



## Procurement ID: CB No: MCA-M/CF/WRA/W/02

### Bidding Document for the Construction of the Conveyance System and CHPP-3 and CHPP-4's Modification and SCADA

#### ANSWERS TO CLARIFICATION QUESTIONS – ISSUE No. 2 (Questions 3-6)

January 31, 2023

Questions and Answers 1 and 2 issued to all registered Bidders on January 26, 2023	
<b>Question 3:</b>	<p>According to the ITB 5.7 Conflict of Interest: “..... <i>All Bidders found to have a conflict of interest shall be disqualified, unless the conflict of interest has been mitigated and the mitigation is approved by MCC.</i>”</p> <p>Is it correct to understand that if the Bidder is under the impression that a conflict of interest may arise or has risen, the Bidder can contend against it? If so, how would the Bidder be able to contend against this? What are the grounds required to mitigate such grounds? Also, what will the Bidder be required to provide?</p>
<b>Answer 3:</b>	<p>The principles, rules, and procedures set out in the MCC Program Procurement Guidelines (PPG) govern the conduct and administration by MCA-Mongolia of the procurement of goods, works, consulting, and non-consulting services that need to be acquired in order to implement the Projects funded by MCC.</p> <p>P1.A.1.9 (b) states (MCA-Mongolia has bolded the relevant portion): “<i>As stated in A.1.6.(b), a firm or individual that has been engaged to provide consulting services for the preparation or implementation of a Project (including the firm’s personnel, subcontractors, and affiliates), shall be disqualified from subsequently providing goods, works, or non-consulting services resulting from or directly related to the firm’s consulting services for such preparation or implementation. This provision does not apply to the various firms (consultants, contractors, or suppliers), which together, are performing the contractor’s obligations under a turnkey or design and build contract. See paragraph P1.A.2.5 for discussion of the use of turnkey or design and build contracts.</i>”</p> <p>In addition, the Bidders shall carefully review the cases of the potential conflict of interest listed under the ITB 5.7 “Conflict of interest” of the Section I “Instructions to Bidders” of the Bidding Documents.</p> <p>Furthermore, Section I of the Bidding Document “Instructions to Bidders” states in ITB 5.8 “Conflict of interest” that (MCA-Mongolia has bolded the relevant portion):</p> <p>“<i>A Bidder or a Contractor that has been engaged by the MCA Entity to provide goods, works or non-consulting services for a project, and any of its affiliates, shall be disqualified from providing consulting services related to those goods, works or services.</i>”</p>

	<p><b><i>Conversely, a Bidder hired to provide consulting services for the preparation or implementation of a project, and any of its affiliates, shall be disqualified from subsequently providing goods, works or non-consulting services resulting from or directly related to such consulting services for such preparation or implementation.”</i></b></p> <p>Ultimately, the determination of whether or not an entity has a conflict of interest shall be made by MCA-Mongolia, relying on information provided by the Bidder in its bid and additional research done by the MCA-Mongolia, its consultants and MCC.</p>
<b>Question 4:</b>	<p>According to the same ITB 5.7: “<i>The Bidder and Contractor will be disqualified or terminated, if they have been considered to have a conflict of interest if they: (a) have at least one controlling partner in common with one or more other parties in the process contemplated by this Bidding Document;</i>”</p> <p>The Bidder understands as stated in this section, the “<i>controlling partner in common with one or more other parties</i>” means that subsidiaries of the same group company entered into this bid, will disqualify the Bidder from the Bidding process. Please clarify if this is correct. If so, as stated above, can the Bidder contend to this?</p>
<b>Answer 4:</b>	<p>While your understanding is correct, your question replaces “<i>may</i>” with “<i>will</i>” As is clearly stated under the ITB 5.7 (a) “Conflict of interest” of the Section I “Instructions to Bidders” of the Bidding Documents: A Bidder may be disqualified if it has at least one controlling partner in common with one or more other parties in the process contemplated by this Bidding Document.</p> <p>Again, Ultimately, the determination of whether or not an entity has a conflict of interest shall be made by MCA-Mongolia, relying on information provided by the Bidder in its bid and additional research done by the MCA-Mongolia, its consultants and MCC.</p>
<b>Question 5:</b>	<p>According to the same ITB 5.7: “<i>The Bidder and Contractor will be disqualified or terminated, if they have been considered to have a conflict of interest if they: (d) participate in more than one Bid in this process; participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which the party is involved; however, this provision does not limit the inclusion of the same subcontractor in more than one Bid; this provision does not limit the inclusion of the same subcontractor in more than one Bid</i>”</p> <p>It is interpreted that the Bidder cannot participate in any other bids that are related or not to the MCC. How would entering into a different bid process will affect the Bidder's eligibility, if it does so? Or does this section only mean in the event the Bidder enters at the same time into two bids announced by MCC?</p>
<b>Answer 5:</b>	<p>The requirement of the ITB 5.7 (d) “Conflict of interest” of the Section I “Instructions to Bidders” of the Bidding Documents relates to the specific bidding process for procurement of Construction works of the Conveyance System and CHPP-3 and CHPP-4's Modification and SCADA. The bidder can participate only in one bid for the subject procurement.</p> <p>Please note that the “Bidder” means any eligible entity or person, including any associate of such eligible entity or person that <b>submits a Bid</b>.</p>
<b>Question 6:</b>	<p>According to ITB 5.13 Evidence of Continued Eligibility: “<i>Bidders and the Contractor shall provide such evidence of their continued eligibility in a manner satisfactory to the Employer, as the Employer shall reasonably request.</i>”</p>

	The Bidder would like a clarification on this section. In the case of a conflict of interest, what is the required evidence?
<b>Answer 6:</b>	<p>The Eligibility of the Bidders will be determined according to the eligibility requirements of the Qualification Table of the Section III – Qualification and Evaluation Criteria.</p> <p>The bidders are required to submit the documents/evidence by the “Letter of Bid” and the Forms ELI-1, ELI-2 (with attachments) and ELI-3 to meet the following eligibility requirements:</p> <ul style="list-style-type: none"> <li>- Eligibility based on any of the criteria set forth in ITB 5 (5.1-5.14). This includes, but is not limited to:</li> <li>- Nationality in accordance with ITB 5.3.</li> <li>- No conflicts of interests as described in ITB 5.7</li> <li>- Compliance with conditions of ITB 5.5.</li> </ul>