

Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations

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MILLENNIUM
CHALLENGE CORPORATION
UNITED STATES OF AMERICA

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1. Purpose

The Millennium Challenge Corporation (MCC) prohibits fraud and corruption in the solicitation and use of MCC funds. For purposes of this policy, “fraud and corruption” include acts of coercion, collusion, corruption, fraud, and obstruction of investigation into allegations of fraudulent or corrupt practices, each as defined below.

This policy sets forth the rules and outlines the roles, responsibilities, and principles which govern MCC and entities funded by MCC with respect to preventing, detecting, and remediating the risk of fraud and corruption.

2. Scope

This policy applies to MCC employees and all other recipients of MCC funding. Allegations of fraud or corruption against MCC employees and direct MCC contractors are not covered by this policy and instead are handled pursuant to applicable federal laws and regulations.

3. Authorities

a. Acts.

1. Millennium Challenge Act of 2003, as amended (22 U.S.C. §7701, et seq.)
2. Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. §78a, et seq.)

b. Federal Government Regulations, Standards, and Other Guidance.

1. Title 18 U.S. Code – Crimes and Criminal Procedure
2. 31 U.S. Code 3729 – False claims (civil)
3. 5 CFR 2635 – Standards of Ethical Conduct for Employees of the Executive Branch

c. Related MCC Policies, Procedures, and Guidelines.¹

1. MCC Program Procurement Guidelines (updated August 15, 2015)
2. Cost Principles for Accountable Entity Operations (updated April 1, 2014)
3. Guidelines for Accountable Entities and Implementation Structures (updated August 26, 2010)
4. Character Risk Due Diligence: Screening of Accountable Entity Personnel (updated January 2008)
5. Annex of General Provisions (updated December 2, 2016)
6. Misconduct, Discipline and Adverse Actions Policy (updated May 7, 2015)

4. Key Definitions

Accountable Entity

The legal entity designated by each partner country’s government to implement MCC’s grant

program on behalf of the government during the lifecycle of the program.

Implementing Entity

Any affiliate, ministry, bureau, department, agency, government, corporation or any other entity chartered or established by a partner country's government engaged by the Accountable Entity to implement and carry out any project, project activity (or a component thereof) or any other activities to be carried out in furtherance of the Compact.

Coercion

Impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of any party, to influence improperly the actions of a party in connection with the implementation of any contract supported, in whole or in part, with MCC funding, including such actions taken in connection with a procurement process or the execution of a contract.

Collusion

A tacit or explicit agreement between two or more parties to engage in a coercive, corrupt, fraudulent, obstructive or prohibited practice, including any such agreement designed to fix, stabilize, or manipulate prices or to otherwise deprive the Accountable Entity of the benefits of free and open competition.

Corruption

The offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of a public official, Accountable Entity staff, MCC staff, consultants, or employees of other entities engaged in work supported, in whole or in part, with MCC funding, including such work involving taking or reviewing selection decisions, otherwise advancing the selection process or contract execution, or the making of any payment to any third party in connection with or in furtherance of a contract.

Fraud

Any act or omission, including any misrepresentation, that knowingly or recklessly misleads or attempts to mislead a party in order to obtain a financial or other benefit in connection with the implementation of any contract supported, in whole or in part, with MCC funding, including any act or omission designed to influence (or attempt to influence) a selection process or the execution of a contract, or to avoid (or attempt to avoid) an obligation.

Obstruction of investigation into allegations of fraudulent or corrupt practice

Any act taken in connection with the implementation of any contract supported, in whole or in part, with MCC funding: (a) that results in the deliberate destroying, falsifying, altering or concealing of evidence or making false statement(s) to investigators or any official in order to impede an investigation into allegations of a coercive, collusive, corrupt, fraudulent, or prohibited practice; or (b) that threatens, harasses, or intimidates any party to prevent him or her from either disclosing his or her knowledge of matters relevant to an investigation or from pursuing the investigation; or (c) that is intended to impede the conduct of an inspection and/or the exercise of audit rights of MCC and/or the Office of the Inspector General (OIG) responsible for MCC provided under a compact, threshold program agreement, or related agreements.

Prohibited practice

Any action that violates Section E (Compliance with Anti-Corruption, Anti-Money Laundering, Terrorist Financing, and Trafficking in Persons Statutes and Other Restrictions) of the Annex of General Provisions that will be made a part of MCC-funded contracts and may be found as part of the Standard Bidding Document templates (there referred to as "Annex A: Additional Provisions") on the MCC website at <http://www.mcc.gov>.

5. Responsibilities

a. Office of the General Counsel

1. Manage MCC's anti-fraud and corruption (AFC) activities.
2. Prepare periodic reports to the CEO, and as agreed to the Board of MCC, on the incidence of fraud and corruption in MCC operations.
3. Ensure compliance with provisions of this policy.

b. Senior Director for Anti-Fraud and Corruption

1. Serve as the chief intake officer and general coordinator for the MCC AFC Team, which includes representatives from OGC, the Department of Compact Operations, and the Department of Administration and Finance.
2. Ensure compliance with provisions of this policy.

c. MCC AFC Team

1. Provide relevant training to MCC staff and to staff of the Accountable Entities.
2. Facilitate and oversee, together with the MCC country teams, the development and implementation of an AFC risk mitigation plan with each Accountable Entity.
3. Act as a resource for communicating both to and from the various MCC Departments and practice groups on issues of importance to good anti-fraud and corruption practice.
4. Coordinate with the OIG with respect to pending AFC allegations.

d. All MCC Departments

1. Support implementation of appropriate anti-fraud and corruption practices.
2. Assist in oversight of operations related to AFC activities.
3. Notify the AFC Team as necessary about suspected violations as well as violation of MCC's policies and practices.
4. Promote good practices with country counterparts in the field.

e. All Recipients of MCC Funding (including Accountable Entities and their contractors and grantees)

1. Comply with the provisions of this policy.

6. Policies and Procedures

a. Guiding Principles for Detecting, Preventing and Remediating Fraud and Corruption in MCC Operations

1. Good governance is a keystone of poverty reduction. A major element of good governance is the control of corruption. For that reason, controlling corruption has been a key indicator for the MCC in selecting countries for eligibility for MCC-funded grant programs.
2. Fraudulent or corrupt practices diminish benefits to intended recipients and impede economic growth and poverty reduction. They are particularly harmful in MCC-funded grant programs in that they undermine core principles of MCC's mission. Fraudulent or corrupt practices also violate the legal and ethical principles to which MCC is committed.
3. MCC's fiduciary responsibility for protecting U.S. taxpayer money makes control of fraud and corruption a vital part of MCC's oversight responsibility.
4. Failure by MCC or its country counterparts to take all reasonable steps to adequately prevent, detect or remediate incidents of fraud or corruption constitutes a serious risk to MCC's credibility as an agency granting U.S. taxpayer funds for development.
5. MCC's approach to the prevention, detection and remediation of fraud and corruption is founded on the following points:
 - a. Taking all reasonable steps to prevent, detect and effectively and promptly remediate fraud and corruption issues affecting MCC funding, directly or indirectly,

- is a first order priority for MCC and the basis for a critical component of MCC's risk management strategy. All MCC and Accountable Entity staff (and all those working with MCC funding) are expected to adhere to the highest standards of ethics and to comply with relevant laws, regulations and MCC policies in areas such as procurement, financial management and contract management.
- b. All MCC and Accountable Entity staff, and all others working with MCC funding, are required to promptly report suspected incidents of fraudulent or corrupt practices through one of the following methods:
 - i. Email to hotline@mcc.gov or mcchotline@usaid.gov;
 - ii. Filling out web form on the website of the Office of the Inspector General responsible for MCC (<https://oig.usaid.gov/complainant-select>);
 - iii. Telephoning the OIG at 1-800-230-6539 or 202-712-1023;
 - iv. Contacting a member of MCC's AFC Team.
 - c. In order to ensure compliance with the highest standards of ethics in the area of avoidance of fraud and corruption, it is critical that all those required to meet such standards understand what is expected and why. Accordingly, MCC is committed to the following: the training and education of both MCC and Accountable Entity staff; the periodic production of guidance on good practices; prompt reporting of all suspected incidents of fraud and corruption both internally and to the OIG; and periodic reporting on MCC's experience with fraud and corruption to MCC's senior management and to the Board of MCC.
 - d. MCC has a responsibility to assist counterparts in partner countries (including Accountable Entities, boards thereof, and Implementing Entities) to develop and implement their own anti-fraud and corruption programs, based on relevant good practices, and the Accountable Entities and similar entities are subject to a corresponding responsibility to act in accordance with such programs. These anti-fraud and corruption programs will be in addition to codes of conduct and ethics established by the entities, as well as clear procedures for disclosing potential or actual conflicts of interest.
 - e. MCC is committed to taking all reasonable steps to promote the highest standards of integrity and ethical behavior in its staff and that of its partner country counterparts, including providing training and guidelines on effective anti-fraud and corruption principles and practices, and requiring its country counterparts to do the same.
 - f. Any U.S. government agency, donor, non-governmental organization, or other party (including from the private sector) involved in developing and/or administering an MCC-funded program is considered to have first-line responsibility to safeguard against fraud and corruption in the program that it administers, to take all reasonable measures to discharge this responsibility, and to report issues and problems to MCC promptly upon their detection, even though MCC retains responsibility for taking all reasonable efforts to ensure that MCC funds are used for their intended purposes.
 - g. MCC, through its implementing partners, requires that companies and entities receiving MCC funds (including contractors) acknowledge notice of this policy and certify that they have acceptable commitments and procedures in place to address the potential for fraudulent or corrupt practices in their MCC-funded work and otherwise ensure compliance with the provisions of this policy.
 - h. During compact and threshold program development and implementation, MCC

will periodically assess the risk of fraud and corruption in its partner countries (drawing where possible on diagnostic assessments of the risks of fraud and corruption in potential partner countries from the partner government, the private sector, non-governmental organizations, and other bilateral and multilateral donors) and the effectiveness of detection, mitigation and remediation strategies in order to ensure that MCC's risk management strategy remains dynamic and responsive to patterns of behavior in each country with which MCC works.

- i. MCC will identify and adopt lessons learned and good practices based on both its own experience and that of institutions, donors, governments and civil society in order to ensure that MCC practices accord with international standards as well as governing laws and regulations.
- j. As part of its role in combatting fraud and corruption, MCC will monitor evolving patterns of fraud and corruption and share information about its experience in that regard and about emerging good practices with governments in partner countries, other donors, and with civil society, consistent with its responsibilities as a U.S. government agency.
- k. MCC management recognizes that effective implementation of this policy requires clear delineation of roles and responsibilities, provision of adequate resources and training to MCC and Accountable Entity staff, promotion of continuous analysis of experience with the objective of improving performance in addressing problems and reducing risks, and prompt remediation where necessary.

b. Actions

MCC operates in risky environments, where fraud and corruption can be endemic, and there can be no guarantees that incidents will not occur. However, MCC must take timely and effective action to minimize and, if possible, prevent fraud and corruption from successfully diverting MCC's objectives of transparency, fair and equitable treatment of all counterparts and beneficiaries, value for money, and integrity in all operations. MCC's existing policies and current practices related to Accountable Entities, contracting, administrative procedures, reporting, procurement, financial management, technical due diligence, monitoring and evaluation, and the structure of legal agreements governing its grants provide for systems, controls and transparency that contribute to MCC's ability to exercise its fiduciary responsibilities. For instance, in most cases Accountable Entities are required to competitively procure independent procurement agents to manage the procurement of goods, works, and services, as well as independent fiscal agents responsible for funds control and documentation, proper and consistent accounting, financial reporting and disbursements. In addition, almost all contract payments on behalf of an Accountable Entity are paid directly by the U.S. Treasury, which mitigates common risks associated with working in emerging economies and guarantees that invoices are paid as quickly as possible. The measures MCC and Accountable Entities are expected to undertake to reinforce their respective capacities to prevent, detect and remediate instances of fraud and corruption include, but are not limited to, the following:

1. Prevention and Detection

- a. Joint Compact-Specific AFC Risk Assessments, to identify specific risks of fraud and corruption which cannot be addressed solely by MCC safeguards and which could affect the implementation of a particular compact, project or activity by the Accountable Entity. These assessments, combined with other efforts such as market analyses conducted to inform procurement strategies for each program, will be used by MCC and the Accountable Entity to reasonably address identified risks; to design and structure relevant aspects of the compact and related agreements; and, in

- implementation, to establish an Accountable Entity AFC Action Plan for managing anticipated vulnerabilities.
- b. Accountable Entity AFC Action Plans, to articulate how the Accountable Entity can supplement MCC-mandated controls and introduce additional methods to prevent fraud and corruption specific to its operating environment. These Action Plans will be based on the findings of the Compact-Specific AFC Risk Assessments and will be drafted and implemented by the applicable Accountable Entity. MCC will approve the AFC Action Plans, monitor their implementation, and refine its oversight strategy in relation to the AFC Action Plans, when necessary. The Compact-Specific AFC Risk Assessment, including the Accountable Entity AFC Action Plan which addresses the identified risks, and the training that precedes the assessment will be required of each Accountable Entity. The Accountable Entities will be expected to update their AFC Action Plans periodically.
 - c. Possible application of risk assessments and action plans to threshold programs, where appropriate.
 - d. Formalizing lines of internal MCC reporting, to ensure that allegations are adequately and consistently addressed internally by MCC staff and referred to the OIG for investigation.

In addition to the measures outlined above, MCC and Accountable Entities are expected to refer to reference materials, curricula, and other guidance and information about methods and strategies for preventing, detecting and remediating fraud and corruption. These will be collected and prepared by the MCC AFC Team and made available to MCC and Accountable Entity staff. This material is revised from time to time to reflect evolving experience and the identification of good practices, including through the implementation of the Compact (and where deemed appropriate by MCC, Threshold Program)-Specific AFC Risk Assessments and AFC Action Plans. MCC and Accountable Entities will continue to contribute and update this information periodically.

MCC recognizes that effective risk management requires flexible, responsive, continuous learning and adaptation of its practices, incentives, and skills. As a result, management will (i) update as relevant the specific objectives of the above-listed measures; and (ii) introduce such additional measures as may become relevant.

2. Remediation

MCC may utilize one or more of the following tools to remediate fraud or corruption:

- a. Use of administrative interventions, in the event that fraudulent or corrupt practices are detected, may include:
 - i. Declaration of mis-procurements for procurements over which MCC has an oversight role;
 - ii. Heightened oversight of particular transactions determined to be most at-risk, by assigning MCC staff or procurement of MCC consulting services for outside expertise;
 - iii. Performance of additional audits, or focusing existing audit requirements on areas of concern; and
 - iv. Imposition of a modification of thresholds for MCC approvals at stages of the contracting or contract administration process.

- b. Sanctions, in the event that fraudulent or corrupt practices are detected, may include:
- i. Annotating a contractor's performance evaluation information to indicate that the contractor was found to be deficient in preventing fraud or corruption in its MCC-funded work;
 - ii. 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;
 - iii. Recommendation to the Accountable Entity or other appropriate government official to take administrative action in instances where an Accountable Entity employee commits fraudulent or corrupt practices;
 - iv. The requirement that the partner country government reimburse to MCC the value of any MCC funding that has been lost or misused as a result of fraudulent or corrupt practices; and
 - v. Suspension or Termination of the compact or threshold program if the government or the Accountable Entity commits the fraudulent or corrupt practices.

MCC does not impose legal sanctions such as fines, imprisonment, or payment of damages, which may be imposed by the appropriate federal or local authorities.

Details regarding the further development and implementation of these preventative matters will be set forth in separate guidance for implementation of this policy.

7. Effective Date

This policy was approved and became effective on January 18, 2018. For the avoidance of doubt, this policy will remain in effect with respect to any successor position or office performing the functions of its predecessor until this policy is modified, revoked, or superseded. In addition, this policy supersedes any prior policy, guidance, and/or delegation of authority with respect to the subject matter hereof.

8. Amendments to This Policy

This policy may be modified or amended at any time in writing with the approval of the Vice President and General Counsel.

Endnotes

1. Most of these MCC Policies, Procedures, and Guidelines, which are revised from time to time, are available at <http://www.mcc.gov>.