for financial opening. In addition, please note that information on other consultants' proposals cannot be provided to third parties under MCA-Nepal Bid Challenge System.

However, we are providing the clarification below on the issues raised by your firm, concerning the sub-consultants:

Section III. Qualification and Evaluation Criteria, 3.7 Qualification Table, Note: 1 states the following:

*“Experience of Sub-Consultant: The Sub-Consultant must satisfy the Specific Experience requirements for the task for which the consultant is proposing the sub-consultant. The Consultant must submit the required experience certificate of the Sub-Consultant in support of the intended task to be sub-consulted for MCA-Nepal approval. 2. The Consultant must satisfy requirements under 3.7 Qualification Table to be awarded the Contract”.*

Please note that as per Section III, Note 2 below the table for Evaluation Criteria 3.4, which states:

*“Sub-Consultant experience shall not be considered for Evaluation, except as part of methodology.”*

Therefore, MCA-Nepal has carried out the evaluation based on “Section III. Qualification and Evaluation Criteria, 3.7 Qualification Table, Note: 1” and “Section III, Note 2 below the table for Evaluation Criteria 3.4” and in full conformity with the provisions of the RFP.

We trust this clarifies all your concerns regarding the subjected evaluation.

With best regards,

Procurement Agent,  
Millennium Challenge Account Nepal (MCA-Nepal)  
Yak and Yeti Hotel Complex, Durbar Marg,  
Kathmandu, Nepal





Section III. Qualification and Evaluation Criteria

3.7.4 Experience						
Factor	Requirement	Consultant				Documentation Required
		Single Entity	Joint Venture			
Sub-Factor		All members combined	Each member	At least one member	Sub-Consultant	
<b>3.7.4.1 Organization Capability and Technical Experience</b>	See Criteria table under 3.4 and specific areas of TOR	Must meet requirement	N/A	N/A	N/A	Form TECH-3 / Form TECH-6
<b>3.7.4.2 General &amp; Specific Experience</b>	See Criteria table under 3.4 and specific areas of TOR	Must meet requirement	N/A	Must meet each discrete requirement	Must meet at least one specialized requirement stated below as note #1	Form TECH-4

**Note:** 1. Experience of Sub-Consultant: The Sub-Consultant must satisfy the Specific Experience requirements for the task for which the consultant is proposing the sub-consultant. The Consultant must submit the required experience certificate of the Sub-Consultant in support of the intended task to be sub-consulted for MCA-Nepal approval. 2. The Consultant must satisfy requirements under 3.7.4 Qualification Table to be awarded the Contract.



## Section III. Qualification and Evaluation Criteria

	<b>Total Points for All Criteria (1+2+3)</b>	<b>400</b>
	The minimum technical score $S_t$ required to pass is	<b>320</b>
	If none of the scores awarded by the TEP reach or exceed the minimum technical score ( $S_t$ ), the MCA Entity reserves the right to invite the Consultant receiving the highest technical score ( $S_t$ ) to negotiate both its Technical and Financial Proposals. If the negotiations fail to result in an acceptable contract within a reasonable time, the MCA Entity reserves the right to terminate the negotiations, at its sole discretion, and to invite—again, at its sole discretion—the Consultant receiving the next highest technical score ( $S_t$ ) to negotiate both its Technical and Financial Proposals. For combined evaluation Technical Score $S(t)$ shall be weighed against total allocated Technical Score that is in case the Consultant receives $X$ Technical scores $S(t)$ . The Technical Score $S(t)$ weighted against total allocated Technical Score of 400 would be $(X/400) \times 100$ .	
ITC 25.10	The formula for determining the financial scores is the following: $S_f = 100 \times F_m / F$ , in which $S_f$ is the financial score, $F_m$ is the lowest price and $F$ the price of the Proposal under consideration. The weights given to the Technical and Financial Proposals are: $T = 70\%$ and $F = 30\%$	

Note:

1. The Consultant must identify the name of the key person they are proposing and attached CV for each expert.
2. Sub-Consultant experience shall not be considered for Evaluation, except as part of methodology.
3. The recommended consultant for negotiation shall be required to submit the CV of non-key personnel for MCA review and approval.

### 3.5 Determination of Responsiveness

During the evaluation of Proposals, the following definitions apply:

- (a) “Deviation” is a departure from the requirements specified in the Request for Proposal document;
- (b) “Reservation” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Request for Proposal document; and
- (c) “Omission” is the failure to submit part or all of the information or documentation required in the Request for Proposal document.

The MCA Entity’s determination of a Proposal's substantial responsiveness is to be based on the contents of the Proposal itself. For purposes of this determination, a substantially responsive Proposal is one that materially conforms to the requirements of the RFP without material deviation, reservation, or omission. A material deviation, reservation, or omission is



16	Section IV A. Technical Proposal Forms (TPF)	Page no.: 91 Form TECH-12. Compliance With Sanctions Certification Form	each Heading 8.1 to 8.5? Please confirm	<p>At the pre-bid meeting; one of the representatives of MCA-Nepal mentioned that Form Tech-12 need to be submitted before the submission and must be verified by the Client. But as per the instruction; it is mentioned as:          “The form is to be submitted to the MCA Procurement Agent at the time of Bid submission”</p> <p>Do we need to submit Form before submission or can submit along with the proposal documents or does it need to be submitted after the contract is awarded? Please clarify.</p> <p>The Consultant would like the client to clarify to what discrete requirement for at least one member of the consortium means. Does it mean that a single JV member should necessarily fulfill all the evaluation criteria mentioned in heading 3.4 of section III? Please Clarify</p> <p>The Sub-Consultant for the assignment has to meet one</p>	<p>This form is required to be submitted to the MCA Procurement Agent at the time of Bid submission using the email MCANepalPA@mcanp.org and cc to sanctionscompliance@mcc.gov</p> <p>OR</p> <p>You may attach the information with your proposal.</p> <p>After Contract award, the awarded Consultant must submit this form to the MCA-Nepal Fiscal Agent at email:          babken.mnatsakanyan@cardno.com with copy to          sanctionscompliance@mcc.gov</p>	<p>3.7.4.2 General &amp; Specific Experience, requirement for Joint Venture, “<i>At least one member must meet each discrete requirement</i>”. However, we noted this condition to be N/A. Thus, please note that this requirement is N/A.</p>
17	Section III	Table 3.7.4, General and Specific Experience Page No.63				
18	Section III	Table 3.7.4, General and Specific Experience				Requirement 3.7.4.2 General & Specific Experience, requirement



<p>(sub-Consultant) Page No.48, 63</p>	<p>specialized experience. Does this mean that the sub-consultant should meet any one of the evaluation criteria mentioned in heading 3.4 of section III? Please Clarify</p>	<p>for Sub-Consultant, states “<b>Must meet at least one specialized requirement</b> stated below as note #1”. Further the note #1 states “Experience of Sub-Consultant: The Sub-Consultant must satisfy the Specific Experience requirements for the task for which the consultant is proposing the sub-consultant. The Consultant must submit the required experience certificate of the Sub-Consultant in support of the intended task to be sub-consulted for MCA-Nepal approval. 2. The Consultant must satisfy requirements under 3.7 Qualification Table to be awarded the Contract.”</p> <p>As per this requirement, If the Consultant is proposing a subconsultant to carry out a particular task (specialized requirement related to experience requirement stated under 3.4, 1.1 to 1.5) under this assignment, then the Consultant must submit the experience certificate of the Sub-consultant in support of the Subconsultants technical capacity and experience to perform the intended task to be sub-consulted, for MCA-Nepal approval. This is to</p>
--	--	---



19	Section III	Qualification and Experience of the Key Personnel Page No. 49-54	Does the Team Leader or any other key experts mentioned in the document should necessarily have Outside of home Experience for the evaluation?	ascertain that the proposed sub-consultant has the required experience to carry out the specialized task under this assignment. Please go through the requirements for each personnel. Please note that for different personnel the requirement is different. For example, for the Team Leader: RAP Implementation, the requirement is to have experience in Asia, preferably in Nepal. Thus, experience outside Nepal is also an evaluation criterion.
20	Section IV	Page No. 105, (Point no. 4)	The document mentions "SEE PDS ITC 12.5 regarding travel-related expenses", but neither the PDS nor ITC 12.5 provides any information about the travel-related expenses. Please Clarify	The correct reference is 12.11 which indicates "Per diem and in-country travel will be included in the total price in form FIN-2 including any cost foreseen to carryout the assignment."
21	Section III	Heading 3.4, ITC 24.1, (Criteria, Sub-Criteria) Page No. 48	The given criteria suggests 3, 5 and 3 number of projects for sub heading 1.2, 1.3, and 1.4 respectively. Is this the minimum number of projects to qualify? How many projects will be required in each of the sub criteria for scoring full marks as per the Technical Evaluation Framework?	If the Consultant meets the requirement that is 3. 5 and 3 projects respectively, they will receive 80% of the points allocated to each sub criteria. For example for criteria 1.2 the Consultant will get (4/5)x16 = 12.8 points If the Consultant submission is evaluated by the Technical Evaluation Panel as "Outstandingly"



**Annex – 2      Notice of Filing Protest - Published on MCA  
Nepal website**



1



2

# Notice of Filing a Protest for “Procurement of Consulting Services for Preparation and Implementation of Resettlement Action Plans (RAP) and Preparation, Supervision of Implementation of Livelihood Restoration Plans (LRP) for the Transmission Line Alignment of Electricity Transmission Project (ETP) MCA-N/ETP/QCBS/010”

This is to notify all Consultants that submitted a proposal for the above described procurement MCA-N/ETP/QCBS/010 that MCA-Nepal has received a protest as per the MCA-Nepal Bid Challenge System.

The nature of the protest is: The Challenger believes that the sub-consultant, without fulfilling the mandatory requirement mentioned in Section III, Qualification and Evaluation Criteria, 3.7. Qualification Table, 3.7.4.2 General and Specific Experience (See Criteria table under 3.4 and specific areas of TOR), Sub-Consultant column states, “Must meet at least one specialized requirement stated below as note #1” and Note 1 states “Experience of Sub-Consultant: The Sub-Consultant must satisfy the Specific Experience requirements for the task for which the consultant is proposing the sub-consultant. The Consultant must submit the required experience certificate of

**Annex – 3      Comment received**





Kathmandu, Nepal  
Date: 16<sup>th</sup> June 2022

To:  
Millennium Challenge Account Nepal  
2<sup>nd</sup> & 3<sup>rd</sup> Floor, east Wing,  
Lal Durbar Convention Centre  
Yak & Yeti Complex, Durbar Marg,  
Kathmandu, Nepal

**Subject: Comments on Filing a Protest** for “Procurement of Consulting Services for Preparation and Implementation of Resettlement Action Plans (RAP) and Preparation, Supervision of Implementation of Livelihood Restoration Plans (LRP) for the Transmission Line Alignment of Electricity Transmission Project (ETP) MCA-N/ETP/QCBS/010”

Dear Sir,

We received your notification for Protest Filing dated on 14<sup>th</sup> June 2022 by a Bid Challenger, whereas we would like to provide our comments as below:

1. In Section III. Qualification and Evaluation Criteria it says “**A proposal will be rejected if it does not earn a total minimum score of 320 points. A proposal may be rejected, at the discretion of the MCA Entity, if the firm does not satisfy the mandatory criteria as per the table below.....**” And Table of 3.4 Evaluation Criteria, **page 47 of RFP** states that **Mandatory Criterion 1 – NONE.**
  - *We understand that there is no Mandatory Criteria for disqualification of consultant and sub-consultant as claimed by the Bid Challenger but the submitted technical proposal is evaluated as per provided documents according to the table for mark allocation. For full conformity, Technical Evaluation Panel (TEP)/Procurement Agent asked clarification/ documents required from the consultants during the evaluation process that was already completed.*
2. In Section III. Qualification and Evaluation Criteria (3.4 Evaluation Criteria, **page 55 of RFP**), In Note: 2. **Sub-Consultant experience shall not be considered for evaluation except as part of methodology.**
  - *We understand that no consortium has been awarded additional mark who has sub-consultant in their consortium thus no need to submit the experience certificate as well. It is equal ground for all the bidders.*
3. In Clarification 1 on RFP dated 31<sup>st</sup> March 2022 **Serial Number 18** of Section III. (Table of 3.7.4 Experience, General & Specific Experience, **Page 63 of RFP**) clarifies that “... Sub-consultant must submit the required experience certificate of the Sub-consultant in support of the **intended task to be sub-consulted** for MCA-Nepal approval.”
  - *In our technical proposal, we never intended to sub-consult/sublet any specific task under specific experiences (under 3.4 Evaluation Criteria 1.1 to 1.5) to our sub-consultant but rather included them to get access to additional local support and resources (e.g. Manpower/experts, vehicles and logistics support etc.) for smooth operation/ implementation of this kind of complex nature and size of the project that too, if required. So question does not arise to meet the mentioned criteria. Also above clause says, **sub-consultant must submit the required experience certificate of sub-consultant for approval.** So our understanding from above clause is that after award and during execution, once the consultant clear on the status of the project then **intend to sublet/sub-consult any works to the sub-consultant (if required), then the consultant shall seek MCA-approval including experience certificates.** We are also surprised that the Bid Challenger is making complain without any knowledge about other consultant’s proposal i.e. without they knowing what the other consultants are intending to sublet and if it has any relevance to the criteria.*

4. Regarding reply to query on **Serial number 17** of Clarification 1 on RFP dated 31<sup>st</sup> March 2022 (Section III, Table 3.7.4, General and Specific Experiences, Page no. 63 of RFP), MCA has even amended the requirement for Joint Venture “at least one member must meet each discrete requirement” as “**Not Applicable**”. When even Joint Venture member need not meet any of the criteria, to interpret that Sub-consultant should meet the criteria is not logical and rationale.

In addition, the bid challenger’s letter dated 9<sup>th</sup> June 2022 (subject: debriefing on Technical Evaluation Results) has been clarified by the procurement agent on dated 13<sup>th</sup> June 2022 whereas our understanding is same as Procurement Agent. However, **in the case of Bid Challenger’s protest (Protests Rule 1.2 (b) of MCA-Nepal Bid Challenge System), that should not be valid because they are selected in first stage and eligible for financial opening (second stage), we understand that the protest can file only for not selecting and the Bid Challenger has to wait until the notice of intent of award (if any).** Hence, we can say that theses all correspondences by the bid challenger are for misguiding the technical evaluation panel by misinterpreting the clauses so that they might able to be a lone bidder. Thus, we also would like to draw your kind attention to the **Section I. Instruction to Consultants (ITC) clause 22.2 (under E. Evaluation of Proposal, 22. Confidentiality)** that might attract to the Bid Challenger and their intention.

We hope this comment is helpful for you to dismiss the protest against bid submitted by a bid challenger.

We remains

Yours sincerely,

Authorized Signatory:



(in full)



Name and Title of Signatory:

**Mr. Bishwa Raj Panday**

Name of Consultant:

Joint Venture of SAICPL-BOTEK-GOEC-TMS in association with WEKI-MNEC (sub-consultant)

In the capacity of:

Authorized Representative

Address:

Kathmandu, Nepal

Contact information:

(phone) (Alt.) Tel: +977-1-4487528, Cell: +977-9841796770

(e-mail): tushardhar@sainfra.com;  
koray.tukenmez@botecorp.com;  
bishwa@weki.com.np

### SECTION III. QUALIFICATION AND EVALUATION CRITERIA

#### 3.1 Legal Status

Each entity forming the Consultant shall attach to Form TECH-1 a copy of its letter of incorporation, or other such document, indicating its legal status. In the event the Consultant is an Association of entities, the Consultant shall include any other document showing that it intends to associate, or it has associated with, the other entity or entities that are jointly submitting a Proposal. Each Associate must provide the information required in Form TECH-1.

#### 3.2 Financial Criteria

If required by PDS ITC 12.5 (a), the Consultant shall provide evidence showing that it has the sufficient financial capacity needed for this Contract, as required in Form TECH-2A. Each Associate must provide the information required in TECH-2A.

#### 3.3 Litigation Criteria

The Consultant shall provide accurate information on any current or past litigation or arbitration resulting from contracts completed, terminated, or under execution by the Consultant over the last five (5) years, as indicated in Form TECH-2B. A consistent history of awards against the Consultant or existence of high value disputes may lead to the rejection of the Proposal. Each Associate must provide the information required in TECH-2B.

#### 3.4 Evaluation Criteria

A Proposal will be rejected if it does not earn a total minimum score of **320 points**. A Proposal may be rejected, at the discretion of the MCA Entity, if the firm does not satisfy the mandatory criteria as per table below. In addition, Proposals may be rejected, at the discretion of the MCA Entity, if any of the Key Personnel fails to satisfy the mandatory requirements.

The Consultant will be rejected if its Proposal does not clearly demonstrate that it meets the following Minimum Mandatory Criteria:

Ref	Item
Mandatory Criterion 1	NONE

Section III. Qualification and Evaluation Criteria

	<b>Total Points for All Criteria (1+2+3)</b>	<b>400</b>
	The minimum technical score $S_t$ required to pass is	<b>320</b>
	If none of the scores awarded by the TEP reach or exceed the minimum technical score ( $S_t$ ), the MCA Entity reserves the right to invite the Consultant receiving the highest technical score ( $S_t$ ) to negotiate both its Technical and Financial Proposals. If the negotiations fail to result in an acceptable contract within a reasonable time, the MCA Entity reserves the right to terminate the negotiations, at its sole discretion, and to invite—again, at its sole discretion—the Consultant receiving the next highest technical score ( $S_t$ ) to negotiate both its Technical and Financial Proposals. For combined evaluation Technical Score $S(t)$ shall be weighed against total allocated Technical Score that is in case the Consultant receives $X$ Technical scores $S(t)$ . The Technical Score $S(t)$ weighted against total allocated Technical Score of 400 would be $(X/400) \times 100$ .	
ITC 25.10	The formula for determining the financial scores is the following: $S_f = 100 \times F_m / F$ , in which $S_f$ is the financial score, $F_m$ is the lowest price and $F$ the price of the Proposal under consideration. The weights given to the Technical and Financial Proposals are: $T = 70\%$ and $F = 30\%$	

Note:

1. The Consultant must identify the name of the key person they are proposing and attached CV for each expert
2. Sub-Consultant experience shall not be considered for Evaluation, except as part of methodology.
3. The recommended consultant for negotiation shall be required to submit the CV of non-key personnel for MCA review and approval.

**3.5 Determination of Responsiveness**

During the evaluation of Proposals, the following definitions apply:

- (a) “Deviation” is a departure from the requirements specified in the Request for Proposal document;
- (b) “Reservation” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Request for Proposal document; and
- (c) “Omission” is the failure to submit part or all of the information or documentation required in the Request for Proposal document.

The MCA Entity’s determination of a Proposal's substantial responsiveness is to be based on the contents of the Proposal itself. For purposes of this determination, a substantially responsive Proposal is one that materially conforms to the requirements of the RFP without material deviation, reservation, or omission. A material deviation, reservation, or omission is

			each Heading 8.1 to 8.5? Please confirm	
16	Section IV A. Technical Proposal Forms (TPF)	Page no.: 91 Form TECH-12. Compliance With Sanctions Certification Form	At the pre-bid meeting; one of the representatives of MCA-Nepal mentioned that Form Tech-12 need to be submitted before the submission and must be verified by the Client. But as per the instruction; it is mentioned as: “The form is to be submitted to the MCA Procurement Agent at the time of Bid submission”  Do we need to submit Form before submission or can submit along with the proposal documents or does it need to be submitted after the contract is awarded? Please clarify.	This form is required to be submitted to the MCA Procurement Agent at the time of Bid submission using the email MCANepalPA@mcanp.org and cc to sanctionscompliance@mcc.gov OR You may attach the information with your proposal.  After Contract award, the awarded Consultant must submit this form to the MCA-Nepal Fiscal Agent at email: babken.mnatsakanyan@cardno.com with copy to sanctionscompliance@mcc.gov
17	Section III	Table 3.7.4, General and Specific Experience Page No.63	The Consultant would like the client to clarify to what discrete requirement for at least one member of the consortium means. Does it mean that a single JV member should necessarily fulfill all the evaluation criteria mentioned in heading 3.4 of section III? Please Clarify	3.7.4.2 General & Specific Experience, requirement for Joint Venture, “ <b><i>At least one member must meet each discrete requirement</i></b> ”. However, we noted this condition to be N/A. Thus, please note that this requirement is N/A.
18	Section III	Table 3.7.4, General and Specific Experience	The Sub-Consultant for the assignment has to meet one	Requirement 3.7.4.2 General & Specific Experience, requirement

		<p>(sub-Consultant) Page No.48, 63</p>	<p>specialized experience. Does this mean that the sub-consultant should meet any one of the evaluation criteria mentioned in heading 3.4 of section III? Please Clarify</p>	<p>for Sub-Consultant, states “<b><i>Must meet at least one specialized requirement</i></b> stated below as note #1”. Further the note #1 states “Experience of Sub-Consultant: The Sub-Consultant must satisfy the Specific Experience requirements for the task for which the consultant is proposing the sub-consultant. The Consultant must submit the required experience certificate of the Sub-Consultant in support of the intended task to be sub-consulted for MCA-Nepal approval.” 2. The Consultant must satisfy requirements under 3.7 Qualification Table to be awarded the Contract.”</p> <p>As per this requirement, If the Consultant is proposing a subconsultant to carry out a particular task (specialized requirement related to experience requirement stated under 3.4, 1.1 to 1.5) under this assignment, then the Consultant must submit the experience certificate of the Sub-consultant in support of the Subconsultants technical capacity and experience to perform the intended task to be sub-consulted, for MCA-Nepal approval. This is to</p>
--	--	--	--	---

Section III. Qualification and Evaluation Criteria

Factor		3.7.4 Experience					
Sub-Factor	Requirement	Consultant					Documentation Required
		Single Entity	Joint Venture			Sub-Consultant	
			All members combined	Each member	At least one member		
<b>3.7.4.1 Organization Capability and Technical Experience</b>	See Criteria table under 3.4 and specific areas of TOR	Must meet requirement	Must meet requirement	N/A	N/A	N/A	Form TECH-3 / Form TECH-6
<b>3.7.4.2 General &amp; Specific Experience</b>	See Criteria table under 3.4 and specific areas of TOR	Must meet requirement	Must meet requirement	N/A	Must meet each discrete requirement	Must meet at least one specialized requirement stated below as note #1	Form TECH-4

**Note:** 1. Experience of Sub-Consultant: The Sub-Consultant must satisfy the Specific Experience requirements for the task for which the consultant is proposing the sub-consultant. The Consultant must submit the required experience certificate of the Sub-Consultant in support of the intended task to be sub-consulted for MCA-Nepal approval. 2. The Consultant must satisfy requirements under 3.7 Qualification Table to be awarded the Contract.

			each Heading 8.1 to 8.5? Please confirm	
16	Section IV A. Technical Proposal Forms (TPF)	Page no.: 91 Form TECH-12. Compliance With Sanctions Certification Form	At the pre-bid meeting; one of the representatives of MCA-Nepal mentioned that Form Tech-12 need to be submitted before the submission and must be verified by the Client. But as per the instruction; it is mentioned as: “The form is to be submitted to the MCA Procurement Agent at the time of Bid submission”  Do we need to submit Form before submission or can submit along with the proposal documents or does it need to be submitted after the contract is awarded? Please clarify.	This form is required to be submitted to the MCA Procurement Agent at the time of Bid submission using the email MCANepalPA@mcanp.org and cc to sanctionscompliance@mcc.gov OR You may attach the information with your proposal.  After Contract award, the awarded Consultant must submit this form to the MCA-Nepal Fiscal Agent at email: babken.mnatsakanyan@cardno.com with copy to sanctionscompliance@mcc.gov
17	Section III	Table 3.7.4, General and Specific Experience Page No.63	The Consultant would like the client to clarify to what discrete requirement for at least one member of the consortium means. Does it mean that a single JV member should necessarily fulfill all the evaluation criteria mentioned in heading 3.4 of section III? Please Clarify	3.7.4.2 General & Specific Experience, requirement for Joint Venture, “ <b><i>At least one member must meet each discrete requirement</i></b> ”. However, we noted this condition to be N/A. Thus, please note that this requirement is <b>N/A.</b>
18	Section III	Table 3.7.4, General and Specific Experience	The Sub-Consultant for the assignment has to meet one	Requirement 3.7.4.2 General & Specific Experience, requirement



Clarification - Procurement of Consulting Services for Preparation and Implementation of Resettlement Action Plans (RAPs) and Preparation, Supervision of Implementation of Livelihood Restoration Plans (LRPs) for the Transmission Line Alignment of Electric

External  
Inbox

Procurement Agent-Millennium Challenge Account Nepal

Jun 13, 2022,  
3:00 PM (19  
hours ago)

to me, Luis, Rakesh, ram.regmi@cddid.com, Gokul, Shankar, Mahendra

To,  
Environment and Resource Management Consultant (P) Ltd., Nepal  
P.O. Box:12419, New Baneshwor, Kathmandu, Nepal  
Phone:977-01-4483064; 977-01-4465863  
Email: [ermc@ermcnepal.com](mailto:ermc@ermcnepal.com)  
K/A: Mr. Pashupati Bhandari, Chief Executive Officer (CEO)

**Sub: Clarification - Procurement of Consulting Services for Preparation and Implementation of Resettlement Action Plans (RAPs) and Preparation, Supervision of Implementation of Livelihood Restoration Plans (LRPs) for the Transmission Line Alignment of Electricity Transmission Project (ETP) (MCA-N/ETP/QCBS/010)**

Dear Sir,

Many thanks for your letter dated 9 June 2022, requesting debrief on the Technical Evaluation of the 'Procurement of Consulting Services for Preparation and Implementation of Resettlement Action Plans (RAPs) and Preparation, Supervision of Implementation of Livelihood Restoration Plans (LRPs) for the Transmission Line Alignment of Electricity Transmission Project (ETP) (MCA-N/ETP/QCBS/010)' as per Part I – Protest Proceedings, Rule 1. Protests, Rule 1.2 (b) of MCA-Nepal Bid Challenge System which states:

*"(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."*

Please note that your proposal was selected for financial opening as the appointed Technical Evaluation Panel found that your proposal satisfied the material requirements of the Request for Proposals (RFP) and has obtained a total technical point above the minimum technical score to pass which is 320 points.

Thus, MCA-Nepal Bid Challenge System does not mandate MCA-Nepal to provide debriefing because your proposal has been selected for financial opening. In addition, please note that information on other consultants' proposals cannot be provided to third parties under MCA-Nepal Bid Challenge System.

However, we are providing the clarification below on the issues raised by your firm, concerning the sub-consultants:

Section III. Qualification and Evaluation Criteria, 3.7 Qualification Table, Note: 1 states the following:

*“Experience of Sub-Consultant: The Sub-Consultant must satisfy the Specific Experience requirements for the task for which the consultant is proposing the sub-consultant. The Consultant must submit the required experience certificate of the Sub-Consultant in support of the intended task to be sub-consulted for MCA-Nepal approval. 2. The Consultant must satisfy requirements under 3.7 Qualification Table to be awarded the Contract”.*

Please note that as per Section III, Note 2 below the table for Evaluation Criteria 3.4, which states:

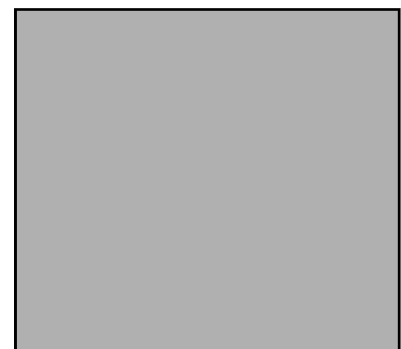
*“Sub-Consultant experience shall not be considered for Evaluation, except as part of methodology.”*

Therefore, MCA-Nepal has carried out the evaluation based on “Section III. Qualification and Evaluation Criteria, 3.7 Qualification Table, Note: 1” and “Section III, Note 2 below the table for Evaluation Criteria 3.4” and in full conformity with the provisions of the RFP.

We trust this clarifies all your concerns regarding the subjected evaluation.

With best regards,

Procurement Agent,  
Millennium Challenge Account Nepal (MCA-Nepal)  
Yak and Yeti Hotel Complex, Durbar Marg,  
Kathmandu, Nepal



securely stored until after the evaluation of the Technical Proposals has been completed.

- 21.5. The MCA Entity shall prepare minutes of the Proposal opening, which shall include, at a minimum: the name of the Consultant, the existence of a signed Technical Proposal Submission Form, whether there is a withdrawal, substitution, or modification. A copy of the record shall be distributed to all Consultants who submitted Proposals on time, and posted on the MCA Entity's website, if one exists.

### **E. Evaluation of Proposals**

#### **22. Confidentiality**

- 22.1. Information relating to the evaluation of Proposals and recommendations of Contract award shall not be disclosed to Consultants or any other persons not officially concerned with the process, until the notification of the evaluation results has been issued pursuant to ITC Clause 28. The undue use by any Consultant of confidential information related to the process may result in the rejection of its Proposal or may invalidate the entire procurement process.

22.2. Any attempt or effort by a Consultant to influence the MCA Entity in the examination, evaluation, and ranking of Proposals or Contract award decisions may result in the rejection of its Proposal and may subject the Consultant to the provisions of the Government's, the MCA Entity's, and MCC's AFC Policy and the application of other sanctions and remedies to the extent applicable

- 22.3. From the time Proposals are opened to the time the Contract is awarded, Consultants shall not contact the MCA Entity on any matter related to its Technical Proposal or Financial Proposal except in writing to the Procurement Agent.



#### **23. Clarification of Proposals**

- 23.1. To assist in the examination and evaluation of Proposals, the MCA Entity may, at its discretion, ask any Consultant for clarification of its Proposal. Any clarification submitted by a Consultant that is not in response to a request by the MCA Entity shall not be considered. The MCA Entity's request for clarification and the Consultant's response shall be in writing. No change in the prices or substance of the Proposal shall be sought, offered, or permitted except to confirm the correction of arithmetic errors discovered by the MCA Entity in the evaluation of the Proposals.
- 23.2. If a Consultant does not provide clarifications of its Proposal by the date and time set in the MCA Entity's request for clarification, its Proposal may be rejected.

#### **24. Evaluation of**

- 24.1. The TEP shall evaluate the Technical Proposals on the basis of their

**Annex B****Form of Comment of the Protest**

<b>Interested Party</b>		
<b>Name:</b> SA Infrastructure Consultants Pvt. Ltd. (SAICPL), India in Joint Venture with BOTEK Bosphorus Technical Consulting Corporation (BOTEK), Turkey and GOEC Nepal (Pvt.) Ltd., (GOEC), Nepal and Total Management Services Pvt. Ltd., (TMS) Nepal in association with WeKreate International (Pvt.) Ltd. (WEKI), Nepal and Map Nepal Engineering Consultancy (P) Ltd. (MNEC), Nepal as a form of Sub-Consultant. Kathmandu, Nepal		
<b>(For legal persons only) Country under whose laws Interested Party was organized:</b> Federal Democratic Republic of Nepal		
<b>Postal address for Protest purposes:</b>		
<b>Email address for Protest purposes:</b> tushardhar@sainfra.com; koray.tukenmez@botekcorp.com; bishwa@weki.com.np	<b>Telephone number for Protest purposes:</b> +977-1-4485728	<b>Fax number for Protest purposes:</b> N/A
<b>Name of authorized representative for the Interested Party (if any):</b> Bishwa Raj Panday		
<b>Signature of Interested Party or Authorized representative</b>		

<b>Number:</b> +977-01-4238353,4238392
<b>Challenged Procurement</b>
<b>Name:</b> Procurement of Consulting Services for Preparation and Implementation of Resettlement Action Plans (RAP) and Preparation, Supervision of Implementation of Livelihood Restoration Plans (LRP) for the Transmission Line Alignment of Electricity Transmission Project (ETP), RFP Ref: MCA-N/ETP/QCBS/010 under Millennium Challenge Account Nepal, 2 <sup>nd</sup> & 3 <sup>rd</sup> Floor, East Wing, Lal Durbar Convention Centre, Yak & Yeti Complex, Durbar Marg, Kathmandu, Nepal

**Comment**

**Date when Interested Party Received a Copy of the Protest:**  
14<sup>th</sup> June 2022

**Date of Filing of Comment:**  
16<sup>th</sup> June 2022

**Explanation of why the Interested Party believes that the Protest should/should not be upheld:**

We believe that the evaluation was carried out in full conformity with the provision of the RFP and during the evaluation process, the technical evaluation panel (TEP) has asked the clarification whenever required that was already completed.

Regarding the Protest, it is clearly stated in the Protest Proceedings, Rule 1. Protests, Rule 1.2 (b) of MSA-Nepal Bid Challenge System which states:

*“(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 prequalification/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 in two (2) Business Days of receiving the request for Debriefing.”*

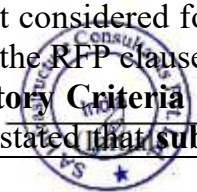
Whereas the Bid Challenger is eligible for financial opening (second stage), **so their protest should not be valid because they are selected in first stage, it is clearly stated in the rule that the protest can only be filed if in case they are not selecting in first stage (i.e. below the pass mark/not scoring the minimum mark).**

**We believe that the process of protest should be filed in right time otherwise it should be considered as influence activities and should attract the Section I. Instruction to the Consultant (ITC) clause 22.2.**

**In our opinion, the Bid Challenger attempted misinterpretation of RFP clauses and clarifications thereafter too, along with they violated the process of protest rule of MCA-Nepal as well.**

**If Interested Party requests that the Challenged Procurement not be suspended, an explanation of the reason why:**

- (a) the Protest does not clearly show that the Challenger will suffer irreparable harm if the Challenged Procurement is not suspended;
- it is clearly stated that the sub-consultants experience was not considered for evaluation, that means the Bid Challenger’s understanding of the RFP clauses was not proper. Please refer page **47 of RFP** where **Mandatory Criteria** is stated as **“NONE”** and page **55 of RFP** where it is clearly stated that sub-



**consultant experience shall not be considered for evaluation except a part of methodology.** Hence, it is all equal ground for all the participated bidders.

- the Bid Challenger also violated the protest rules by filing the protest beforehand even eligible for second stage. They could file the protest during notice of intent of award if any.
- the Bid Challenger's misinterpretation of the RFP Clauses and subsequent clarification should not be valid as they explained.

## **Relief Sought**

### **Description of relief sought:**

The misinterpretation of the Bid Challenger should be invalid and dismiss the protest and MCA-Nepal shall notify the new date for Financial Opening. Also need to demotivate such kind of activities in the name of "rights".

### **Explanation of reason why Interested Party is entitled to relief sought:**

We understand that page 47 of RFP where **Mandatory Criteria** is stated as "NONE" and page 55 of RFP where it is clearly stated that **sub-consultant experience shall not be considered for evaluation except a part of methodology** and the technical evaluation panel (TEP) has already completed the evaluation process according to the understanding and conformity of RFP clauses and clarification. Hence, no one should suffer by the misunderstanding of Bid Challenger on RFP Clauses and Clarifications.

