

REQUEST FOR PROPOSALS

RFP # PP4-CIF ADM 23/QCBS

MILLENNIUM CHALLENGE ACCOUNT – BENIN II

on behalf of:

THE GOVERNMENT OF BENIN

Funded by

THE UNITED STATES OF AMERICA

through

THE MILLENNIUM CHALLENGE CORPORATION

Procurement of External Legal Counsel

Date: September 2017

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Section 1 LETTER OF INVITATION

Re: MCA-BENIN II II EXTERNAL LEGAL COUNSEL

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6 September, 2017

Dear Sir,

1. This Request for Proposals follows the General Procurement Notice n° 4 and its amendment n°2 that appeared in Devbusiness.com on 18 July, 2017, dgMarket on 13 July, 2017 and was posted on 13 July, 2017 on MCA-Benin II website www.mcabenin2.bj and local newspaper “la Nation” on July 18, 2017, and “le Matinal” on July 20, 2017
2. The Millennium Challenge Corporation (“MCC”) and the Government of Benin (the “Government” or [GoB]) have entered into a Millennium Challenge Compact for Millennium Challenge Account assistance to help facilitate poverty reduction through economic growth in Benin (the “Compact”) in the amount of approximately 375 000 000 USD (“MCC Funding”). The Government, acting through the Millennium Challenge Account – Benin II (“MCA-Benin II”), a public institution established under the laws of the republic of Benin as the Accountable Entity for the Compact (hereafter referred to as the “MCA-Benin II”), intends to apply a portion of the MCC Funding to eligible payments under a contract (“Contract”) for which the Request for Proposals (“RFP”) is issued. Any payments made under the proposed Contract will be subject, in all respects, to the terms and conditions of the Compact and related documents, including restrictions on the use of MCC Funding and conditions to the disbursements of MCC Funding. No party other than the Government and the MCA-Benin II shall derive any rights from the Compact or have any claim to the proceeds of MCC Funding.
3. The MCA-Benin II hereby invites proposals from legally constituted law firms, authorized to offer legal services in Benin to provide the following services (“Proposals”): **MCA-Benin II External Legal Counsel**.

More details on the services are provided in the Terms of Reference found at Section 5 of this RFP.

This RFP is open to all eligible entities (“law firm”) who wish to respond. Subject to the restrictions noted in the RFP, law firms may associate with other law firms to enhance their capacity to successfully carry out the assignment.”

4. A law firm (“External Legal Counsel”, “External Counsel” or “Counsel”) will be selected under the **Quality and Cost-Based Selection (“QCBS”)** method as defined in the latest version of the *MCC Program Procurement Guidelines*, which are provided on the MCC website <https://www.mcc.gov/resources/doc/program-procurement-guidelines>.
5. This invitation is for a fixed **rate** contract payable in US Dollars. **The term of the Contract would include a period to cover the Base Period of seven (07) months ending 21 June,**

2018; a first Option Period to cover the twelve (12) months ending 21 June, 2019; a second Option Period to cover the 12 months ending 21 June, 2020; a third Option Period to cover the 12 months ending 21 June, 2021; and a close-out Option Period to cover the remaining duration of the Compact, plus 120 days to cover the Compact's close-out ending 19 October, 2022. The MCA-Benin II shall determine at its sole discretion whether to exercise each Option Period regardless of the performance of the Counsel.

The Base Period is funding on the Compacts Implementation Funds already available whereas the option periods will be funded by Compact funds. The Option Periods are subject to fund availability and therefore this will be discussed with the selected law firm during contract negotiation prior to contract award.

6. The RFP includes the following documents:

- Section 1 – Letter of Invitation
- Section 2 – Instructions to External Legal Counsel
- Section 3 – Technical Proposal Standard Forms
- Section 4 – Financial Proposal Standard Forms
- Section 5 – Terms of Reference
- Section 6 – Form of Contract

7. A pre-proposal conference **will** be held at **10:00 am (local time) on 14 September, 2017 at MCA-Benin II Conference room**. Attendance is strongly advised for all prospective Counsels or their representatives but is not mandatory. Clarifications may be requested up to COB on 19 September, 2017, Benin time on 26 September, 2017. The address for requesting clarifications is:

Millennium Challenge Account- Benin II
Attn: The Procurement Agent

Immeuble KOUGBLENOU, 3ème Etage, Domaine de l'OCBN

Derrière la Compagnie Territoriale de Gendarmerie du Littoral

01 BP 101 Cotonou, Republic of Benin

E-mail: info-benin@charleskendall.com

cc: info@mcabenin2.bj

1. Law firms interested in submitting a Proposal should register their interest by sending an e-mail, giving full contact details of the law firm, to the above email address. This will ensure that the Counsels receive updates regarding this RFP. Proposals duly signed by an authorized representative of Counsel must be submitted on or before **10:00 a.m.**, Benin time, **10 October, 2017** at the address indicated in paragraph 7 above. Proposals received after this date and time shall not be considered and shall be returned unopened. **Law firms should be aware that distance and customs formalities may require longer than expected delivery**

time. Please note that electronic Proposals shall not be accepted. However, an electronic version of the proposal shall be submitted on a CD or on a thumb drive.

9. Technical Proposals will be opened in the presence of Counsel and/or their representatives who choose to attend at **10:15 a.m.**, Benin time, on **10 October, 2017** at the address for proposal submission.

Yours sincerely,

Gabriel DEGBEGNI
Acting National Coordinator
Millennium Challenge Account – Benin

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1. Introduction
 - 1.1 The United States of America, acting through MCC and the Government have entered into the Compact. The Government, acting through the MCA-Benin II 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 MCA-Benin II 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 MCA-Benin II.
 - 1.2 The MCA-Benin II will select External Legal Counsel, either a firm or sole practitioner, among those listed in the Letter of Invitation. The selection will be in accordance with the Quality and Cost-Based Selection (“QCBS”) procedures described in this RFP, and the MCC *Program Procurement Guidelines*. The parties listed in the Letter of Invitation are requested to submit a Technical Proposal and a Financial Proposal. The proposal will be the basis for Contract negotiations and ultimately for a signed Contract with the selected Counsel.
 - 1.3 The MCA-Benin II will make relevant project data and reports available to the winning Counsel. It is expected that the Counsel will have the necessary licenses and permits needed to carry out the services being procured. Please note that (i) the costs of preparing the proposal and of negotiating the Contract are not reimbursable costs; and (ii) neither MCC nor the MCA-Benin II is bound to accept any of the proposals submitted.
 - 1.4 The MCA-Benin II policy requires that the Counsel provide professional, objective, and impartial advice at all times and hold the MCA-Benin II’s interests paramount, without any consideration for future work, and strictly avoid conflicts with other assignments or their own corporate interests.
 - (a) Counsel 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 not being able to carry out the assignment in the best interest of the MCA-Benin II.
 - (b) Any previous or ongoing participation in relation to this specific assignment by the Counsel, its proposed staff or its affiliates or associates under a contract with MCA-Benin II may result in rejection of the proposal. Counsel should clarify their situation in that respect with the MCA-Benin II before preparing the proposal.

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- (c) Counsel that have a business or family relationship with a member of the MCA-Benin II's board of directors or the MCA-Benin II staff, or with the Procurement Agent or Fiscal Agent (as defined in the Compact or related agreements) hired by the MCA-Benin II who is directly or indirectly involved in any part of (i) the preparation of the Terms of Reference of the assignment, (ii) the selection process for such assignment, or (iii) supervision of the Contract, may not be awarded the Contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to MCC throughout the selection process and the execution of the Contract. Counsel shall clarify such situations prior to the deadline for clarifications, as specified in Section 2.1, Instructions to External Legal Counsel.
 - (d) Counsel have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of the MCA-Benin II, or that may be reasonably perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Counsel or the termination of the Contract.
- 1.5 Counsel will observe and adhere to the highest professional and ethical standards, both during the selection process and throughout the implementation of the Contract. MCC's Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations is applicable to all procurements and contracts involving MCC funding and can be found on the MCC website. In pursuance of this policy, the following provisions will apply:
- (a) For the purposes of these provisions, the terms set forth below are defined as follows:
 - (i) "coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of any party, to influence the actions of a party in connection with the implementation of any contract supported, in whole or in part, with MCC funding, including such actions taken in connection with a procurement process or the execution of a contract;
 - (ii) "collusive practice" means a tacit or explicit agreement between two or more parties to perform a coercive, corrupt, fraudulent, obstructive or prohibited practice, including any such agreement designed to establish prices at artificial, non-competitive levels or to

otherwise deprive the MCA-Benin II of the benefits of free and open competition;

- (iii) “corrupt practice” means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the actions of a public official, MCA-Benin II 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;
- (iv) “fraudulent practice” means any act or omission, including any misrepresentation, that 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;
- (v) “obstructive practice” means any act taken in connection with the implementation of any contract supported, in whole or in part, with MCC funding:
 - (aa) that results in the 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 a coercive, collusive, corrupt, fraudulent or prohibited practice;
 - (bb) 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; and/or
 - (cc) intended to impede the conduct of an inspection and/or the exercise of audit rights of MCC provided under the Compact and related agreements; and

- (vi) “prohibited practice” means any action that violates Section E (Compliance with Anti-Corruption Legislation), F (Compliance with Anti-Money Laundering Legislation), or G (Compliance with Terrorist Financing Statutes and Other Restrictions) of Annex C (General Provisions) of the Contract.
- (b) The MCA-Benin II will reject a proposal under this RFP (and MCC will deny approval of a proposed Contract award) if it determines that a bidder (“Bidder”) recommended for award has, directly or through an agent, engaged in coercive, collusive, corrupt, fraudulent, obstructive or prohibited practices in competing for the Contract.
- (c) MCC and the MCA-Benin II have the right to sanction a Bidder or Counsel, including declaring the Bidder or Counsel ineligible, either indefinitely or for a stated period of time, to be awarded any MCC-funded contract if at any time either MCC or the MCA-Benin II determines that the Bidder or Counsel has, directly or through an agent, engaged in coercive, collusive, corrupt, fraudulent, obstructive or prohibited practices in competing for, or in executing, such a contract.
- (d) MCC and the MCA-Benin II have the right to require that a provision be included in the Contract requiring the selected Bidder or Counsel to permit the MCA-Benin II MCC, or any designee of MCC, to inspect the Bidder’s or Counsel’s, or any of the Counsel’s suppliers or sub-consultants on the Contract, accounts, records and other documents relating to the submission of its proposal or performance of the Contract and to have such accounts, records and other documents audited by auditors appointed by MCC or by the MCA-Benin II with the approval of MCC.
- (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 any representative of a beneficiary of MCC Funding engaged in coercive, collusive, corrupt, fraudulent, obstructive or prohibited practices during the selection process or the execution of any MCC-funded contract, without the MCA-Benin II having taken timely and appropriate action satisfactory to MCC to remedy the situation.

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Eligibility

1.6 Counsel (including their partners and associates, if any), its sub-consultants and personnel, shall satisfy the eligibility criteria set forth below, as applicable.

Ineligibility and
Debarment

1.6.1 Counsel (including their partners and associates, if any), its personnel and sub-consultants shall not be any person or entity under a declaration of ineligibility for Fraud and Corruption or that have been declared ineligible for participation in a procurement in accordance with the procedures set out in Part 10 of the *MCC Program Procurement Guidelines* (Eligibility Verification Procedures) that can be found on MCC's website at www.mcc.gov. This would also remove from eligibility for participation in procurement any sole practitioner or firm 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 sanction or restriction by law or policy of the United States. The countries, firms, organizations and individuals subject to these sanctions and restrictions are subject to change from time to time and it is necessary to refer to the websites identified in Part 10 of the *MCC Program Procurement Guidelines* for the most current listing of sanctioned and restricted countries. Counsel (including their partners and associates, if any), its personnel and sub-consultants not otherwise made ineligible for a reason described in the immediately preceding paragraph shall be excluded if:

- (a) as a matter of law or official regulation, the Government prohibits commercial relations with the country of such Counsel, partners, associates, personnel or sub-consultants;
- (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Government prohibits any import of goods from the country of such Counsel, partners, associates, personnel or sub-consultants or any payments to persons or entities in such country; or
- (c) Such Counsel, partners, associates, personnel or sub-consultants are otherwise deemed ineligible by MCC pursuant to any policy or guidance that may, from time to time, be in effect as posted on the MCC website at www.mcc.gov.

1.7 Counsel, its Key Professional Personnel (as defined below), sub-contractors and partners, shall undergo partial, full and periodic eligibility verification in accordance with the procedures set out in Part 10 of MCC's Program Procurement Guidelines (Eligibility Verification Procedures) that can be found on MCC's website at www.mcc.gov/ppg.

If the Counsel, its Key Professional Personnel, sub-contractors and

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partners, is found ineligible at any time during the procurement proceedings or after contract award, this will result in the rejection of the Counsel's proposal or the termination of the contract with the selected Counsel unless the ineligibility is resolved to the satisfaction of MCA-Benin II and MCC within seven days of the notification from the MCA-Benin II to such Counsel.

- 1.8 Counsel shall furnish information on commissions and gratuities, if any, paid or to be paid to agents relating to this proposal and during execution of the assignment if the Counsel is awarded the Contract, as requested in the Financial Proposal Submission Form (Section 4).
- 1.9 MCC has a zero tolerance policy with regard to trafficking in persons. Trafficking in Persons ("TIP") is the crime of using force, fraud, and/or coercion to exploit another person. Human trafficking 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.
 - (a) The Terms of Reference may set out certain prohibitions, Counsel requirements, remedies and other provisions that will be made a binding part of any Contract that may be entered into with respect to this procurement. As such, those provisions should be given careful consideration.
 - (b) Additional information on MCC's requirements aimed at combating trafficking in persons can be found in MCC's Counter-Trafficking in Persons 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 Counter-Trafficking in Persons requirements as described in the Counter-Trafficking in Persons Policy.

**2. Clarification
and
Amendment
of RFP
Documents**

- 2.1 Counsel may request a clarification of any of the RFP documents up to **COB, Benin time on 19 Septembre, 2017**. Any request for clarification must be sent in writing or by electronic mail to the address indicated in paragraph 7 of the Letter of Invitation. The MCA-Benin II will respond in writing, or electronic mail, to such requests and will send written copies of the response (including an explanation of the query but without identifying the source of inquiry) to all short-listed Counsel who intend to submit proposals. Every attempt will be made by the MCA-Benin II to issue responses in writing to all Counsels who

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have registered or obtained the RFP directly from the MCA Benin II, as the case may be, no later than **26 September, 2017**.

2.2 At any time before the submission of proposals, the MCA-Benin II may amend the RFP. All addenda issued shall be part of this RFP, posted on the MCA Benin II's website, and shall be communicated in writing to all Counsel who have registered or obtained the RFP directly from the MCA-Benin II, as the case may be. To give Counsel reasonable time in which to take an amendment into account in their proposals, the MCA-Benin II may, if the amendment is substantial, extend the deadline for the submission of proposals.

3. Preparation of Proposal

3.1 Counsel are requested to submit a proposal written in French and all reports that are part of the assignment must also be written in French. Counsel shall submit only one proposal, and if Counsel submits or participates in more than one Proposal, all such Proposals shall be disqualified.

Technical Proposal

3.2 In preparing the Technical Proposal, Counsel are expected to examine the documents constituting this RFP in detail. Material deficiencies in providing the information requested may result in rejection of a proposal.

3.3 While preparing the Technical Proposal, Counsel should note the following:

(a) Proposed Professional Personnel (as defined below) must, at a minimum, have the appropriate level of experience to successfully complete the requirements in the Terms of Reference, preferably working under conditions similar to those currently prevailing in Benin. The technical evaluation will also consider as a criterion of evaluation both years with the firm or entity and current position held with the firm or entity.

(b) Alternative Professional Personnel shall not be proposed, and only one signed curriculum vitae (CV) may be submitted for each position.

(c) The Technical Proposal shall provide the following information using the attached Technical Proposal Standard Forms (Section 3):

(i) Signed Technical Proposal Submission Form letter by authorized representative of Counsel (Section 3, Form TECH-1).

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- (ii) The proposal must clearly state whether or not the Counsel is independent from the MCC and the MCA-Benin II (Section 3, Form TECH-2).
- (iii) A brief description of the Counsel's organization and a summary of recent experience (within the last five (5) years) on a minimum of three (3) assignments (Section 3, Form TECH-3) of a similar nature. For each assignment, the summary should indicate, among other things, the profiles of the Professional Personnel engaged, duration of the assignment, contract amount, and Counsel's involvement.
- (iv) A description of the methodology and work plan including a schedule for performing the assignment (Section 3, Form TECH-4). The work plan should also include a list of the proposed Professional Personnel by position and specialty with a brief description of roles and responsibilities.
- (v) CVs of all proposed Key Professional Personnel, in the format indicated in Section 3, Form TECH-5. CVs must be signed, (original signatures) by the proposed Key Professional Personnel or by the authorized representative submitting the proposal. Key information should include the number of years working for the firm/entity and degree of responsibility held in various assignments during the last ten (10) years and a submission of all licenses and qualifications related to the authority to practice law in Benin, which will be evaluated as part of the proposal. While proposing Key Professional Personnel with less than ten (10) years of experience will not serve as a basis for rejection, experience is an evaluation criterion that will be considered. The Counsel is required to identify a minimum of two (2) Key Professional Personnel – the Contract Relationship Partner, and Partner or Senior Counsel, which will be evaluated as Key Professional Personnel, and two (2) other attorneys (collectively, the "Professional Personnel"). If Counsel does not have the staffing to meet these minimum personnel requirements, it may provide an explanation as to why it has the requisite skill and experience to otherwise satisfy the terms of the Contract, and how it may mitigate or secure additional assistance of counsel as needed.

(vi) Staffing Plan and Time Schedule for Professional Personnel (Section 3, Form TECH-6).

(d) The Technical Proposal shall not include any financial information which may totally or partially disclose the offered proposal rate. A Technical Proposal containing such financial information shall be rejected.

Financial Proposal

3.4 In preparing the Financial Proposal, Counsel are expected to take into account the requirements and conditions outlined in the RFP documents.

3.5 The financial proposal shall include the following Financial Forms (Section 4):

(a) Signed Financial Proposal Submission Form letter by authorized representative of Counsel (Section 4, Form FIN-1).

(b) Fixed Price (Section 4, Form FIN-2), which will be the proposed average hourly blended billing rate for Professional Personnel, which will be the product of the billing rate for Professional Personnel, weighted pursuant to the projected staffing blend from the Technical Proposal for each potential assignment under the Contract, for a final, projected blended average fee proposal for all Professional Personnel.

An example of the computation is as follows: For the base period, across all potential assignments, Counsel is proposing the following staffing mix:

- Managing Partner, 50%, at \$350 per hour
- Senior Partner, 30%, at \$300 per hour
- Associate, 20%, at \$100 per hour

Calculation: $(.5*350) + (.3*300) + (.2*100) = \$285 =$ average hourly blended billing rate.

This rate will be calculated and proposed for each period under this Contract.

3.6 The Financial Proposal shall be for fixed-price attorney rates for a period **to cover the Base Period of seven (07) months ending 21 June, 2018; a first Option Period to cover the twelve (12) months ending 21 June, 2019; a second Option Period to cover the 12 months ending 21 June, 2020; a third Option Period to cover the**

12 months ending 21 June, 2021; and a close-out Option Period to cover the remaining duration of the Compact, plus 120 days to cover the Compact’s close-out ending 19 October, 2022, payable in US Dollars. No other currency or combination of currencies is allowed.

**Period of
Proposal
Validity**

- 3.7 The total proposed rates for each Professional Personnel for the Base Contract and each Option Period shall be set out using Form FIN-2 found in Section 4. A Financial Proposal that does not cover the services for the entire duration, including the Base Period and the Option Periods shall be rejected.
- 3.8 Proposals must remain valid ninety (90) days after the submission date. During this period, Counsel is expected to keep available the Professional Personnel proposed for the assignment. The MCA-Benin II will make its best effort to complete negotiations and sign the Contract within this period. If the MCA-Benin II wishes to extend the validity period of the proposals, the Counsel who do not agree have the right not to extend the validity of their proposals.

Taxes

- 3.9
- (a) The Section 2.8 of the Compact provides a comprehensive series of tax exemptions that cover the use of all funding under the Compact to protect against the payment of any taxes, duties, levies or similar charges of or in Benin by any natural or legal person, except natural persons who are citizens or permanent residents of Benin or legal persons (unless residency has been created or formed because of the Compact). The terms and a detailed description of the exemptions are provided in the Tax Schedules (“Tax Schedules”) at Annex II to the Program Implementation Agreement. The Counsel, (including its associates, if any), Sub- Consultants, and their respective Personnel shall otherwise pay all other Taxes, as applicable. In the event that any taxes are imposed on the Counsel, its associates, Sub- Consultants, or their respective Personnel, the Contract price shall not be adjusted to account for such taxes. The MCA-Benin II shall have no obligation to pay or compensate the Counsel, its associates, Sub- Auditors, or their respective Personnel for any Taxes.
- (b) In conjunction with the exemption and requirements under the Tax Schedules, the Counsel, the Sub-consultants and their respective Personnel, and their eligible dependents, shall follow the usual customs procedures of Benin in importing property into Benin.
- (c) If the Counsel, the Sub-consultants or any of their respective Personnel, or their eligible dependents, do not withdraw but dispose of any property in Benin upon which customs duties or other Taxes have been exempted, the Counsel, the Sub-Consultants or such Personnel, as the case may be, (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 MCA-Benin II if such customs duties and Taxes were paid by the MCA-Benin II at the time the property in question was brought into Benin.

- (d) Without prejudice to the rights of the Counsel under this clause, the Counsel, the Sub- Consultants and their respective Personnel will take reasonable steps as requested by the MCA-Benin II or the Government with respect to the determination of the Tax status described in this GCC Clause 3.9.
- (e) If the Counsel is required to pay Taxes that are exempt under the Compact or a related agreement, the Counsel shall promptly notify the MCA-Benin II (or such agent or representative designated by the MCA Entity) of any Taxes paid, and the Counsel shall cooperate with, and take such actions as may be requested by the MCA-Benin II, MCC, or either of their agents or representatives, in seeking the prompt and proper reimbursement of such Taxes.
- (f) The MCA- Benin II shall use reasonable efforts to ensure that the Government provides the Counsel, the Sub-Consultants, and their respective Personnel, the exemptions from taxation applicable to such persons or entities, in accordance with the terms of the Compact or related agreements. If the MCA-Benin II fails to comply with its obligations under this paragraph, the Auditor shall have the right to terminate this Contract in accordance with the Sub Clause 14.(B) of the section 6, form of contract.

The MCA- Benin II will assist the Counsel in addressing its applicable tax exemptions issues under this Contract, by issuing the Tax Exemption Letters, in accordance to the Sections 2.7 and 3.1 of the Compact.

4. Submission, Receipt, and Opening of Proposals

- 4.1 The following applies to the “**Original**” of the Technical Proposal, and of the Financial Proposal. The “**Original**” shall contain no interlineations or overwriting, except as necessary to correct errors made by Counsel themselves. The person signing the Proposal must initial such corrections. The submission letters for the Technical Proposal and for the Financial Proposal should respectively be in the format shown in (Form TECH-1) and (Form FIN-1).
- 4.2 The signed Technical and Financial Proposals shall be marked “Original”.
- 4.3 For each proposal, Counsel shall prepare one (1) original and four (4) hard copies, and one (1) electronic version (on a CD or USB drive) in French. Each Technical Proposal and Financial Proposal shall be marked “ORIGINAL” or “COPY” as appropriate. If there are any

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discrepancies between the original and the copies of the proposal, the original governs.

The “ORIGINAL” and each “COPY” of the Technical Proposal along with the electronic version of the Technical Proposal shall be placed in a sealed envelope/parcel clearly marked “**Technical Proposal**”. Similarly, the “ORIGINAL” and each “COPY” of the Financial Proposal along with the electronic version of the Financial Proposal shall be placed in a separate sealed envelope/parcel clearly marked “**Financial Proposal**”.

Each envelope/parcel shall bear the name and address of MCA-Benin II the name and address of Counsel (in case they have to be returned unopened), and “External Legal Services”.

In addition, the envelope/parcel containing the original and copies of the Financial Proposal shall be marked with a warning “**Do Not Open With the Technical Proposal.**” If the Financial Proposal is not submitted in a separate sealed envelope/parcel duly marked as indicated above, this will constitute grounds for declaring the proposal non-responsive.

The two envelopes/parcels containing the Technical Proposal and the Financial Proposal shall then be placed into one outer envelope or carton (as appropriate) and securely sealed to prevent premature opening. This outer envelope/carton shall bear the submission address, name and address of the Counsel, name of the assignment reference number, and be clearly marked “**Do Not Open, Except During the Proposal Opening Session.**” The MCA-Benin II shall not be responsible for misplacement, losing or premature opening if the outer envelope/carton is not sealed and/or marked as stipulated. This circumstance may be cause for proposal rejection.

Deadline for
Submission of
Proposals

- 4.4 The completed Technical Proposal and Financial Proposal must be delivered at the submission address on or before the time and date stated in Paragraph 8 of the Letter of Invitation. Any proposal received after the closing time for submission of proposals shall not be considered and could be returned unopened at the request and expense of the requesting Counsel, or it can destroyed by the MCA-Benin II if so instructed by the respective Counsel.
- 4.5 The MCA-Benin II shall open the Technical Proposals immediately on **10 October, 2017** in the presence of Counsel and their representatives as per Paragraph 9 of the Letter of Invitation after the deadline for their submission, as indicated in Paragraph 8 of the Letter of Invitation. The

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envelopes with the Financial Proposal shall remain sealed and securely stored until completion of the technical evaluation.

- 4.6 From the time the proposals are opened to the time the Contract is awarded, Counsel should not contact the MCA-Benin II or members of the Technical Evaluation Panel, on any matter(s) related to the Technical and/or Financial Proposal(s). Any effort by Counsel to influence examination, evaluation, or recommendations shall result in the rejection of the Counsel’s proposal. Evaluators of Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded.
- 4.7 The MCA-Benin II retains the right to request clarifications from Counsel on the content of their Technical or Financial Proposal. However, the nature of these clarifications and the answers received shall not lead to the modification or improvement of the proposal but only to explanations of aspects already stated in the proposal. Unsolicited clarifications shall not be considered in the evaluation process.
- 4.8 In order to be eligible for the technical evaluation, Technical Proposals will be first validated for compliance with the RFP requirements. In the case where a Technical Proposal materially deviates from the RFP requirements, it will not be evaluated further and its Financial Proposal shall be returned unopened.
- 4.9 After the administrative compliance review, the Technical Proposals shall be delivered to an MCA-Benin II-assigned Technical Evaluation Panel (“TEP”). The TEP member’s name(s) will remain confidential throughout the Compact duration and thereafter. The TEP will evaluate the Technical Proposals according to the evaluation criteria and weightings specified below:

Proposal Evaluation

5. Evaluation of Proposals

Evaluation Criteria for Technical Proposal

5.1

Evaluation Criteria Maximum Points	
1.	Qualifications and experience of Counsel, including experience in advising domestic or international development programs funded or implemented by a government or quasi-governmental entity within Benin, including at least three (3) performance references from
	<u>20</u>

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	<p>i) Qualified attorney, licensed to practice law in Benin.</p> <p>ii) Minimum of seven (7) years of relevant experience.</p> <p>iv) Experience in advising government, non-governmental, corporate and commercial clients engaged in similar projects and work.</p> <p>iv) Fluency in English.</p> <p>The number of points to be assigned to each of the above positions shall be determined considering the following three sub-criteria and relevant percentage weights:</p> <p>Education and training: 30%</p> <p>Demonstrated relevant experience: 60%</p> <p>Fluency English: 10%</p>	
	Total	100

Only Counsel that meet the minimum technical score of seventy-five (75) points will be eligible for the financial evaluation and award of a Contract. Proposals of the Counsel not meeting this minimum score shall not be considered further. In exceptional circumstances, if none of the scores awarded by the TEP reach or exceed the minimum technical score, the MCA-Benin II reserves the right to invite the Counsel receiving the highest technical score to negotiate both its Technical and Financial Proposals. If the negotiations fail to result in an acceptable contract within a reasonable time, the MCA-Benin II reserves the right to terminate the negotiations, at its sole discretion, and to invite—again, at its sole discretion—the Counsel receiving the next highest technical score to negotiate both its Technical and Financial Proposals.

5.2 After the technical evaluation is completed, and received MCC clearance, the MCA-Benin II shall notify those Counsel whose proposals did not meet the minimum qualifying score or were already found not to be eligible, indicating that their Financial Proposals will be returned unopened after completing the selection process at the request and expense of the Counsel, if so requested; otherwise such proposals shall be destroyed by MCA-Benin II after a suitable duration. The MCA-Benin II shall simultaneously notify Counsel that have secured the minimum qualifying score of seventy-five (75) points, indicating the date and time set for opening of the Financial Proposals.

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**Opening and
Evaluation
of Financial
Proposals**

- 5.2.1 The MCA-Benin II shall promptly respond in writing to any Counsel who, after receiving notification of the procurement results, makes a written request for a debriefing as provided in the MCC Program Procurement Guidelines, or submits a formal Bid Challenge.
- 5.3 The Financial Proposals shall be opened publicly in the presence of Counsel’s representatives who choose to attend. The name of the Counsel and the proposed prices shall be read aloud and recorded when the Financial Proposals are opened. The MCA-Benin II shall prepare minutes of the public opening.
- 5.4 The Financial Proposal evaluated shall be the hourly blended rate for the base period and each option period under the Contract (the “Total Blended Rate”), as indicated in Form FIN-2.
- 5.4.1 The TEP will correct any computational errors. When correcting computational errors, in case of discrepancy between a partial amount and the total amount, or between words and figures, the former will prevail.
- 5.5 For QCBS, the lowest evaluated Financial Proposal will be given the maximum financial score of 100 points. The formula for determining the financial scores is the following:

$$Sf = 100 \times Fm / F$$

in which Sf is the financial score, Fm is the lowest Total Blended Rate and F the Total Blended Rate of the Proposal under consideration.

- 5.6 Proposals will be ranked according to their combined technical (“St”) and financial (“Sf”) scores using the weights ([.80] = the weight given to the Technical Proposal; [.20] = the weight given to the Financial Proposal; [.80] + [.20] = 1) indicated in this RFP. The total combined score (S) = St x [.80%] + Sf x [.20%]. The Counsel achieving the highest combined technical and financial score will be invited for negotiations.
- 5.7 Notwithstanding that the Contract may end after the Base Period, may be extended for a first Option Period, and may be extended for a second Option Period, the evaluation of the Financial Proposals will be based on the full period covering the Base Period and all potential Option Periods. Prior to execution of a contract, the MCA-Benin II shall conduct a verification of the market-reasonableness of the prices offered, including whether the prices are significantly unbalanced, front-loaded, or end-loaded. Price reasonableness will be based on the Financial Proposals, not on fee schedules fixed under local law, by a legal association, or otherwise. If such price reasonableness analysis

suggests that a Proposal is significantly unbalanced, front-loaded, or end-loaded, the MCA-Benin II may require the Counsel to produce a detailed price analysis for any or all items of the Proposal that demonstrates the internal consistency of price. The price reasonableness shall focus on market prices, not necessarily legal or regulated fee schedules that may not be appropriate or applicable to this RFP for external legal services. A negative determination (either unreasonably high or unreasonably low) could be a reason for rejection of the proposal at the discretion of the MCA-Benin II. The Counsel shall not be permitted to revise its submission after a determination that its offered price is unreasonable. In addition, the MCA-Benin II may also verify any information provided on the TECH Forms submitted in the Proposal. A negative determination in the post-qualification could lead to the rejection of the Proposal and the MCA-Benin II may, at its discretion, move to invite the next-ranked Bidder for negotiation.

- 6. Negotiations** 6.1 Negotiations will be held at the MCA-Benin II office, located at Immeuble Kouglénou, 3ème étage, Domaine de l’OCBN, Derrière la Compagnie Territoriale de Gendarmerie du Littoral- Cotonou, Benin or remotely for the purpose of reaching agreement on all points and signing a Contract.

Negotiations will include a discussion of the Technical Proposal including the proposed work plan (methodology, schedule, and staffing). The MCA-Benin II and the Counsel will then finalize the Description of Services (Annex A to the Contract) based on the Terms of Reference, staffing and work schedule, logistics, and reporting. The agreed work plan and Terms of Reference will then be incorporated into the Contract. The price shall not be negotiated unless price negotiations are authorized by MCC under exceptional circumstances. For example, if the MCA Entity has assigned a weight to the Technical Proposal of 1.00, the price may be negotiated. The MCA-Benin II shall prepare minutes of negotiations, which will be signed by the MCA-Benin II and the Counsel.

- 6.2 Having selected Counsel on the basis of, among other things, an evaluation of proposed Professional Personnel, the MCA-Benin II expects to negotiate a Contract on the basis of the Professional Personnel named in the proposal. Before Contract negotiations, the MCA-Benin II will require assurances that the Professional Personnel will actually be available. The MCA-Benin II will not consider substitutions during Contract negotiations unless both parties agree that undue delay in the selection process makes such substitution unavoidable, or that such changes are critical to meet the objectives of the assignment. If this is not the case and if it is established that

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proposed Professional Personnel were offered in the proposal without confirming their availability, the Counsel may be disqualified.

- 6.3 The negotiations will conclude with a review of the draft Contract. To complete negotiations, the MCA-Benin II and the Counsel will initial the agreed Contract. If negotiations fail, the MCA-Benin II will invite the Counsel with the next highest combined technical and financial score to negotiate a Contract, and will not be liable to the Counsel with whom negotiations have failed for any expenses incurred.
- 6.4 After completing negotiations, the MCA-Benin II will award the Contract to the selected Counsel; and will promptly notify all Counsel who have submitted proposals. After Contract signature, the MCA-Benin II shall return the unopened Financial Proposals to the unsuccessful Counsel at the cost and expense of the unsuccessful Counsel if so requested by such Counsel; otherwise such Proposals shall be destroyed after a reasonable time by the MCA-Benin II.

The MCA Entity shall promptly respond in writing to any unsuccessful bidder who, after receiving notification of the procurement results, makes a written request for a debriefing as provided in the MCC Program Procurement Guidelines, or submits a formal Bid Challenge.

After the award of Contract, the MCA Entity shall publish on its website, at dgMarket and at UNDB online, the results identifying the procurement, the name of the winning Consultant and the price, duration, and summary scope of the Contract. The same information shall be sent to all Consultants who have submitted

- 7. Award of Contract** Counsel is expected to commence the assignment at the earliest date after Contract signature.
- 8. Confidentiality** Information relating to evaluation of Proposals and recommendations concerning awards shall not be disclosed to Counsel who submitted the Proposals, or to other persons not officially concerned with the process, until the winning Counsel has been notified that it has been awarded the Contract. The undue use by any Counsel of confidential information related to the process may result in the rejection of its proposal and may subject the Counsel to the provisions of the Government's, the MCA-Benin II's and MCC's antifraud and corruption policies.
- 9. Bid Challenge** Any Counsel has the right to complaint and appeal, but must do so in the manner and format set down in the MCC *Program Procurement Guidelines* and the MCA-Benin II's Bid Challenge System, which can be found in the interim Bid Challenge System provided for under the MCC *Program Procurement Guidelines*.

- 10. Compact Conditionalities** The provisions set forth in Annex C (General Provisions) to the Contract apply both during the RFP procedures and throughout the performance of the Contract. Counsel are advised to examine and consider carefully the provisions that are set forth in Annex C to the Contract, as these are a part of the Government's and the MCA-Benin II's obligations under the Compact and related agreements, which, under the terms of the Compact and related agreements, are required to be transferred onto any Counsel (including any associate) or sub-consultant who partakes in procurement or subsequent contracts in which MCC funding is involved.
- 11. Inconsistencies with MCC Program Procurement Guidelines** The Procurement that is the subject of this RFP is being conducted in accordance with and is subject in all respects to the *MCC Program Procurement Guidelines*. In the event of any conflict between any section or provision of this RFP (including any Addenda that may be issued to this RFP) and the *MCC Program Procurement Guidelines*, the terms and requirements of the *MCC Program Procurement Guidelines* shall prevail, unless MCC has granted a waiver of the guidelines.

Section 3 TECHNICAL PROPOSAL STANDARD FORMS

1. Technical Proposal Forms in English

Section 3.A : TECHNICAL STANDARD FORMS

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TECH-6 Staffing Plan and Time Schedule for Professional Personnel.....37

TECH-1 TECHNICAL PROPOSAL SUBMISSION FORM

[The Technical Proposal Submission Form shall be submitted with the Proposal pursuant to sub-clause 3.3 of Section 2, Instructions to External Legal Counsel.

The Counsel shall fill in this form in accordance with the instructions indicated. No alterations to its format shall be permitted and no substitutions shall be accepted. The form shall be on the letterhead of Counsel's firm or entity.

The original of the Technical Proposal Submission Form shall be signed by a person duly authorized to bind the Counsel's firm or entity to the Contract pursuant to sub-clause 3.3 of Section 2, Instructions to External Legal Counsel.]

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[Official Letterhead of Counsel's firm/entity]

Date: *[insert: date of Proposal submission]*

[insert: full legal address of Counsel]

TECHNICAL PROPOSAL SUBMISSION FORM

To: Gabriel DEGBEGNI

Acting National Coordinator of Millennium Challenge Account- Benin II
Immeuble KOUGBLENOU, 3ème étage Domaine de l'OCBN,
Quartier Zongo Nima Derrière Compagnie Territoriale de la Gendarmerie du Littoral
01 BP 101 Cotonou,
Republic of Benin
Email: info@mcabenin2.bj

Re: PROCUREMENT OF EXTERNAL LEGAL COUNSEL BY MCA-BENIN II

RFP# PP4-CIF-ADM-23

Dear Sir:

We, the undersigned, offer to provide external legal services for MCA-Benin II covering the **Base Period of seven (07) months ending 21 June, 2018; a first Option Period to cover the twelve (12) months ending 21 June, 2019; a second Option Period to cover the twelve (12) months ending 21 June, 2020; a third Option Period to cover the twelve (12) months ending 21 June, 2021; and a close-out Option Period to cover the remaining duration of the Compact, plus 120 days to cover the Compact's close-out ending 19 October, 2022**, in accordance with your Request for Proposals ("RFP") dated 6 September, 2017 and our proposal. We are hereby submitting our proposal, which includes this Technical Proposal, and a Financial Proposal sealed under a separate envelope.

We hereby declare that all the information and statements made in this Proposal are true and accept that any misrepresentation contained in it may lead to our disqualification.

We are attaching herewith information to support our eligibility in accordance with Section 2 of the RFP.

We hereby certify that we are not engaged in, facilitating, or allowing any of the prohibited activities described in Part 15 of the MCC *Program Procurement Guidelines* (Combating Trafficking in Persons) and that we will not engage in, facilitate, or allow any such prohibited activities for the duration of the Contract. Further, we hereby provide our assurance that the prohibited activities described in Part 15 of the MCC Program Procurement Guidelines will not be

External Legal Counsel Managed by MCA-Benin II
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tolerated on the part of our employees, or any sub-consultants, or sub-consultant employees. Finally, we acknowledge that engaging in such activities is cause for suspension or termination of employment or of the Contract.

We acknowledge notice of MCC's Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations¹. We have taken steps to ensure that no person acting for us or on our behalf has engaged in any corrupt or fraudulent practices described in Instructions to External Legal Counsel, Clause 1.4. As part of this, we 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) The prices in this offer have not been and will not be knowingly disclosed by us, directly or indirectly, to any other offeror or competitor before Proposal opening or Contract award unless otherwise required by law; and
- (c) No attempt has been made or will be made by us to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

We understand and accept without condition that, in accordance with Instructions to External Legal Counsel, Clause 9, any challenge or protest to the process or results of this procurement may be brought only through the MCA Entity's Bid Challenge System (BCS).

We hereby certify that we have not been suspended or debarred by any government or international organization.

If negotiations are held during the period of validity of the proposal, i.e., before January 8, 2018, we will negotiate on the basis of the proposed Professional Personnel.

Our Proposal is binding upon us and subject to the modifications resulting from Contract negotiations, and we undertake, if our Proposal is accepted, to initiate the external legal services related to the assignment not later than the date indicated in the RFP.

We understand you are not bound to accept any Proposal you receive.

Yours sincerely,

Authorized Signatory

[insert: name and title of Signatory]

[insert: full legal name of Counsel]

[insert: full legal address of Counsel]

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

TECH-2 INDEPENDENCE STATEMENT

[The Independence Statement (the “Statement”) shall be submitted with the Proposal pursuant to sub-clause 3.3(c)(ii) of Section 2, Instructions to External Legal Counsel.

This Statement must clearly state whether or not the Counsel’s firm or entity is independent from the MCC and the MCA-Benin II. Note that Counsel must be independent from MCC and MCA-Benin II to qualify for evaluation.

Specifically, this Statement must state that the Counsel’s firm or entity (1) is free from personal and external impairments to independence from the MCC and the MCA-Benin II (2) is organizationally independent, and (3) will maintain its independence in fact, attitude, and appearance throughout the period of performance. If any impairment(s) exists and/or is foreseen, the proposals must explicitly state the nature of such impairment(s).

The Independence Statement shall be signed by a person duly authorized to sign the Counsel’s proposal pursuant to sub-clause 3.3(c)(ii) of Section 2, Instructions to External Legal Counsel.]

TECH-3 COUNSEL’S REFERENCES

[The following information shall be submitted with the proposal pursuant to sub-clause 3.3(c)(iii) of Section 2, Instructions to External Legal Counsel.

Using the format below, the Counsel shall provide under this form information on each relevant assignment for which its firm or entity was legally contracted either individually as a corporate entity or as one of the major companies within an association, for carrying out services similar to the ones requested under the Terms of Reference included in this RFP. The proposal must clearly indicate the relevant services carried out by the Counsel’s firm or entity in the last five (5) years on a minimum of three (3) relevant assignments that best illustrate qualifications.

The Counsel shall provide under this Form also contact information for at least three (3) references that can provide substantial input about the type of work performed and confirm the quality of the work experience listed in Form TECH-3. For each reference, the Counsel shall list a contact individual, his/her title, address, facsimile, phone and e-mail address.

The MCA-Benin II reserves the right to contact other sources as well as to check references and past performance of the particular counsel, including relevant past performance reports filed in MCC’s Contractor Past Performance Reporting System (“CPPRS”) in accordance with Part 2 of MCC’s *Program Procurement Guidelines*. (Counsel will not be evaluated based upon performance of affiliates in different countries.)

For each reference, list a contact individual, their title, address, facsimile, phone and e-mail address.]

Assignment Name:		Country:
Location within Country:		Professional Staff Provided by Your Firm/Entity (profiles):
Name of Client:		No. of Professional Personnel:
Address and Contact Information:		No. of Staff-Months: Duration of Assignment:
Start Date (Month/Year):	Completion Date (Month/Year):	Approx. Value of Services (in Current US Dollars):
Name of Senior Professional Staff (Project Director/Coordinator, Team Leader) Involved and Functions Performed:		

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Narrative Description of Project:
Description of Actual Services Provided by Your Staff:

**TECH-4 DESCRIPTION OF THE METHODOLOGY AND WORK PLAN FOR
PERFORMING THE ASSIGNMENT**

[The description shall be submitted with the proposal pursuant to sub-clause 3.3(c)(iv) of Section 2, Instructions to External Legal Counsel.

Counsel shall provide under this form a comprehensive description of how it will provide the required scope of work in accordance with the Terms of Reference. Information provided must be sufficient to convey to the Technical Evaluation Panel that the Counsel has an understanding of the challenges in performing the required scope of work and that it has an approach, methodology and work plan to overcome those challenges.

The Technical Proposal should be divided into the following three (3) chapters:

- (a) **Technical Approach and Methodology.** In this chapter, the Counsel should explain their 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 Counsel should highlight the problems being addressed and their importance, and explain the technical approach to address them. The Counsel should also explain the methodologies proposed to adopt and highlight the compatibility of those methodologies with the proposed approach.
- (b) **Work Plan.** In this chapter, the Counsel should propose the main activities of the assignment, including coordination with the MCA-Benin II. The proposed work plan should be consistent with the technical approach and methodology, demonstrating understanding of the TOR and ability to translate them into a feasible working plan.
- (c) **Organization and Staffing.** In this chapter, the Counsel should propose the structure and composition of their professional team. The Counsel should list the main disciplines of the assignment, the key expert responsible, level of effort of each professional, and proposed technical and support staff

The Technical Proposal should also include a problem solving chapter detailing a technical problem the Counsel had in meeting the requirements of a contract and how the Counsel overcame that problem.]

**TECH-5 FORMAT OF CURRICULUM VITAE FOR PROPOSED KEY
PROFESSIONAL PERSONNEL**

[The CVs shall be submitted with the proposal pursuant to sub-clause 3.3(c)(v) of Section 2, Instructions to External Legal Counsel.

Counsel shall provide under this Form the CVs of the Key Professional Personnel signed by the staff themselves and/or by the Counsel's authorized representative, and copies of all licenses and qualifications related to the authority to practice law in Benin.]

CURRICULUM VITAE

1. *Proposed Position* [only one candidate shall be nominated for each position]
 2. *Name of Firm/Entity* [insert: name of firm/entity proposing the staff]
 3. *Name of Personnel* [insert: full name]
 4. *Date of Birth* [insert: birth date] *Nationality* [insert: nationality]
 5. *Education* [indicate: college/university and other specialized education of staff member, giving names of institutions, degrees obtained, and dates of obtainment].
 6. *Membership in Professional Associations* [indicate: names of professional associations and years of membership].
 7. *Other Training* [indicate: appropriate postgraduate and other training]
 8. *Countries of Work Experience* [list countries where staff has worked in the last ten years]
 9. *Languages* [indicate: proficiency in each language: good, fair, or poor in speaking, reading, and writing]

Language	Speaking	Reading	Writing
----------	----------	---------	---------
 10. *Employment Record* [insert: starting with present position, list in reverse order every employment held by staff member since graduation, giving for each employment (see format here below): dates of employment, name of employing organization, positions held.]

From [year]:	To [year]:
--------------	------------

Position(s) held:
 11. *Detailed Tasks Assigned* [list: all tasks to be performed under this assignment]
 12. *Work undertaken that best illustrates capability to handle the tasks assigned:* [indicate: among the assignments in which the staff has been involved, indicate the following information for those assignments that best illustrate staff capability to handle the tasks listed under point 11.]

Name of assignment or project:

Year:

Location:

Client:

Main project features:
-

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Position held:

Activities performed:

13. References:

[list: At least three (3) individual references with substantial knowledge of the person's work. Include each reference's name, title, phone and e-mail contact information.]

[The MCA-Benin II reserves the right to contact other sources as well as to check references, in particular for performance on any relevant MCC-funded projects.]

14. 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 with the [insert: name of Counsel] in the above-mentioned Request for Proposal. I further declare that I am able and willing to work:

1. for the period(s) foreseen in the specific Terms of Reference attached to the above referenced Request for Proposal for the position for which my CV has been included in the proposal of the Counsel and
2. within the implementation period of the specific contract.

Signature of Key Professional Personnel:

If this form has NOT been signed by the Key Professional Personnel, then in signing below the authorized representative of the Counsel is making the following declaration.

“In due consideration of my signing herewith below, if the Key Professional Personnel has NOT signed this CV then I declare that the facts contained therein are, to the best of my knowledge and belief, a true and fair statement AND THAT I confirm that I have approached the said Key Professional Personnel and obtained his/her assurance that he/she will maintain his/her availability for this assignment if the Contract is agreed within the Proposal validity period provided for in the RFP.”

Signature of Counsel or Authorized Representative

Day / Month/ Year

**TECH-6 STAFFING PLAN AND TIME SCHEDULE FOR PROFESSIONAL
PERSONNEL**

[The schedule shall be submitted with the proposal pursuant to sub-clause 3.3(c)(vi) of Section 2, Instructions to External Legal Counsel.

Counsel shall provide under this Form the estimates of the staff input (person-hours on a daily basis) available for the assignment, and how Counsel would staff projects or legal questions envisioned under the Terms of Reference, and the blend of staff that may work on such projects.]

2. Technical Proposal Forms in French

Section 3.B : Formulaires de Proposition Technique

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[Papier En-tête officiel de la firme du Conseiller Juridique]

Formulaire TECH-1. Formulaire de Soumission de la Proposition Technique

Date: *[insérer: la date de soumission de la Proposition]*

[insérer: l'adresse complete du Conseiller Juridique]

A l'attention de : **Mr. Gabriel DEGBEGNI**

Coordonnateur National par intérim

Millennium Challenge Account -Bénin II (MCA-BENIN II)

Adresse: Immeuble KOUGBLENOU, 3^{ème} étage

Domaine de l'OCBN, Quartier Zongo Nima

Derrière Compagnie Territoriale de la Gendarmerie du Littoral

01 BP 101 Cotonou, République du Benin

Email: info@mcabenin2.bj

Monsieur,

Re : Sélection du Conseiller Juridique Externe pour MCA-Bénin II

RFP#PP4-CIF-ADM-23

Nous, soussignés, proposons de fournir les services de Conseiller Juridique Externe pour MCA-Bénin II couvrant la période de Base de sept (07) mois finissant le 21 Juin 2018 ; une première période optionnelle de douze (12) mois finissant le 21 Juin 2019 ; une seconde période optionnelle de douze (12) mois finissant le 21 Juin 2020 ; une troisième période optionnelle de douze (12) mois finissant le 21 Juin 2021 ; et une période optionnelle de clôture pour couvrir le reste de la durée du Compact plus 120 jours pour couvrir la clôture du Compact finissant le 19 Octobre 2022, conformément à votre Demande de Propositions (DP) en date du 6 Septembre 2017 et à notre

Proposition. Nous soumettons par la présente notre Proposition, qui contient cette Proposition Technique, et une Proposition Financière, chacune placée dans une enveloppe/un paquet scellé, cacheté, clairement distincts et libellés.

Nous déclarons par la présente que toutes les informations et déclarations faites dans cette Proposition sont vraies et acceptons que toute déclaration erronée puisse conduire à notre disqualification.

Nous y joignons des informations pour appuyer notre éligibilité conformément à la Section II de la DP.

Nous certifions par la présente que nous ne sommes pas engagés dans, ni ne facilitons ou autorisons, aucune des activités prohibées décrites au Chapitre 15 des Directives MCC en matière de passation de marchés (Lutte contre la Traite des Personnes) et que nous n'allons pas nous engager, faciliter ou autoriser ces activités prohibées pendant la durée du Contrat. De plus, nous garantissons que les activités prohibées décrites au Chapitre 15 des Directives MCC en matière de passation de marché ne seront pas tolérées de la part de nos employés, de tout sous-traitant et de leurs employés respectifs. Enfin, nous reconnaissons que le fait de s'engager dans ce type d'activités est un motif de suspension ou de résiliation du Contrat.

Nous reconnaissons le document de politique du MCC en matière de prévention, de détection et de remédiation de fraude et de la corruption dans les opérations du MCC¹. Nous avons pris des mesures pour faire en sorte que la personne qui agit pour nous ou en notre nom ne soit engagé dans des pratiques de corruption ou frauduleuses décrites dans la Clause 3 des IAC. Dans ce cadre, nous certifions que :

- (a) Les tarifs de cette proposition ont été fixés de manière indépendante, sans, dans le but de restreindre la concurrence, aucune consultation, communication, ou accord avec un autre soumissionnaire ou concurrent en relation avec :
 - (i) Ces tarifs ;
 - (ii) L'intention de soumettre une proposition ; ou
 - (iii) Les méthodes ou les facteurs utilisés pour calculer les tarifs offerts.
- (b) Les tarifs de cette proposition n'ont pas été et ne seront pas sciemment divulgués par nous, directement ou indirectement, à tout autre soumissionnaire ou concurrent avant l'ouverture des propositions ou d'attribution de contrat sauf exigence de la loi ; et

¹Disponible sur le site web www.mcc.gov/resources/doc/corruption_policy-fraud-and-

- (c) Aucune tentative n'a été faite ou ne sera faite par nous pour induire toute autre personne concernée à soumettre une proposition dans le but de restreindre la concurrence.

Nous comprenons et acceptons sans condition, conformément à l'article 9 des Instructions au Conseiller Juridique Externe, que toute contestation ou protestation contre le processus ou les résultats de ce marché ne peut être menée que par le biais du Système de contestation des offres intérimaire de MCA-Bénin II (BCS).

Nous certifions par la présente que nous n'avons pas été suspendu ni été l'objet d'interdiction par un gouvernement ou organisation internationale

Si des négociations se tiennent durant la période de validité de la Proposition, c'est-à-dire avant le 8 Janvier 2018, nous nous engageons à négocier sur la base des Personnels Experts Clés désignés dans notre Proposition.

Notre Proposition engage notre responsabilité et, sous réserve des modifications résultant des négociations du Marché, nous nous engageons, si notre Proposition est retenue, à commencer la prestation des services de conseiller juridique externe relatifs à la mission au plus tard à la date indiquée dans cette DP.

Nous comprenons que vous n'êtes pas tenu(e) d'accepter toutes les Propositions qui vous sont adressées.

Veillez agréer, Madame, Monsieur, l'expression de notre considération distinguée.

Signature Mandaté

Nom et titre du Signataire

Nom du Consultant

Adresse du Consultant

Annexes :

1. Procuration écrite démontrant que la personne qui signe a été dûment mandatée pour signer la Proposition au nom du Consultant et de ses associés ;
2. Lettre(s) patente(s) (ou tous autres documents indiquant le statut juridique) ; et

TECH- 2 DECLARATION D'INDEPENDANCE

[La Déclaration d'Indépendance (la « Déclaration ») devra être soumise avec la proposition conformément à la sous-clause 3.3(c)(ii) de la Section 2, Instructions au Conseiller Juridique Externe.

Cette Déclaration doit clairement indiquer si la société ou l'entité du Conseiller est indépendant vis-à-vis de MCC et de MCA-Bénin II ou non. Veuillez noter que le Conseiller Juridique Externe doit être indépendant vis -à -vis de MCC et de MCA-Bénin II pour être qualifié pour l'évaluation.

Spécifiquement, cette Déclaration doit énoncer que la société ou l'entité du Conseiller (1) est libre de toute diminution personnelle ou externe d'indépendance vis-à-vis de MCC et de MCA-Bénin II, (2) est indépendant sur le plan organisationnel, et (3) maintiendra son indépendance en fait, en attitude et en apparence durant toute la période de réalisation. Si une quelconque diminution existe ou est prévisible, les propositions doivent explicitement énoncer la nature de telle diminution.

La Déclaration d'indépendance doit être signée par une personne dûment autorisé pour signer la proposition du Conseiller conformément à la sous-clause 3.3(c)(ii) de la Section 2, Instructions au Conseiller Juridique Externe.]

TECH-3 REFERENCES DU CONSEILLER

[L'information suivante devra être soumise avec la proposition conformément à la sous-clause 3.3(c)(iii) de la Section 2, Instructions au Conseiller Juridique Externe.

En utilisant le format ci-dessous, le Conseiller doit fournir les informations pour chaque mission pertinente pour laquelle votre société ou entité, était juridiquement engagé contractuellement, soit individuellement en tant qu'entité commerciale soit en tant que l'une des principales sociétés d'un regroupement, pour l'exécution de services de consultants similaires à ceux requis dans les Termes de Référence inclus dans cette DP. La proposition doit clairement indiquer les services avérés mis en œuvre par la firme ou entité du Conseiller au cours des cinq (5) dernières années avec un minimum de trois (03) missions pertinentes qui illustrent au mieux ses qualifications.

Le Conseiller doit donner également sous ce format les coordonnées d'au moins trois (3) références qui pourront fournir des informations pertinentes sur le type de travail réalisé et confirmer la qualité de l'expérience de travail figurant dans le Formulaire TECH-3. Pour chaque référence, indiquer la personne à contacter, ses adresse, numéros de fax et de téléphone et adresse courriel.

MCA-Bénin II se réserve le droit, à sa seule discrétion, de contacter d'autres sources, ainsi que de vérifier les références et les performances passées du Conseiller et inclure les informations sur les rapports pertinents de performance passée renseignée dans le Système rapportant la performance passée des contractants (« CPPRS ») conformément à la partie 2 des Directives de Passation de Marchés de MCC. Le Conseiller ne sera pas évalué sur la base des performances de ses sociétés affiliées dans les pays différents)

Pour chaque référence, indiquer la personne à contacter, ses adresse, numéros de fax et de téléphone et adresse courriel.]

Nom de la Mission :	Pays :
Lieu dans le pays :	Valeur approximative du marché (En \$ US) :
Nom du Client :	Durée de la mission (mois) :

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Adresse et coordonnées :		Nombre total d'employés-mois ayant participé à la Mission :
Date de démarrage (mois/année) :	Date d'achèvement (mois/année) :	Valeur approximative des services offerts par votre société au titre du marché (en \$ US) :
Nom des personnels professionnels senior (Directeur/Coordonnateur de projet, Chef d'équipe) impliqués et fonctions occupées :		
Description narrative du projet :		
Description des services effectivement fournis par votre personnel dans le cadre de la mission :		

TECH -4 DESCRIPTION DE LA METHODOLOGIE ET DU PLAN DE TRAVAIL POUR REALISER LA MISSION

[La description devra être soumise avec la proposition conformément à la sous-clause 3.3(c)(iv) de la Section 2, Instructions au Conseiller Juridique Externe.

Le Conseiller doit fournir dans ce formulaire une description compréhensive de sa stratégie pour fournir les Services requis conformément aux Termes de référence (TdR) inclus dans la DP. Ces informations doivent être suffisamment complètes pour convaincre le Panel d'évaluation technique que le Conseiller a une compréhension des défis liés à l'exécution des Services requis et que son approche, sa méthodologie et son plan de travail pourront lui permettre d'y faire face.

La proposition technique doit comporter les trois (3) chapitres suivants :

- (a) Approche technique et méthodologie. Dans ce chapitre, le Conseiller doit expliquer sa compréhension des objectifs de la mission, son approche par rapport aux services, sa méthodologie pour exécuter les activités et atteindre les résultats escomptés, ainsi que le degré de précision desdits résultats. Le Conseiller doit relever les difficultés à résoudre et leur ampleur, et décrire l'approche technique qu'il entend adopter pour régler ces difficultés. Le Conseiller doit également décrire les méthodologies qu'il compte adopter et souligner la compatibilité de ces méthodologies avec l'approche proposée.
- (b) Plan de travail. Dans ce chapitre, le Conseiller doit proposer les tâches principales de la mission, y compris la coordination avec l'Entité MCA. Le plan de travail proposé doit s'adosser sur l'approche technique et la méthodologie, et mettre en évidence la compréhension par le Conseiller des TdR et sa capacité à les traduire en un plan de travail viable.
- (c) Organisation et dotation en personnel. Dans ce chapitre, le Conseiller doit proposer la structure et la composition de son équipe. Le Conseiller doit énumérer les principales rubriques de la mission, les experts clés responsables, le niveau d'effort de chaque professionnel et le personnel technique et personnel d'appui proposés.

La Proposition Technique devrait aussi inclure un chapitre de résolution de problèmes détaillant un problème technique que le Conseiller avait rencontré dans l'accomplissement des exigences d'un contrat et comment le Conseiller a surmonté ce problème.]

**TECH -5 FORMAT DU CURRICULUM VITAE POUR LE PERSONNEL
PROFESSIONNEL CLE PROPOSE**

[Les CVs devront être soumis avec la proposition conformément à la sous-clause 3.3(c)(v) de la Section 2, Instructions au Conseiller Juridique Externe.

Le Conseiller devra fournir sous ce formulaire les CVs du personnel professionnel clé signés par les personnels eux-mêmes et/ou par le représentant autorisé du Conseiller et copies de toutes les habilitations/ permis relatives à l'autorisation de pratiquer le droit au Bénin]

Curriculum Vitae

1. Poste proposé [Un seul candidat sera proposé pour chaque poste]
2. Nom de l'entreprise/entité [Insérer la dénomination de l'entreprise/entité proposant les personnels]
3. Nom du personnel [Insérer le nom complet en toutes lettres]
4. Date de naissance [Insérer date de naissance] Nationalité : [Insérer nationalité]
5. Niveau d'études [Indiquer les études universitaires et autres études spécialisées du personnel ainsi que le nom des établissements fréquentés, les diplômes obtenus et les dates d'obtention.]
6. Affiliation à des Associations Professionnelles [Indiquer les noms des associations professionnelles et années d'adhésion]
7. Autres formations [Indiquer autres formations reçues/ diplôme(s) au-delà de la licence]
8. Pays où le personnel a travaillé [Donner la liste des pays où le personnel a travaillé au cours des 10 dernières années]
9. Langues [Indiquer pour chaque langue le degré de connaissance : bon, moyen, médiocre pour ce qui est de la langue parlée, lue et écrite]

Langue	Parlée	Lue	Écrite
--------	--------	-----	--------
10. Expérience professionnelle [En commençant par son poste actuel, indiquer par ordre chronologique décroissant les emplois occupés par l'employé depuis la fin de ses études. Pour chaque emploi (voir le formulaire ci-dessous), donner les dates, le nom de l'employeur et le poste occupé.]

De [année] : À [année] :

Employeur :

Poste(s) occupé(s) :
11. Détail des tâches attribuées [Indiquer toutes les tâches à exécuter pour cette mission]
12. Expérience de l'employé qui illustre le mieux sa capacité à assumer [Parmi les missions auxquelles le personnel a pris part, donner les informations suivantes pour les missions qui illustrent au mieux la capacité à assumer]

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les tâches attribuées compétence professionnelle du personnel pour les tâches mentionnées au point 11.]

Nom du projet ou de la mission :

Année :

Lieu :

Client

Projet principal :

Poste occupé :

Tâches et activités exécutées :

13. Références :

[Indiquer au moins trois références différentes ayant une bonne connaissance du travail du personnel. Inclure le nom de chaque référence, son titre, son numéro de téléphone et son adresse courriel.] [L'Entité MCA se réserve le droit de contacter d'autres sources et de vérifier les références apportées, en particulier pour les interventions dans les projets financés par MCC.]

14. Déclaration sur l'honneur :

Je soussigné(e), certifies-en mon âme et conscience que ce CV me décrit correctement, ainsi que mes qualifications et mon expérience. Je comprends que toute fausse déclaration faite intentionnellement constituera un motif de disqualification, ou de renvoi, dans le cas où je serais engagé(e).

Je soussigné(e), affirme par la présente que j'accepte de répondre avec le [insérer le nom du Conseiller] à la Demande de Propositions ci-dessus. Je déclare en outre que je suis capable et disposé à travailler :

- a) pour la/les période(s) prévue (s) dans les Termes de Référence spécifiques inclus dans le Dossier de Demande de Propositions pour le poste pour lequel mon CV a été inclus à la Proposition du Conseiller ; et
- b) pour la durée de la mise en œuvre du marché spécifique.

Signature du Professionnel Clé

Si ce formulaire n'a PAS été signé par le Professionnel Clé, en le signant ci-dessous, le représentant mandaté du Conseiller déclare ce qui suit :

« En signant ci-dessous, si le Professionnel Clé N'a PAS signé ce CV, je déclare que les faits qui y sont énoncés sont, autant que je puisse en juger, authentiques et corrects ET je confirme

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que j'ai approché ce Professionnel Clé et obtenu de lui/ d'elle l'assurance de sa disponibilité pour cette mission si le Marché est conclu au cours de la période de validité de la DP. »

Signature du Représentant Mandaté du Conseiller Juridique Externe

Jour/mois/année

**TECH – 6 PROGRAMME DE DOTATION ET PLANNING POUR LE PERSONNEL
CLE**

Ce calendrier devra être soumis avec la proposition conformément à la sous-clause 3.3(c)(vi) de la Section 2, Instructions au Conseiller Juridique Externe.

Le Conseiller devra fournir sous ce formulaire les estimations pour les apports du personnel (homme-heure sur une base journalière] disponible pour la mission et comment le Conseiller pourvoirait en personnel les projets ou les questions légales prévues conformément aux termes de Référence et le mélange du personnel qui peut travailler sur de tels projets

Section 4 FINANCIAL PROPOSAL STANDARD FORMS

1. Financial Proposal Forms in English

Section 4A Financial proposal submission forms in English

FIN-1 FINANCIAL PROPOSAL SUBMISSION FORM52
FIN-2 FIXED PRICE.....55

FIN-1 FINANCIAL PROPOSAL SUBMISSION FORM

[The Financial Proposal Submission Form shall be submitted with the proposal pursuant to sub-clause 3.5(a) of Section 2, Instructions to External Legal Counsel.

Counsel shall fill in this Form in accordance with the instructions indicated. No alterations to its format shall be permitted and no substitutions shall be accepted. The form shall be on the official letterhead of the Counsel.

The original of the Financial Proposal Submission Form shall be signed by a person duly authorized to bind the Counsel to the Contract pursuant to sub-clause 3.5 of Section 2, Instructions to External Legal Counsel.]

[Letterhead of Counsel's firm/entity]

Date: *[insert: date of Proposal submission]*
[insert: full legal address of Counsel]

FINANCIAL PROPOSAL SUBMISSION FORM

To: Gabriel DEGBEGNI

Acting National Coordinator of Millennium Challenge Account- Benin II
Immeuble KOUGBLENOU, 3ème étage Domaine de l'OCBN,
Quartier Zongo Nima Derrière Compagnie Territoriale de la Gendarmerie du Littoral
01 BP 101 Cotonou,
Republic of Benin
Email: info@mcabenin2.bj

Re: PROCUREMENT OF EXTERNAL LEGAL COUNSEL BY MCA-BENIN II

RFP# PP4-CIF-ADM-23

Dear Sir:

We, the undersigned, offer to provide external legal services for MCA-Benin II covering the **Base Period of seven (07) months ending 21 June, 2018 ; a first Option Period to cover the twelve (12) months ending 21 June, 2019 ; a second Option Period to cover the 12 months ending 21 June, 2020 ; a third Option Period to cover the 12 months ending 21 June, 2021; and a close-out Option Period to cover the remaining duration of the Compact, plus 120 days to cover the Compact's close-out ending 19 October, 202,** in accordance with your Request for Proposals ("RFP") dated 6 September, 2017 and our Technical and Financial Proposals.

Our attached Financial Proposal is for the fixed rate of *[insert amount in words and in U.S. dollars]*. This represents the Total Blended Rate. Our Financial Proposal provides a breakdown of this Total Blended Rate based on the sum of Fixed Price Proposals for a **Base Period of Base Period of seven (07) months ending 21 June, 2018 ; a first Option Period to cover the twelve (12) months ending 21 June, 2019 ; a second Option Period to cover the 12 months ending 21 June, 2020 ; a third Option Period to cover the 12 months ending 21 June, 2021; and a close-out Option Period to cover the remaining duration of the Compact, plus 120 days to cover the Compact's close-out ending 19 October, 2022.**

All periods considered above indicate the total price of the services being proposed, to include all remuneration, but not including transportation, per diem, and any other related expenses required to provide the services as proposed.

Our Financial Proposal shall be binding upon us subject to the modifications resulting from Contract negotiations, up to expiration of the validity period of the Proposal, i.e., 8 January, 2018.

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Commissions and gratuities paid or to be paid by us to agents relating to this Proposal and Contract execution, if we are awarded the Contract, are listed below:²

Name and Address of Agents	Amount and Currency	Purpose of Commission or Gratuity

By signing this letter, we understand and accept that we will be bound by the Bid Challenge System of the MCA-Benin II as laid out in this RFP for raising any complaint or dispute during the solicitation process of this RFP till the Contract award.

We understand you are not bound to accept any Proposal you receive.

Yours sincerely,

Authorized Signatory

[insert: name and title of Signatory]

[insert: full legal name of Counsel]

² [If applicable, replace this paragraph with “No commissions or gratuities have been or are to be paid by us to agents relating to this Proposal and Contract execution” and delete the table.]

FIN-2 TOTAL BLENDED RATE

[This Form shall be submitted with the Proposal pursuant to sub-clause 3.7(b) of Section 2, Instructions to External Legal Counsel.

The Financial Proposal should state the projected blended hourly rate to be paid by the MCA-Benin II. Each Bidder shall provide the underlying individual levels of effort and rates for the blended rate for each period.]

FIXED PRICE

<u>KEY EXPERT</u>	<u>Hourly Rate (US\$)</u>	<u>Proposed weighting in total effort³ (%)</u>	<u>AMOUNT (US\$)</u>
<u>Managing Partner</u>			
<u>Senior Partner</u>			
<u>Associate</u>			
<u>...</u>			
<u>Total Blended Rate</u>			

³ Total for this column should be 100%

1. Financial proposal forms in French

Section 4B Formulaires de la proposition financière en français

FIN-1	Formulaire de Soumission de la Proposition Financière	57
FIN-2	Tarif fixe	60

FIN 1- Formulaire de soumission de la proposition financière

[Les Formulaires Types de Proposition Financière doivent être soumis avec la proposition financière conformément à la sous-clause 3.5(a) de la Section 2, Instructions au Conseiller juridique externe.

Le Conseiller remplira ce formulaire conformément aux instructions indiquées. Aucune altération de ce format ne sera autorisée et aucune substitution ne sera acceptée. Le formulaire devra être sur papier en-tête du Conseiller.

L'original du formulaire de soumission de la proposition financière sera signé par une personne dûment autorisée pour lier le Conseiller au contrat conformément à la sous-clause 3.5 de la section 2, Instructions au Conseiller juridique externe

[PAPIER EN-TETE DE LA FIRME/ENTITE DU CONSEILLER]

DATE : [INSERER : DATE DE LA SOUMISSION DE LA PROPOSITION]

[INSERER : ADRESSE JURIDIQUE COMPLETE DU CONSEILLER]

FORMULAIRE DE SOUMISSION DE LA PROPOSITION FINANCIERE

A l'attention de : Mr. Gabriel DEGBEGNI

Coordonnateur National a.i

Millennium Challenge Account -Bénin II (MCA-Bénin II)

Adresse: Immeuble KOUGBLENOU, 3^{ème} étage
Domaine de l'OCBN, Quartier Zongo Nima
Derrière Compagnie Territoriale de la Gendarmerie du Littoral
01 BP 101 Cotonou, République du Benin

Email: info@mcabenin2.bj

Monsieur

Re: SELECTION DU CONSEILLER JURIDIQUE EXTERNE POUR MCA-BENIN II RFP#PP4-CIF-ADM-23

Nous, soussignés, proposons de fournir les services de conseiller juridique externe pour MCA-Bénin II couvrant la **période de Base de sept (07) mois finissant le 21 Juin 2018 ; une première période optionnelle de douze (12) mois finissant le 21 Juin 2019 ; une seconde période optionnelle de douze (12) mois finissant le 21 Juin 2020 ; une troisième période optionnelle de douze (12) mois finissant le 21 Juin 2021 ; et une période optionnelle de clôture pour couvrir le reste de la durée du Compact plus 120 jours pour couvrir la clôture du Compact finissant le 19 Octobre 2022**, conformément à votre Demande de Propositions (DP) en date du 6 September 2017 et à notre Proposition et financière.

Notre Proposition Financière ci-jointe porte sur le tarif fixe de [insérer le montant en toutes lettres et en chiffres]. Ceci représente le tarif total de la proposition. Notre proposition financière fournit une décomposition du tarif total de la proposition basé sur la somme des tarifs fixes des propositions pour la **période de Base de sept (07) mois finissant le 21 Juin 2018 ; une première période optionnelle de douze (12) mois finissant le 21 Juin 2019 ; une seconde période optionnelle de douze (12) mois finissant le 21 Juin 2020 ; une troisième période optionnelle de douze (12) mois finissant le 21 Juin 2021; et une période optionnelle de clôture pour couvrir le reste de la durée du Compact plus 120 jours pour couvrir la clôture du Compact finissant le 19 Octobre 2022**.

Toutes les périodes ci-dessus considérées indiquent le prix total des services ayant été proposés pour inclure toute la rémunération mais n'incluent pas le transport, les perdiems et les autres

dépenses nécessaires pour fournir les services comme proposés

Notre Proposition Financière engage notre responsabilité sous réserve des modifications résultant des négociations contractuelles relatives au Marché, jusqu'à expiration de la période de validité de la Proposition c'est-à-dire le 8 Janvier 2018.

Les commissions et gratifications versées ou à verser par nous à des agents dans le cadre de la présente Proposition et de l'exécution du Marché, si nous en sommes les adjudicataires, sont indiquées ci-dessous² :

Nom et adresse des agents	Montant et Monnaie	Objet de la Commission ou de la gratification

En signant cette lettre, nous comprenons et acceptons d'être tenus par le système de contestation d'offres de MCA-Bénin comme décrit dans la DP pour soulever toute plainte durant le processus de sollicitation de cette DP jusqu'à l'attribution du contrat.

Nous comprenons que vous n'êtes pas tenu d'accepter aucune des Propositions qui vous sont adressées.

Veillez agréer, Madame, Monsieur, l'expression de notre considération distinguée.

Signataire Mandaté

Nom et titre du Signataire

Nom du Consultant

² Le cas échéant, remplacer ce paragraphe par : « Aucune commission ni gratification n'a été, ni ne sera, versée par nous à des agents dans le cadre de la présente Proposition et de l'exécution du Marché. »

FIN-2 TARIF FIXE

[Ce formulaire devra être soumis avec la proposition financière conformément à la sous-clause 3.7(b) de la Section 2, Instructions au Conseiller juridique externe.

La proposition Financière devra indiquer le tarif horaire composite (confondu) projeté devant être payé par MCA-BÉNIN II. Chaque Soumissionnaire fournira les niveaux individuels sous-jacents d'effort et des tarifs pour le tarif composite (confondu) pendant chaque période]

TARIF FIXE

<u>PERSONNEL CLÉ</u>	<u>Taux horaire (US\$)</u>	<u>Poids Proposé dans l'effort³ total (%)</u>	<u>MONTANT (US\$)</u>
<u>Managing Partner</u>			
<u>Senior Partner</u>			
<u>Associate</u>			
<u>...</u>			
<u>Total Taux Composite</u>			

³ [Le Total pour cette colonne devrait être 100%](#)

Section 5 TERMS OF REFERENCE

MILLENNIUM CHALLENGE ACCOUNT – Benin

On Behalf of

THE GOVERNMENT OF Benin

Funded by

THE UNITED STATES OF AMERICA

Through

THE MILLENNIUM CHALLENGE CORPORATION

PROCUREMENT OF EXTERNAL LEGAL SERVICES

EXTERNAL LEGAL COUNSEL MANAGED BY MCA-Benin II

The RFP is issued in English but the proposals are to be submitted in French. This is the reason as to why the English and French versions of the TOR are being provided. However, please note in case of discrepancy, the English version of the TOR shall prevail.

**SECTION 5.A TERMS OF REFERENCE
ENGLISH VERSION**

Introduction

The United States of America, acting through the Millennium Challenge Corporation (“MCC”), has signed a Millennium Challenge Compact on September 9, 2015 (the “Compact”) with the Government of Benin (the “Government”) to fund a five-year economic development program (the “Program”) in Benin. The Compact funds investments in (i) Policy Reform and Institutional Strengthening Project; (ii) Electricity Generation Project; (iii) Electricity Distribution Project; and (iv) Off-grid Electricity Access Project .

- Policy Reform and Institutional Strengthening Project: This project will advance far-reaching policy reforms and strengthen institutions through improved regulation, utility operations and management, energy efficiency, and private investment in power generation. The project advances the compact’s policy reform agenda, including planned conditions precedent.
- Electricity Generation Project: This project will increase the amount of installed generating capacity in Benin by 78 megawatts (MW) – equivalent in capacity to one-third of the country’s current peak demand – while helping the country decrease its reliance on unreliable energy imports. This will be achieved through the installation of 45 MW of solar photovoltaic generation and the rehabilitation of 33 MW of thermal and hydroelectric generation infrastructure that will complement the solar investment.
- Electricity Distribution Project: This project will modernize Benin’s electricity distribution infrastructure to expand grid capacity to accommodate future growth, improve reliability, and reduce losses and outages. The project will improve the grid serving Cotonou, the commercial capital, selected regional networks as a complement to proposed solar generation investments, as well as on a national level by building a modern distribution dispatch and control center to more effectively manage the network, including intermittent power from renewable sources.

Off-grid Electricity Access Project: This project will expand access to electricity through financing of an off-grid energy grant facility along with policy and institutional strengthening to support the entire off-grid power sector in Benin. Pursuant to the Compact and the Program Implementation Agreement between MCC and the Government dated March 23, 2016 (the “PIA”), Millennium Challenge Account-Benin II (“MCA-Benin II”) is responsible for managing the implementation of the Compact program on behalf of the Government. MCA-Benin II is governed by its Board of Directors (“Board”). The National Coordination of MCA-Benin II, (the “National Coordination”), which reports to the Board, manages the day-to-day operations of Board and will have responsibility to ensure that the Program is implemented in a timely, effective, efficient, and results-oriented manner in accordance with the terms of the Compact. The National Coordination is headed by the National Coordinator.

MCC and the Government may enter into additional supplemental agreements (“Supplemental Agreements”) to facilitate implementation of the Program.

Objective of the Assignment

In line with its role, MCA-Benin II would like to engage legal support services (“External Counsel”) to assist it on legal matters pertaining to the implementation of the Program as provided

External Legal Counsel Managed by MCA-Benin II
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below. The objective of this consultancy is to provide legal services to MCA-Benin II in-house legal counsel (“Legal Counsel”) on all legal issues affecting MCA-Benin II in the implementation of the Compact and Compact closeout.

Scope of Work

The External Counsel will assist in providing legal advice on issues affecting the operations of MCA-Benin II, including but not limited to, contract law, fiscal law, tax law, property law, infrastructure contracts, and governance and corporate records management. The External Counsel will also assist MCA-Benin II in identifying and analyzing legal issues, negotiating and drafting key documents, presenting recommendations, and assuring legal and corporate compliance.

The services include assisting MCA-Benin II in its cooperation with the relevant Governmental agencies with regard to performance of the required actions for successful implementation of the Compact. The services may also include drafting and analyzing various agreements relating to procurement, construction projects, and consulting services under the direction of Legal Counsel.

The External Counsel may be required to assist the Legal Counsel in the exercise of his/her responsibilities and advise and provide counsel to the Legal Counsel on behalf of MCA-Benin II. The External Counsel may perform the following tasks:

1. Assist in drafting and negotiating the Supplemental Agreements and other related agreements, reviewing and drafting other documents related to entry into force and Compact implementation and close-out;
2. Review the Compact and the related agreements in order to identify and resolve any issues of Benin law that may arise;
3. Provide legal opinions, if necessary, to relevant Government officials and MCC on the validity and enforceability of the Compact and the related agreements;
4. Assist in the drafting of standard agreements that may be used by MCA-Benin II during the Compact term;
5. Assist MCA-Benin II Board of Directors, management and staff in ensuring that MCA-Benin II activities comply with: (i) the obligations of MCA-Benin II contained in the Compact and the PIA or otherwise delegated to MCA-Benin II by the Government, (ii) all Supplemental Agreements, and (iii) all Benin laws and regulations;
6. Provide advice on legal issues relating to the implementation, interpretation, and compliance of the Compact, PIA and Supplemental Agreements;
7. Identify and advise MCA-Benin II on the resolution of legal issues related to the formation of government entities, business entities, funds and other legal entities in Benin for implementation of the proposed Program;
8. Perform additional due diligence required to determine and maximize the viability of the proposed program, including identifying and proposing solutions to legal impediments to the

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Compact's treatment as an international agreement that would supersede domestic laws under Benin laws;

9. Advise the Board of Directors and National Coordination on legal issues and address management-related legal issues as they arise;
10. Provide external advice and opinions on legal issues relating to the procurement processes and procedures to be followed in compliance with the Compact, the Procurement Agent Agreement, the MCC's Program Procurement Guidelines, and any other related agreements;
11. Provide legal advice on employment-related issues under general employment law and Benin-specific employment legislation including and not limited to the Code Béninois de Travail and the Convention Collective de Travail;
12. Advise MCA-Benin II on the resolution of legal issues related to the structure and implementation of the proposed program (including project-specific matters in the electricity sector), issues related to the governance and management structures of the MCA-Benin II and implementing entities, financial management, procurement, labor, and environmental matters;
13. Provide technical support to the MCA-Benin II to carry out all the legal, administrative, and technical steps required under Benin law;
14. Provide legal advice on intellectual property rights as issues arise under the Compact;
15. Advise or represent the MCA-Benin II in any potential dispute resolution proceeding, including informal or formal proceedings, arbitration, dispute adjudication boards, or in the courts of Benin;
16. Assist with the wind-up of MCA-Benin II and the termination of relevant project documents during the Compact closeout period;
17. Cooperate with and advise Government representatives regarding the Government's responsibilities under the Compact, the PIA, and any other Supplemental Agreements on behalf of MCA-Benin II;
18. Advise on property rights under Benin law, including land acquisition, conveyancing and related matters; and
19. Provide advice and counsel on tax issues under Benin law.

Qualifications and Experience

These services should be provided by a law firm with preferred five (5) years of experience, with not less than three (3) legal practitioners who have at least an aggregate of twelve (12) years of post-qualification experience among its two (2) senior partners.

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Firms must be authorized to practice in Benin and must confirm that they have no conflicts of interest that would prevent them from undertaking the representation. They also must provide information indicating they have the following qualifications:

20. General work experience within and, if applicable, outside Benin;
21. Experience and familiarity with power sector, procurement, environmental, and health and safety laws, regulations, compliance requirements and procedures;
22. Experience in representing clients in connection with the financing of infrastructure projects;
23. Experience in conveyance, land acquisition, resettlement, and real estate matters in connection with developmental projects;
24. Experience in International Federation of Consulting Engineers (“FIDIC”) contracts, or access to an expert in FIDIC contracts;
25. Experience in dealing with a full range of contract, commercial, and land law services;
26. Full service litigation capacity with practical experience of claims, adjudication, mediation, or arbitration processes; and
27. Experience in working with United States Government agencies and/or international financial or development institutions.

SECTION 5.B TERMS OF REFERENCE FRENCH VERSION

TERMES DE REFERENCE POUR LA SELECTION D'UN AVOCAT-CONSEIL AU PROFIT DE MCA-BENIN II

1- Préambule

Les Etats-Unis d'Amérique agissant par le biais du Millennium Challenge Corporation (« MCC ») ont signé le 9 septembre 2015 avec la République du Bénin agissant par le biais de son Gouvernement (le « Gouvernement »), un Accord de Don du Millenium Challenge (le « Compact ») pour financer un programme de développement économique sur cinq ans (le « Programme »). Le Compact est destiné à promouvoir les investissements dans (i) le Projet « Réforme des Politiques et Renforcement des Institutions », (ii) le Projet « Production d'Electricité », (iii) le Projet « Distribution d'Electricité » et (iv) le Projet « Accès à l'Electricité Hors-Réseau ».

- **Projet « Réforme des Politiques et Renforcement des Institutions ».** Ce projet appuiera des réformes profondes de politiques et contribuera à renforcer les institutions grâce à l'amélioration de la régulation, à la réforme tarifaire, à l'optimisation de l'exploitation et de la gestion de la SBEE, l'amélioration de l'efficacité énergétique et la promotion de l'investissement privé dans la production de l'énergie électrique. Le projet contribuera à l'atteinte des objectifs de réforme de politiques du Programme, y compris la satisfaction des conditions préalables prévues.
- **Projet « Production d'Electricité » :** Ce projet permettra d'accroître d'environ 78 MW, la capacité totale installée du Bénin en termes de production d'électricité, – soit le tiers de la demande actuelle du pays en période de pointe – tout en réduisant sa dépendance vis-à-vis des sources d'approvisionnement externes. Cet objectif sera atteint grâce à l'installation de centrales photovoltaïques d'une capacité de production de 45 MW, ainsi que la réhabilitation d'infrastructures de production thermique et hydroélectrique existantes, pour une capacité de 33 MW, en complément des investissements dans la production solaire³.
- **Projet «Distribution d'Electricité» :** Ce projet permettra de moderniser les infrastructures de distribution d'énergie électrique du Bénin en vue d'étendre la capacité du réseau à satisfaire la croissance future, améliorer sa fiabilité, et réduire les pertes et les coupures d'électricité. Le Projet « Distribution d'Electricité » contribuera à moderniser et à densifier le réseau desservant Cotonou, la capitale économique de même que des réseaux régionaux sélectionnés pour compléter les propositions d'investissements dans la production solaire.

³, Le Gouvernement a décidé d'utiliser ses propres fonds pour réhabiliter les centrales thermiques existantes qui avaient été identifiés au cours de la phase de formulation du Programme. Par conséquent, MCC est en train d'examiner un certain nombre d'options susceptibles d'augmenter la capacité du système : la construction d'une nouvelle centrale thermique, l'utilisation des batteries de stockage en complément des centrales solaires photovoltaïques, la production décentralisée.

Sur le plan national, il appuiera la construction d'un centre de conduite et de contrôle (dispatching center) moderne susceptible de gérer plus efficacement le réseau, y compris l'énergie intermittente produite à partir de sources renouvelables.

- **Projet « Accès à l'Electricité Hors-réseau »** : Ce projet contribuera à accroître l'accès à l'électricité dans un pays où seulement un tiers de la population dispose de l'énergie électrique et ce, par la mise en place d'une Facilité de financement de projets énergétiques hors-réseau, couplée à la réforme des politiques et au renforcement institutionnel afin d'appuyer l'ensemble du secteur de la production d'électricité hors-réseau au Bénin.

Conformément aux dispositions du Compact et aux dispositions de l'Accord de Mise en Œuvre du Programme conclu entre MCC et le Gouvernement le 23 mars 2016 (l'« Accord de Mise en Œuvre du Programme»), MCA-Bénin II est responsable de la gestion et de la mise en œuvre du Compact pour le compte du Gouvernement du Bénin. MCA-Bénin II est régi par son Conseil d'Administration (le « Conseil d'Administration »). La Coordination Nationale de MCA-Bénin II qui rend compte au Conseil d'Administration, gère les activités courantes du Programme et est chargée de veiller à ce que le Programme soit mis en œuvre avec célérité et efficacité et axé sur les résultats, conformément aux dispositions du Compact. La Coordination nationale est dirigée par le Coordonnateur National.

MCC et le Gouvernement peuvent conclure des Accords Complémentaires (« Accords supplémentaires ») pour faciliter la mise en œuvre du Programme.

2. Objectifs de la Mission

Conformément à son rôle, MCA-Bénin II souhaite engager des services d'un Avocat-conseil (« Avocat-conseil ») pour l'assister sur les questions juridiques relatives à la mise en œuvre du Programme, comme il est indiqué ci-dessous. L'objectif de cette consultation est de fournir des services juridiques au conseiller juridique interne de MCA-Bénin II (le « Conseiller Général ») sur toutes les questions juridiques touchant MCA-Bénin II dans la mise en œuvre du Compact et la clôture du Compact.

3. Etendue de la mission

La mission de l'Avocat-conseil consistera entre autres à fournir à MCA-Bénin II, des conseils juridiques sur les questions touchant aux activités de MCA-Bénin II, y compris, mais sans s'y limiter, le droit des obligations, le droit fiscal, le droit des biens, les contrats relatifs à la construction d'infrastructures, la gouvernance et à la gestion des documents des entreprises. L'Avocat-conseil aidera également MCA-Bénin II à identifier et à analyser les problèmes juridiques, à négocier et à rédiger des documents clés, à présenter des recommandations et à assurer la conformité avec la loi et les documents de programme.

Les services de l'Avocat-conseil comprennent aussi l'assistance à MCA-Bénin II dans ses rapports avec les organismes gouvernementaux compétents, notamment en ce qui concerne l'exécution des actions requises pour la mise en œuvre réussie du Compact. Les services peuvent également inclure la rédaction et l'analyse de divers accords relatifs à la passation des marchés, aux projets de construction et aux services de consultation sous la direction du Conseiller Général.

L'Avocat-conseil peut être requis pour assister le Conseiller Général dans l'exercice de ses responsabilités, et lui prodiguer des conseils ou émettre des avis juridiques pour le compte de MCA-Bénin II. L'Avocat-conseil peut en outre effectuer les tâches suivantes :

- Participer à la rédaction et à la négociation des Accords Complémentaires et autres accords connexes au Compact ; examiner et rédiger d'autres documents liés à la mise en œuvre et à la clôture du Compact ;
- Procéder à une revue du Compact et des Accords connexes en vue d'aider à identifier et de résoudre tout conflit éventuel avec le droit positif béninois ;
- Fournir des avis juridiques, le cas échéant, aux membres du Gouvernement compétents et à MCC sur la validité et la force exécutoire du Compact et de ses accords connexes ;
- Aider à la rédaction d'accords types pouvant être utilisés par MCA-Bénin II tout au long de la durée du Compact ;
- Assister MCA-Bénin II, le Conseil d'Administration, la Coordination Nationale ainsi que le personnel à s'assurer que les activités de MCA-Bénin II sont conformes : (i) aux obligations de MCA-Bénin II contenues dans le Compact et l'Accord de Mise en Œuvre du Programme ou toutes autres obligations déléguées à MCA-Bénin II par le Gouvernement, (ii) tous les Accords Complémentaires, et (iii) toutes les lois et règlements du Bénin ;
- Fournir des conseils sur les questions juridiques liées à la mise en œuvre et à l'interprétation du Compact, de l'Accord de Mise en œuvre du Programme et des Accords Complémentaires, et à la conformité à leurs dispositions ;
- Identifier et conseiller MCA-Bénin II sur la résolution des problèmes juridiques liés à la formation d'entités gouvernementales, de sociétés commerciales, de fonds et autres entités juridiques béninoises créées pour intervenir dans la mise en œuvre du Programme ;
- Effectuer les due diligences supplémentaires requises pour déterminer et maximiser la viabilité du Programme, y compris identifier et proposer des solutions aux obstacles juridiques pouvant nuire à la mise en œuvre du Compact en tant qu'accord international pouvant se substituer aux lois nationales en vertu du droit positif béninois ;
- Conseiller le Conseil d'Administration et la Coordination Nationale sur les questions juridiques et aborder les questions juridiques liées à la gestion de MCA-Bénin II au fur et à mesure qu'elles surviennent ;
- Fournir des conseils et des avis sur les questions juridiques relatives aux processus et aux procédures de passation de marchés en conformité aux dispositions du Compact, de l'Accord avec l'Agent de Passation des Marchés, et aux Directives de MCC relatives à la Passation des Marchés ou tout autre accord connexe ;
- Fournir des conseils juridiques sur les questions liées à l'emploi en vertu du droit du travail en général et du droit positif béninois de travail notamment et sans s'y limiter, le code béninois de travail et la Convention Collective Générale de travail ;
- Conseiller MCA-Bénin II sur la résolution des questions juridiques liées à la structure et à la mise en œuvre du Programme proposé (y compris les questions spécifiques aux projets dans les secteurs de l'énergie électrique), des questions juridiques liées aux structures de gouvernance et de gestion de MCA-Bénin II, aux entités de mise en œuvre, à la gestion financière, à la passation des marchés, au travail et à l'environnement ;
- Fournir un appui technique à MCA-Bénin II pour mener à bien toutes les étapes juridiques, administratives et techniques requises par le droit béninois ;
- Fournir des conseils juridiques sur les droits de propriété intellectuelle lorsque des problèmes du genre surviendront dans le cadre de l'exécution du Compact ;
- Conseiller ou représenter MCA-Bénin II dans toute procédure éventuelle de règlement des différends, y compris les procédures informelles ou formelles, l'arbitrage, les Bureaux de Conciliation ou devant les juridictions béninoises ;

- apporter son assistance pour la fermeture de MCA-Bénin II et à la gestion des documents pertinents des projets pendant la période de clôture du Compact ;
- Coopérer avec les entités gouvernementales intervenant dans la mise en œuvre du Programme et leur fournir des Conseils sur les responsabilités du Gouvernement dans la mise en Œuvre du Compact, de l'Accord de Mise en Œuvre du Programme et de tout autre Accord Complémentaire pour le compte de MCA-Bénin II ;
- Conseiller MCA-Bénin II sur le droit de propriété foncière au Bénin, notamment en ce qui concerne l'acquisition de terres, le transfert de droit de propriété et les questions connexes ; et
- Fournir des conseils et des avis sur les questions fiscales en vertu du droit béninois.

4- Qualifications et expérience

Ces services devraient être fournis par un cabinet d'avocats ayant de préférence une expérience d'au moins de cinq (5) ans, avec au moins trois (3) praticiens du droit qui possèdent au moins un total de douze (12) ans d'expérience post-qualification pour ses deux (2) partenaires seniors.

Le cabinet d'avocats doit être dûment autorisé à exercer au Bénin et doit confirmer qu'il n'a pas de conflit d'intérêts pouvant l'empêcher de fournir des prestations ou de représenter MCA-Bénin II. Les Cabinets intéressés par la présente offre doivent également fournir des informations indiquant qu'ils ont les qualifications suivantes :

- Expérience professionnelle générale dans et, le cas échéant, en dehors du Bénin ;
- Expérience et maîtrise des lois, des règlements, des exigences et des procédures dans le domaine de l'énergie électrique, de la passation des marchés, de l'environnement, la santé et la sécurité, des normes y relatives et des procédures y afférentes ;
- Expérience dans la représentation des clients dans le cadre du financement de projets d'infrastructure ;
- Expérience dans la transmission du droit de propriété, notamment en ce qui concerne l'acquisition de terrains, la réinstallation et les questions immobilières dans le cadre de projets de développement ;
- Expérience dans les contrats de la Fédération Internationale des Ingénieurs-Conseils (« FIDIC ») ou être en relation avec un expert dans les contrats FIDIC ;
- Expérience dans le traitement d'une gamme complète de contrats, de services commerciaux et du droit foncier ;
- Capacité d'offrir des services dans tous les domaines de litige avec une expérience pratique des processus de revendication, conciliation, de médiation ou d'arbitrage ; et
- Expérience de travail avec des organismes gouvernementaux des États-Unis et / ou des institutions financières ou de développement international.

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CONTRACT

RFP#PP4-CIF-ADM-23

This CONTRACT AGREEMENT (this “Contract”) made as of the [insert date], between Millennium Challenge Account-Benin II (the “MCA Entity”), on the one part, and [insert Counsel’s name] (the “External Counsel”), having its principal office located at [insert Counsel’s address], represented by Benin [insert position] (“the Attorney”), on the other part (each, a “Party” and together, the “Parties”).

WHEREAS

1. The Millennium Challenge Corporation (the “MCC”) and the Government of Benin (the “Government”) have entered into a Millennium Challenge Compact for Millennium Challenge Account assistance to help facilitate poverty reduction through economic growth in the Benin on 9 September, 2015 (the “Compact”) in the amount of approximately 375 000 000 US Dollars (“MCC Funding”). The Government, acting through the MCA-Entity, intends to apply a portion of the proceeds of MCC Funding to eligible payments under this Contract. Payments made under this Contract will be subject, in all respects, to the terms and conditions of the Compact and related documents, including restrictions on the use, and conditions to disbursement, of MCC Funding. No party other than the Government and the MCA Entity shall derive any rights from the Compact or have any claim to the proceeds of MCC Funding; and

2. The MCA Entity requested proposals under RFP# **PP4-CIF-ADM-23** from firms to provide external legal services to the MCA Entity, and in reliance on that RFP and External Counsel’s proposal thereto, the MCA Entity selected and now requests under this Contract that External Counsel provide certain legal services as described in Annex A (Description of Services) to this Contract; and

3. External Counsel, having represented to the MCA Entity that it has the required professional skills has agreed to provide such Services on the terms and conditions set forth in this Contract.

NOW THEREFORE THE PARTIES hereby agree as follows:

1. Services

- (A) External Counsel shall perform the services specified in Annex A, (Description of Services), which is made an integral part of this Contract (the “Services”).
- (B) External Counsel shall provide the personnel listed in Annex B, (External Counsel’s Personnel, Hourly Rates, and Costs), to perform the Services.

2. Term

The term of the Contract includes a Base Contract to cover the Base Period of seven (07) months ending 21 June, 2018; a first Option Period to cover the twelve (12) months ending 21 June, 2019 a second Option Period to cover the 12 months ending 21 June, 2020; a third Option

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Period to cover the 12 months ending 21 June, 2021; and a close-out Option Period to cover the remaining duration of the Compact, plus 120 days to cover the Compact's close-out ending 19 October, 2022. The Base Period must begin as soon as practicable after the signing of the contract. The MCA Entity will notify External Counsel in writing of its intent to exercise each Option Period at least thirty (30) days prior to an Option Period. The MCA Entity shall determine in its sole discretion whether to exercise an Option Period regardless of the performance of External Counsel; provided that the MCA Entity shall obtain the consent of MCC prior to exercising an Option.

3. Invoicing and Payment

(A) Contract Price

Subject to Paragraph C, below, the total amount of the Contract is [insert: amount in words and figures] [US Dollars] (the "Contract Price"), which amount may be amended, as provided under this Contract.

(B) Invoicing

Within 30 days of completing an assignment and that assignment being accepted by the Coordinator (as defined in Clause 4) under this Contract, External Counsel shall submit an invoice to the MCA Entity detailing the time spent by the separate personnel of External Counsel listed under Annex B completing the work, with hours or a fraction thereof expended by each personnel, with an explanation as to that time expended, broken out by individual days, with sufficient detail for the MCA Entity to evaluate and verify the amount invoiced. External Counsel shall invoice only for that personnel, or class of counsel or support personnel, at the rates provided in Annex B. External Counsel shall not secure reimbursement for any additional costs or expenditures, except for the following, provided that rates for such are included in Annex B:

- (a) copy or duplication services;
- (b) telephone or communication costs; and
- (c) travel costs, as approved in advance, and subject to the terms of the MCA Entity's travel policy.

Payments made hereunder by the MCA Entity to External Counsel will be made to the following account:

Bank Name:
Address:
SWIFT:
ABA:
Account Name:
Account #:

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(C) Taxes

Except as may be exempted pursuant to the Compact or another agreement related to the Compact, available at the MCA Entity website www.mcabenin2.bj, External Counsel may be subject to certain taxes on amounts payable by the MCA Entity under this Contract in accordance with applicable law (now or hereinafter in effect). In no event shall the MCA Entity be responsible for the payment or reimbursement of any taxes. In the event that any taxes are imposed on External Counsel the Contract Price shall not be adjusted to account for such taxes.

The MCA Entity will assist External Counsel in addressing its applicable tax exemptions issues under this Contract, by issuing the Tax Exemption Letters, in accordance to the Sections 2.8 of the Compact.

(D) Payment Conditions

Payment shall be made no later than thirty (30) days following submission by the External Counsel of uncontested invoices in duplicate to the MCA-Benin II Fiscal Agent.

The accounts are:

Bank:

Account name:

Account number:

Code IBAN:

SWIFT:

(E) Invoice Delivery

The original tax-exempt signed invoice, together with the MCA-Benin II Certificate of acceptance, all copies and all related correspondence and documents, shall be delivered to the MCA-Benin II Fiscal Agent at the following address:

Fiscal Agent Manager,

MCA-Benin II Fiscal Agent,

3rd Floor Immeuble KOUGBLENOU, Domaine de l'OCCBN

Derrière la Compagnie Territoriale de Gendarmerie du Littoral

01 BP 101, Cotonou, Republic of Benin

Tel: (229) 21 31 78 15

5. Performance Standards

External Counsel undertakes to perform the Services with the highest standards of professional and ethical competence and integrity. External Counsel shall promptly replace any employees assigned under this Contract that the MCA Entity considers unsatisfactory.

6. Confidentiality

(a) External Counsel shall not, during the term of this Contract and after its expiration, disclose any proprietary or confidential information relating to the Services, this Contract or the MCA Entity's business or operations without the prior written consent of the MCA Entity.

(b) The obligation of External Counsel and its sub-consultants to obtain the MCA Entity's written approval before disclosing any information about the MCA Entity's business or operations relating to the assignment, the Services or this Contract, shall not apply to any information that was in External Counsel's possession prior to commencement of the work under this Contract, or which is or shall become available to the general public in a printed publication, but not one published by External Counsel, and provided further that this obligation shall in no way limit External Counsel's internal use of such information in performing the Services under this Contract.

7. Ownership of Materials

Any studies, reports or other material, graphic, software or otherwise, prepared by External Counsel for the MCA Entity under the Contract shall belong to and remain the property of the MCA Entity. External Counsel may retain a copy of such documents and software.

8. External Counsel Not to be Engaged in Certain Activities

External Counsel agrees that, during the term of this Contract and after its termination, External Counsel and any entity affiliated with the External Counsel (i) shall be disqualified from providing goods, works or services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services, and (ii) for the duration of this Contract and for a period of [three (3) years] after its termination, shall not provide any consulting services related to the Services unless the External Counsel obtain the prior consent of the MCA Entity (or its successor in interest), which consent shall not be unduly withheld unless, in the opinion of the MCA Entity, there is a conflict of interest.

9. Accounting, Inspection and Auditing

External Counsel shall keep accurate and systematic accounts and records in respect of the provision of the Services and invoicing related thereto under this Contract, in accordance with the provisions of Annex C, (General Provisions) of this Contract.

10. Law Governing Contract and Language

This Contract shall be governed by the law of Benin and any other instrument having the force of law in Benin. The language of the Contract shall be the French language.

11. Assignment

External Counsel shall not assign this Contract or sub-contract any portion of it without the MCA Entity's prior written consent.

12. Amendments, Modifications or Variations

Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may only be made by written agreement between the Parties.

13. Termination

(A) By the MCA Entity

The MCA Entity may terminate this Contract after the occurrence of any of the events specified in Paragraphs (i) to (iv) below by written notice to the External Counsel, and such termination shall be effective immediately upon delivery of the notice or on the date specified below, or in the notice of the MCA Entity:

- (a) If External Counsel, as determined by the MCA Entity does not comply with its obligations regarding the use of funds set forth in Annex C of this Contract;
- (b) If External Counsel does not remedy a failure in the performance of its obligations under this Contract within ten (10) days after delivery of the notice of termination;
- (c) If External Counsel, in the judgment of the MCA Entity has engaged in coercive, collusive, corrupt, prohibited, obstructive or fraudulent practices in competing for or in the performance of this Contract or another MCC funded contract;
- (d) If the MCA Entity, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

(B) By External Counsel

External Counsel may terminate this Contract, by written notice to the MCA Entity, if the MCA Entity fails to pay any money due to External Counsel pursuant to this Contract that is not otherwise subject to dispute pursuant to Clause 14 hereof within sixty (60) days after receiving written notice from External Counsel that such payment is overdue.

(C) Payment upon Termination

Upon termination of this Contract pursuant to sub-clauses 13(A) or 13(B), the MCA Entity shall make, or cause to be made, payment pursuant to Clause 3 for Services

satisfactorily performed (as determined by the MCA Entity) prior to the effective date of termination.

14. Settlement of Disputes

The Parties agree that the avoidance or early resolution of disputes is crucial for a smooth execution of this Contract and the success of the assignment. The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

Any dispute, controversy or claim arising out of or in connection with this Contract, or the breach, termination or invalidity thereof, that cannot be settled amicably by the Parties within thirty (30) days of notification of such dispute, controversy or claim, shall be finally settled by arbitration in accordance with the rules of procedure for arbitration of the “**Règlement d’Arbitrage de la Cour Commune de Justice et d’Arbitrage**” of the “**Organisation pour l’Harmonisation en Afrique du Droit des Affaires** (the “Rules”) as in force on the date of this Contract.

In any arbitration hereunder:

- (a) Proceedings shall, unless otherwise agreed by the Parties, be held in **Abidjan, Republic of Côte d’Ivoire**,
- (b) The French language shall be the official language for all purposes unless otherwise agreed by the Parties. The arbitration shall be conducted in French with simultaneous translation in English and subsequent written English translation;
- (c) The arbitral tribunal shall be composed of three (3) arbitrators appointed in accordance with the Rules, with the exception that the chairman of the tribunal shall be appointed by the party-appointed arbitrators; and
- (d) The decision of a majority of arbitrators shall be final, binding and enforceable against the Parties.

15. Fraud and Corruption Requirements

MCC requires that the MCA Entity and any other beneficiaries of MCC Funding, including any bidders, suppliers, contractors, sub-consultants and 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. MCC’s AFC Policy requires that companies and entities receiving MCC funds acknowledge notice of MCC’s AFC Policy and certify that they have acceptable commitments and procedures in place to address the potential for fraudulent and corrupt practices.

Any entity receiving an award (including, but not limited to, both contracts and grants) of

External Legal Counsel Managed by MCA-Benin II
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MCC Funding of over \$500,000 will be required to certify that they will adopt and implement a code of business ethics and conduct within ninety (90) days of Contract award. Such entity will also include the substance of this clause in subcontracts that have a value in excess of \$500,000. Information regarding the establishment of business ethics and conduct programs can be obtained from numerous sources, including but not limited to:

<http://www.oecd.org/corruption/Anti-CorruptionEthicsComplianceHandbook.pdf>;

<http://cctrends.cipe.org/anti-corruption-compliance-guide/>

- A. For purposes of the Contract, the terms set forth below are defined as follows, and sometimes referred to collectively in this document as “Fraud and Corruption”:
- (a) **“coercive practice”** 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, including such actions taken in connection with a procurement process or the execution of a contract;
 - (b) **“collusive practice”** means a tacit or explicit agreement between two or more parties to perform a coercive, corrupt, fraudulent, obstructive or prohibited practice, including any such agreement designed to fix, stabilize, or maintain prices or to otherwise deprive the MCA Entity of the benefits of free and open competition;
 - (c) **“corrupt practice”** means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of a public official, MCA 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;
 - (d) **“fraudulent practice”** 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;

- (e) **“obstructive practice”** means any act taken in connection with the implementation of any contract supported, in whole or in part, with MCC Funding:
1. 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 a coercive, collusive, corrupt, fraudulent or prohibited practice;
 2. 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; and/or
 3. intended to impede the conduct of an inspection and/or the exercise of audit rights of MCC and/or an authorized Inspector General of MCC provided for in the Contract and under the Compact and related agreements; and
- (f) **“prohibited practice”** means any action that violates Sections E-F (Compliance with Anti-Corruption, Anti-Money Laundering, Terrorist Financing, and Trafficking in Persons Statutes and Other Restrictions) of Annex C (Additional Provisions) of the Contract.
- B. MCC may cancel any portion or all of the MCC Funding allocated to the Contract if it determines at any time that representatives of the MCA Entity, the Consultant or any other beneficiary of the MCC Funding were engaged in any coercive, collusive, corrupt, fraudulent, obstructive or prohibited practices during the selection process or the performance of the Contract, or another MCC-funded contract, without the MCA Entity, the External Counsel or such other beneficiary having taken timely and appropriate action satisfactory to MCC to remedy the situation.
- C. MCC and the MCA Entity may pursue sanction of the External Counsel, including declaring the External Counsel ineligible, either indefinitely or for a stated period of time, to be awarded any MCC-funded contract if at any time either MCC or the MCA Entity determines that the contractor has, directly or through an agent, engaged in any coercive, collusive, corrupt, fraudulent, obstructive or prohibited practices in competing for, or in performance of, the Contract or another MCC-funded contract.
- D. If the MCA Entity or MCC determines that the External Counsel, any subcontractor, any of the External Counsel’s Professional Personnel, or any agent or affiliate of any of them has, directly or indirectly, engaged in coercive, collusive, corrupt, fraudulent, obstructive or prohibited practices, in competing for or in the performance of the Contract, then the MCA Entity or MCC may, by notice, immediately terminate the Contract.

- E. Should any of the External Counsel’s Professional Personnel be determined to have engaged in coercive, collusive, corrupt, fraudulent, obstructive or prohibited practices during the competition for or execution of the Contract, but the MCA Entity or MCC determines not to terminate the Contract in accordance with the immediately preceding sub-paragraph, then the relevant External Counsel’s Professional Personnel shall be removed in accordance with GCC Clause 17.

16. Combatting Trafficking in Persons

MCC, along with other United States Government entities, has adopted a zero tolerance policy with regard to Trafficking in Persons (“TIP”) through its Counter-Trafficking in Persons Policy.³⁴ In pursuance of this policy:

(a) **Defined Terms.** For purposes of the application and interpretation of this Sub-Clause:

- (i) The terms “coercion,” “commercial sex act,” “debt bondage,” “employee,” “forced labor,” “fraud,” “involuntary servitude,” and “sex trafficking” have the meanings given such terms in the MCC Counter-Trafficking in Persons Policy (“MCC C-TIP Policy”) and such definitions are incorporated by reference into this Sub-Clause; and
- (ii) “Trafficking in Persons” means (A) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; (B) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(b) **Prohibition.** External Counsel, contractors, subcontractors, consultants, sub-consultants and any of their respective Professional Personnel shall not engage in any form of Trafficking in Persons during the period of performance of any contract funded, in whole or in part, with MCC funding and must also comply with those prohibitions described in U.S. laws and Executive Orders regarding TIP, including using misleading recruitment practices; charging employees recruitment fees; or destroying, concealing, confiscating, or otherwise denying access by an employee to the employee’s identity documents.

(c) **External Counsel Requirements.**

- (i) External Counsel shall:
 - a. notify its employees, agents, consultants, or representatives of the MCC C-TIP Policy and of the actions that will be taken against Professional Personnel for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and
 - b. take appropriate action, up to and including termination, against Professional Personnel or subcontractors or sub-consultants that violate the prohibitions set out in this policy.

³⁴ <https://www.mcc.gov/resources/doc/policy-counter-trafficking-in-persons-policy>

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- c. certify that it is not engaged in, facilitating, or allowing any activities constituting Trafficking in Persons, or related activities also prohibited under this policy, for the duration of the Contract;
 - d. provide assurances that activities constituting Trafficking in Persons, or related activities also prohibited under this policy, will not be tolerated on the part of its Professional Personnel; and
 - e. acknowledge that engaging in such activities is cause for suspension or termination of employment or of the Contract.
 - (ii) A bidder, supplier, contractor, subcontractor, consultant or sub-consultant shall inform the MCA Entity immediately of:
 - a. any information it receives from any source (including law enforcement) that alleges its Professional Personnel, subcontractor, sub-consultant, or the employee of a subcontractor or sub-consultant, has engaged in conduct that violates this policy; and
 - b. any actions taken against any Professional Personnel, subcontractor, subcontractor/consultant, or the employee of a subcontractor or sub-consultant, pursuant to these requirements.
- (d) **Remedies.** Once the incident has been confirmed and depending on the severity of each case, the MCA Entity will apply remedies, which could include:
 - (i) the MCA Entity requiring External Counsel to remove the involved Professional Personnel, employee, or any involved agent or affiliate;
 - (ii) the MCA Entity requiring the termination of a subcontract or sub-award;
 - (iii) suspension of Contract payments until the breach is remedied to the satisfaction of the MCA Entity;
 - (iv) loss of incentive payment, consistent with the incentive plan set out in the Contract, if any, for the performance period in which the MCA Entity determined non-compliance;
 - (v) the MCA Entity pursuing sanctions against the Consultant, including declaring the Consultant ineligible, either indefinitely or for a stated period of time, to be awarded any MCC-funded contract; and
 - (vi) termination of the Contract by the MCA Entity for default or cause in accordance with the termination clause of the Contract

17. Prohibition of Sexual Harassment

External Counsel shall prohibit sexual harassment behaviors directed at Compact beneficiaries, MCA Entity employees or MCA Entity consultants. Examples of sexual harassment include, but are not limited to, the following behaviors: unwelcome sexual advances; requests for sexual favors; verbal or physical harassment of a sexual nature; or offensive remarks about a person's sex, sexual orientation or non-conformity with gender stereotypes. The MCA Entity may investigate allegations of sexual harassment as it determines appropriate. External Counsel shall fully cooperate with any investigation conducted by the MCA Entity regarding breach of this provision. External Counsel will ensure that any incident of sexual harassment investigated by the MCA Entity has been resolved to the MCA Entity's satisfaction.

18. Non-Discrimination and Equal Opportunity

The MCA Entity adheres to the principle of equal opportunity and fair treatment in its employment practices. The MCA Entity expects that External Counsel shall not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements. Personal characteristics include sex, race, nationality, ethnic, social and indigenous origin, religion or belief, disability, age, sexual orientation, and gender identity. The MCA Entity expects that External Counsel shall base its employment decisions on the principle of equal opportunity and fair treatment, and shall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, promotion, termination of employment or retirement, and discipline. Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job shall not be deemed discrimination.

19. Compact Conditionalities

For the avoidance of doubt, the Parties agree and understand that the provisions set forth in Annex C of this Contract reflect certain obligations of the Government and the MCA Entity under the terms of the Compact and related documents that are also required to be transferred onto any consultant, sub-consultant or associate who partakes in procurements or contracts in which MCC funding is involved and that, as with other clauses of this Contract, the provisions of said Annex C are binding obligations under this Contract.

20. Approval, Removal, and/or Replacement of Personnel

(a) The personnel listed by name and/or title in Annex B (the “Professional Personnel”) are hereby approved by the MCA Entity. In respect of other personnel External Counsel may propose to use in carrying out the Services, External Counsel shall submit a copy of their biographical data for the MCA Entity’s review and approval.

(b) Except as the MCA Entity may otherwise agree, no changes shall be made to the Professional Personnel. If, for any reason beyond the reasonable control of External Counsel, it becomes necessary to replace any of the Professional Personnel, External Counsel shall provide as a replacement a person of equivalent or better qualifications.

(c) If the MCA Entity (i) finds that any of the Professional Personnel have committed serious misconduct or have been charged with having committed a criminal action, or (ii) has reasonable cause to be dissatisfied with the performance of any of the Professional Personnel, then External Counsel shall, at the MCA Entity’s written request specifying the grounds therefor, provide as a replacement a person with qualifications and experience acceptable to the MCA Entity.

(d) External Counsel shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Professional Personnel.

21. Relation between the Parties

Nothing contained herein shall be construed as establishing a relation of master and servant or of principal and agent as between the MCA Entity and External Counsel. External Counsel, subject to this Contract, have complete charge of Personnel and sub-consultant, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf.

22. Entire Agreement

This Contract contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.

FOR THE MCA ENTITY:

FOR EXTERNAL COUNSEL:

Signature: _____
Signed by:
Title:[Managing Director/CEO]
Millennium Challenge Account-Benin

Signature: _____
Signed by:
Title:

LIST OF ANNEXES

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ANNEX A DESCRIPTION OF SERVICES

Note: *Detailed descriptions of the Services, based on the Terms of Reference, to be provided, place of performance for different tasks, specific tasks to be approved by the MCA Entity, etc. shall be listed here.*

ANNEX B EXTERNAL COUNSEL'S PERSONNEL, HOURLY RATES, AND DIRECT COSTS

Note: *Titles and names, detailed job descriptions and minimum qualifications of Key Professional Personnel to be assigned, and rates for Base and Option periods for each staff, or classification of staff.*

ANNEX C GENERAL PROVISIONS

Capitalized terms that are used but not defined in this Annex shall have the meaning given to them in the agreement to which this Annex is attached (the “Agreement”) and that certain Millennium Challenge Compact by and between the United States of America, acting through MCC, and the Government, signed in [city] on [date], as may be amended from time to time.

The Government is acting through MCA-Benin II the legal entity established by the Government as responsible for the oversight and management of the implementation of the Compact on behalf of the Government (the “MCA Entity”), and has received a grant from MCC pursuant to the Compact, of which it intends to apply a portion of the proceeds of the Compact to eligible payments under this Agreement, provided that (i) such payments will only be made at the request of and on behalf of the MCA Entity and as authorized by the Fiscal Agent, (ii) MCC shall have no obligations to [insert name of Implementing Entity or Provider] (for the purposes of this Annex, the “Contract Party”) under the Compact or this Agreement, (iii) such payments will be subject, in all respects, to the terms and conditions of the Compact, and (iv) no party other than the MCA Entity shall derive any rights from the Compact or have any claim to MCC Funding.

A. MCC Status; Reserved Rights; Third-Party Beneficiary

1. MCC Status. MCC is a United States government corporation acting on behalf of the United States government in the implementation of the Compact. As such, MCC has no liability under this Agreement, and is immune from any action or proceeding arising under or relating to this Agreement. In matters arising under or relating to this Agreement, MCC is not subject to the jurisdiction of the courts or any other juridical or other body of any jurisdiction.

2. MCC Reserved Rights.

(a) Certain rights are expressly reserved to MCC under this Agreement, the Compact and other related Compact documents, including the right to approve the terms and conditions of this Agreement, as well as any amendments or modifications hereto, and the right to suspend or terminate this Agreement.

(b) MCC, in reserving such rights under this Agreement, the Compact or other related Compact documents, has acted solely as a funding entity to assure the proper use of United States Government funds, and any decision by MCC to exercise or refrain from exercising these rights shall be made as a funding entity in the course of funding the activity and shall not be construed as making MCC a party to this Agreement.

(c) MCC may, from time to time, exercise its rights, or discuss matters related to this Agreement with the parties to this Agreement, the Government or the MCA Entity, as appropriate, jointly or separately, without thereby incurring any responsibility or liability to any party.

(d) Any approval (or failure to approve) or exercise of (or failure to exercise) any rights by MCC shall not bar the Government, the MCA Entity, MCC or any other person or entity from asserting any right against the Contract Party, or relieve the Contract Party of any

Liability, which such entity might otherwise have to the MCA Entity, MCC, or any other party. For the purposes of this clause (d), MCC shall be deemed to include any MCC officer, director, employee, Affiliate, contractor, agent or representative.

3. Third-Party Beneficiary. MCC shall be deemed to be a third party beneficiary under this Agreement.

B. Limitations on the Use or Treatment of MCC Funding.

The use and treatment of MCC Funding in connection with the Agreement does not, and shall not, violate any limitations or requirements specified in the Compact or any other relevant agreement or Implementation Letter or applicable Laws or United States government policy. No MCC Funding shall be used for military purposes, for any activity likely to cause a substantial loss of United States jobs or a substantial displacement of United States production, to support any activity likely to cause a significant environmental, health or safety hazard, or to fund abortions or involuntary sterilizations as a method of family planning. MCC Funding shall be free from the payment or imposition of all Taxes as set forth in the Compact.

C. Procurement.

The Contract Party shall ensure that all procurements of goods, services or works under, related to or in furtherance of this Agreement shall be consistent with the general principles set forth in Section 3.6 of the Compact and in the Procurement Guidelines. The Contract Party shall comply with the eligibility requirements related to prohibited source or restricted party provisions in accordance with U.S. law, regulations and policy, applicable World Bank policies or guidelines and in accordance with other eligibility requirements as may be specified by MCC or the MCA Entity.

D. Reports and Information; Access; Audits; Reviews.

1. Reports and Information. The Contract Party shall maintain such books and records and provide such reports, documents, data or other information to the MCA Entity in the manner and to the extent required by Sections 3.8(a) and (b) of the Compact, and as may be reasonably requested by the MCA Entity from time to time in order to comply with its reporting requirements arising under the Compact. The provisions of Section 3.8(a) and (b) of the Compact that are applicable to the Government shall apply, *mutatis mutandis*, to the Contract Party as if such Contract Party were the Government under the Compact. A summary of the applicable Compact provisions referenced in this paragraph may be found on the MCC website at www.mcc.gov/guidance/compact/audits_reviews_provisions.pdf.

2. Access; Audits and Reviews. The Contract Party shall permit such access, audits, reviews and evaluations as provided in the Compact. The provisions of the Compact that are applicable to the Government with respect to access and audits shall apply, *mutatis mutandis*, to the Contract Party as if such Contract Party were the Government under the Compact. A summary of the applicable Compact provisions referenced in this paragraph may be found on the MCC website at www.mcc.gov/guidance/compact/audits_reviews_provisions.pdf.

3. Application to Providers. The Contract Party shall ensure the inclusion of the applicable audit, access and reporting requirements in its contracts or agreements with other Providers in connection with the Agreement. A summary of the applicable requirements may be found on the MCC website at www.mcc.gov/guidance/compact/audits_reviews_provisions.pdf.

E. Compliance with Anti-Corruption Legislation.

The Contract Party shall ensure that no payments have been or will be made by such Contract Party to any official of the Government, the MCA Entity, or any third party (including any other government official) in connection with this Agreement in violation of the United States Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. 78a et seq.) (the “FCPA”) or that would otherwise be in violation of the FCPA if the party making such payment were deemed to be a United States person or entity subject to the FCPA, or similar statute applicable to this Agreement, including any local laws. The Contract Party affirms that no payments have been or will be received by any official, employee, agent or representative of such Contract Party in connection with this Agreement in violation of the FCPA or that would otherwise be in violation of the FCPA if the party making such payment were deemed to be a United States person or entity subject to the FCPA, or similar statute applicable to this Agreement, including any local laws.

F. Compliance with Anti-Money Laundering Legislation.

The Contract Party shall ensure that MCC Funding pursuant to this Agreement is not used for money-laundering activities and, to that end, shall comply with any policies and procedures for monitoring operations to ensure compliance, as may be established from time to time by the Contract Party, MCC, the MCA Entity, the Fiscal Agent, the Procurement Agent, or the Bank.

G. Compliance with Terrorist Financing Statutes and Other Restrictions.

1. The Contract Party shall not provide material support or resources directly or indirectly to, or knowingly permit MCC Funding to be transferred to, any individual, corporation or other entity that such Party knows, or has reason to know, commits, attempts to commit, advocates, facilitates, or participates in any terrorist activity, or has committed, attempted to commit, advocated, facilitated or participated in any terrorist activity, including, but not limited to, the individuals and entities (i) on the master list of Specially Designated Nationals and Blocked Persons maintained by the U.S. Department of Treasury’s Office of Foreign Assets Control, which list is available at www.treas.gov/offices/enforcement/ofac, (ii) on the consolidated list of individuals and entities maintained by the “1267 Committee” of the United Nations Security Council, (iii) on the list maintained on www.sam.gov, or (iv) on such other list as the MCA Entity may request from time to time. For purposes of this provision, “material support and resources” includes currency, monetary instruments or other financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

2. The Contract Party shall ensure that its activities under this Agreement comply with all applicable U.S. laws, regulations and executive orders regarding money laundering, terrorist financing, U.S. sanctions laws, restrictive trade practices, boycotts, and all other economic

sanctions promulgated from time to time by means of statute, executive order, regulation or as administered by the Office of Foreign Assets Control of the United States Treasury Department or any successor governmental authority, including, 18 U.S.C. Section 1956, 18 U.S.C. Section 1957, 18 U.S.C. Section 2339A, 18 U.S.C. Section 2339B, 18 U.S.C. Section 2339C, 18 U.S.C. Section 981, 18 U.S.C. Section 982, Executive Order 13224, 15 C.F.R. Part 760, and those economic sanctions programs enumerated at 31 C.F.R. Parts 500 through 598 and shall ensure that its activities under the Contract comply with any policies and procedures for monitoring operations to ensure compliance, as may be established from time to time by MCC, the MCA Entity, the Fiscal Agent, or the Bank, as may be applicable. The Contract Party shall verify, or cause to be verified, appropriately any individual, corporation or other entity with access to or recipient of funds, which verification shall be conducted in accordance with the procedures set out in Part 10 of the MCC Program Procurement Guidelines (Eligibility Verification Procedures) that can be found on MCC's website at www.mcc.gov. The Contract Party shall (A) conduct the monitoring referred to in this paragraph on at least a quarterly basis, or such other reasonable period as the MCA Entity or MCC may request from time to time and (B) deliver a report of such periodic monitoring to the MCA Entity with a copy to MCC.

3. Other restrictions on the Contract Party shall apply as set forth in Section 5.4(b) of the Compact with respect to drug trafficking, terrorism, sex trafficking, prostitution, fraud, felony, any misconduct injurious to MCC or the MCA Entity, any activity contrary to the national security interests of the United States or any other activity that materially and adversely affects the ability of the Government or any other party to effectively implement, or ensure the effective implementation of, the Program or any Project or to otherwise carry out its responsibilities or obligations under or in furtherance of the Compact or any Supplemental Agreement or that materially and adversely affects the Program Assets or any Permitted Account.

H. Publicity, Information and Marking.

The Contract Party shall cooperate with the MCA Entity and the Government to provide the appropriate publicity to the goods, works and services provided under this Agreement, including identifying Program activity sites and marking Program Assets as goods, services, and works funded by the United States, acting through MCC, *provided*, any announcement, press release or statement regarding MCC or the fact that MCC is funding the Program or any other publicity materials referencing MCC, shall be subject to prior approval by MCC and shall be consistent with any instructions provided by MCC from time to time in relevant Implementation Letters. Upon the termination or expiration of the Compact, MCC may request the removal of, and the Contract Party shall, upon such request, remove, or cause the removal of, any such markings and any references to MCC in any publicity materials. MCC shall have the right to use any information or data provided in any report or document provided to MCC for the purpose of satisfying MCC's reporting requirements or in any other manner.

I. Insurance.

The Contract Party shall obtain insurance, performance bonds, guarantees or other protections appropriate to cover against risks or liabilities associated with performance of the Agreement. The Contract Party shall be named as payee on any such insurance and the beneficiary of any such guarantee, including performance bonds. MCC and the MCA Entity shall be named

as additional insureds on any such insurance or other guarantee, to the extent permissible under applicable laws. The Contract Party shall ensure that any proceeds from claims paid under such insurance or any other form of guarantee shall be used to replace or repair any loss or to pursue the procurement of the covered goods, services, works, *provided, however*, at MCC's election, such proceeds shall be deposited in an account as designated by the MCA Entity and acceptable to MCC or as otherwise directed by MCC.

J. Conflict of Interest.

The Contract Party shall ensure that no person or entity shall participate in the selection, award, administration or oversight of a contract, grant or other benefit or transaction funded in whole or in part (directly or indirectly) by MCC Funding in connection with this Agreement, in which (i) the entity, the person, members of the person's immediate family or household or his or her business partners, or organizations controlled by or substantially involving such person or entity, has or have a financial or other interest or (ii) the person or entity is negotiating or has any arrangement concerning prospective employment, unless such person or entity has first disclosed in writing to the parties under this Agreement and MCC the conflict of interest and, following such disclosure, the parties to this Agreement agree in writing to proceed notwithstanding such conflict. The Contract Party shall ensure that no person or entity involved in the selection, award, administration, oversight or implementation of any contract, grant or other benefit or transaction funded in whole or in part (directly or indirectly) by MCC Funding in connection with this Agreement shall solicit or accept from or offer to a third party or seek or be promised (directly or indirectly) for itself or for another person or entity any gift, gratuity, favor or benefit, other than items of *de minimis* value and otherwise consistent with such guidance as MCC may provide from time to time.

K. Inconsistencies.

In the event of any conflict between this Agreement and the Compact and/or the Program Implementation Agreement, the term(s) of the Compact and/or the Program Implementation Agreement shall prevail.

L. Other Provisions.

The Contract Party shall abide by such other terms or conditions as may be specified by the MCA Entity or MCC in connection with the Agreement.

M. Flow-Through Provisions.

In any subcontract or sub-award entered into by the Contract Party, as permitted by the Agreement, the Contract Party shall ensure the inclusion of all the provisions contained in paragraphs (A) through (L) above.

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