

Millennium Challenge Corporation

**COMPACT DEVELOPMENT TEAM – BENIN**

**INTERIM BID CHALLENGE SYSTEM**

**Effective Date: August 11, 2023**



## Definitions

**Words and terms:** Definitions apply to the entire document unless specifically defined in another part, subpart, section, provision, or clause. Words or terms defined in a specific part, subpart, section, provision, or clause have that meaning when used in that part, subpart, section, provision, or clause. Undefined words retain their common dictionary meaning.

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

<b>Appeal</b>	A request to MCC for review of the Protest decision by the MCA Entity.
<b>Appellant</b>	Any Protestor that submits an Appeal is referred to herein as the “Appellant.”
<b>Business Day</b>	Any day in Benin that is not a (i) public holiday, (ii) weekend, or (iii) day when work is suspended by public authorities due to natural calamities. A close of the Business Day is 5:00 p.m. (local time at the MCA Entity (Cotonou, <b>Benin</b> ))
<b>Compact</b>	The Millennium Challenge Compact between the Government of Benin and the United States of America signed on December 14, 2022, pursuant to which MCC would provide a US Dollars grant to the Government of Benin for a program to reduce poverty through economic growth in Benin.
<b>Compact Development Fund (CDF) Agreement</b>	The second amended and restated funding agreement between the Benin and the United States of America, acting through MCC, signed on April 6, 2022, as the same may be amended from time to time.
<b>Compact Development Team (CDT)-Benin</b>	A government body assigned by the Government of the Benin to develop the Compact with MCC. Until the government establishes a MCA Benin Regional, all references to MCA-Benin Regional will also be applicable to CDT-Benin.
<b>Debriefing</b>	A mechanism by which Offerors have an opportunity to obtain feedback from the CDT-Benin to ascertain the grounds on which its offer was not selected.
<b>Interim Bid Challenge System (IBCS)</b>	This Interim Bid Challenge System and the rules and procedures set forth herein. This IBCS is applicable until replaced by the Compact’s bid challenge system.
<b>MCA Entity</b>	Means the accountable entity designated by the Government to develop the Compact or implement the Compact or Threshold Program. The MCA Entity in this IBCS is the Compact Development Team (CDT)-Benin
<b>MCC</b>	Millennium Challenge Corporation, a United States federal government agency that provides grants funds for the procurements undertaken by the MCA Entity.
<b>Offer</b>	A bid or proposal submitted by the Offeror,

## Definitions

<b>Offeror</b>	Any firm or individual that participates in an MCA Entity procurement process to provide goods, works or services.
<b>Procurement Agent or Interim Procurement Agent</b>	The natural or legal person acting as procurement agent on behalf of the Government accountable entity to conduct the procurements.
<b>PPG</b>	The MCC Program Procurement Guidelines, as the same may be amended from time to time.
<b>Procurement Rules</b>	The PPG or the solicitation documents applicable to the challenged procurement action, or both.
<b>Protest</b>	A request that a procurement action be reviewed in accordance with this IBCS.
<b>Protestor</b>	Any Offeror that submits a Protest is referred to herein as a “Protestor”.
<b>Protest Fee</b>	A fee that needs to be submitted by the Offeror to file a protest.
<b>Secretariat</b>	The MCA Entity personnel designated by the MCA Entity to act as the secretariat for proceedings under this IBCS.

## 1. BACKGROUND

The United States of America, acting through the Millennium Challenge Corporation (“MCC”), and the Government of Benin (the “Government”) signed an agreement on December 14, 2022 called a Compact pursuant to which MCC agreed to provide a grant of up to two hundred and two million dollars (\$ 202,000,000) to the Government, as well as a fifteen million dollars (\$15,000,000) contribution from the Government, for a program to reduce poverty through economic growth in Benin. The Government has established a Compact Development Team (CDT) called Equipe Technique de Formulation (UCF) to develop this Compact with the MCC.

The Government’s CDF Agreement with MCC requires the Government (including any designee) to ensure that the MCA Entity procures all goods, works and services to implement the CDF program, in accordance with the MCC Program Procurement Guidelines (“PPG”).

The PPG further requires that the MCA Entity establish and publish an Interim Bid Challenge System (“IBCS”) that provides Offerors the ability to challenge and seek review of the MCA Entity procurement actions and decisions.

This IBCS must be included in all solicitation documents issued by the MCA Entity.

- **For a CDF Agreement or Compact**, this IBCS remains applicable in procurements launched prior to the Government’s adoption of a formal Bid Challenge System (BCS), which will take place after establishing the Millennium Challenge Account Entity (MCA-Benin Regional), and hiring a Procurement Agent.
- **For a Threshold program**, which is another form of MCC’s funding to a partner country, this IBCS remains applicable in procurements throughout the development and implementation of the Threshold program.

This IBCS does not apply to procurements that are conducted through (a) Shopping methodology, and/or (b) Individual Consultant selection methodology for which the MCA Entity has adopted a modified version of this IBCS, called the IBCS-IS.

This IBCS applies only to Protests during the procurement process, and not to examine or review the implementation or conduct of any contract once awarded.

## **Rule 1. PROTESTS**

**Rule 1.1.** The MCA Entity shall consider a Protest from any Offeror that claims to have suffered or may suffer loss or injury due to a breach of Procurement Rules by the MCA Entity in the conduct of any procurement.

**Rule 1.2.** For a Protest to prevail, a Protestor 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 Protestor has suffered or will suffer loss or injury because of the procurement action taken by the MCA Entity on its offer.

**Rule 1.3.** Any Offeror may file a Protest, with the following exceptions:

- (a) sub-contractors, sub-consultants and members of the general public are not permitted to file a Protest;
- (b) a Protest cannot be used to cure a deficiency in the Offeror's Offer;
- (c) a Protest cannot be used to allege fraud, corruption or intent of wrongdoing in the procurement process; such allegations must be filed in accordance with MCC's Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations, a copy of which is available on MCC's website <https://www.mcc.gov/resources/doc/policy-fraud-and-corruption>.

**Rule 1.4.** The following procurement actions shall not be the subject of a Protest:

- (a) The selection of a procurement methodology (e.g., Shopping, QCBS, QPBS, QBS, etc.)
- (b) The selection of the type of procurement (e.g., goods, works, non-consultant services, or consultant services)
- (c) Technical scores assigned by the technical evaluation panel, unless the Protestor can demonstrate to the satisfaction of the MCA Entity that determination of such scores is arbitrary or capricious or characterized by an abuse of discretion
- (d) The decision by the MCA Entity to reject all Offers and/or cancel the procurement.

**Rule 1.5.** A Protest cannot be filed against/for a procurement action taken by the MCA Entity on the offer of any other Offeror.

**Rule 1.6.** A Protestor must file its Protest with the Secretariat by the protest deadline, which shall be by the MCA Entity's close of the Business Day on or before the date set forth in the rules below, to be considered timely filed.

**Rule 1.7.** Any Offeror may file a Protest in any of the two Protest windows below, however, a Protestor must request a Debriefing prior to filing a Protest under Rule 1.7.2:

**1.7.1.** For Protests before submission, any Offeror may Protest the solicitation documents if it considers the document violates MCC's open, fair and transparent procurement principles. A Protestor must file its Protest with the Secretariat within seven (7) Business Days after the MCA Entity issues the solicitation document.

**1.7.2.** For Protests after the submission, any Offeror can Protest the notice of intent of award, notice of pre-qualification/shortlisting results or notification of the technical rankings or declaration of the prices being unreasonable.

**Rule 1.8.** The Debriefing request to the MCA Entity must be submitted via e-mail to the MCA Entity at [contact@ucfbenin.bj](mailto:contact@ucfbenin.bj) within two (2) Business Days after receipt of the notice from the MCA Entity that gives rise to the reasons for the Protest.

**Rule 1.9.** The MCA Entity shall provide a written explanation via email within three (3) Business Days of receiving the request for Debriefing.

**Rule 1.10.** The request for Debriefing is not considered a Protest. Following the Debriefing, if the Protestor intends to file a Protest, the Protestor must submit an "intent to Protest" referencing the MCA Entity's written explanation via email to the Secretariat at [recours@ucfbenin.bj](mailto:recours@ucfbenin.bj) within one (1) Business Day of receiving the written explanation. Failure to submit an "intent to Protest" within this timeframe will result in rejection of the Protest.

**Rule 1.11.** Following submission of the "intent to Protest", the Protestor must file its Protest with the Secretariat within five (5) Business Day after the MCA Entity provided the written Debriefing explanation.

**Rule 1.12.** A Protest must be in the form set forth in Annex A and must provide the information required in said form. In form Annex A, the Protestor must include the requested remedy or relief, which may be one of the following:

- (a) compensation for any reasonable and verifiable cost of bid preparation and Appeal, subject to a price reasonableness analysis in accordance with the PPG and excluding attorney fees or lost profits;
- (b) revision of the procurement proceedings to conform to the applicable guidelines;
- (c) cancellation of the procurement; or
- (d) request a new procurement. No other remedy is allowed.

**Rule 1.13.** A Protestor must pay a Protest Fee in the amount of US\$500.00 (or its equivalent in a local currency and the date of the exchange rate for conversion purposes will be the date when the MCA Entity provided the written explanation). The exchange rate of the Central

Bank of West African States (BCEAO) will be use and available on the following link:  
<https://www.bceao.int/fr>

**Rule 1.14.** Nonpayment of the Protest Fee will result in rejection of the Protest without any consideration. The MCA Entity will return the Protest Fee if the Protest is upheld in full.

**Rule 1.15.** Form Annex A along with proof of payment of Protest fees (such as confirmation of wire transfer, or any other internet-based money transfer services or the payment by bank check) of the required Protest Fee and all attachments must be submitted to the Secretariat by email before the Protest deadline.

Protest fees must be remitted to the following account:

**BANK NAME:** UNITED BANK FOR AFRICA (UBA)

**ACCOUNT TITLE:** EQUIPE TECHNIQUE DE FORMULATION DU  
COMPACT REGIONAL

**ACCOUNT NUMBER:** 501100008429

**IBAN:** BJ0670150150110000842967

**SWIFT CODE:** COBBBJBJ

**BANK ADDRESS:** Carrefour des Trois Banques-Avenue Pape Jean Paul II  
01 BP 2020, Cotonou, Benin, Tél: +229 21 31 24 24

**ACCOUNT CURRENCY:** XOF

**Rule 1.16.** All Protests filed in violation of above rules will be declared frivolous and rejected with a notice of rejection and the Protest Fee will be confiscated.

**Rule 1.17.** The Secretariat shall within one (1) Business Day after the date when a Protest is filed:

- (a) Send an acknowledgement of the receipt of the Protest to the Protestor;
- (b) Send a copy of the Protest to the Interim Procurement Director of the MCA Entity and the Interim Procurement Agent (IPA)/ Procurement Agent (PA), as applicable.

**Rule 1.18.** The MCA Entity may decide to immediately suspend the procurement at its sole discretion if the Protest clearly shows that the Protestor and/or other Offerors and/or general public in Benin will suffer irreparable harm if the challenged procurement is not suspended. If the procurement is suspended, no award will be made while the Protest is pending.

## **Rule 2. Review and Decision of the Protest**

**Rule 2.1.** The Secretariat shall, within ten (10) Business Days after submission of the Protest, issue a written decision to the Protestor, and:

**Rule 2.2.** If the Protest is upheld in whole or in part, indicate the corrective measures that shall be taken by the Secretariat and the evidence that the Protest Fee is being returned to the Protestor.

**Rule 2.3.** If the Protest is rejected, stating the reasons for the rejection and that the Protest Fee will be confiscated at the discretion of the Secretariat.

## **Rule 3. APPEALS**

**Rule 3.1.** If the Protestor is dissatisfied with the decision of the MCA Entity on its Protest, it may submit an Appeal to MCC per the following procedures. There is no fee for the appeal.

**Rule 3.2.** The Protestor may seek review by MCC within five (5) Business Days after it has received the decision from the MCA Entity or should have received the decision from the MCA Entity by sending an email request to MCC at the email addresses below.

**Rule 3.3.** MCC's review of the Appeal will be limited to the Appellant claims that:

- (a) the MCA Entity failed to consider its Protest,
- (b) the MCA Entity failed to issue a written decision via email on the Protest within the time specified in this IBCS, or
- (c) the MCA Entity violated the Procurement Rules in making its determination on the Protest.

**Rule 3.4.** MCC will issue a final decision within ten (10) Business Days of the receipt of the Appeal.

**Rule 3.5.** An Appeal:

- (a) An Appeal must be in the form set forth in Annex B, and must provide all the information required in the form.
- (b) Must include all the documents submitted by the Appellant to the MCA Entity,
- (c) Must not allege any theory or argument that was not alleged in the Protest,
- (d) Must not assert any new information or include any new documents that were not provided to the MCA Entity, and
- (e) Must indicate the requested remedy or relief, which may only include:
  - i. Compensation for any reasonable and verifiable cost of bid preparation and Appeal, subject to a price reasonableness analysis in accordance with the PPG and excluding attorney fees or lost profits;



- ii. Revision of the procurement action to conform to the PPG;
- iii. Termination of the procurement; or
- iv. Order a new procurement.

**Rule 3.6.** If the procurement is suspended, no award will be made while the Appeal is pending

**Rule 3.7.** The Appeal should be addressed to and sent via email to:

**Millennium Challenge Corporation**

**Attention:** Vice President, Department of Compact Operations

(With a copy to the Vice President and General Counsel)

1099 14th Street NW

Suite 700, Washington, DC 20005-3550

United States of America

**Email:** [VPOperations@mcc.gov](mailto:VPOperations@mcc.gov) (Vice President for Compact Operations)

[VPGeneralCounsel@mcc.gov](mailto:VPGeneralCounsel@mcc.gov) (Vice President and General Counsel)

## Annex A - Protest Form

<b>Offeror</b>		
<b>Name:</b>		
<b>(For legal persons only) Country under whose laws the Protestor is organized:</b>		
<b>Postal address for Protest purposes:</b>		
<b>Email address for Protest purposes:</b>	<b>Telephone number for Protest purposes:</b>	<b>Fax number for Protest purposes:</b>
<b>Name of authorized representative for the Protest (if any):</b>		
<b>Signature of Protestor's authorized representative:</b>		

<b>Challenged Procurement</b>
<b>Name:</b>
<b>Number:</b>

<b>Protest</b>	
<b>Date when Offeror became aware of procurement action:</b>	<b>Date of Filing of Protest:</b>
<b>Description of Procurement Action:</b>	
<b>Procurement Rules provisions violated by procurement action:</b>	
<b>Explanation of reason why procurement action constitutes a violation of the Procurement Rules in the MCC PPG or in the solicitation document of the said procurement:</b>	

**Explanation of reason why the Offeror has been or will be harmed by Procurement Action:**

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

**Relief Sought**

**Description of relief sought:**

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

Instructions:

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

## Annex B - Form of Appeal

<b>Appellant</b>		
<b>Name:</b>		
<b>Postal address for appeal purposes:</b>		
<b>Email address for Appeal purposes:</b>	<b>Telephone number for Appeal purposes:</b>	
<b>Name of authorized representative for the Appellant (if any):</b>		
<b>Signature of Appellant or authorized representative:</b>		

<b>Challenged Procurement</b>	
<b>Name:</b>	
<b>Number:</b>	

<b>Appeal</b>	
<b>Date when Appellant became aware of the MCA Entity Decision:</b>	<b>Date of Filing of Appeal:</b>
<b>Explanation of reason why the Appellant believes that the MCA Entity failed to decide the Protest in accordance with the Level 1 Authority's duty:</b>	

<b>Relief Sought</b>	
<b>Description of relief sought:</b>	
<b>Explanation of reason why the Appellant is entitled to relief sought:</b>	

**Instructions:**

1. Please attach a copy of each of the following documents, if available to the Appellant: (a) the Protest and its attachments, and any Comment and their attachments, if any, and (b) the MCA Entity decision.
2. Please use additional sheets for the required information if necessary.