



**GOVERNMENT OF THE REPUBLIC OF MALAWI  
MILLENNIUM CHALLENGE ACCOUNT - MALAWI  
(MCA-MALAWI)**

**INVITATION TO QUOTE (ITQ)**

**MCA-MALAWI PROJECT – Backhoe Loaders**

**Ref: PA/MCA-MW/MCC/ERM/ITQ/130/2018**

*May, 2018*

**To:** .....  
.....  
.....  
.....  
.....  
.....

1. You are invited to submit your price quotation for the Supply to **MCA-Malawi Project for Backhoe Loaders**
2. The technical specifications and quantities of the items required are presented in Annex 1 to this Invitation to Quote (hereafter “ITQ”).
3. Your quotation in the all the required formats must be addressed and submitted by hand, by the deadline indicated in Section 6 below, and should be well labeled, for submission to:

**MCA-Malawi Procurement Agent**  
1st Floor, West Wing  
Kang’ombe House, City Center  
Lilongwe 3, Malawi

Tel: +265 1 770 348  
Fax: +265 1770 833  
Email: [MCAMalawiPA@cardno.com](mailto:MCAMalawiPA@cardno.com)

4. Your quotation should be presented on the standard form indicated at **Annex 2** to this ITQ, and should be accompanied by electronic [scanned] copies of all pertinent technical documentation and the relevant pages from catalogue(s) and other printed material or pertinent information for the items quoted.

5. The *deadline for receipt of your quotation* at the address indicated above (Section 4) is: **June 18, 2018 at 15:00hours**, Malawi local time.
6. The quotation shall be delivered by the deadline indicated in Section 5, above, to the address indicated in Section 3. The quotation must be **one original and three copies** duly signed by an authorized representative of the Supplier. The envelope containing your quotation must be clearly marked: **“Quotation for MCA-Malawi Backhoe Loader”** If the name and reference is not mentioned, the Purchaser will not be responsible for any premature opening or late opening or non-acceptance of the quotation due to late recognition of the quotation.
7. The Supplier needs to submit *proof of authorization* of the person signing the quotation on their behalf.
8. The Government of Malawi will ensure that MCA-Malawi and all Providers, Covered Providers, Project Partners, contractors (prime contractors and subcontractors), consultants, and other entities and individuals that receive MCC Funding directly or indirectly in furtherance of the Compact are exempt from Taxes.
  - a. In the case of goods to be imported MCA-Malawi will obtain the necessary clearance documentation from the Commissioner General of Malawi Revenue Authority (MRA) to ensure the goods are cleared without the payment of any taxes or duties.
9. Your quotation must be submitted as per the following instructions and in accordance with the sample Purchase Order included as Annex 4 to this ITQ. The Purchase Order terms and conditions are not negotiable and shall be fully accepted by the Supplier:
  - (i) **PRICES** shall be quoted in United States Dollars (USD), including the cost of delivery to the place of destination - EGENCO Head Office, Blantyre, Malawi.
  - (ii) **EVALUATION OF QUOTATIONS AND AWARD OF PURCHASE ORDER:** Quotations determined to be substantially responsive to the technical specifications will be evaluated by comparison of quoted prices, including the cost of delivery to the place of destination, VAT and customs duties. A contract will be issued to the Supplier offering the total lowest quotation and that meets all the requirements of the technical specifications.
  - (iii) **VALIDITY OF THE OFFER:** Your quotation should be valid for a period of **60 days** from the date of receipt of your quotation, indicated in Section 6 above. A quotation with less than 60 days validity may be rejected and may not be considered.
10. **DELIVERY:** The Backhoe Loader must be delivered to the address indicated in the “Delivery Instructions” clause of Annex 4 (below) in accordance with the agreed delivery date. The Supplier must clearly state on the documentation that the items are being delivered to MCA-Malawi.
11. The supplier must clearly state the **Country of Origin, warranty and/or guaranty conditions and duration** for the goods proposed.

12. Suppliers are required to certify their status as part of their submission by duly completing and submitting the Government-Owned Enterprises (GOE) Certification Form, included as Annex 3 to this ITQ.
13. Each Bidder shall submit only one Quote, either individually or as a member of a joint venture. A Bidder who submits or participates in more than one Quote shall cause all the bids with the Bidder's participation to be disqualified. Further it is to be noted that no alternate quote is permitted under this invitation to quote.
14. MCA-Malawi shall entertain a complaint from any Bidder that claims to have suffered or that may suffer loss or injury due to a breach of duty by MCA-Malawi in the conduct of this selection process. Any complaint shall be submitted in accordance with MCA-Malawi's Bid Challenge System, which is posted on <http://www.mca-m.gov.mw/>
15. Additional information may be obtained at the address indicated in Section 4 (above) and at the following email address: [MCAMalawiPA@cardno.com](mailto:MCAMalawiPA@cardno.com)
16. Clarifications will be accepted up until June 7, 2018, and responded to by June 9, 2018

Sincerely,

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**Dye B. Mawindo**  
**Chief Executive Officer**

**ANNEX 1**

**BACKHOE LOADER - TECHNICAL SPECIFICATIONS**

Technical Specification of items required including applicable standards			BIDDER MUST STATE WHAT THEY ARE OFFERING AND SHOULD ATTACH CATELOGUE AND DOCUMENTS IN SUPPORT, WHERE POSSIBLE	Compliance of specification offered
<b>ENGINE</b>				
Rated net power @2200rpm	74 - 96 kW	99 - 128 hp		
Bore	104 - 105 mm			
Stroke	127 - 132 mm			
Displacement	4.4L			
Net Peak Torque @ 1400 rpm	536N.m			
Diesel powered				
Combustion	Direct injection (DI)			
Aspiration	Turbo-intercooled			
Cooling system	Radiator			
Equipped with electric fuel priming system				

Technical Specification of items required including applicable standards			BIDDER MUST STATE WHAT THEY ARE OFFERING AND SHOULD ATTACH CATELOGUE AND DOCUMENTS IN SUPPORT, WHERE POSSIBLE	Compliance of specification offered
<b>TRANSMISSION</b>				
Automatic	Power shuttle			
Forward	5			
Reverse	3			
Drivetrain	4WD			

Technical Specification of items required including applicable standards			BIDDER MUST STATE WHAT THEY ARE OFFERING AND SHOULD ATTACH CATELOGUE AND DOCUMENTS IN SUPPORT, WHERE POSSIBLE	Compliance of specification offered
<b>WEIGHTS</b>				
Operating weight	Minimum			
Operating weight	Nominal	10,950 kg		
Operating weight	Maximum	12,300kg		

Technical Specification of items required including applicable standards		BIDDER MUST STATE WHAT THEY ARE OFFERING AND SHOULD ATTACH CATELOGUE AND DOCUMENTS IN SUPPORT, WHERE POSSIBLE	Compliance of specification offered
DIMENSIONS			
Overall length	7916mm		
Wheelbase	2200mm		
Maximum Operating Height	6704mm		
Maximum digging depth	5260mm		
Height to top of cab	2874mm		
TIRES			
Front	12 - 19.5 12 ply		
Rear	21L - 24 16 ply		

Technical Specification of items required including applicable standards		BIDDER MUST STATE WHAT THEY ARE OFFERING AND SHOULD ATTACH CATELOGUE AND DOCUMENTS IN SUPPORT, WHERE POSSIBLE	Compliance of specification offered
BRAKE			
Oil immersed disc brakes			
Hydraulically boosted			
Dual pedals	Interlocking		

Technical Specification of items required including applicable standards		BIDDER MUST STATE WHAT THEY ARE OFFERING AND SHOULD ATTACH CATELOGUE AND DOCUMENTS IN SUPPORT, WHERE POSSIBLE	Compliance of specification offered
CABIN			
Air conditioning system			
Seat belt			
Audible system fire alarm			
Adjustable air suspension seat			
Ample legroom			
Storage compartments for tools and			
Joystick controls	Pilot operated		
LCD screen	hour meter		
	oil temperature		
	hydraulic oil temp		
Indicator lights	air cleaner service		
	water separator service		
	engine coolant		
Easy to read gauge cluster			
Excellent visibility over the hood			

Technical Specification of items required including applicable standards		BIDDER MUST STATE WHAT THEY ARE OFFERING AND SHOULD ATTACH CATELOGUE AND DOCUMENTS IN SUPPORT, WHERE POSSIBLE	Compliance of specification offered
BODY			
Rotating	magnetic mount		
Headlamps	wire mesh protected		
Boom transport lock			
Ground level fuel refill			
Guard	fuel tank bottom		
Guards	stabilizer		
Hydraulic oil cooler			
Toolbox	external lockable		
Antivandalism locks			

**ANNEX 2**

**Quotation Submission Form  
(OFFER)**

PA/MCA-MW/MCC/ERM/ITQ/130/2018

**Vendor:** \_\_\_\_\_

**Date:** \_\_\_\_\_

ITEM #	Description of Goods	Delivery Date (DD) <i>(number of days after both parties sign the Purchase Order)</i>		
		Earliest DD	Latest DD	Supplier's DD
All Items	[enter]	45 days	60 days	

Item #	Description of Goods	Quantity	Units	Country of Origin	Guaranty Duration	Final Destination	Unit Rate	USD
1	Backhoe Loaders	2	Each			As per the address provided in Annex 3		
<b>Total Price excluding VAT and/or Custom Duties:</b>								

We confirm that:

1. The price quoted for each item excludes VAT or any Custom Duty.
2. The unit price of each item includes the cost of delivery (if any), and we understand that the cost of delivery will not be paid separately.
3. The currency of our quoted priced is \_\_\_\_\_ (USD)
4. Our Warranty and/or Guaranty details are clearly stated.
5. Day mean calendar day and Week equals to 7 days.
6. Our proposed delivery duration is clearly stated.
7. We shall sign the Purchase Order, if issued, within three (3) days of receipt from MCA-Malawi.
8. The Supplier is required under the Contract to transport the Goods to a specified place of final destination within the Purchaser's country, defined as the Project Site, transport to such place of destination in the Purchaser's country or in other country, including insurance installation, Unload Main Carrier Charges, Destination Terminal Charges, Destination Terminal Charges, any cost associated with clearing of Goods Outside Malawi, and facilitating the goods entry in to Malawi (Including Boarder Clearance) from Custom of Malawi (MCA-Malawi will provide the tax exemption for entry to Malawi to the Supplier, in case the supplier will inform MCA-Malawi 21 days before the goods arrived to Malawi Boarder), National and International Transportation if any required, storage, loading and unloading of all the goods, all works and services required as per technical requirements and as shall be specified in the schedule of requirement and Contract, shall be the cost to the Supplier, and related costs shall be included in the **Bid Price**.

Our above-mentioned cost includes all costs needed to provide service as per the requirement of Technical Specifications attached with this ITQ.

Our Quotation is valid for **60 days** from the date of submission.

Attached is documentary proof authorizing the signatory to act on behalf of the Supplier.

Name of the Signatory: \_\_\_\_\_

Position of the signatory in Organization: \_\_\_\_\_

Signature: \_\_\_\_\_

Email: \_\_\_\_\_

Phone #: \_\_\_\_\_

Date: \_\_\_\_\_



## Supplier's Specifications

**Note: The Supplier must comply with required specifications as detailed above, in Annex 1.**

### SUPPLY AND DELIVERY OF MCA-MALAWI – BACKHOE LOADER

PA/MCA-MW/MCC/ERM/ITQ/130/2018

Technical Specification of items required including applicable standards			BIDDER MUST STATE WHAT THEY ARE OFFERING AND SHOULD ATTACH CATELOGUE AND DOCUMENTS IN SUPPORT, WHERE POSSIBLE	Supplier's Demonstration of Compliance of specification offered
<b>ENGINE</b>				
Rated net power @2200rpm	74 - 96 kW	99 - 128 hp		
Bore	104 - 105 mm			
Stroke	127 - 132 mm			
Displacement	4.4L			
Net Peak Torque 1400 rpm	536N.m			
Diesel powered				
Combustion	Direct injection (DI)			
Aspiration	Turbo-intercooled			
Cooling system	Radiator			
Equipped with electric fuel priming system				
<b>TRANSMIS</b>				
Automatic	Power shuttle			
Forward gears	5			
Reverse gears	3			
Drivetrain	4WD			
<b>WEIGHTS</b>				
Operating	Minimum			
Operating	Nominal	10,950 kg		
Operating	Maximum	12,300kg		
<b>DIMENSIONS</b>				
Overall length	7916mm			
Wheelbase	2200mm			
Maximum Operating Height	6704mm			
Maximum digging depth	5260mm			
Height to top of cab	2874mm			
<b>TIRES</b>				
Front	12 - 19.5 12 ply			

Rear	21L - 24 16 ply			
<b>BRAKE</b>				
Oil immersed disc brakes				
Hydraulically boosted				
Dual pedals	Interlock			
<b>CABIN</b>				
Air-conditioning system				
Seat belt				
Audible system fire alarm				
Adjustable air suspension seat				
Ample legroom				
Storage compartments for tools and				
Joystick controls	Pilot operated			
LCD screen	hour meter			
	oil temperature			
	hydraulic oil temp			
Indicator lights	air cleaner			
	water separator service			
	engine coolant			
Easy to read gauge cluster				
Excellent visibility over the hood				
<b>BODY</b>				
Rotating beacon	magnetic mount			
Headlamps	wire mesh protected			
Boom transport lock				
Ground level fuel refill				
Guard	fuel tank bottom			
Guards	stabilizer			
Hydraulic oil cooler				
Toolbox	external	lockable		
Ant vandalism				

### **ANNEX 3**

#### **GOVERNMENT-OWNED ENTERPRISE CERTIFICATION FORM**

Government-Owned Enterprises are not eligible to compete for MCC-funded contracts. Accordingly, GOEs (i) may not be party to any MCC-funded contract for goods, works, or services procured through an open solicitation process, limited bidding, direct contracting, or sole source selection; and (ii) may not be pre-qualified or shortlisted for any MCC-funded contract anticipated to be procured through these means.

This prohibition does not apply to Government-owned Force Account units owned by the Government of the MCA Entity's country, or Government-owned educational institutions and

research centers, or any statistical, mapping or other technical entities not formed primarily for a commercial or business purpose, or where a waiver is granted by MCC in accordance with Part 7 of MCC's Program Procurement Guidelines. The full policy is available for your review on the Compact Procurement Guidelines page at the MCC Website ([www.mcc.gov](http://www.mcc.gov)). As part of the eligibility verification for this procurement, **please fill in the form below to indicate the status of your entity.**

For purposes of this form, the term "Government" means one or more governments, including any agency, instrumentality, subdivision or other unit of government at any level of jurisdiction (national or subnational).



**GOVERNMENT-OWNED ENTERPRISE**

**CERTIFICATION**

**Full Legal Name of Bidder:**

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**Full Legal Name of Bidder in Language and Script of Country of Formation** (if different from above):

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**Address of Principal Place of Business or Chief Executive Office of Bidder:**

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**Full Name of Three (3) Highest Ranking Officials of Bidder** (for any Bidder that is an entity):

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**Full Legal Name(s) of Parent Entity or Entities of Bidder** (if applicable; if Bidder has no parent, please so state):

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**Full Legal Name(s) of Parent Entity or Entities of Bidder in Language and Script of Country of Formation** (if applicable and if different from above):

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**Address(es) of Principal Place of Business or Chief Executive Office of Parent Entity or Entities of Bidder** (if applicable):

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1) Does a Government own a majority or controlling interest (whether by value or voting interest) of your shares or other ownership interest (whether directly or indirectly and whether through fiduciaries, agents or other means)?  
Yes  No

2) If your answer to question 1 was yes, are you a Government-owned:

- a. Force Account unit                      Yes  No
- b. Educational institution                Yes  No
- c. Research center                        Yes  No
- d. Statistical entity                        Yes  No
- e. Mapping entity                         Yes  No
- f. Other technical entities not formed primarily for a commercial or business purpose  
Yes  No

3) Regardless of how you answered question 1, please answer the following:

a. Do you receive any subsidy or payment (including any form of subsidized credit) or any other form of assistance (financial or otherwise) from a Government?  
Yes  No

If yes, describe:

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b. Has a Government granted to you any special or exclusive legal or economic rights or benefits that may alter the competitiveness of your goods, works or services or otherwise influence your business decisions?  
Yes  No

If yes, describe:

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c. Does a Government have the ability to direct or decide any of the following with respect to you:

- i. any reorganization, merger, or dissolution of you or the formation or acquisition of any subsidiary or other affiliate by you  
Yes  No
- ii. any sale, lease, mortgage, pledge, or other transfer of any of your principal assets, whether tangible or intangible and whether or not in the ordinary course of business  
Yes  No
- iii. the closing, relocation, or substantial alteration of the production, operational, or other material activities of your business  
Yes  No
- iv. your execution, termination, or non-fulfillment of material contracts  
Yes  No
- v. the appointment or dismissal of your managers, directors, officers or senior personnel or otherwise participate in the management or control of your business  
Yes  No

4) Have you ever been Government-owned or controlled? Yes  No

5) If your answer to question 4 was yes, please answer the following questions

a. How long were you Government-owned? \_\_\_\_\_

b. When were you privatized? \_\_\_\_\_

c. Do you receive any subsidy or payment (including any form of subsidized credit) or any other form of assistance (financial or otherwise) from a Government?

Yes  No

If yes, describe:

\_\_\_\_\_

d. Even though not majority or controlling, does a Government continue to hold any ownership interest or decision making authority in you or your affairs?

Yes  No

If yes, describe:

\_\_\_\_\_

e. Do you send any funds to a Government other than taxes and fees in the ordinary course of your business in percentages and amounts equivalent to other non-Government-owned enterprises in your country that are engaged in the same sector or industry? Yes  No

If yes, describe: \_\_\_\_\_

Participants are advised that:

1. Prior to announcing the winning bidder or consultant or any list of pre-qualified bidders or shortlisted consultants for this procurement, the MCA Entity will verify the eligibility of such bidder(s) or consultant(s) with MCC. MCC will maintain a database (internally, through subscription services, or both) of known GOEs and each winning or pre-qualified bidder and winning or shortlisted consultant subject to this provision will be compared against the database and subject to such further due diligence as MCC may determine necessary under the circumstances.

2. Any misrepresentation by any entity submitting a bid or proposal for this procurement may be deemed a "fraudulent practice" for purposes of the MCC Program Procurement Guidelines and any other applicable MCC policy or guidance, including MCC's Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations.

3. Any entity that is determined by MCC to have organized itself, subcontracted any part of its MCC-funded contract, or otherwise associated itself with any other entity for the purpose of, or with the actual or potential effect of, avoiding or otherwise subverting the provisions of the MCC Program Procurement Guidelines may be deemed to be a GOE for all purposes of those Guidelines.

4. Any credible accusation that any entity submitting a bid or proposal for this procurement is a GOE ineligible to submit a bid or proposal in accordance with the MCC Program Procurement Guidelines will be subject to review in a bid challenge in accordance with those Guidelines and the MCA Entity's Bid Challenge System.

I hereby certify that the information provided above is true and correct in all material respects and understand that any material misstatement, misrepresentation or failure to provide the information requested in this certification may be deemed a "fraudulent practice" for purposes of the MCC Program Procurement Guidelines and other applicable MCC policy or guidance, including MCC's Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations.

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name of Signatory: \_\_\_\_\_

**Note: *All Suppliers must complete and sign the Government-Owned Enterprise (GEO) Certification For and submit it with their quotation.***

**ANNEX 4**

**SAMPLE CONTRACT**

**I. AGREEMENT**

This CONTRACT AGREEMENT (hereinafter called this “Contract”) is made this ..... day of....., 2014, between the **Millennium Challenge Account-Malawi** (hereinafter called the “MCA Entity”), on the one part, and ..... (hereinafter called the “Supplier”), on the other part, (collectively referred to as the “Parties”).

**RECITALS**

**WHEREAS** the Millennium Challenge Compact between the United States of America, acting through the Millennium Challenge Corporation (“MCC”), and the Government of Malawi (the “*Government*”) signed on April 7, 2011 (the “*Compact*”) sets forth the general terms on which MCC will provide assistance of up to Three Hundred and Fifty Million Seven Hundred Thousand United States Dollars (US\$350,700,000) (“*MCC Funding*”) to the Government for a program to reduce poverty through economic growth in Malawi (the “*Program*”);

**AND WHEREAS** the Government incorporated the MCA Entity as a public trust under the Trustees Incorporation Act (Cap 5:03) of the Laws of Malawi, to act as its designee in the supervision, management, administration and implementation of the Program;

**AND WHEREAS:**

- (a) The MCA-Malawi, intends to apply a portion of the proceeds of MCC Funding to eligible payments under this Contract. Payments made under this Contract will be subject, in all respects, to the terms and conditions of the Compact and related documents, including restrictions on the use, and conditions to disbursement, of MCC Funding. No party other than the Government and the MCA Entity shall derive any rights from the Compact or have any claim to the proceeds of MCC Funding; and
- (b) The MCA -Malawi has requested the Supplier to supply the goods as described in **Appendix A** to this Contract; and
- (c) The Supplier, having represented to the MCA -Malawi that it has the required technical resources, has agreed to supply the goods on the terms and conditions set forth in this Contract.

**NOW THEREFORE**, the Parties to this Contract agree as follows:

In consideration of the payments to be made by the MCA-Malawi to the Supplier as set forth in this Contract, the Supplier hereby covenants with the MCA-Malawi to supply the goods in conformity in all respects with the provisions of this Contract.

Subject to the terms of this Contract, the MCA-Malawi hereby covenants to pay the Supplier, the Contract Price of ..... or such other sum as may become payable pursuant to the provisions of this Contract at the times and in the manner prescribed by this Contract.

The Conditions of Contract and the Appendices hereby attached shall form part of this Contract.

**IN WITNESS** whereof the Parties hereto have caused this Contract to be executed in

accordance with the Laws of Malawi as of the day, month and year first indicated above.

For and on behalf of:

**Millennium Challenge Account - Malawi:**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Dye B. Mawindo  
Chief Executive Officer**

Witnessed By:

Full Name: \_\_\_\_\_

Designation: \_\_\_\_\_

For and on behalf of:

\_\_\_\_\_  
[Signature of Authorized Representative]

Witnessed By:

Full Name: \_\_\_\_\_

Designation: \_\_\_\_\_



## II. CONDITIONS OF THE CONTRACT

1. **Price and Schedule of Supply**

The Supplier shall provide the goods according to the schedule and delivery period indicated in **Appendix A** at the contract price of .....). **The Supplier must clearly state that the items are being delivered to the MCA-Malawi, Lilongwe, Malawi.**

2. **Fixed Price:** The price indicated above is firm and fixed and not subject to any adjustments.

3. **Delivery Schedule:** The delivery shall be completed within the number of days indicated in **Paragraph 6 below**. The Supplier must give a minimum notice of **5 working days** before delivery to allow the necessary preparations by MCA Malawi, for receiving the goods. If the Supplier fails to give the notice, the Supplier will be responsible for non-receipt of the goods.

4. **Payment:** Payment of 100% of the amount of this Contract shall be made following delivery, inspection and acceptance of the goods by MCA-Malawi:

- a. Payment will be made within **30 days** of receipt of an acceptable signed invoice from the Supplier, accompanied by a duly signed Goods Receipt Note confirming acceptance of all equipment ordered and supplied.
- b. The Supplier must submit their signed Invoice to the **MCA-Malawi's Director of Finance and Administration ([rose.kamoto@mca-m.gov.mw](mailto:rose.kamoto@mca-m.gov.mw)) with a copy to the Fiscal Agent, 1st Floor, West Wing, Kang'ombe House, City Center, Lilongwe 3, Malawi (Tel: +265 (0) 1 770 348) ([Tim.Flanagan@cardno.com](mailto:Tim.Flanagan@cardno.com)).**
- c. When invoicing the MCA Entity, the value of the invoice shall be in United States Dollars and include any local USA sales tax (if any).
- d. No withholding of payment, payment off-set or set-off shall apply. The Supplier shall retain a purchase money security interest in all products sold until payment has been made, and the MCA Entity agrees that the Supplier may file financing statements in such places as are necessary to perfect its security interest.

5. **Warranty and or Guaranty/Disclaimer:** Shall be in accordance with the requirement of Technical Specification indicated in **Appendix A** (Under the column "Guaranty Duration"). The Supplier will pass through to the MCA Entity any applicable product warranties of the manufacturer, as the Supplier does not provide warranties on products which it does not manufacture. No statement or affirmation by the Supplier or its agents, by action or word, shall constitute a warranty and the MCA Entity is to rely solely on the manufacturer's warranties. The Supplier will not be liable for any damage, loss, cost or expense for breach of warranty. As the Supplier has no control over the manufacturing of the products sold herein, it cannot and does not indemnify the MCA Entity for claims by third parties that products infringe any patent, copyright, trademark or trade secret. The Supplier does not warrant that any product or information provided by the Supplier will meet the MCA Entity's particular purpose or requirements, nor that the operation of any such materials will be uninterrupted and/or error-free. All warranties provided herein are personal to, and intended solely for the benefit of the MCA Entity and do not extend to any third party. This warranty is made expressly in lieu of all other warranties, express or implied, including without limitation any implied warranties of fitness for a particular purpose, merchantability, non-infringement, title or otherwise.

6. **Delivery Instructions:** The goods shall be delivered, within **a maximum of 60 calendar days** from date of contract signature, to the following address:

**Millennium Challenge Account Malawi**  
**Pamodzi House**  
**Off Presidential Drive**  
**P. O. Box 31513**  
**Lilongwe 3**  
**Malawi**  
**Tel: (O) +265 (0) 177-4303**  
**Fax: (F) +265 (0) 177-4301**  
**website: [www.mca-m.gov.mw](http://www.mca-m.gov.mw)**

7. **Contract Manager: The Environment and Natural Resources Management Manager** will be responsible for managing this Contract on behalf of the MCA-Malawi.
8. **Required Technical Specifications:** The required Technical Specifications are attached to this Contract as **Appendix A**.
9. **Failure to Perform:** The MCA-Malawi may cancel, at any time, this Contract if the Supplier fails to deliver the goods in accordance with the above terms and conditions. The Supplier undertakes that during the Guaranty/Warranty period the repair/replacement of any defective parts and equipment will be completed within one week of the date of notification of the defect. The Supplier agrees and attests that it shall devote commercially reasonable efforts to the fulfillment of the duties outlined in this order, any attachment thereto, and in these terms and conditions.
10. **Liquidated Damages:** The Supplier acknowledges and agrees that failing to deliver any or all of the goods within the period specified in this Contract may lead to a breach of the agreement in which, the MCA Entity shall be entitled to, without prejudice to its other remedies under this Contract, deduct from the Contract price, as liquidated damages, a sum equivalent to half of percent (0.5%) of the Contract price for each day of delay in providing the goods and any related services, until actual delivery and acceptance, up to a maximum deduction of ten percent (10%) of the Contract amount. Once the maximum amount (10%) is reached, the MCA Entity may consider canceling this Contract. The Supplier is bound to provide the amount of liquidated damages, which will be recovered from the Suppliers in the event of their non-performance. Delivery timetables for products are subject to availability and manufacturer procedures, which the Supplier does not control, and therefore damages herein are subject to availability and manufacturer procedures meaning that the MCA Entity's entitlement to damages under this section is subject to the failure to perform by the Supplier with respect to that amount of damages claimed.
11. **Inspection:** The goods to be supplied shall be inspected by the Supplier prior to delivery at the Supplier's premises, and at the delivery point by the MCA Entity's representative(s). The MCA Entity may elect to witness the inspection at the Supplier's premises. Non conformity of the goods with the proposed Technical Specifications shall be a justification for cancellation of this Contract. The MCA Entity acknowledges that the Supplier is a reseller of products manufactured and supplied by third parties and that the Supplier does not possess the facilities to inspect and test.
12. **Corruption, Fraud; Collusion; Coercion; and Prohibited Practices:** The MCA Entity requires that the Supplier observe the highest standard of ethics during the procurement and execution of this Contract. In addition, the MCA Entity may cancel this Contract if it determines at any time that the Supplier engaged in corrupt, fraudulent, collusive, coercive or prohibited practices during the selection process or the execution of this Contract. The Supplier represents and warrants that neither the Supplier nor any of the Supplier's employees or agents, to the Supplier's actual knowledge during the prior five

(5) years, has ever (or will have had during the term of this order) been convicted in any jurisdiction of the United States of America or elsewhere of any felonies or found in violation of any ethical codes or standards applicable to the Supplier's line of business.

13. **Notices:** Any notice, request or consent given by one party to the other pursuant to this Contract shall be in writing, to the attention of the signatory of this Contract, and sent to the address specified in this Contract. A notice shall be effective when delivered or on the notice's effective date, whichever is later. A party may change its address for notice hereunder by giving the other party notice in writing of such change sent to the address specified in this Contract.
14. **Taxes:** The Contract Price includes Taxes as applicable and the MCA Entity shall not be responsible for the payment of any additional Taxes. The Contract Price shall not be adjusted to account for such Taxes.
15. **Eligible Countries:** Persons or entities that have been prohibited from participation in procurements funded with The World Bank assistance or debarred or suspended from participation in procurements funded by the US Federal Government or otherwise prohibited by applicable United States law or Executive Order or United States policies including under any then-existing anti-terrorist policies are not eligible to receive funding under this Contract. It is the legal responsibility of the Supplier to ensure compliance with these Executive Orders and Laws.
16. **Assignment:** This Contract shall not be assigned by the Supplier to any third party without the expressed written consent of the MCA Entity.
17. **Disputes:** Any dispute arising out of this Contract, which cannot be amicably settled between the Parties, shall be referred to arbitration in accordance with the Arbitration Act (Cap 6:03) of the Laws of Malawi.
18. The Supplier agrees to deliver all the goods set forth in the Appendix and included by any amendment and in any Solicitation cited for the fixed-price amount specified in accordance with the terms and conditions set forth herein and in any accompanying Solicitation as may have been issued. In the event of a conflict between the terms and conditions of this document (including solicitation if cited) and any other form, agreement, letter or document, then this Contract shall govern.
19. **Limitation of Liability:** The Supplier's aggregate liability to the MCA Entity will be limited to direct damages, which will not exceed the amounts paid by the MCA Entity for the product or service giving rise to such liability. In no event shall the Supplier be liable for any special, consequential, incidental, punitive or exemplary damages arising out of or in any way connected with the agreement to sell product to the MCA Entity or the product, including, but not limited to, damages for lost profits, loss of use, lost data or for any damages or sums paid by the MCA Entity to third parties, even if the Supplier has been advised of the possibility of such damages.

**APPENDIX A**  
**SUPPLIERS QUOTATION**

## APPENDIX B

### ADDITIONAL PROVISIONS

Capitalized terms that are used but not defined in this Appendix shall have the meaning given to them in the GCC or in the Compact or related agreements.

The MCA Entity is responsible for the oversight and management of the implementation of the Compact on behalf of the Government, and intends to apply a portion of the proceeds of the Compact to eligible payments under this Contract, provided that (a) such payments will only be made at the request of and on behalf of the MCA Entity and as authorized by the Fiscal Agent, (b) MCC shall have no obligations to the Consultant under the Compact or this Contract, (c) such payments will be subject, in all respects, to the terms and conditions of the Compact, and (d) no party other than the Government and the MCA Entity shall derive any rights from the Compact or have any claim to MCC Funding.

#### **A. MCC Status; Reserved Rights; Third-Party Beneficiary**

**1. MCC Status.** MCC is a United States Government corporation acting on behalf of the United States Government in the implementation of the Compact. As such, MCC has no liability under this Contract, and is immune from any action or proceeding arising under or relating to this Contract. In matters arising under or relating to this Contract, MCC is not subject to the jurisdiction of the courts or any other juridical or other body of any jurisdiction.

#### **2. MCC Reserved Rights.**

- (a) Certain rights are expressly reserved to MCC under this Contract, the Compact and other related Compact documents, including the right to approve the terms and conditions of this Contract, as well as any amendments or modifications hereto, and the right to suspend or terminate this Contract.
- (b) MCC, in reserving such rights under this Contract, the Compact or other related Compact documents, has acted solely as a funding entity to assure the proper use of United States Government funds, and any decision by MCC to exercise or refrain from exercising these rights shall be made as a funding entity in the course of funding the activity and shall not be construed as making MCC a party to this Contract.
- (c) MCC may, from time to time, exercise its rights, or discuss matters related to this Contract with the Parties or the Government, as appropriate, jointly or separately, without thereby incurring any responsibility or liability to any party.
- (d) Any approval (or failure to approve) or exercise of (or failure to exercise) any rights by MCC shall not bar the Government, the MCA Entity, MCC or any other person or entity from asserting any right against the Consultant, or relieve the Consultant of any liability which the Consultant might otherwise have to the Government, the MCA Entity, MCC, or any other person or entity. For the purposes of this clause (d), MCC shall be deemed to include any MCC officer, director, employee, affiliate, contractor, agent or representative.

**3. Third-Party Beneficiary.** MCC shall be deemed to be a third party beneficiary under this Contract.

#### **B. Limitations on the Use or Treatment of MCC Funding**

The use and treatment of MCC Funding in connection with this Contract does not, and shall not, violate any limitations or requirements specified in the Compact or any other relevant agreement or Implementation Letter or applicable law or United States Government policy. A

summary of the applicable provisions referenced in this paragraph may be found on the MCC website at [www.mcc.gov/guidance/compact/funding\\_limitations.pdf](http://www.mcc.gov/guidance/compact/funding_limitations.pdf).

### **C. Procurement**

The Supplier shall ensure that all procurements of goods, services or works under, related to or in furtherance of this Contract shall be consistent with the general principles set forth in the Compact and in the MCC Program Procurement Guidelines from time to time in effect as posted on the MCC website at [www.mcc.gov](http://www.mcc.gov). The Supplier shall comply with the eligibility requirements related to prohibited source or restricted party provisions in accordance with U.S. law, regulations and policy, applicable World Bank policies or guidelines and in accordance with other eligibility requirements as may be specified by MCC or the MCA Entity. A summary of the applicable provisions referenced in this paragraph may be found on the MCC website at [www.mcc.gov/guidance/compact/procurement awards provisions.pdf](http://www.mcc.gov/guidance/compact/procurement_awards_provisions.pdf).

### **D. Reports and Information; Access; Audits; Reviews**

**1. Reports and Information.** The Supplier shall maintain such books and records and provide such reports, documents, data or other information to the MCA Entity in the manner and to the extent required by Sections 3.7 (a) and (b) of the Compact or related documents and as may be reasonably requested by the MCA Entity from time to time in order to comply with its reporting requirements arising under the Compact or related documents. MCC may freely use any information it receives in any report or document provided to it in any way that MCC sees fit. The provisions of Section 3.8(a) and (b) of the Compact that are applicable to the Government in this regard shall apply, *mutatis mutandis*, to the Supplier as if the Supplier were the Government under the Compact. A summary of the applicable provisions referenced in this paragraph may be found on the MCC website at [www.mcc.gov/guidance/compact/audits reviews provisions.pdf](http://www.mcc.gov/guidance/compact/audits_reviews_provisions.pdf).

**2. Access; Audits and Reviews.** Upon MCC's request, the Supplier shall permit such access, audits, reviews and evaluations as provided in the Compact or related documents. The provisions of the Compact that are applicable to the Government with respect to access and audits shall apply, *mutatis mutandis*, to the Supplier as if the Supplier were the Government under the Compact. A summary of the applicable provisions referenced in this paragraph may be found on the MCC website at [www.mcc.gov/guidance/compact/audits reviews provisions.pdf](http://www.mcc.gov/guidance/compact/audits_reviews_provisions.pdf).

**3. Application to Providers.** The Supplier shall ensure the inclusion of the applicable audit, access and reporting requirements in its contracts or agreements with other providers in connection with this Contract. A summary of the applicable requirements may be found on the MCC website at [www.mcc.gov/guidance/compact/audits reviews provisions.pdf](http://www.mcc.gov/guidance/compact/audits_reviews_provisions.pdf).

### **E. Compliance with Anti-Corruption, Anti-Money Laundering and Terrorist Financing Statutes and Other Restrictions**

1. The Supplier shall ensure that no payments have been or will be made by the Consultant to any official of the Government, the MCA Entity, or any third party (including any other government official) in connection with this Contract in violation of the United States Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. 78a et seq.) (the "FCPA") or that would otherwise be in violation of the FCPA if the party making such payment were deemed to be a United States person or entity subject to the FCPA, or similar statute applicable to this Contract, including any local laws. The Supplier affirms that no payments have been or will be received by any official, employee, agent or representative of

the Supplier in connection with this Contract in violation of the FCPA or that would otherwise be in violation of the FCPA if the party making such payment were deemed to be a United States person or entity subject to the FCPA, or similar statute applicable to this Contract, including any local laws.

2. The Supplier shall not provide material support or resources directly or indirectly to, or knowingly permit MCC Funding to be transferred to, any individual, corporation or other entity that the Supplier knows, or has reason to know, commits, attempts to commit, advocates, facilitates, or participates in any terrorist activity, or has committed, attempted to commit, advocated, facilitated or participated in any terrorist activity, including, but not limited to, the individuals and entities **(i)** on the master list of Specially Designated Nationals and Blocked Persons maintained by the U.S. Department of Treasury's Office of Foreign Assets Control, which list is available at [www.treas.gov/offices/enforcement/ofac](http://www.treas.gov/offices/enforcement/ofac), **(ii)** on the consolidated list of individuals and entities maintained by the "1267 Committee" of the United Nations Security Council, **(iii)** on the list maintained on [www.epls.gov](http://www.epls.gov) or **(iv)** on such other list as the MCA Entity may request from time to time. For purposes of this provision, "material support and resources" includes currency, monetary instruments or other financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

3. The Supplier shall ensure that its activities under this Contract comply with all applicable U.S. laws, regulations and executive orders regarding money laundering, terrorist financing, U.S. sanctions laws, restrictive trade practices, boycotts, and all other economic sanctions promulgated from time to time by means of statute, executive order, regulation or as administered by the Office of Foreign Assets Control of the United States Treasury Department or any successor governmental authority, including, 18 U.S.C. § 1956, 18 U.S.C. § 1957, 18 U.S.C. § 2339A, 18 U.S.C. § 2339B, 18 U.S.C. § 2339C, 18 U.S.C. § 981, 18 U.S.C. § 982, Executive Order 13224, 15 C.F.R. Part 760, and those economic sanctions programs enumerated at 31 C.F.R. Parts 500 through 598 and shall ensure that its activities under this Contract comply with any policies and procedures for monitoring operations to ensure compliance, as may be established from time to time by MCC, the MCA Entity, the Fiscal Agent, or the Bank, as may be applicable. The Supplier shall verify, or cause to be verified, appropriately any individual, corporation or other entity with access to or recipient of funds, which verification shall be conducted in accordance with the procedures set out in the MCC Program Procurement Guidance paper entitled "*Excluded Parties Verification Procedures in MCA Entity Program Procurements*" that can be found on MCC's website at <http://www.mcc.gov/procurement/mca-guidancepapers.php>. The Supplier shall **(A)** conduct the monitoring referred to in this paragraph on at least a quarterly basis, or such other reasonable period as the MCA Entity or MCC may request from time to time and **(B)** deliver a report of such periodic monitoring to the MCA Entity with a copy to MCC.

4. Other restrictions on the Supplier shall apply as set forth in the Compact or related documents with respect to any activities in violation of other applicable U.S. laws, regulations, executive orders or policies, any misconduct injurious to MCC or the MCA Entity, any activity contrary to the national security interests of the United States or any other activity that materially and adversely affects the ability of the Government or any other party to effectively implement, or ensure the effective implementation of, the Program or any Project or to otherwise carry out its responsibilities or obligations under or in furtherance of the Compact or any related document or that materially and adversely affects the Program assets or any Permitted Account.

## **F. Publicity, Information and Marking**

1. The Supplier shall cooperate with the MCA Entity and the Government to provide the appropriate publicity to the goods, works and services provided under this Contract, including identifying Program activity sites and marking Program assets as goods, works and services funded by the United States, acting through MCC, all in accordance with the MCC Standards for Corporate Marking and Branding, available on the MCC website at <http://www.mcc.gov/documents/mcc-marking-corporate-v2.pdf>; provided, however, that any press release or announcement regarding MCC or the fact that MCC is funding the Program or any other publicity materials referencing MCC, shall be subject to MCC's prior written approval and must be consistent with any instructions provided by MCC from time to time in relevant Implementation Letters.

2. Upon the termination or expiration of the Compact, the Supplier shall, upon MCC's request, cause the removal of any such markings and any references to MCC in any publicity materials.

## **G. Insurance**

The Supplier shall obtain insurance or other protections appropriate to cover against risks or liabilities associated with performance of this Contract. The Supplier shall be named as payee on any such insurance. The MCA Entity and, at MCC's request MCC, shall be named as additional insureds on any such insurance or other guarantee, to the extent permissible under applicable laws. The Supplier shall ensure that any proceeds from claims paid under such insurance or any other form of guarantee shall be used to replace or repair any loss or to pursue the procurement of the covered goods, works and services; provided, however, that at MCC's election, such proceeds shall be deposited in an account as designated by the MCA Entity and acceptable to MCC or as otherwise directed by MCC.

## **H. Conflict of Interest**

The Supplier shall ensure that no officer, director, employee, affiliate, contractor, subcontractor, agent, advisor or representative of the Supplier participates in the selection, award, administration or oversight of a contract, grant or other benefit or transaction funded in whole or in part (directly or indirectly) by MCC Funding in connection with this Contract, in which (i) the entity, the person, members of the person's immediate family or household or his or her business partners, or organizations controlled by or substantially involving such person or entity, has or have a financial or other interest or (ii) the person or entity is negotiating or has any arrangement concerning prospective employment, unless such person or entity has first disclosed in writing to the parties under this Contract and MCC the conflict of interest and, following such disclosure, the parties to this Contract agree in writing to proceed notwithstanding such conflict. The Supplier shall ensure that none of its officers, directors, employees, affiliates, contractors, subcontractors, agents, advisors or representatives involved in the selection, award, administration, oversight or implementation of any contract, grant or other benefit or transaction funded in whole or in part (directly or indirectly) by MCC Funding in connection with this Contract shall solicit or accept from or offer to a third party or seek or be promised (directly or indirectly) for itself or for another person or entity any gift, gratuity, favor or benefit, other than items of *de minimis* value and otherwise consistent with such guidance as MCC may provide from time to time. The Supplier shall ensure that none of its officers, directors, employees, affiliates, contractors, subcontractors, agents, advisors or representatives engage in any activity which is, or gives the appearance of being, a conflict of interest in connection with this Contract. Without limiting the foregoing, the Supplier shall comply, and ensure compliance, with the applicable



conflicts of interest and ethics policies of the MCA Entity as provided by the MCA Entity to the Consultant.

## **I. Inconsistencies**

In the event of any conflict between this Contract and the Compact and/or the Program Implementation Agreement, the term(s) of the Compact or the Program Implementation Agreement, as appropriate, shall prevail. The Compact shall prevail over the Program Implementation Agreement.

## **J. Other Provisions**

The Supplier shall abide by such other terms or conditions as may be specified by the MCA Entity or MCC in connection with this Contract.

## **K. Flow-Through Provisions**

In any subcontract or sub-award entered into by the Supplier, as permitted by this Contract, the Supplier shall ensure the inclusion of all the provisions contained in paragraphs (A) through (J) above.

## **L. Combating Trafficking in Persons**

### **1. Background**

MCC has a zero tolerance policy with regard to trafficking in persons. Trafficking in persons (TIP) is the crime of using force, fraud, and/or coercion to exploit another person. Human trafficking can take the form of domestic servitude, peonage, forced labor, sexual servitude, bonded labor, and the use of child soldiers. This practice deprives people of their human rights and freedoms, increases global health risks, fuels growing networks of organized crime, and can sustain levels of poverty and impede development. The U.S. Government, led by the Department of State, is committed to making progress against the global crime and human rights abuse of TIP. MCC is committed to working with partner countries to ensure appropriate steps are taken to prevent, mitigate, and monitor TIP risks in the countries it partners with and projects it funds. For more on MCC's approach to combating TIP please visit: <http://www.mcc.gov/documents/reports/issuebrief-2010002011002-mccandtip.pdf>

### **2. Defined Terms**

For the purposes of these provisions, the terms set forth below are defined as follows:

- 2.1 "coercion" means (a) threats of serious harm to or physical restraint against any person; (b) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or (c) the abuse or threatened abuse of the legal process.
- 2.2 "commercial sex act" means any sex act on account of which anything of value is given to or received by any person.
- 2.3 "debt bondage" means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

- 2.4 “employee” means an employee of a bidder, supplier, contractor, subcontractor, consultant, or sub-consultant directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.
- 2.5 “forced labor” means knowingly providing or obtaining the labor or services of a person (a) by threats of serious harm to, or physical restraint against, that person or another person; (b) by means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or (c) by means of the abuse or threatened abuse of law or the legal process.
- 2.6 “fraud” means any act or omission, including any misrepresentation, in order to influence (or attempt to influence) any person to engage (knowingly or unknowingly) in any of the activities prohibited by this Part 15. Examples of fraud include, but are not limited to, false promises for specific employment; promises of money or other compensation that is never paid; working conditions that are not as promised; and a person being told he or she would receive legitimate immigration papers or legal authorizations necessary to work that are never received.
- 2.7 “involuntary servitude” includes a condition of servitude induced by means of (a) any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or (b) the abuse or threatened abuse of the legal process.
- 2.9 “severe forms of trafficking in persons” means (a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- 2.10 “sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

### **3. Prohibition**

MCC has adopted a zero tolerance policy regarding TIP. Bidders, suppliers, contractors, subcontractors, consultants, sub-consultants and any of their respective employees shall not:

- a. engage in severe forms of trafficking in persons during the period of performance of any contract funded, in whole or in part, with MCC funding;
- b. procure commercial sex acts during the period of performance of any contract funded, in whole or in part, with MCC funding; or
- b. use forced labor in the performance of any contract funded, in whole or in part with MCC funding.

### **4. Requirements**

- a. Each bidder, supplier, contractor, subcontractor, consultant or sub-consultant shall:
  - i. notify its employees of (i) MCC’s zero tolerance policy with regard to TIP and the prohibited activities described in section P15.3; and (ii) the actions

that will be taken against employees for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and

- ii. take appropriate action, up to and including termination, against employees or subcontractors or sub-consultants that violate the prohibitions set out in section P15.3.
- b. Each bidder (whether to be a supplier or contractor) or consultant, as part of its bid or proposal, shall:
- i. certify that it is not engaged in, facilitating, or allowing any of the prohibited activities described in section P 15.3 for the duration of the contract;
  - ii. provide assurances that the prohibited activities described in section P 15.3 will not be tolerated on the part of employees or subcontractors, or sub-consultants (as the case may be), or their respective employees; and
  - iii. acknowledge that engaging in such activities is cause for suspension or termination of employment or of the contract.
- c. Each contractor shall prepare and implement a TIP risk management plan in form and substance satisfactory to the MCA Entity (and, at its discretion, MCC). The risk management plan will include:
- i. a plan to raise the level of awareness of employees and subcontractors on the issue including providing information on the risk areas and the penalties for involvement in any of the prohibited activities described in section P 15.3; and
  - ii. a requirement and system to report suspicions or known incidents of any of the prohibited activities described in section P 15.3 to the MCA Entity and responsible government authorities, and to refer potential victims to appropriate agencies.
- d. The TIP risk management plan may be presented as a stand-alone document, or, to benefit from existing synergies and processes, it may be integrated into a Health & Safety Plan to be developed by the contractor following contract award and approved by the MCA Entity, and should be incorporated into any relevant training programs.

## **5. Notification**

A bidder, supplier, contractor, subcontractor, consultant or sub-consultant shall inform the MCA Entity immediately of:

- a. any information it receives from any source (including law enforcement) that alleges its employee, subcontractor, sub-consultant, or the employee of a subcontractor or sub-consultant, has engaged in conduct that violates this policy; and
- b. any actions taken against any employee, subcontractor, sub-consultant, or the employee of a subcontractor or sub-consultant, pursuant to these requirements.

## **6. Remedies**

In addition to other remedies available to the MCA Entity or MCC, a bidder's, supplier's, contractor's, subcontractor's, consultant's, or sub-consultant's failure to comply with the requirements of this Part 15 may result in:

- a. requiring the supplier, contractor, subcontractor, consultant or sub-consultant to remove the involved employee or employees from the performance of the contract;
- b. requiring the supplier, contractor, subcontractor, consultant or sub-consultant to terminate a subcontract;
- c. suspension of contract payments;
- d. loss of incentive payment, consistent with the incentive plan set out in the contract, if any, for the performance period in which the MCA Entity or MCC determined non-compliance;
- e. termination of the contract for default or cause, in accordance with the termination clause of the contract; and
- f. suspension or debarment of the bidder, supplier, contractor, subcontractor, consultant or sub-consultant from any contract funded, in whole or in part, with MCC funding.

## **7. Subcontracts**

The supplier, contractor, subcontractor, consultant or sub-consultant shall include the substance of all of the provisions of this Part 15, including this section P15.7, in all subcontracts.

## **8. Mitigating Factor**

The MCA Entity and MCC may consider whether the bidder, supplier, contractor, subcontractor, consultant or sub-consultant had a TIP awareness program at the time of any violation as a mitigating factor when determining remedies.