



Selection of Individual Consultants

Millenium Challenge Account (MCA)-Malawi II

On behalf of the Government of Malawi

REQUEST FOR APPLICATIONS

Issued on: 15th November 2024

for

**Competition and Fair Trading Commission
Technical Assistance**

Ref No: MCA-MWII-24-4003

Table of Contents

<u>SECTION 1. GENERAL INSTRUCTIONS TO APPLICANTS (GIA)</u>	<u>4</u>
1. SCOPE OF RFA.....	5
2. SOURCE OF FUNDS	6
3. FRAUD AND CORRUPTION	6
4. TRAFFICKING IN PERSONS	8
5. ELIGIBLE CONSULTANTS	9
6. ORIGIN OF GOODS AND CONSULTING SERVICES	12
7. AMENDMENT OF THE RFA.....	12
8. COST OF APPLICATION	12
9. LANGUAGE OF APPLICATION	12
10. PREPARATION OF APPLICATION.....	13
11. SUBMISSION OF TECHNICAL OFFERS	13
12. CONFIDENTIALITY	13
13. CLARIFICATION OF TECHNICAL OFFERS	13
14. EVALUATION.....	14
15. PAST PERFORMANCE AND REFERENCE CHECK.....	14
16. NOTIFICATION OF TECHNICAL EVALUATION RESULTS.....	14
17. ACCOUNTABLE ENTITY’S RIGHT TO ACCEPT ANY OFFER, AND TO REJECT ANY OR ALL OFFERS	16
18. NOTICE OF AWARD OF CONTRACT	16
19. INCONSISTENCIES WITH MCC PPG	16
20. APPLICABLE COMPACT CONDITIONS.....	16
<u>SECTION 2. SPECIFIC INSTRUCTIONS TO APPLICANTS (SIA)</u>	<u>17</u>
<u>SECTION 3. APPLICATION FORMS.....</u>	<u>21</u>
<u>SECTION 4. TERMS OF REFERENCE</u>	<u>28</u>
LIST OF TABLES	30
LIST OF FIGURES	30
ABBREVIATIONS.....	30
INTRODUCTION	31
GEOGRAPHICAL FOCUS	31
INSTITUTIONAL ARRANGEMENTS	32
LEGAL PROVISIONS IN NEW COMPETITION AND FAIR TRADE ACT, NO. 20 OF 2024.....	32
CFTC-TU’S PREFERRED MODUS-OPERANDI	33
CFTC PROGRAM MONITORING AND EVALUATION PROGRAM.....	34
DETAILED SCOPE OF WORK FOR THE TA ADVISOR	38
TEAM COMPOSITION	39
LEVEL OF EFFORT (LOE)	39
REPORTING PROTOCOLS AND ASSIGNMENT DELIVERABLES.....	39
EVALUATION CRITERIA.....	40
PAYMENT SCHEDULE	40
<u>SECTION 5. EVALUATION CRITERIA</u>	<u>41</u>

SECTION 6. CONTRACT DOCUMENTS..... 43

FORM OF CONTRACT AGREEMENT..... 44

CONDITIONS OF CONTRACT..... 46

1.	CORRUPT AND FRAUDULENT PRACTICES.....	46
2.	COMMISSIONS AND FEES DISCLOSURE	46
3.	FORCE MAJEURE	46
4.	SUSPENSION.....	47
5.	TERMINATION.....	47
6.	OBLIGATIONS OF THE CONSULTANT	49
7.	CONFIDENTIALITY	50
8.	INSURANCE TO BE TAKEN OUT BY THE CONSULTANT.....	50
9.	ACCOUNTING, INSPECTION AND AUDITING	51
10.	REPORTING OBLIGATIONS.....	51
11.	PROPRIETARY RIGHTS OF THE ACCOUNTABLE ENTITY IN REPORTS AND RECORDS	51
12.	JOB DESCRIPTION OF CONSULTANT	52
13.	ACCOUNTABLE ENTITY'S PAYMENT OBLIGATION	52
14.	MODE OF BILLING AND PAYMENT	52
15.	INTEREST ON DELAYED PAYMENTS.....	52
16.	TAXES AND DUTIES.....	52
17.	AMICABLE SETTLEMENT OF DISPUTES.....	53
18.	DISPUTE RESOLUTION	53

ATTACHMENT 2: MCC'S POLICY – ANNEX TO GENERAL PROVISIONS..... 56

APPENDIX A – DESCRIPTION OF SERVICES AND REPORTING REQUIREMENTS.....	57
APPENDIX B - CONSULTANT'S CV.....	58
APPENDIX C – CONSULTANT'S BANK DETAILS.....	59
APPENDIX D – NEGOTIATED DEPLOYMENT SCHEDULE [IF NECESSARY].....	60
APPENDIX E – COST DETAILS.....	61

Section 1. General Instructions to Applicants (GIA)

The following words and expressions shall have the meanings stated below. Throughout this RFA if the context so requires, words indicating the singular also include the plural and vice versa, and the feminine means the masculine and vice versa.

- | | |
|--|---|
| | <ul style="list-style-type: none"> (a) “Accountable Entity” means the entity designated by the Government to implement the Compact or Threshold Program, identified in Section 2. (b) “Application” means the Technical Offer for the provision of the Services submitted by a Consultant in response to the RFA. (c) “Compact”, “Compact Development Fund” or “Threshold Program Grant Agreement” means the financing agreement between the Millennium Challenge Corporation and the Government, as applicable, identified in Section 2. (d) “confirmation” means confirmation in writing. (e) “Consultant” means any eligible individual person that may provide or provides the Services to the Accountable Entity under the Contract. (f) “Contract” means the contract proposed to be entered into between the Accountable Entity and the Consultant, including all attachments, annexes, and all documents incorporated by reference therein, a form of which is included in the RFA. (g) “days” refers to calendar days, unless otherwise specified as “Business Day”. A Business Day is any day that is an official working day in the Accountable Entity country and excludes the official public holidays. (h) “Financial Offer” means the priced and completed form to be submitted by the highest ranked Consultant, listing the prices and other relevant financial information to undertake the execution of the assignment. (i) “General Instructions to Consultants” or “GIC” means this Section 1 that provides general instructions to Consultants. (j) “Government” means the Government identified in Section 2. (k) “ICS” means Individual Consultant Services selection method as defined in the MCC PPG. (l) “in writing” means communicated in written form (e.g., by paper, mail, e-mail or other electronic means). (m) “Millennium Challenge Corporation” or “MCC” means a United States Government corporation, acting on behalf of the United States Government. (n) “MCC Accountable Entity Procurement Policy and |
|--|---|

	<p><i>Guidelines</i>” or “MCC PPG” means the <i>MCC Accountable Entity Procurement Policy and Guidelines</i> and its amendments posted from time to time on the MCC website at www.mcc.gov/ppg.</p> <p>(o) “MCC Funding” means the funding MCC has made available to the Government pursuant to the terms of the financing agreement identified in Section 2.</p> <p>(p) “<i>MCC’s AFC Policy</i>” has the meaning provided in Clause 3.</p> <p>(q) “Pre-Application Conference” means a conference specified in Section 2, if any, held before Applications are submitted.</p> <p>(r) “RFA” means this Request for Applications, including any amendments that may be made, prepared by the Accountable Entity for the selection of the Consultant.</p> <p>(s) “Services” means the tasks to be performed by the Consultant pursuant to the Contract.</p> <p>(t) “Specific Instructions to Consultants” or “SIC” means Section 2 of the RFA, including any amendments, which provides Consultants with all information needed to prepare their Applications.</p> <p>(u) “Taxes” has the meaning given the term in the Compact, CDF or Threshold Program Grant Agreement.</p> <p>(v) “Technical Offer” refers to the Application Forms in Section 3 of the RFA (including any ancillary information), with the exception of the Financial Offer, filled and submitted by a Consultant.</p> <p>(w) “Terms of Reference” or “TOR” means the document included in this RFA, which explains the objectives; scope of work; activities; tasks to be performed; respective responsibilities of the Accountable Entity and the Consultant; and expected results and deliverables of the assignment.</p> <p>(x) “Trafficking in Persons” or “TIP” has the meaning given to the term in the MCC PPG.</p>
1. Scope of RFA	1.1. The Accountable Entity has issued an RFA to select a Consultant in accordance with the ICS method stipulated in the MCC PPG.
	1.2. Consultants are invited to submit Applications which will be evaluated (and as applicable, negotiated) for the purpose of executing a Contract.
	1.3. Consultants are encouraged to attend a Pre-Application Conference if one is specified in Section 2 . Attending any Pre-Application Conference is strongly advised, but not mandatory. Attending any Pre-Application Conference and/or a site visit shall not be taken into account for the purpose of evaluation of Applications.

	<p>1.4. The Accountable Entity will timely provide, at no cost to the Consultant, the inputs and facilities specified in the Terms of Reference, assist the Consultant in obtaining licenses and permits needed to carry out the Services, and make available relevant project data and reports. No other inputs will be provided. Therefore, an Applicant shall plan to cover all incurred expenses that may be foreseen to initiate and sustain the Services in a timely manner, including but not limited to office space, communication, insurance, office equipment, travel, etc. not otherwise specified in the Terms of Reference.</p>
	<p>1.5. The Accountable Entity is not bound to accept any Application, and reserves the right to cancel the procurement at any time prior to Contract award, without thereby incurring any liability to any Applicant.</p>
<p>2. Source of Funds</p>	<p>2. The United States of America, acting through MCC and the Government have entered into the Compact. The Government, acting through the Accountable Entity, intends to apply a portion of the MCC Funding to eligible payments under the Contract. Any payments made under the Contract with MCC Funding will be subject, in all respects, to the terms and conditions of the Compact and related documents, including restrictions on the use and distribution of MCC Funding. No party other than the Government and the Accountable Entity shall derive any rights from the Compact or have any claim to any proceeds of MCC Funding. The Compact and its related documents can be found on the MCC website (www.mcc.gov) or on the website of the Accountable Entity.</p>
<p>3. Fraud and Corruption</p>	<p>3.1. MCC requires that all beneficiaries of MCC Funding, including the Accountable Entity and any Applicants, offerors, suppliers, contractors, subcontractors, consultants and sub-consultants, and non-consulting service providers under any MCC-funded contracts, observe the highest standards of ethics during the procurement and execution of such contracts. <i>MCC's Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations</i> ("MCC's AFC Policy") is applicable to all procurements and contracts involving MCC Funding and can be found on the MCC website. This Policy requires that companies and entities receiving MCC funds acknowledge notice of MCC's AFC Policy and certify to the Accountable Entity that they have acceptable commitments and procedures in place to address the potential for fraud and corruption.</p> <p style="padding-left: 40px;">(a) For the purposes of these provisions, the terms set forth below are defined as follows</p> <p style="padding-left: 80px;">(i) "coercion" means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of any party, to influence improperly the actions of a party in connection with the implementation of any contract supported, in whole or in part, with MCC Funding,</p>

	<p>including such actions taken in connection with a procurement process or the execution of a contract;</p> <p>(ii) “collusion” means a tacit or explicit agreement between two or more parties to engage in coercion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or a prohibited practice, including any such agreement designed to fix, stabilize, or manipulate prices or to otherwise deprive the Accountable Entity of the benefits of free and open competition;</p> <p>(iii) “corruption” means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of a public official, Accountable Entity staff, MCC staff, consultants, or employees of other entities engaged in work supported, in whole or in part, with MCC Funding, including such work involving taking or reviewing selection decisions, otherwise advancing the selection process or contract execution, or the making of any payment to any third party in connection with or in furtherance of a contract;</p> <p>(iv) “fraud” means any act or omission, including any misrepresentation, that knowingly or recklessly misleads or attempts to mislead a party in order to obtain a financial or other benefit in connection with the implementation of any contract supported, in whole or in part, with MCC Funding, including any act or omission designed to influence (or attempt to influence) a selection process or the execution of a contract, or to avoid (or attempt to avoid) an obligation;</p> <p>(v) “obstruction of investigation into allegations of fraud or corruption” means any act taken in connection with the implementation of any contract supported, in whole or in part, with MCC funding: (a) that results in the deliberate destroying, falsifying, altering or concealing of evidence or making false statement(s) to investigators or any official in order to impede an investigation into allegations of coercion, collusion, corruption, fraud, or a prohibited practice; or (b) that threatens, harasses, or intimidates any party to prevent him or her from either disclosing his or her knowledge of matters relevant to an investigation or from pursuing the investigation; or (c) that is intended to impede the conduct of an inspection and/or the exercise of audit rights of MCC and/or the Office of the Inspector General (OIG) responsible for MCC provided under the Compact, Threshold Program agreement, or related agreements</p> <p>(vi) “prohibited practice” means any action that violates Section E (Compliance with Anti-Corruption Legislation), Section F (Compliance with Anti-Money Laundering Legislation), and Section G (Compliance with Terrorist Financing Legislation and Other Restrictions) of the Annex of Additional Provisions that will be made a part of MCC-funded contracts.</p>
--	--

	<p>(b) The Accountable Entity will reject an Application (and MCC will deny approval of a proposed Contract award) if it determines that the Applicant recommended for award has, directly or through an agent, engaged in coercion, collusion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or prohibited practices in competing for the Contract.</p> <p>(c) MCC and the Accountable Entity have the right to sanction an Applicant or a Consultant, including declaring such party ineligible, either indefinitely or for a stated period of time, to be awarded an MCC-funded contract if at any time either the Accountable Entity or MCC determines that such party has, directly or through an agent, engaged in coercion, collusion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or prohibited practices in competing for, or in executing, such a contract.</p> <p>(d) Per MCC PPG, MCC and the Accountable Entity have the right to require any Applicant or Consultant to permit the Accountable Entity, MCC, or any designee of MCC, to inspect their accounts, records and other documents relating to the submission of an Application or performance of an MCC-funded contract and to have them audited by auditors appointed by MCC or by the Accountable Entity with the approval of MCC.</p> <p>(e) In addition, MCC has the right to cancel any portion or all of the MCC Funding allocated to the Contract if it determines at any time that representatives of a beneficiary of MCC Funding engaged in coercion, collusion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or prohibited practices during the selection process or the execution of an MCC-funded contract, without the Accountable Entity having taken timely and appropriate action satisfactory to MCC to remedy the situation.</p>
4. Trafficking in Persons	<p>4.1. MCC has a zero tolerance policy with regard to Trafficking in Persons (“TIP”). TIP is the crime of using force, fraud, and/or coercion to exploit another person. TIP can take the form of domestic servitude, peonage, forced labor, sexual servitude, bonded labor, and the use of child soldiers. This practice deprives people of their human rights and freedoms, increases global health risks, fuels growing networks of organized crime, and can sustain levels of poverty and impede development. MCC is committed to working with partner countries to ensure appropriate steps are taken to prevent, mitigate, and monitor TIP risks in the countries it partners with and projects it funds.</p>
	<p>4.2. The Additional Provisions (Annex 2 of the Contract) of this RFA may set out certain prohibitions, Consultant requirements, remedies and other provisions that will be made a binding part of any</p>

	<p>Contract that may be entered into. As such, those provisions, if included, should be given careful consideration.</p> <p>4.3. Additional information on MCC's requirements aimed at combating TIP can be found in <i>MCC Counter-Trafficking in Persons Policy</i> ("C-TIP Policy") that can be found on MCC's website (https://www.mcc.gov/resources/doc/policy-counter-trafficking-in-persons-policy). All contracts funded by MCC are required to comply with MCC's C-TIP Policy's Minimum Compliance Requirements. Contracts for projects categorized by MCC as high-risk for TIP are required to implement a TIP Risk Management Plan (which is to be developed by the Accountable Entity and implemented by the Consultant).</p>
5. Eligible Consultants	<p>5.1. An Applicant may have the nationality of any country, subject to the nationality restrictions specified in this Clause 5.</p>
	<p>5.2. Applicants must also satisfy the eligibility criteria contained in the MCC PPG governing MCC-funded procurements.</p>
	<p>5.3. No full-time key professional personnel of a consultant currently contracted by any Accountable Entity shall submit an Application.</p>
Conflict of Interest	<p>5.4. An Applicant shall not have a conflict of interest. All Applicants found to have a conflict of interest shall be disqualified, unless the conflict of interest has been mitigated and the mitigation is approved by the Accountable Entity after receiving a "no-objection" from MCC. Consultants shall provide professional, objective, and impartial advice and at all times hold the interests of the Accountable Entity paramount, strictly avoid conflicts of interest, including conflicts with other assignments or their own corporate interests, and act without any consideration for future work. Applicants shall not be hired for any assignment that would be in conflict with their prior or current obligations to other clients, or that may place them in a position of being unable to carry out the assignment in the best interest of the Accountable Entity. Without limitation on the generality of the foregoing, an Applicant may be considered to have a conflict of interest and disqualified or terminated if they:</p> <ul style="list-style-type: none"> (a) have a relationship, directly or through common third parties, that puts them in a position to have access to information about or influence over the Application of another Applicant, or influence the decisions of the Accountable Entity regarding the selection process for this procurement; or (b) are themselves, or have a business or family relationship with, <ul style="list-style-type: none"> (i) a member of the Accountable Entity's board of directors or staff, (ii) the project's implementing entity's staff, or (iii) the Procurement Agent or Fiscal Agent (as defined in the Compact or related agreements) hired by the Accountable Entity in connection with the Compact, any of whom is directly or

	<p>indirectly involved in any part of (a) the preparation of this RFA or any section therein, (b) the selection process for this procurement, or (c) supervision of the Contract, unless the conflict stemming from this relationship has been resolved in a manner approved by the Accountable Entity after receiving a "no-objection" from MCC; or</p> <p>(c) are engaged by the Accountable Entity as staff member of the Implementing Entity, Procurement Agent, Fiscal Agent, or Auditor under the Compact.</p> <p>5.5. A Consultant that has been engaged by the Accountable Entity to provide goods, works or services other than consulting services for a project, shall be disqualified from providing consulting services related to those goods, works or services. Conversely, a Consultant hired to provide consulting services for the preparation or implementation of a project, shall be disqualified from subsequently providing goods, works or services other than consulting services resulting from or directly related to such consulting services for such preparation or implementation. For example, a Consultant hired to prepare terms of reference for an assignment should not be hired for the assignment in question. For the purpose of this paragraph, services other than consulting services are defined as those leading to a measurable physical output, for example surveys, exploratory drilling, aerial photography, and satellite imagery.</p>
	<p>5.6. Applicants and Consultants have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of the MCA Entity, or that may be reasonably perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Applicant or the termination of the Contract.</p> <p>5.7. The Consultant shall not receive any remuneration in connection with the Services except as provided in the Contract. The Consultant shall not engage in consulting or other activities that conflict with the interest of the Accountable Entity under the Contract. The Contract shall include provisions limiting future engagement of the Consultant in other services resulting from or directly related to the Services in accordance with the requirements of the MCC PPG.</p>
Government Employees	<p>5.8. The following restrictions shall apply (in each case subject to the limited exception set forth in Sub-Clause 5.8 (e) below):</p> <p>(a) No member of the Accountable Entity's board of directors or current employees of the Accountable Entity (whether part time, or full time, paid or unpaid, in leave status, etc.) may submit an Application.</p>
	<p>(b) Except as provided in Sub-clause 5.8 (d), no current employees of the Government shall work as Consultants under their own</p>

	ministries, departments or agencies.
	(c) Recruiting current or former Accountable Entity or Government employees to perform services for their former ministries, departments or agencies is acceptable provided no conflict of interest exists.
	(d) If an Applicant is a Government employee, they must have written certification from the Government confirming that: (i) they will be on leave without pay from the time of their official Application submission and will remain on leave without pay until the end of their assignment and they are allowed to work full-time outside of their previous official position; or (ii) they will resign or retire from Government employment on or prior to the Contract award date. Under no circumstances shall any individuals described in (i) and (ii) be responsible for approving the implementation of this Contract. Such certification shall be provided to the Accountable Entity by the Applicant as part of its Application.
	(e) In the case where an Applicant falls under Sub-clauses 5.8 (a) – 5.8 (d), and may have left the Accountable Entity (or such other MCC-funded accountable entity, as the case may be) within a period of less than twelve (12) months of the date of this RFA, it must obtain a “no-objection” from the Accountable Entity, prior to the submission of its Application. The Accountable Entity must also obtain a “no-objection” from MCC before replying to the Applicant on any related correspondence.
Ineligibility and Debarment	<p>5.9. An Applicant or a Consultant will not be any person or entity under (a) a declaration of ineligibility for engaging in coercion, collusion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption or prohibited practices as contemplated by Sub-clause 3.1 above, or (b) that has been declared ineligible for participation in a procurement in accordance with the procedures set out in the MCC PPG. This would also remove from eligibility for participation in this procurement any entity that is organized in, or has its principal place of business or a significant portion of its operations in, any country that is subject to sanctions or restrictions by law or policy of the United States.</p> <p>5.10. An Applicant or a Consultant not otherwise made ineligible for a reason described in this Clause 5 will nonetheless be excluded if:</p> <p>(a) as a matter of law or official regulation, the Government prohibits commercial relations with the country of the Applicant or Consultant; or</p> <p>(b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the</p>

	<p>United Nations, the Government prohibits any import of goods from the country of the Applicant or Consultant or any payments to entities in such country; or</p> <p>(c) such Applicant or Consultant are otherwise deemed ineligible by MCC pursuant to any policy or guidance that may, from time to time, be in effect as posted on MCC's website.</p>
Evidence of Continued Eligibility	5.11. Applicants and Consultants shall provide such evidence of their continued eligibility in a manner satisfactory to the Accountable Entity, as the Accountable Entity shall reasonably request.
Unfair Advantage	5.12. If an Applicant has gained an unfair competitive advantage because of its access to information in the context of another assignment, that Applicant may not be disqualified from participation in a subsequent procurement if the unfair competitive advantage can be adequately mitigated.
Commissions and Gratuities	5.13. An Applicant will furnish information on commissions and gratuities, if any, paid or to be paid relating to this procurement or its Application and during performance of the Contract if the Applicant is awarded the Contract, as requested in this RFA.
6. Origin of Goods and Consulting Services	6.1. Goods supplied and consulting services provided under the Contract may originate from any country, subject to the same restrictions specified for Applicants set forth in Clause 5.
7. Amendment of the RFA	7.1. At any time prior to the deadline for submission of Applications, the Accountable Entity may amend this RFA by issuing Addenda.
	7.2. All Addenda issued shall be part of this RFA, shall be posted on the Accountable Entity's website, if one exists, and/or shall be communicated in writing to all Consultants that have registered or obtained the RFA directly from the Accountable Entity.
	7.3. To give prospective Applicants reasonable time in which to take an Addendum into account in preparing their Applications, the Accountable Entity may extend the deadline for the submission of Applications at its sole discretion.
8. Cost of Application	8.1. The Applicant shall bear all costs associated with the preparation and submission of its Application, and the Accountable Entity shall not be responsible or liable for those costs, regardless of the conduct or outcome of the selection process.
9. Language of Application	9.1. The Application, as well as all correspondence and documents relating to the Application exchanged by the Applicant and the Accountable Entity, shall be written in the language specified in Section 2 . Supporting documents that are part of the Application

	may be in another language provided they are accompanied by an accurate translation of the relevant passages into the language specified in Section 2 , in which case, for purposes of interpretation of the Application, such translation shall govern.
10. Preparation of Application	10.1. In preparing their Application, Applicants are expected to examine in detail the documents comprising the RFA. Failure to provide the information requested may result in rejection of an Application.
Format and Content	10.2. Applicants are required to submit a Technical Offer, which shall provide the information indicated in the Forms 1 through 3 provided in Section 3 (Application Forms).
	10.3. The Technical Offer shall not include any financial information. A Technical Offer containing financial information will constitute grounds for declaring the Application non-responsive.
11. Submission of Technical Offers	<p>11.1. Applicants shall submit their Technical Offers in the manner and no later than the date and time specified in Section 2, or any extension of this date as communicated by the Accountable Entity. Any Application received by the Accountable Entity after the deadline for submission shall be declared late and rejected.</p> <p>11.2. An Applicant may withdraw, substitute, or modify its Application prior to the deadline for the submission through the File Request Link or in the manner specified in Section 2.</p>
12. Confidentiality	<p>12.1. Information relating to the evaluation of Applications and recommendations of Contract award shall not be disclosed to Applicants or any other persons not officially concerned with the process, until the notification of the technical evaluation results has been issued. The undue use by any Applicant of confidential information related to the process may result in the rejection of its Application or may invalidate the entire procurement process.</p> <p>12.2. Any attempt or effort by an Applicant to influence the Accountable Entity in the examination, evaluation, and ranking of Applications or Contract award decisions may result in the rejection of its Application and may subject the Applicant to the provisions of the Government's, the Accountable Entity's, and MCC's AFC Policy and the application of other sanctions and remedies to the extent applicable.</p>
13. Clarification of Technical Offers	13.1. To assist in the examination and evaluation of Technical Offers, the Accountable Entity may, at its discretion, ask any Applicant for clarification of its Technical Offer. Any clarification submitted by an Applicant that is not in response to a request by the Accountable Entity shall not be considered. The Accountable Entity's request for clarification and the Applicant's response shall be in writing.

14. Evaluation	<p>14.1. The Accountable Entity shall evaluate the Technical Offers on the basis of their responsiveness to the qualification requirements and Terms of Reference, applying the evaluation criteria, sub-criteria, and point system specified in Section 5 (Evaluation Criteria). A Technical Offer may be rejected if it does not respond to the RFA or if it fails to achieve the minimum number of points indicated in Section 5 (Evaluation Criteria).</p> <p>14.2. In exceptional circumstances, if none of the Applicants reach or exceed the minimum number of points, the Accountable Entity reserves the right to invite the Applicant receiving the highest number of points to negotiate both its Technical and Financial Offers. If the negotiations fail to result in an acceptable contract within a reasonable time, the Accountable Entity reserves the right to terminate the negotiations, at its sole discretion, and to invite—again, at its sole discretion—the Applicant receiving the next highest number of points to negotiate both its Technical and Financial Offers.</p>
15. Past Performance and Reference Check	<p>15.1. In accordance with the MCC PPG, the Applicant's performance on earlier contracts will be considered a factor in the Accountable Entity's qualification of the Applicant. The Accountable Entity reserves the right to check the performance references provided by the Applicant or to use any other source at the Accountable Entity's discretion. If the Applicant is or has been party to an MCC-funded contract (either with MCC directly or with any Accountable Entity, anywhere in the world), whether as lead Consultant, affiliate, Associate, subsidiary, Sub-Consultant, or in any other role, the Applicant must identify the contract in its list of references submitted with its Application. Failure to include any such contracts may be used to form a negative determination by the Accountable Entity on the Applicant's record of performance in prior contracts. However, the failure to list any contracts because the Applicant has not been a party to any such contract will not be grounds for a negative determination by the Accountable Entity on the Applicant's record of performance in prior contracts. That is, prior performance in connection with an MCC-funded contract is not required. The Accountable Entity will check the references, including the Applicant's past performance reports filed in MCC's Contractor Past Performance Reporting System ("CPPRS"). A negative determination by the Accountable Entity on the Applicant's record of performance in prior contracts may be a reason for disqualification of the Applicant, or lowered evaluation scores, at the discretion of the Accountable Entity.</p>
16. Notification of Technical Evaluation Results	<p>16.1. Following completion of the evaluation of Technical Offers, and after receiving a "no objection" from MCC (if applicable), the Accountable Entity must notify all the Applicants of the results of the technical evaluation.</p>

	16.2. The Accountable Entity shall promptly respond in writing to any Applicant who, after receiving notification of the technical evaluation results, makes a written request for a debriefing as provided in the MCC PPG.
	16.3. Applicants may challenge the results of a procurement only according to the rules established in the Bid Challenge System as indicated in Section 2.
Financial Offer and Negotiations	<p>16.4. The Accountable Entity will request the Applicant receiving the highest number of points to submit a Financial Offer using for this purposes Form 4 (Financial Offer) in Section 3 (Application Forms) and any other supporting financial information as may be requested by the Accountable Entity.</p> <p>16.5. The Financial Offer shall be expressed in the currency indicated by the Accountable Entity.</p>
	16.6. The Accountable Entity and the highest ranked Applicant will negotiate a Contract of the basis of the Financial Offer.
Price Reasonableness	<p>16.7. Negotiations will be held on the date and at the address notified to the Applicant. The invited Applicant will, as a pre-requisite for attendance at the negotiations, confirm their availability. Failure to confirm availability may result in the MCA Entity proceeding to negotiate with the next-ranked Applicant.</p> <p>16.8. Negotiations will commence with a discussion of the technical aspects of the Application, including as applicable (a) proposed technical approach and methodology, (b) workplan, and (c) any suggestions made by the Consultant to improve the Terms of Reference.</p> <p>16.9. The Accountable Entity and the Applicant will then finalize the Terms of Reference, work schedule, logistics, and reporting. These documents will then be incorporated in the Contract under "Description of Services." Special attention will be paid to clearly defining the inputs and facilities required from the Accountable Entity to ensure satisfactory implementation of the assignment. The Accountable Entity shall prepare minutes of negotiations which will be signed by the Accountable Entity and the Consultant.</p> <p>16.10. Prior to execution of a contract, the Accountable Entity shall conduct a verification of the market-reasonableness of the prices offered. A negative determination (either unreasonably high or unreasonably low) could be a reason for rejection of the Financial Offer at the discretion of the Accountable Entity.</p> <p>16.11. It is the responsibility of the Applicant, before starting financial negotiations, to determine the relevant local tax amount to be paid by the Consultant under the Contract. In no event shall the Accountable Entity be responsible for the payment or reimbursement</p>

	<p>of any taxes.</p> <p>16.12. If negotiations fail, the Accountable Entity may, at its discretion, move to invite the next-ranked Applicant to submit a Financial Offer and to negotiate a Contract.</p>
17. Accountable Entity's Right to Accept Any Offer, and to Reject Any or all Offers	<p>17.1. The Accountable Entity reserves the right to accept or reject any Application, and to annul the bidding process and reject all Applications at any time prior to Contract award, without thereby incurring any liability to Applicants. If all Applications are rejected, the Accountable Entity shall review the causes justifying the rejection and consider making revisions to the conditions of Contract, specifications, scope of the Contract, or a combination of these, before inviting new Applications. The Accountable Entity reserves the right to cancel the procurement if this is no longer in the interest of the Accountable Entity.</p>
18. Notice of Award of Contract	<p>18.1. After Contract signing, the Accountable Entity shall publish on its website the results identifying the procurement, the name of the winning Applicant and the price, duration, and summary scope of the Contract.</p>
19. Inconsistencies with MCC PPG	<p>19.1. The Procurement that is the subject of this RFA is being conducted in accordance with and is subject in all respects to the MCC PPG. In the event of any conflict between any section or provision of this RFA (including any Addenda that may be issued to this RFA) and the MCC PPG, the terms and requirements of the MCC PPG shall prevail, unless MCC has granted a waiver of the guidelines.</p>
20. Applicable Compact Conditions	<p>20.1. Consultants are advised to examine and consider carefully the provisions that are set forth in the Additional Provisions attached to and made part of the Contract, as these are a part of the Government's and the Accountable Entity's obligations under the Compact and related agreements which, under the terms of the Compact and related documents are required to be transferred onto any Applicant or Consultant who partakes in procurement or subsequent contracts in which MCC Funding is involved.</p>

Section 2. Specific Instructions to Applicants (SIA)

Lilongwe, Malawi
15th November 2024

Competition and Fair Trading Commission Technical Assistance

Ref No: MCA-MWII-24-4003

1. The United States of America, acting through the Millennium Challenge Corporation (“MCC”) and the Government of Malawi (the “Government”) have entered into a Millennium Challenge Compact for assistance to help facilitate poverty reduction through economic growth in Malawi (the “Compact”) in the amount of approximately US\$350,000,000 Dollars [Three-Hundred Fifty Million United States Dollars] (“MCC Funding”). The Government, acting through Millennium Challenge Account- Malawi II (the “Accountable Entity”), intends to apply a portion of the MCC Funding to eligible payments under a contract for which this Request for Applications (“RFA”) is issued.
2. The Compact program includes the following projects:
 - a) **The Accelerated Growth Corridors (“AGC”) Project** aims to reduce the barriers between farm and market by improving road conditions, encouraging a more transparent and competitive business environment for transporters, and addressing first mile transportation challenges for smallholder farmers. The project will support policy and institutional reforms to enable better road planning and maintenance of AGCs and associated infrastructure, as well as safer conditions for women to move and conduct economic activity along the corridors
 - b) **The Increased Land Productivity Project (the “Land Project”)** will support improved land services, better functioning land markets, and increased investment in land through revenue-oriented investments to increase adequate funding of land institutions at national and city levels and support institutional change in the land sector. Revenue work at both levels equally focuses on the broader role of well-functioning property tax systems in incentivizing productive use of land.
 - c) **The American Catalyst Facility for Development (“ACFD”) Project** is to facilitate United States International Development Finance Corporation (“DFC”) investment in Malawi in an effort to catalyze increased private investment consistent with compact objectives and increase the scale and impact of the compact.
3. MCC requires that all beneficiaries of MCC Funding, including the Accountable Entity and any applicants, Bidders, Suppliers, contractors, Subcontractors, consultants, and sub-consultants under any MCC-funded contracts, observe the highest standards of ethics during the procurement and execution of such contracts. *MCC’s Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations*

(“MCC’s AFC Policy”) is applicable to all procurements and contracts involving MCC Funding and can be found on the MCC website at: <https://www.mcc.gov/resources/doc/policy-fraud-and-corruption>.

4. The Accountable Entity now invites Applications from eligible Individual Consultants to provide the consultant services for **Competition and Fair Trading Commission Technical Assistance**
5. **Contract start date and duration.** The location of the assignment is Lilongwe, Malawi. The assignment is for a period of **eight (8) person months** over a period of **two (2) calendar years**
6. The required qualifications for the Individual Consultant to be considered are indicated in the Section 5 (Evaluation Criteria).
7. All applicants are expected to be eligible individual consultants as per the eligibility criteria provided under GIA Clause 6, including the restrictions to apply to government employees. In the case where an applicant falls under GIA Sub-clauses 5.8(a) – 5.8(e), who may have left the Accountable Entity within a period of less than twelve (12) months of the date of the RFA, it must obtain a “no-objection” from the Accountable Entity for the inclusion of such a person, prior to the applicant’s submission of its Application.
8. Interested Individual Consultants are requested to submit their Applications using the forms provided for this purpose in Section 3 (Application Forms) of this RFA.
9. A Pre-Application Conference **will not** be held. Attendance is encouraged but not mandatory.
10. Applicants are advised to seek clarifications to this RFA by email to PAMalawi@charleskendall.com and cc andy.koloko@mca-malawi2.gov.mw by **02nd December 2024 at 15:00 PM Local Time**. The Accountable Entity may not respond to any clarifications submitted after this date and time. All requests for clarifications shall be official and in writing.
11. The estimated budget for this procurement is \$200,000 USD for both consultants combined. For the avoidance of doubt, this is a notional budget not a fixed upper limit.
12. Applications shall be submitted **only** electronically, using a File Request Link (FRL), which shall expire on the deadline for receipt of Applications as per Clause 15 below. This is the only acceptable method to submit Applications. Applications submitted by email, email attachment or as hard-copy (by hand, post, courier, etc.) shall be rejected.
13. The Technical Offer - Forms 1, Form 2 and Form 3 - are not required to be password-protected, but may be protected at the Applicant's discretion. Applicants who choose to password-protect their Technical Offers can do so to protect against inadvertent untimely opening of that document, but at their own responsibility for providing the correct password by the deadline indicated in Clause 15 below. If an Applicant fails to provide the correct password that opens the files so its relevant contents can be

announced by the deadline indicated in Clause 15, their Application shall be rejected. Applicants cannot provide this password via the File Request Link; the password should be sent to the email address indicated in Clause 10 above.

14. Applicants are not required to submit a Financial Offer or to indicate their fees together with the Technical Offer. **A Financial Offer (Form 4) shall be required only from the successful Applicant.**
15. The deadline for receipt of Applications is **6th January 2025 at 15:00 PM Local Time.** The FRL to submit Applications is:

<https://www.dropbox.com/request/d6UUiYtBAGUkjHvPLl6h>

The same FRL can be used (more than once) to submit the Technical Offers, and any additional documentation.

16. All submitted documents (whether as standalone files or files in folders) shall be in Microsoft Office or PDF format. Compressed files or folders are discouraged; thus the Accountable Entity assumes no responsibility for the partial or complete damage or failure to open or access documents submitted in any archived and/or compressed format (compressed by WinZip - including any application of the zip family-, WinRAR, 7z, 7zX, or any other similar formats).
17. Applicants should use the following filename format for Applications:
 - Technical Offer filename: [Applicant's Name]–Individual-TA-CFTC- MCA-MWII-24-4003
18. **Selection Procedure:** The Consultants will be selected in accordance with the procedures for selection of Individual Consultants set out in the MCC *Accountable Entity Procurement Policy and Guidelines* which are provided on the MCC website (www.mcc.gov).
19. The selection process comprises two stages: (a) Accountable Entity will evaluate the Applications and select the Applicant with the most appropriate CV/qualifications and experience using the criteria provided in Section 4 of the RFA, then (b) the most qualified Applicant will be invited to submit their Financial Offer/fee. Contract award is subject to negotiations and a price reasonableness analysis. In the resultant contract, the Consultant will be paid only for time worked.
20. All Applications shall be valid for a period of **90 days** from the deadline of submission.
21. The Bid Challenge System is accessible from:

<https://mmd-malawi.org/procurement/Files/Bid%20Challenge%20System/BCSC.pdf>

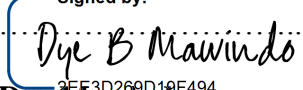
For the Purposes of this RFA Bid Challenge:

- **Protest Fee:** The Protest Fee shall be **USD 500.00**

- **Appeal Fee:** The Appeal Fee shall also be **USD 2,000.00**

Yours sincerely,

For Accountable Entity

Signed by:

Dye B Mawindo

Chief Executive Officer
Millenium Challenge Account-Malawi II

Section 3. Application Forms

Form 1: Letter of Application

[*Location, Date*]

To: Dye Mawindo
Chief Executive Officer
Millenium Challenge Account-Malawi II

Address: Sparc Complex, Second Floor, Plot Number 13/133, City Centre,
P.O. Box 31513,
Lilongwe, Malawi

Dear Sir/Madam,

**Re: Procurement of Consultant Services for Competition and Fair Trading Commission
Technical Assistance**

Ref No: **MCA-MWII-24-4003**

I, the undersigned, offer to provide the consulting services for the above-mentioned assignment in accordance with Letter of Invitation dated **15th November 2024**

I hereby submit my Application including my latest updated Curriculum Vitae which contains among others my previous relevant assignments and references with complete contact details.

I hereby declare that all the information and statements made in this document are true and correct. I accept that any misinterpretation contained herein can lead to my disqualification.

I hereby certify that I am not engaged in, facilitating, or allowing any of the prohibited activities described in the *MCC Counter-Trafficking in Persons Policy* and that I will not engage in, facilitate, or allow any such prohibited activities for the duration of the Contract. Finally, I acknowledge that engaging in such activities is cause for suspension or termination of employment or of the Contract.

I acknowledge notice of *MCC's Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations*¹ and hereby certify that I am not engaged in or facilitating, any fraud and corruption as described in GIA Clause 4. Finally, I acknowledge that engaging in such activities is cause for suspension or termination of the Contract. I further certify that I am eligible to be awarded an MCC-funded contract as per the eligibility clauses of the *MCC Accountable Entity Procurement Policy and Guidelines*.

If negotiations are held during the initial period of validity of the Application, I undertake to negotiate on the basis of my availability for the assignment.

¹ Available at www.mcc.gov/resources/doc/policy-fraud-and-corruption

My submission is subject to modifications arising from Contract negotiations.

I undertake, if my Application is accepted, to initiate the consulting services on the timelines indicated in Section 2 (Specific Instructions to Consultants).

I understand and accept without condition that, in accordance with Section 2 of this RFA (SIA), any challenge or protest to the process or results of this procurement may be brought only through the Accountable Entity's Bid Challenge System (BCS).

I understand that you are not bound to accept any submissions that you may receive.

I acknowledge that my digital/digitized signature is valid and legally binding.

Yours Sincerely,

[Name of Applicant]

[Date]

Email of Applicant: _____

Form 2: Curriculum Vitae (CV)

Name	[Insert full name]				
Date of Birth	[Insert birth date]				
Nationality	[Insert nationality]				
Education	[Indicate college/university and other specialized education, giving names of institutions, degrees obtained, and dates of obtainment].				
Membership in Professional Associations	[insert information]				
Other Training	[Indicate appropriate postgraduate and other training]				
Countries of Work Experience	[List countries where the consultant has worked in the last ten years]				
Languages	<p>[For each language indicate proficiency: excellent, good, fair, or poor in speaking, reading, and writing]</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 25%;">Language</td> <td style="width: 25%;">Speaking</td> <td style="width: 25%;">Reading</td> <td style="width: 25%;">Writing</td> </tr> </table>	Language	Speaking	Reading	Writing
Language	Speaking	Reading	Writing		
Employment Record	<p>[Starting with present position, list in reverse order every employment held by the consultant since graduation, giving for each employment (see format here below): dates of employment, name of employing organization, positions held.]</p> <p>From [month] [year]: To [month] [year]: Employer: Position(s) held:</p>				
Work undertaken that best illustrates capability to handle the tasks assigned	<p>[Among the assignments in which the consultant has been involved, indicate the following information for those assignments that best illustrate his/her capability to handle the tasks listed in the LOI]</p> <p>Name of assignment or project:</p> <p>Year:</p> <p>Location:</p> <p>Accountable Entity:</p>				

Main project features:

Position held:

activities/tasks performed:

References

[List at least three individual references with substantial knowledge of your work. Include each reference's name, title, phone and e-mail contact information. The Accountable Entity reserves the right to contact other sources as well as to check references. References for MCC/Accountable Entities experience is provided below, separately]

**Past MCC/Accountable
Entities Experience**

[Insert information about any and all MCC-funded contracts (either with MCC directly or with any Accountable Entity, anywhere in the world) to which you are or had been a party whether as a lead Consultant, affiliate, associate, subsidiary, Sub-Consultant, or in any other role]

Certification:

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes me, my qualifications, and my experience. I understand that any willful misstatement described herein may lead to my disqualification or dismissal, if engaged.

I, the undersigned, hereby declare that I agree to participate in the above-mentioned assignment. I further declare that I am able and willing to work for the period foreseen in the above referenced in the Letter of Invitation.

Signature:

Date:

RFA Ref No: MCA-MWII-24-4003-Procurement of Consultant Services for Competition and Fair-Trading Commission
Technical Assistance

Form 3: Approach and Methodology

Re: Procurement of Consultant Services for Competition and Fair Trading Commission Technical Assistance

Ref No: **MCA-MWII-24-4003**

[In this form, the Applicant should explain his/her understanding of the objectives of the assignment, approach to the services, methodology for carrying out the activities and obtaining the expected output, and the degree of detail of such output.]

The Applicant should highlight the problems being addressed and their importance, and explain the technical approach s/he would adopt to address them. The Applicant should also explain the methodologies s/he proposes to adopt and highlight the compatibility of those methodologies with the proposed approach.]

Form 4: Financial Offer

[*Location, Date*]

To: Dye Mawindo
Chief Executive Officer
Millenium Challenge Account-Malawi II

Address: Sparc Complex, Second Floor, Plot Number 13/133, City Centre, P.O. Box 31513,
Lilongwe, Malawi

Re: Procurement of Consultant Services for Competition and Fair Trading Commission Technical Assistance

Ref No: **MCA-MWII-24-4003**

Dear Sir/Madam,

Having examined the Letter of Invitation documents, I am pleased to submit the following Financial Offer for the services to be provided:

[Include monthly fee rate² excluding airfare, accommodation, per diem and other expenses]

As part of acknowledging notice of *MCC's Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations*³ and declaring that we have not engaged in fraud and corruption as described in GIA Clause 4, I certify that:

- (a) The prices in this Offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to:
 - (i) Those prices;
 - (ii) The intention to submit an offer; or
 - (iii) The methods or factors used to calculate the prices offered.
- (b) No attempt has been made or will be made by us to induce any other party to submit or not to submit an offer for the purpose of restricting competition; and
- (c) I understand that you are not bound to accept any proposal you may receive and that a binding contract would result only after final negotiations are concluded on the basis of the technical and price components proposed.

I acknowledge that my digital/digitized signature is valid and legally binding.

² This should be remuneration rate, excluding all reimbursables, i.e. travel, accommodation, per diem and other expenses, which will be negotiated and paid separately. For travel, Accountable Entity will negotiate for the lowest economy fare as applicable.

³ Available at www.mcc.gov/resources/doc/policy-fraud-and-corruption

RFA Ref No: MCA-MWII-24-4003-Procurement of Consultant Services for Competition and Fair-Trading Commission
Technical Assistance

Yours sincerely,

[Name of Applicant]

[Date]

[Include salary history for the past three years].

Section 4. Terms of Reference

Provision of Consultancy Services for the Competition and Fair Trading Commission Technical Assistance

Table of Contents

[List of Tables](#) 30

[List of Figures](#)..... 30

[Abbreviations](#) 30

[1 Introduction](#)..... 31

[2 Geographical Focus](#) 31

[3 Institutional Arrangements](#)..... 32

[4 Legal Provisions in New Competition and Fair Trade Act, No. 20 of 2024](#) 32

[5 CFTC-TU’s Preferred Modus-Operandi](#) 33

[6 CFTC Program Monitoring and Evaluation Program](#) 34

[7 Detailed Scope of Work for the TA Advisor](#) 38

[8 Team Composition](#)..... 39

[9 Level of Effort \(LOE\)](#)..... 39

[10 Reporting Protocols and Assignment Deliverables](#) 39

[11 Evaluation Criteria](#) 40

[12 Payment schedule](#)..... 40

List of Tables

Table 1: CFTC Transport Unit – High-Level Output and Outcome Indicators..... 37
Table 2: Payment Schedule 40

List of Figures

Figure 1: CFTC Sub-Program Simplified Theory of Change (TOC) Logic..... 35

Abbreviations

Abbreviation	Full meaning
Act	Competition and Fair Trade Act, No. 20 of 2024
AGC	Accelerated Growth Corridors Project
BL	Baseline
CFTC	Competition and Fair Trade Commission
Compact	MCA - Malawi Compact II (Transport and Land)
DHRMD	Department of Human Resources and Department
DRTSS	Directorate of Road Transport and Safety Services
GoM	Government of Malawi
LOE	Level of Effort
MCA	Millennium Challenge Account
MCC	Millennium Challenge Corporation
MEL	Monitoring, Evaluation and Learning
MoTPW	Ministry of Transport and Public Works
TA	Technical Assistance
TOC	Theory of Change
ToR	Terms of Reference
TU	Transport Unit
TUC	Transport Unit Coordinator
WS	Workstream

Introduction

The Government of Malawi (GoM) and the Millennium Challenge Corporation (MCC) are implementing the second Millennium Challenge Account (MCA) Compact in Malawi (Compact II). The Compact agreement was signed in October 2022 and entered into force in May 2024. The Compact seeks to address the high price of road transport services, which is one of the key constraints to economic growth in Malawi, through the Accelerated Growth Corridors (AGC) Project. The AGC Project will invest in the upgrading of rural roads and will support policy and institutional reform (PIR) in the road transport sector.

Part of the AGC Project aims to assist in ensuring transport in Malawi is priced as competitively as possible. The Competition and Fair Trading Commission (CFTC), whose mandate it is to ensure competitiveness in all markets, has been unable, in the past, to provide sufficient resources to extend awareness of its role in transport into the rural areas, or to provide any response to situations where transport services are being overpriced in these areas. The AGC Project therefore provides for supporting the establishment of a Transport Unit (TU) in the CFTC structure to make specific resources available to address this lack in the rural transport segment, as well as improving competitiveness in the road transport market generally.

Support is being provided to the GoM under the AGC Project to develop and establish the TU, as well as to provide for Technical Assistance to this newly formed TU to fulfil this objective. The purpose of this assignment is therefore to provide targeted Technical Assistance (TA) in the fields of Competition Enforcement, Consumer Protection and Advocacy and Awareness to the CFTC-TU that is designed to improve the transparency and accountability of services provided to consumers in all segments of the transport services market, with a particular focus on AGCs as pilot for such activities in the rural areas of Malawi generally.

Geographical Focus

The rural transport services markets comprise three segments: (1) Farm Gate to Aggregation Centre(s) (First Mile Tracks and Link Roads); (2) Aggregation Centre to Regional City (Classified Road Network); and (3) Regional City to International Gateway Port (Regional Road Network).

The TU will therefore be responsible for competition enforcement and consumer protection in the transport services market in all of these segments but will initially have a focus on the AGC districts and related roads to complement the infrastructure investments to be undertaken under the AGC Project. These investments intend to improve roads within four Corridors selected to show how improved access can encourage economic development. These Corridors are intended to provide effective examples that can be rolled out in all areas and districts in the future. The road improvements comprise the following in each Corridor:

- (1) A Corridor Road providing paved road access into and through the rural areas forming the AGCs.
- (2) Primary link roads providing access from the Corridor Road to main points of population and potential for economic development (called focal points).
- (3) Secondary link roads (also known as 'first mile roads') linking between focal points and other communities, as well as linking to the Corridor Road in places, to provide the local road network in each Corridor area.
- (4) 'Main roads' which are established paved roads requiring some maintenance or improvement, linking the AGC Corridors to main markets.

The effectiveness of these investments in encouraging economic development can be compromised if the services provided to the communities in the Corridors are priced in an uncompetitive manner. The initial focus of the CFTC-TU will therefore be to develop the approach and levels of enforcement that

are required in these areas, to ensure that benefits from the investments are passed down to the target beneficiaries of the rural residents and smallholder farmers. As the transport value chain involves the use of all roads connecting to the AGC Corridors, such as M1 Road and other primary and secondary road networks, the TU will also undertake competition enforcement and consumer protection on these major roads, and ultimately on all roads of Malawi.

Institutional Arrangements

The TU as a unit in the CFTC is being established under the direct supervision of the CFTC's Chief Executive Officer (CEO). The TU will work in consultation with the CFTC's Directorate of Competition Enforcement and the Directorate of Consumer Protection.

The TU will be managed by a Transport Unit Coordinator (TUC) who will report to the CEO. The TU will have six (6) employees as full-time employees of the CFTC, including the TUC. The TA proposed in these Terms of Reference will support the TU and the TUC specifically in setting up baselines and systems to carry out the intended role of the TU.

The TA will be provided by a TA Advisor who will work closely with, and report directly to the TUC as well as liaise with the CEO regarding the activities of the TU. The TA Advisor is to be engaged through the AGC Project.

The core function of the TU will be to enforce competition and consumer protection on all the commercially active roads of Malawi in accordance with the objectives, powers and functions conferred on the CFTC under the new Competition and Fair Trading Act (No. 20 of 2024) and pursuant to the CFTC's goals and objectives set out in the CFTC Strategic Plan (2021-2026). The initial focus on the AGC roads is intended to establish the state of the market in the rural access sector, and to determine appropriate actions for the CFTC TU to pursue because this segment of the market has previously not been a focus for the CFTC.

An Action Plan has been prepared in consultation with the Department of Human Resource Management and Development (DHRMD) who need to approve the additional posts in the CFTC-TU and the CFTC who will make provision for some operational support for program activities.

Legal Provisions in New Competition and Fair Trade Act, No. 20 of 2024

The New Act contains provisions for effective and comprehensive enforcement against anticompetitive business practices, including excessive pricing, predatory pricing, discriminatory pricing, price fixing, minimum resale price maintenance, margin squeeze, collusive tendering, and bid-rigging. The CFTC has also been empowered to keep under review commercial activities with a view to ascertain practices which may substantially affect the welfare and economic interests of consumers in any market in Malawi. This is a very expansive power which will enable the CFTC to review, from competition enforcement perspective, any form of commercial activity in any sector. The New Act also mandates the CFTC to conduct market studies or enquiries where the CFTC has reasonable grounds to suspect any unfair trade practices.

The New Act has, for the first time, provided for the enforcement against abuse of buyer power, which normally happens where powerful or dominant buyers are procuring goods or services from small scale suppliers, such as suppliers of transport services. The types of abuses prohibited under the Act include imposing low prices on suppliers, demanding preferential terms unfavourable to suppliers, demanding unreasonable limitation clauses, and transfer of commercial risk which could be better managed by the buyer from the buyer to the supplier. The New Act also mandates the CFTC to order any industry or sector, in which instances of abuse of power are likely to occur, to develop a binding code of practice.

The New Act has expanded the CFTC's mandate to enforce consumer protection. The Act has extended the definition of consumers to include users of services for purposes of producing goods, such as, farmers and farm produce traders. The Act includes the enforcement against excessive or exploitative pricing of goods and services. The Act mandates the CFTC to enforce against excessive or exploitative pricing in the provision of transport services.

The sanctions in the New Act have been broadened and have given the CFTC powers to issue fines and penalties for consumer rights violations as well as anti-competitive conducts. This is pertinent to the enforcement of competition and consumer protection in the AGC and related roads, as it will enable the CFTC to enforce competition and consumer protection in all sectors, including the more informal transport subsectors, where formal requirements are sometimes bypassed (such as the prevalence of unlicensed motor vehicles and motorcycles).

CFTC-TU's Preferred Modus-Operandi

The TU will operate in accordance with the CFTA. To dispense its mandate effectively the TU needs to engage in independent activities at the field-level. To cover the areas defined in the New Act, the Action Plan (2024-2027) was prepared by the CFTC and this has been developed and transposed into the transport sector as the basis for the TU operations. The TU Action Plan has defined four (4) workstreams (WS), as follows:

- Workstream 1: Competition Enforcement, anchored by a Competition Analyst.
- Workstream 2: Consumer Protection, anchored by a Consumer Analyst.
- Workstream 3: Advocacy and Awareness, anchored by an Advocacy & Awareness Officer.
- Workstream 4: Research, Monitoring and Evaluation, anchored by a Senior Monitoring & Evaluation Officer.

These workstreams are to be coordinated by the TUC, who is supported by the TA Advisor to develop the necessary tools to define, track, monitor, investigate and evaluate anti-competitive behaviour and/or unfair business practices.

The work within each workstream pivots around field-level activities, which are typically structured in six (6) stages, as follows:

- Stage 1: Prepare methodology paper, including techniques and tools to structure activities.
- Stage 2: Define a priori indicators to measure progress in achieving stated program outcomes.
- Stage 3: Profile key stakeholders and define constituents to be targeted in workstream activities.
- Stage 4: Design, pilot and roll-out baseline surveys (and/or gap analyses) in high-priority locations.
- Stage 5: Collate results of baseline surveys/gap analyses and develop a monitoring program.
- Stage 6: Roll-out workstream activities (competition enforcement, consumer protection enforcement, advocacy and awareness raising and research, monitoring and evaluation).

Given the costly nature of field trips, defining an annual work-plan of visits (why, what, who, where and when) and how these visits link to each workstream activity, will be a critical area of support that the TA Advisor is expected to provide to the TUC. Linking field visits to programming of workstream activities will be important to ensure the efficient use of limited resources.

CFTC Program Monitoring and Evaluation Program

Figure 1 summarizes a simplified Theory of Change (TOC) logic for the CFTC-TU sub-program. The process starts with the TA Advisor (WS 5) drafting a methodology paper that inter alia, elaborates on the techniques and tools that will be used to structure workstream activities, including a clear definition of ‘a priori’ indicators associated with each workstream.

The Senior Research, Monitoring and Evaluation Officer (WS4) can then detail the method and indicators so that it can be applied in practice and then confirm these with the Competition Analyst (WS 1), Consumer Protection Analyst (WS2) and Advocacy and Awareness Officer (WS3).

The TA Advisor will design a draft baseline questionnaire for each of the workstreams, which may combine information in two groups, one for Competition Enforcement and Consumer Protection and the second for Advocacy and Awareness.

The base line survey will then be consolidated through WS4 and rolled-out in WS1, WS2 and WS3.

Annual Activities will then be planned upon the basis of baseline survey information. These will be primarily defined as:

- a. Follow-up to “anti-competitive incidents” identified in WS1.
- b. Follow-up to “consumer protection needs” identified in WS2.
- c. Rolling out awareness raising in WS3.
- d. Conducting specific research that has been highlighted as critical as WS 4.

These activities will be reviewed on an annual basis by WS1, WS2 and WS3 and consolidated into an integrated review under WS4. This process is supported by WS5.

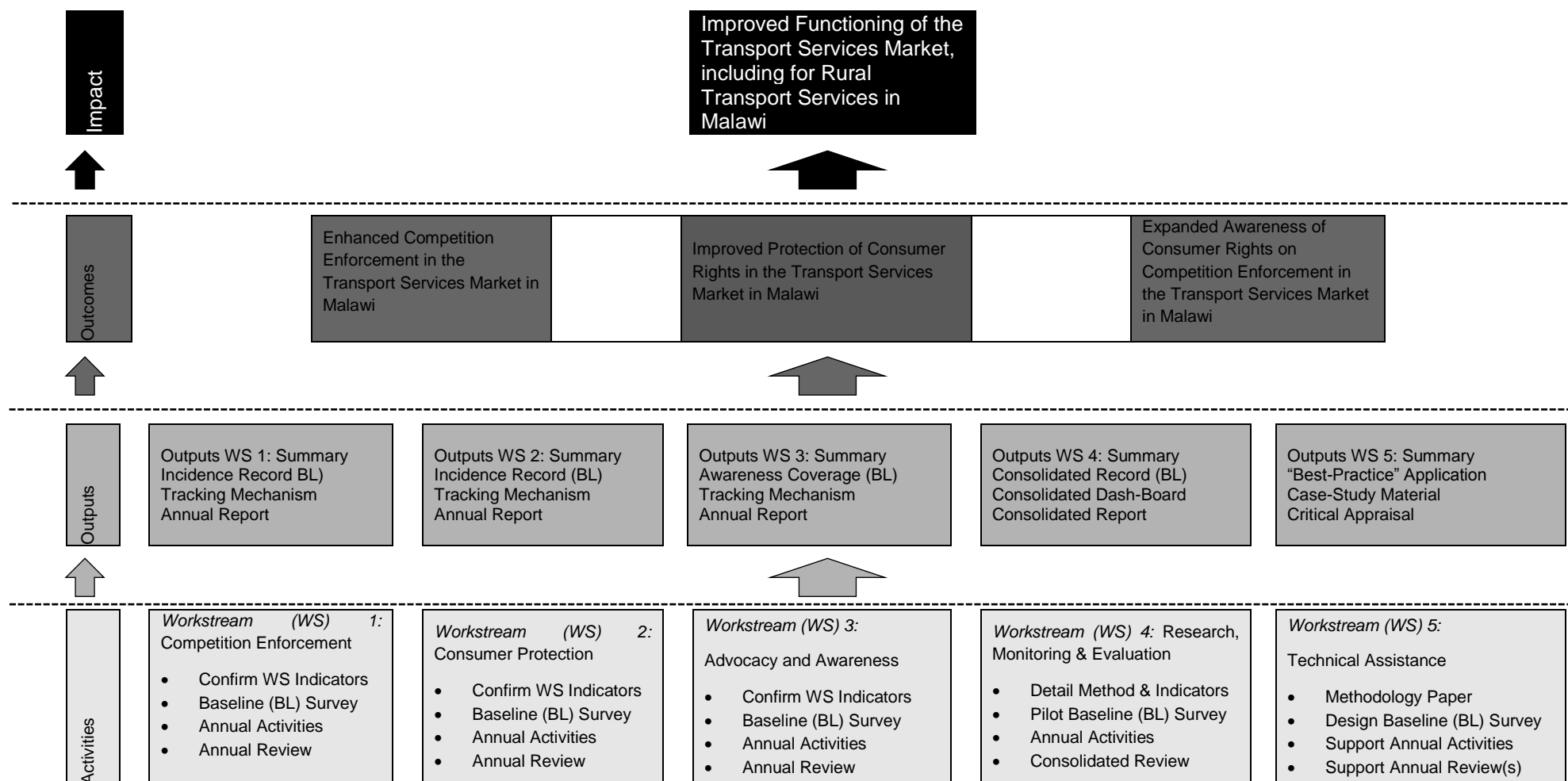
The data, either qualitative or quantitative, from which Annual Reviews are compiled comes from a tracking mechanism that logs “incident records” in WS1 and WS2 or “awareness coverage” in WS3 and how they have been resolved.

This data is compiled into a consolidated record, supplemented by any bespoke research that may have been undertaken in WS4, and placed in a consolidated data dashboard so that progress against key indicators can be tracked.

WS5 ensures that best-practices have been applied, relevant case-studies are profiled, and a critical appraisal of the consolidated review prepared by WS4 is conducted.

The primary outcome of the activities conducted in each workstream is focused on enhancing competition enforcement. Improvements in consumer protection are linked to enhancing competition enforcement. Expanding the width (geographic reach) and depth (number of stakeholders) of coverage in the awareness of consumer rights to competitive offering from transport service providers will assist in enhancing competition enforcement and improving consumer protection.

Figure 1: CFTC Sub-Program Simplified Theory of Change (TOC) Logic



Since the CFTC is not the transport sector regulator it cannot enforce technical and safety standards or quality of transport services, as these are the responsibility of the Directorate of Road Transport and Safety Services (DRTSS), a division of the Ministry of Transport and Public Works (MoTPW). Hence, indicators for the CFTC Sub-Program cannot be directly linked to price and quality of transport services but rather at increasing the rate at which reported incidents of anti-competitive behavior are identified and resolved, the rate at which remedial actions to address consumer complaints about unconscionable conduct⁴ are completed and the rate at which coverage of consumers with a basic understanding of their rights to competitive services.

The TA Advisor will have to confirm the key indicators to be used for the purposes of detailed monitoring of progress. Specifically, under Competition Enforcement, it will be necessary to define what an “incident of anti-competition” is in practice, so it can be measured. Similarly, under Consumer Protection can it be confirmed that the “reported incidents” are the same “incidents” as those reported under Competition Enforcement. Finally, under “Advocacy and Awareness” defining how to measure and track the level of coverage of consumers’ awareness of their rights, notably the variable coverage under different types of stakeholders is also needed. The high-level indicators that have been distilled from the CFTC Action Plan are summarized in **Table 1**.

⁴ Unconscionable conduct as being serious misconduct that is so far outside accepted standards of commercial conduct as to be against good conscience. Good business conscience is measured against the values and norms of modern society and expectations of what is right and proper according to those values and norms. Those values and norms can include acting honestly, fairly and without deception or unfair pressure. This is conduct that is more than just hard commercial bargaining but is deliberate and clearly unfair and unreasonable (Source: Commerce Commission of New Zealand).

Table 1: CFTC Transport Unit – High-Level Output and Outcome Indicators

Activities	Outputs Year 2-5	Outcomes Year 3-6	Project Objective Year 9
Policy and Institutional Reform and Capacity Building Activity	<u>Annual Incident Report: Competition Enforcement in the Transport Services Market in Malawi</u>	Increased rate in the <u>resolution of reported incidents</u> of anti-competitive behavior (e.g. Compliance with CFTC decisions) in the transport services market in Malawi	<u>More competitive market for transport services</u> , in urban, rural and cross-border market segments in Malawi
	<u>Annual Incident Report: Consumer Protection in the Transport Services Market in Malawi</u>	Increase rate in the <u>completion of remedial actions</u> (e.g. Fines paid to CFTC) to address complaints from consumers about unconscionable conduct in the transport services market in Malawi	<u>Improved remedial response to complaints of a lack of consumer protection</u> against unconscionable conduct in the transport services market in Malawi
	<u>Annual Awareness Coverage Report: Consumer Rights in the Transport Services Market in Malawi</u>	Increased rate in the <u>coverage of stakeholder understanding of consumer rights</u> in the transport services market in Malawi	Full coverage of stakeholder understanding of consumer rights in the transport services market in Malawi

Detailed Scope of Work for the TA Advisor

The TA Advisor will be responsible for providing technical advice to the TUC and TU staff in structuring and implementing approved annual plans as presented in **Figure 1** and in ensuring that the Monitoring, Evaluation and Learning (MEL) framework, for which an initial framework is provided in **Table 1**, is implemented. The tasks of the TA Advisor are linked to the stages identified in the previous section, which are envisaged to be rolled-out sequentially, as follows:

1. Assist with the development of the preferred method to structure the activities of each workstream to ensure that a robust framework for annual monitoring and evaluation, and learning, (MEL) can be put in place.
2. Assist with the development of tools, manuals and guidelines designed to operationalise tracking (stakeholders), monitoring (indicators), investigations (complaints) and evaluation (outcomes) within the TU.
3. Assist with the development of an annual work plan linked to a field visit calendar to frame required operational costs and sources of funding for each of the workstream activities
4. Assist in developing a standardised template for drafting Monthly, Quarterly and Annual Progress Reports based on the annual work plan approved by the TUC and CEO.
5. Assist in designing, piloting and roll-out a baseline survey for Workstream 1 to provide a benchmark to track, monitor and evaluate anti-competitive business conduct, with a focus on the AGC Corridors.
6. Assist in designing, piloting and roll-out baseline survey for Workstreams 2 to provide a benchmark to track, monitor and evaluate unfair business practice.
7. Assist in designing, piloting and roll-out a gap analysis for Workstream 3 to provide a benchmark to track, monitor and evaluate awareness levels.
8. Assist in collating the results of each baseline survey and gap analysis and develop an integrated monitoring and evaluation system for reporting. Specifically, the TA should consider the role of local authorities (particularly districts) in identifying incidents of anti-competitive behaviour and consumer protection needs, and the needs of districts themselves in terms of awareness of CFTC activities how these can be leveraged to facilitate CFTC-TU activities.
9. Assist in preparing TORs for CFTC TU for anti-competitive business conduct investigations and obtain approval from CFTC management to undertake the proposed investigation.
10. Assist in preparing TORs for CFTC TU for unfair business practice investigations and obtain approval from CFTC management to undertake the proposed investigation.
11. Assist in developing data-capture tools to compile an integrated national database on transport costs and prices from vetted sources.
12. Carry out a training needs assessment and, if necessary, provide specialist on-the-job technical training on competition enforcement and consumer protection to TU staff.
13. Assist in reviewing Monthly, Quarterly and Annual Progress Reports to be submitted:
 - Monthly to CFTC management.
 - Quarterly and annually to CFTC management and to the MCA.

14. Assist in conducting an annual review of the previous and forthcoming year's activities with the TUC and the TU staff.
15. Working with the CFTC-TU develop proposals for roll out of activities beyond the AGC Corridors and districts, to give effective reach across the country.
16. Undertake other relevant ad-hoc specialist tasks, as may be required or delegated by the TUC and/or CEO, from time-to-time.

Team Composition

The team will comprise of a single part-time TA Advisor, who can demonstrate the following key attributes:

- Postgraduate degree in Economics, Law, Transport Planning or an equivalent related discipline.
- Demonstrated experience in competition and consumer protection policy, law or economics, with expertise in economic regulation of the transport sector preferable.
- Twenty (20) years of post-graduate experience in developing countries in sub-Sahara Africa, preferably with experience in Malawi.
- Ten (10) years of experience in Institutional Reform of Government Institutions, of which five (5) years should be in the field of competition law.
- Fluent in the English language.

Level of Effort (LOE)

The envisaged LOE for this assignment is a minimum of four (4) months per annum for a period of two (2) years totalling eight (8) person-months.

The CFTC will provide furnished office space for the Consultant at the CFTC head office in Lilongwe.

The Consultant's price must be all-inclusive and must include the cost of accommodation and subsistence in Lilongwe, and the cost of travel to and from Lilongwe if the expert is not based in Lilongwe.

All costs associated with CFTC meetings will be met by the Client except the time and subsistence costs of the Consultant.

Reporting Protocols and Assignment Deliverables

As stated in the section on Institutional Arrangements above, the TA Advisor will work closely with, and report directly to the TUC, as well as liaise with the CEO regarding the activities of the TU. The envisaged deliverables are as follows:

1. Inception Report will include the following five (5) deliverables, within six (6) weeks of the notice to proceed:
 - a. Methodology Paper on workstream programming.
 - b. Elaborated MEL Framework for CFTC Transport Unit.

- c. Design of Baseline Survey to cover each workstream.
 - d. Training needs assessment for the CFTC TU.
 - e. Annual Work Plan and Budget for Year 1 and 2 for the CFTC Transport Unit.
2. TA Quarterly Progress Reports to CFTC Management and MCA, indicating progress in accordance with the proposed activities of the CFTC-TU and the milestones of the Work Plan that are achieved. These reports will identify challenges and propose solutions to ensure effective progress is made in operationalising the TU.
3. Annual Reports reviewing of the Work Plan at end of Year 1 and at the end of Year 2, consolidating the quarterly report information from the year and proposing adaptation of the Work Plans for the following year, based upon the outcomes achieved.
4. Relevant ad hoc reports compiled with specialist input from the TA Advisor to the TUC and/or CEO.
5. A Final Report on completion of the Assignment, which shall detail:
 - a. All activities undertaken by the TA.
 - b. Summarising the outcomes achieved.
 - c. Identifying where expected outcomes were not achieved and the reasons therefore.
 - d. Recommending areas of improvement and the process to achieve these.
 - e. Outlining how the scope of the activities of the CFTC-TU can be extended to cover other areas beyond the AGC Corridor districts and roads, and ultimately be extended over Malawi.

Evaluation Criteria

The Evaluation Criteria can be found in Section 5 - Evaluation Criteria of the Individual Consultant Selection of the Solicitation Document.

Payment schedule

All report deliverables shall be submitted initially in draft form. MCA-Malawi II is required to respond within fourteen (14) calendar days of receipt of a deliverable. The Consultant shall incorporate any comments from MCA-Malawi II and submit the final version of the report. Payment of fees is contingent upon written approval of the deliverable by MCA-Malawi II. Upon approval, the Consultant shall promptly submit the invoice for payment. Payments for the deliverables shall be made according to the schedule of percentages of the Contract amounts in **Table 2**.

Table 2: Payment Schedule

	Deliverable	Due Date	Payment %
1	Inception Report	NTP + 6 weeks	10%
2	TA Quarterly Report	Within 10 working days of the end of each quarter	6 reports x 5% = 30%
3	Annual Report	Within 15 working days of the end of each year	2 reports x 10% = 20%
4	Draft Final Report	Within 15 working days of the end of year 2	30%
5	Final Report	Within 10 working days after receiving comments	10%

Section 5. Evaluation Criteria

Applicants are required to obtain a minimum of 80 points in order to qualify. The Applicant with the highest score equal to or above the 80 points threshold will be recommended for award subject to satisfactory references being obtained, successful negotiations, positive price reasonableness analysis and agreement on the rate and contents of the Financial Offer.

In the event that a Contract cannot be agreed between Accountable Entity and the first-ranked Consultant, the second-ranked Consultant will then be invited for negotiations.

The selection of the Individual Consultant will be based on the following criteria:

ITEM	CRITERIA	POINTS
1	<i>Education and Qualifications</i>	[5]
	Postgraduate degree in Economics, Law, Transport Planning or an equivalent related discipline.	5
2	<i>General Experience</i>	[20]
2.1	Demonstrated experience in competition and consumer protection policy, law or economics, with expertise in economic regulation of the transport sector preferable.	20
3	<i>Specific Experience</i>	[30]
3.1	Ten (10) years of experience in Institutional Reform of Government Institutions, of which five (5) years are in the competition field.	15
3.2	Twenty (20) years of post-graduate experience in developing countries in sub-Sahara Africa, preferably with experience in Malawi.	15
4	<i>Approach and Methodology</i>	[45]
	The approach and methodology to the assignment must focus on the following:	
4.1	Programming and training needs of each workstream.	15
4.2	Outline of baseline survey for each workstream	20
4.3	Monitoring, Evaluation and Learning framework for the Competition and Fair Trading Commission (CFTC) Transport Unit	10
	Annual work plan	10
	Total Score	100

Technical Evaluation Framework

Each sub-criteria/item shall be scored between 0 – 5 points, and as follows:

0	=	No evidence presented	=0% of the points
2	=	Significant deviation from the requirements	=40% of the points
3	=	Marginal deviation from the requirements	=60% of the points
4	=	Meeting the requirements	=80% of the points
4.5	=	Marginally exceeding the requirements	=90% of the points
5	=	Significantly exceeding the requirements	=100% of the points

Section 6. Contract Documents



CONTRACT FOR CONSULTANT'S SERVICES

Contract No. MCA-MWII-24-4003

between

**Millenium Challenge Account (MCA)-Malawi II
and**

[Name of the Consultant]

for

Competition and Fair Trading Commission Technical Assistance

Dated: *[Date]*

Form of Contract Agreement

This CONTRACT AGREEMENT (this “Contract”) made as of the [day] of [month], [year], between **Millenium Challenge Account (MCA)-Malawi II** (the “Accountable Entity”), on the one part, and [full legal name of Consultant] (the “Consultant”), on the other part.

WHEREAS, the Accountable Entity has accepted the Consultant’s proposal for the performance of the Services (the “Services”) described in the Description of Services in Appendix A, and the Consultant is capable and willing to perform said Services.

THE ACCOUNTABLE ENTITY AND THE CONSULTANT (the “Parties”) AGREE AS FOLLOWS:

1. This Contract, its meaning, interpretation and the relation between the Parties shall be governed by the applicable law of **Malawi**.
2. The Contract is signed and executed in English language, and all communications, notices and modifications related to this Contract shall be made in writing and in the same language.
3. The total Contract price is [insert amount and the currency] and is [indicate: inclusive or exclusive] of local taxes. The Contract price includes all costs associated with the assignment, including remuneration of the Consultant (foreign and local, in the field and at the Consultants’ home office), travel expenses, accommodation, per diem and other expenses. **Appendix E** provides further details.
4. The expected date for the commencement of the Services is [insert date, month and year] at [insert location]. The time period shall be [insert time period, e.g.: twelve months and end date, insert date, month and year].
5. The Accountable Entity designates [Insert Name and Title reporting Point of Contact] as the Accountable Entity’s reporting point of contact.
6. Any dispute, controversy or claim that cannot be amicably settled between the parties and arising out of, or relating to this Contract or the breach, termination or invalidity thereof, shall be finally settled by [dispute resolution in accordance with the applicable law]. The arbitration shall be held in [Malawi] and the language of the arbitration shall be English.
7. The following documents form an integral part of this Contract:
 - (a) The Conditions of Contract (including Attachment 1 “MCC’s Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations (“MCC’s AFC Policy”), Attachment 2 “Annex to General Provisions”).

RFA Ref No: MCA-MWII-24-4003-Procurement of Consultant Services for Competition and Fair-Trading Commission Technical Assistance

- (b) Appendices:
- Appendix A: Description of Services and Reporting Requirements
 - Appendix B: Consultant's CV
 - Appendix C: Consultant's Bank Details
 - Appendix D: Negotiated Deployment Schedule
 - Appendix E: Cost Details

SIGNED:

For and on behalf of [*Name of Accountable Entity*]

[*Authorized Representative of the Accountable Entity – name, title and signature*]

For and on behalf of [*Name of Consultant*]

[*Consultant – name and signature*]

Conditions of Contract

- | | |
|--|---|
| 1. Corrupt and Fraudulent Practices | 1.1 The Millennium Challenge Corporation (“MCC”) requires compliance with its policy in regard to corrupt and fraudulent practices as set forth in Attachment 1. |
| 2. Commissions and Fees Disclosure | 2.1 The Accountable Entity requires the Consultant to disclose any commissions, gratuities or fees that may have been paid or are to be paid to agents or any other party with respect to the selection process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee. Failure to disclose such commissions, gratuities or fees may result in termination of the Contract and/or sanctions by MCC. |
| 3. Force Majeure | |
| Definition | 3.1 For the purposes of this Contract, “Force Majeure” means an event or condition that (a) is not reasonably foreseeable and is beyond the reasonable control of a Party, and is not the result of any acts, omissions or delays of the Party relying on such event of Force Majeure, (or of any third person over whom such Party has control, (b) is not an act, event or condition the risks or consequence of which such Party has expressly agreed to assume under this Contract, (c) could not have been prevented, remedied or cured by such Party’s reasonable diligence, and (d) makes such Party’s performance of its obligations under this Contract impossible or so impractical as to be considered impossible under the circumstances. Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder. |
| No Breach of Contract | 3.2 The failure of a Party to fulfil any of its obligations under this Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as practicable (and in no event later than five (5) days after the occurrence) about the occurrence of an event giving rise to a claim of Force Majeure. |
| Measures to be Taken | 3.3 A Party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical and shall take all reasonable measures to minimize the |

consequences of any event of Force Majeure.

- 3.4 Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.
- 3.5 During the period of their inability to perform the Services as a result of an event of Force Majeure, the Consultant, upon instructions by the Accountable Entity, shall either:
 - (a) demobilize, in which case the Consultant shall be reimbursed for additional costs they reasonably and necessarily incurred, and, if required by the Accountable Entity, in reactivating the Services; or
 - (b) continue with the Services to the extent reasonably possible, in which case the Consultant shall continue to be paid under the terms of this Contract and be reimbursed for additional costs reasonably and necessarily incurred.

In the case of disagreement between the Parties as to the existence or extent of and event of Force Majeure, the matter shall be settled in accordance with Clause 18.

4. Suspension

- 4.1 The Accountable Entity may, by written notice of suspension to the Consultant, suspend part or all payments to the Consultant hereunder if the Consultant fails to perform any of its obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Consultant to remedy such failure within a period not exceeding seven (7) calendar days after receipt by the Consultant of such notice of suspension or if MCC has suspended disbursements under the Compact.

5. Termination

- 5.1 This Contract may be terminated by either Party as per provisions set out below.

By the Accountable Entity

- 5.2 The Accountable Entity may terminate this Contract with at least fourteen (14) calendar days prior written notice to the Consultant after the occurrence of any of the events specified in paragraphs (a) through (e) of this Clause:

- (a) If the Consultant does not remedy a failure in the performance of its obligations under the Contract after being notified by the Accountable Entity in writing by specifying the nature of the failure and requesting to remedy it within at least ten (10) calendar days after the receipt of the Accountable Entity's notice;
- (b) If the Consultant becomes insolvent or bankrupt;
- (c) If the Consultant, in the judgment of the Accountable Entity, has engaged in integrity violations as defined in Attachment 1 or if in the judgment of the Accountable Entity, continuing the Contract will be detrimental to the interests or reputation of the Accountable Entity, or the project;
- (d) If the Accountable Entity, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.
- (e) If the Compact has been terminated or MCC has suspended disbursements under the Compact. If this Contract is suspended pursuant to this Sub-Clause 5.2 (e) the Consultant has an obligation to mitigate all expenses, damages and losses to the Accountable Entity during the period of the suspension.

By the Consultant

5.3 The Consultant may terminate this Contract, upon written notice to the Accountable Entity in accordance with the time period specified below, such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (e) of this Sub-Clause 5.3:

- (a) If the Accountable Entity fails to pay any money due to the Consultant pursuant to this Contract that is not otherwise subject to dispute pursuant to Clause 18 hereof within forty-five (45) days after receiving written notice from the Consultant that such payment is overdue. Termination under this provision shall become effective upon the expiration of thirty (30) days after delivery of the notice of termination unless the payment that is the subject of such notice of termination is made by the Accountable Entity to the Consultant within such thirty (30) days.
- (b) If, as the result of an event of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days. Termination under this provision shall become effective upon the expiration of thirty (30) days after delivery of the notice of termination.

- (c) If the Accountable Entity fails to comply with any final decision reached as a result of arbitration pursuant to Clause 18. Termination under this provision shall become effective upon the expiration of thirty (30) days after delivery of the notice of termination.
- (d) If the Consultant does not receive a reimbursement of any Taxes that are exempt under the Compact within one hundred and twenty (120) days after the Consultant gives notice to the Accountable Entity that such reimbursement is due and owing to the Consultant. Termination under this provision shall become effective upon the expiration of thirty (30) days after delivery of the notice of termination unless the reimbursement that is the subject of such notice of termination is made to the Consultant within such thirty (30) days.
- (e) If this Contract is suspended for a period of time exceeding three (3) consecutive months; provided that the Consultant has complied with its obligation to mitigate in accordance with Clause 5.2(e) during the period of the suspension. Termination under this provision shall become effective upon the expiration of thirty (30) days after delivery of the notice of termination.

6. Obligations of the Consultant

Standard of Performance

- 6.1 The Consultant shall carry out the Services with due diligence and efficiency and shall exercise such reasonable skill and care in the performance of the Services as is consistent with sound professional practices.
- 6.2 The Consultant shall act at all times so as to protect the interests of the Accountable Entity and shall take all reasonable steps to keep all expenses to a minimum, consistent with sound professional practices.

Compliance

- 6.3 The Consultant shall perform the Services in accordance with the Contract and the applicable law of **Malawi**.

- | | |
|---|--|
| Conflict of Interests | <p>6.4. The Consultant shall hold the Accountable Entity's interests paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their own corporate interests.</p> <p>6.5 The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant, shall be disqualified from providing goods, works or non-consulting services resulting from or directly related to the Consultant's Services for the preparation or implementation of the project.</p> <p>6.6 The Consultant shall not engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.</p> <p>6.7 The Consultant has an obligation shall have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of the Accountable Entity, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Consultant or the termination of its Contract.</p> |
| 7. Confidentiality | <p>7.1 Except with the prior written consent of the Accountable Entity, the Consultant shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the Consultant, make public the recommendations formulated in the course of, or as a result of, the Services.</p> |
| 8. Insurance to be taken out by the Consultant | <p>8.1 The Consultant shall take out and maintain at its own cost adequate professional liability insurance as well as adequate insurance against third party liability and loss of or damage to equipment purchased in whole or in part with funds provided by the Accountable Entity. The Consultant shall ensure that such insurance is in place prior to commencing the Services.</p> <p>8.2 The Accountable Entity undertakes no responsibility in respect of any life, health, accident, travel or other insurance which may be necessary or desirable for the Consultant, for purpose of the Services, nor for any dependent of any such person.</p> <p>8.3 The Accountable Entity reserves the right to require original evidence that the Consultant has taken out the necessary insurance.</p> |

- | | |
|--|---|
| 9. Accounting, Inspection and Auditing | <p>9.1 The Consultant shall keep, and shall make all reasonable efforts to keep, accurate and systematic accounts and records in respect of the Services and in such form and detail as will clearly identify relevant time changes and costs.</p> <p>9.2 The Consultant shall permit MCC and/or persons appointed by MCC to inspect the site and/or all accounts and records relating to the performance of the Contract and to have such accounts and records audited by auditors appointed by MCC if requested by MCC.</p> |
| 10. Reporting Obligations | <p>10.1 The Consultant shall submit to the Accountable Entity the reports and documents specified in Appendix A, in the form, in the numbers and within the time periods set forth in said Appendix.</p> |
| 11. Proprietary Rights of the Accountable Entity in Reports and Records | <p>11.1 All reports and relevant data and information such as maps, diagrams, plans, databases, other documents and software, supporting records or material compiled or prepared by the Consultant for the Accountable Entity in the course of the Services shall be confidential and become and remain the absolute property of the Accountable Entity unless otherwise agreed by the Accountable Entity in writing. The Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Accountable Entity, together with a detailed inventory thereof. The Consultant may retain a copy of such documents, data and/or software but shall not use the same for purposes unrelated to this Contract without prior written approval of the Accountable Entity.</p> <p>(a) The Consultant shall indemnify the Accountable Entity from and against any and all claims, liabilities, obligations, losses, damages, penalties, actions, judgments, suits, proceedings, demands, costs, expenses and disbursements of whatsoever nature that may be imposed on, incurred by or asserted against, the Accountable Entity during or in connection with the Services by reason of i) infringement or alleged infringement by the Consultant of any patent or other protected right, or ii) plagiarism or alleged plagiarism by the Consultant.</p> <p>(b) The Consultant shall ensure that all goods and services (including without limitation all computer hardware, software and systems) procured by the Consultant from the Accountable Entity funds or used by the Consultant in the carrying out of the Services do not violate or infringe any industrial property or intellectual property right or claim of</p> |

any third party.”

- | | |
|--|--|
| 12. Job Description of Consultant | 12.1 The title, agreed job description, and minimum qualification to carry out the Services of the Consultant are described in Appendix A. |
| 13. Accountable Entity’s Payment Obligation | 13.1 In consideration of the Services performed by the Consultant under this Contract, the Accountable Entity shall make such payments to the Consultant for the Services specified in Appendix E. |
| 14. Mode of Billing and Payment | <p>14.1 The payments under this Contract shall be made in accordance with the payments provisions as described in the Appendix E.</p> <p>14.2 Payments do not constitute acceptance of the whole Services nor relieve the Consultant of its obligations.</p> |
| 15. Interest on Delayed Payments | <p>15.1 If the Accountable Entity has delayed payments beyond thirty (30) days after the payment date determined, the interest rate to be applied in the case of late payments is:</p> <p>(i) for payments in US Dollars: the Federal Funds Rate as stated on the website:</p> <p>http://www.federalreserve.gov/releases/h15/current/default.htm</p> <p>(ii) for payments in local currency: <u><i>insert applicable interest rate</i></u></p> |
| 16. Taxes and Duties | <p>(a) <i>[This Clause 16(a) may need to be modified to address unique tax arrangements in some countries.]</i> Except as may be exempted pursuant to the Compact or another agreement related to the Compact, available in English at https://assets.mcc.gov/content/uploads/compact-malawi-transport-land.pdf, the Consultant, may be subject to certain Taxes as defined in the Compact on amounts payable by the Accountable Entity under this Contract in accordance with Applicable Law (now or hereinafter in effect). The Consultant shall pay all Taxes levied under Applicable Law. In no event shall the Accountable Entity be responsible for the payment or reimbursement of any Taxes. In the event that any Taxes are imposed on the Consultant, the contract price shall not be adjusted to account for such Taxes.</p> <p>(b) The Consultant shall follow the usual customs procedures of the Accountable Entity Country in importing property into the Accountable Entity Country.</p> <p>(c) If the Consultant does not withdraw, but dispose of any property in the Accountable Entity Country upon which</p> |

customs duties or other Taxes have been exempted, the Consultant, (i) shall bear such customs duties and other Taxes in conformity with Applicable Law, or (ii) shall reimburse such customs duties and Taxes to the Accountable Entity if such customs duties and Taxes were paid by the Accountable Entity at the time the property in question was brought into the Accountable Entity Country.

- (d) Without prejudice to the rights of the Consultant under this clause, the Consultant, will take reasonable steps as requested by the Accountable Entity or the Government with respect to the determination of the Tax status described in this Clause 16.
- (e) If the Consultant is required to pay Taxes that are exempt under the Compact or a related agreement, the Consultant shall promptly notify the Accountable Entity (or such agent or representative designated by the Accountable Entity) of any Taxes paid, and the Consultant shall cooperate with, and take such actions as may be requested by the Accountable Entity, MCC, or either of their agents or representatives, in seeking the prompt and proper reimbursement of such Taxes.
- (f) The Accountable Entity shall use reasonable efforts to ensure that the Government provides the Consultant, the exemptions from taxation applicable to the Consultant, in accordance with the terms of the Compact or related agreements. If the Accountable Entity fails to comply with its obligations under this paragraph, the Consultant shall have the right to terminate this Contract.

17. Amicable Settlement of Disputes

- 17.1 The Parties shall seek to resolve any dispute amicably by mutual consultation.

18. Dispute Resolution

- 18.1. Any dispute between the Parties arising under or related to this Contract that cannot be settled amicably may be referred to and determined by a sole arbitrator to be appointed by agreement between the Parties or in default of agreement by the Parties, in accordance with Clause 6 of the Contract Agreement. The arbitral award shall be final and binding. Notwithstanding any reference to arbitration herein, the Parties shall continue to perform their respective obligations under the Contract.
- 18.2 MCC has the right to be an observer to any arbitration proceeding associated with this Contract, at its sole discretion, but does not have the obligation to participate in any arbitration proceeding. Whether or not MCC is an observer to any arbitration associated with this Contract, the Parties shall provide MCC with written English transcripts of any arbitration

RFA Ref No: MCA-MWII-24-4003-Procurement of Consultant Services for Competition and Fair-Trading Commission Technical Assistance

proceedings or hearings and a copy of the reasoned written award within ten (10) days after (a) each such proceeding or hearing or (b) the date on which any such award is issued. MCC may enforce its rights under this Contract in an arbitration conducted in accordance with this provision or by bringing an action in any court that has jurisdiction. The acceptance by MCC of the right to be an observer to the arbitration shall not constitute consent to the jurisdiction of the courts or any other body of any jurisdiction or to the jurisdiction of any arbitral panel.

RFA Ref No: MCA-MWII-24-4003-Procurement of Consultant Services for Competition and Fair-Trading Commission Technical Assistance

Attachment 1: MCC's Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations ("MCC's AFC Policy")

MCC's Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations ("MCC's AFC Policy") may be found at the following link:

<https://www.mcc.gov/resources/doc/policy-fraud-and-corruption>

[These provisions must be downloaded and attached to the Contract]

RFA Ref No: MCA-MWII-24-4003-Procurement of Consultant Services for Competition and Fair-Trading Commission Technical Assistance

Attachment 2: MCC's Policy – Annex to General Provisions

The MCC's general provisions can be found at the following link:

<https://www.mcc.gov/resources/doc/annex-of-general-provisions>

[These provisions must be downloaded and attached to the Contract]

RFA Ref No: MCA-MWII-24-4003-Procurement of Consultant Services for Competition and Fair-Trading Commission Technical Assistance

APPENDICES

APPENDIX A – DESCRIPTION OF SERVICES AND REPORTING REQUIREMENTS

RFA Ref No: MCA-MWII-24-4003-Procurement of Consultant Services for Competition and Fair-Trading Commission Technical Assistance

APPENDIX B - CONSULTANT'S CV

RFA Ref No: MCA-MWII-24-4003-Procurement of Consultant Services for Competition and Fair-Trading Commission Technical Assistance

APPENDIX C – CONSULTANT'S BANK DETAILS

RFA Ref No: MCA-MWII-24-4003-Procurement of Consultant Services for Competition and Fair-Trading Commission Technical Assistance

APPENDIX D – NEGOTIATED DEPLOYMENT SCHEDULE *[if necessary]*

Consultant Input (in the form of a bar chart)								
Months	1	2	3	4	5	6	Etc.	Total
[Home]								
[Field]								

RFA Ref No: MCA-MWII-24-4003-Procurement of Consultant Services for Competition and Fair-Trading Commission Technical Assistance

APPENDIX E – COST DETAILS

Description	Unit Cost	U/M	Total	Remarks
Remuneration				
Fees				

Other Costs				
Description	Rate	Qty	Total	Remarks
Return Flight [insert airports]				
Return Flight [insert airports]				
Lodging [[insert city]				
M&IE [insert city] (first day of travel)				
M&IE [insert city]				
M&IE [insert city] (last day of travel)				
Visa Costs, courier services and related expenses				
		Total	0.00	

Grand Total: US\$ **0.00**

For all reimbursables, the Consultant will submit the originals of boarding passes, invoices and receipts of any expenses incurred based on the maximum approved costs.

The Consultant will only be paid for time worked.