



MINUTES OF THE PRE-PROPOSAL CONFERENCE

PROCUREMENT OF CONSULTING SERVICES

MCA-Mongolia External Legal Counsel

Quality and Cost Based Selection (QCBS)

Ref No: MCA-M/CF/AD/CS/01

Date: May 25, 2022

Time: 10:00 -11:00 a.m.

I. INTRODUCTION

The Pre-Proposal Conference for Procurement of Consulting Services for “**MCA-Mongolia External Legal Counsel**” was organized by the Millennium Challenge Account-Mongolia (“MCA-Mongolia”), an accountable entity established to oversee the implementation of the Compact and was held in accordance with the Letter of Invitation of the Request for Proposals.

The entire Pre-Proposal Conference was conducted as an online event using Zoom software.

II. AGENDA

1. Opening Remarks

- **Welcome Message and an Overview of the Mongolia Water Compact**
Otgonbayar Byambanorov, Acting General Counsel, MCA-Mongolia

2. Presentations

- **Consultant Services of MCA-Mongolia External Legal Counsel**
Otgonbayar Byambanorov, Acting General Counsel, MCA-Mongolia
- **Important Aspects of the Procurement Process**
Giorgi Tvalavadze, Procurement Agent Manager, Procurement Agent of MCA-Mongolia
- **Tax Exemption and MCC’s AFC Policy**
Otgonbayar Byambanorov, Acting General Counsel, MCA-Mongolia
- **Payment and Audit**
Luis Baires, Fiscal Agent Manager, Fiscal Agent of MCA-Mongolia

3. Q&A Session

III. PARTICIPANTS

Panelists Representing MCA-Mongolia:

No	Name	Title
1.	Otgonbayar Byambanorov	Acting General Counsel, MCA-Mongolia
2.	Enkhtungalag Togtokh	Director, Procurement, MCA-Mongolia
3	Doljin Sumiya	Procurement Specialist, MCA-Mongolia
3.	Giorgi Tvalavadze	Procurement Agent Manager, Procurement Agent, MCA-Mongolia
4.	Keith Treviss	Senior Procurement Specialist, Procurement Agent, MCA-Mongolia
5.	Luis Baires	Fiscal Agent Manager, Fiscal Agent, MCA-Mongolia

Attendees: Four (4) individuals representing potential consultants and/or interested firms attended the Pre-Proposal Conference. The List of Participants (with the exception of details of MCC and MCA-Mongolia personnel and Consultants) is attached as **Annex 1**.

Minutes of the Pre-Proposal Conference were taken by the Procurement Agent of MCA-Mongolia.

IV. OPENING REMARKS

Mrs. Doljin Sumiya, Procurement Specialist of MCA-Mongolia opened the Pre-Proposal Conference and introduced the agenda and instructions to submit questions through the Q&A feature of Webinar to the participants.

The Senior Procurement Specialist of the Procurement Agent, Mr. Keith Treviss welcomed the attendees and emphasized that the purpose of the Pre-Proposal Conference was to provide the representatives of potential consultants and interested firms with an opportunity to clarify the issues related to the RFP documents and the entire procurement process.

Then, he passed the floor to Otgonbayar Byambanorov, Acting General Counsel, MCA-Mongolia and other panelists for the presentations.

V. PRESENTATIONS

Panelists representing the MCA-Mongolia delivered presentations in accordance with the Agenda of the Pre-Proposal Conference.

All presentations made by the panelists of MCA-Mongolia are enclosed as **Annex 2**.

VI. QUESTIONS AND ANSWERS

The participants were given sufficient time to raise the questions in the written form through the Zoom portal, however, no questions were raised either verbally or in the written form during the Pre-Proposal Conference.

VII. CLOSING

Concluding the Pre-Proposal Conference, Mrs. Enkhtungalag Togtokh, Director, Procurement, MCA-Mongolia thanked the participants for their interest in the event and noted that all participants will receive the Minutes of the Pre-Proposal Conference, including the Contact List of Participants, and all Presentations made by MCA-Mongolia's panelists.

The meeting was closed at 11:00 AM, Ulaanbaatar time.

Annexes:

Annex 1: List of Participants (1 page)

Annex 2: PowerPoint Presentations (39 pages)

MCA-Mongolia External Legal Counsel

Ref No: MCA-M/CF/AD/CS/01

Annex 1 – Minutes of the Pre-Proposal Meeting

Contact list of all participants (with the exception of details of MCC and MCA-Mongolia personnel and Consultants)

No.	Full Name	E-mail address	Company	Location
1	Narmandakh Ganbat	narmandakh@melvilledalai.com	Melville Erdenedalai LLP	Mongolia
2	Undram	undram@gmail.com	Cosanex Partners LLP	Mongolia
3	Zambaga Tulga	zambaga@cosanex.mn	Cosanex Partners LLP	Mongolia
4	Tselmeg Erdenebileg	info@legal-link.mn	Legal link CBA	Mongolia
5	Solongo Khandaa	enkhush@hotmail.com	Not determined	-



МОНГОЛЫН МЯНГАНЫ СОРИЛТЫН САН
MILLENNIUM CHALLENGE ACCOUNT - MONGOLIA



PRE-PROPOSAL CONFERENCE

Consultant Services for External Legal Counsel

MCA-M/CF/AD/CS/01

May 25, 2022



AGENDA

1. Agenda and Ground Rules
2. Consultant Services of MCA-Mongolia External Legal Counsel
Otgonbayar Byambanorov, Acting General Counsel, MCA-Mongolia
3. Important Aspects of the Procurement Process
Giorgi Tvalavadze, Procurement Agent Manager, Procurement Agent of MCA-Mongolia
4. Tax Exemption and MCC's AFC Policy
Otgonbayar Byambanorov, Acting General Counsel, MCA-Mongolia
5. Payment and Audit
Luis Baires, Fiscal Agent Manager, Fiscal Agent of MCA-Mongolia
6. Questions and Answers
7. Closing Remarks

GROUND RULES OF THE WEBINAR SESSION

1. Language of the Webinar: English

2. Question and Answer Session:

How to submit questions: The participants are requested to write down/type their questions using the **Q&A feature of the webinar session**. The questions shall be submitted only in English and all written responses of MCA-Mongolia will also be in English.

All questions may not be responded to due to time constraints.

However, all questions received during the webinar will be answered formally through the Minutes of the webinar. The Minutes shall be distributed to all attendees and posted on the MCA-Mongolia website within one week after the event. The verbal or typed responses given during the Pre-Proposal Conference will be non-binding to MCA-Mongolia.

CONSULTANT SERVICES OF MCA-MONGOLIA EXTERNAL LEGAL COUNSEL

Otgonbayar Byambanorov

Acting General Counsel, MCA-Mongolia



WATER SUPPLY PROJECT PROGRAM ACTIVITIES AND OBJECTIVES

The \$350 million Mongolia Water Compact will expand Ulaanbaatar's supply of potable water by more than 80% and enhance the long-term financial, institutional, and environmental sustainability of the water sector.

Activities

1. Downstream Wells Activity

- i. Construction of Groundwater Wells and Conveyance (CCP-1)
- ii. Construction of an Advanced Water Purification Plant (AWPP) and SCADA Controls (CP-2)

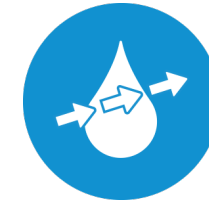
2. Wastewater Recycling Activity

- i. Design-Build for Water Recycling Plant (50,000m³/day)
- ii. Construction of CHP-3 and CHP-4 Modifications, Conveyance System
- iii. Consulting Services for Design of Conveyance System, Modifications of CHPs and Development of RAP, DEIA/ESIA including ESMP

3. Water Sector Sustainability Activity

- i. Cost Recovery Sub-Activity
- ii. Ger Area Cost Containment Sub-Activity
- iii. Utility Operations Sub-Activity
- iv. Industrial Pre-Treatment and Pollution Control Sub-Activity
- v. Public Awareness and Behavior Change Sub-Activity

Objectives



**Ulaanbaatar city's
water supply
increase**



**Supply of recycled
wastewater**



**Long-term sustainability
of Ulaanbaatar city's
water and wastewater
sectors through
adoption of cost-
recovery tariffs and
capacity building**

OBJECTIVE OF THE ASSIGNMENT

- To engage legal support services to assist the MCA-Mongolia on legal matters pertaining to the implementation of the Compact Program.
- The objective of this consultancy is to provide legal services to MCA-Mongolia's in-house legal counsel on all legal issues affecting MCA-Mongolia in the implementation of the Compact and Compact closeout.

CONTRACT TERM

- Base Period of approximately six (6) months ending March 31, 2023;
- First Option Period to cover the twelve (12) months ending March 31, 2024;
- Second Option Period to cover the twelve (12) months ending March 31, 2025;
- Third Option Period to cover the twelve (12) months ending March 31, 2026,
- Compact's close-out, 120 days to cover, the ending by July 29, 2026.

SCOPE OF WORK (1)

1. The External Legal Counsel shall assist in providing legal advice on issues affecting the operations of MCA-Mongolia, including but not limited to, contract law, fiscal law, tax law, property law, infrastructure contracts, and corporate governance and corporate records management.
2. The External Legal Counsel shall also assist MCA-Mongolia in identifying and analyzing legal issues, negotiating and drafting key documents, presenting recommendations, and assuring legal and corporate compliance.
3. The services include:
 - ✓ Assisting MCA-Mongolia in its cooperation with the relevant Governmental agencies with regard to performance of the required actions for successful implementation of the Compact.
 - ✓ Reviewing, drafting and analyzing various agreements relating to procurement, construction projects, and consulting services under the direction of General Counsel.
4. The External Legal Counsel may perform the following tasks:
 - ✓ Provide legal opinions, if necessary, to relevant Government officials and MCC on the validity and enforceability of the Compact and the related agreements;
 - ✓ Assist in the drafting of standard agreements that may be used by MCA-Mongolia during the Compact term;

SCOPE OF WORK (2)

- Assist MCA-Mongolia Board of Directors, management and staff in ensuring that MCA-Mongolia activities comply with:
 - i. the obligations of MCA-Mongolia contained in the Compact and the Program Implementation Agreement (the PIA) or otherwise delegated to MCA-Mongolia by the Government,
 - ii. all Supplemental Agreements,
 - iii. all applicable Mongolian laws and regulations;
- Provide advice on legal issues relating to the implementation, interpretation, and compliance of the Compact, the PIA and Supplemental Agreements;
- Identify and advise MCA-Mongolia on the resolution of legal issues related to the formation of government entities, business entities, funds and other legal entities in Mongolia for implementation of the proposed Program;
- Perform additional due diligence required to determine and maximize the viability of the proposed program, including identifying and proposing solutions to legal impediments to the Compact's treatment as an international agreement that would supersede domestic laws under Mongolian laws;

SCOPE OF WORK (3)

- Advise the Board of Directors and the Management Unit on legal issues and address management-related legal issues as they arise;
- Provide external advice and opinions on legal issues relating to the procurement processes and procedures to be followed in compliance with the Compact, the Procurement Agent Agreement, the MCC's Program Procurement Guidelines, and any other related agreements;
- Provide legal advice on employment-related issues under the Mongolian Labor Law and Mongolian specific-employment legislation;
- Advise MCA-Mongolia on the resolution of legal issues related to the structure and implementation of the proposed program (including project-specific matters in the water sectors), issues related to the governance and management structures of the MCA-Mongolia and implementing entities, financial management, procurement, labor, and environmental matters;
- Provide technical support to the MCA-Mongolia to carry out all the legal, administrative, and technical steps required under Mongolian law;
- Provide legal advice on intellectual property rights as issues arise under the Compact;

SCOPE OF WORK (4)

- Advise or represent the MCA-Mongolia in any potential dispute resolution proceeding, including informal or formal proceedings, arbitration, dispute adjudication boards, or in the courts of Mongolia;
- Assist with the wind-up of MCA-Mongolia and the termination of relevant project documents during the Compact closeout period;
- Cooperate with and advise Government representatives regarding the Government's responsibilities under the Compact, the PIA, and any other Supplemental Agreements on behalf of MCA-Mongolia;
- Advise on property rights under Mongolian law, including land acquisition, conveyancing and related matters;
- Provide advice and counsel on tax issues under Mongolian law.

REPORTING REQUIREMENTS

- The External Legal Counsel will be reporting to the General Counsel of MCA-Mongolia.
- The reporting languages will be English with the Mongolian translation.
- For the duration of the Contract, the External Legal Counsel will be required to submit a proposed estimate of hours/amounts prior to each task to the Coordinator.
- MCA-Mongolia will then request Legal Counsel to provide the services through individual task orders.
- The authorized ceiling of the Level of Efforts (LoE) will be stated in the individual task order agreed by the parties for each task order.
- The External Legal Counsel shall provide services only after signing an individual task order.
- The External Legal Counsel will be required to submit the Report for each completed task.
- Submittals will require written approvals from MCA-Mongolia.

IMPORTANT ASPECTS OF THE PROCUREMENT PROCESS

Giorgi Tvalavadze

Manager, Procurement Agent of MCA-Mongolia



OBJECTIVE OF THE PRESENTATION

- Provide information on the procurement process for the consultant services as per the MCC's Program Procurement Guidelines (PPG).
- Review & clarify the relevant documents and requirements included in the Request for Proposals (RFP) Document.



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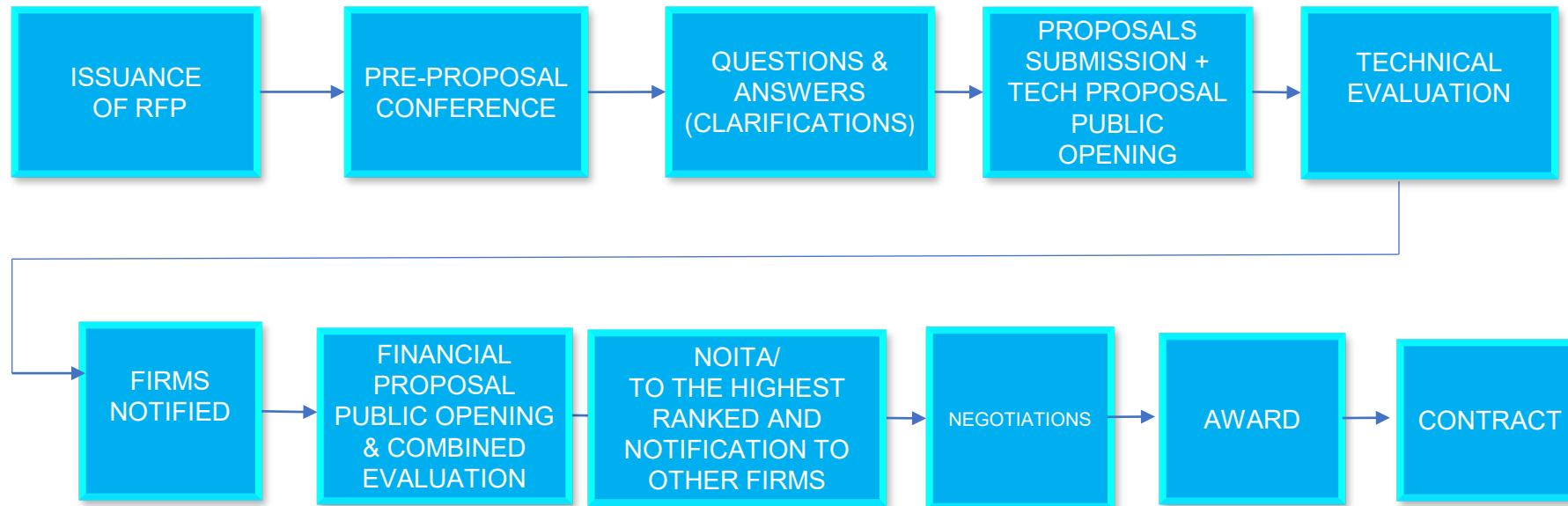
MILLENNIUM
CHALLENGE CORPORATION
UNITED STATES OF AMERICA

IMPORTANT DATES / EVENTS / INFORMATION

RFP Issued:	May 05, 2022
Pre-Proposal Conference:	May 25, 2022
Clarification Requests Deadline:	June 02, 2022
Clarification Responses Deadline:	June 09, 2022
Proposal Submission Deadline:	June 30, 2022
Proposals must be valid to (90 days):	September 28, 2022

PROCUREMENT PROCESS AS PER MCC's PPG*

STAGES OF PROCUREMENT – QUALITY AND COST BASED SELECTION (QCBS)



* Program Procurement Guideline (PPG)
[MCC Program Procurement Guidelines | Millennium Challenge Corporation](#)

RFP DOCUMENT: CONTENTS

Section 1	Letter of Invitation
Section 2	Instructions to Consultants
Section 3	Technical Proposal Standard Forms
Section 4	Financial Proposal Standard Forms
Section 5	Terms of Reference
Section 6	Form of Contract and Annexes

**READ THE RFP CAREFULLY.
IF IN DOUBT ON ANY ISSUE(S) ALWAYS ASK FOR CLARIFICATION**

SUMMARY OF THE EVALUATION PROCESS

- **Step One: Administrative compliance**
 - Administrative conformity and Partial Eligibility;
- **Step Two: Technical Evaluation**
 - Compliance with mandatory criterion: Pass / Fail;
 - Minimum technical score for each Key Professional Personnel;
 - Compliance with technical criteria: 75/100 to pass
- **Step Three: Technical Evaluation Report (TER)** submitted to MCA and to MCC for No Objection
- **Step Four: Opening of Financial Proposals** (if Technical Score ≥ 75)
- **Step Five: Full Eligibility Check** of the Highest Combined Scoring Proposal
- **Step Six: Combined Evaluation Report (CER)** submitted to MCA and to MCC for No Objection

ELIGIBILITY

Consultant: Single Entity (+Sub-Consultant) or Joint Venture

If JV, Letter of Intent, or JV Agreement is to be submitted

Consultants are **not eligible** if they:

- Fail to meet the **Eligibility** in accordance with ITC 1.6 and 1.7.
- Are Debarred and Excluded Parties. If they are found to be **ineligible** because of having been engaged in coercive, collusive, corrupt, fraudulent, obstructive, and prohibited practices (including trafficking in persons) as defined in the PPG.
- Have a Conflict of Interest (see next slide)

Consultants are encouraged to visit the websites of the US Department of State and the US Department of Treasury for updates on embargoed countries.

<https://www.state.gov/state-sponsors-of-terrorism/>

[Where is OFAC's Country List? What countries do I need to worry about in terms of U.S. sanctions? | U.S. Department of the Treasury Sanctions Programs and Country Information | U.S. Department of the Treasury](#)

Eligibility checks are completed on the firms during evaluation, again before contract signing¹⁹ (including all Key Personnel) and periodically before payments.

CONFLICT OF INTEREST INCLUDES

- Participation in more than 1 Proposal as
 - Firm
 - Controlling Partner
 - Legal representative
- Access to information or influence over the other consultant or on MCA-Mongolia
- Any previous or ongoing participation in relation to this specific assignment by the Consultant, its proposed staff or associates under a contract with MCA-Mongolia
- Business or family relationship with Procurement Agent, Fiscal Agent, MCA Staff, MCA Board or Auditor, that would influence the procurement

Any Consultant 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

The MCA-Mongolia requires that Consultants always hold the MCA-Mongolia's interest paramount, strictly avoid conflicts of interest, including conflicts with other assignments or their own corporate interests, and act without any consideration for future work.

TECHNICAL SUBMISSION FORMS AND PASSWORD PROTECTION

- **Form TECH-1** Technical Proposal Submission Form
- **Form TECH-2** Independence Statement
- **Form TECH-3** Consultant's References and References of MCC-Funded Contracts
- **Form TECH-4** Description of the Methodology and Work Plan for Performing the Assignment
- **Form TECH-5** Format of Curriculum Vitae for Proposed Key Professional Personnel

If a Consultant submits a **Technical Proposal** with password protection, the instructions for sending the password are detailed in ITC 4.1(h) and must be adhered to.

FINANCIAL PROPOSAL SUBMISSION FORMS AND PASSWORD PROTECTION

- **Form FIN-1** Financial Proposal Submission Form
- **Form FIN-2** Hourly Rates and Blended Rates

If a Consultant submits a **Financial Proposal** with password protection, the instructions for sending the password are detailed in ITC 4.1(j) and must be adhered to.

QUALIFICATION AND EVALUATION CRITERIA/ SUB-CRITERIA

A Proposal failing to meet any Mandatory Criterion will not be considered for further evaluation.

A Proposal will be rejected if it does not earn a total minimum score of **75**.

Organizational Capability and Experience of the Consultant (30 Points)

Approach, Methodology and Work Plan (20 Points)

Key Professional Personnel Experience and Qualifications (50 Points)

- Contract Relationship Partner : 30 points with a minimum technical score of 22.5 points
- Partner/Senior Counsel : 20 points with a minimum technical score of 15 points

Each Key Personnel must attain the minimum technical score.

Only Consultants that meet the mandatory criteria, receive required minimum technical score for each Key Professional Personnel, and receive a minimum technical score of seventy-five (75) points will be eligible for the financial evaluation and award of a Contract.

REASONS FOR REJECTION, NON-RESPONSIVENESS OR DISQUALIFICATION

- Engagement in fraud, corruption, etc.
- A Technical Proposal containing any information that should appear in the Financial Proposal
- Failure to provide passwords for password protected Proposals
- Failure to provide all pertinent information and documents
- Late Proposals
- Attempts to influence the evaluation
- Not substantially responsive
- Negative performance/reference responses
- Failed verifications & ineligibility

QUESTIONS FOLLOWING THIS PRE-PROPOSAL CONFERENCE

As set forth in ITC 2.1, the clarification requests regarding the RFP document should be submitted to the MCA-Mongolia **in writing** at the address indicated in the PDS. MCA-Mongolia will respond **in writing** to all clarification requests. The responses will also be posted on MCA-Mongolia's website.

Clarification Requests Deadline: 02 June 2022

Clarification Responses Deadline: 09 June 2022

Under no circumstance will unofficial communication methods be entertained.

Clarification requests to be addressed to MCA-Mongolia Procurement Agent –
pa-mongolia@charleskendall.com

With a CC to MCA-Mongolia Procurement Team
procurement@mca-mongolia.gov.mn

NOTES FOR SUBMISSION

- Electronic submissions only, via File Request Link:
<https://www.dropbox.com/request/Gpt302q4l38HrmMri86F>
- **Link expires on deadline**
- **Late submissions not acceptable**
- **Submission by email or hard copy not acceptable**
- **Separate Technical and Financial Proposals**

TAX EXEMPTION AND MCC'S AFC POLICY

Otgonbayar Byambanorov

Acting General Counsel, MCA-Mongolia



TAX EXEMPTION

Consultants **shall be exempt from any existing and future applicable taxes or duties**, levies, contributions or similar charges of Mongolia. At the same time, the exemptions shall extend to the duly authorized representative/sub-Consultant of the Consultant in Mongolia.

Taxes subject to exemption include:

- Value Added Tax (VAT) at local purchases;
- VAT at Importation of Goods;
- Import and Customs Duties;
- Corporate Income Tax;
- Individual Income Tax;
- Social Insurance;
- Workplace Payment.

Exceptions to Exemption:

- Citizens of Mongolia;
- Permanent residents of Mongolia;
- Legal entities formed under the laws of Mongolia, in case of corporate income tax and social insurance contribution.

MCC'S POLICY ON PREVENTING, DETECTING AND REMEDIATING FRAUD AND CORRUPTION IN MCC OPERATIONS /AFC POLICY/

- ✓ All Recipients of MCC Funding shall follow the AFC Policy.
- ✓ The AFC Policy can be found at www.mcc.gov – search “Fraud.”
- ✓ The AFC Policy requires the contractor receiving an award of MCC Funding of over \$500,000 to certify to MCA-Mongolia that they will adopt and implement a code of business ethics and conduct within ninety (90) days of Contract award and otherwise ensure compliance with the provisions of this policy. Such entity will also include the substance of this clause in subcontracts that have a value in excess of \$500,000.

WHAT IS FRAUD AND CORRUPTION?

- ✓ Fraud and corruption include collusion, coercion, and obstruction of investigations.
- ✓ Fraud and corruption can be either:
 - Intentional acts – you know you are doing something wrong;
 - Failure of internal control systems – you don't care if you are doing something wrong.
- ✓ Mistakes are not fraud or corruption – but they can indicate weak internal control systems.
- ✓ Examples of weak internal control systems – lack of segregation of duties, no rules for retaining documents, lack of code of business conduct and ethics, lack of prohibition against staff offering or paying bribes.

SANCTIONS

- ✓ Administrative measures such as temporary or permanent ineligibility, removal from competition in a procurement activity, assignment of an adverse performance rating, withholding of MCC disbursements for payments on affected contracts, and other similar actions;
- ✓ MCC does not impose legal sanctions such as fines, imprisonment, or payment of damages. However, appropriate federal or local authorities may conduct further investigations and impose other sanctions if necessary.

SEE SOMETHING, SAY SOMETHING

All consultants working with MCC funding are required to promptly report suspected incidents of fraudulent or corrupt practices through one of the following methods:

- Email to hotline@mcc.gov or mcchotline@usaid.gov;
- Filling out web form on the website of the Office of the Inspector General responsible for MCC (<https://oig.usaid.gov/complainant-select>);
- Telephoning the OIG at 1-800-230-6539 or 202-712-1023;
- Contacting a member of MCC's Senior Director for Anti-Fraud and Corruption (williamscp@mmc.gov).

Reports will be kept confidential, and can be made anonymously.



PAYMENT PROCESS AND AUDIT

Luis Baires

Fiscal Agent Manager, Fiscal Agent of MCA-Mongolia



PAYMENT PROCESS

Prompt payment:

All contractual payments are made **within thirty* (30) calendar days** after receipt of a valid invoice

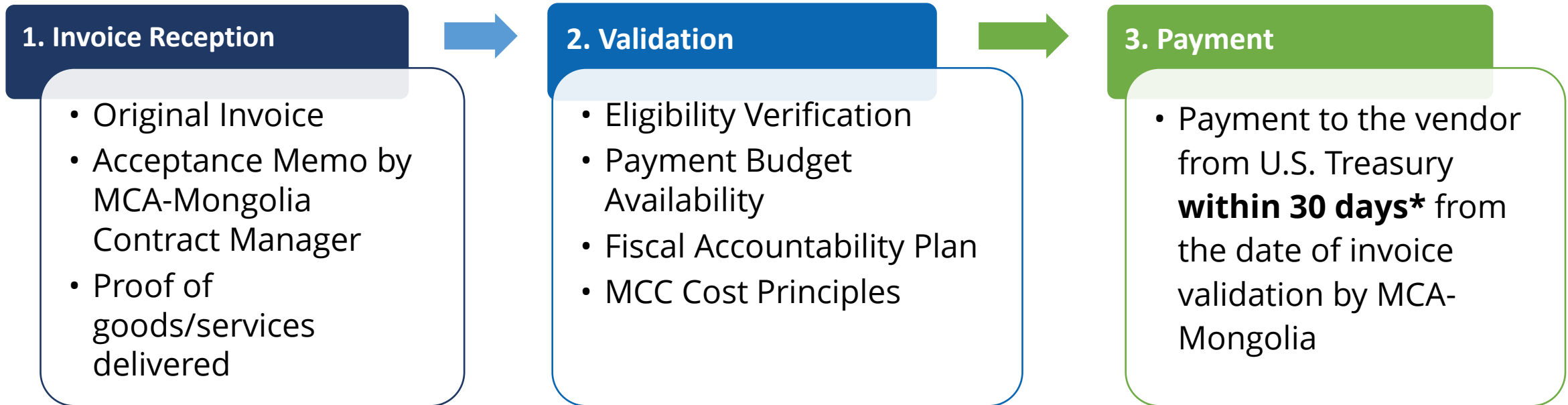
- All invoices must be submitted to MCA-Mongolia through the Contract Manager upon MCA-Mongolia's acceptance of the corresponding contractual deliverable(s)

Payment method:

Payments are made in U.S. dollars from the United States Treasury directly to the Vendor's bank through Common Payment System (CPS)

PAYMENT PROCESS

Payment process flow:



** Payment processing time largely depends on the completeness and quality of the supporting documents.*

AUDIT

In accordance with **Compact Section 3.8 Audits and Reviews**, any Provider:

- ✓ is subject to the audit in accordance with the MCC Audit Guidelines, or other applicable audit requirements;
- ✓ must permit independent auditors to have an access to its records;
- ✓ must take corrective actions in a response to audits .

ELIGIBILITY VERIFICATIONS- after Contract Award

After contract award, MCA-Mongolia will periodically **examine the eligibility of contractors** and sub-contractors **prior to payments**:

- If any contractor is found to be ineligible on any of the required lists of the Excluded parties, proceed with contract termination immediately.
- If any of the contractor's key personnel or sub-contractors are found to be ineligible, request the contractor to make a substitution (subject to MCC approval).

Q&A SESSION





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MILLENNIUM
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THANK YOU FOR YOUR
ATTENTION

