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Level 1 Authority Decision

Matter of: Horizon Construction/Century Engineering Contractors Joint Venture

Procurement: Design-Build Raw Water Transmission Pipeline from Mt. Coffee Hydropower Plant to White Plains Water Treatment Plant

Procurement Reference Number: 4A150/EP/009

Date: December 7, 2018

BACKGROUND

Under the Millennium Challenge Compact ("Compact") that was entered into between the Government of Liberia ("Government") and the Millennium Challenge Corporation ("MCC"), Millennium Challenge Account Liberia ("MCA-Liberia") is required to procure a contractor to rehabilitate the raw water transmission pipeline that spans from the Mt. Coffee Hydro Power Plant to the White Plains Water Treatment Plant. With this aim in mind, MCA-Liberia published several advertisements of the Specific Procurement Notice for the *Design-Build Raw Water Transmission Pipeline from Mt. Coffee Hydropower Plant to White Plains Water Treatment Plant* ("Pipeline Rehabilitation Contract"), which resulted in the submission of bids by four (4) entities. After the bid submission deadline, each bidder's price was revealed, the amounts of which are detailed below:

Name of Bidder	Read out Bid Price in USD	
	Main Bid (incl. Provisional Sum) (US Dollars)	Alternative Bid (incl. Provisional Sum) (US Dollars)
1. WBHO/UWP JV	\$20,331,769.31	\$22,024,938.81
2. Dawnus	\$13,981,421.85 with 10% discount on prime cost	\$14,843,025.88 with 10% discount on prime cost
3. Denys NV	\$11,932,985.66	\$14,213,996.20

4. Horizon-CEC JV	\$10,247,145.44	\$12,963,909.44
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The bids were then reviewed by a Bid Review Panel (“BRP”) that consisted of three externally hired foreign based panelists who were observed by a representative from the United States Army Corps of Engineers; a representative from the Nicholas O’Dwyer, the Design Review & Supervision Engineer; and a representative from MCA-Liberia.

Following its review of the bids, the BRP recommended that Denys NV should be invited to negotiate the Pipeline Rehabilitation Contract. Cardno Emerging Markets USA Ltd., MCA-Liberia’s Procurement Agent (“Procurement Agent”), proceeded to notify the bidders that, in keeping with the BRP’s recommendation, MCA-Liberia intended to award the Supervision Contract to Denys NV (“Procurement Decision”).

In line with the MCA-Liberia Bid Challenge System (“BCS”), the Horizon Construction/Century Engineering Contractors Joint Venture (“Challenger”) requested a debrief to learn the specific reason(s) why it was not selected. The Procurement Agent delivered a debrief to the Challenger that listed the several reasons why the its bid did not pass the administrative review and the responsiveness determination as required by the Invitation for Bids (“IFB”). In response to the debrief, the Challenger filed the protest from which this decision grows (“Protest”). Upon receipt of the Protest, MCA-Liberia issued a notice that informed all of the bidders that any further action related to the challenged procurement was suspended until the Protest was resolved. Rule 1.6 of the BCS permits any bidder, other than a challenger, that believes that it may be affected by a decision to be made with respect to a protest may intervene and participate in the protest by filing a comment. Accordingly, Denys NV, being an interested party, filed a comment against the Protest.

DISCUSSION

The BCS requires a challenger to prove by clear and convincing evidence that a procurement action violates a procurement rule. The BCS defines “a procurement action as any action or decision by MCA-Liberia relating to the MCA-Liberia process of procuring goods, works, or services in furtherance of the Compact.” A procurement rule is defined as “the PPG, or the solicitation documents applicable to the challenged [Procurement Decision].” In this instance, the Challenger is protesting MCA-Liberia’s intent to award the Pipeline Rehabilitation Contract on the basis that, by awarding the contract to a company with a higher bid, MCA-Liberia abused its discretion during the bid review process and, in the process, violated several provisions of the IFB.

Section III of the IFB explains the various forms of review each bid will have to undergo to determine the bidder that will be recommended to enter into the Pipeline Rehabilitation Contract. A bid is required to pass each of the listed types of review in order for the bidder to remain in contention for the contract. The first review performed by the BRP was the administrative review. This review is conducted to determine that a bid includes all required forms and documents and that these forms and documents have been correctly completed. Having explained the purpose of the administrative review, this decision will now address the administrative review issues raised by the Challenger.

The debrief stated, “The JV Partner Horizon Construction did not submit a letter of authorization authorizing the signatory to sign the bid documents on its behalf.” In the Protest, the Challenger responded as follows:

We submitted a certificate of Domestic Company registration which highlighted that Mr. Robert Bellarmin Nkusi is the General Manager for Horizon Construction. From a legal point of view, Mr. Nkusi Robert is entrusted with all powers to deal with any matter on behalf of the company. He is authorized by virtue of the Articles of Association to legally represent the Company and transact any business, regardless whether the project is locally or internationally tendered. Surprisingly, at the time when the bids were opened, MCA-Liberia confirmed that we satisfy the conditions related to the authority to sign the bid. Regrettably, we don't really understand why MCA has raised this issue as a deviation.

Section I of the IFB is the Instructions to Bidders (“ITB”) and this section provides instructions to bidders that informs them how to prepare their bids. ITB 21.2 directs, “A letter of authorization shall consist of a written confirmation as specified in the BDS and shall be attached to the Bid. The name and position held by each person signing the authorization must be typed or printed below the signature.” The BDS mentioned in ITB 21.2 refers to the Bid Data Sheet. The Bid Data Sheet “sets out the particular requirements for the specific procurement and supplements the information included in Section I, Instructions to Bidders.”¹ The BDS’ reference to ITB 21.2 specifically states:

*The written confirmation of authorization to sign on behalf of the Bidder shall consist of:
Written Power of Attorney.*

For companies applying as JV or Consortium, all individual JV members need to provide Power of Attorney confirming authorization for the lead member to sign on behalf of the JV or Consortium. The authorized person shall belong to the lead member of the JV or Consortium.

Although the Challenger is of the belief that Mr. Robert Nkusi had the legal authority to represent Horizon Construction (“Horizon”), the fact of the matter is the IFB required each individual member of a joint venture to provide a duly signed written power of attorney and Horizon did not comply with this requirement. The BDS did not provide bidders with the latitude to the form of letter of authorization that can be submitted. ITB 21.2 unambiguously compels each member of a joint venture to provide a written power of attorney and the Challenger did not. So, the Challenger’s claim that the certificate of domestic company registration that names Mr. Nkusi as the company’s general manager should be considered to be the letter of authorization required under the IFB is denied.

The next issue raised in the debrief is, “The signatory of the bid did not sign the bid forms and did not provide initials on all the pages of bid (sic).” In the Protest, the Challenger responded as follows:

Horizon Construction as lead partner has stamped each and every page of our original bid. We believe that a stamp serves the same purpose as the initials, and nobody would confuse this with the omission to get Horizon-CEC abide by the contents of the bid (sic).

¹ Page 2 of the IFB, “Summary Description of Standard Bidding Document for Procurement of Design-Build”

While the Challenger thinks a stamp serves the same purpose of initials, the reality of the situation is the IFB specifically required the pages to be signed or initialed and not stamped. ITB 21.2 says, "All pages of the Bid where entries or amendments have been made **shall be signed or initialed** by the person(s) signing the Bid." There is a difference between what the Challenger believes and what the IFB compels. If there was an intention to accept stamped pages, the IFB would have included stamped pages as an option but the IFB explicitly limited the alternatives to either signed pages or initialed pages. ITB 8.1, as elaborated in the BDS, says, "The Employer shall not be responsible for any errors, omissions, or mis-interpretation of the Bidding Documents resulting from a failure of the Bidder to request clarification or ensure that they are fully informed of the requirements." Therefore, the Challenger's assertion that stamped pages should be acceptable under the IFB is denied.

The final administrative review issue raised in the debrief is the Challenger's failure to produce Leak Testing Equipment information in Form Tech-7, to which the Challenger replied:

In article 2.5 of the Qualification section of the bidding document, it was clearly mentioned that Leak Testing Equipment shall be purchased by the Contractor since it was meant to be passed on to the Owner of the project free from liens and other legal encumbrances upon completion. This is the reason why we didn't put Leak Testing Equipment on the list of equipment to be leased instead in the BOQ (the testing and commissioning component, item No. E).

The opening paragraph of the Qualification Requirements Section, under which Clause 2.5 falls, stresses, "The Bidder shall provide the information requested in the corresponding information sheets included in Section IV, Bidding Forms, to establish that the Bidder meets the requirements established below." So, Clause 2.5 accordingly declares, "The Bidder shall provide further details of proposed items of equipment (which includes the Leak Testing Equipment) using Form TECH-7 in Section IV, Bidding Forms." The instructions contained in Form Tech-7 similarly required the Challenger to fill out a form for the leak testing equipment. The instructions says, "The Bidder shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in Part 2, Employer's Requirements. A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Bidder." The Challenger nevertheless failed to satisfy the requirement to prepare a Form Tech-7 for the Leak Testing Equipment. The reason the Challenger provided for not adding the Leak Testing Equipment is immaterial because the IFB does not stipulate any exceptions to its unequivocal requirement that information related to the Leak Testing Equipment should be detailed in Form Tech-7. The requirements in the IFB are not suggestions; each bidder is compelled to abide by the terms of the IFB.

This decision shall now turn to the responsiveness determination issues raised by the Challenger. The responsiveness determination is intended to ascertain the extent to which a bid substantially responds to the requirements of the IFB. This includes a determination as to whether the bid is technically responsive. Under the responsiveness determination, the first issue raised in the debrief was the Challenger's failure to affix its signature to the Appendix to Bid. In the Protest, the Challenger responded as follows:

Given the fact that, Appendix to bid did not show where to oppose signatures, we stamped each page of the Appendix to bid in order to confirm our acceptance.

The Appendix to Bid’s instructions declares, “The Employer should insert relevant data prior to the issue of the Bidding Document. Bidders should fill in the remaining blank spaces. **Bidders are required to sign each page of the Appendix to Bid.** The Appendix to Bid of the successful Bidder shall become Annex B to the Particular Conditions.” This obligation is consistent with ITB 21.2 that says, “All pages of the Bid where entries or amendments have been made **shall be signed or initialed** by the person(s) signing the Bid.” Given the fact that the Appendix to Bid reiterates the requirement that the pages should be signed, there is no justifiable reason to deviate from this requirement. Bidders are required to abide by the requirements established in the IFB and since the IFB does not allow for any exception to the signature requirement, the Challenger’s assertion that stamped pages should be acceptable under the IFB is denied.

The next point raised was the debrief’s assertion that neither member of the joint venture satisfied the general design experience required in the IFB. Clause 2.4.1 of the Qualification Requirements section demands that at least one member of a joint venture must have been contracted to perform the role of designer for at least the last five years prior to the bid submission deadline, and with activity in at least nine months in each of those years. The deadline for the submission of bids for the Pipeline Rehabilitation Contract was October 12, 2018. Consequently, the IFB required each bidder to have been a designer for at least nine months of each year dating back to at least October 12, 2013. In the Protest, the Challenger responded as follows:

We have 3 projects with Horizon and one project with CEC as follows:

1. Study of concept of installation works of an overflow protection dam on the Akagera River done from September 2014 to January 2016
2. Study and rehabilitation of Karuruma -Jali Earth road(10km)
3. Study and implementation of Water Supply Phase I in Gabiro School of Infantry project
4. Engineering, Design, Procurement and Construction Contract for the construction works to upgrade and rehabilitate Keya, Nkora, Cyimbiri, Nyamyotsi I &II Hydro Power Plants.

Honestly, we are failed to understand how you have overlooked such important point. All those activities have been done for more than 9 months in each year which is more than the bid requirements.

An inspection of the general design experience provided by Horizon indicates that it did not satisfy the requirement to have been contracted as a designer for at least nine months of each year dating back to at least October 12, 2013. Below is the information Horizon included in the IFB:

General Design Experience				
Starting Month Year	Ending Month Year	Years	Contract Identification and Name Name and Address of Employer Brief Description of the Designs Executed by the Bidder/Member of a JV/Association making up the Bidder	Role of Bidder/Member of a JV/Association making up the Bidder

2005	2007	2 years	<p>Contract Identification and Name: Study and implementation of Water Supply Phase I in Gabiro School of Infantry project.</p> <p>Name and Address of employer : Gabiro School of Infantry</p> <p>Brief Description of the Works Executed by the Bidder: the project consisted the Design and mapping of full concept Water Supply Phase I in Gabiro School of Infantry project.</p>	Contractor
2013	2014	1 year	<p>Contract Identification and Name: Study and rehabilitation of Karuruma –Jali Earth road(10km)</p> <p>Name and Address of employer: Rwanda Transport and Development Agency (RTDA) www.rtda.gov.rw</p> <p>Brief Description of the Works Executed by the Bidder: The project consisted :</p> <ol style="list-style-type: none"> 1. The rehabilitation of Karuruma –Jali Earth road(10km) 2. Preparation of detailed design package (Report, Drawings and technical Specifications) 3. Site Survey , 4. Geotechnical Investigation and Report, Site Layout 	Contractor
September 2014	January 2016	1 year	<p>Contract Identification and Name: Study of concept of installation works of an overflow protection dam on the Akagera River</p> <p>Name and Address of employer: MINAGRI</p> <p>Brief Description of the Works Executed by the Bidder: Study of concept of installation works of an overflow protection dam on the Akagera River</p> <p>Conduct operations and ensure that all system operation of Water Supplier and existing facilities will arrive at the high level.</p>	Contractor

In order to determine whether a bidder meets the nine month per year threshold, the form required the bidders to input the specific month of the year for which the bidder's previous design work commenced and concluded. Despite this requirement, Horizon neglected to specify the months for two of its three listed projects. Nonetheless, based on the information provided, Horizon did not perform any design services for the years covering the period of October 13, 2016 to October 12, 2017 and October 13, 2017 to October 12, 2018. Horizon asserted that, from September 2014 to January 2016, it performed design services for an Akagera River project. So, in terms of the relevant general design experience years under the Form EXP-1, the Akagera River Project enabled Horizon to satisfy the nine months of experience requirement for October 13, 2014 to October 12, 2015. However, since Horizon indicated that the project ended in January 2016, that means it only had three months of experience during the year comprising the months of October 13, 2015 – October 12, 2016, which is six months below the minimum amount.

Consequently, of the five individual years preceding the October 12, 2018 bid submission deadline, Horizon only worked for nine months for one of those years (October 13, 2014-October 12, 2015). Clause 2.4.1 of the Qualification Requirements section stipulated that a bidder must work for nine months in each of those years, which Horizon failed to do. It should be noted that the Challenger included a Gabiro School of Infantry project that supposedly took place between 2005 and 2007. Since this project falls beyond the five year period prior to the bid submission deadline, it is not germane to determining whether Horizon complied with Clause 2.4.1.

Moreover, ITB 12.1(e) demands the submission of documentary evidence to allow for the substantiation of any claimed qualification and, of the three projects Horizon listed, there was no documentary evidence for two of the projects. The only project for which Horizon attempted to provide corroborating documentation was the Akagera River Project. However, the completion certificate provided was in French, which is a violation of ITB 11.1 that directs:

The Bid, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and the Employer, shall be written in English. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in English in which case, the English version shall govern.

Since Clause 2.4.1 demands one member of a joint venture to fulfill its requirement, the Challenger could have still satisfied Clause 2.4.1 if Century Engineering Contractors (“CEC”), the other member of the Challenger’s joint venture, had amassed the requisite amount of general design experience but, as indicated in its Form EXP-1, CEC’s experience was also inadequate. The only design project CEC listed was a project that purportedly lasted from January 2016 through September 2017. CEC therefore had zero months of general design experience from October 13, 2013 – October 12, 2014; zero months of general design experience from October 13, 2014 – October 12, 2015 and zero months of general design experience from October 13, 2017 – October 12, 2018. As a result, CEC had the minimum nine months of experience for only two years (October 13, 2015 – October 12, 2016; October 13, 2016 – October 12, 2017) out of the five years required by Clause 2.4.1 of the Qualification Requirements section. Also, similar to Horizon, CEC breached ITB 12.1(e) by not providing any documentary evidence to authenticate the design experience it claimed to have in its Form EXP-1. For the reasons stated above, neither member of the Challenger’s joint venture served as the role of designer for at least the last five years prior to the bid submission deadline, and with at least nine months of experience in each year, which is why the Challenger’s claim that it met the terms of Clause 2.4.1 of the Qualification Requirements section is denied.

The next point raised regarding the Challenger’s substantial responsiveness to the bid pertained to the debrief’s assertion that CEC did not satisfy the general construction experience required in the IFB. Clause 2.4.2 of the Qualification Requirements section demands that each member of a joint venture must have been a contractor or an approved subcontractor for at least the last five years prior to the bid submission deadline, and with activity in at least nine months in each of those years. The deadline for the submission of bids for the Pipeline Rehabilitation Contract was October 12, 2018. Consequently, the IFB required each bidder to have been a contractor or an approved subcontractor for at least nine months of each year dating back to at least October 12, 2013.

In Form EXP-2, CEC included seven construction projects where it was either a contractor or subcontractor. These projects date back to October 2014 and continue through the October 12, 2018 bid submission deadline. In accordance with ITB 12.1(e), CEC also provided the necessary supporting evidence to establish that it had indeed worked on those projects. Notwithstanding those years of general construction experience though, Clause 2.4.2 mandated CEC to have at least nine months of experience for each year beginning from at least five years from the bid submission deadline date, which means CEC should have had nine months of general construction experience in the year spanning October 12, 2013 to October 13, 2014. Yet, CEC did not have the total months of experience needed for that year and that is why the BRP concluded that CEC did not have the minimum amount of construction experience to be deemed in compliance with Clause 2.4.2 of the Qualification Requirements section. Consequently, the Challenger's claim that CEC complied with Clause 2.4.2, which requires at least nine months of construction experience for each year dating back to October 12, 2013, is denied.

The next issue presented concerning the substantial responsiveness related to the claim that the Challenger's bid not meet the similar design and construction experience required in the IFB. The particular similar design experience required in the IFB is mentioned in Clause 2.4.3 of the Qualification Requirements section. In order to be considered to have the similar design experience, this provision insists that at least one member of a joint venture must have participated as lead designer in at least two design or design-build water pipeline projects within 2008 and 2018, each with a value of at least One Million US Dollars, that have been successfully and substantially completed and that are similar to the proposed works contained in the pipeline rehabilitation contract. The IFB instructed the bidders to detail their similar design experience in Form EXP-3. Although Clause 2.4.3 called for each member of a joint venture to list at least two similar water pipeline projects, CEC included only one water pipeline project in its Form EXP-3. Similarly, Horizon also only named one water pipeline project. Also, the project Horizon identified in its Form EXP-3 is the same Akagera River Project mentioned under the general design experience because, as previously stated in this decision, the required supporting documentation was presented in French, which is a violation of ITB 11.1 that requires all documents related to a bid to be in English or translated into English.

In response to its similar design experience deficiencies, the Challenger wrote in its Protest, "Kindly check details in our bid and read it carefully". The EXP-3 forms for both members of the Challenger's joint venture have been meticulously examined and there is no evidence that either member of the Challenger's joint venture served as a lead designer in at least two design or design-build water pipeline projects within the last ten years (CEC only named one water pipeline project and Horizon also only named one water pipeline project). Therefore, the Challenger's claim that it has the similar design experience required in the IFB is denied.

As an aside, it is important to note that the Challenger provided conflicting information about the Akagera River Project. Under the general design experience, Horizon asserted that the project commenced in September 2014 and completed in June of 2016. However, under similar design experience, Horizon declared that this project was awarded in June 2007 and completed in May 2010.

Turning to the similar construction experience, the exact similar construction experience required in the IFB is mentioned in Clause 2.4.4 of the Qualification Requirements section and it reads as follows:

Participation as contractor, or approved subcontractor, in at least two (2) construction or design-build contracts using FIDIC Conditions of Contract for Plant and Design-Build 1999 (“Yellow Book”) within 2008 and 2018, each with a value of at least Ten Million US Dollars (\$10,000,000)], that have been successfully and substantially completed and that are similar to the proposed Works. The similarity shall be based on the physical size, complexity, methods/technology or other characteristics as described in Section V, Employer’s Requirements.

Clause 2.4.4 further directs that each member of a joint venture ought to meet the requirements and detail the experience in Form EXP-4. Accordingly, both members of the Challenger’s joint venture included information that suggests that they have participated in the construction of the minimum amount and of the minimum values required in Clause 2.4.4. However, Clause 2.4.4 additionally emphasized that any construction contract identified by a bidder in Form EXP-4 must be a FIDIC Conditions of Contract for Plant and Design-Build 1999 (also known as FIDIC’s Yellow Book). Neither member of the Challenger’s joint venture mentioned in their Form EXP-4 that any of the cited contracts operated under the terms and conditions of FIDIC’s Yellow Book. In the Protest, the Challenger responded to this issue by contending, “FIDIC’s Yellow Book principle is the design and build, almost all our experience provided are governed by this principle. Although we provided the certificates of completion, we assumed that we could as well provide any additional information required with respect to the contracts signed off and delivered, if need be.” As opposed to assuming, in accordance with ITB 8.1, the Challenger had a duty to seek clarification from MCA-Liberia prior to submitting its bid.

The Challenger presented a bevy of additional information related to penstocks in the Protest in an attempt to further explain the similarities between the construction of a penstock and the construction of the proposed Mt. Coffee pipeline. This was a breach of the IFB because, unless the BRP specifically requests for a clarification, no bidder is permitted to provide any supplementary bid information beyond the bid submission deadline. Additionally, by including the penstock information in the Protest, the Challenger ran afoul of Rule 1.1(b) of the BCS that points out, “a protest cannot be used to cure deficiency in the challenger’s bid”. The purpose of the BCS is to provide a bidder with the opportunity to explain why it is under the belief that MCA-Liberia erred in evaluating the information included in a bid. The BCS does not permit challengers to augment their bids by providing additional information that should have been included in the bid prior to the submission deadline.

Turning now to the subject of Resettlement Action Plan (RAP) experience, the debrief remarked that the Challenger did not comply with the requirement related to the development of RAPs. In the Protest, the Challenger responded by focusing on the RAP technical requirements as opposed to the RAP experience requirements. Clause 2.4.7 specifically requires bidders to have developed and implemented at least 2 involuntary RAPs for donor funded projects in Sub-Saharan Africa in the 5 years prior to the bid submission deadline. For joint ventures, it is sufficient if either member of the joint venture meets this requirement or both members combine to meet this requirement. Horizon listed 3 RAPs that it implemented however Horizon did not indicate whether the RAPs it implemented were pursuant to donor funded projects. Also, for two of the RAPs, the dates of the implementation are not included, which means there is no indication that those two RAPs were implemented within the required five year period prior to the bid submission deadline. Unlike Horizon, CEC provided the dates of the two RAPs it implemented and CEC also specified that both RAPs were donor funded (one by the European Union and the other by Japan International Cooperation Agency). Since CEC supplied the required information

regarding the implementation of RAPs, the Challenger met the RAP implementation experience requirement because, as mentioned above, it is sufficient for only one member of joint venture to have the necessary experience.

While the Challenger satisfied the RAP implementation experience requirements, the Challenger did not meet the standards established for the development of RAPs. Clause 2.4.7 obligates bidders to have **developed and implemented** at least 2 involuntary RAPs for donor funded projects in Sub-Saharan Africa in the 5 years prior to the bid submission deadline. The Challenger seems to have focused on the RAP implementation requirement while neglecting the RAP development requirement because neither Horizon nor CEC mentioned that they had developed any RAPs. As a result, due to the Challenger's failure to indicate that it has developed at least 2 involuntary RAPs for donor funded projects in Sub-Saharan Africa in the 5 years prior to the bid submission deadline, its claim that it has the required RAP development experience is denied.

In summary, the Challenger did not satisfy the following IFB experience requirements:

1. Clause 2.4.1: General Design Experience
2. Clause 2.4.2: General Construction Experience
3. Clause 2.4.3: Similar Design Experience
4. Clause 2.4.4: Similar Construction Experience
5. Clause 2.4.7: Environmental and Social Management Experience

As a result of not fulfilling these requirements, the Challenger did not have the necessary experience required by MCA-Liberia to undertake the rehabilitation of the raw water pipeline.

The debrief proceeded to next address the Challenger's price schedules. The debrief commented, "On examination of the price schedules, the BRP observed Horizon-CEC JV submitted the cost of all pipes, valves, bends and specials required for construction of pipeline in the schedule of spare parts. Also, the pricing for construction of segment 1 and 2 for both main bid and alternative bid appears to include only civil works cost. This is not in line with the price schedules in the bidding document, where construction costs should include all construction materials costs, which appears to be mistakenly included in the Bidder's schedule of spare parts." In the Protest, the Challenger disagreed with this assessment by expressing that it does not understand the basis under which that conclusion was reached. The Challenger maintained that it had properly filled out the IFB's price schedules.

In Price Schedule A (main bid) and Price Schedule B (alternative bid), the bidders were directed to insert the construction costs in item number 3 (construct segment 1) and item number 4 (construct segment 2). The IFB explains that each bidder's construction price for construct segment 1 and construct segment 2 must include "All costs for labor, equipment, and materials for the construction of Segments 1 and 2"². The bidders were therefore required to insert the cost for the materials that would be used during the construction of the segments 1 and 2 into items number 3 and 4 of Price Schedules A and B.

A review of the Challenger's detailed bill of quantities ("BOQ") for items number 3 and 4 of Price Schedules A and B reveals the Challenger did not comply with the requirement to include the cost

² Section V "Employer's Requirements". Section 2 (Measurement and Payments): Price Schedule (A and B) Item Number 3 and 4: Construct Segment 1 and Segment 2

of the construction material within its price for construct segment 1 and construct segment 2. According to the detailed BOQ, the price for items number 3 and 4 of Price Schedules A and B consists of the following:

- Bush clearing
- Trees felling of girth > 1m and measured from 1m of ground level
- Excavation
- Premium (Surplus value) to price 303 for rocky materials' excavation
- Embankments from cut debris (Access Road)
- Filling of trenches from cut debris (Pipe Backfilling)
- Filling of trench bases with 20cm thick laterite layer
- Filling of trench bases with 15cm thick sand layer
- Shaping and compacting the upper platform of earthworks
- Wearing course of lateritic layer
- Construction of Valve chambers in concrete class 25/30 reinforced concrete each 3mx3m complete with access door
- Construction of Piers in reinforced Concrete class 35/30
- Construction of concrete haunches in ordinary concrete class 20/25 each shall be 300mm thick from the foundation and 400mm high at the at the centre

The cost for the materials that would be used during the construction of the pipeline is conspicuously absent from this list, which is a material deviation from the bidding requirement. As mentioned in the debrief, the Challenger only factored in the costs of the civil works when determining its price for items number 3 and 4 of Price Schedules A and B. Based on the Challenger's response to this issue in the Protest, the Challenger seems to be confusing the difference between the materials used for the construction of the pipeline and the materials that are recommended to be spare parts, which are used for maintenance and repair after the construction and commissioning of the pipeline. Only the costs of the recommended spare parts materials are supposed to be included in the price for item number 5 of Price Schedules A and B while, as explained above, the cost of the construction materials are required to be included in the price for items number 3 and 4 (construct segment 1 and construct segment 2). By excluding the construction material costs from items number 3 and 4 of Price Schedules A and B (construct segment 1 and construct segment 2), the Challenger failed to abide by the terms of the IFB. Consequently, the Challenger's suggestion that it filled out Price Schedules A and B in accordance with the IFB's requirements is denied.

The debrief proceeded to next tackle the issue of the Challenger's technical responsiveness. The Challenger was informed in the debrief that it did not comply with the 30% preliminary design requirement and included insufficient technical specifications. The debrief named the particular requirements that the DRB concluded the Challenger's design proposal lacked. The Challenger responded in the Protest by claiming, "All this information has been provided in the volume 2 (Tech 1 to 9 pages), what you are accusing us is out of the scope even if we have submitted them. You should be consistency! (sic)". It is noteworthy that, as opposed to answering the specific deficiencies pointed out in the debrief by pinpointing the exact location in Tech-1 where the required information is located, the Challenger elected to issue a general claim that the required information has been provided. Nonetheless, the decision will examine the Tech-1 requirements and determine whether the Challenger included them in its design proposal.

Form Tech-1(b): Commentary on the Employer's Requirements, including status of the information available, relevant design issues and constructability issues for the Works, detailing how the critical requirements will be achieved, including delivery to site of the pipes and other major items and reducing environmental, social and resettlement impacts.

Form Tech-1(b) required the Challenger to, amongst other things, specifically detail how pipes and other major construction items would be delivered. Despite this requirement, the Challenger did not present the requisite delivery information. The Challenger was also mandated to specify how it would achieve the reduction of environmental, social and resettlement impacts. As opposed to providing the required information, the Challenger stated, "We shall provide enough detail to demonstrate an understanding of the critical environmental, health, safety, gender and social inclusion issues related to the project." As stated above, any information related to a bid must be provided by the bidder prior to the bid submission deadline. The IFB does not permit bidders to leave out required information, which is why the IFB expresses the idea that excluding required information from a bid will have a negative effect on any bidder's proposal. The detailed information the Challenger decided to not include in its proposal is the very information the BRP needed to evaluate to determine whether the Challenger should be awarded the contract, which is why the Challenger should have included it in its bid.

Form Tech-1(c): Discussion of how the Bidder proposes to develop the design at key stages, including a commentary on any necessary field investigations (mapping, soils, and/or survey work) and the proposed design methodology for key elements of the Works. Discuss how optimize design to reduce environmental, social and resettlement costs/issues. Make recommendations for addressing any long-lead delivery items or constructability issues that could adversely affect the proposed schedule of the project.

In violation of Form Tech-1(c), the Challenger did not describe how it intends to optimize the design of the project to reduce social and resettlement cost/issues. Additionally, the Challenger did not recommend how to address any long-lead delivery items or constructability issues that could have a negative effect on the project's schedule.

Form Tech-1(d): Discussion of how the Bidder proposes to incorporate environmental and social considerations, including the prevention and management of negative impacts, avoidance of resettlement, and inclusion of mitigation measures and health and safety concerns into the design, including proposed methods for coordinating design work with concurrent environmental and social management plans and any resettlement planning and implementation activities.

In violation of Form Tech-1(d), the Challenger did not articulate how it would precisely incorporate social considerations, such as the avoidance of resettlement, health and safety mitigation into the project. Additionally, the Challenger did not provide a detailed explanation about how it intends to integrate environmental and social management plans and resettlement planning and implementation activities into the pipeline rehabilitation events.

Form Tech-1(e): Name, qualifications, and particulars of the design company and designers in charge of the design of the Works.

In violation of Form Tech-1(e), the Challenger's Form Tech-1 does not contain the name, qualification or any particulars of the design company and designers responsible for the design of the project.

Form Tech-1(f): Name, qualifications and particulars of the environmental and social specialists who will be responsible for development and implementation of the resettlement action plan.

In violation of Form Tech-1(f), the Challenger did not include the name, qualifications or any particulars of the environmental and social specialists who would be responsible for the development and implementation of the resettlement action plan.

Form Tech-1(g): Proposed names of suppliers and details for all essential equipment items, including but not limited to major items such as the *Ductile Iron Pipe*. Specifications shall be accompanied by manufacturers' brochures and details of the main items and equipment, especially those listed above, and indication of availability when needed in the general project timeframe, respectively.

Pursuant to Form Tech-1(g), the only essential equipment for which the Challenger submitted the name of the supplier is the ductile iron pipe. In violation of Form Tech-1(g), the Challenger did not include the name of the supplier of any of the other equipment that are essential to the success of the pipeline rehabilitation. Correspondingly, there are no manufacturers' brochures and details of these main pieces of equipment. Neither is there any indication of the availability of these pieces of equipment. In the design proposal, the Challenger did name SAFET S.p.A and SOVEMA as the suppliers of the ductile iron pipe but did not provide the brochure for SOVEMA nor any detail of the ductile iron tape that would be provided.

Form Tech-1(i): Bidders demonstrate that they have in place a results-based Monitoring and Evaluation framework and methodology to track progress on proposed and agreed performance indicators for the project in accordance with MCC M&E Policy for Compacts and Thresholds and the Liberia Compact M&E Plan.

In violation of Form Tech-1(i), the Challenger did not reasonably establish that it already had in place a results-based monitoring and evaluation framework to track progress on the proposed and agreed upon performance indicators. In the design proposal, the Challenger stated:

The Monitoring and Evaluation policy shall ensure complete and objective information; performance monitoring indicators to measure inputs, outputs, and outcomes for resettlement activities; involvement of the displaced persons in the monitoring process; evaluation of the impact of resettlement for reasonable period after the resettlement and related development activities have been completed; and provisions for using the results of resettlement monitoring to guide subsequent implementation. Appropriate mechanisms for monitoring performance, reporting, grievance redress, and taking corrective actions as appropriate shall be done.

There was a requirement to demonstrate in the design proposal that it has a monitoring and explanation framework and methodology in place for this project and it is that framework and methodology that is supposed to be evaluated by the BRP. Nonetheless, the Challenger did not include a framework or methodology that could be assessed by the BRP. The Challenger's proposal merely says that its monitoring and evaluation policy would produce certain outcomes

but there is no detail as to how the Challenger's policy will achieve those goals. The Challenger's design proposal demonstrated that the Challenger did not have the required framework and methodology in place by the date on which the bid was submitted.

As outlined above, the Challenger's design proposal inadequately addresses the specific requirements listed in paragraphs (a) through (e) of Form Tech-1 (It should be noted that Form Tech-1(a) was modified in the September 12, 2018 IFB addendum). It is also puzzling to read the Challenger's claim in the Protest that these requirements are beyond the scope of the project. These requirements are plainly enumerated in Form Tech-1.

In regards to Form Tech-2, the debrief stated that Challenger's method statement was incomplete and therefore not compliant with the specific requirements. The debrief went on to spell out the specific ways in which the Challenger's method statement was deficient. In the Protest, rather than identifying where exactly in Form Tech-2 the required information is located, the Challenger responded to each of the precise issues raised in the debrief by simply stating, "please take your time and read carefully our design and method statement, you will find all the claimed as missing information." According to Rule 1.3 of the BCS, the burden of proof is on the Challenger to prove by "clear and convincing evidence" that an error was committed. It was therefore incumbent on the Protestor to counter the debrief by crafting a tailored response for each individual issue in the debrief. However, the Challenger elected to not do so for the Form Tech-2 questions. Nevertheless, the decision will examine the Tech-2 requirements mentioned in the debrief and determine whether the Challenger included them in its method statement.

Form Tech-2 (d): Description of the risks to safety within the limits of site and surrounding areas created by the execution of the Works and the measures included in the Bid to mitigate risk to all personnel involved with the Works and including the general public.

For this requirement, the debrief noted that, "The [Challenger] did not (i) identify or comment on risks to safety or to local inhabitants, (ii) provide comments on contractor's and engineer's facilities, (iii) provide a statement of how they plan to coordinate with other employer representatives or contractors." As mentioned above, the Challenger chose to not specifically rebut this claim but to broadly say the information was indeed included in the method statement. A review of the method statement reveals that it mentioned 3 types of risks, (i) equipment related risks, (ii) formation related risks, and (iii) human related risk. For each, the Challenger described the risk and explained the mitigation efforts that would be undertaken. Contrary to what was stated in the debrief, the Challenger actually did comment on safety risks for the local inhabitants (human related risks) and risks to the contractor's and engineer's facilities (equipment related risks). However, the debrief did accurately observe that Challenger did not state how it intends to coordinate with other employer representatives or contractors.

Form Tech-2(g): Description of arrangements which the Bidder proposes to adopt to address the need for phased relocation of peoples and properties located within the limits of site and phased right of access to, and possession of the Site as described in the Contract and, therefore, the need to program the execution of the Works accordingly within the Time for Completion.

For this requirement, the debrief made the following remark about the method statement, "There was no statement about relocating people from or within the site should the need arise." The method statement did mention the relocation of project affected persons (PAPs) however there was no plan or methodology proposed that detailed exactly how the Challenger intended to

address the need to relocate the PAPs. The Challenger merely stated that, “A detailed Resettlement Action Plan shall be presented by the resettlement expert. However, it is important to note that by the time the architectural plans are approved then a good number PAP will have been compensated and relocated.” The IFB required a plan or methodology about the relocation of persons and properties to be included as part of the bid not to be provided at a later date. This is because the plan/methodology is one of the several documents that are assessed to determine to whom the contract should be awarded. As previously stated in this decision, the IFB does not permit bidders to submit documents that are required to form a part of the bid after the bid submission deadline. Since the Challenger did not provide a plan or methodology as required, the Challenger failed to meet Form Tech-2(g)’s requirements.

Form Tech-2(h): Description of arrangements which the Bidder proposes to adopt and has included in the Bid to ensure compliance with the environmental, social, gender, health and safety requirements called for in the Employer’s Requirements.

Form Tech-2(i): Description of arrangements which the Bidder proposes to adopt and has included in the Bid to ensure compliance with the gender requirements called for in the Employer’s Requirements, including Trafficking in Persons (“TIP”) prohibitions. It is understood that this type of expertise and experience may be outside of the normal experience of some Bidders, and thus call special attention to the importance of an adequately interdisciplinary offer and staffing plan.

For these requirements, the debrief mentioned, “The JV stated that they will comply with environmental and social considerations (social, gender health and safety, trafficking of persons or mitigation efforts), but did not provide details on how.” A perusal of the method statement confirms the conclusions reached in the debrief. The Challenger wrote that the environmental plan “shall be prepared by the environmental and social safeguard team and they shall ensure that all the worker’s adhere to it from the start to the end of the project.” Form Tech-2(h) mandated the Challenger to describe the plan in the bid, which the Challenger did not do. As for the plan to address the trafficking in persons concern, the Challenger stated, “The Contractor shall have to ensure that he comes with the designated personnel for the project. All the names of the persons to work on the project shall have to being submitted prior to being to the client to facility in acquiring of the worker permits.” The Challenger only says that the contractor will have to provide personnel to tackle this issue. The Challenger did not specify how many personnel; what the personnel’s’ qualifications are and what the specific process that will be instituted to mitigate the trafficking in person problem. That is some of the detail that should have been included but the Challenger elected to leave them out and that failure to explain any particular aspect of the plan is why the Challenger did not satisfy the requirements of Form Tech-2(i).

Form Tech-2(k): Description of arrangements which the Bidder proposes to adopt and has included in the Bid for testing and testing upon completion, as may be called for in the Employer’s Requirements.

Form Tech-2(l) : Description of arrangements which the Bidder proposes to adopt and has included in the Bid for handover, including completion of as-built drawings, and any additional matters.

For these requirements, the debrief commented, “There was no mention of a testing and commissioning plan, or of as-builts or handover of the project.” The debrief accurately pointed

out that the method statement did not describe a plan for the testing and commissioning of the pipeline. The exclusion of this plan constitutes a violation of Form Tech-2(k)'s requirement to include such information in the bid. In respect of Form Tech-2(l), the debrief erred by asserting that the Challenger did not refer to a plan to complete as-built drawings and to handover the project. In its bid, the Challenger wrote, "During the handover of the project, the Contractor shall take the Clients team round the project. He shall have some printouts describing the project scope, the activities and challenges which were executed to project completion. As built drawings and all operation and maintenance manuals shall be submitted at most 30 days after the provisional handover." It was therefore inaccurate for the debrief to declare that the Challenger did not refer to a handover plan in the bid.

Form Tech-2 (m): Description of arrangements which the Bidder proposes to and has included in the Bid for formal training and instruction of the Owner's staff, especially as it relates to the operation and maintenance of the works.

In regards to this requirement, the debrief observed, "The description of training was incomplete and did not mention training in relation to operations and maintenance." While the Challenger's method statement did generally refer to training and instruction, it did not particularly mention the operation and maintenance training. Although Form Tech-2(m) proclaimed that operation and maintenance should be especially described in the method statement, the Challenger did not make any specific reference to the operation and maintenance training. For this reason, the Challenger did not meet this requirement.

Turning to Form Tech-3 (Environmental, Social, Gender, Health & Safety Staffing Methodology), the Challenger was required to show that it had put in place an environmental, social, gender, health and safety staffing and methodology plan that is consistent with the relevant MCC and MCA-Liberia's policies as well as Liberian law. The Challenger therefore needed to develop a plan that that was specific to this project. After reviewing the Challenger's bid, the debrief informed the Challenger that "The information provided was too generic and incomplete to understand the proposed approach and organization to manage the environmental, social, health, safety and gender risks and impacts of the project. Horizon-CEC JV did not provide any information specifically related to the project to make an assessment of their understanding of the risks and impacts posed by the project."

This decision concurs with the assessment contained in the debrief that the Challenger's plan is generic, meaning that it is not tailored to the project. An examination of the Challenger's Form Tech-3 uncovers the fact that it does not refer to Liberia, the raw water pipeline, MCA-Liberia, MCC or the Compact. There is no indication in Form Tech-3 that it was developed for the pipeline rehabilitation project. In the Protest, the Challenger expressed that the information specific to this project is located in item 3.2.3 of Form Tech-2. ITB 7.4 of the IFB orders that bidders are responsible to read and understand all instructions, forms, terms, and specifications in the IFB and any failure to provide the required information will negatively affect a bid. In this case, Form Tech-3 required the environmental, social, gender, health and safety staffing and methodology plan to be included in Form Tech-3 not Form Tech-2. So, for the purposes of evaluating whether Form Tech-3's requirements were met, the only information that is relevant to conduct that assessment is the information the Challenger included in its Form Tech-3, which, as stated above, was too generic since it did not make any reference to Liberia, the raw water pipeline or MCC.

In Form Tech-4, the Challenger was expected to develop a program that included a detailed timeline for the execution of the all activities to be performed under the contract. The debrief noted, "The Program submitted did not include the proposed schedule for the ESHS and RAP requirements, or the commissioning of the pipeline." In the Protest, the Challenger reacted by saying, "please refer to the Form TECH-9: Resettlement Action Plan (RAP) Development and Implementation Methodology". It was previously stressed in this decision that ITB 7.4 of the IFB expects all bidders to comply with the requirements contained in the IFB's instructions, forms, terms, and specifications and any noncompliance would have a detrimental effect on a bid. Accordingly, the IFB required the detailed timeline for the implementation for all of the contract's activities to be included in Form Tech-4. There are no instructions in Form Tech-4 that says a bidder can refer to Form Tech-9 to find the schedules for the execution of the ESHS and RAP requirements as well as the commissioning of the pipeline. Due to the Challenger's failure to abide by the requirements included in Form Tech-4, this decision agrees with the debrief's conclusion that the Challenger did not satisfy all of the terms and conditions of Form Tech-4.

In accordance with Form Tech-5, the Challenger was instructed to illustrate a cash flow projection that indicated the quarterly projected expenditure throughout the length of the contract. Form Tech-5 demanded that the cash flow projection must address, "(a) The periodic payments by milestones for the completion of the mobilization and (b) The periodic payments based on measurement for the construction of the Works." The Challenger submitted its cash flow projection but the project did not make reference to payments by milestone or payments based on the measurement of works construction. This shortcoming was pointed out in the debrief to which the Challenger responded in the Protest by asserting that the cash flow projection is inclusive of the periodic milestone payments and the construction measurement payments and then added "should you need more details we will be happy to provide it."

Form Tech-5 required bidders to specifically address the periodic milestone payments and the construction measurement payments in the cash flow projection and the Challenger neglected to do so. The Challenger's retort that the cash flow projection is inclusive of those payments is unsatisfactory because that runs contrary to what Form Tech-5 demanded. Form Tech-5 did not instruct bidders to have those payments to be inclusive within the cash flow projection. The exact directive was to separately address those two payments. The Challenger then stated that it is available to provide additional details about those two payments but this also go against the terms of the IFB. It has been reiterated in this decision that, unless MCA-Liberia asks for clarification that is unrelated to a material deviation, it is impermissible for MCA-Liberia to consider any additional bid information that is submitted beyond the bid submission deadline. In this case, the Challenger's failure to comply with Form Tech-5 explicit directions to address the periodic milestone payments and the construction measurement payments in the cash flow projection constitutes a material violation of Form Tech-5.

Form Tech-6(d) directed bidders to provide information about a quality management system that describes the basis of the management system and how the system will operate. The Challenger did not include any information about a quality management system in its Form Tech-6. After this issue was raised in the debrief, this is how the Challenger responded in the Protest, "please refer to the method statement and consider the additional quality control standardization proven by ISO certificate for Horizon Construction." The method statement that the Challenger refers to is found in Form Tech-2. For the reasons stated in the Forms Tech-3 and Tech-4 discussions above, the only information that can be considered to determine if a bidder has fulfilled the requirement for a particular form is the information the bidder supplied pursuant to that form. In this case,

Form Tech-6 called for information about a quality management system so the Challenger was obligated to include the required information in Form Tech-6. The Challenger's failure to do so is deemed a material violation of Form Tech-6.

The instructions contained in Form Tech-7 says, "The Bidder shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in Part 2, Employer's Requirements. A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Bidder." Clause 2.5 of the Qualification Requirement section lists several pieces of key equipment (see below) and each of the key equipment should have its own Form Tech-7.

No.	Equipment Type and Characteristics	Minimum Number required
1	Trench Excavator	3
2	Lifting Rig/Derrick with chain pulley	5
3	Dewatering Pumps	2
4	Concrete Mixer	2
5	Pipe Fitting Jack	4
6	Mechanical Earth Compactor	3
7	Truck	5
8	Loader	1
9	Leak Testing Equipment	1
10	Carry-all	1
11	Steel Shoring Box	1
12	Steel Road Plate (10' x 10')	2

Of all the pieces of key equipment, the Challenger only provided Form Tech-7s for five of them (Trench Excavator, Concrete Mixer, Mechanical Earth Compactor, Truck and Loader). Even so, of those five, the Challenger only provided the minimum number of Form Tech-7s for three (Mechanical Earth Compactor, Truck and Loader). The Challenger was supposed to have three Form Tech-7s for the trench excavator but only had two and there was only one Form Tech-7 for the concrete mixer when the Challenger was required to produce a minimum of two. Consequently, the Challenger only had the right number of Form Tech-7s for three out of the twelve pieces of key equipment.

In response to this issue being raised in the debrief, the Challenger's response in the Protest ignored all of the other key equipment and dealt exclusively with the Leak Testing Equipment. The Challenger specifically provided reasons why the Leak Testing Equipment was not included in Form Tech-7. The reason the Challenger provided for not adding the Leak Testing Equipment

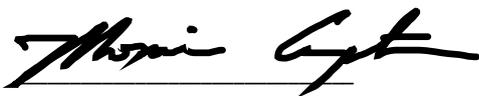
is immaterial because the IFB does not stipulate any exceptions to its unequivocal requirement that information related to the Leak Testing Equipment should be detailed in Form Tech-7. The requirements in the IFB are not suggestions; each bidder is compelled to abide by the terms of the IFB. The Challenger therefore materially deviated from the Form Tech-7 requirements by not filling out a Form Tech-7 for all of the key equipment listed in Clause 2.5 of the Qualification Requirement.

As for Form Tech-9 (Resettlement Action Plan (RAP) Development and Implementation Methodology), the debrief stated the information provided by the Challenger did not indicate that the Challenger has the required staff, experience and methodology to satisfactorily develop and implement the RAP for the project, to which the Challenger replied, "please refer to the Form TECH-6: Project Management Organization". For the reasons stated in the Forms Tech-3, Tech-4 and Tech-6 discussions above, the only information that can be considered to determine if a bidder has fulfilled the requirements of a particular form is the information the bidder supplied pursuant to that form. In this case, the Challenger's Form Tech-9 was deemed to be deficient but the Challenger cannot refer to Form Tech-6 in an attempt to address the deficiencies in form Tech 9. The Challenger was obligated to include into Form Tech-9 any information it felt was relevant to Form Tech-9. Consequently, Form Tech-9 remains materially deficient.

This decision has already concluded that due to the Challenger not fulfilling five of the experience requirements, the Challenger did not have the necessary experience required by MCA-Liberia to undertake the rehabilitation of the raw water pipeline. The Challenger's lack of experience is compounded by the Challenger's failure to satisfy over eight of the IFB's technical responsiveness categories. It is due to these failures, which have been thoroughly explained above, that this decision agrees with the conclusion in the debrief that the Challenger did not meet the evaluation criteria for substantive or technical responsiveness.

In accordance with ITB 30.1, the bid review process entails four types of review: i. Administrative Review; ii. Responsiveness Determination; iii. Qualification Review; and iv. Price Review. In order to reach steps three and four of the review process (Qualification Review and Price Review), it is necessary for a bid to have survived the scrutiny of steps one and two (Administrative Review and Responsiveness Determination). In the Challenger's case, and as explained above, its bid failed both the Administrative Review and the Responsiveness Determination, so that precluded any further review from taking place. So, the issue of the Qualification and Price Review, which was mentioned in the Protest, is not germane to this case.

In the Protest, the Challenger claimed that the decision to not award the contract to its Joint Venture was arbitrary and characterized by an abuse of discretion. Rule 1.3 of the BCS requires the Challenger to prove its claim by providing clear and convincing evidence. For the reasons stated herein, the Challenger has failed to meet its burden of proof that any procurement rule has been violated. Hence, the Protest is denied. If the Challenger is dissatisfied with this decision, he may seek a review by duly filing an appeal before 5:30 pm (Greenwich Mean Time) on December 14, 2018.



Monie R. Captan
MCA-Liberia CEO
Level 1 Authority