



**MILLENNIUM DEVELOPMENT AUTHORITY  
GHANA**

**BID CHALLENGE SYSTEM**

**Report of Level 2 Authority  
On  
Appeal of Level 1 Authority Decision  
By  
AZOROM/SWECO**

**PROCUREMENT OF PROGRAM MANAGEMENT  
CONSULTANT (PMC)  
(RFP REF: 5121100/RFP/QCBS/06/16)**

**4<sup>th</sup> April 2017**

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# EXECUTIVE SUMMARY

## E.1 INTRODUCTION

### E.1.1 Background

On 5<sup>th</sup> August 2014 the United States of America, acting through the Millennium Challenge Corporation, and the Republic of Ghana (the “Republic”) signed a Millennium Challenge Compact pursuant to which MCC agreed to provide a grant of up to \$ 498,200,000 to the Government for a program to reduce poverty through economic growth in Ghana. In addition, the Republic of Ghana has provided funding of \$37,365,000. The Government has designated the Millennium Development Authority (“MiDA”), Ghana, to oversee and implement the compact program in accordance with the terms of the Compact. The Compact requires the Government (including any designee) to ensure that it procures all goods, works and services to implement the compact program in accordance with the MCC Program Procurement Guidelines. The MCC Program Procurement Guidelines further require that MiDA establish and publish a Bid Challenge System that provides Bidders on MiDA procurements with the ability to challenge and seek review of MiDA procurement actions and decisions.

To comply with these requirements, MCC has established the rules and procedures set forth in a document - Bid Challenge System (BCS), to govern the review of all challenged MiDA procurement actions and decisions, and which will be incorporated in all solicitation documents distributed to potential Bidders.

### E.1.2 Purpose of the BCS

The purpose of the 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.

Such a Bidder can initially file a Protest which will be reviewed by Level 1 Authority. Any Challenger or Interested Party who is dissatisfied with the decision of the Level 1 Authority may seek review of that decision by filing an Appeal to the Level 2 Authority made up of Independent Reviewers. And the Level 2 Authority decision will be final and binding on all parties to the Appeal with no further recourse available in any other forum or jurisdiction.

## **E.2 PROTEST AND APPEAL BY AZOROM/SWECO**

MiDA is in the process of procuring a Program Management Consultant (PMC) using the MCC procurement Guidelines. On completion of the Evaluation of the Proposals and posting the Notice Intention to Award the Contract to SMEC International PTY Limited, AZOROM/SWECO who had also put in a Proposal filed a Protest in accordance with the BCS. The Protest by email filed by AZOROM/SWECO alleged that the procurement action was “arbitrary or capricious or characterized by an abuse of discretion which resulted in AZOROM/SWECO losing a contract valued at USD 22.6million.” These alleged violations were said to be in:

1. the application of the evaluation methodology;
2. the determination of the highest overall score based on the application of the evaluation methodology;
3. lack of transparency and disclosure regarding the Bidders’ total scores; and
4. compliance with the prescribed evaluation criteria.

The Protest was reviewed by the Level 1 Authority as required by the BCS Rules and was dismissed on the grounds that it had not violated any procurement rules, neither had the Challenger been able to meet its burden of proof that the decision to award the contract to SMEC had been “arbitrary or capricious or characterized by an abuse of discretion.”

On receipt of the decision of the Level 1 Authority, AZOROM/SWECO filed an Appeal to the Level 2 Authority alleging that the decision to award the contract to SMEC was again “arbitrary or capricious or characterized by an abuse of discretion.”

The Level 2 Authority was constituted as per BCS Rule 4 from the Master List of Independent Reviewers to review AZOROM/SWECO’s Appeal to the Level 1 Authority Decision on their Protest.

## **E.3 FINDINGS OF LEVEL 2 AUTHORITY**

The Level 2 Authority reviewed and considered rules and principles governing the BCS, MCC Program Procurement Guidelines, the RFP for the Procurement of Program Management Consultant (REF: 5121100/ RFP/QCBS/05/16), Clarification Questions and Responses (SI 47) on the RFP (ITC 24.10) issued by MiDA which used a worked example to explain how the formula for financial scores would be used, Financial Proposals of Bidders and all other documents received from MiDA (see list of Documents Received and Requested in Sections 3.3 and 3.4 respectively.

Level 2 Authority grouped its findings into the following sub-categories: Procedural and Substantive Issues.

### **E.3.1 Procedural Issues**

As per BCS Rule 3.4 (b), MiDA submitted their response to the Appeal by AZOROM/SWECO to the Level 2 Authority. In the Response MiDA indicated that the Appeal was non-compliant with procedural requirements of the BCS. The reasons given and the decisions of the Level 2 Authority are stated below.

1. The Appeal was not accompanied by a “Proof of Payment”

The Level 2 Authority decided that since no specific form of Proof of Payment had been indicated in the BCS Rules or in the communication to AZOROM/SWECO, the Challenger’s statement on the Appeal Form that they had paid the Fees which is supported by the SWIFT Transfer from MiDA’s Bankers that indeed the amount had been transferred and credited to MiDA’s account on time, was sufficient to serve as a proof of payment.

2. Payment of \$2,500

The Appeal Fee stipulated in the BCS in Rule 3.2.3 is \$2,500. The Level 2 Authority is of the view that the SWIFT Message shows a clear intent to transfer \$2,500, and the shortfall of \$10 relative to the fee amount of \$2,500 is too minimal to warrant discarding the Appeal.

3. Rule 3.2.2 (d) and (e) of the BCS states as follows: (d) an appeal must not allege any theory or argument that was not alleged in the Protest or Comment, (e) must not assert any new information or include any new documents that were not provided to the Level 1 Authority except as stipulated in Rule 3.1 (b).

On the issue of new reasons being introduced in the Appeal, the Level 2 Authority finds that AZOROM/SWECO’s original position at the Level 1 Authority Protest, and its reasons for the Appeal are closely related and can be said to be a further clarification and explanation of its original position.

*In summary, the Level 2 Authority decided that AZOROM/SWECO used their best effort to follow all the BCS rules for filing an Appeal on receipt of the Decision of the Level 1 Authority.*

### **E.3.2 Substantive Issues**

On the substantive issues raised in the Appeal of AZOROM/SWECO, the Level 2 Authority after careful review and consideration of all documents related to this procurement action, finds that MiDA followed the MCC Procurement Guidelines as stated in one of the four MCC Program Procurement Principles which states as per the MCC PPG P1.B.1.3, “(a) Open, fair and competitive procedures used in a transparent manner to solicit, award and administer contracts to procure consultant services.”

The Level 2 Authority finds that the AZOROM/SWECO approach to the issues raised in the Appeal in relation to the evaluation criteria with regards to the financial and combined evaluation scores is not consistent with the RFP as provided to all Bidders.

### **E.3.3 Level 2 Authority Decision**

The Level 2 Authority as of 4<sup>th</sup> April, 2017 based on our findings upholds the decision of Level 1 Authority and dismisses the Appeal as AZOROM/SWECO has failed to prove by clear and convincing evidence that: (a) the Procurement Action (i) violates the Procurement Rules; or (ii) is arbitrary or capricious or characterized by an abuse of discretion; and (b) the Challenger has suffered or will suffer loss or injury because of the Procurement Action.”

#### **E.3.4 Recommended Action**

The Level 2 Authority therefore recommends that the automatic suspension on the Procurement of the Program Management Consultant be lifted in accordance with BCS Rule 5.3.

And as per BCS Rule 3.2.3.1, the Appeal Fee paid by AZOROM/SWECO shall be applied to the expenses of the Appeal.

## 1. BACKGROUND

MiDA published on their Website on 8<sup>th</sup> February, 2017 as required by MCC Program Procurement Guidelines a notification of intention to award the Base Contract for Program Management Consultant to SMEC International PTY LTD at a price of US\$ 7,833,608.99.

On Wednesday 15<sup>th</sup> February, 2017 MiDA received a Protest by email filed by AZOROM/SWECO alleging that the procurement action was “arbitrary or capricious or characterized by an abuse of discretion which resulted in AZOROM/SWECO losing a contract valued at USD 22.6million.” These alleged violations were said to be in:

1. the application of the evaluation methodology;
2. the determination of the highest overall score based on the application of the evaluation methodology;
3. lack of transparency and disclosure regarding the Bidders’ total scores; and
4. compliance with the prescribed evaluation criteria.

On 16<sup>th</sup> February, 2017 by 16:30 hours GMT, MiDA posted a notice of the Protest by AZOROM/SWECO as required by Bid Challenge System (BCS) Rule 1.4 (a) and (b).

By a letter dated 12<sup>th</sup> February, 2017 the CEO of MiDA constituted Level 1 Authority Review Committee as per BCS Rule 2.1 to review the protest from AZOROM/SWECO and comments from CDM International Inc. and SMEC International PTY Ltd.

On 3<sup>rd</sup> March, 2017 Level 1 Authority on the advice of the Level 1 Review Committee issued its decision on the protest (Ref: MiDA/CEO/5121100) and also communicated their decision to the Challenger, AZOROM/SWECO, and all other Bidders through email and the MiDA website.

The Level 1 Authority ruled that the Protest be dismissed in accordance with Rule 2.1.2 (a) (ii) of the BCS on the basis that AZOROM/SWECO had failed to meet its burden of proof as required by Rule 1.2.

The decision notice was posted on the MiDA website and informed AZOROM/SWECO if they were dissatisfied with the decision of the Level 1 Authority, they may seek review of that decision by filing an Appeal to the Level 2 Authority in accordance with Rule 3 of the MiDA Bid Challenge System.

On 13<sup>th</sup> March, 2017 AZOROM/SWECO submitted by email an Appeal to the MiDA Level 1 Authority Decision on their Protest in accordance with Rule 3 of the BCS.

On 14<sup>th</sup> March, 2017 MiDA posted the Notice of Appeal by AZOROM/SWECO as required by BCS Rule 3.3. The Challenger’s reasons for the Appeal were that the decision taken by the Level 1 Authority was arbitrary or capricious or characterized by an abuse of discretion.

As per BCS Rule 3.5, SMEC and CDM who had sent comments on the Protest, sent their Comments on the Appeal to MiDA on 27<sup>th</sup> March, 2017. SMEC and CDM sent a copy of their Comments to AZOROM/SWECO on 29<sup>th</sup> March 2017.

They each indicated that their positions remain the same as at the Protest stage.

By Rule 4 of BCS MiDA proceeded to constitute a 2-person Level 2 Authority drawn from the Master List of 6 Independent Reviewers selected and contracted by MiDA to review the Appeal submitted by AZOROM/SWECO and comments from CDM and SMEC.

## **2. COMPOSITION OF LEVEL 2 AUTHORITY**

An email was sent on 15<sup>th</sup> March, 2017 after phone calls to the two (2) prospective members selected using the process in BCS Rule 4 requesting that they confirm their availability to serve as the Level 2 Authority to review the Appeal filed by AZOROM/SWECO from 21<sup>st</sup> to 24<sup>th</sup> March, 2017.

The selected Level 2 Authority members per Rule 4.2 are:

1. Ing Akwasi Pianim Osei - *FGhIE*, representative of Ghana Institution of Engineers (GhIE)
2. Abdul-Latif Alhassan - *MCIPS*, representative of Chartered Institute of Procurement and Supply (CIPS).

The Level 2 Authority members confirmed their availability by email on 15<sup>th</sup> March, 2017 and later were sent the Level 2 Authority Declaration Form to be signed and submitted by each member to MiDA.

On submission of the completed and signed Declaration Forms and after the “No Objection” was received from the Challenger, members received individual letters dated 21<sup>st</sup> March, 2017 engaging them to undertake Level 2 Authority review under their existing contracts with MiDA as Independent Reviewers for the MiDA Bid Challenge System.

## **3. PROCEEDINGS OF THE LEVEL 2 AUTHORITY**

The Level 2 Authority reported at MiDA offices by 9.00 a.m. on Tuesday 21<sup>st</sup> March 2017 as requested and were allocated space in the Conference Room of the MiDA Procurement Agent, Charles Kendall and Partners, on the 3<sup>rd</sup> Floor of MiDA Office in Heritage Towers, Accra as their work area for the duration of the review.

### **3.1 Terms of Reference**

The main services to be provided by The Level 2 Authority of the BCS, as per the BCS Rule 5 and the Contract for Individual Consulting Services to serve as an Independent Reviewer for MiDA Bid Challenge System made on the 23<sup>rd</sup> day of February, 2017 state among others that:

1. To review Bid Appeals submitted by MiDA.
2. To submit their findings and decisions to MiDA.
3. The Level 2 Authority will have the authority to decide procedural and organizational matters in consultation with the MiDA Procurement Director and such other technical experts as the Level 2 Authority deems appropriate.



4. The Level 2 Authority decision will be based on review and consideration of the applicable principles and provisions of the Procurement Rules, the Bid Challenge record from the Protest proceedings and the written decision of the Level 1 Authority.
5. After reviewing the Appeal, the Level 2 Authority will issue a decision:
  - a. To uphold the Level 1 Authority decision; or
  - b. To overturn the Level 1 Authority decision if it determines that the decision has no reasonable basis or is a clear error of judgment in the application of the Procurement Rules, and grant one or more of the remedies set forth in Section P.5.4.3 of the PPG, provided that any monetary compensation will be subject to a price reasonableness analysis by MiDA in accordance with the PPG and will not include attorney fees or lost profits.
6. Decisions and implementing instructions shall be in accordance with the MiDA Bid Challenge System and generally may include the following as applicable to the circumstances of the particular appeal:
  - a. Determine that MiDA has taken a decision or followed a procedure that the IRP finds is not in compliance with the MCC Program Procurement Guidelines or bidding documents;
  - b. Determine that MiDA acted or proceeded in a manner or taken a decision that is in compliance with the provisions of the MCC Program Procurement Guidelines or bidding documents;
  - c. Require the payment of compensation for any reasonable and verifiable cost of appeal, not to include attorney fees or lost profits. Any decision requiring payment of compensation shall be subject to review by MCC.
  - d. The decision must be in writing, delivered to the Secretariat and must state:
    - i. the date of the decision;
    - ii. the reasons upon which the decision is based; and
    - iii. the remedy awarded to the successful party.

### **3.2 Sittings of the Level 2 Authority**

On Day 1, Tuesday 21<sup>st</sup> March 2017, the Level 2 Authority had a brief interaction with the Procurement Director (PD) and the Procurement Agent (PA). The Level 2 Authority was reminded of the earlier email instruction of the duration of the review being 21<sup>st</sup> – 24<sup>th</sup> March, 2017 with an option to be extended if the Level 2 Authority could not complete its report within the period.

On Friday 24<sup>th</sup> March the Level 2 Authority after discussions of the progress of work with the PD and PA agreed for the Level 2 Authority to sit on Monday 27<sup>th</sup> March to work on its report.

Due to other pressing commitments of Level 2 Authority, they requested to continue the Report preparation out of MiDA offices at the close of Day on Monday 27<sup>th</sup> March 2017. It was agreed that the earliest date that the Level 2 Authority could submit its Report was Thursday 30<sup>th</sup> March 2017 (i.e. a day after the deadline for submission of Comments on the Appeal by other parties to the Protest which was at 17.00 hours GMT on Wednesday 29<sup>th</sup> March 2017). This was to ensure that any Comment on the Appeal

that is received by the deadline as per BCS Rule 5.2 would be considered by the Level 2 Authority in arriving at its Decision.

BCS Rule 5.2, states that the Level 2 Authority has 10 business days from the deadline for submission of Comments on the Appeal to submit its Report (i.e. by Wednesday 12<sup>th</sup> April, 2017) – and could ask for an extension of 5 business days with cause.

The Level 2 Authority by email dated 29<sup>th</sup> March 2017 to the PD and copied to the PA indicated that the Report which they were working on would be submitted by Tuesday 4<sup>th</sup> April 2017.

### **3.3 Documents Received**

MiDA submitted the following documents to the Level 2 Authority:

1. SPN for Program Management Consultant (Ref: 5121100/RFP/QCBS/05/16);
2. Minutes of Preproposal Meeting on 9 June, 2016;
3. RFP Issued on 17 May, 2016;
4. Clarification for PMC Proposal;
5. Bid Evaluation Report approved by MiDA on 28 October, 2016;
6. Bid Challenge System effective date 25h July, 2016;
7. AZOROM/SWECO Protest dated 15<sup>th</sup> February, 2017;
8. AZOROM/SWECO Appeal dated 13<sup>th</sup> March, 2017;
9. CDM comments dated 1<sup>st</sup> March 2017 and SMEC comments dated 17<sup>th</sup> February 2017 to the Protest;
10. BCS Committee Report (Level 1 Authority) signed 22<sup>nd</sup> February, 2017;
11. Level One Authority Decision on the Protest dated 3<sup>rd</sup> March;
12. Review Committee report on CDM International comments on protest dated 3<sup>rd</sup> March, 2017;
13. MiDA response to the appeal (No Date);
14. MiDA Response to CDM Comments dated 3<sup>rd</sup> March, 2017;
15. Bid Challenge Committee report on CDM International Comment;
16. Memo of Orientation of IRP for MiDA BCS dated 24<sup>th</sup> February, 2017;
17. Memo of establishment of Secretariat for MiDA BCS dated 4<sup>th</sup> January, 2017; and
18. Comments on the Appeal from SMEC and CDM all dated 27<sup>th</sup> March, 2017.
19. Copies of Comments on the Appeal from SMEC and CDM sent by email to AZOROM on 29<sup>th</sup> March, 2017

### **3.4 Program of Work**

The Level 2 Authority reviewed and considered rules and principles governing the BCS, MCC Program Procurement Guidelines, the RFP for the Procurement of Program Management Consultant (REF: 5121100/ RFP/QCBS/05/16), Clarification Questions and Responses (SI 47) on the RFP (ITC 24.10) issued by MiDA which used a worked example to explain how the formula for financial scores would be used, Financial Proposals of Bidders and all other documents received from MiDA.

In reviewing the Appeal of AZOROM/SWECO the Level 2 Authority considered the following:

1. Whether the Appeal was properly filed in accordance with BCS Rule 3.2;
2. Considered the Response to the Appeal by MiDA;
3. Performed an independent analysis of each reasons for the Appeal against the rules and principles governing MCC procurement and competitive bidding; and
4. Documented our Findings and Decisions.

In the course of the Level 2 Authority's work, additional documents were requested and received from BCS Secretariat. These were;

1. Email of Bid Challenge Notice to all Bidders and Interested Parties dated 16<sup>th</sup> February, 2017;
2. Memo Appointing Bid Challenge Committee;
3. Copy of SWIFT Message of Transfer of Bid Appeal fees (from MiDA);
4. Email and letter dated 16<sup>th</sup> March, 2017 from MiDA to AZOROM for their "No Objection" to the selected Level 2 Authority members;
5. Email dated 17<sup>th</sup> March, 2017 from AZOROM indicating their "No Objection" to the selected Level 2 Authority members; and
6. Financial Proposals of SMEC and AZOROM submitted for the Program Management Consultant.

## 4. FINDINGS

The Level 2 Authority reviewed and considered rules and principles governing the BCS, MCC Program Procurement Guidelines, the RFP for the Procurement of Program Management Consultant (REF: 5121100/ RFP/QCBS/05/16), Clarification Questions and Responses (SI 47) on the RFP (ITC 24.10) issued by MiDA which used a worked example to explain how the formula for financial scores would be used, Financial Proposals of Bidders and all other documents received from MiDA (see list of Documents Received and Requested in Sections 3.3 and 3.4 respectively).

Level 2 Authority grouped its findings into the following sub-categories: Procedural and Substantive Issues.

### 4.1 Procedural Issues

As per BCS Rule 3.4 (b), MiDA submitted their response to the Appeal by AZOROM/SWECO to the Level 2 Authority. In the Response MiDA indicated that the Appeal was non-compliant with procedural requirements of the BCS. The reasons given and the decisions of the Level 2 Authority are stated below.

1. The Appeal was not accompanied by a “Proof of Payment”

The Level 2 Authority decided that since no specific form of Proof of Payment had been indicated in the BCS Rules or in the communication to AZOROM/SWECO, the Challenger’s declaration on the Appeal Form that they had paid the Fees was sufficient to serve as a proof of payment. This was supported by the SWIFT Transfer to MiDA Bankers made available to the Level 2 Authority, that indeed the amount had been transferred and credited to MiDA’s account on time.

2. Payment of \$2,500

The Appeal Fee stipulated in the BCS in Rule 3.2.3 is \$2,500. The Level 2 Authority is of the view that the SWIFT Message shows a clear intent to transfer \$2,500, and the shortfall of \$10 relative to the fee amount of \$2,500 is too minimal to warrant discarding the Appeal.

3. Rule 3.2.2 (d) and (e) of the BCS states as follows: (d) an appeal must not allege any theory or argument that was not alleged in the Protest or Comment, (e) must not assert any new information or include any new documents that were not provided to the Level 1 Authority except as stipulated in Rule 3.1 (b).

On the issue of new reasons being introduced in the Appeal, the Level 2 Authority finds that AZOROM/SWECO’s original position at the Level 1 Authority Protest, and its reasons for the Appeal are closely related and can be said to be a further clarification and explanation of its original position.

*In summary, the Level 2 Authority decided that AZOROM/SWECO used their best effort to follow all the BCS rules for filing an Appeal on receipt of the Decision of the Level 1 Authority.*

## 4.2 Substantive Issues

The Level 2 Authority took each of the substantive issues raised by AZOROM and addressed by the Level 1 Authority Decision and after a careful review of all documents, provides its findings below.

### 4.2.1 The Application of the Evaluation Methodology

There are three (3) Sections of the RFP which provide the methodology for determining the winning bidder. These are:

#### (a) Instructions to Consultants (ITC 24.10)

For Quality and Cost Based Selection (QCBS), the lowest evaluated Financial Proposal (Fm) will be given the maximum financial score (Sf) of 100 points.

The financial scores (Sf) of the other Financial Proposals will be computed as indicated in Section III: Qualification and Evaluation Criteria.

Proposals will be ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Proposal; F = the weight given to the Financial Proposal; T + F = 1) indicated in the PDS.

$S = S_t \times T\% + S_f \times F\%$ . The Consultant achieving the highest combined technical and financial score will be invited for negotiations.

#### (b) Proposal Data Sheet (ITC 24.10)

The weight given to the Technical Proposal, T = 80%

The weight given to the Financial Proposal, F = 20%

#### (c) Section III: Qualification and Evaluation Criteria

The formula for determining the financial scores is the following:

$S_f = 100 \times F_m / F$ , in which Sf is the financial score, Fm is the lowest price and F the price of the Proposal under consideration.

The weights given to the Technical and Financial Proposals are:

$$T = [80] \text{ and } F = [20]$$

The prices for the Base Contract and Option 1 shall be evaluated in full.

Prices for Option 2 will be added to the Prices of the Base Contract and Option 1 and then evaluated at 30% of the Total Price.

1. Financial Score A - Base Contract plus Option 1 prices.
2. Financial Score B – Financial Score A plus Option 2 price x 30%.
3. Average Financial Score = (A + B)/2

In addition, MiDA provided to all Bidders, through a response to a Clarification Question, the method of calculating the Financial Scores and Total Scores using a worked example in Response No. SI 47 to Clarification Questions.

The Level 2 Authority confirmed that responses were sent to all Bidders including AZOROM/SWECO via email to Conor Lonergan (representative of

AZOROM/SWECO) on June 17, 2016 at 17:43 hours GMT. Conor Lonergan acknowledged receipt of the mail on June 18, 2016 at 08:42.

MiDA response, SI 47, sent to Bidders on June 17, 2016 is reproduced below.

Base Contract and Option 1 prices are announced for Firm 1 at \$400 and Firm 2 \$500. The Financial Scores would be 100 for Firm 1 and 80 for Firm 2.

The total Base Contract plus Option 1 and 2 prices are Firm 1 \$600 and Firm 2 \$700 so the prices would be multiplied by 30% to give \$180 for Firm 1 and \$210 for Firm 2. Thus giving a Financial Score of 100 for Firm 1 and 85.71 for Firm 2.

The Average Financial Score would be 100 (200/2) for Firm 1 giving a weighted score of 20.

The Average Financial Score would be 82.855 (165.71/2) for Firm 2 giving a weighted score of 16.571.

The total weighted Financial Scores would then be added to the weighted Technical Scores to work out the winner.

The Level 2 Authority is of the view that AZOROM/SWECO after receiving the email sent on June 17, 2016 after the pre-proposal conference to Bidders as per ITC clause 8.3 of the RFP had the opportunity to have raised protest as per BCS Rule 1.3.1 (b) which states “For Protests of the solicitation documents, the tenth Business Day after MiDA issues an invitation to prequalify or issues an invitation to submit a bid or a proposal”

However, through Conor Lonergan (Rep of AZOROM/SWECO) acknowledged receipt of the mail on June 18, 2016 which implies AZOROM/SWECO had accepted the method of calculating the Financial Scores and Total Scores using a worked hypothetical example in Response No. SI 47 to Clarification Questions. This is in line with the first paragraph of the RFP Technical Proposal Submission Form which states “We, the undersigned, offer to provide the consulting services for the above mentioned assignment in accordance with your Request for Proposal (RFP) dated **[Insert Date]** and our Proposal”.

The Level 2 Authority is of the view that AZOROM/SWECO should have protested the evaluation criteria on receipt of the Response No. SI 47 of Clarification Questions. And therefore cannot challenge the evaluation criteria after the Notice of Intent to Award the Contract.

Notwithstanding the above, the Level 2 Authority checked and confirmed the formula in the worked example in Response No. SI 47, and its results are consistent with the results obtained by MiDA.

Financial Score Calculation using Response No. SI 47						
Name of Firm	A=Base + Opt1	B=A+Opt2	FS1	Wt Tot Con	FS2	AVG
Firm 1	400	600	100	180	100	100
Firm 2	500	700	80	210	85.714	82.86

The Level 2 Authority after review and consideration concurs with the MiDA computation of the financial scores as being in line with the RFP evaluation criteria ITC 24.10 and as clarified in Response No. SI 47 to Clarification Questions.

#### 4.2.2 Determination of the Highest Overall Score Based on the Application of the Evaluation Methodology

The Level 2 Authority after detailed review and consideration of the evaluation criteria and the formulae for computing of the financial and technical scores for ranking of the Bids agrees with results of the Combined Technical and Financial Scores.

The Level 2 Authority finds that the approach used by AZOROM/SWECO does not comply with the evaluation criteria in the RFP and as clarified in the response to Clarification Questions No. S147.

In addition, AZOROM/SWECO argument that the 30% in the evaluation formula could be replaced by 50%, 75% or any other percentage and it would have no effect on the result is not tenable. The Level 2 Authority checked and found that it only applies if the Option 2 price is the same for Bidder A and Bidder B at \$200 as per the example worked in Response No. SI 47, and the results cannot be the same if the Option 2 prices are different for the different Bidders which is normally the case.

This is demonstrated in the example below at 30%.

The total Base Contract plus Option 1 and 2 prices are for Firm 1 equal to \$900 and for Firm 2 equal to \$700.

Therefore the prices would be multiplied by 30% which will give the following results:

$$\text{Firm 1} = \$900 \times 30\% = \$270$$

$$\text{Firm 2} = \$700 \times 30\% = \$210$$

Therefore Firm 1 will obtain Financial Score 2 of 77.78 (i.e.  $700/900 \times 100$ ).

And Firm 2 with the lower score obtains Financial Score 2 of 100 (i.e.  $700/700 \times 100$ ).

For Firm 1, the Average Financial Score will be  $(FS1 + FS2)/2$  which comes to  $(100 + 77.78)/2$  which is equal to 88.89.

And for Firm 2, the Average Financial Score will be  $(FS1 + FS2)/2$  which comes to  $(80 + 100)/2$  which is equal to 90.

Consequently the weighted financial score for Firm 1 will be 17.78 (i.e.  $88.89 \times 20\%$ ) and that for Firm 2 will be 18 (i.e.  $90 \times 20\%$ ).

To arrive at the combined Technical and Financial Scores will be the weighted financial score plus the technical score.

Name of Firm	A=Base + Option 1	B=A + Option 2	FS1	30% of B	FS2	Average = (FS1+FS2)/2	Weighted Financial Score
Firm 1	400	900	100	270	77.78	88.89	17.78
Firm 2	500	700	80	210	100	90	18

#### 4.2.3 Lack of Transparency and Disclosure Regarding the Bidders' Total Scores

After a close examination of the procurement process followed by MiDA and supported by the various documents made available, the Level 2 Authority agrees with the Level 1 Authority that MiDA has complied with all the transparency and disclosure requirements as required by the MCC Program Procurement Guidelines.

### 5. DECISION ON THE APPEAL

In accordance with BCS Rule 5.1.2 (a) the Level 2 Authority on the 4<sup>th</sup> April, 2017 upholds the decision of Level 1 Authority based on the review and consideration of the applicable principles and provisions of the Procurement Rules, the Bid Challenge record from the Protest proceedings and the written decision of the Level 1 Authority.

### 6. RECOMMENDATION

The Level 2 Authority therefore recommends that the automatic suspension on the Procurement of the Program Management Consultant be lifted in accordance with BCS Rule 5.3.

And as per BCS Rule 3.2.3.1, the Appeal Fee paid by AZOROM/SWECO shall be applied to the expenses of the Appeal.



**LEVEL 2 AUTHORITY MEMBERS**

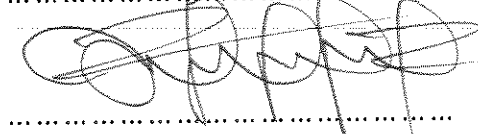
**Name**

**Signature/Date**

Ing Akwasi Pianim Osei, *FGhIE*

 04/04/2017

Abdul-Latif Alhassan, *MCIPS*

 4/4/17