



**ACTION PLAN
FOR
PREVENTING, DETECTING AND
REMEDIATING FRAUD AND
CORRUPTION IN
MCA-NEPAL COMPACT
IMPLEMENTATION**

**MILLENNIUM CHALLENGE ACCOUNT NEPAL
DEVELOPMENT BOARD
MCA-NEPAL**

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ACTION PLAN FOR PREVENTION, DETECTION AND REMEDIATION OF FRAUD AND CORRUPTION

1. INTRODUCTION

The United States of America, acting through Millennium Challenge Corporation ("MCC") and the Government of Nepal ("the Government") entered into a Millennium Challenge Compact for Millennium Challenge Account assistance to help facilitate poverty reduction through economic growth in Nepal (the 'Compact'). The compact will have a duration of 5 years following Entry into Force (EIF) which was previously expected to be mid-2020. However, due to delay in parliamentary ratification of the Compact in Nepal, and challenges posed by COVID-19 pandemic, the EIF date is expected to be now in 2021. The compact program includes investment from MCC of USD 500 million and an additional USD 130 million from the Government, for a total of USD630 million.

The compact includes two projects (i) construction of about 314 kilometers of 400KV electricity transmission lines, three substations and technical assistance for the power sector regulators (Electricity Transmission Project - ETP); and (ii) Technical assistance to improve the road maintenance regime and road maintenance works up to 300 kilometers on the East West Mahendra Highway (Road Maintenance Project-RMP).

2. PURPOSE

The purpose of the Anti-Fraud & Corruption Action Plan (AFC AP) is to establish an appropriate framework that defines how staff and management of MCA-Nepal, working closely with its Implementing Entities/Project Partners, will ensure the effective prevention, detection and remediation of fraud and corruption of any description within MCA-Nepal (also known as the Accountable Entity, or AE) during the implementation of the project.

3. SCOPE

The MCA-Nepal's AFC AP is meant to address all stakeholders involved in the implementation of the Compact and includes the MCA-Nepal Board and staff, Implementing Entities/Project Partners, as well as MCA-Nepal Contractors/Consultants for works, goods and services.

4. MCC POLICIES TARGETED AT FRAUD AND CORRUPTION

MCC has developed various Policies and Procedures targeted at addressing instances of fraud and corruption during implementation of Compact Activities. One such policy is the ***Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC's Operations*** ("MCC AFC Policy")

In March 2009, MCC developed a ***Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC's operations*** that requires all MCAs to complete a

Compact Specific Anti-Fraud and Corruption Risk Assessment and to develop and implement a related Action Plan. It is widely agreed that corruption retards economic growth by:

- Increasing costs;
- Lowering productivity;
- Discouraging investment;
- Reducing confidence in public institutions;
- Limiting the development of small and medium sized enterprises;
- Weakening systems of public financial management;
- Undermining investments in health and education, and
- Misappropriating the tax payer's money for illegal gains,

Corruption also increases poverty by:

- Slowing economic growth
- Skewing government expenditure in favour of the rich and well-connected;
- Depriving the poor and vulnerable sections of the social safeguard nets,
- Concentrating public investment in unproductive projects; and
- Promoting a more regressing tax system.

MCC's AFC Policy recognizes six types of fraud and corruption as follows:

- i. Coercion: 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.
- ii. Collusion: A tacit or explicit agreement between two or more parties to engage in a coercive, corrupt, fraudulent, obstructive or prohibited practice, including any such agreement designed to fix, stabilize, or manipulate prices or to otherwise deprive the Accountable Entity of the benefits of free and open competition.
- iii. Corruption: The offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of a public official, Accountable Entity staff, MCC staff, consultants, or employees of other entities engaged in work supported, in whole or in part, with MCC funding, including such work involving taking or reviewing selection decisions, otherwise advancing the selection process or contract execution, or the making of any payment to any third party in connection with or in furtherance of a contract.
- iv. Fraud: 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.
- v. Obstruction of investigation into allegations of fraudulent or corrupt practice: Any act taken in connection with the implementation of any contract supported, in whole or in part, with MCC funding: (a) that results in the deliberate destroying, falsifying, altering

- or concealing of evidence or making false statement(s) to investigators or any official in order to impede an investigation into allegations of a coercive, collusive, corrupt, fraudulent, or prohibited practice; or (b) that threatens, harasses, or intimidates any party to prevent him or her from either disclosing his or her knowledge of matters relevant to an investigation or from pursuing the investigation; or (c) that is intended to impede the conduct of an inspection and/or the exercise of audit rights of MCC and/or the Office of the Inspector General (OIG) responsible for MCC provided under a compact, threshold program agreement, or related agreements.
- vi. **Prohibited practice:** Any action that violates Section E (Compliance with Anti-Corruption, Anti-Money Laundering, Terrorist Financing, and Trafficking in Persons Statutes and Other Restrictions) of the Annex of General Provisions that will be made a part of MCC-funded contracts and may be found as part of the Standard Bidding Document templates (there referred to as “Annex A: Additional Provisions”) on the MCC website at <http://www.mcc.gov>.

In addition, potential and actual Conflicts of Interest should be openly declared and duly managed in accordance with the MCA-Nepal Conflict of Interest Policy under MCA-Nepal HR Manual and MCC’s Program Procurement Guidelines as they can open the door to perceptions of, or actual, fraud and corruption.

5. ANTI-FRAUD & CORRUPTION ACTION PLAN TO COMBAT FRAUD AND CORRUPTION

- 5.1 In Compliance with MCC policy directives, MCA-Nepal developed this AFC AP to address the highest priority risks listed in the Anti-Fraud and Corruption Risk Assessment Matrix.
- 5.2 The AFC AP describes both the process and results of the AFC Risk Assessment and provides a detailed pathway for implementing additional measures to mitigate risks identified during the assessment.
- 5.3 The AFC AP complements an array of internal policies adopted by MCA-Nepal, in conjunction with MCC, to promote good governance, strengthen internal controls and deter fraudulent and corrupt practices in MCA-Nepal operations.

6. MCA-NEPAL POLICIES AND ACTIVITIES TARGETING FRAUD AND CORRUPTION

Apart from the Compact and the Programme Implementation Agreement (“PIA”) governing the MCA- Nepal operations, more detailed subject related policies and activities were developed and/or are in place to govern the organization. Some these policies and activities are listed and described below:

- **Fiscal Accountability Plan:** - The objective of the Fiscal Accountability Plan (FAP) is to define and document key processes and procedures, including internal controls, related to operations, payments and contract(s) directly procured and managed by the Millennium Challenge Account Nepal (MCA-Nepal). It applies to

the all grant funds provided by MCC and GON for implementation of activities of the Nepal Compact.

MCA-Nepal regards the FAP as an important management tool and the leadership team has promoted widespread understanding, knowledge and adherence to the FAP for all staff. Presentation on FAP is given to all MCA-Nepal staff.

The FAP is reviewed semi-annually, and updated, if necessary, to incorporate changes to existing MCC and or GoN policies or procedures and new policies or procedures that have been implemented since the last update of the FAP.

- **MCA-Nepal Procurement Operations Manual:** - MCA-Nepal released the MCA-Nepal Procurement Operations Manual (POM) in July 2019 to all MCA-Nepal staff with the training in September 2019. The POM was developed by Procurement Agent, reviewed by MCA-Nepal Procurement Manager, approved by MCC Procurement Director and MCA-Nepal Executive Director. The MCA-Nepal Procurement Operations Manual (POM) establishes guidance and procedures for procuring all Goods, Works, Non-Consultant and Consultant Services for MCA-Nepal in accordance with compact requirements, the Program Implementation Agreement, as well as MCC Program Procurement Guidelines (PPG) and MCC Guidance Papers, within the framework of the following MCC Procurement Principles:
 - Open, fair and competitive procedures used in a transparent manner to solicit, award and administer contracts to procure Goods, Works and Services.
 - Solicitations for Goods, Works and Services shall be based upon a clear and accurate description of Goods, Works and Services to be acquired.
 - Contracts shall be awarded only to responsible suppliers, contractors and consultants that have the capability and willingness to perform the contracts in accordance with the terms and conditions of the applicable contracts and on a cost effective and timely basis.
 - Only a commercially reasonable price (as determined, for example, by a comparison of price quotations and market prices) shall be paid to procure goods, works and non-consulting services.

Section 17 of POM describes the Code of Conduct/ Fraud and Corruption. MCA-Nepal adopts a Code of Conduct for Procurement Personnel, to set out values and clear guidance on expected behavior. Clear and known rules of behavior are applicable to all, to foster mutual respect and increase public confidence in procurement personnel and the procurement process. All persons in the procurement process have to be vigilant for possible cases of fraud or corrupt practices and should they appear to occur report them to the MCC Anti-Fraud and Corruption (AFC) hotline, hotline@mcc.gov. In accordance with MCC's Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations, also known as MCC's AFC Policy, the reporting of apparent fraud is the

responsibility of all MCA-Entity staff and not just those persons responsible for countermeasures.

- **Standard Bidding Documents (SBDs):** - MCC has developed SBDs that are required to be used by all MCA Entities in procuring the goods, works, and services (consulting and non-consulting) needed to implement their Compacts. These SBDs are the procurement standards to be used by all MCA Entities. The latest MCC-approved SBDs are available on MCC's website. Bidders are informed of the Anti-Fraud and Corruption policy of MCC through "Instruction to Bidders". Any applicants, bidders, suppliers, contractors, subcontractors, consultants, and sub-consultants under any MCC-funded contracts, are required to 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.

The bidders have been instructed through the SBDs that 'The Employer will reject a Bid if it determines that the Bidder recommended for award has, directly or through an agent, engaged in coercion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or prohibited practices in competing for the Contract and MCA-Nepal has the right to sanction a Bidder or Contractor, including declaring the Bidder or Contractor ineligible, either indefinitely or for a stated period of time, to be awarded any MCC-funded contract'.

- **Contract Administration and Management Manual (Camm):** - MCA-Nepal has adopted the Contract Administration and Management Manual (Camm) in February, 2020. This Camm as developed by the Procurement Agent of MCA-Nepal, reviewed by MCA-Nepal Procurement Manager and approved by MCC Procurement Director & MCA-Nepal Executive Director identifies the activities to be performed or initiated by each responsible person in MCA-Nepal in tracking, amending, and closing out the contracts.

The purpose of the Camm is to:

- Ensure that both parties of the contract (MCA-Nepal and the Supplier/Contractor/Service Provider) fully meet their respective obligations as efficiently and effectively as possible in order to meet the objectives required within the contract.
- Ensure administrative tasks relating to timely amendments, observing deadlines and the preparation of follow-up status reports, are carried out, in congruence to contract management activities.
- Ensure that all relevant contract implementation phases, stages and milestones, as well as all decisions that impact the contract implementation are properly documented.

The Camm provides guidance and procedures for contract administration of goods, works, non-consultant, and consultant services procured by the MCA-Nepal in accordance with Compact requirements, the Program Implementation Agreement as well as MCC Program Procurement Guidelines (PPG) and MCC

Guidance Papers. CAMM is to be used in conjunction with the Management Information System (MIS) and the Procurement Operations Manual (POM).

Since the CAMM defines post-contract signing stages, all pre-contract signing activities are defined in the Procurement Operations Manual (POM). The PM shall act as the Contract Administrator, supported by the Procurement Agent (PA) for all contracts.

- **MCA – Nepal Bid Challenge System:** - The Compact requires the Government (including any designee) to ensure that it procures all goods, works and services to implement the compact program in accordance with the MCC Program Procurement Guidelines (“PPG”). The PPG further requires that MCA-Nepal establish and publish a bid challenge system that provides Bidders on MCA-Nepal procurements with the ability to challenge and seek review of MCA-Nepal procurement actions and decisions. MCA-Nepal adopted the Bid Challenge System (BCS) as approved by MCC on 21 September 2018 and revised on 29 April 2019 and 20 November 2019. The MCA-Nepal’s Bid Challenge System http://mcanp.org/wp-content/uploads/2019/12/MCA-Nepal-BCS-Adjustment-for-Shopping-10-December-2019-Final_Clear-1.pdf provides bidders or potential bidders who believe they have been affected by a violation of the procurement principles or procedures by the MCA-Nepal, the ability to seek review of the procurement process.

In brief, MCA-Nepal has established the rules and procedures set forth in the Bid Challenge System to govern the review of all challenged MCA-Nepal procurement actions and decisions, and which will be incorporated in all solicitation documents distributed to Potential Bidders. The purpose the BCS is to provide Bidders who believe that they have been harmed by an MCA-Nepal Procurement Action or decision and have the ability to seek a prompt, impartial and cost-effective review of the action or decision in order to promote and maintain the integrity and transparency of the MCA-Nepal compact procurement process. The BCS is not intended to examine or review the implementation or conduct of any contract once awarded. To that end, BCS is based on the following principles:

- MCA-Nepal must provide clear explanations of why Bidders are disqualified or not selected.
- A procedurally simple and expeditious process is essential to address concerns about the application of procurement rules and procedures to specific procurement actions.
- While a bid challenge remains outstanding, the related procurement proceedings should be suspended to prevent, in normal circumstances, the signing of a contract.
- A challenge should be initially reviewed and a decision issued by the awarding authority (in this case, MCA-Nepal) with the opportunity for an Appeal to a knowledgeable and impartial third-party.

- **MCA – Nepal Conflict of Interest Policy:-** MCA-Nepal has strict policy with regard to Conflict of Interests and the policy has been derived from MCA-Nepal HR Manual (for employees of MCA-Nepal), MCC Program Procurement Guidelines (for Consultants, Contractors and Technical Evaluation Panel members while dealing with MCA-Nepal and with its employees), and Confidentiality and Conflict of Interest Agreements with members of Board of Directors. The Code of Business Ethics and Standards of Conduct (the “Code”) in ANNEX I of MCA-Nepal HR Manual is established to guide the behaviors of management and staff. It was developed to primarily guide MCA- Nepal staff members and implementing entities/project partners and other agents to be aware of the policies regarding ethical business practices, standards of conduct, and avoidance of conflicts of interest and are therefore able to conduct themselves accordingly. MCA-Nepal Staff members must disclose any such conflicts of interests to MCA-Nepal Human Resource/Legal Department.

- **MCA-Nepal HR Manual: -** The MCA-Nepal HR Manual contains conditions of employment that are coherent with MCA-Nepal’s rules, regulations and procedures including MCA-Nepal employment bylaws and other documents prescribed by MCA-Nepal. MCA-Nepal operates under special authorities and unless otherwise stated, its operations and actions are exempted from the application of Civil Service Act 1993 and Labor Act 2017. MCA-Nepal HR policy is also compliant to the International Finance Corporation’s Standard 2: Labor and Working Conditions (IFC PS2). This HR manual is developed as an implementation plan document in line with MCA-Nepal internal governance bylaws section 3.4 (B). In case of any conflicts of this HR Manual with the MCA- Nepal formation order, employee bylaws, or internal governance bylaws, the latter shall prevail. The MCA-Nepal shall at all times act with fairness and impartiality and shall follow a consistent and proper process in their relations with staff members. It shall not differentiate nor discriminate between individuals or groups within the staff and shall encourage diversity in staffing. Furthermore, the MCA-Nepal shall:
 - Establish and maintain appropriate safeguards to respect the personal privacy of staff members and protect the confidentiality of personal information about them.
 - Make all reasonable efforts to ensure appropriate protection and safety for staff members in the performance of their duties;
 - Provide staff members security in their employment consistent with the terms of their appointments, their satisfactory performance and conduct and the effective administration of MCA-Nepal;
 - Develop and maintain compensation and personnel management policies and practices designed to help create an environment conducive to the highest standards of performance.

- **Audit Plan: -** MCA-Nepal is finalizing its Audit Plan to detail out the scope of audits. According to MCA-Nepal formation order 2074, the Office of Auditor General of Nepal (OAG) will audit the expenditure of total compact funds. District Treasury Controller Office (DTCO) will perform internal audit. Government of Nepal (GoN) and Millennium Challenge Corporation (MCC) can audit or appoint independent

auditor to audit books of accounts anytime. In addition, MCA-Nepal needs to engage a third-party independent auditor to audit total compact funds.

Audit by The Office of Auditor General of Nepal (OAG): OAG conducts external audit of MCA-Nepal once a year covering previous GoN Fiscal Year.

District Treasury Controller Office (DTCO): DTCO conducts internal audit of MCA-Nepal as often as once every trimester.

Independent third party auditor: MCA-Nepal has to engage an independent third party auditor to audit all aspects of MCA-Nepal's financial operations of all the resources handled by MCA-Nepal. The initial period of audit will be from July 2016 to March 2021. Thereafter, semi-annually until Compact closure.

In addition to above, GoN, Office of Inspector General of the United States, and MCC may conduct additional audit on an ad-hoc basis.

- **Independent Procurement and Fiscal Agents:** - MCA-Nepal has hired independent consultants to assist in procurement as well as financial management aspect:

Procurement Agents (PA):

MCA-Nepal has engaged a Procurement Agent (PA) to carry out and certify specified procurement activities in furtherance of the Compact. The Procurement Agent reports to the MCA-Nepal Procurement Manager and advises and supports the entire MCA-Nepal. Cardno Emerging Markets USA, Ltd was contracted as the Procurement Agent for MCA-Nepal on 15-December-2018. The PA follows MCC's Program Procurement Guidelines (PPG) and its related Guidance documents; utilize MCC's Standard Bidding Documents as templates for developing specific solicitation documents; and adopt MCC's template on Bid Challenge System (BCS), MCC's Procurement Operations Manual (POM), and Contract Administration and Management Manual (CAMP) for their use in MCA-Nepal procurements.

The Procurement Agent performs the following functions:

- Effectively develop, plan, manage and administer the procurement process for selecting the suppliers, contractors and consultants for a wide variety of goods, works and services as complying with all MCC requirements related to procurement processes as provided in the MCC PPG and other guiding documents.
- Conduct procurements and conclude procurement contracts in compliance with MCC PPG and Guidance Documents which include the rules and procedures governing the selection of suppliers, contractors and consultants.
- Execute the duties and responsibilities of the Procurement Agent as set forth in the Fiscal Accountability Plan ("FAP") for MCA-Nepal including any

interim FAP and also comply with the MCC Cost Principles for Government Affiliates.

- Analyze market conditions and organize market outreach events to promote the upcoming procurement opportunities and promote competition and to optimize the success of the procurement activity.
- Plan, schedule, and prioritize procurement activities, including plans for the efficient and effective procurement of goods, works, and services for the day-to-day operations of MCA-Nepal
- Take measures to prevent, detect and remediate Fraud and Corruption in the conduct of procurements in accordance with the principles set out in MCC Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations found on the MCC website at <https://www.mcc.gov/resources/doc/policy-fraud-and-corruption>

Fiscal Agents (FA): The Fiscal Agent team acts on behalf of MCA-Nepal to provide a broad range of financial management services while implementing/executing projects. In this capacity, FA diligently oversees, discharges, and perform services necessary to ensure that all financial management activities conducted comply with guidelines set forth by MCC and MCA-Nepal as well as all signed agreements related to the Compact.

- **MCA-Nepal Performance Management System:** - Despite the time-bound nature of employment, it is important for MCA-Nepal to examine performance of staff and have the capacity to discern and recognize different levels of performance. Beyond movement in pay to sustain market position, success in pursuing MCA-Nepal goals will depend on good performance of individual staff. In addition, management shall make sure that the performance management is carried out in a way that is non-discriminatory regarding gender, disabilities, health status and/or age and assures equal opportunities for all staff. The performance management process at MCA-Nepal includes two complementary components:
 - i. Employee check-ins that ensure strong support and supervision of work and
 - ii. Online ‘community’ model that ensures rewards based on performance ratings.
- **MCC PPG :-** Here in this section we describe how MCC PPG applies to AFC policy. MCC requires that all beneficiaries of MCC funding, including the MCA Entity and any bidders, suppliers, contractors, and subcontractors 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 is applicable to all procurements involving MCC funding and can be found on the MCC website. In pursuance of this policy, the following provisions shall apply:

P1.A.1.16 (a) For the purposes of these provisions, the terms “coercion”, “collusion”, “corruption”, “fraud”, “obstruction of investigation into allegations of fraud or corruption” and “prohibited practice” have the meaning set forth in MCC’s

Policy on Preventing, Detecting, and Remediating Fraud and Corruption in MCC Operations.

P1.A.1.16 (b) The MCA Entity will reject a bid (and MCC will deny approval of a Proposed Contract award) if it determines that the bidder recommended for award has, directly or through an agent, engaged in coercion, collusion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or prohibited practices in competing for the contract in question.

P1.A.1.16 (c) MCC and the MCA Entity have the right to sanction a bidder, supplier, contractor, or subcontractor, including declaring such party ineligible, either indefinitely or for a stated period of time, to be awarded an MCC-funded contract if at any time either the MCA Entity or MCC determines that the bidder, supplier, contractor, or subcontractor has, directly or through an agent, engaged in coercion, collusion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or prohibited practices in competing for, or in executing, such a contract.

P1.A.1.16 (d) MCC and the MCA Entity have the right to require that a provision be included in solicitation documents and in MCC-funded contracts requiring a bidder, supplier, contractor, or subcontractor to permit the MCA Entity, MCC, or any designee of MCC, to inspect its accounts, records, and other documents relating to the submission of a bid or performance of an MCC-funded contract and to have them audited by auditors appointed by MCC or the MCA Entity with the approval of MCC.

- **MCC Cost Principles for Government Affiliates:** - MCA-Nepal is also required to follow MCC Cost Principles for Government Affiliates. They are MCC guidelines that set forth the principles that govern accountable entity's (MCA-Nepal's) expenses (from both MCC and Government funds) to insure such expenses incur in furtherance of the Compact.

This policy also intends for use in: (1) preparation of budget estimates; (2) request of budgets from MCC; (3) procurement and contract administration and (4) during the evaluation of Program expenditures through audits, reviews, and inspections.

MCA-Nepal has promoted widespread understanding, knowledge and adherence to MCC Cost Principles for Government Affiliates for all staff. Presentation on this guideline has been given to all MCA-Nepal staff.

- **MCC M&E Policy:-** The MCC M&E Policy sets forth the requirements for monitoring and evaluation of compact and threshold programs and the approaches for gathering, disseminating, and using M&E data. This policy primarily guides internal staff decisions to utilize M&E effectively throughout the entire program life cycle in order to improve outcomes. The Policy is also designed to help MCC and its partners estimate, track and evaluate the impacts of its programs using technically rigorous, systematic, and transparent methods.

It is predicated on the principles of accountability, transparency, and learning:

- a. Accountability refers to the obligation to report on and accept responsibility for all funded activities and attributable outcomes.
- b. Transparency refers to MCC's obligation to disclose these findings in a public and transparent manner and share the information generated in the implementation and evaluation of its compacts and threshold programs.
- c. Learning refers to MCC's commitment to improving the understanding of the causal relationships and effects of its interventions, particularly in terms of poverty reduction and growth, and to facilitating the integration of M&E findings in the design, implementation, analysis, and measurement of current and future interventions.

7. MCA-NEPAL METHODOLOGY FOR AFC AP

The methodology used in developing the AFC Action Plan towards effective prevention, detection and remediation of fraud and corruption of any description within MCA-Nepal involved the following:

- i. Two representatives including Senior Director for Anti-Fraud and Corruption (AFC) from Office of the General Counsel, MCC provided AFC training in Nepal to MCA-Nepal staff and stakeholder representatives;
- ii. The AFC training in Nepal was jointly opened by US Ambassador to Nepal, and by Joint Secretary, International Economic Cooperation Coordination Division, Ministry of Finance, Government of Nepal.
- iii. Establishment of MCA-Nepal Core Team and an MCA-Nepal/MCC Joint Working Group on Fraud and Corruption;
- iv. Kick Off meeting (through video conference) to discuss the draft AFC Risk Assessment Matrix;
- v. Development of MCA-Nepal AFC AP based on the AFC Risk Assessment Matrix.
- vi. MCC field study to MCA-Nepal, meeting with staff, key contractors, Board members, and other stakeholders is scheduled for the future, due to the COVID-19 pandemic situation.

7.1 Organization –wide Anti-Fraud and Corruption Training

A three-day training intervention on fraud and corruption took place in January 2020 with the objective to create awareness amongst all staff members and stakeholders regardless of status and designation on the importance of combating fraud and corruption in MCA-Nepal operations and Compact activities. The trainers were from MCC's AFC team. The training covered fraud and corruption risks related to Compact Start-up (Project design/Beneficiary selection), Compact Implementation (Procurement, Contract Management, and Financial/Administrative Management), Compact Closeout and general information, the Nepalese Laws on Anti-Fraud and Corruption. The participants were presented with case studies to expose them to real life occurrences of fraud and corruption related to their specific daily tasks. They also discussed measures which might be taken to reduce the risk and occurrence of fraud and corruption, and the standard mitigants that have been developed by MCC. The training used the previous corruption cases reported

in Nepalese media regarding the status of fraud and corruption in Nepal as a case study and enjoined on the measures that MCA-Nepal should take.

7.2 Joint MCC/MCA-Nepal Working Group on Anti-Fraud and Corruption

In 3rd March 2020 a joint MCC and MCA-Nepal working group was formed to develop and review the Anti-Fraud and Corruption risk assessment matrix. The working group consisted of a core team that worked with MCC and MCA technical directors and staff as necessary.

The Core Team:- MCA-Nepal staff (including Chief Legal Officer, Chief Finance Officer, Manager – Procurement, Manager – Monitoring and Evaluation, and Executive Assistant to Deputy Executive Director(Management) as Member Secretary), Rick Messick (Senior AFC Advisor, MCC), Chris Williams (Senior Director on AFC, MCC) and Sanjay Poudyal, Deputy Country Director, MCC as Point of Contact from Resident Country Mission, MCC

7.3 Kick off activities and Development of AFC Risk Assessment Matrix

During the period from 3rd March 2020 till 20th March 2020 as the initial stage in the AFC risk assessment process, the Joint Working Group conducted several “kick-off” sessions on fraud and corruption via teleconference. It was agreed that MCA-Nepal would draft sector-based AFC risk matrices with close involvement of the MCA-Nepal technical staff.

7.4 Development of Fraud and Corruption Risk Assessment Matrix

The sector specific risk matrixes were developed by MCA-Nepal Core team in consultation with MCA- Nepal sector Directors¹ (Project Managers), after an internal discussion on methodology and development of a template for the AFC risk assessment matrix. The draft matrix identified possible activities of fraud and corruption that may occur in the MCA-Nepal Compact per sector, showing the impact and likelihood of the risks on the Compact. It also proposed the appropriate mitigation measures to prevent or limit the impact and likelihood of these risks. MCC teams independently developed their own version of the AFC risk assessment matrix to encourage creative and wide-ranging consideration of the context relevant to the specific Compact program as well as their professional experience. The consolidated draft matrices were shared between MCA-Nepal and MCC, and then reviewed by the Joint Working Group with the relevant MCA and MCC staff in subsequent sessions via teleconference. The matrix was then updated to reflect the discussions and input from representatives of MCC’s AFC Team. MCA-Nepal team focused on identifying risks which they saw unfolding during the Compact Implementation, using their experience in the field to suggest mitigation measures.

8. FIELD VISIT TO MCA-NEPAL

This task is pending due to the COVID-19 pandemic situation and the travel restrictions imposed by Government of Nepal and by the Government of the United States. This shall be completed after the situation improves and when it is conducive to travel for MCC teams.

¹ The phrases “Sector Director”, “Sector Manager” and “Project Manager” have been used interchangeably.

8.1 Individual Interviews with MCA-Nepal Staff

This task is pending due to COVID-19 pandemic situation and the travel restrictions imposed by Government of Nepal and by the Government of the United States. This shall be completed after the situation improves and when it is conducive to travel for MCC teams.

8.2 Individual interviews with MCA-Nepal Contractors/Consultants

This task is pending due to COVID-19 pandemic situation and the travel restrictions imposed by Government of Nepal and by the Government of the United States. This shall be completed after the situation improves and when it is conducive to travel for MCC teams.

8.3 Interview with other MCA-Nepal Stakeholders

This task is pending due to COVID-19 pandemic situation and the travel restrictions imposed by Government of Nepal and by the Government of the United States. This shall be completed after the situation improves and when it is conducive to travel for MCC teams.

8.4 Field Visit to Project Site

This task is pending due to COVID-19 pandemic situation and the travel restrictions imposed by Government of Nepal and by the Government of the United States. This shall be completed after the situation improves and when it is conducive to travel for MCC teams.

8.5 Conclusions and Outcomes of Field Study

This task is pending due to COVID-19 pandemic situation and the travel restrictions imposed by Government of Nepal and by the Government of the United States. This shall be completed after the situation improves and when it is conducive to travel for MCC teams.

9. MCA-NEPAL AFC ACTION PLAN

After careful deliberation of the AFC risk assessment matrix, the MCC/MCA-Nepal Joint AFC Working Group agreed that fraud and corruption risks in most areas of the MCA-Nepal Compact implementation are properly mitigated. The Working Group agreed that the MCA-Nepal AFC Action Plan would focus on the risks rated with a high likelihood of occurrence and/or high impact on Compact implementation. Such risks are concentrated in Procurement and Infrastructure Works Construction, and are detailed in the tables below.

9.1 Corruption and Collusion between bidders and MCA-Nepal Staff

Sector Risk	<ul style="list-style-type: none">• Procurement
Description	<ul style="list-style-type: none">• Corruption and collusion between Bidders and MCA-Nepal Staff resulting in leaking of confidential information relating to the procurement in question.

Factors in Mitigation	<ul style="list-style-type: none"> • Code of Conduct and implementation of Conflict of Interest Policy mandating disclosure of conflicts of interest by all MCA-Nepal staff. • Staff are also required to sign up to confidentiality agreements. Requirement that all procurement sensitive information, including the Procurement Plan be kept confidential and restricting the number of staff with access to the same (strictly need to know basis). • Strict adherence to the provisions of the Procurement Operations Manual and MCC Program Procurement Guidelines. • Ability of MCC AFC Team and USAID Office of Inspector General's Office of Investigations (OIG/I) to analyze procurements for signs of corruption through leaked confidential information.
Timing	<ul style="list-style-type: none"> • With every procurement process.
Additional Cost (if any)	<ul style="list-style-type: none"> • Negligible.
Staff Member/Office Responsible	<ul style="list-style-type: none"> • Procurement Manager.

9.2 Corruption and Collusion of bidders and staff –Undisclosed Conflict of Interest

Sector Risk	<ul style="list-style-type: none"> • Procurement
Description	<ul style="list-style-type: none"> • Undisclosed conflict of interest and collusion with Bidders by MCA-Nepal staff resulting in Terms of Reference (ToRs) for bids devised to favour a particular Bidder/Consultant.
Factors in Mitigation	<ul style="list-style-type: none"> • Code of Conduct and Conflict of Interest Policy mandating all staff to declare interest. • Review of ToRs by professional MCC and MCA technical and procurement staff which should detect over-specification or bias towards a prospective bidder. • Ability of potential bidders to submit questions about ToRs that seem to target specific individuals or companies • Enforcement of Disciplinary Code against errant staff including termination of Contract of employment, Contractor Past Performance Report System (CPPRS) in respect of Consultants or Contractors.
Timing	<ul style="list-style-type: none"> • With every Procurement Process
Additional Cost (if any)	<ul style="list-style-type: none"> • Negligible

Staff Member/Office Responsible	<ul style="list-style-type: none"> • Procurement Manager
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9.3 Collusion Among Bidders

Sector Risk	<ul style="list-style-type: none"> • Procurement
Description	<ul style="list-style-type: none"> • Collusion among Bidders on pricing of Bids and bids submitted in a way that may eliminate competition.
Factors in Mitigation	<ul style="list-style-type: none"> • Ensuring extensive advertisement/outreach to potential Bidders to enhance competition. • Cross-referencing checks on Bidders and key personnel. • Conducting price reasonableness analysis. • Checking on patterns that may raise red flags, including with assistance from the MCC AFC Team and OIG. • Careful scrutiny of successful bidders who use competitors as sub-contractors. • Where a procurement is done in lots i.e. two lots, Bidders can bid on entire contract i.e. both lots or on an individual lot i.e. on either lot thereby mitigating the risk of collusion.
Timing	<ul style="list-style-type: none"> • With every bid evaluation and procurement process
Additional Cost (if any)	<ul style="list-style-type: none"> • Negligible
Staff Member/Office Responsible	<ul style="list-style-type: none"> • Procurement Manager

9.4 Corruption of Bid Evaluation Panel Members

Sector Risk	<ul style="list-style-type: none"> • Procurement
Description	<ul style="list-style-type: none"> • Panel members could be bribed in order that they may pick a preferred bidder or they may have an undisclosed conflict of interest that impacts their evaluation.
Factors in Mitigation	<ul style="list-style-type: none"> • Clear definition of evaluation criteria prior to evaluation. • Panel members will be required to have appropriate skillset to review bids and will be trained on their responsibilities. • Panel members to document and justify scores i.e. outliers. • List of Panel members kept confidential.

	<ul style="list-style-type: none"> Panel members are required to disclose any conflicts of interest with bidders, and the MCA Procurement Agent will review Panel member CVs for connections with bidders. A mix of different panel members selected for each procurement. Independent Panel members i.e. internationally recognized experts used on panels especially for large procurements to encourage objectivity. Managers and individuals reporting to them will not be members of the same panel, to avoid undue influence. MCC exercising observer rights. MCC to assure transparency in the process.
Timing	<ul style="list-style-type: none"> With every bid evaluation
Additional Cost (if any)	<ul style="list-style-type: none"> Moderate
Staff Member/Office Responsible	<ul style="list-style-type: none"> Procurement Manager

9.5 Collusion: Acceptance of Sub Standard Infrastructure

Sector Risk	<ul style="list-style-type: none"> Infrastructure (Both ETP and RMP infrastructure)
Description	<ul style="list-style-type: none"> Collusion between contractors and supervising engineer to accept substandard construction workmanship, shortcuts and falsely certifying completion of works or Contractor does not perform to specification and hides this fact.
Factors in Mitigation	<ul style="list-style-type: none"> MCC Independent Engineers' oversight and supervision. Regular random site visits by MCA-Nepal Infrastructure, other Project staff and Implementing Entity (IE)/Project Partner staff. Joint reviews of reports and deliverables by IE Staff. MCA/IE/MCC inspections at selected major construction milestones. Review, authorization, and approval of invoices by multiple individuals in accordance with Fiscal Accountability Plan (FAP). Posting of anti-corruption notices on construction sites to inform the public where to report suspicious activity on construction sites.

	<ul style="list-style-type: none"> • Placing of posters: once Contractors mobilize and set up site offices • Continuous oversight
Timing	<ul style="list-style-type: none"> • During entire project cycle once contractors mobilize their personnel
Additional Cost (if any)	<ul style="list-style-type: none"> • Moderate
Staff Member/Office Responsible	<ul style="list-style-type: none"> • Manager – Transmission Lines, Manager – Sub-stations and Manager – Road Maintenance Project

9.6 Falsifications of Invoice (Payment Certificates) by Contractors

Sector Risk	<ul style="list-style-type: none"> • Infrastructure (Both ETP and RMP infrastructure)
Description	<ul style="list-style-type: none"> • Contractors overstate quantity of work completed in invoices, or falsely claims that they have complied with health, safety, or other contractual requirements (falsification of invoices by Contractors not reflecting progress in the field)
Factors in Mitigation	<ul style="list-style-type: none"> • Supervising engineer verifies quantity of work completed to ensure that it is accurate and to specification and observes and confirms contractor compliance with other contractual requirements like health and safety. • MCA staff conduct both scheduled and unannounced visits to construction sites. • Invoices not processed by Fiscal Agent unless approved by Sector Lead (by Manager – Transmission Lines, Manager – Sub-stations or Manager – Road Maintenance Project as the case may be), Supervising Engineer. • Internal review process on invoices to be developed. • MCA/IEs to diligently check measurement of Interim Payment Certificates (IPCs) • Inspections of major construction milestones by MCC/MCA and IEs.
Timing	<ul style="list-style-type: none"> • During entire project cycle once contractors mobilize their personnel
Additional Cost (if any)	<ul style="list-style-type: none"> • Moderate
Staff Member/Office Responsible	<ul style="list-style-type: none"> • Manager – Transmission Lines, Manager – Sub-stations and Manager – Road Maintenance Project

9.7 Change or variations orde

Sector Risk	<ul style="list-style-type: none"> Infrastructure (Both ETP and RMP infrastructure)
Description	<ul style="list-style-type: none"> Unnecessary requests for change and variation orders on infrastructure specifications and scoping
Factors in Mitigation	<ul style="list-style-type: none"> Strict Change Order Management Process, initiated by Contract Manager approved by the Deputy-Executive Director (Project Delivery) or by Executive Director Cumulative increases of over 10% of contract value or USD 1,000,000 must be reviewed by MCA Board of Directors and by MCC
Timing	<ul style="list-style-type: none"> During entire project cycle once contractors mobilize their personnel
Additional Cost (if any)	<ul style="list-style-type: none"> Moderate
Staff Member/Office Responsible	<ul style="list-style-type: none"> Manager – Transmission Lines, Manager – Sub-stations and Manager – Road Maintenance Project

9.8 Pressure from government officials

Sector Risk	<ul style="list-style-type: none"> Infrastructure (Both ETP and RMP infrastructure)
Description	<ul style="list-style-type: none"> Demands from local or national level officials that contractors must pay bribes or illegal fees to receive immigration or construction permits, clear customs, pass inspection, or obtain other government approvals,
Factors in Mitigation	<ul style="list-style-type: none"> Contractors will be instructed to inform MCA of any pressure to pay bribes from government officials. MCA will conduct training or review sessions with contractors to inform them of local laws, and possible illegal or related payments/schemes. MCA will appoint and make-known a point of contact (MCA/Legal) to field contractor inquiries as to requested payments or other requests/issues suspected to be illegal or questionable.

	<ul style="list-style-type: none"> • Contact persons will be identified in Ministry of Finance and Immigration to facilitate timely issuance • Customs clearance process flow chart and assistance in customs clearance and tax exemption processes will be provided
Timing	<ul style="list-style-type: none"> • During entire project cycle once contractors mobilize their personnel
Additional Cost (if any)	<ul style="list-style-type: none"> • Moderate
Staff Member/Office Responsible	<ul style="list-style-type: none"> • Manager – Transmission Lines, Manager – Sub-stations, Manager – Road Maintenance Project, Chief Legal Officer

9.9 Abuse of force majeure

Sector Risk	<ul style="list-style-type: none"> • Infrastructure (Both ETP and RMP infrastructure)
Description	<ul style="list-style-type: none"> • Contractors or consultants claim force majeure to demand payments and time extensions that are not warranted
Factors in Mitigation	<ul style="list-style-type: none"> • MCA will have a detailed process for reviewing every force majeure claim • MCC will be informed about every force majeure claim that MCA is considering accepting • Burden is on the contractor to demonstrate how work plans need to change and how that would result in appropriate increases to what they should be paid.
Timing	<ul style="list-style-type: none"> • During entire project cycle
Additional Cost (if any)	<ul style="list-style-type: none"> • Negligible
Staff Member/Office Responsible	<ul style="list-style-type: none"> • Manager – Transmission Lines, Manager – Sub-stations, Manager – Road Maintenance Project, Chief Legal Officer

9.10 Collusion with vendors and suppliers

Sector Risk	<ul style="list-style-type: none"> • Administration
Description	<ul style="list-style-type: none"> • MCA staff accept goods from vendors or suppliers of lower quality or quantity than specified in the purchase agreement
Factors in Mitigation	<ul style="list-style-type: none"> • MCA will have the Procurement Agent, Procurement Director, and appropriate sector experts receive and inspect goods

	and provide independent certifications before accepting them.
Timing	<ul style="list-style-type: none"> • During entire program
Additional Cost (if any)	<ul style="list-style-type: none"> • Negligible
Staff Member/Office Responsible	<ul style="list-style-type: none"> • Manager – Administration

9.11 Additional Proposed AFC Actions

MCA- Nepal will, in addition to actions indicated above, ensure that public outreach efforts also incorporate anti-Fraud and Corruption messages. Similarly, there will be financial literacy programs conducted by MCA-Nepal before the disbursements of land acquisition compensation. That is expected to reduce the risks of misappropriation of funds, and lower the risk of fraud and corruption. Further, in an effort to ensure that Implementing Entities (Project partners) are also in harmony with the efforts to combat the risk of Fraud and Corruption throughout Compact Implementation, MCA-Nepal will sensitize its project partners on the measures they have to take to combat Fraud & Corruption while implementing compact activities. Further, joint initiatives with other stakeholders in the combat of Fraud & Corruption such as Consultants and other community-based groups, will be explored.

10. ROLE OF MCA-NEPAL BOARD AND MCC

- The AFC AP shall be submitted to the MCA-Nepal Board for information and to MCC for approval.
- The Risks recorded in the AFC Action Plan shall be reported on a semi-annual basis to the Board to provide feedback on implementation of mitigation measures.

11. REVISION AND MONITORING

MCA-Nepal management shall update the AFC AP at semi-annual intervals (or upon significant changes to the AFC context).

An AFC Action Plan progress report shall be posted semi-annually on MCA-Nepal's website after approval by MCC.

Effective risk management requires flexible, responsive, continuous learning of best practices. Lessons learned will contribute to refining MCA-Nepal's oversight strategy in relation to the AFC Action Plan. With this commitment in mind, the MCA-Nepal AFC risk assessment matrix and this Action Plan will be revised and improved regularly during their implementation.

The revisions will involve different actions, depending on the scope and purpose, and may include:

- eliminating some risks and mitigates and amending/adding new ones;
- adopting new actions, which will facilitate detection of fraud and corruption;
- improving the system for responding to fraud and corruption;

- improving the system for prompt and proportional remediation;
- any other actions.

Revisions to the AFC Action Plan may be initiated by MCA-Nepal management, Project Directors, the Board of Directors, MCC technical staff, and/or MCC Resident Country Director as needed. MCA-Nepal will prepare the final draft for the Board's information and MCC's final approval. The final versions of revised AFC Action Plan will be made available on the MCA-Nepal website.

**Fostering economic growth with better access to
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Millennium Challenge Account Nepal Development Board

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