



CENTER FOR REGIONAL DEVELOPMENT
TRANSPARENCY INTERNATIONAL ARMENIA

MCA-Armenia Procurement

MONITORING REPORT - 2007

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on MCA-Armenia Procurement



This study was supported by Open Society Institute
Assistance Foundation Armenia.

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LIST OF ABBREVIATIONS

CRD/TI Armenia	Center for Regional Development / Transparency International Armenia
CJSC	Closed Joint-Stock Company
IBRD	International Bank for Reconstruction and Development
IDA	International Development Agency
LLC	Limited Liability Company
MCA	Millennium Challenge Account
MCC	Millennium Challenge Corporation
NGO	Non-governmental organization
RFP	Request for proposals
REOI	Request for expression of interest
SNCO	State non-commercial organization
TI	Transparency International
USAID	United States Agency for International Development
WB	The World Bank

INTRODUCTION

In March 2006, the Millennium Challenge Corporation (MCC) signed a \$235.65 million Compact with the Government of Armenia (hereinafter, the *Compact*) to assist the country in achieving its poverty reduction goals through a sustainable increase in the economic performance of the agricultural sector. The *Compact* plans to invest a five-year grant for rehabilitation of rural roads, development of irrigation infrastructure and provision of technical and financial assistance to improve water supply and support farmers and agribusinesses. The *Compact*, entered into force in September 2006, is being administered by Millennium Challenge Account (MCA) Armenia, a state non-commercial organization (SNCO) established by, acting for and on behalf of the Government of the Republic of Armenia.

Throughout the *Compact* implementation, MCA-Armenia plans to procure various goods, works and services, particularly, related to the construction of roads and irrigation infrastructure. Transparency International's (TI) research around the world indicates that public procurement and expenditures is one of the areas that experiences the highest risks of corruption. Corruption risks can appear as early as in the planning stages and design of specifications, continue throughout bidding and contracting process, remain throughout execution and control, while the impacts of corruption may only become visible long after the projects are completed. Thus, special endeavors directed toward curbing corruption in public procurement become critical.

While enforcement and control are imperative for the integrity of operations in public procurement, the transparency of processes is considered to be the most effective anti-corruption preventive mechanism to promote accountability, facilitate oversight and citizen participation, and bring legitimacy to governmental decisions.

The monitoring of MCA-Armenia procurement was conducted throughout 2007 by the Center for Regional Development / Transparency International Armenia (CRD/TI Armenia) non-governmental organization (NGO). Efforts of CRD/TI Armenia included the review of procurement-related documents provided by MCA-Armenia SNCO and general observations related to the transparency of procurement processes. The monitoring focused on issues related to access to information, bidding opportunities, conflicts of interests, complaint mechanisms, corruption risks and other relevant issues.

METHODOLOGY

Methodology for the monitoring of MCA-Armenia procurement operations was designed to observe and evaluate the transparency and the compliance of respective procurement operations to the *Compact* and the related *Procurement Agreement* signed on September 26 2007 between MCC and MCA-Armenia SNCO (hereinafter, the *Procurement Agreement*).

The approach adopted by CRD/TI Armenia was to monitor procurement processes from the position of the general public - taking the advantage of the publicly available website and of citizens' right to access to information. Methodology planned that the documents requested from MCA-Armenia will be those that are considered to be accessible for bidders. Thus, CRD/TI Armenia refrained itself from requesting documents that are not connected to the topics under the monitoring.

Monitoring methodology proposed the study of several aspects/stages of the procurement cycle, including the guidelines used for procurement operations, procurement planning, bidding preparation, bidding procedures and evaluation.

- Guidelines used for procurement operations of MCA-Armenia were reviewed based on the extent of their clarity, availability for the broad public and/or making references to widely available documents. Procurement of goods, works and services under the *Compact* are governed by the *Procurement Agreement's "Schedule 1: Procurement Guidelines"*, which are based on the principles, rules and procedures set forth in the World Bank's *Guidelines: Selection and Employment of Consultants by World Bank Borrowers, May 2004* and The World Bank's *Guidelines: Procurement Under IBRD Loans and IDA Credits, May 2004 (together, the WB Procurement Guidelines)*. Therefore, the monitoring considered the provisions of the *Procurement Agreement* as well as the *WB Procurement Guidelines*.
- Planning was examined for the procurement plans posted on the MCA-Armenia website, on the grounds of inclusion of details required by the *Procurement Agreement* and of the availability for wide public.
- Packages of bidding documents were studied based on their compliance with the procurement guidelines; provision of all the necessary details allowing the

bidders to participate; provision of grounds for open competition and equal opportunities to all potential participants; impartiality and avoidance of fraud or corrupt practices; prevention of conflict of interest situations. For this reason, the requests for proposals (RFP), including the instructions to bidders, conditions of contract, specifications/bills of quantities/terms of reference and schedules of requirements, were scrutinized.

- Execution of bidding was observed upon its compliance with the guidelines and accessibility of the bidding documents for all the bidders/participants; impartiality and provision of equal opportunities to all potential participants; prevention of conflicts of interest. These observations were made through reviewing the additional information as well as clarifications/amendments provided to all bidders.
- Evaluation procedures were monitored based on opening of the bids at the place and date specified in the bidding documents; evaluation of bids by the independent and professional committee; keeping up with the procedures specified in the bidding documents/guidelines and prevention of conflicts of interests. Monitoring was done based on the review of evaluation reports, which included also the correspondence with bidders.

Methodology intended that the documents were provided upon request by CRD/TI Armenia via electronic means of communication within two business days upon request. It also suggested that MCA-Armenia delegated a person to communicate with CRD/TI Armenia and provide the requested documents on a regular basis, in accordance with the agreed procedures.

This methodology along with other monitoring efforts initiated by a partner NGO - Community Finance Officers' Association - was presented and discussed with MCA-Armenia staff in February 2007 as well as introduced to the representatives of MCC and USAID in early March 2007. In addition to these meetings, there was an official correspondence related to the monitoring methodology and a working meeting with MCA-Armenia Procurement Officer on the concrete steps of communication and data collection. In particular, this meeting resulted in an arrangement that the requested documents are provided to CRD/TI Armenia after signing of contracts and publication of award decisions.

In addition, CRD/TI Armenia reviewed the national print media for articles covering the MCA-Armenia program, Governing Council meetings, tender announcements, etc. The project team also regularly visited the MCA-Armenia and MCC websites as well as the MCA Monitor blog of the Center for Global Development (blogs.cgdev.org/mca-monitor). It also attended MCA-Armenia Stakeholders' Committee meetings, made open for non-member NGOs since February 1 2007, and communicated with other stakeholder NGOs to discuss the progress of the program.

FINDINGS

The website of MCA-Armenia (www.mca.am) is designed to provide information about the procurement guidelines, announced and archived tenders for goods, works and services, procurement plans, awarded contracts and bid challenges. Shopping and direct contracting do not appear on the website.

For the most of procurement cases MCA-Armenia provided CRD/TI Armenia with the Requests for Proposals (RFP) and Evaluation Reports, while for some it also presented Requests for Expression of Interest (REOI), Invitation to Quote and draft contracts. Some of the requested documents were provided within two business days as agreed by these organizations, while for a few the respective documents were provided with a delay of up to 20 days.

Throughout 2007, CRD/TI Armenia scrutinized the following procurement cases under MCA-Armenia program:

1. Vehicle
2. Bank Agent Services
3. Roads Feasibility Study and Design Consultant
4. Project Manager for the Water-to-market Activity
5. Survey on Technical and Economical Justification for Construction of New Irrigation Reservoirs
6. Design and Construction Supervision for Rehabilitation of Six Main Canals

7. Design and Implementation of a Farmer Survey to Collect Data for an Impact Evaluation of On-farm Water Management Training
8. Environmental and Social Assessment and Oversight

Problems revealed by CRD/TI Armenia included ones of a general nature, associated with procurement regulations and planning, as well as specific concerns related to procurement processes.

Guidelines

The monitoring showed that there are no comprehensive and publicly available procurement guidelines that would govern procurement operations under the *Compact*. Procurement guidelines under the *Procurement Agreement* refer to the *WB Procurement Guidelines* and delineate special modifications to the latter for the purpose of MCA-Armenia program. Such a practice creates impediments for public monitoring and is not seen by CRD/TI Armenia as effective, transparent or user-friendly.

- In order for a person to just get acquainted with what the rules are that govern the procurement under MCA-Armenia program, he/she has to engage in a complicated and redundant task of going back and forth with the *Procurement Agreement* on the MCA-Armenia website and *WB Procurement Guidelines* on the WB website, memorizing the rules or integrating these documents on their own.
- MCA-Armenia *Procurement Agreement* is available in English and Armenian, while *WB Procurement Guidelines* exist in English and Russian. Thus, the task will be even a more complicated one for an Armenian/Russian speaker, who will also have to translate either of these documents from Russian into Armenian or vice versa.
- As of December 31 2007, there are no comprehensive guidelines available on MCA-Armenia website, though since the times when it was launched it contained a link - Procurement Guidelines.

Planning

Procurement plans have to be developed and adopted in accordance with the *Procurement Agreement* on a semi-annual basis and publicized on the MCA-Armenia website, Development Gateway Market website (www.dgmarket.com), the United Nations Development Business website (www.devbusiness.com) as well as in a daily newspaper of wide circulation in Armenia. These plans are designed to identify the purchasing needs for the goods, works and services for a six month period, the proposed methods for procurement of those and the estimated costs. Deviations from procurement plans are subject to the approval by MCC.

The review of procurement plans demonstrated that those do not reflect the schedules of procurement operations, which makes the monitoring rather difficult. Also, procurement plans do not make any indication of the already initiated procurement operations or of the delayed procurements. So, one may judge on the status of procurement processes based on juxtaposition of recent plans to see which items of the previous plan do not appear in the later one as well as through following-up with bid announcements and their deadlines. Such a format is quite confusing and does not contribute to the transparency of procurement processes.

Bidding Preparation

Matters of concerns were also found in the use of inaccurate bidding requirements, inadequate information provided to bid participants, inconsistent data and the selected method of the procurement.

- MCA-Armenia provided inaccurate and incomplete information to participants for purchase of a **Vehicle**. The Invitation to Quote mentioned that the technical specifications set forth in this document "could be slightly deviated," though it did not spell out what is meant by "slightly". For example, could a 5-door vehicle change into a 4-door one? Could the seating capacity change from 5-7 persons into 4-6 persons? Could fuel tank capacity change from 60-80L into 58L? Could the vehicle have 2 instead of 4 speakers, etc.? Yet, some of these deviations would dramatically influence the price and such vagueness could limit participation of companies in this quote.

- For solicitation of proposals for **Bank Agent Service**, the RFP has set a requirement to express service charges and fees in US dollars, whereas most of the banks around the world normally use percentage measurement for indication of their service charges and fees. Two banks – Armeconombank closed joint-stock company (CJSC) and Ardshininvestbank CJSC provided their charges as a percentage from the operation cost and for this reason were rejected. Thus, the use of inaccurate requirements for soliciting proposals had limited the competition for this procurement.
- Procurement of the **Farmer Survey for the Impact Evaluation** service was based on consultant qualifications, whereas this method is usually used for contracts that are small, when the requirement is too specific and where the price does not matter as much as the search for a qualified company. Thus, the procuring entity is ready to negotiate any price proposed by the selected participant as it is believed to have a unique expertise in the field. Meanwhile, the particular service was merely a survey and there were many companies qualified for such a task.
- As revealed in the evaluation stage of the procurement for the **Design and Construction Supervision for Rehabilitation of Six Main Canals**, the discrepancy between the lowest and highest prices proposed by the three applying companies was more than four times, while between the two lowest ones it was almost three times. One of the reasons for such disparity could be the vagueness of the bidding documents and the information provided. This assumption is also supported by the fact that there were many questions asked by bidders and only half of the short-listed companies have submitted proposals. Eventually, the contract was awarded to a local company – “Hayjrnakhagits Institute” CJSC, which likely possessed more information due to many years of its experience in this field and suggested the lowest price.
- The RFP for the **Design and Construction Supervision for Rehabilitation of Six Main Canals** did not provide criteria for the desired experience, staffing, approach to the assignment, etc. Though this document provided information regarding the maximum points for each criterion, it was not clear what were the sufficient requirements for getting the best scores for the technical part of the proposal.

Bidding Procedures

Along execution of bidding procedures there have been cases of providing insufficient time for preparation of bids, disclosure of the budget and late submission of bids.

- For the procurement of a **Bank Agent Service**, not sufficient time was provided for development of proposals. Though the guidelines used for MCA-procurement operations require that “the time allowed shall depend on the assignment, but normally shall not be less than four weeks or more than three months,” only 15 days instead of the minimum 28 were given to the bidding companies. Meanwhile, it is possible that there could be more companies participating in bidding in case there was more time available. At the same time, those companies whose proposals were rejected could have prepared higher-quality proposals adequate time was provided. Thus, as an outcome, the selection for this procurement could result in a completely different picture.
- During the bidding for the **Survey on Technical and Economic Justification for Construction of New Irrigation Reservoirs** service the available budget was disclosed to potential bidders before the proposals submission deadline. Such a practice could bring to an artificial increase of the proposals' price and/or reduction of the number of bids and limited competition. In fact, eventually, only 2 bids have been submitted out of 8 short-listed companies.
- Evaluation report for the **Farmer Survey for the Impact Evaluation** referred to a case of one late submission of EOI, though it did not provide the name of the late company. Thus, one could raise a question on why the late bid has not been rejected by MCA-Armenia. Another uncertainty relates to the issue on whether the late bid was submitted by the company, which later was awarded the contract.

Evaluation

During evaluation of bids the revealed problems were associated with breach of requirements set forth in the procurement guidelines and/or respective RFP.

- In the case of procurement of a **Vehicle** the MCA-Armenia made a selection of the winner from two substantially responsive quotations, instead of the required three. The evaluation report indicated that one of the companies offered 45 days for the delivery of goods, instead of 30 set forth in the Invitation to Quote. This quotation should have not been taken into consideration and should have not been evaluated or compared with the other ones as different conditions were applied for the competing companies. If the delivery period of 45 days was acceptable for MCA-Armenia, it should have informed all the participants about that beforehand and asked for quotations in accordance with the new delivery period. This might have brought more participants and lowered the final price, especially given that the delivery period and transportation means directly influence the price. This could also result in a contract awarded to a different provider.
- One of the weaknesses of the selected company – “Hayjrnakhagits Institute” CJSC, mentioned in the Combined Evaluation Report for the **Design and Construction Supervision for Rehabilitation of Six Main Canals** was that the Company designated 18 months work of one manager for each primary canal, while the total construction period was intended to be 36 months. This meant that the contractor should not be able to implement the contract in the way it was requested by RFP. Another disadvantage of the selected company was mentioned to be the weak experience of team leaders in the design of primary canals. Such statements naturally question the results of the evaluation and the criteria used.
- The Evaluation Report for the **Farmer Survey for the Impact Evaluation**, where the selection was supposed to be based only on consultant qualifications, indicated that the selected consortium - JEN Consult Limited Liability Company (LLC) and “Areg” NGO - had "only limited track record of surveys in rural areas of Armenia." Thus, when the selected participant was expected to have a unique expertise in this area, the contract was awarded to one, which had only some degree of experience. Interestingly, this participant has not only gained the best combined evaluation score, but also gained the highest score for each criterion separately.

- Language requirements for the staff for the **Economic and Social Assessment and Oversight** service set forth in the respective RFP mention that the key staff shall be "proficient in English; functional Armenian and/or Russian is desirable." Meanwhile, the evaluation used only knowledge of the Armenian and Russian as criteria. Thus, one of the weaknesses of the Water Resources Management/planning Specialist of the non-winner company among the two who submitted bids was mentioned to be the fact that he did not know any of "required" languages, namely Armenian or Russian.

Other

Other problems noticed along the review of the procurement documents included the following:

- In accordance with the Contract on **Farmer Survey for the Impact Evaluation**, MCA-Armenia should provide assistance to the consultant in obtaining visas, while it was not clear from the reviewed documents what was the purpose of visas since the survey should be conducted in Armenia by Armenia-based companies. However, in case the consultant planned to travel abroad or engage non-Armenian citizens for the purpose of contract, it would be reasonable to provide clearer information within the document.
- The Combined Evaluation Report of the **Environmental and Social Assessment and Oversight** procurement contained odd data, where two different dates were mentioned for publication of RFP. Dates for the publication in Development Business were mentioned to be December 23 2006 and November 1 2006 in different places of the reviewed document. While for the publication in "Hayastani Hanrapetutyun" the indicated dates were December 23 2006 and November 4 2006.
- RFP for the procurement of the latter consulting services contained inconsistent information regarding the payment schedules, where the Special Conditions of Contract stated that MCA-Armenia will pay only 33% of the contract price to the contractor, while the payment calendar provided in the annex of the same document indicated payment of 100%.

- A conflict of interest as well was observed in the same case of procurement, where the RFP recommended the bidders to address their complaints for a procurement process to the very person, who organizes that procurement process rather than to an independent person.

RECOMMENDATIONS

Taking into consideration the above-mentioned deficiencies along the procurement cycle and the associated risks for corruption, CRD/TI Armenia recommends that MCA-Armenia take steps to improve procurement operations and their transparency through:

- Development of a comprehensive, user-friendly and publicly available document on *Procurement Guidelines*;
- Inclusion of information about the schedule of the planned procurements and the status of the previously publicized ones in the *Procurement Plans* and timely posting of the latter on MCA-Armenia website;
- Exposure of competitive as well as non-competitive procurement contracts on the respective website;
- Careful design of RFP and the respective elements, including specifications and the selection criteria so that to ensure adequate competition and evaluation of bids;
- Strict implementation of procurement guidelines and RFP requirements during bid administration and selection process;
- Assurance of the consistency of data contained within procurement documents
- Prevention of conflicts of interests during all stages of the procurement cycle.