COMPACT DEVELOPMENT TEAM – REPUBLIC OF KOSOVO

INTERIM BID CHALLENGE SYSTEM

Effective Date: _____

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 take on 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 below in the Definitions section.

Appeal	A request to MCC for review of the Protest decision by the MCA Entity.
Appellant	Any Protestor that submits an Appeal is referred to herein as the "Appellant."
Business Day	Any day in **Republic of Kosovo** 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 (**Republic of Kosovo, Prishtine**).
Compact	The Millennium Challenge Compact between the **Republic of Kosovo** and the United States of America intend to sign, pursuant to which MCC would provide a US Dollars grant to **Republic of Kosovo** for a program to reduce poverty through economic growth in **Republic of Kosovo**
Compact Development Fund (CDF) Agreement	The funding agreement between the **Republic of Kosovo** and the United States of America, acting through MCC, signed on **July 15, 2022**, as the same may be amended from time to time.
Compact Development Team (CDT)- **[Compact Country]**	A government body assigned by the government of the **Republic of Kosovo** to develop the Compact with MCC. Until the government establishes a MCA **Kosovo** all references to CDT- **Kosovo** will also be applicable to MCA- **Kosovo**.
Debriefing	A mechanism by which Offerors have an opportunity to obtain feedback from the CDT- **Kosovo** to ascertain the grounds on which its offer was not selected.
Interim Bid Challenge System (IBCS)	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.
MCA Entity	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)-**Kosovo** or the Threshold Program.

Definitions	
MCC	Millennium Challenge Corporation, a United States federal government agency that provides funds in the form of grants for the procurements undertaken by the CDT- **Kosovo.**
Offer	A bid or proposal submitted by the Offeror.
Offeror	Any firm or individual that participates in an MCA Entity procurement process to provide goods, works or services.
Procurement Agent or Interim Procurement Agent	The natural or legal person acting as procurement agent on behalf of the Government accountable entity to conduct the procurements.
PPG	The Accountable Entity Procurement Policy and, which may be amended from time to time.
Procurement Rules	The PPG and/or the solicitation documents applicable to the challenged procurement action.
Protest	A request that a procurement action be reviewed in accordance with this IBCS.
Protestor	Any Offeror that submits a Protest is referred to herein as a "Protestor".
Protest Fee	A fee submitted by the Offeror to file a protest.
Secretariat	The MCA Entity personnel designated by the MCA Entity to act as the secretariat for proceedings under this IBCS are ***MCA-K Legal Director to be appointed by MCA]***].

BACKGROUND

The United States of America, acting through the Millennium Challenge Corporation ("MCC"), and the **Republic of Kosovo** (the "Government") intends to sign an agreement, called a Compact, pursuant to which MCC would provide a US Dollars grant to the Government for a program to reduce poverty through economic growth in **Republic of Kosovo**. The Government has established a Compact Development Team (CDT) to develop this Compact with the MCC.

The Government's CDF Agreement with MCC requires the Government (including any designee) 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 framework 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-Compact country) and after the hiring of a Procurement Agent.

- **For a Threshold program,** which is another form of MCC's funding to a partner country, the IBCS remains applicable in procurements throughout the development and implementation of the Threshold program.

This IBCS does not apply to procurements 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 wrong doing 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 bid review or 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 for/against a procurement action taken by the MCA Entity on the Offer of any other Offeror.

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

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 offer submission, any Offeror may Protest the solicitation documents if they believe the documents violate MCC's open, fair, and transparent procurement principles. A Protestor must file their Protest with the Secretariat within seven (7) Business Days after the MCA Entity issues the solicitation documents.

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

Rule 1.8. The Debriefing request to the MCA Entity must be submitted via e-mail to the MCA Entity at *mcakosovopa@dt-global.com* within two (2) Business Days after receipt of the notification of evaluation results, notification of intent to award or notification of shortlisting results from the MCA Entity that gave 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 BCS@mcakosovo.orwithin one (1) Business Day of receiving the written explanation. Failure to submit an "Intent to Protest" will result in rejection of the Protest.

Rule 1.11. Following submission of the "Intent to Protest," the Protestor must file their Protest with the Secretariat within five (5) Business Days after the MCA Entity provided the written Debriefing explanation. The Protests can only be filed in English language.

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 to be indicated in the solicitation document which could be zero or an amount not greater than 0.5% of the estimated budget for the solicitation or its equivalent in a local currency before or at the time it files the Protest by depositing the same in a special bank account that will be given at the time of debriefing to the potential protestor. The date of the exchange rate for conversion purposes will be the date when the MCA Entity provided the written explanation based on the exchange rate of European Central Bank in the link: *Euro foreign exchange reference rates (europa.eu)*

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

Rule 1.15. Form Annex A, proof of payment (such as confirmation of wire transfer or any other internet-based money transfer services) or the payment deposit slip of the required Protest Fee, and all the attachments must be sent to the Secretariat via email on before the Protest deadline.

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; and

(b) Send a copy of the Protest to the Interim Procurement Director of the MCA Entity and the Interim Procurement Agent (IPA) or Procurement Agent (PA), as applicable.

Rule 1.18. The MCA 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 the MCA Entity 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 2.1.1 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 2.1.2 If the Protest is rejected, indicate the reasons for the rejection and state that the Protest Fee will be confiscated.

Rule 3. Appeals

Rule 3.1. If the Protestor is dissatisfied with the decision of the MCA Entity on its Protest, the Protestor 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) MCA Entity failed to consider its Protest;
(b) MCA Entity failed to issue a written decision via email on the Protest within the time specified in this IBCS or
(c) 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.
(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 (Vice President for Compact Operations)
VPGeneralCounsel@mcc.gov (Vice President and General Counsel)

Annex A - Protest Form

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

Challenged Procurement
Name:
Number:

Protest	
Date when Offeror became aware of procurement action:	**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 in the MCC PPG or in the solicitation documents of the said procurement:	
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

Apellant		
Name:		
Postal address for appeal purposes:		
Email address for Appeal purposes:	**Telephone number for Appeal purposes:**	
Name of authorized representative for the Appellant (if any):		
Signature of Appellant or authorized representative:		

Challenged Procurement
Name:
Number:

Appeal	
Date when Appellant became aware of the MCA Entity Decision:	**Date of Filing of Appeal:**
Explanation of reason why the Appellant believes that the MCA Entity failed to decide the Protest in accordance with the Secretariat's duty:	

Relief Sought
Description of relief sought:
Explanation of reason why the Appellant is entitled to relief sought:

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.