



**MILLENNIUM CHALLENGE ACCOUNT – GEORGIA (MCA- GEORGIA)**

**BID CHALLENGE SYSTEM PROCEDURES**

**FIRST EDITION**

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**ADOPTED BY MILLENNIUM CHALLENGE ACCOUNT - GEORGIA ON JANUARY 27 2014**

**APPROVED BY MILLENNIUM CHALLENGE CORPORATION ON JANUARY 25 2014**

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**Definitions**

- a. **“Appeal”** means the process of initiating the recourse to the Independent Review Panel.
- b. **“Appeal Deposit”** means the deposit required to be made by a Challenger and paid to the account of MCA-Georgia in accordance with Article 14 of these Challenge Procedures.
- c. **“Bid Challenge”** means the document submitted by a Challenger in accordance with the rules set forth in this document, having the purpose to seek review of the procurement process.
- d. **“Bidder”** means any consultant, contractor or supplier that participates in the MCA-Georgia procurement process to provide goods, works or services in furtherance of the Compact.
- e. **“Bidding Documents”** means the procurement documents for the Challenged Procurement.
- f. **“Challenge Procedures”** means collectively, the rules set forth in this document.
- g. **“Challenged Procurement”** means the particular MCA-Georgia procurement in relation to which the Procurement Action was taken.
- h. **“Challenger”** means any Bidder or Potential Bidder who submits a Bid Challenge and Notice of Appeal.
- i. **“Compact”** has the meaning provided in the preamble and may be found on the MCA-Georgia website at [www.mcageorgia.ge](http://www.mcageorgia.ge)
- j. **“Decision”** means the binding, written determination made by the MCA-Georgia Bid Challenge Review Committee, or the Independent Review Panel, as the case may be, as duly communicated to the Parties.
- k. **“FAP”** means the MCA-Georgia Fiscal Accountability Plan as may be found on the MCA-Georgia website at [www.mcageorgia.ge](http://www.mcageorgia.ge)
- l. **“Filed”** means the receipt, either by mail services or Internet e-mail, of any document by the addressee before the close of its Working Day.
- m. **“Independent Review Panel” (IRP)** is an independent body consisting of three members from the Independent Review Pool, selected in accordance with the procedures described in Article 8 to consider a particular Appeal.

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- n. **“Independent Review Pool”** is a group of competent and qualified persons, appointed by MCA-Georgia from which individual panels will be selected in accordance with the procedures described in Article 8 to consider Appeals.
- o. **“MCA-Georgia”** means Millennium Challenge Account-Georgia provided in the preamble
- p. **“MCC”** means Millennium Challenge Corporation provided in the preamble.
- q. **“MCC Program Procurement Guidelines”** means the MCC Program Procurement Guidelines, as the same may be amended from time to time and may be found on MCA-Georgia website at [www.mcageorgia.ge](http://www.mcageorgia.ge) or MCC website at <http://www.mcc.gov>.
- r. **“Notice of Appeal”** means a document filed by a “Challenger” (Bidder or Potential Bidder) for the purpose of showing that the Bid Challenge Review Committee failed to decide the Bid Challenge in accordance with the Bid Challenge Review Committee’s duty or that the Challenger is dissatisfied with the decision of such committee.
- s. **“Party”** or **“Parties”** means the Challenger and MCA-Georgia.
- t. **“Potential Bidder”** means Bidders who would have participated in an MCA-Georgia procurement process but for an alleged mistake of MCA-Georgia.
- u. **“Procurement Action”** means any decision by MCA-Georgia relating to the MCA-Georgia process of procuring goods, works, or services in furtherance of the Compact.
- v. **“Procurement Rules”** means the MCC Program Procurement Guidelines, and the rules contained in the applicable Bidding Documents.
- w. **“Review Panel Service Agreement”** means the service agreement between MCA-Georgia and each member of the Independent Review Pool for the provision of personal services if said person is selected as an IRP member.
- x. **“Working Day”** means any day in Georgia that is not a (i) public holiday, (ii) weekend, or (iii) day when work is suspended by public authorities due to natural calamities.

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**PREAMBLE**

WHEREAS, the United States of America, acting through the Millennium Challenge Corporation (“**MCC**”) on 26 July, 2013 signed a five-year, \$140 million compact (the “**Compact**”) with Georgia (the “**Government**”) to advance economic growth and reduce poverty in Georgia;

WHEREAS, the United States of America, acting through MCC, and Georgia, acting through the Government, on July 26, 2013 signed a Program Implementation Agreement (the “**Program Implementation Agreement**”) that sets forth the general framework for Program Implementation during the Compact term;

WHEREAS, the Government designated the Millennium Challenge Account-Georgia (“MCA-Georgia”) to manage and oversee the implementation of the activities under the Compact;

WHEREAS, pursuant to the Compact, MCA-Georgia shall ensure that the procurement of all goods, works and services in furtherance of the Compact is in accordance with the MCC Program Procurement Guidelines;

WHEREAS, the MCC Program Procurement Guidelines require that MCA-Georgia establish and publish a bid challenge system procedures that provides bidders and potential bidders the ability to seek a review of procurement actions and decisions.

NOW, therefore, MCA-Georgia has established the procedures set forth in this Bid Challenge System procedures (the “**Challenge Procedures**”) and agrees that the review of procurement actions and decisions shall be referred to as bid challenges, and these Challenge Procedures shall be incorporated in all bidding documents distributed to potential bidders.

The principles upon which these Challenge Procedures are based include:

- a) Clear explanations of why bidders were disqualified or unsuccessful bids or proposals were not selected;
- b) A procedurally simple and expeditious process to address concerns about how procurement rules and procedures were applied to specific procurement actions;
- c) The action to suspend the procurement proceedings and to prevent, in normal circumstances, the signing of a contract while a challenge remains outstanding;
- d) Establishing one body to hear a challenge as a first step and an independent body to hear an appeal as a second step; and
- e) The ability to implement corrective measures.

Capitalized terms used but not defined herein shall have the meaning given to them in the MCC Program Procurement Guidelines.

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**Article 1. Right to Challenge**

- 1.1 A Bidder or Potential Bidder, that claims to have suffered or claims that it may suffer loss or injury because of an alleged decision or action of MCA-Georgia that is not in compliance with the Procurement Rules, may challenge the decision or action concerned, except for:
- a. the selection of a method of procurement or selection procedures (e.g., QCBS, QBS, etc.);
  - b. the selection of the type of procurement (e.g., goods, works, non-consultant services, or consultant services);
  - c. the decision by MCA-Georgia to reject all bids, proposals, offers or quotations; and
  - d. allegations of fraud or corruption or intent of wrong doing in the procurement process, which shall be processed in accordance with MCC’s Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations, a copy of which is available on MCC’s Website ([www.mcc.gov](http://www.mcc.gov)).
- 1.2 Subcontractors and members of the public are not eligible to submit a Bid Challenge.
- 1.3 Bid challenge proceedings may be initiated by submitting a Bid Challenge to MCA-Georgia, pursuant to Article 4 of these Challenge Procedures.

**Article 2. Bid Challenge Review Committee**

- 2.1 For the purposes of these Challenge Procedures, MCA-Georgia shall establish a permanent specialized body, Bid Challenge Review Committee (the “**Review Committee**”), consisting of three members and entrusted with the review and decision-making authority on the claims submitted by bidders.
- 2.2 The Review Committee shall consist of the following three members: the MCA-Georgia Chief Executive Officer (the “**CEO**”) who shall serve as the Chair of the Review Committee, the MCA-Georgia General Counsel and the MCA-Georgia Procurement Director. In case of absence of the General Counsel and/or the Procurement Director, the MCA-Georgia CEO may assign their responsibilities to other relevant staff members of MCA-Georgia.
- 2.3 The Chair of the Challenge Review Committee shall have the authority to decide procedural matters.

**Article 3. Suspension of Procurement Proceedings**

- 3.1 Immediately after the Review Committee receives a Bid Challenge that complies with the requirements of Article 4, the Review Committee shall instruct the Procurement Director to suspend the disputed procurement proceeding until the Review Committee

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has issued a Decision on the Bid Challenge in accordance with the Challenge Procedures, unless the Challenge Review Committee determines that:

- a. there are urgent or compelling reasons not to suspend;
- b. the claim is frivolous;
- c. there will be no irreparable harm to the Challenger; or
- d. granting the suspension will cause disproportionate harm to MCA-Georgia.

3.2 The suspension shall be lifted:

- a. Three (3) days after a Decision of the Review Committee has been sent to the Challenger and to all Bidders in the procurement proceedings; provided that if a Notice of Appeal is timely filed within such three days, the suspension shall continue until the associated Appeal is resolved in accordance with the terms of these Challenge Procedures; or
- b. Immediately after a Decision of the IRP has been sent to the Challenger, to all Bidders in the procurement proceedings, and to MCA-Georgia.

3.3 Any decision to not suspend the procurement proceedings and the reasons therefore, shall be made part of the bid challenge record, and shall promptly be communicated to the Challenger, and to all Bidders in the procurement proceedings.

#### **Article 4. Submitting a Bid Challenge**

4.1 A Bidder or Potential Bidder may submit a Bid Challenge to MCA-Georgia on the ground that it has been damaged by a Procurement Action which constitutes a violation of the Procurement Rules by the MCA-Georgia.

4.2 A Bid Challenge shall:

- a. Identify the procurement out of which the Bid Challenge arises;
- b. Describe the nature of the Bid Challenge and supporting facts, including the Procurement Rules or portion of the procurement process that was allegedly in non-compliance;
- c. Identify the specific provision(s), of the Procurement Rules which allegedly were violated by the decisions or actions of MCA-Georgia,
- d. Justify the nature of the damage that will be or was suffered by the Challenger as a result of such decisions or actions;
- e. Indicate the requested remedy;
- f. Explain why the Bid Challenge was timely; and
- g. Include the name, address, telephone and facsimile numbers, as well as the email address of the Challenger;

4.3 A Bid Challenge shall be submitted to MCA-Georgia, in writing (which may be in electronic form), within the following time periods:

- a. within **five** Working Days of the date of:

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- i. the issuance or modification of an invitation to prequalify or submit a bid or submit a proposal; or
  - ii. a decision to extend the time for submission of proposals
  - b. in the event that the procurement process requires a technical evaluation prior to the opening of financial proposals, within **five** Working Days of the date that the results of the technical evaluation are notified to bidders;
  - c. Bid challenges to any two-envelope (i.e., separate technical and financial bid or proposal) procurement proceedings shall be submitted within **five (5)** Working Days after notification of the technical rankings/results.
  - d. Bid challenges of all other decisions or actions taken by MCA-Georgia in the procurement proceedings shall be submitted within **five (5)** days after the notice of award or **three (3)** Working Days after receiving a written debriefing, as set forth in paragraph 4.4 below.
- 4.4 For the purposes of these Challenge Procedures, a Bidder may request a debriefing by submitting a written request for debriefing to MCA-Georgia within **two (2)** Working Days after receipt of the notice of award. MCA-Georgia shall provide a written explanation of why the Bidder was not selected within three **(3)** Working Days of receiving the request for debriefing.

**Article 5. Bid Challenge Proceedings**

- 5.1 MCA-Georgia shall notify all Bidders of the substance of the Bid Challenge not later than three (3) Working Days after receipt of the Bid Challenge.
- 5.2 The Review Committee may decide to dismiss the Bid Challenge:
- a. the Bid Challenge is clearly without merit, including not citing a specific provision of the Procurement Rules that have been allegedly violated, as set forth in paragraph 4.2(c);
  - b. the Bid Challenge was not submitted within the time periods set out in paragraph 4.3; or
  - c. the Challenger is not eligible to submit a Bid Challenge, as set forth in paragraph 1.2.
- 5.3 The Review Committee may decide to adopt a decision to overturn, correct, vary or uphold a decision or action taken in the procurement proceedings to which the Bid Challenge relates.
- 5.4 The Review Committee shall issue a Decision within ten (10) days after receipt of the Bid Challenge. MCA-Georgia shall immediately thereafter communicate the decision to the Challenger and to all Bidders in the procurement proceedings. The decision shall:
- a. be in writing;
  - b. state the action taken and the reasons therefore; and
  - c. promptly be made part of the bid challenge record, together with the Bid Challenge received by MCA-Georgia.

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5.5 If MCA-Georgia does not issue a decision to the Challenger, as required in paragraph 5.4 above, or the Challenger is dissatisfied with the written decision, the Challenger may within three (3) days of MCA-Georgia's failure to issue a Decision pursuant to paragraph 5.4 above or receipt of the written Decision (as applicable) submit an Appeal as set forth in Article 7. When such proceedings commence, the Review Committee will no longer be the review body.

**Article 6. Submitting an Appeal**

6.1 A Bidder may appeal the Review Committee's decision to an IRP in accordance with paragraphs 6.2 and 6.3 only if it has fully complied with the Bid Challenge Proceedings set forth in Article 5 and:

- a. The Challenger had not received the Review Committee's decision by the deadline set forth in paragraph 5.4; or
- b. The Challenger has received the Review Committee's decision by the deadline but does not agree with the decision;

6.2 Within three (3) Working Days from the date on which the Review Committee issues (or should have issued) a decision on a Bid Challenge pursuant to Article 5 or rejects a Challenger's Bid Challenge pursuant to Article 1.1, the Challenger may appeal the decision or rejection by submitting an Appeal to MCA-Georgia.

6.3 The proceedings by which a Challenger appeals the Review Committee's decision shall be deemed to commence on the date on which the Notice of Appeal is received by MCA-Georgia.

6.4 The Appeal shall be filed in English and shall include the following:

- a. Request that the Appeal be referred to an IRP and information regarding the timeliness of such request;
- b. Name and address of the Challenger;
- c. Reference to the procurement in relation to which the Appeal arises;
- d. General nature of the Appeal;
- e. Relief or remedy sought; and

6.5 If the Appeal does not include one or more of the above-mentioned items, the Appeal shall be dismissed by MCA-Georgia within three (3) days of receipt of the Appeal from the Challenger. In addition, the Appeal shall be dismissed by MCA-Georgia within five (5) days of receipt from the Challenger if the Appeal Deposit is not received in accordance with paragraph 14.2 of these Challenge Procedures.

**Article 7. The Independent Review Pool**

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7.1 MCA-Georgia shall establish a pool (known as the Independent Review Pool) of a minimum of six competent and qualified persons, appointed by MCA-Georgia from which members will be selected to preside over individual Appeals.

7.2 The full names, addresses, occupations, nationalities and qualifications of all Independent Review Pool members, shall be posted on the MCA-Georgia website.

7.3 The members of the Independent Review Pool 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. MCA-Georgia shall sign a service agreement with all panel members, contingent upon their appointment to sit as an Independent Review Panel Pool.

**Article 8. Selection of Independent Review Panel Members to Consider Appeals**

8.1 For each Appeal, MCA-Georgia shall establish an Independent Review Panel consisting of three members randomly selected from the Independent Review Pool.

8.2 Within five (5) Working Days of receiving a Notice of Appeal, MCA-Georgia shall conduct the public random selection of three members of the IRP in the presence of the Challenger's representatives if they choose to attend at the date, time and location stated in the notice issued to the Challenger by MCA-Georgia. All envelopes with names of the Independent Review Pool members will first be inspected to confirm that they include all members of the Independent Review Pool. A copy of the record with list of the selected IRP members shall subsequently be sent to the Challenger. Any two IRP members shall constitute a quorum for the IRP to execute its duties.

8.3 In the event that a member of the IRP is not available, or is determined to have a conflict of interest, MCA-Georgia shall select, at random, another member of the IRP from the Independent Review Pool following the procedures set forth in Article 8.2 above.

8.4 The Challenger shall have the opportunity to submit an objection to the appointment of any of the IRP members, pursuant to the criteria established in paragraph 8.2, within one Working Day after receiving the list of IRP members from MCA-Georgia.

8.5 If an objection is received, MCA-Georgia will conduct a review and determine whether the objection is valid, and will issue a justification of its decision to the Challenger. In the event that the selection of a member is deemed invalid based on the Challenger's objection, MCA-Georgia will immediately select, at random, another member of the IRP from the Independent Review Pool, following the procedures set forth in paragraph 8.2 above.

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8.6 If no timely objection is lodged by the Challenger, then the IRP will be deemed to be ‘formed’ as of the start of the second Working Day after the Challenger received the list of IRP members from MCA-Georgia.

8.7 IRP Members shall be impartial, independent, have no interest (through financial, family, business beneficial ownership, or otherwise) in the outcome of the Challenged Procurement, nor be involved in or related to the procurement process.

**Article 9. Appointment of the Chair**

9.1 Within three Working Days of the IRP being ‘formed’, pursuant to paragraph 8.6, all members of the IRP shall convene and agree on the appointment of a Chair from among them.

9.2 The IRP shall immediately notify the Parties of the appointment.

**Article 10. Replacement of a Member of the Independent Review Panel**

10.1 In the event of physical incapacity or resignation of a member of the IRP during the course of the Appeal proceedings, or if a member of the IRP fails to act or in the event of the de jure or de facto impossibility of him/her performing his/her functions, a substitute member of the IRP shall be appointed by MCA-Georgia pursuant to the procedure set forth in Article 8 that was applicable to the appointment of the member of the IRP being replaced.

10.3 Notwithstanding, the resignation of an IRP member, if a quorum continues to exist, the IRP shall use its best efforts to issue the IRP Decision and send copies of the same to each Party within five Working Days of its first deliberation meeting.

**Article 11. Appeal Proceedings**

11.1 MCA-Georgia shall notify all Bidders of the substance of the Appeal not later than two (2) days after receipt of the Appeal.

11.2 MCA-Georgia shall provide the IRP with a brief report responding to an Appeal within four (4) days of the IRP being formed. .

11.3 The chairperson shall be responsible for issuing a decision on behalf of the IRP.

11.4 The IRP shall review the bid challenge record and only entertain issues raised in the Bid Challenge and written decision.

11.5 The IRP may only overturn a decision that it finds has no reasonable basis or is a clear error of judgment in the application of the Procurement Rules, provided, however; if there is no written decision, the IRP may request that MCA-Georgia provide access to all documents in its possession relating to the subject procurement proceedings, and review the decisions or actions taken to which the Bid Challenge relates.

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11.6 The IRP may take one or more of the following actions:

- a. Prohibit MCA-Georgia from acting, taking a decision or following a procedure that it finds is not in compliance with the Procurement Rules;
- b. Recommend that MCA-Georgia act or proceed in a manner that is in compliance with the provisions of the Procurement Rules;
- c. Uphold a decision of MCA-Georgia;
- d. Deny the Appeal; and/or
- e. Require the payment of compensation for any reasonable and verifiable cost of bid preparation and Appeal, excluding attorney fees or lost profits.

11.7 The IRP chairperson shall issue a Decision on behalf of the IRP, within five (5) days after the IRP's first meeting to deliberate the Appeal, with an option to extend five (5) days with sufficient cause.

- 11.8 The IRP shall immediately thereafter communicate the Decision to the Challenger, MCA-Georgia, and to all Bidders in the procurement proceedings. The Decision shall:
- a. be in writing;
  - b. state the action taken and the reasons therefore; and
  - c. promptly be made part of the bid challenge record, together with the Appeal received by MCA-Georgia.

**Article 12. Notice, Calculation of Periods of Time**

12.1 For the purposes of these Challenge Procedures, any notice, including a notification, communication, Bid Challenge, Appeal or decision is deemed to have been received if it is delivered to the address on record with MCA-Georgia. Notice shall be deemed to have been received on the day it was actually received by MCA-Georgia.

12.2 Notices of Appeal shall be sent by MCA-Georgia to the Independent Review Pool within one (1) day of receipt.

12.3 For the purposes of calculating a period of time under these Challenge Procedures, such period shall begin on the first Working Day following the day when a notice, notification, communication, Bid Challenge, Appeal, or decision is received. If not otherwise specified in these Challenge Procedures, all references to "days" shall mean Working Days.

Notices and all other documents required to be delivered to MCA-Georgia, the Review Committee or the Independent Review Pool, or any IRP, under these Challenge Procedures, shall be sent to the following legal, factual, or electronic addresses:

Factual address

Millennium Challenge Account- Georgia  
Dimitri Kemoklidze  
Procurement Director

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8 Rustaveli Avenue, Block B,  
Tbilisi 0114, Georgia  
Telephone: +995591199996  
Email: [procurement@mcageorgia.ge](mailto:procurement@mcageorgia.ge)

Legal address  
4, Sanapiro Street,  
0105, Tbilisi Georgia

**Article 13. Language Requirements**

13.1 All written documents related to these Challenge Procedures shall be in English.

**Article 14. Appeal Deposit**

14.1 The Appeal Deposit shall be:

- a. in the applicable amount stated in the schedule below;
- b. paid by depositing the same in MCA-Georgia’s bank accounts described in these Challenge Procedures or subsequently described in the MCA-Georgia’s website, and
- c. applied, in the order stated, to pay for the following expenses relating to the Appeal proceedings:
  - i) Total professional fee of each IRP Member, in the amount stated in his or her Review Panel Service Agreement;
  - ii) Total costs of printing, copying, clerical support and other office expenses of IRP members;
  - iii) Total costs of courier expenses during the process; and
  - iv) Travel, experts, witnesses costs and other expenses;

Any unused portion of the remaining Appeal Deposit funds may be refunded to the Challenger at the IRP’s discretion and explicit order.

<b>APPEAL DEPOSIT</b>	<b>CHALLENGER’S ESTIMATE OF CONTRACT PRICE</b>
\$5,000.00	Up to \$100,000.00
\$15,000.00	\$100,000.00-\$1,000,000.00
\$50,000.00	Above \$1,000,000.00

14.2 The Appeal Deposit shall be in United States Dollars or in GEL equivalent of USD with the exchange rate of the day of the payment set by the National Bank of Georgia and shall be paid to

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the account of MCA-Georgia, with accompanying written confirmation of the payment, within five Working Days from the date when the Notice of Appeal is received by MCA-Georgia.

14.3 If MCA-Georgia does not receive confirmation that the payment of the Appeal Deposit was received as is required by clause 14.2, the Appeal will not be considered as properly filed.

14.4 If, according to the service agreements of the IRP members, it is known that professional fees relating to the Appeal proceedings exceed the amount stated in the table above, MCA-Georgia shall send the copy of the signed service agreement to the Challenger immediately after appointment of the IRP and inform the Challenger in writing about the total amount owed to cover the professional fees stated in the Review Panel Service Agreements. In this case, the Challenger is responsible to pay the additional amount required as per the Review Panel Service Agreements within five Working Days after receipt of the Review Panel Service Agreement and the formal notification from MCA-Georgia.

14.5 MCA-Georgia will send notice to the Challenger of any additional expenses in excess of the Appeal Deposit that are known only upon completion of the appeal review and/or Appeal process (such as clerical, courier or other office expenses) immediately upon receipt of the final invoices from IRP members. These invoices shall be submitted along with the final decision from the IRP. In this case, the Challenger is responsible to pay the additional amount required as per the final invoices within (3) three Working Days after receipt of the invoices and the formal notification from MCA-Georgia. Notwithstanding the provisions of paragraph 11.7, the final Decision of the IRP shall be released by MCA-Georgia to the Challenger only after the receipt of this additional payment.

14.6 The details of MCA-Georgia's bank accounts will be provided to Challenger on the next Working Day following the receipt of a Notice of Appeal.

**Article 15. Filing Fee and Costs**

15.1 There shall be no filing fee applied to the submission of a Bid Challenge.

15.2 The Review Panel shall state the costs of the Appeal procedure in its Decision. The term "costs" includes only:

- d. The fees, travel and other expenses of the IRP calculated in accordance with the Review Panel Service Agreements that each member has entered into with the MCA-Georgia;
- e. The reasonable costs of expert advice and of other assistance required by the Review Panel, approved in advance by MCA-Georgia and the Challenger;
- f. The travel and other expenses of witnesses to the extent that such expenses are in advance approved by MCA-Georgia and the Challenger. The travel expenses, per-

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diems and lodging expenses shall be calculated in accordance with the FAP of MCA-Georgia and MCC's cost principles.

- g. The costs for legal representation of the successful Party if such costs were claimed during the Appeal proceedings, and only to the extent that the IRP determines that the amount of such costs is reasonable.

15.3 The costs of the appeal procedure shall be borne by the unsuccessful party. In case the Challenger is the unsuccessful party, MCA-Georgia will use the Appeal Deposit (plus any additional payments made by the Challenger in accordance with sections 14.4 and 14.5 if any) to cover the full costs of the appeal procedure; any unused portion of Appeal Deposit after this payment shall be returned to the Challenger. In case, MCA-Georgia is the unsuccessful party, MCA-Georgia will return the full amount of the Appeal Deposit (plus any additional payments made by the Challenger in accordance with sections 14.4 and 14.5 if any) to the Challenger and will cover the full cost of the Appeal procedure.

**Article 16. Governing Rules**

16.1 These procedures shall govern the bid challenge system, except that where any of these procedures are in conflict with provisions of the Compact, the Program Implementation Agreement, MCC Program Procurement Guidelines, and or laws of Georgia. In the event of any conflict between this document and the Compact and/or the Program Implementation Agreement, or MCC Program Procurement Guidelines, as applicable, the term(s) of the Compact and /or the Program Implementation Agreement, or MCC Program Procurement Guidelines, as applicable, shall prevail.

16.2 These Challenge Procedures shall be governed by and construed in accordance with the laws of Georgia and any dispute arising under these Challenge Procedures shall be settled by the relevant court of Georgia.

16.3 The bidding documents shall state that every Bidder or Potential Bidder, bidding for the provision of services and/or the supply of goods or execution of works, agrees to be bound by these Challenge Procedures, 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 issue arising out of the bidding and procurement processes until and unless a Bid Challenge and Appeal have been completed in accordance with these Challenge Procedures.

16.4 MCA-Georgia may, with the prior written approval of MCC, modify these Challenge Procedures in writing from time to time. For the avoidance of doubt, the Challenge Procedures posted at the time the Bid Challenge is submitted shall govern with respect to those suppliers, providers and contractors, even if MCA-Georgia subsequently modifies Challenge Procedures in accordance with this Article 16.

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**Article 17. Reporting to MCC**

- 17.1 Bidders and Potential Bidders shall have no right to appeal to MCC regarding decisions resulting from these Challenge Procedures.
- 17.2 Within three (3) days after a final decision, MCA-Georgia shall submit to MCC a report of the handling and disposition of the Bid Challenge and/or Appeal (as applicable). The report shall include the bid challenge record, all notices and other relevant correspondence.
- 17.3 MCC, at its sole discretion, has the right to be an observer to all Bid Challenges and Appeals proceedings, but does not have the obligation to participate in any proceeding, in any capacity. The acceptance by MCC of the right to be an observer to any proceeding shall not constitute consent to the jurisdiction of the courts or any other body of the Georgia or any other jurisdiction.