

**Notice of Filing a Protest under  
Procurement of Consultancy Services for Construction Supervision  
for Transmission Lines and Substations Activities for  
Electricity Transmission Project**

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**MCA-N/ETP/QCBS/006**

**Date: 30 June 2023**

This is to notify all Consultants that submitted a proposal for the above-described procurement MCA-N/ETP/QCBS/006 that MCA-Nepal has received a protest as per the MCA-Nepal Bid Challenge System.

The nature of the protest is: The Challenger stated that The Technical Evaluation Committee violated MCA-Nepal Bid Challenge System Rule 1.2(a)(iii). The scores awarded by the technical evaluation panel were arbitrary and erroneous in failing to score the offeror's full organizational capabilities and experience as specified in RFP sections A(b), A(c), 5.7, 12.4, and the criteria in the Qualification Table at section 3.7. The Challenger sought a relief to suspend the procurement process and sought further relief available under BCS Rule 2.2: (1) MCA-Nepal to revise the procurement proceedings to conform to the evaluation criteria; (2) reevaluate the Tetra Tech Association offer to consider its full corporate capabilities and experience; (3) perform a new ranking of technical proposals; and (4) proceed with the procurement based on the revised technical rankings.

A copy of the protest is attached to this notice.

Name of Challenger: **Tetra Tech ES, Inc. and Association Members (as per Bid Challenge submitted)**

The procurement process is hereby automatically suspended until a final decision with respect to the Protest/Challenge is issued or the Level 1 Authority lifts the suspension. The financial proposal opening scheduled on 3 July 2023 is postponed until further notice; MCA-Nepal will request the Password of the financial proposal once a new financial opening date and time will be notified to the Consultants, as applicable.

All Consultants are advised on their right to file a Comment on this challenge in accordance with **Rule 1.6 of the Bid Challenge System** and failure to file a Comment in the required time period (no later than 5 Business Days after the Secretariat sends this Notice of the Protest) will prevent any future participation in the Protest.



June 28, 2023

Procurement Agent  
Millennium Challenge Account Nepal (MCA-Nepal)  
2nd & 3rd Floor, East Wing,  
Lal Durbar Convention Centre,  
Yak & Yeti Complex, Durbar Marg,  
Kathmandu, Nepal

**Re: Protest Regarding Evaluation of Technical Proposal and Assigning Lower Technical Score - RFP Ref: MCA-N/ETP/QCBS/006: Procurement of Consultancy Services for Construction Supervision for Transmission Lines and Substations Activities for Electricity Transmission Project**

Dear Procurement Agent,

Tetra Tech ES, Inc. (hereafter referred to as Tetra Tech) protests the evaluation and scoring of our Technical Proposal for the Consultancy Services RFP referenced above. This protest is based on MCA-Nepal Bid Challenge System (BCS) Rule 1.2(a)(iii). The qualifications and experience scores awarded by the technical evaluation panel were arbitrary and erroneous in failing to score the Association's full organizational capabilities and experience as specified in the solicitation. Tetra Tech was adversely impacted by the evaluation error due to MCA-Nepal's misinterpretation of our partnership structure. The harm is a material omission of evaluation points that Tetra Tech believes impacts the ranking of offerors. Please see the full BCS Annex A Form of Protest below.

Tetra Tech requests suspension of the procurement referenced above. Failure to suspend the procurement will result in irreparably lost economic costs for Tetra Tech and Association members because the lost opportunity costs and proposal preparation costs will have been wasted. Tetra Tech and Association members will also lose the opportunity to receive a meaningful debriefing of our proposal as the current debriefing is fundamentally flawed. In addition, the Association seeks the following relief available under BCS Rule 2.2: (1) require MCA-Nepal to revise the procurement proceedings to conform to the evaluation criteria; (2) reevaluate the Tetra Tech Association offer to consider its full corporate capabilities and experience; (3) perform a new ranking of technical proposals; and (4) proceed with the procurement based on the revised technical rankings.

The following is a narrative summary of the Annex A factors for the Authority's consideration. The Technical Evaluation panel overlooked the structure of our Association and arbitrarily and incorrectly determined that the Association members are sub-consultants and therefore their project experience, presented as part of the TECH-4 – EXPERIENCE OF THE CONSULTANT was not considered. This determination was communicated to Tetra Tech in MCA-Nepal's debrief note dated June 26, 2023. A

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comment pertaining to evaluation criteria row 1.1 states that, “Sub-consultants' experiences not looked into it.”

This note shows that the evaluation was flawed and contrary to the RFP requirements that specify the evaluation of offerors who form an Association rather than proposing a prime-subcontractor structure. First, RFP sections A(b) and A(c) define Associate as “any entity that is a member of the Association that forms the Consultant. A Sub-Consultant is not an Associate.” Section 5.2 further specifies that a Consultant offeror may be a combination of entities if supported by a letter of intent.

In compliance with RFP requirements, Tetra Tech’s Technical Proposal included Letters of Association from partner firms (page 18), and a signed Intent of Association Agreement (page 21). The Agreement satisfies the requirements of RFP sections 5.7, 12.4, and the criteria in the section 3.7 Qualification Table. Tetra Tech and its Association partners are therefore properly qualified to participate in the competition as an Association according to MCA-Nepal’s rules.

As a qualified Association, the Tetra Tech proposal presents combined qualifications as stated in the instructions to Form TECH-4 EXPERIENCE OF THE CONSULTANT:

Using the format below, ***provide information on each relevant assignment for which your firm, and each Associate for this assignment***, was legally contracted either individually as a corporate entity or as one of the major companies within an association, for carrying out consulting services similar to the ones requested under the Terms of Reference included in this RFP. (emphasis added)

The quotation clearly shows that the qualifications of all Associates are to be evaluated and scored. In addition, Form TECH-3 ORGANIZATION OF THE CONSULTANT requires “a brief description of the background and organization of your firm/entity ***and of each Associate for the assignment.***” (emphasis added) The Tetra Tech Association, the "Consultant," therefore presented its combined qualifications in support of evaluation criteria 1, Organizational Capability and Experience of the Consultant, and these combined qualifications should have been scored. The arbitrary, erroneous, and incorrect decision to not consider the full capabilities and experience of the Association resulted in our technical proposal being awarded a materially lower technical score than should have properly been awarded.

Tetra Tech’s proposal includes four members in an Association. These include K&A Engineering Consulting (USA/Nepal), Virtuous Energy (India), and ADMC Engineering (Nepal). Tetra Tech ES, Inc. (USA) is the lead member. Tetra Tech submitted a clarification letter dated April 11, 2023 responding to MCA-Nepal’s query that verified that our proposal was submitted as an Association (as defined under ITC Clause 5.7 “Joint Ventures or Associations”).

Thus, it is clear that only Tetra Tech’s project experience was considered for the evaluation. This oversight in not considering our team as an Association resulted in Tetra Tech receiving a lower technical score by up to ten points as elaborated in the table below.

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<b>Tetra Tech ES, Inc. in association with K&amp;A Engineering Consulting P.C., Virtuous Energy Pvt. Ltd., ADMC Engineering Pct. Ltd.</b>				
<b>MCA-Nepal Debrief Response</b>			<b>Tetra Tech Response</b>	
<b>Description</b>	<b>STRENGTHS</b>	<b>WEAKNESSES</b>	<b>Points Allocated as per the RfP</b>	<b>Additional Experience of the Association Members</b>
<b>Criteria 1 - Organizational Capability and Experience of the Consultant</b>				
Evidence of organizational capability and relevant experience in the execution of projects of a similar scale and complexity in the power sector, as follows:				
Overall organizational capability in engineering and expertise under Supervision of Transmission Line and Substations based on FIDIC Yellow Book conditions of Contract – at least 4 Projects of more than value USD 4 Million each with similar experience		2 projects of value more than US\$ 4 million each but no mention of FIDIC Form of Contract. Sub-consultants' experiences not looked into it.	6	In addition to the Tetra Tech led projects, our Association brings two additional project experience (as described on 71-72 pages of our technical proposal): <b>K&amp;A Engineering:</b> 1. Smart Generation and Transmission (“SGT”) Communication Backbone 2. Moses-Adirondack Smart  Thus, our Association partially meets this criterion and should receive additional points.
Technical supervision of works and contractors including review and approval of final designs and supervision of construction, including all environmental, health & safety, and resettlement requirements.				
a) Experience in design review of Transmission line in two similar projects (minimum 220 kV for TL)		Experience in one relevant project only	1	In addition to the Tetra Tech led project, our Association brings three additional project qualifications (as described on 70-78 pages of our Technical Proposal): <b>K&amp;A Engineering:</b> 1. Life Extension & Modernization Program (TELM) 2. Moses-Adirondack Smart Path Reliability <b>Virtuous Energy:</b> 1. Construction Supervision for 765 kV D/C Bhuj – Banaskantha & 400 kV D/C Banaskantha – Radhanesda Transmission Lines.  The Association meets these criteria and should receive the full point.

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<b>MCA-Nepal Debrief Response</b>			<b>Tetra Tech Response</b>	
<b>Description</b>	<b>STRENGTHS</b>	<b>WEAKNESSES</b>	<b>Points Allocated as per the RfP</b>	<b>Additional Experience of the Association Members</b>
b) Experience in design review of Substation in two similar projects (minimum 380 kV for GIS Substation)		No Experience in 380kV GIS Substation, but has experience in GIS in lower voltage	1	Our Association has the project qualifications (as described on page 73 of our Technical Proposal): <b>K&amp;A Engineering:</b> 1. Life Extension & Modernization Program (TELM)  The Association partially meets these criteria and should receive additional points.
c) Experience shall include construction supervision of at least two (2) transmission line infrastructure projects with a similar scope of work (minimum 220 kV for TL) during the last 10 years in a developing country context, with an increasing preference for experience in hilly terrain.		Experience in one relevant project only	5	In addition to the Tetra Tech led project, our Association brings four additional project qualifications (as described on 75-78 pages of our Technical Proposal): <b>Virtuous Energy:</b> 1. Construction Supervision for 765 kV D/C Bhuj – Banaskantha & 400 kV D/C Banaskantha – Radhanesda Transmission Lines. 2. Project Management and Construction Supervision of 400 kV Transmission Lines and GIS substation project in Bihar 3. Supervision of 400 kV double circuit Transmission project in Punjab 4. Construction Supervision for 400 kV Double Circuit Quad Moose Transmission Line and 400 kV Bays at Akola Substations in Maharashtra.  The Association meets these criteria and should receive full five points.

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<b>MCA-Nepal Debrief Response</b>			<b>Tetra Tech Response</b>	
<b>Description</b>	<b>STRENGTHS</b>	<b>WEAKNESSES</b>	<b>Points Allocated as per the RfP</b>	<b>Additional Experience of the Association Members</b>
d) Experience shall include construction supervision of at least two (2) GIS Substation with a similar scope of work (minimum 380 kV for GIS Substation) during the last 10 years in a developing country context, with an increasing preference for experience.		No Experience in 380kV GIS Substation, but has experience in GIS in lower voltage	5	Our Association has project experience working on two GIS Substations at voltage greater than 380 kV (as described on pages 75-76 of our Technical Proposal):  <b>Virtuous Energy:</b> Project Management and Construction Supervision of 400 kV Transmission Lines and GIS substation project in Bihar: <u>1. 400 kV GIS substation at Darbhanga (1,000 MVA) &amp; 2. 400 kV GIS substation at Motihari (400 MVA)</u>  The Association meets this criteria and should receive full five additional points.
e) Construction supervision experience in environmental, health & safety, TIP, GSI and resettlement requirements in at least one in Transmission Line and one in Substation projects in Voltage level 132kV and above.	Two Projects of Construction Supervision in required field		2	No comment

We request MCA-Nepal to consider the project experience of our Association members as outlined in the table above and re-adjust our technical score regarding “Criteria 1 - Organizational Capability and Experience of the Consultant.”

Sincerely yours,



Llyr Rowlands


President, Tetra Tech ES, Inc.

[llyr.rowlands@tetrattech.com](mailto:llyr.rowlands@tetrattech.com)

+1 703.387.2139

## Annex A

### Form of Protest

Challenger		
Name: Tetra Tech ES, Inc. and Association Members		
Choose one: <input checked="" type="checkbox"/> Bidder <input type="checkbox"/> Potential Bidder		
(For legal persons only) Country under whose laws Challenger was organized: United State of America		
Postal address for Protest purposes: 1320 North Courthouse Road, Suite 600, Arlington, VA, USA 22201		
Email address for Protest purposes: Llyr.Rowlands@tetratech.com	Telephone number for Protest purposes: +1 (703) 387-2100	Fax number for Protest purposes: +1 (703) 243-0953
Name of authorized representative for the Protest (if any): Llyr Rowlands		
Signature of Challenger or authorized representative: 		

Challenged Procurement
Name: Procurement of Consultancy Services for Construction Supervision for Transmission Lines and Substations Activities for Electricity Transmission Project
Number: MCA-N/ETP/QCBS/006

Protest	
Date when Challenger became aware of Procurement Action: June 22, 2023	Date of Filing of Protest: June 27, 2023
Description of Procurement Action: MCA-Nepal Request for Proposals for Procurement of Consultancy Services for Construction Supervision for Transmission Lines and Substations Activities for Electricity Transmission Project. RFP was issued 10 Jan 2023.	
Procurement Rules provisions violated by Procurement Action: The Technical Evaluation Committee violated MCA-Nepal Bid Challenge System Rule 1.2(a)(iii). The scores awarded by the technical evaluation panel were arbitrary and erroneous in failing to score the offeror's full organizational capabilities and experience as specified in RFP sections A(b), A(c), 5.7, 12.4, and the criteria in the Qualification Table at section 3.7.	
Explanation of reason why Procurement Action constitutes a violation of the Procurement Rules provisions: The qualification and experience scores awarded to the Tetra Tech proposal by the technical evaluation panel were arbitrary and erroneous in failing to score the Association's full organizational capabilities and experience as specified in the solicitation. The Technical Evaluation panel overlooked the structure of our Association and arbitrarily and incorrectly determined that the Association members are sub-consultants and therefore, their project experience, presented as part of the TECH-4 – EXPERIENCE OF THE CONSULTANT was not considered. This determination was communicated to Tetra Tech in	

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MCA-Nepal's debrief note dated June 26, 2023, that includes comment pertaining to evaluation criteria row 1.1. It states that, "Sub-consultants' experiences not looked into it."

This note shows that the evaluation was flawed and contrary to the RFP requirements that specify the evaluation of offerors who form an Association rather than proposing a prime-subcontractor structure. First, RFP sections A(b) and A(c) define Associate as "any entity that is a member of the Association that forms the Consultant. A Sub-Consultant is not an Associate." Section 5.2 further specifies that a Consultant offeror may be a combination of entities if supported by a letter of intent.

In compliance with RFP requirements, Tetra Tech's Technical Proposal included Letters of Association from partner firms (page 18), and a signed Intent of Association Agreement (beginning on page 21). The Agreement satisfies the requirements of RFP sections 5.7, 12.4, and the criteria in the section 3.7 Qualification Table. Tetra Tech and its Association partners are therefore properly qualified to participate in the competition as an Association according to MCA-Nepal's rules.

As a qualified Association, the Tetra Tech proposal presents combined qualifications as stated in the instructions to Form TECH-4 EXPERIENCE OF THE CONSULTANT:

Using the format below, provide information on each relevant assignment for which your firm, *and each Associate for this assignment*, was legally contracted either individually as a corporate entity or as one of the major companies within an association, for carrying out consulting services similar to the ones requested under the Terms of Reference included in this RFP. (emphasis added).

The quotation clearly shows that the qualifications of all Associates are to be evaluated and scored. In addition, Form TECH-3 ORGANIZATION OF THE CONSULTANT requires "a brief description of the background and organization of your firm/entity *and of each Associate for the assignment*." (emphasis added). The Tetra Tech Association, the "Consultant," therefore presented its combined qualifications in support of evaluation criteria, Organizational Capability and Experience of the Consultant, and these combined qualifications should have been scored. The arbitrary, erroneous, and incorrect decision to not consider the full capabilities and experience of the Association resulted in our technical proposal being awarded a materially lower technical score than should have properly been awarded.

Thus, it is clear that only Tetra Tech's project experience was considered in the evaluation. This oversight in not considering our team as an Association resulted in Tetra Tech receiving a lower technical score by up to ten points as elaborated in the table included in the narrative above.

**Explanation of reason why Challenger has been harmed by Procurement Action:** Tetra Tech was harmed due to the Technical Evaluation Committee's abuse of discretion. The harm is a material omission of evaluation points that Tetra Tech believes impacts the ranking of offerors. Tetra Tech and its Association members invested significant time and expenses in preparing a proposal that deserves a fair evaluation according to the stated criteria in the RFP. The lost opportunity costs due to an arbitrary and erroneous determination by the Technical Evaluation Committee are significant. The investment of time and resources in forming the Association and developing the proposed project could have been put to profitable use pursuing other opportunities. A fair reevaluation of the proposal would remedy this loss.



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

Tetra Tech requests suspension of procurement for RFP Ref: MCA-N/ETP/QCBS/006: Procurement of Consultancy Services for Construction Supervision for Transmission Lines and Substations Activities for Electricity Transmission Project. Failure to suspend the procurement will result in irreparably lost economic costs for Tetra Tech and Association members because the lost opportunity costs and proposal preparation costs will have been wasted. Tetra Tech and Association members will also lose the opportunity to receive a meaningful debriefing of our proposal as the current debriefing is fundamentally flawed.

**Relief Sought**

**Description of relief sought:** In addition to suspension of the procurement, the Association seeks the following relief available under BCS Rule 2.2: (1) require MCA-Nepal to revise the procurement proceedings to conform to the evaluation criteria; (2) reevaluate the Tetra Tech Association offer to consider its full corporate capabilities and experience; (3) perform a new ranking of technical proposals; and (4) proceed with the procurement based on the revised technical rankings.

**Explanation of reason why Challenger is entitled to relief sought:** Tetra Tech and Association members are entitled to relief as qualified offerors for the subject solicitation. MCA-Nepal was negligent in arbitrarily and erroneously ignoring its own solicitation instructions and evaluation criteria. This resulted in lost direct and indirect opportunity costs to Tetra Tech and the Association. We are only seeking a fair evaluation and opportunity to compete for the award on a level field with our competitors.