

THE UNITED REPUBLIC OF TANZANIA
MINISTRY OF FINANCE AND ECONOMIC AFFAIRS
MILLENIUM CHALLENGE ACCOUNT -TANZANIA



BID CHALLENGE SYSTEM

MCA-TANZANIA

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DEFINITIONS:

- “Bidder(s)”** means any consultant, contractor or supplier that participates in the procurement process to provide consultant services, non-consultant services, works or goods in the furtherance of the Compact.
- “Bidding Documents”** means any solicitation document for the procurement of goods, works, non-consultant and consultant services in the furtherance of the Compact.
- “CEO”** means the chief executive officer of MCA-Tanzania.
- “Claim”** means the written allegation made by a Bidder, who believes that he/she has suffered or may suffer loss or injury due to a breach of a duty by MCA-Tanzania in the conduct of a procurement proceeding.
- “Claimant”** means the Bidder who makes a Claim.
- “Independent Appeal Board”** means the body that conducts the second and final review of a Claim. Claimants may submit a Notice of Appeal to this Board.
- “MCA-Tanzania”
or “MCA-T”** means the Millennium Challenge Account – Tanzania, an autonomous government entity established under the laws of Tanzania.
- “Notice of Appeal”** means the notification submitted to the Independent Appeal Board as a result of the Claimants disagreement or dissatisfaction with the decision of the Review Panel.
- “Review Panel”** means the body that conducts the first level review of a Claim.

PREAMBLE

WHEREAS, the United States of America, acting through the Millennium Challenge Corporation (“**MCC**”), and the Government of United Republic of Tanzania (*the “Government”*) executed the Millennium Challenge Compact (*the “Compact”*) on February 17th, 2008, that sets forth the general terms and conditions on which MCC will provide a five-year grant of up to US\$ 698,136,000 (“**MCC Funding**”) to the Government of Tanzania for a Millennium Challenge Account program to advance economic growth and reduce poverty in the United Republic of Tanzania (*the “Program”*);

WHEREAS, MCA-Tanzania is obliged to establish a Bid Challenge System (the “**Bid Challenge System**” or “**BCS**”) that provides suppliers, contractors and service providers (“**Bidders**”) the ability to seek review of procurement actions and decisions;

NOW THEREFORE, in consideration of the covenants contained in the Compact and Supplemental Agreements, MCA-Tanzania has established the rules set forth in this Bid Challenge System (*the “Rules”*) and agrees that challenges in relation to the bidding process shall be referred to the BCS in accordance with these Rules, and these Rules shall be made available to bidders on the MCA-Tanzania website: <http://mca-t.go.tz>

SECTION 1 – Purpose and Principles

1.1 The purpose and principles of the Bid Challenge System are as follows:

- a) This Bid Challenge System is established to provide bidders with a means to seek transparency in any procurement proceedings. This Bid Challenge System is intended to ensure that if negligence or abuse in the procurement process occurs, there is suitable redress for the aggrieved parties and that proper corrections are made. The Bid Challenge System is not intended to examine or review the implementation or conduct of any contract once awarded.
- b) An effective Bid Challenge System is one that reviews alleged inappropriate acts and decisions taken by MCA-Tanzania, ensures the proper functioning of the procurement process and promotes confidence in the process. This document sets forth provisions establishing a right to review and governs the exercise of that right.
- c) The principles of the Bid Challenge System are to:
 - (i) Establish and implement a formal Bid Challenge System to address complaints about how procurement rules and procedures were applied to specific procurement actions;
 - (ii) Clearly and openly state the basis on which decisions are made to accept and evaluate bids and proposals in the solicitation documents; and
 - (iii) Provide unsuccessful bidders, upon request, further explanations of why their bids or proposals were rejected or not selected.
- d) The Rules set forth below shall govern MCA-Tanzania’s Bid Challenge System except where any of the Rules are in conflict with the provisions of the Compact, the Program Implementation Agreement, or the MCC Program Procurement Guidelines or the relevant applicable laws of the United Republic of Tanzania, in which case the provisions of such documents shall prevail in the order in which they are referred to herein.

These Rules, and any disputes arising under these Rules, shall be governed by and construed in accordance with the terms and conditions of the Compact.

SECTION 2 – Scope of Application

- 2.1 The Bidding Documents shall state that every Bidder and MCA-T agrees to be bound by these Rules.
- 2.2 MCA-T may, with the prior written approval of MCC, modify these Rules in writing from time to time. To avoid doubt, the Rules referred to in Bidding Documents issued under MCC Funding for a particular procurement shall govern with respect to such procurement, even if MCA-T subsequently modifies the Rules.

SECTION 3 – MCA-Tanzania Review Panel

- 3.1 MCA-T shall establish the **Internal Review Panel** to review and decide on Claims lodged by Bidders on the procurement process. The Internal Review Panel shall consist of the following five members:
 - a) MCA-T Deputy Chief Executive Officer (Mainland),
 - b) MCA-T Procurement Director,
 - c) MCA-T General Counsel,
 - d) The MCA-T Director under whom the particular procurement is being undertaken; and
 - e) A fifth member to be appointed by the CEO from within MCA-T or from outside as considered appropriate by the CEO depending on circumstances.

SECTION 4 – Filing a Claim

- 4.1 Any Bidder who has suffered or reasonably believes they may suffer loss or injury due to a breach of MCA-T's duties under the MCC Program Procurement Guidelines in the course of procurement may file a written Claim, which may be in electronic form, with MCA-T. All Claims must be submitted within five (5) working days from the day on which the Bidder knows, or could reasonably be expected to know, of such breach. However, Claims received after this period shall not be considered.
- 4.2 Claims shall be in English and shall:
 - a) include the name, address, telephone and facsimile numbers of the Bidder;
 - b) identify the procurement bid in relation to which the Claim arises;
 - c) describe the nature of the Claim and the facts supporting such Claim, including the MCC Program Procurement Guidelines which were violated, and the timeliness of the Claim (a statement as to the date when the basis for the Claim was established);
 - d) provide justification (grounds) for the Claim; and
 - e) state which steps in the procurement process (if any) the Bidder is requesting to be redone and/or what other remedies are sought by the Bidder.

- 4.3 Only the lead Bidder may submit Claims under these Rules. Under no circumstances shall any Claim be submitted by a subcontractor or sub-consultant.
- 4.4 The Bidder shall not pay any fees or charges for submission of Claims to MCA-T and/or their review and adoption of a decision by MCA-T.
- 4.5 All Claims should be sent to MCA-T at the following address:

Millennium Challenge Account -Tanzania,
2nd Floor, Development House,
Kivukoni Front/Ohio Street

Dar es Salaam
Tanzania
Attention: Chief Executive Officer, MCA-Tanzania

Facsimile: +255 (0)22 2124644
E-mail: benmchomvu@yahoo.com

- 4.6 Within two (2) working days the CEO shall forward any Claims received to each member of the Internal Review Panel.
- 4.7 The following shall not be subject to the filing of a Claim:
- a) The selection of a method of procurement;
 - b) The choice of selection procedure, or
 - c) The decision to reject all Bids, proposals, offers or quotations.
- 4.8 The Internal Review Panel shall review all Claims and make a decision within five (5) working days of the receipt of the Claim by the CEO. A Claim shall be rejected if it fails to conform to the requirements of this Section 4. The Internal Review Panel decision must be submitted in writing to the CEO who will in turn forward the decision to the Claimant, copied to the applicable Procurement Agent.
- 4.9 Copies of all Claims and decisions shall be sent to MCC by the CEO.

SECTION 5 – Suspension of Procurement Proceedings

- 5.1 After the Internal Review Panel receives a Claim that complies with the requirements of Section 4, the Internal Review Panel shall suspend the disputed procurement proceeding, unless the Internal Review Panel considers that:
- a) The Claim is frivolous and obviously unjustified;
 - b) The Claimant will not sustain irreparable harm;
 - c) MCA-T may sustain disproportionately greater damage by such suspension, compared to the damage to be possibly sustained by the Claimant; or

- d) Suspension of the proceeding is against the public's interest.
- 5.2 The CEO, through the Procurement Director, will issue a written instruction to the relevant Procurement Agent immediately upon receipt of the Claim, to temporarily suspend the procurement activity.
- 5.3 The CEO will issue, through the Procurement Director, a letter suspending the procurement for the relevant Procurement Agent to transmit to all Bidders involved in the procurement immediately upon advice from the Internal Review Panel that the Claim is not covered by any of the clauses in 5.1 above. This Notice should be issued within five (5) working days of receipt of the Claim.
- 5.4 MCA-T reserves the right to continue with any award considered a critical effort while in parallel addressing a full adjudication under the BCS. This action requires a written request from MCA-T to MCC and a written approval from MCC to allow this process.

SECTION 6 – Decision of the Internal Review Panel

- 6.1 The Internal Review Panel shall issue to the CEO a written decision agreed to by a majority of the members on any Claim filed in accordance with Section 4 within five (5) working days of receipt of the Claim, which period may be extended at the discretion of the Internal Review Panel for an additional five (5) working days by written notice from the Internal Review Panel to the Claimant.
- 6.2 In reaching its decision, the Internal Review Panel, at its discretion, may seek assistance from subject matter experts. When such experts are consulted, the Internal Review Panel shall use its best efforts to appoint experts who are best qualified and shall ensure that there is no actual or perceived conflict of interest on the part of such experts in the outcome of the Claim.
- 6.3 Within two (2) days from receipt of the Internal Review Panel's decision, the CEO will in turn communicate the decision to the relevant Procurement Agent and the Claimant. If the Claim is rejected, the Internal Review Panel's decision shall state the justification for non-acceptance; likewise, if the Claim is considered valid, the decision shall state how the Claim shall be remedied.
- 6.4 MCA-T shall not award a contract with respect to a procurement which is subject to a Claim until such time as the Claim is rejected or remedied, either through a decision by the Internal Review Panel or the Independent Appeal Board, except as indicated in Section 5.
- 6.5 Where MCA-T decides to continue the procurement process, the justification and the recommendation to continue shall be provided in writing to the Claimant at least five (5) working days prior to the time the decision comes into force.
- 6.6 Any decision issued by the Internal Review Panel shall state the grounds and justification for the decision and, if the Internal Review Panel upholds the Claim in whole or in part, which steps in the procurement process shall be redone.

- 6.7 The decision of the Internal Review Panel shall be binding on both parties unless the Claimant submits a Notice of Appeal in accordance with Section 7.
- 6.8 The suspension of the procurement process, if in place, will thereafter be lifted unless the Claimant submits a Notice of Appeal.
- 6.9 The CEO shall sign a letter lifting the Suspension of Procurement that shall be sent by the applicable Procurement Agent to all Bidders involved in the procurement. This letter must be issued within seven (7) working days after the decision of the Internal Review Panel has been received by the CEO, unless there is an appeal.

SECTION 7 – Appeal of Internal Review Panel’s Decision

- 7.1 The Claimant shall have the right to appeal the decision of the Internal Review Panel to the Independent Appeal Board if:
- (a) the Internal Review Panel fails to make a final decision within the timeframe stipulated in these Rules, or
 - (b) the Claimant is not satisfied with the decision of the Internal Review Panel.
- 7.2 The Claimant may submit Notice of Appeal, within three (3) working days of receipt of the decision of the Internal Review Panel that was forwarded by the CEO to:

The Secretary to the MCA-T Governing Board
Millennium Challenge Account-Tanzania
Room 206, Development House
Kivukoni Front/Ohio Street
Dar es Salaam
Tanzania

Facsimile: +255 (0)22 2124632
E-mail: mckalemani@yahoo.com

Copied to:

Chief Executive Officer
Millennium Challenge Tanzania,
Development House, Ohio/Kivukoni Street
2nd Floor,
Dar es Salaam
Tanzania

Facsimile: ++255 (0)22 2124632,
E-mail: benmchomvu@yahoo.com

- 7.3 The Notice of Appeal shall be filed in English and shall include the following:
- (a) Name, address, telephone and facsimile of the Claimant;

- (b) Reference to the procurement bid in relation to which the Claim arises;
- (c) General nature of the Claim; and
- (d) Relief or remedy sought.

- 7.4 If the Notice of Appeal does not conform to these submission requirements, the Notice of Appeal shall be immediately rejected by the Secretary to the MCA-T Governing Board). The Claimant shall not be entitled to submit a revised or corrected Notice of Appeal.
- 7.5 Upon receipt of a non-compliant Notice of Appeal, the Secretary to the MCA-T Governing Board shall inform the CEO who shall sign a letter lifting the Suspension of Procurement. The Notice shall be sent by the applicable Procurement Agent to all Bidders involved in the procurement within two (2) working days of receipt of the Appeal by the Secretary to the MCA-T Governing Board.

SECTION 8 – The Independent Appeal Board

- 8.1 An Independent Bid Challenge Appeal Panel comprising not less than ten (10) members, from which the Independent Appeal Board will be constituted, should be comprised of qualified professional specialists with considerable public procurement expertise but in no event shall any members have an interest in the outcome of the procurement or have been involved in the procurement process. The Appeal Panel Members shall be pre-approved by MCC before being selected to the Panel. The Panel members will be identified in advance by Secretary of the MCA-T Governing Board in conjunction with the Public Procurement Regulatory Authority (PPRA) of Tanzania and members will have agreed, in writing, to participate on an Independent Appeal Board if and when required, and in compliance with the MCC Program Procurement Guidelines.
- 8.2 The Independent Bid Challenge Appeal Panel shall be constituted immediately after the Bid Challenge System is adopted.
- 8.3 Upon Receipt of a Notice of Appeal, the Secretary of the MCA-T Governing Board will ensure that a copy of the list of members of the Independent Appeal Panel will be sent to the Claimant by email or fax within one (1) day of the receipt of the Notice of Appeal.
- 8.4 The Claimant will select one member of the Panel to be his/her representative and will notify his/her choice in writing to the Secretary of the MCA-T Governing Board at the addresses given at 7.2 above. The Claimant shall notify the selected representative within three (3) working days. This is to allow time for an alternate to be identified if the first choice is unavailable.
- 8.5 The CEO, in consultation with the MCA-T Procurement Director, will also select a member from the Panel to represent MCA-T and will notify the selected member to the Secretary of the MCA-T Governing Board within one (1) working day of the receipt of the nominee from the Claimant.

- 8.6 Within two (2) working days of receipt by the Secretary of the MCA-T Governing Board of the names of the two selected Panel members, the same two Panel members will be asked by the Secretary of the MCA-T Governing Board to nominate their agreed third panel member to join the Independent Appeal Board. The third member shall be the Chair of the Independent Appeal Board.
- 8.7 The Secretary of the MCA-T Governing Board shall immediately thereafter notify the CEO and the Claimant of the formation of the Independent Appeal Board. The Independent Appeal Board shall be considered accepted by both parties unless the Secretary of the MCA-T Governing Board receives objection from either of the parties within two (2) working days of the notice.
- 8.8 The Independent Appeal Board shall be convened no later than two (2) working days from the date the Independent Appeal Board has been accepted by both MCA-T (the CEO) and the Claimant. The Independent Appeal Board shall meet in Dar es Salaam, Tanzania at a location selected by the Independent Appeal Board but which shall not be at the offices of MCA-T.
- 8.9 The Independent Appeal Board shall consider the facts of the Claim, and all written representations made by the parties, to determine whether or not the procurement was conducted in accordance with the bidding documents and the MCC Program Procurement Guidelines.
- 8.10 The Independent Appeal Board, at any time following receipt of a Notice of Appeal, may request, in writing, additional information relating to the relevant procurement, and must include the deadline within which the Claimant or MCA-T shall provide such information.
- 8.11 Each Party must furnish the information requested by the Independent Appeal Board provided that:
- a) MCA-T may refuse to disclose certain information if it would be contrary to the public interest;
 - b) would prejudice the legitimate commercial interests or fair competition between Bidders;
 - c) would be in breach of a legal professional privilege; or
 - d) a confidentiality agreement to which the Claimant is a party.
- Any refusal to disclose information shall be justified in writing. In case the Claimant does not provide such requested information, the Independent Appeal Board shall continue with the review process without the information.
- 8.12 If the Independent Appeal Board considers that the appeal process cannot continue without the requested information, it may decide to terminate the appeal process, and declare the Notice of Appeal invalid.
- 8.13 If any confidential information of the Claimant is disclosed by the Claimant to the Independent Appeal Board at the Independent Appeal Board's request, the Claimant may request that such information only be made available to members of the Independent Appeal Board. In such cases, a statement is to be provided by the Claimant identifying the Claimant's confidential information, together with a copy of the confidential information

(which is to be provided to the Independent Appeal Board only (the address will be given to the Claimant at the time of the review) and one copy of the documents where the confidential information has been deleted.

- 8.14 The Independent Appeal Board may ask the Claimant or MCA-T's representative to appear in person and present its appeal or justify its decision before the Independent Appeal Board. The Independent Appeal Board may address the Claimant or MCA-T by asking questions. The MCA-T Procurement Agent may also be called for questioning at the discretion of the Independent Appeal Board.
- 8.15 After hearing and reviewing all documents and statements, the Independent Appeal Board will discuss the facts and merits of the Notice of Appeal.
- 8.16 The Independent Appeal Board shall make a written report of its opinions or decisions and issue a statement describing the basis of the opinion or decision, and any actions to be undertaken. The Independent Appeal Board shall issue this decision within ten (10) working days from the date the Independent Appeal Board convened for the first time, stating the reasons for the decision and the remedies granted, if any.
- 8.17 If the Independent Appeal Board finds the Claim is valid (in whole or in part), it may grant one or more of the following remedies:
- a) Require MCA-T to issue the relief (in whole or in part) requested by the Claimant;
 - b) Determine that MCA-T was at fault (but not issue the relief), and require a corrective action;
 - c) Annul, in whole or in part, the procurement proceedings, and require MCA-T to take specific actions that the Independent Appeal Board may consider appropriate, within the framework of the MCC Program Procurement Guidelines;
 - d) Decide on cost distribution of the proceedings, and require MCA-T to pay compensation for any reasonable costs incurred by the Claimant 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 of the Claimant; and/or
 - e) Require that the procurement proceedings be terminated, and for MCA-T to institute new procurement proceedings.
- 8.18 If the Independent Appeal Board decides to compensate the Claimant for loss or damage, such compensation shall be limited to the cost of preparation of the bid challenge and the cost of preparing the bid. The Claimant will not be compensated for anticipated profits. The members of the Independent Appeal Board will be paid a stipend for the time served on the panel. The reasonable costs of the review (including the stipend of the Independent Appeal Board members) shall be covered by the parties in the proportion that the Independent Appeal Board determines is reasonable under the circumstances. The costs of the proceedings shall be reasonable and consistent with similar proceedings in Tanzania. Each party shall be responsible for their own legal, travel, accommodation and other costs.
- 8.19 If the Independent Appeal Board finds the appeal invalid, it shall dismiss the appeal and decide on the cost as provided for in Rule 8.17 (d).

8.120 The decision of the Independent Appeal Board shall be notified in writing (which may be by email or fax) by the Secretary of the MCA-T Governing Board to the Claimant and MCA-T within two (2) working days of the decision. The decision of the Independent Appeal Board shall be carried out by MCA-T within fifteen (15) working days.

8.21 The decision of the Independent Appeal Board will be final, binding and enforceable on both parties and it shall be published on the MCA-T website.

8.22 The suspension of the procurement process will thereafter be lifted in accordance with Section 5.3 unless the Independent Appeal Board decides against proceeding with the procurement process.

SECTION 9 - Reporting to MCC and to MCA-T Governing Board

9.1 All correspondence from/to the Claimant shall be copied to MCC by MCA-T.

9.2 The Claimant shall have no right to appeal to MCC regarding decisions resulting from these Rules.

9.3 Within five (5) days after the decision, MCA-T shall submit to MCC a report of the handling and disposition of the Claim.

9.4 MCC, at its sole discretion, may choose to be an observer to all bid challenge proceedings but does not have the obligation to participate in any bid challenge proceedings, in any capacity.

9.5 All reports sent to MCC pursuant to 9.3 above shall be submitted to the MCA-T Governing Board for information purposes only.

SECTION 10 – Language Requirement

All documents and proceeding under these Rules shall be in the English language; provided that all Claimant may at its own cost, provide for official translation services at any oral hearings or when providing statements for the record.

TIMETABLE OF ACTIONS

Administrative Procedure	Working Days	Total Working Days
Complainant lodges complaint: 4.1 after becoming aware of the breach	5	5
CEO forwards claim to Review Panel: 4.6	2 From receipt of Claim	7
Review Panel considers and makes a decision: 4.8 & 6.1	5-10 From receipt of Claim	10-15
CEO issues Notice of Suspension, if applicable: 5.3	5 From receipt of Claim	
Procurement Agent informs complainant of decision from the Review Panel: 6.3	2 From date of Review Panel decision	12-17
CEO issues Notice of Lifting the Notice of Suspension, if no Appeal received: 6.9	7 From issue of Review Panel decision	19-24

Appeal Procedure

Complainant lodges appeal: 7.2	3 From receipt of Review Panel decision	3
Secretary MCA-T Governing Board provides list of Appeal Panel members: 8.3	1 From receipt of Appeal	4
Claimant nominates one Appeal Board member: 8.4	3 From receipt of Panel names	7
CEO nominates one representative to the Appeal Board member: 8.5	1 From receipt of Claimant's nominated Board member	8
Secretary MCA-T Board invites 2 nominated Appeal Board members to appoint 3 rd member: 8.6	2 From receipt of both nominated Appeal Board members	10
Secretary MCA-T Board notifies Claimant and CEO of composition on Appeal Board: 8.7	2 From receipt of full Appeal Board names	12
Appeal Board meets: 8.8	4 From approval of Appeal Board by both parties	16
Appeal Board reviews, decides and reports: 8.16	10 From date of first Appeal Board meeting	26
Secretary to MCA-T Board notifies the parties of the Appeal Board Decision: 8.20	2 From date of Appeal Board Decision	28
Appeal Board Decision implemented by MCA-T: 8.20	15 From date of Appeal Board Decision	43
Notice of the Lifting of the Suspension of Procurement shall be issued, if applicable: 8.21	Immediately after Notification of Board Decision.	