



**Millennium Development Authority**  
Reducing Poverty through Economic Growth



# TRAINING WORKSHOP FOR PROSPECTIVE BIDDERS

**“Enhancing effective participation in MiDA contracts”**



**MiDA BID CHALLENGE SYSTEM (BCS)**



# MiDA Bid Challenge System: What is it?

- ▶ A set of standard procedures to strike an appropriate balance between preserving the interests of Bidders and the need to limit disruption in the procurement process
- ▶ A safeguard to preserve fairness and transparency in the MiDA procurement process
- ▶ Visit the MiDA website at <http://www.mida.gov.gh/pages/procurement-opportunities#fndtn-bid-challenge-system-bcs>



## MiDA Bid Challenge System: What it's NOT

- ▶ This BCS does NOT address or provide any mechanism to resolve contract disputes once a MiDA contract has been awarded
- ▶ The terms of the contract provide for dispute resolution during contract performance
- ▶ BCS is to ensure fairness and transparency during the procurement process from solicitation (Invitation For Bids, Request For Proposals, etc.) to contract award



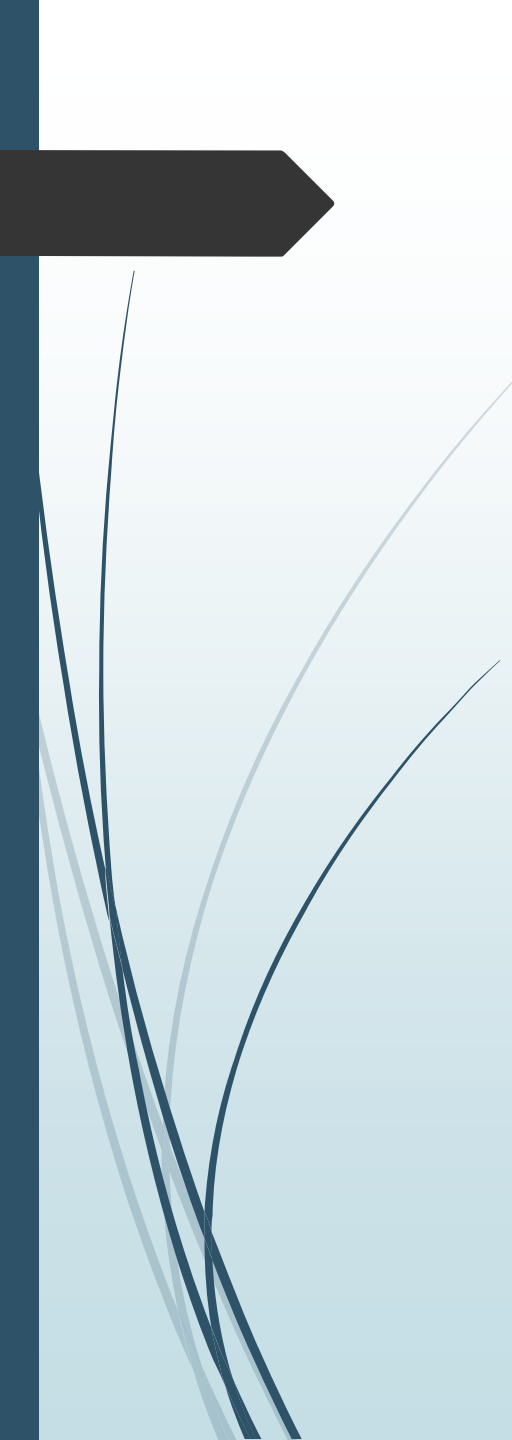
## MiDA Bid Challenge System: What it's NOT

- ▶ Not to be used to allege fraud, corruption or intent of wrong doing in the procurement process,
  - ▶ Such allegations must be processed in accordance with MCC's Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations (see MCC's Website [www.mcc.gov](http://www.mcc.gov))
- ▶ Not to be used to cure a deficiency in the Challenger's bid or proposal

A decorative graphic on the left side of the slide. It features a dark blue vertical bar on the far left. A black arrow points to the right from the top of this bar. Below the arrow, several thin, light blue lines curve downwards and to the right, creating a sense of movement and depth.

## MiDA Bid Challenge System: Why?

- ▶ “The purpose of this BCS is to provide Bidders who believe that they have been unduly harmed by a MiDA procurement action or decision *the ability to seek a prompt, impartial and cost-effective review of the action or decision* in order to promote and maintain the integrity and transparency of the MiDA compact procurement process.”



## MiDA Bid Challenge System: Foundational Principles

- ▶ MiDA must provide clear explanations of why Bidders are disqualified or not selected
- ▶ A procedurally simple and expeditious process is essential to address concerns about the application of procurement rules and procedures to specific procurement actions
- ▶ While a challenge remains outstanding, the related procurement proceedings should be suspended to prevent, in normal circumstances, the signing of a contract



## MiDA Bid Challenge System: Foundational Principles (continued)

- Challenges should be initially reviewed and a decision issued by the awarding authority (in this case, MiDA) with the opportunity for an appeal to a knowledgeable and impartial third-party
- All Bidders understand and accept without condition that any challenge or protest to the process or results of a MiDA procurement may be brought only through MiDA's Bid Challenge System (BCS)



## MiDA Bid Challenge System: Foundational Principles: Right of Appeal

- ▶ Bid Challenge is made to MiDA
  - ▶ MiDA CEO renders a decision “upon the advice of the MiDA Procurement Director, General Counsel, the Procurement Agent, and such other technical experts as the Chief Executive Officer may deem appropriate”
- ▶ Any Challenger or Interested Party who is dissatisfied with the decision may lodge an appeal to a ***knowledgeable, independent, and impartial panel*** established under the BCS





## MiDA Bid Challenge System: What can be challenged?

- The solicitation document (RFP, IFB, etc.) if the protester believes the requirements or selection criteria **unduly** restrict competition
- Pre-qualification or shortlisting proceedings
- First-stage proceedings in a two-stage procurement
- Contract award (or intent to award)
  - Single-stage or second stage of two-stage procurement



## MiDA Bid Challenge System:

### What can NOT be challenged?

- ▶ Choice of the method of procurement (e.g., Quality and Cost Based Selection, Quality Based Selection, Least Cost Technically Acceptable, etc.)
- ▶ Choice of the type of procurement (e.g., goods, works, non-consultant services, or consultant services)
- ▶ Scores assigned by the technical evaluation panel
  - ▶ UNLESS the determination of such scores is alleged to have been arbitrary or capricious or characterized by an abuse of discretion
- ▶ Decision to cancel a procurement or reject all bids, proposals, offers or quotations



## MiDA Bid Challenge System: What is the standard? (What does it take to “win”?)

For a Protest to prevail, a Challenger must prove by clear and convincing evidence:

- ▶ that the Procurement Action
  - ▶ violates the Procurement Rules; or
  - ▶ is arbitrary or capricious or characterized by an abuse of discretion;
- ▶ and that the Challenger has suffered or will suffer loss or injury because of the Procurement Action




## MiDA Bid Challenge System: Timeliness is Essential!

- ▶ Protests of the solicitation documents:
  - ▶ 10<sup>th</sup> Business Day after MiDA issues an invitation to prequalify or to submit a bid or a proposal
- ▶ Protests of pre-qualification or short listing proceedings:
  - ▶ 5<sup>th</sup> Business Day after notification of the pre-qualification or short listing decision or action
- ▶ Protests of two-envelope procurement proceedings (i.e., separate technical and financial bid or proposal):
  - ▶ 5<sup>th</sup> Business Day after notification of the technical rankings or results



## MiDA Bid Challenge System: Timeliness is Essential!

- ▶ Protests of all other Procurement Actions:
  - ▶ 5<sup>th</sup> Business Day after the Challenger became, or should have become, aware of the circumstances giving rise to the Protest
- ▶ Appeal of a Level 1 decision to the independent appeal panel:
  - ▶ 5<sup>th</sup> Business Day after MiDA issues the Level 1 decision



## MiDA Bid Challenge System: What if someone else's Challenge impacts me?

- ▶ Any Bidder, other than the Challenger, that believes it may be affected by the decision to be made with respect to the Protest may become an "Interested Party" by joining in the Protest or by filing a Comment by the Comment Deadline
- ▶ The Challenger or an Interested Party may Appeal the Level 1 decision
- ▶ If there is an Appeal of a Level 1 decision, any "Interested Party" (the original Challenger or any other Bidder who joined in or commented on the original Protest) may join in or comment on the Appeal



## MiDA Bid Challenge System: Common Claims

- Determining bid/proposal non-responsive or non-compliant due to failure to provide required documents:
  - Letters of incorporation/documentation of legal status
  - Power of attorney/evidence of authority to sign
  - Proper bid security
    - Not in name of bidder
    - Improper form (bond where demand bank guarantee required)
    - No corresponding bank in MCA's country



## MiDA Bid Challenge System: Common Claims

- Bidder failed to demonstrate required qualification or scored criteria:
  - Challenger must show where in their bid/proposal the evidence was clearly provided
  - If form of evidence was prescribed in RFP/IFB, Challenger must show it was provided as requested
  - Evaluators do not look beyond bid/proposal
  - Challenger cannot introduce new information
- Evaluators are NOT finding that Bidder is unqualified, but that they failed to provide proper evidence of qualification/evaluation criteria





## Example 1: Misapplication of Evaluation Criteria

- Procurement: Translation & other linguistic services
- Challenge: Evaluation Panel failed to consider one of the evaluation criteria as described in the RFP
- Facts: This procurement was conducted using the QCBS method (Quality and Cost Based Selection). The RFP required firms to submit CVs for several key personnel and provided for evaluation of each CV against the qualification requirements for the particular key personnel position. In addition, the RFP stated that each CV would receive its own rating, and that CVs failing to meet minimum requirements would be rated as unacceptable and given a score of zero.



## Example 1: Misapplication of Evaluation Criteria

- What happened: The evaluators were given an incorrect evaluation worksheet for the key personnel factor. Rather than being advised of the above standard, the evaluators were instructed simply to verify that the firms had furnished CVs for the key personnel positions. Applying this instruction, the evaluators essentially reviewed the CVs factor on a pass/fail basis, giving the challenger and awardee the same rating.
- Level 1 Decision: The Level 1 Authority decided that the evaluation panel effectively considered the qualifications of the firms' key personnel under the management plan factor, which provided for consideration of the relevant experience of the proposed management team in relation to the terms of reference.



## Example 1: Misapplication of Evaluation Criteria

- Appeal: Level 2 Authority found that the Level 1 analysis conflated two evaluation factors that the RFP established as separate and distinct from one another, and, in so doing, undermined the significance of the CVs factor. By considering the key personnel factor as part of the management plan factor, rather than assigning it the separate rating and weight provided for in the RFP, the evaluation was conducted in a manner contrary to the evaluation scheme expressly established by the RFP.
- Remedy: The appeals body recommended that the procuring entity reevaluate firms' proposals consistent with the Level 2 decision, and re-issue its evaluation report based up on the correct criteria. They also recommended that the Challenger be reimbursed the costs of appeal.



## Example 2: Inappropriate Evaluation Criteria

- **Procurement:** Construction improvements to bridge levee and floodwalls
- **Challenge:** Company X maintains that the qualification criteria was not fair and that the company's experience in a neighboring country should have qualified.
- **Facts:** The IFB advised that the MCA would award on a lowest price basis. The IFB indicated that the qualification criteria required experience on more than 5 projects in the country. X's bid indicated only two projects in the country, and 5 in a neighboring (and similar) country. The MCA announced award to Company Y on the basis that it met the minimum evaluation criteria, though its price was higher than X's. X challenged after bids were submitted, claiming the qualification criteria was not fair and that X's experience in a neighboring country should have qualified.



## Example 2: Inappropriate Evaluation Criteria

- ▶ **Decision:** Any question regarding the qualification criteria in the IFB had to be raised, if at all, no later than the 10<sup>th</sup> Business Day after publication of the IFB (well before the bid due date). Since Company X did not protest until after bids were due and submitted, its assertion that the agency should have expanded its qualification criteria or allowed the company to count its other experience is not valid. Given Company X's failure to timely challenge, it had no independent basis to allege that the procurement entity should have changed its qualification criteria. The challenge was dismissed.



**Thank You**