

BID CHALLENGE SYSTEM RULES

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BID CHALLENGE

Whereas, on October 25, 2010, the United States of America, acting through the Millennium Challenge Corporation (“MCC”), and the Hashemite Kingdom of Jordan (the “Government”) signed a Millennium Challenge Compact (the “Compact”) and a Program Implementation Agreement (the “PIA”) that set forth the general terms and conditions on which MCC will provide funding of up to \$272,980,000 to the Government for a program to reduce poverty through economic growth in Jordan (the “Program”) and describes terms and conditions for procurements of goods, services and works made in furtherance of the Compact using MCC Funding;

Whereas, the Government has designated the Millennium Challenge Account – Jordan (“MCA-Jordan”) to implement the Program pursuant to Government Resolution no. 1220 of April 25, 2010;

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

Now, therefore, in consideration of the promises and covenants contained in the Compact, the PIA and Supplemental Agreements, MCA-Jordan has established the rules set forth in this Bid Challenge System (the “Rules”) and agrees that challenges in relation to the bidding shall be referred to the Bid Challenge System (the “BCS”) in accordance with these Rules, and these Rules shall be incorporated in all bidding documents lodged by suppliers, providers and contractors (the “Bidders”, and each individually, a “Bidder”).

The principles upon which these Rules are based are:

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

SECTION 1 - INTRODUCTORY RULES

Article 1. Scope of application

- 1.1. These Rules shall govern the BCS, except that where any of these Rules are in conflict with provisions of the Compact, PIA or the MCC Program Procurement Guidelines, provisions of the latter shall prevail.
- 1.2. The bidding documents shall state that every Bidder bidding for the provision of services

and/or the supply of goods or execution of works agrees to be bound by these Rules and they further accept at the commencement of bidding that no legal challenge of any kind may be instituted in any court in any jurisdiction with respect to any matter, claim or thing arising out of the bidding and procurement processes until and unless a protest and a Bid Challenge have been completed in accordance with these Rules.

- 1.3. MCA-Jordan may, with the prior written approval of MCC, modify these Rules in writing from time to time. For the avoidance of doubt, the Rules included in standard bidding documents obtained by suppliers, providers and contractors shall govern with respect to those suppliers, providers and contractors, even if MCA-Jordan subsequently modifies the Rules in accordance with this Article 1.3.

Article 2. Notice, calculation periods of time

- 2.1. For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received if it is delivered to the addressee at the address set forth in Article 2.3. Notice shall be deemed to have been received on the day it is so delivered.
- 2.2. For the purposes of calculating a period of time under these Rules, such period shall begin on the first Working Day (as defined herein) following the day when a notice, notification, communication or proposal is received. If not otherwise specified in these Rules, all references to “days” shall mean Working Days. “Working Day” means any day in Jordan that is not a public holiday or a weekend.
- 2.3. Notices and all other documents required to be delivered to MCA-Jordan, to the Challenge Review Committee and to the Bid Challenge Tribunal under these Rules shall be sent to the following address:

Millennium Challenge Account - Jordan
Chief Executive Officer
No. 86 Uqba Ben Nafee Street, Jabal Amman - Amman, Jordan
Telephone: (962)-6-5936339
Telephone/Fax: (962)-6-5936332
Email: info@mca-jordan.gov.jo

Article 3. Protests

- 3.1. Challenge Review Committee
 - (a) For the purposes of these Rules, MCA-Jordan shall establish a permanent specialized challenge review committee (the “Challenge Review Committee”), consisting of three (3) members and entrusted with the review and decision-making on the protest submitted by bidders.
 - (b) The Challenge Review Committee shall consist of the following three members –

MCA-Jordan Chief Executive Officer (who shall serve as the Chairman of the Challenge Review Committee), MCA-Jordan Legal Advisor and MCA-Jordan Procurement Director.

- (c) The decisions of the Challenge Review Committee shall be adopted by all members.

3.2. Filing a Protest

- (a) Subject to paragraphs (b), (c), (d) and (e) of this Article 3.2, any Bidder may file a written protest (which may be in electronic form) with MCA-Jordan at the following times:
 - i) within five (5) working days of the date of (a) issuance or modification of a request for proposals/bids or (b) a decision to extend the time for submission of proposals/bids;
 - ii) in the event that the procurement process requires prequalification prior to the request for proposals/bids, within five (5) working days of the date that the results of the prequalification are notified to bidders;
 - iii) in the event that the procurement process requires a technical evaluation prior to the opening of financial proposals, within five (5) working days of the date that the results of the technical evaluation are notified to bidders; and
 - iv) within five (5) working days of the date that the proposed award is notified to bidders.
 - v) Solely to the extent that a protest is based on facts or information that was not available to a Bidder at the times set forth above, the Bidder may also file a protest within five (5) working days of the date that the Bidder knows or should reasonably be expected to know (whichever is earlier) of the fact that gives rise to the protest. Untimely protests shall be dismissed.
- (b) Any written protest submitted by a Bidder shall:
 - i) identify the procurement action out of which the protest arises;
 - ii) describe the nature of the protest and the facts supporting such protest, including the clause of the MCC Program Procurement Guidelines and/or clause of the bidding documents which were allegedly violated, and the timeliness of the protest;
 - iii) indicate the justification for its relief and compensation form requested;
 - iv) provide justification for the protest; and
 - v) include the name, address, telephone and facsimile numbers, as well as the email address of the Bidder.
- (c) The following shall not be subject to the filing of a protest provided for in Article 3.2(a):

- i) the selection of a method of procurement (QCBS, QBS, etc.) or the type of procurement (goods, works, non-consultant services, consultant services); or
 - ii) a decision by MCA-Jordan to reject all bids, proposals, offers or quotations.
- (d) Under no circumstance shall any protest be submitted by a potential subcontractor or subconsultant.
- (e) All protests should be sent to MCA-Jordan at the address set forth in Article 2.3. Within one (1) Working Day, the Chairman of the Challenge Review Committee will forward any protest s/he receives to each member of the Challenge Review Committee.
- (f) The Challenge Review Committee shall reject a protest:
 - i) that is filed after signing of the contract;
 - ii) that is filed after the five (5) Working Day period set forth in paragraph 3.2(a) above; or
 - iii) that does not meet the requirements set forth in Article 3.2(b)(i)-(iv) above.

After the Challenge Review Committee receives a protest that complies with the requirements of Article 3.2(a) and is not rejected pursuant to Article 3.2(f), the Challenge Review Committee shall instruct the Procurement Agent to suspend the disputed procurement proceeding and communicate the suspension of the process to other Bidders until the Challenge Review Committee has issued a decision on the protest in accordance with these Rules, unless the Challenge Review Committee believes:

- i) the protest is unjustified; or
- ii) MCA-Jordan or other Bidders may sustain disproportionately greater damage in relation to that which threatens the Bidder filing the protest.

3.3. Challenge Review Committee Decision

- (a) The Challenge Review Committee shall issue a written decision on any protest filed in accordance with Article 3.2 within five (5) Working Days from receipt of such protest, which period may be extended for an additional five (5) Working Days on written notice from the Challenge Review Committee to the Bidder who filed the protest. The Challenge Review Committee shall deliver copies of the written decision to the Procurement Agent and the Bidder who filed the protest within one (1) Working Day of rendering a written decision.
- (b) In reaching its decision, the Challenge Review Committee may, in its discretion, seek assistance from experts in the field. When such additional experts are consulted, the Challenge Review Committee shall use its best efforts to appoint experts who are best qualified and shall ensure such experts do not have any direct or perceived interest in the outcome of the protest and shall not have been involved in the procurement process at issue.

- (c) The Challenge Review Committee will determine:
 - i) whether the Bidder, submitting the protest, has an interest in the procurement concerned;
 - ii) whether the information provided discloses a reasonable indication that the procurement has not been carried out in accordance with the MCC Program Procurement Guidelines; and
 - iii) whether the Bidder has filed sufficient information to support its protest. The Challenge Review Committee at any time following receipt of the protest may request additional information relating to the relevant procurement, indicating the time in which the Bidder shall provide such information.
- (d) The Challenge Review Committee may decide to dismiss the protest or uphold the protest in whole or in part and indicate corrective measures.
- (e) Any decision issued by the Challenge Review Committee shall state the reasons for the decision and, if the Challenge Review Committee upholds the protest in whole or in part, which steps in the procurement process shall be redone.
- (f) The Challenge Review Committee shall send a copy of the decision to each of the MCA-Jordan Board of Directors and MCC for their respective records.

Article 4. Appeal; Notice of Bid Challenge

- 4.1. A Bidder may initiate recourse to the bid challenge tribunal (the “Bid Challenge Tribunal”) as set in Article 6 and in accordance with Articles 4.2 and 4.3 only if it has first fully complied with the protest procedures set forth in Article 3.
- 4.2. Within five (5) Working Days from the date on which the Challenge Review Committee issues a decision on a protest pursuant to Article 3.3 or rejects a Bidder’s protest pursuant to Article 3.2(f), the Bidder (the “Claimant”) may appeal the decision by submitting a notice of bid challenge (the “Notice of Bid Challenge”) to MCA-Jordan at the address mentioned in Article 2.3.
- 4.3. If the Challenge Review Committee fails to issue a decision within five (5) Working Days from receipt of the protest as required by Article 3.2 (or ten (10) Working Days, if the Challenge Review Committee exercises its right to extend the decision period in accordance with Section 3.3(a)), then the Claimant may, within five (5) Working Days from the date on which such decision was to be made, submit a Notice of Bid Challenge to MCA-Jordan at the address mentioned in Article 2.3.
- 4.4. The Notice of Bid Challenge shall include the following:
 - (a) A request that the challenge be referred to the Bid Challenge Tribunal;
 - (b) The name, telephone, email and address of the Claimant;

- (c) A reference to the bid challenge decision;
- (d) The general nature and detailed statement of the facts supporting the claim and an indication of the amount involved, if any;
- (e) The relief or remedy sought;
- (f) The name and address of the Claimant representatives, if different from (b);
- (g) All documents or reference to the documents or other evidence the Claimant deems relevant.

If the Notice of Bid Challenge does not include one or more of the abovementioned items, the case shall be dismissed by MCA-Jordan.

Article 5. Representation and assistance

The Claimant and/or MCA-Jordan (each a “Party” and together the “Parties”) may be represented or assisted by persons of their choice. The names and addresses of such persons must be communicated in writing to the other party; such communication must specify whether the appointment is being made for purposes of representation or assistance.

SECTION 2 - COMPOSITION OF THE BID CHALLENGE TRIBUNAL

Article 6. Bid Challenge Panel Members

Within forty-five (45) Working Days of MCC’s approval of these Rules, MCA-Jordan shall establish a list of competent and qualified persons, appointed by MCA-Jordan (each a “Bid Challenge Panel Member” and together the “Bid Challenge Panel Members”). The Bid Challenge Panel Members shall be independent and impartial, and have no interest (through financial, family, business or beneficial ownership or otherwise, directly or indirectly) in the outcome of the procurement, nor be involved in or connected with the procurement process. The list of full names, addresses, occupations, nationalities and qualifications of all Bid Challenge Panel Members, shall be posted on the MCA-Jordan website.

Article 7. Appointment of Bid Challenge Tribunal Members

- 7.1. The Bid Challenge Tribunal shall consist of three members (each a “Bid Challenge Tribunal Member” and together the “Bid Challenge Tribunal Members”), appointed from the list of Bid Challenge Panel Members established pursuant to Article 6 to hear a particular Bid Challenge.
- 7.2. Within five (5) Working Days from the date of the Notice of Bid Challenge each party shall appoint one (1) Bid Challenge Tribunal Member from the list of Bid Challenge Panel Members established pursuant to Article 6. The first Bid Challenge Tribunal Member shall be appointed by the Claimant and the second shall be appointed by MCA-Jordan. In case a Bid Challenge Tribunal Member is challenged or replaced in accordance with Articles 8 through 12 of these Rules, either Party shall appoint a new member.

- 7.3. The two Bid Challenge Tribunal Members thus appointed shall appoint, within three (3) Working Days, a third person from the list of Bid Challenge Panel Members to be the presiding member of the Bid Challenge Tribunal, called the Chairman of the Bid Challenge Tribunal.
- 7.4. If within three (3) Working Days after the receipt of a Party's notification of the appointment of a Bid Challenge Tribunal Member by the other Party, the other Party has not notified the first party of the Bid Challenge Tribunal Member it has appointed, then the Bid Challenge Tribunal Member may appoint a second Bid Challenge Tribunal Member.

Article (8 to 12) - Challenges to Bid Challenge Tribunal Members

Article 8.

A prospective Bid Challenge Tribunal Member shall immediately disclose to the Party who approaches him in connection with his possible appointment any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. A Bid Challenge Tribunal Member, once appointed or chosen, shall disclose such circumstances to the Parties unless they have already been informed by him of these circumstances.

Article 9.

- 9.1. The proposing of any Bid Challenge Tribunal Member may be challenged by a Party if circumstances exist that give rise to justifiable doubts as to his/her impartiality or independence.
- 9.2. A Party may challenge the proposing of any Bid Challenge Tribunal Member only for reasons of which he becomes aware after the appointment has been made.

Article 10.

- 10.1. A Party who intends to challenge the proposing of any Bid Challenge Tribunal Member shall send notice of its challenge within three (3) Working Days after the later of (i) the proposing of the challenged Bid Challenge Tribunal Member or (ii) the challenging Party becomes aware of circumstances that give rise to justifiable doubts as to his/her impartiality or independence.
- 10.2. The challenging Party shall give notice of the challenge to the other Party, to the Bid Challenge Tribunal Member who is challenged and to the other Bid Challenge Tribunal Members. The notification shall be in writing and shall state the reasons for the challenge.
- 10.3. When the proposing of any Bid Challenge Tribunal Member has been challenged by one Party, the other Party may agree to the challenge, and the procedure provided in Article 7 shall be used in full for the appointment of the substitute Bid Challenge Tribunal Member, even if during the process of proposing the challenged Bid Challenge Tribunal Member, the other Party had failed to exercise its right to appoint or to participate in the appointment.

Article 11.

If the other Party does not agree to the challenge of the proposed Bid Challenge Tribunal Member and the challenged Bid Challenge Tribunal Member does not withdraw from the Bid Challenge Tribunal within three (3) Working Days after delivery of a notice pursuant to Article 10.2, the decision on the challenge will be made by the Chairman (Preceding Member). If the Chairman decides the challenged Bid Challenge Tribunal Member should not participate in the Bid Challenge Tribunal, then the Chairman shall appoint a substitute member of the Bid Challenge Tribunal from the list of Bid Challenge Panel Members.

Article 12. Replacement of a Bid Challenge Tribunal Member

- 12.1. In the event of death or resignation of a Bid Challenge Tribunal Member during the course of the Bid Challenge proceedings, a substitute Bid Challenge Tribunal Member shall be appointed or chosen pursuant to the procedure set forth in Article 7 that was applicable to the appointment or choice of the Bid Challenge Tribunal Member being replaced.
- 12.2. In the event that a Bid Challenge Tribunal Member fails to act or in the event of the de jure or de facto impossibility of him performing his functions, the procedure in respect of the challenge and replacement of a Bid Challenge Tribunal Member as provided in the preceding articles shall apply. For the avoidance of doubt, Articles 8 through 12 shall apply to any substitute Bid Challenge Tribunal Member appointed pursuant to Articles 10 or 11 or any replacement Bid Challenge Tribunal Member appointed pursuant to Article 12.

SECTION 3 - BID CHALLENGE PROCEEDINGS

Article 13. General provisions

- 13.1. Subject to these Rules, the Bid Challenge Tribunal may conduct the proceedings in such manner as it considers appropriate, provided the Parties are treated with equality and that at any stage of the proceedings each Party is given a full opportunity to present its case.
- 13.2. If either Party so requests in its Notice of Bid Challenge or Statement of Defense, the Bid Challenge Tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the Bid Challenge Tribunal shall decide, within three (3) Working Days after MCA-Jordan files its Statement of Defense, whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.
- 13.3. All documents or information supplied to the Bid Challenge Tribunal by a Party shall at the same time be communicated by such Party to the other Party.

Article 14. Place of bid challenge procedure

- 14.1. The Bid Challenge Tribunal shall sit in Amman, Jordan.

- 14.2. The Bid Challenge Tribunal may meet at any place it deems appropriate for the inspection of goods, other property or documents. The Parties shall be given at least two (2) Working Days notice.

Article 15. Language

The language to be used in the proceedings shall be English. If translation is required, the translator will be arranged and be paid for by requesting Party. This determination shall apply to the Notice of Bid Challenge, the Statement of Defense, any further written statements and, if oral hearings take place, to the language to be used in such hearings.

Article 16. Statement of Defense; Counterclaims

- 16.1. Within five (5) Working Days after the MCA-Jordan receives the Notice of Bid Challenge from the Claimant, MCA-Jordan shall communicate its Statement of Defense in writing to the Bid Challenge Tribunal.
- 16.2. The Statement of Defense shall reply to all the points raised in the Notice of Bid Challenge and shall also state whether MCA-Jordan is requesting any hearings pursuant to Article 19. MCA-Jordan may annex to its Statement of Defense the documents on which it relies for its defense or may add a reference to the documents or other evidence it will submit within two (2) Working Days of submitting the Statement of Defense.
- 16.3. In its Statement of Defense, or at a later stage in the Bid Challenge proceedings if the Bid Challenge Tribunal decides that the Notice of Bid Challenge was justified under the circumstances, MCA-Jordan may make a counter-claim arising out of the same issue or rely on a claim arising out of the same issue for the purpose of a set-off. Such counter-claims shall be submitted to the Claimant and to the Bid Challenge Tribunal. The Claimant shall reply to such counter-claims within five (5) Working Days of receipt of the counter-claim.

Article 17. Further written statements

The Bid Challenge Tribunal shall decide if any further written statements, in addition to the Notice of Bid Challenge, Statement of Defense, any counter-claims and any replies to counterclaims shall be required from the Parties and shall fix the periods of time for communicating such statements, such periods not to exceed three (3) Working Days.

The Bid Challenge Tribunal at any time following receipt of a Notice of Bid Challenge may request, in writing, additional information relating to the relevant procurement, and must include the time in which the Claimant or MCA-Jordan shall provide such information. Each Party must furnish the information requested by the Bid Challenge Tribunal, provided that the Claimant may refuse to disclose certain information if it would be contrary to the public interest; would prejudice the legitimate commercial interests or fair competition between Bidders; or would be in breach of a legal professional privilege or a confidentiality agreement to which the Claimant is a party. Any refusal to disclose information is to be accompanied by reasons in writing. In case the Claimant does not provide such requested information, the Bid Challenge Tribunal shall continue with the review

process without the information. However, if the Bid Challenge Tribunal believes that the review cannot be continued without this information, it may decide to terminate the review proceedings, and declare the complaint invalid.

If any confidential information of the Claimant is disclosed by the Claimant to the Bid Challenge Tribunal at the Bid Challenge Tribunal's request, the Claimant may request that such information only be made available to members of the Bid Challenge Tribunal. 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 Bid Challenge Tribunal 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.

Articles (18 and 19) - Evidence and hearings

Article 18.

- 18.1. Each Party shall have the burden of proving the facts relied on to support its claim or defense.
- 18.2. The Bid Challenge Tribunal may, at any time, if it considers it appropriate, require a party to deliver to the Bid Challenge Tribunal and to the other Party, within the time limit as determined appropriate by the Bid Challenge Tribunal, a summary of the documents and other evidence, which that Party intends to present in support of the facts in issue set out in its Notice of Bid Challenge or Statement of Defense.

Article 19.

- 19.1. In the event of an oral hearing pursuant to Article 13.2, the Bid Challenge Tribunal shall give the Parties at least five (5) Working Days advance notice of the date, time and place thereof.
- 19.2. If, in accordance with Article 13.2 witnesses are to be heard, then at least three (3) Working Days before the hearing each Party shall communicate to the Bid Challenge Tribunal and to the other Party the names and addresses of the witnesses it intends to present, the subject matter and the languages in which such witnesses will give their testimony.
- 19.3. The Party who intends to present a witness in accordance with Article 13.2 shall make arrangements for the translation of such witness's oral statements made at a hearing and for a record of the hearing if either is deemed necessary by the Bid Challenge Tribunal under the circumstances of the case, or if the Parties have agreed thereto and have communicated such agreement to the Bid Challenge Tribunal at least three (3) Working Days before the hearing. Any translations and records required to be delivered pursuant to this Article 19.3 shall be delivered within two (2) Working Days from the date of the hearing.
- 19.4. Evidence of witnesses may also be presented in the form of written statements signed by them.

19.5. The Bid Challenge Tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

Article 20. Experts

20.1. The Bid Challenge Tribunal may appoint one or more experts to report to it, in writing, on specific issues to be determined by the Bid Challenge Tribunal. A copy of the expert's terms of reference and qualifications, established by the Bid Challenge Tribunal, shall be communicated to the parties.

20.2. The Parties shall give the expert any relevant information or produce for inspection any relevant documents or goods that the expert may require of them. Any dispute between a Party and such expert as to the relevance of the required information or production shall be referred to the Bid Challenge Tribunal, and the Bid Challenge Tribunal shall make a decision within three (3) Working Days of such referral.

20.3. Upon receipt of the expert's report, the Bid Challenge Tribunal shall communicate a copy of the report to the Parties who shall be given the opportunity to express, in writing, their opinion of the report within three (3) Working Days of their receipt of such report. A Party shall be entitled to examine any document on which the expert has relied in his report.

20.4. At the request of either Party, the expert after delivery of the report, may be heard at a hearing where the Parties have the opportunity to be present and address questions to the expert. At this hearing either Party may present expert witnesses in order to testify on the points at issue. The provisions of Article 19 shall be applicable to such proceedings.

Article 21. Default

21.0 If the Claimant failed to communicate its Notice of Bid Challenge in accordance with Article 4.5 within five (5) Working Days without showing sufficient cause for such failure, the Bid Challenge Tribunal shall order termination of the proceedings.

21.1 If one of the Parties, duly notified under these Rules, fails to appear at a hearing without showing sufficient cause for such failure, the Bid Challenge Tribunal may proceed with the Bid Challenge proceedings.

21.2 If one of the Parties, duly invited to produce documentary evidence, fails to do so within the required period of time without showing sufficient cause for such failure, the Bid Challenge Tribunal may render the award on the evidence before it.

Article 22. Closure of hearings

The Bid Challenge Tribunal may inquire of the Parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it shall promptly, and in any event no more than three (3) Working Days after the hearings started, declare the hearings closed.

Article 23.

A Party who knows that any provision of, or requirement under, these Rules has not been complied with and yet proceeds with the Bid Challenge procedures without promptly stating its objection to such non-compliance, shall be deemed to have waived its right to object.

Article 24.

The Bid Challenge Tribunal records shall be maintained with the Procurement Agent for the duration of the Compact. These would include a record of the proceedings and all materials provided to the Bid Challenge Tribunal (the "Records"). Following the issuance of a Decision pursuant to Article 26, the Parties may request a copy of the Records.

SECTION 4 - THE DECISION

Article 25. Decisions

- 25.1. The Bid Challenge Tribunal shall issue a decision not more than twenty-five (25) Working Days after the Claimant has submitted its Notice of Bid Challenge, unless delayed for justified reasons and the Bid Challenge Tribunal requests an extension of time onto which period may be extended for an additional five (5) Working Days on written notice from the Bid Challenge Tribunal to both Parties.
- 25.2. Any decision of the Bid Challenge Tribunal shall be made by a majority of the members of the Bid Challenge Tribunal.
- 25.3. In the case of questions of procedure when there is no majority, the decision shall be made by the Chairman of the Bid Challenge Tribunal.

Article 26. Form and Effect of the Decision

- 26.1. All decisions by the Bid Challenge Tribunal shall be made in writing, shall state the reasons upon which the decision is based, shall be signed by all Bid Challenge Tribunal Members, shall contain the date on which and the place where the decision was made and shall be final and binding on the Parties (a "Decision"). The Parties shall undertake to carry out the Decision without delay.
- 26.2. The decision of the Bid Challenge Tribunal shall be in English.
- 26.3. The Bid Challenge Tribunal shall deliver copies of the Decision to MCA-Jordan and the Claimant within 24 hours of rendering a Decision.
- 26.4. Either Party may enforce a Decision in any court with jurisdiction.

26.5 All records of the Bid Challenge shall be provided to each of the MCA-Jordan Board of Directors and to MCC.

26.6 The Claimant shall have no right to complain or appeal to MCC.

Article 27. Applicable Principles

In its deliberations, the Bid Challenge Tribunal shall apply the procurement principles set out in the Compact and the MCC Program Procurement Guidelines, as set out in the PIA. Training materials will be provided to the Bid Challenge Tribunal before the start of the proceedings.

Article 28. Remedies

In its decision, the Bid Challenge Tribunal shall determine whether or not the procurement was conducted in accordance with the bidding documents and the MCC Program Procurement Guidelines and may order one or more of the following remedies:

- (a) correction of any breach of the MCC Program Procurement Guidelines;
- (b) order compensation for any loss or damage suffered by a successful Claimant, such amount not to exceed the costs reasonably 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 (or, proposal, offer or quotation) of the Claimant; or
- (c) cancellation of a procurement in whole or in part that is under challenge.

Article 29.

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

Article 30. Correction

30.1. Within five (5) Working Days after the Bid Challenge Tribunal issues a Decision, either Party, with notice to the other Party, may request that the Bid Challenge Tribunal correct any errors in computation, any clerical or typographical errors, or any errors of similar nature in the Decision. The Bid Challenge Tribunal may within three (3) Working Days after the communication of the Decision make such corrections on its own initiative.

30.2. Such corrections shall be in writing, and the provisions of Article 26 shall apply.

Article (31 to 32) – Costs

Article 31.

The Bid Challenge Tribunal shall fix the costs beforehand of the Bid Challenge procedure in its award decision. The term “costs” includes only:

- (a) The fees, travel, per diem, translation services, administrative costs, and other expenses of the Bid Challenge Tribunal calculated in accordance with the agreements that each Panel member has entered into with the respective Party;
- (b) The reasonable costs of expert advice and of other assistance required by the Bid Challenge Tribunal;
- (c) The travel and other expenses of witnesses to the extent such expenses are approved by the Bid Challenge Tribunal;
- (d) The costs for legal representation and assistance of the successful Party if such costs were claimed during the Bid Challenge proceedings, and only to the extent that the Bid Challenge Tribunal determines that the amount of such costs is reasonable.

Article 32.

- 32.1. The costs of Bid Challenge proceedings including costs of legal representation shall be borne by the unsuccessful Party.
- 32.2. When the Bid Challenge Tribunal issues an order for the termination of the Bid Challenge proceedings or makes a Decision on agreed terms, it shall fix the costs of proceedings referred to in Article 31, in the text of that Decision.
- 32.3 The Decision of the Bid Challenge Tribunal shall be implemented by MCA- Jordan within 30 days.

SECTION 5 - GENERAL PROVISIONS

Article 33. Governing Law

These Rules, and any disputes arising under these Rules, shall be governed by and construed in accordance with the laws of the Hashemite Kingdom of Jordan.