



FONDUL PROVOCĂRILE
MILENIULUI MOLDOVA

BID CHALLENGE SYSTEM RULES

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Second Edition

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Definitions

- (a) “*Affected Bidder*” means a Bidder, as defined in Article 3.5(a), which has the right to file a Comment..
- (b) “*Appeal*” means the process of initiating the recourse to the Bid Challenge Tribunal.
- (c) “*Appeal Deposit*” means the deposit required to be made by a Challenger shall be paid to the account of MCA-Moldova within five working days from the date when the Notice of Appeal is “*Filed*” by MCA-Moldova.
- (d) “*Bidder*” means any consultant, contractor or supplier that participates in an MCA-Moldova procurement process to provide goods, works or services in furtherance of the Compact.
- (e) “*Bid Challenge*” document submitted by a Challenger in accordance with the rules set forth in this document, having the purpose to seek review of the procurement process.
- (f) “*Bid Challenge Panel*” (“*BCP*”) is an independent body of a minimum of six competent and qualified persons, appointed by MCA-Moldova to consider Appeals.
- (g) “*Bid Challenge Tribunal*” (“*BCT*”) means, with respect to each Appeal, the Bid Challenge Tribunal that is appointed under the BCS.
- (h) “*BCS*” means, collectively, the rules set forth in this document.
- (i) “*BCT Chair*” means the BCT Member who shall act as the chairman of the BCT.
- (j) “*BCT Member*” means an individual selected in accordance with the BCS to act as member of the BCT.
- (k) “*BCT Service Agreement*” means the service agreement between MCA-Moldova and BCT member for the provision of personal services as a BCT Member if said person is appointed as a BCT Member.
- (l) “*Bidding Documents*” means the procurement documents for the Challenged Procurement.
- (m) “*Challenged Procurement*” means the particular MCA-Moldova procurement in relation to which the Procurement Action was taken.
- (n) “*Challenger*” means any Bidder or Potential Bidder who submits a Bid Challenge.
- (o) “*Comment*” means a document filed by an Affected Bidder for the purpose of opposing or supporting the Protest.
- (p) “*Communication*” means exchange of information between concerned parties on subjects covered by the BCS, including or in reference to a notification, Protest, Appeal, or Decision.
- (q) “*Compact*” has the meaning provided in the preamble.
- (r) “*Decision*” means the binding, written determination made by the MCA-Moldova Challenge Review Committee, or the Bid Challenge Tribunal, as the case may be, as duly communicated to the Parties.
- (s) “*Filed*” means the receipt, either by mail services or Internet e-mail, of any document by the addressee before the close of its Working Day.
- (t) “*FAP*” means the MCA-Moldova Fiscal Accountability Plan as may be found on the MCA-Moldova website at http://mca.gov.md/en/legal_framework.html.

- (u) “*MCA-Moldova*” means Millennium Challenge Account-Moldova.
- (v) “*MCC*” has the meaning provided in the preamble.
- (w) “*Notice of Appeal*” means a document, compiled substantially in accordance with the Annex B “*Notice of Appeal*” form enclosed herewith, filed by a “Challenger” (Bidder or Potential Bidder) for the purpose of showing that the Challenge Review Committee failed to decide the Protest in accordance with the Challenge Review Committee’s duty.
- (x) “*Objection*” has the meaning provided in the Article 7.4.
- (y) “*Protest*” or “*Notice of Protest*” means the form that shall be completed and submitted by a Challenger wishing to protest the outcome of a procurement conducted by MCA-Moldova (see Annex A of the BCS).
- (z) “*Party*” or “*Parties*” means the Challenger and MCA-Moldova.
- (aa) “*PIA*” has the meaning provided in the preamble and may be found on the MCA-Moldova website at http://mca.gov.md/en/legal_framework.html.
- (bb) “*POC*”, the point of contact appointed by each Party after the formation of the BCT, to receive and send all formal communications with the BCT for the duration of BCT proceedings.
- (cc) “*Potential Bidder*” means the Bidders who would have participated in the solicitation process but for an alleged mistake of the MCA-Moldova.
- (dd) “*PPG*” means the MCC Program Procurement Guidelines, as the same may be amended from time to time and may be found on MCA-Moldova website at <http://www.mca.gov.md/en/Procurements-guidlines.html> or MCC website at <http://www.mcc.gov/pages/business/guidelines>.
- (ee) “*Procurement Action*” means any decision by MCA-Moldova relating to the MCA-Moldova process of procuring goods, works, or services in furtherance of the Compact.
- (ff) “*Procurement Agent*” means the legal person engaged by MCA-Moldova as procurement agent in accordance with the Compact and the PIA.
- (gg) “*Procurement Rules*” means the PPG, and the rules contained in the applicable solicitation documents.
- (hh) “*Protest*” means a document, compiled substantially in accordance with the *Notice of Protest* form enclosed herewith, filed by a Challenger who believes it has been damaged by a violation of the procurement principles or procedures by MCA-Moldova, for the purpose to seek review of the procurement process.
- (ii) “*Response*” means the written statement provided by MCA-Moldova to the BCT, pursuant to Article 13, in response to the written Appeal submitted by the Challenger.
- (jj) “*Working Day*” means any day in the Republic of Moldova that is not a (i) public holiday, (ii) weekend, or (iii) day when work is suspended by public authorities due to natural calamities.

BID CHALLENGE SYSTEM

PREAMBLE

On January 22, 2010, the United States of America, acting through the Millennium Challenge Corporation (“MCC”), and the Republic of Moldova (the “Government”) executed a Millennium Challenge Compact (the “Compact”) and a Program Implementation Agreement (the “PIA”), that set forth the general terms and conditions on which MCC will provide funding of up to \$262,000,000 to the Government for a program to reduce poverty through economic growth in Moldova (the “Program”), and describe terms and conditions for procurements of goods, services and works made in furtherance of the Compact using MCC Funding;

The Government has designated MCA-Moldova to implement the Program pursuant to Government Resolution no. 161 of March 4, 2010; and

Pursuant to Section 2.1(d) of the PIA, MCA-Moldova is obliged to establish a bid challenge system that provides bidders (goods suppliers, service providers and contractors, etc.) the ability to seek review of procurement actions and decisions.

MCA-Moldova has established the rules and procedures set forth in the Bid Challenge System (the “BCS”) and agrees that the review of procurement actions and decisions shall be processed with reference to and in accordance with the provisions of the BCS. MCA-Moldova shall ensure that the BCS has been presented to Bidders and Potential Bidders by including respective references in all solicitation documents distributed. All capitalized terms used in the BCS are consistent with term provided in the Compact and the PIA, and have the meaning specified herein.

The principles upon which the BCS is based are:

- a) Clearly and openly state the basis on which decisions are made to accept and evaluate bids and proposals in the invitations for bids or requests for proposals;
- b) Provide unsuccessful bidders, upon request, clear explanations of why their bids or proposals were rejected or not selected; and
- c) Establish and implement a formal process to address, i.e. accept, review and process the Bid Challenges on how procurement rules and procedures were applied to specific procurement actions.

SECTION 1 - INTRODUCTORY RULES

Article 1. Scope of Application

- 1.1 The BCS shall govern any Bid Challenge, except that where any of the provisions of the BCS are in conflict with provisions of the: 1) Compact, 2) the PIA, and/or 3) the MCC Program Procurement Guidelines, provisions of the later shall prevail.
- 1.2 The application of the BCS these Rules must be consistent with the MCA-Moldova Fiscal Accountability Plan and MCC cost principles.
- 1.3 The BCS shall be incorporated into all solicitation documents distributed to Potential Bidders, and all Bidders and Potential Bidders shall be bound by the BCS, and further

agree that by submitting a bid, proposal or Bid Challenge, no legal challenge of any kind may be instituted in any court, in any jurisdiction, with respect to any matter, claim or issue arising out of the bidding and procurement processes until and unless a Bid Challenge has been completed in accordance with the BCS.

- 1.4 MCA-Moldova may, with the prior written approval of MCC, modify the BCS in writing from time to time. For the avoidance of doubt, the version of the BCS referred to in the solicitation documents received by suppliers, contractors and consultants shall govern the respective procurement, even if MCA-Moldova subsequently modifies the BCS in accordance with this Article 1.4.

Article 2. Communication; Calculation of Periods of Time

- 2.1 The language to be used for all communication shall be the English language.
- 2.2 For the purposes of the BCS, any communication, is deemed to have been received if it is delivered to the Challenger's, or Affected Bidder's, address on record with MCA-Moldova. A written communication, including email, shall be deemed to have been received on the day it is so delivered.
- 2.3 For the purposes of calculating a period of time under the BCS, such period shall begin on the first Working Day following the day when a Communication is Filed..
- 2.4 Notices and all other documents required to be delivered to MCA-Moldova, to the Bid Challenge Panel and to the Bid Challenge Tribunal under the BCS shall be sent to the following address:

Millennium Challenge Account - Moldova
Executive Director
21, Nicolae Iorga Str., office 5, Chişinău, MD 2012, Republic of Moldova
Telephone: (373)-22-852299
Telephone/Fax: (373)-22-852294
Email: office@mca.gov.md

Article 3. Protests

- 3.1 Any Bidder or Potential Bidder may file a Protest on the ground that it has been damaged by a Procurement Action which constitutes a violation of the procurement principles or procedures by the MCA-Moldova.
- 3.2 A Challenger shall provide sufficient relevant information, specifically: (a) provisions of the MCC Program Procurement Guidelines or the solicitation documents which allegedly were violated by the decisions or actions of MCA-Moldova, (b) justifications regarding the nature of the damage that will be or was suffered by the Challenger as a result of such decisions or actions, (c) the relief sought.
- 3.3 Challenge Review Committee
 - (a) For the purposes of the BCS, MCA-Moldova shall establish a permanent specialized body, consisting of three members and entrusted with the review and decision-making on the claims submitted by bidders (the "Challenge Review

Committee”).

- (b) The Challenge Review Committee shall consist of the following three members – the MCA-Moldova Executive Director (who shall serve as the Chair of the Challenge Review Committee), the MCA-Moldova Legal Advisor and the MCA-Moldova Procurement Director. The MCA-Moldova Executive Director may, at his or her own discretion, assign the Deputy Executive Director to exercise his or her functions for the purposes of the BCS. In the case of absence of the Legal Advisor and/or the Procurement Director, the MCA-Moldova Executive Director may assign their responsibilities to other relevant staff members of MCA-Moldova.
- (c) The Chair of the Challenge Review Committee shall have the authority to decide procedural matters.

3.4 Filing a Protest

- (a) Subject to paragraphs (b), (c), (d) and (e) of this Article 3.4, any Bidder or Potential Bidder may file a written Protest (which may be in electronic form) with MCA-Moldova at the following times:
 - i) within five Working Days of the date of:
 - i. the issuance or modification of a request for proposals; or
 - ii. a Decision to extend the time for submission of proposals
 - ii) in the event that the procurement process requires a technical evaluation prior to the opening of financial proposals, within five Working Days of the date that the results of the technical evaluation are notified to bidders; and
 - iii) within five Working Days of the date that the award is notified to bidders.
- (b) A Bidder or Potential Bidder may challenge any Procurement Action except for:
 - i) the selection of the method of procurement (e.g., QCBS, QBS, etc.);
 - ii) the choice of the type of procurement (e.g., goods, works, non-consultant services, or consultant services); and
 - iii) a Decision to cancel a procurement or reject all bids, proposals, offers or quotations.
 - iv) allegations of fraud and corruption or intent of wrong doing in the procurement process, which shall 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).
 - v) in case of bad references.
- (c) A Protest:
 - i) must be received by MCA-Moldova substantially in the “Notice of Protest” form set forth in **Annex A**, and
 - ii) must state at least the information required in said form.
- (d) Without prejudice to Article 4 below requiring an Appeal Deposit, no fee shall

be required for the filing of a Protest.

- (e) A Protest that is not filed in accordance with the BCS shall not be considered as filed.
- (f) Under no circumstance shall any Protest be submitted by a potential subcontractor or sub-consultant, or a member of the public.
- (g) The Challenge Review Committee shall reject a Protest filed:
 - i) after signing of the contract;
 - ii) after the five Working Day period set forth in paragraph 3.4(a) above;
 - iii) does not meet the requirements set forth in Article 3.4(b) above; or
 - iv) if the Protest is clearly without merit, including not citing a specific provision; or improperly filed, as set forth in Article 3.4 (e) above.
- (h) Immediately after the Challenge Review Committee receives a Protest that complies with the requirements of this Article 3.4, the Challenge Review Committee shall instruct the Procurement Agent to suspend the disputed procurement proceeding until the Challenge Review Committee has issued a Decision on the Protest in accordance with the BCS, unless the Challenge Review Committee believes:
 - i) there are urgent or compelling reasons not to suspend;
 - ii) the claim is frivolous;
 - iii) there will be no irreparable harm to the challenger; or
 - iv) the granting of the suspension will cause disproportionate harm to MCA-Moldova.
- (i) Within three Working Days of receipt of the Protest, MCA-Moldova shall:
 - i) Post on the website of MCA-Moldova a notification of the filing of the Protest and the issuance of any written instruction by the Challenge Review Committee to suspend the challenged procurement;
 - ii) Send such notification to all Bidders and all persons in the Bid Challenge Panel through electronic mail; and
 - iii) Provide to any Affected Bidder a summary of the Protest.
- (j) If an Affected Bidder wishes to file a Comment, an Affected Bidder must file its Comment with the Challenge Review Committee (with proof that a copy had been previously or simultaneously provided to the Challenger) within two Working Days of its receipt of a copy of the Protest. The Comment must be substantially in the form set forth in Annex C.

3.5 Affected Bidders

- (a) The following are the Affected Bidders that may file a Comment. A Challenger is not allowed to file any reply to the Comment.

Type of procurement	Method of procurement under the PPG	Affected Bidder
Goods, works and	Competitive	the Bidder that was adjudged to be offering the

non-consultant services	Bidding and Limited Bidding	lowest evaluated price and substantially responsive bid
Consulting services	QCBS	the Bidder that obtained the highest total score
Consulting services	QBS and FBS	the Bidder with the highest ranked technical proposal
Consulting services	LCS	the Bidder with the lowest price
Consulting services	CQS	the Bidder that was adjudged as having the most appropriate qualifications and references and was asked to submit a combined technical and financial proposal

3.6 The Challenge Review Committee shall

- (a) Determine whether:
 - i) the Protest was filed in accordance with the BCS; and
 - ii) the Challenger has provided sufficient relevant information as per Article 3.2 above;
- (b) Make such determination on the basis of (i) the applicable principles and provisions of the MCC Program Procurement Guidelines, (ii) provisions of the solicitation documents, the BCS, and (iii) the Protest, and Comments, if any; and
- (c) Either (i) reject the Protest, if a negative determination has been made as per Article 3.6(a,b) above, or (ii) uphold the Protest (in whole or in part), and prescribe corrective measures that will bring the Procurement Action into conformity with the provisions of the MCC Program Procurement Guidelines or the solicitation document, if a positive determination has been made accordingly.

3.7 Challenge Review Committee Decision

- (a) The Challenge Review Committee shall issue a written Decision on any Protest filed in accordance with Article 3.4 within 10 Working Days from receipt of such Protest, which period may be extended for an additional five Working Days upon written notification from the Challenge Review Committee to the Challenger who filed the Protest. The Challenge Review Committee shall send copies of the written Decision to the Procurement Agent, the Challenger who filed the Protest, and Affected Bidders immediately after rendering a written Decision.
- (b) Any Decision issued by the Challenge Review Committee shall state the reasons for the Decision and, if the Challenge Review Committee upholds the Protest in whole or in part, which steps in the procurement process shall be addressed, and how.

Article 4. Appeal

- 4.1. Only the original Challenger or any other Affected Bidder may initiate recourse to the Bid Challenge Tribunal (“BCT”) on the ground that the Challenge Review Committee failed to decide the Protest in accordance with its duty, by filing an Appeal, in

accordance with Articles 4.2 and 4.3, and in the form of a Notice of Appeal as set forth in **Annex B** enclosed herewith, only if it has first fully complied with the Protest procedures set forth in Article 3.

- 4.2. Within five Working Days from the date on which the Challenge Review Committee issues a Decision on a Protest pursuant to Article 3.7, or rejects a Challenger's Protest pursuant to Article 3.4(h), the Challenger may appeal the Decision by submitting a Notice of Appeal to MCA-Moldova.
- 4.3. If the Challenge Review Committee fails to issue a Decision within 10 Working Days from receipt of the Protest as required by Article 3.7(a) (or 15 Working Days if the Challenge Review Committee exercises its right to extend the Decision period in accordance with Article 3.7(a), then the original Challenger may, within five Working Days from the date on which such Decision was to be made, submit an Appeal.
- 4.4. Immediately after receiving an Appeal that complies with the requirements of the Article 4.1, the MCA-Moldova shall instruct the Procurement Agent to keep suspended the disputed procurement proceeding until the Challenge Review Tribunal has issued a Decision on the Appeal in accordance with the BCS, unless the BCT believes:
 - i) there are urgent or compelling reasons not to suspend;
 - ii) the claim is frivolous;
 - iii) there will be no irreparable harm to the challenger; or
 - iv) the granting of the suspension will cause disproportionate harm to MCA-Moldova.
- 4.5. Within 10 Working Days of receiving the Appeal, MCA-Moldova shall form the BCT in accordance with Article 7.2.
- 4.6. BCT proceedings shall be deemed to commence on the date that the BCT is formed, pursuant to Article 7.6.
- 4.7. The BCT shall review the Appeal and only entertain issues raised in the Notice of Appeal and written Decision of the Challenge Review Committee in accordance with Article 10.3.
- 4.8. The Notice of Appeal should include the following attachments:
 - (a) Copy of the Notice of Protest and related attachments;
 - (b) Copies of Comments and related attachments, if any;
 - (c) Copy of Challenge Review Committee Decision; and
- 4.9. Any Appeal that is not filed in accordance with the BCS shall not be considered as filed.
- 4.10. The Appeal Deposit shall be:
 - (a) in the amounts stated in the respective schedule below,
 - (b) paid by depositing the same in MCA-Moldova's bank accounts described in the BCS or subsequently described in the MCA-Moldova's website, and
 - (c) applied, in the order stated, to pay for the following expenses relating to the BCT proceedings:
 - i) Total professional fee of each BCT Member, in the amount stated in his or

- her BCT Service Agreement;
- ii) Total costs of printing, copying, clerical support and other office expenses of BTC members;
- iii) Total costs of courier expenses during the process.
- iv) Travel, experts, witnesses costs and other expenses

Any unused portion of the remaining Appeal Deposit funds may be refunded to the Challenger at the BCT’s discretion and explicit order.

Appeal Deposit	Challenger’s Estimate of the Contract Price
\$5,000	Up to \$100,000
\$15,000	\$100,000 - \$1,000,000
\$50,000	Above \$1,000,000

- 4.11. The Appeal Deposit shall be in United States Dollars and shall be paid to the account of MCA-Moldova, with accompanying written confirmation of the payment, within five Working Days from the date when the Notice of Appeal is received by MCA-Moldova.
- 4.12. If MCA-Moldova does not receive confirmation that the payment of the Appeal Deposit was received as is required by clause 4.11, the Appeal will not be considered as properly filed.
- 4.13. If, according to the service agreements of the BCT members, it is known that professional fees relating to the BCT proceedings exceed the amount stated in the table above, MCA-Moldova shall send the copy of the signed service agreement to the Challenger immediately after appointment of the Tribunal and inform the Challenger in writing about the total amount owed to cover the professional fees stated in the service agreements. In this case, the Challenger is responsible to pay the additional amount required as per the service agreements within five Working Days after receipt of the service agreement and the formal notification from MCA-Moldova.
- 4.14. MCA-Moldova will send notice to the Challenger of any additional expenses in excess of the Appeal Deposit that are known only upon completion of the Challenge review and/or Appeal process (such as clerical, courier or other office expenses) immediately upon receipt of the final invoices from BCT members. These invoices shall be submitted along with the final decision from the BCT. In this case, the Challenger is responsible to pay the additional amount required as per the final invoices within three Working Days after receipt of the invoices and the formal notification from MCA-Moldova. The final Decision of the BCT shall be released by MCA-Moldova to the Challenger only after the receipt of this additional payment.
- 4.15. The details of MCA-Moldova’s bank accounts will be provided to Challenger next Working Day following receipt of a Notice of Appeal.

Article 5. Representation

The Parties may be represented by persons of their choice. The names and addresses of such

persons must be communicated in writing to the other Party; such communication must specify whether the appointment is being made for purposes of representation.

SECTION 2 - COMPOSITION OF THE BID CHALLENGE TRIBUNAL

Article 6. Bid Challenge Panel Members

- 6.1 MCA-Moldova shall establish an independent panel of a minimum of six competent and qualified persons, appointed by MCA-Moldova (the “Bid Challenge Panel Members”).
- 6.2 The full names, addresses, occupations, nationalities and qualifications of all Bid Challenge Panel Members, shall be posted on the MCA-Moldova website.
- 6.3 The Members of the Bid Challenge Panel shall be independent and impartial, and have no interest (through financial, family, business or beneficial ownership or otherwise, directly or indirectly) in the outcome of the procurement, nor be involved in or connected with the procurement process. MCA-Moldova shall sign a service agreement with all panel members, contingent upon their appointment to sit as a Tribunal member.

Article 7. Appointment of Bid Challenge Tribunal Members

- 7.1. MCA-Moldova shall have previously established a BCP consisting of a minimum of six competent and qualified persons.
- 7.2. Within five Working Days of receiving a Notice of Appeal, MCA-Moldova shall conduct the public random selection of three members of the BCT in the presence of Challengers’ representatives if they choose to attend at the date, time and location stated in the notice issued to the Challenger by MCA-Moldova. All envelopes with names of the BCP members will first be inspected to confirm that they include all members of the BCP. A copy of the record with list of the selected BCT members shall subsequently be sent to the Challenger. Any two BCT members shall constitute a quorum for the BCT to execute its duties.
- 7.3. In the event that a member of the BCT is not available, or is determined to have a conflict of interest, MCA-Moldova shall publicly select, at random, another member of the BCT from the BCP following the procedures set forth in Article 7.2 above.
- 7.4. The Challenger shall have the opportunity to submit an Objection (see Form of Objection, Annex D) to the appointment of any of the BCT members, pursuant to the criteria established in Article 6.3, within one Working Day after receiving the list of BCT members from MCA-Moldova.
- 7.5. If an objection is received, MCA-Moldova will conduct a review and determine whether the objection is valid, and will issue a justification of its decision to the Challenger. In the event that the selection of a member is deemed invalid based on the Challenger’s objection, MCA-Moldova will immediately publicly select, at random, another member of the BCT from the BCP, following the procedures set forth in Article

7.2 above.

- 7.6. If no timely objection is lodged by the Challenger, then the BCT will be deemed to be ‘formed’ as of the start of the second Working Day after the Challenger received the list of BCT members from MCA-Moldova.
- 7.7. BCT Members shall be impartial, independent, have no interest (through financial, family, business beneficial ownership, or otherwise) in the outcome of the Challenged Procurement, nor be involved in or related to the procurement process.

Article 8. Appointment of the Chair

- 8.1. Within three Working Days of the BCT being ‘formed’, pursuant to Article 7.4, all members of the Tribunal shall convene virtually and agree on the appointment of a Chair from among them.
- 8.2. The BCT shall immediately notify the Parties of the appointment.

Article 9. Replacement of a Member of the Bid Challenge Tribunal

- 9.1. In the event of death or resignation of a member of the BCT during the course of the Bid Challenge proceedings, a substitute member of the BCT shall be appointed by MCA-Moldova pursuant to the procedure set forth in Article 7 that was applicable to the appointment of the member of the BCT being replaced.
- 9.2. In the event that a member of the BCT fails to act or in the event of the de jure or de facto impossibility of him performing his functions, the procedure in respect of the replacement of a member of the BCT as provided in the preceding articles shall apply. For the avoidance of doubt, Articles 8 shall apply to any replacement BCT member appointed pursuant to Articles 9.
- 9.3. Notwithstanding, the resignation of a BCT member, the BCT shall issue the BCT Decision and send copies of the same to each Party within five Working Days of its first deliberation meeting.

SECTION 3 - BID CHALLENGE PROCEEDINGS

Article 10. General Provisions

- 10.1 Within two Working Days of the BCT becoming ‘formed’, pursuant to Article 7.4, the BCT shall request from the Parties a formal point of contact (“POC”) for the duration of the proceedings.
- 10.2 Within two Working Days of the BCT becoming ‘formed’, pursuant to Article 7.4, the BCT shall conduct a preliminary review of the timeliness of the Appeal, and issue a Decision to reject the Appeal which is untimely filed contrary to the requirements of Articles 4.2 and 4.3.
- 10.3 Subject to the BCS, the BCT shall conduct the proceedings by review in a timely manner of the Challenger’s Notice of Protest and Notice of Appeal documents, as well as the Decision of the Challenge Review Committee and the Response of MCA-

Moldova to the Notice of Appeal. Its review shall be limited to a review of the Decision of the Challenge Review Committee, and whether the procurement principles set out in the Compact, PIA, the MCC Program Procurement Guidelines, and the solicitation document were appropriately applied in reaching that Decision

- 10.4 All documents or information supplied to the BCT by a Party shall at the same time be communicated by such Party POC to the other Party POC.

Article 11. Place of Bid Challenge Proceedings

- 11.1. The BCT may conduct deliberations virtually, based on a review of the documents provided by the Parties, and email/written and telephone/verbal discussions. In this case the 'location' of the Chair shall be considered the location of the BCT deliberations and Decision
- 11.2. If the Challenger and MCA-Moldova agree, the BCT may conduct deliberations at a mutually agreed location. The expense of such meeting will be covered by the Appeal Deposit.

Article 12. Language

The language to be used in the proceedings shall be English. If translation is required, the translator will be arranged by and the costs will be borne by the requesting Party. This determination shall apply to the Notice of Appeal and the written response.

Article 13. Further Written Information

- 13.1. Within three Working Days from the date of receipt of the Response from MCA-Moldova, the BCT may request, in writing, additional information relating to the relevant procurement.
- 13.2. Each Party must furnish the information requested by the BCT within five Working Days; provided that MCA-Moldova may refuse to disclose information that may compromise the fairness of the procurement process, be contrary to the public interest, prejudice the legitimate commercial interests or fair competition between bidders; and the Challenger may refuse to disclose certain information if it would be in breach of a confidentiality agreement to which the Challenger is a Party. Any refusal to disclose information is to be accompanied by reasons in writing. In case MCA-Moldova or the Challenger do not provide such requested information, the BCT shall continue with the review process without the information.
- 13.3. If any confidential or procurement-sensitive information is requested by the BCT, MCA-Moldova or the Challenger may request that such information be made available only to members of the BCT. In such cases, a statement is to be provided by the Challenger identifying the Challenger's confidential information, together with a copy of the confidential information which is to be provided to the BCT only (the email address will be given to the Challenger at the time of the review) and one copy of the documents which is to be provided to the other Party, in which the confidential information has been redacted.

Article 14. Bid Challenge Tribunal Records

The BCT records shall be maintained with the Procurement Agent, MCA-Moldova or successor entity of MCA Moldova for at least five years beyond the end of the Compact. These would include a record of the proceedings and all materials provided to the BCT (the "Records"). Following the issuance of a Decision pursuant to Article 15 the Parties may request a copy of the Records.

SECTION 4 - THE DECISION

Article 15. Decisions

- 15.1. The BCT shall issue a Decision not more than twenty (20) Working Days from the date that the BCT is formed in accordance with Article 7.
- 15.2. Any Decision of the BCT shall be made by a majority of the members of the BCT, except the case when there is only one remaining member of the Tribunal

Article 16. In the case of questions of procedure when there is no majority, the Decision shall be made by the Chair of the BCT. Form and Effect of the Decision

- 16.1. All Decisions by the BCT shall be made in writing, shall state the reasons upon which the Decision is based, shall be signed by all BCT Members, shall contain the date on which and the place where the Decision was made and shall be final and binding on the Parties (a "Decision"). The Parties shall undertake to carry out the Decision without delay.
- 16.2. The Decision of the BCT shall be in English.
- 16.3. The BCT shall send copies of the Decision to MCA-Moldova and the Challenger within on Working Day of rendering a Decision.
- 16.4. Either Party may enforce a Decision in any court with jurisdiction.

Article 17. Applicable Principles

In its deliberations, the BCT shall apply the procurement principles set out in the Compact, PIA, the MCC Program Procurement Guidelines, and the the solicitation document. Training will be provided to the BCT at the start of the proceedings.

The total Working Days that the each BCT member may invoice to the Parties should not exceed (10) Working Days, including review and deliberation.

Article 18. Remedies

- 18.1. In its Decision, the BCT shall determine whether or not the procurement was conducted in accordance with the bidding documents and the MCC Program Procurement Guidelines and may order one or more of the following remedies:
 - (a) correction of any breach of the MCC Program Procurement Guidelines;
 - (b) order compensation for any loss or damage suffered by a successful Challenger,

such amount not to exceed the costs reasonably incurred by the Challenger in connection with the procurement proceedings, provided that such reasonable costs do not include profit lost, travel costs, or punitive damages because of non-acceptance of a bid (or, proposal, offer or quotation) of the Challenger; or

- (c) cancellation of a procurement that is under challenge.

Article 19. Settlement

If, before the award is made, the Parties agree on a settlement of the Bid Challenge, the BCT shall either issue an order for the termination of the proceedings or, if requested by both Parties, record the settlement in the form of a Decision on agreed terms.

Article 20. Correction of the Award

20.1. Within five Working Days after the BCT issues a Decision, either Party, with notification to the other Party, may request that the BCT correct any errors in computation, any clerical or typographical errors, or any errors of similar nature in the Decision. The BCT may within three Working Days after the communication of the Decision make such corrections on its own initiative.

20.2. Such corrections shall be in writing, and the provisions of Article 16 shall apply.

Article 21. Costs

21.1. The BCT shall state the costs of the Bid Challenge procedure in its Decision. The term “costs” includes only:

- (a) The fees, travel and other expenses of the BCT calculated in accordance with the service agreements that each member has entered into with the MCA-Moldova;
- (b) The reasonable costs of expert advice and of other assistance required by the BCT, approved in advance by MCA-Moldova and the Challenger;
- (c) The travel and other expenses of witnesses to the extent that such expenses are in advance approved by MCA-Moldova and the Challenger. The travel expenses, per-diems and lodging expenses shall be calculated in accordance with the FAP of MCA-Moldova and MCC cost principles.
- (d) The costs for legal representation of the successful Party if such costs were claimed during the Bid Challenge proceedings, and only to the extent that the BCT determines that the amount of such costs is reasonable.

21.2. The costs of the Bid Challenge procedure shall be borne by the unsuccessful party. In case the Challenger is the unsuccessful party, MCA-Moldova will use the Appeal Deposit (plus any additional payments made by the Challenger in accordance with sections 4.13 and 4.14 if any) to cover the full costs of the Bid Challenge procedure; any unused portion of Appeal Deposit after this payment shall be returned to the Challenger. In case, the MCA-Moldova is the unsuccessful party, MCA-Moldova will return the full amount of the appeal deposit (plus any additional payments made by the Challenger in accordance with sections 4.13 and 4.14 if any) to the Challenger and will cover the full cost of Bid Challenge procedure. ”

21.3. When the BCT issues an order for the termination of the Bid Challenge proceedings or makes a Decision on agreed terms, it shall state the costs of proceedings in the text of that Decision.

SECTION 5 - GENERAL PROVISIONS

Article 22. Governing Law

The BCS, and any disputes arising under the BCS, shall be governed by and construed in accordance with the laws of the Republic of Moldova.

Notice of Protest

Challenger		
Name:		
Choose one: [] Bidder [] Potential Bidder		
(For legal persons only) Country under whose laws Challenger was organized:		
Postal address of Challenger:		
Email address of Challenger:	Telephone number of Challenger:	Fax number of Challenger:
Name of authorized representative (Power of Attorney shall be attached)		
Of Challenger (if any):		
Signature of Challenger or authorized representative:		

Challenged Procurement
Name:
Number:

Protest	
Date when Challenger became aware of Procurement Action according to the paragraph 3.2	Date of filing of Protest:
Description of Procurement Action:	

Procurement Rules provisions violated by Procurement Action:

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

Explanation of reason why Challenger has been or will be damaged by Procurement Action:

If Challenger requests suspension of Procurement Action, explanation of reason why Challenger will suffer irreparable damage if Procurement Action is not suspended:

Relief Sought

Description of relief sought:

Explanation of reason why Challenger is entitled to relief sought:

Instructions:

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

Notice of Appeal

Challenger		
Name:		
Postal address for Appeal purposes (if different from postal address for Protest purposes):		
Email address of the Challenger:	Telephone number of Challenger:	Fax number Challenger:
Name of authorized representative (The Power of Attorney should be attached) for the Appeal (if any):		
Signature of Challenger or authorized representative:		
Challenged Procurement		
Name:		
Number:		
Appeal		
Date when Challenger became aware of the Decision of the Challenge Review Comitee:	Date of filing of the Notice of Appeal:	

Explanation of reason why the bidders believes that the Challenge Review Comitee failed to decide the Protest in accordance with the Duty of the Challenge Review Comitee:

Relief Sought

Description of relief sought:

Explanation of reason why the bidder is entitled to relief sought:

Instructions:

1. Please attach a copy of each of the following documents, if available to the bidder:
 - (a) a copy of the Notice of Protest and related attachments, if any;
 - (b) copies of Comments and related attachments;
 - (c) a copy of the Challenge Review Committee Decision; and
2. Please use additional sheets for the required information if necessary.

Form of Comment to the Protest

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

Challenged Procurement
Name:
Number:

Comment	
Date when Affected Bidder received a copy of the Protest:	Date of filing of Comment:
Explanation of why the Affected Bidder believes that the Protest must not be upheld:	

If Challenger requests suspension of Procurement Action, explanation of reason why:

- (a) the Protest does not clearly show that the Challenger will suffer irreparable harm if the Challenged Procurement is not suspended; or
- (b) the Protest is obviously unjustified; or
- (c) the Affected Bidder may sustain disproportionately greater damage by the suspension, compared to the damage to be possibly sustained by the Challenger; or
- (d) the suspension of the Challenged Procurement will compromise public interest; or
- (e) there are urgent or compelling reasons not to suspend the Challenged Procurement.

Relief Sought

Description of relief sought:

Explanation of reason why Affected Bidder 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.

Form of Objection to the Appointment of a BCT Member

Appeal Party filing the Objection
Name (Indicate whether Appellant, Appellee, or MCA-M):
Name of authorized representative for the Appeal (if any):
Signature of Appeal Party or authorized representative:

Name:

Number:

Objection	
Name of objected BCT Member:	
Date when Appeal Party became aware of the ground for Objection:	Date of filing of Objection:
Ground for Objection:	
Factual basis to support the ground for Objection:	

Instructions:

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