



**ORGANISME DE MISE EN ŒUVRE DU
MILLENNIUM CHALLENGE ACCOUNT
(OMCA-TOGO)**

BID CHALLENGE SYSTEM

Effective Date: March 28, **2022**

BACKGROUND

The United States of America, acting through the Millennium Challenge Corporation (“*MCC*”), and the Republic of Togo (the “*Government*”) signed a Threshold Program Grant Agreement on February 14, 2019 (as amended or otherwise modified, the “*Grant Agreement*”) pursuant to which MCC agreed to provide a grant of up to \$ **35,000,000** to the Government for a program to reduce poverty through economic growth in Togo. The Government has designated l’Organisme de Mise en Oeuvre du Milennium Challenge Account (*OMCA-Togo*) as the accountable entity in charge of implementing the Threshold Program.

The Grant Agreement requires the Government (including any designee) to ensure that it procures all goods, works and services to implement the Threshold Program in accordance with the *MCC Program Procurement Guidelines* (“*PPG*”). The PPG further require that OMCA-Togo establish and publish a Bid Challenge System (“*BCS*”) that provides Bidders on OMCA-Togo procurements with the ability to challenge and seek review of OMCA-Togo procurement actions and decisions.

To comply with these requirements, OMCA-Togo has established the rules and procedures set forth in this document, also referred to as its BCS, to govern the review of all challenged OMCA-Togo procurement actions and decisions, and which will be incorporated in all solicitation documents distributed to Potential Bidders.

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

1. Protests

- 1.1. OMCA-Togo will consider a Protest from any Bidder or Potential Bidder that claims to have suffered or that it may suffer loss or injury due to a breach of a duty by OMCA-Togo in the conduct of an OMCA-Togo procurement. The BCS is not intended to examine or review the implementation or conduct of any contract once awarded. A Protest must:
 - (a) Identify the procurement out of which the bid challenge arises;
 - (b) Describe the nature of the bid challenge and supporting facts, including the bidding documents or portion of the procurement process that was allegedly in non-compliance;
 - (c) Identify the specific provision(s), as set forth in the PPG or the bidding documents, which were allegedly breached;
 - (d) Indicate the requested remedy or relief, which may include (1) compensation for any reasonable and verifiable cost of bid preparation and Appeal, subject to a price reasonableness analysis in accordance with the PPG and excluding attorney fees or lost profits; (2) revision of the procurement proceedings to conform to the applicable guidelines; (3) termination of the procurement; or (4) initiation of a new procurement;
 - (e) Explain why the bid challenge was timely; and

- (f) Include the name, address, telephone and facsimile numbers, as well as the email address of the Challenger.

The English language will be used for all documents Filed or provided in accordance with this BCS.

- 1.2. Any Bidder that claims to have suffered or that it may suffer loss or injury because of a Procurement Action may File a Protest, except that: (a) sub-contractors, sub-consultants and members of the general public are not permitted to File a Protest; (b) a Protest cannot be used to cure a deficiency in the Challenger's bid or proposal; and (c) a Protest cannot be used to allege fraud, corruption or intent of wrong doing in the procurement process, which allegation must be processed in accordance with MCC's *Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations*, a copy of which is available on MCC's website (www.mcc.gov).
- 1.3. The following Procurement Actions may not be the subject of a Protest:
 - (a) the selection of a method of procurement (e.g., QCBS, QBS, etc.);
 - (b) the selection of the type of procurement (e.g., goods, works, non-consultant services, or consultant services);
 - (c) the decision by OMCA-Togo to reject all bids, proposals or quotations;
 - (d) scores assigned by the technical evaluation panel, unless the determination of such scores is alleged to have been arbitrary or capricious or characterized by an abuse of discretion.
- 1.4. Bidders are strongly advised to request a Debriefing before initiating a formal Protest by submitting a written request for Debriefing to OMCA-Togo 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. OMCA-Togo will provide a written explanation of why the Bidder was not selected within two (2) Business Days of receiving the request for Debriefing. Such a request is not a bid challenge.
- 1.5. The Secretariat will, no later than 5:00 p.m. (local time at OMCA-Togo's location) on the first Business Day after the date that a Protest is Filed:
 - (a) Send a Notice of the Filing of the Protest; and
 - (b) Send to the Procurement Agent or the OMCA-Togo Procurement Director, as applicable, and all Bidders who submitted bids for the Challenged Procurement, a copy of such Notice and instructions (if any), and if the automatic suspension of the Challenged Procurement was lifted by the Level 1 Authority prior to such Business Day, notice thereof. The Secretariate will also provide a copy of the Protest itself to the Procurement Agent or the OMCA-Togo Procurement Director, as applicable.

- 1.6. A Protest must be submitted to OMCA-Togo, in writing, within five (5) Business Days of the date of: (a) the issuance of the original bidding document, (b) the modification to the original bidding document, or (c) when the Bidder learned or should have learned of the results of the pre-qualification or short listing, technical evaluation or other decision or action, including but not limited to, the written explanation giving rise to the challenge.
- 1.7. Upon the Filing of a Protest, the Challenged Procurement will be automatically suspended until a final decision with respect to the Protest is issued, unless the Level 1 Authority lifts the suspension after determining that :
- (a) the Protest does not clearly show that the Challenger will suffer irreparable harm if the Challenged Procurement is not suspended;
 - (b) the claim is frivolous;
 - (c) OMCA-Togo or Bidders other than the Challenger may sustain disproportionately greater harm by the suspension, compared to the harm to be possibly sustained by the Challenger;
 - (d) the suspension of the Challenged Procurement will be detrimental to public interest; or
 - (e) there are urgent or compelling reasons not to suspend the Challenged Procurement, including potential harm to OMCA-Togo.
- 1.8. For the avoidance of doubt, any Protest that was not Filed in accordance with the procedures under Section 1.1 (a-f) or Section 2.2 (a-e) and in a timely manner and that was rejected as a result of such failure, will not result in any suspension of the relevant Procurement Action.
- 1.9. 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.
- 1.10. OMCA-Togo will, within fifteen (15) Business Days after submission of the Protest, issue a written decision to the Challenger stating the reasons for the decision and, if the bid challenge is upheld in whole or in part, indicating the corrective measures that are to be taken. OMCA-Togo must submit a report of the handling and disposition of any bid challenge to MCC. The report must be submitted to MCC, if there is no Appeal, within 3 days after the deadline for Filing an Appeal.

2. Appeals

- 2.1. In certain cases, a Bidder or Potential Bidder may seek review by MCC after it has exhausted all remedies with OMCA-Togo. MCC's review will be limited to claims that
(a) OMCA-Togo failed to consider the Protest, (b) OMCA-Togo failed to issue a written

decision on the Protest within the time specified in this BCS, or (c) OMCA-Togo violated the procedures set out in the solicitation documents. The appeal to MCC must be received in writing (which may be in electronic form) within five (5) Business Days of the date the Bidder or Potential Bidder learned or should have learned of an adverse decision by OMCA-Togo, MCC will issue a final decision within (15) Business Days of the submission of the Appeal.

2.2. A bid Appeal must:

- (a) Identify the procurement out of which the bid challenge arises ;
- (b) Describe the nature of the Appeal and supporting facts, including full correspondence and decision of OMCA-Togo;
- (c) Indicate the requested remedy or relief, which may include (1) compensation for any reasonable and verifiable cost of bid preparation and Appeal, subject to a price reasonableness analysis in accordance with the PPG and excluding attorney fees or lost profits; (2) revision of the Procurement Action to conform to the PPG; (3) termination of the procurement; or (4) initiation of a new procurement;
- (d) Explain why the Appeal is timely; and
- (e) Include the name, address, telephone and facsimile numbers, as well as the email address of the Challenger.

2.3. The Appeal should be addressed to:

Millennium Challenge Corporation
Attention: Vice President, Department of Compact Operations
(with a copy to the Vice President and General Counsel)
1099 14th Street NW
Suite 700
Washington, DC 20005-3550
United States of America

Email: VPOperations@mcc.gov (Vice President of Compact Operations)

VPGeneralCounsel@mcc.gov (Vice President and General Counsel)

3. Definitions

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

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

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

Business Day: means any day in Togo that is not a (i) public holiday, (ii) weekend, or (iii) day when work is suspended by public authorities due to natural calamities.

Challenged Procurement: the procurement out of which a Protest arises.

Challenger: a Bidder who Files a Protest.

Debriefing: A mechanism by which Bidders have an opportunity to meet or discuss with OMCA-Togo to ascertain the grounds on which its bid was not selected.

Filed or Filing: means the receipt, either by mail services or other delivery services (fax and email), of any document by the addressee before the close of its Business Day.

Level 1 Authority: The OMCA-Togo *Directeur Général*.

MCC: Millennium Challenge Corporation

Notice: means a written communication sent to participating Bidders when a Protest is received by OMCA-Togo. The Notice will contain the nature of the Protest, the name of the Challenger and if applicable, the issuance of any written instruction by the Level 1 Authority regarding the suspension of the Challenged Procurement.

Potential Bidder: the Bidders who would have participated in the solicitation process but for an alleged mistake made by OMCA-Togo.

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

Procurement Action: means any action or decision by OMCA-Togo relating to the OMCA-Togo process of procuring goods, works, or services in furtherance of the Threshold Program.

Procurement Agent: means the natural or legal person engaged by OMCA-Togo as procurement agent in accordance with the Grant Agreement.

Procurement Rules: the PPG, or the solicitation documents applicable to the challenged Procurement Action, or both.

Protest: the initial challenge to a Procurement Action and request that such Procurement Action be reviewed in accordance with this BCS.

Secretariat: the OMCA-Togo personnel designated by the OMCA-Togo *Directeur Général* to act as the secretariat for proceedings under this BCS.

Threshold Program: the program of projects and activities to be implemented under and in accordance with the Grant Agreement.