



MILLENNIUM CHALLENGE ACCOUNT NEPAL (MCA-NEPAL)

MILLENNIUM CHALLENGE ACCOUNT NEPAL (“MCA-Nepal”) Minutes of 40th Meeting of the Board of Directors of Millennium Challenge Account Nepal (MCA-Nepal)

Nature: Emergency Meeting
MCA-N/BOD-M-40/06-03-2024

Date: Wednesday, 06 March, 2024 (2080/11/23 BS)
Time: 3:00 PM
Place: Emergency Meeting at Conference Room of the Secretary, Ministry of Finance
Notice Served: Friday, 1 March 2024 (2080/11/18 BS)

1. Board Meeting Attended By Members

- **Dr. Krishna Hari Pushkar**, Chairperson
And, Secretary, Government of Nepal, Ministry of Finance
Singhadurbar, Kathmandu
- **Kul Man Ghising**, Member
And, Managing Director, Nepal Electricity Authority
- **Nabin Raj Singh**, Member
And, Joint Secretary, Ministry of Energy, Water Resources and Irrigation
Singhadurbar, Kathmandu
- **Kumar Pandey**, Member, Representing the Private Sector
And, Chairman of the Board, National Hydro Power Company (NHPC)
- **Khadga Bahadur Bisht**, Member Secretary
And, Executive Director, MCA-Nepal

2. Invitees

- **Shreekrishna Nepal**, Invitee
And, Joint Secretary, Government of Nepal, Ministry of Finance, International Economic Cooperation and Coordination Division (IECCD)
- **Sanjay Poudyal**, Invitee
Deputy Resident Country Director, Millennium Challenge Corporation, US Embassy, Kathmandu
- **Bibek Chapagain**, Development Specialist/RCM-Nepal, Millennium Challenge Corporation, US Embassy, Kathmandu

3. Others Attending

- **Rajib Dahal**, Chief Legal Officer, MCA-Nepal
- **Satyam Pathak**, Legal Advisor, MCA-Nepal



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4. PRELIMINARY

- 4.1.** The meeting of the Board of Directors was constituted by conduct of Emergency Meeting by Circulation of Agendas on Wednesday, 06 March, 2024 (2080/11/23 BS) after the notice was served in writing on Friday, 1 March 2024 (2080/11/18 BS.)
- 4.2.** This Notice was issued pursuant to Section 5(3) of the Millennium Challenge Account Nepal Development Board Formation Order, 2074 (2018). Further, the Notice was issued under Section 3.12 (b) for an emergency meeting under Millennium Challenge Account - Nepal Internal Conduct Bylaws, 2075 (2019).
- 4.3.** The Board Members declared that there is no Conflict of Interest (CoI) on any of the Agendas presented by MCA-Nepal, and all the members of the board provided their consent to initiate the discussion on the agenda.

5. AGENDA ITEMS AND BOARD'S DECISIONS/RESOLUTIONS

5.1. Agenda One: : Approval of Procurement Plan 8.1

- 5.1.1.** Accountable Entity Procurement Policy & Guidelines, MCC-DCO-2008.37.8, Effective January 1, 2024 (herein after "AE PPG") required to be followed by MCA-Nepal as a condition of the Compact states that MCA-Nepal shall periodically prepare a Procurement Plan for acquiring goods, works, and consultant and non-consultant services needed to implement the Compact. Compliance, satisfactory to MCC, with the approved Procurement Plan shall be a condition precedent to MCC disbursements or payments.
- 5.1.2.** MCA-Nepal is required to regularly update a procurement plan that aligns to the Compact's projects and guides technical and administrative activity.
- 5.1.3.** The Procurement Plan approved by MCA-Nepal Board of Directors need amendments and the amended and revised Procurement Plan Version 8.1 is presented for approval.
- 5.1.4.** RESOLVED THAT the Board of Directors approves the Procurement Plan as per the document entitled "Procurement Plan Version 8.1".

5.2. Agenda Two : Approval of Contract Amendment: Land Acquisition Experts

- 5.2.1.** MCA-Nepal has entered into a Contract with Prem Bahadur Ayer, as Land Acquisition Expert (LAE), that commenced from 1 September 2023. The Contract was for an initial duration of 7 months. The LAE are required to support the ESP specialist – Land Acquisition (LA) and Resettlement for all three lots in 10 districts. Their role will be to support for LA process e.g. review of parcel along the footprints and RoW, initiate gazette process support for Compensation Fixation Committee (CFC) and CFC subcommittee meeting since all of these activities are required to be conducted simultaneously, and considering these workloads, MCA-Nepal requires to extend this Contract for additional 9 months.



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5.2.2. MCA-Nepal has entered into a Contract with Lok Pasad Nepal, as Land Acquisition Expert (LAE), that commenced from 1 September 2023. The Contract was for an initial duration of 7 months. The LAE are required to support the ESP specialist – Land Acquisition (LA) and Resettlement for all three lots in 10 districts. Their role will be to support for LA process e.g. review of parcel along the footprints and RoW, initiate gazette process support for Compensation Fixation Committee (CFC) and CFC subcommittee meeting since all of these activities are required to be conducted simultaneously, and considering these workloads, MCA-Nepal requires to extend this Contract for additional 9 months.

5.2.3. The Board approval for the extension of the Contract is required as per the provisions of the Accountable Entity Procurement Policy & Guidelines, MCC-DCO-2008.37.8, Effective January 1, 2024 (herein after “AE PPG”).

5.2.4. RESOLVED THAT the Board of Directors approves the Amendment of the Contracts: MCA-N/ETP/ICS/046 (1) and, MCA-N/ETP/ICS/046 (6) for extension of 7 months after taking into account the scope of remaining activities, and prevalent legal practices in Nepal. The Board instructed MCA-Nepal to complete the remaining activities within the approved time period by expediting the activities in the field.

5.3. Agenda Three: Approval of Monitoring and Evaluation Plan

5.3.1. This M&E Plan serves as a detailed framework for assessing progress toward and achievement of the Nepal Compact’s project objectives. The M&E Plan is used in conjunction with other documents such as work plans, procurement plans, and financial plans to provide oversight for program implementation and to strive to ensure the program is on track to achieving its intended results. The M&E Plan also serves as a communications tool, so that MCA-Nepal staff and other stakeholders clearly understand the results the MCA-Nepal is responsible for achieving. The M&E Plan ensures that the MCA-Nepal Executive Team and Project Teams, MCA-Nepal Board Members, Government of Nepal (GoN), Program Partners, beneficiaries, and other stakeholders understand the progress being made towards the achievement of objectives and results, and are aware of variances between targets and actual achievement during implementation.

5.3.2. The M&E plan is one of the post-EIF Condition Precedent and as per the MCC-M&E Policy; the board is required to approve it within 180 days after the Compact Enter into Force. The plan has been approved by MCC, for which No Objection (MCC NO) was received on 09 February, 2024.

5.3.3. RESOLVED THAT the Board of Directors hereby approve the Monitoring and Evaluation (M&E) Plan developed by MCA-Nepal.

5.4. Agenda four: Salary increment and reward for the performance year until September, 2023 (Information Agenda)



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- 5.4.1.** MCC mandates all MCAs to undergo annual performance evaluation and the 37th meeting of the Board of Directors of MCA-Nepal held on 29 September, 2023 approved the amended MCA-Nepal Employees Administration Bylaws to incorporate Dignity as MCA-Nepal's performance management system.
- 5.4.2.** The fifth Performance Evaluation for the year October, 2022 – September, 2023 (Evaluation for year 2023) for Millennium Challenge Account Nepal (MCA-Nepal) was conducted through Dignity (hereafter called Dignity23) from October 01 to December 31, 2023 for 60 eligible staffs. MCA-Nepal requires to adhere to a mechanism to implement the consequences of performance evaluation by analyzing Objectives, Collaboration and Execution to arrive at a comprehensive analysis of each employees' performance. Employees who are under contract during the community evaluation process will be eligible for pro-rated benefits mentioned hereunder so long as they have completed 3 months at the end of the performance period.
- 5.4.3.** Within the provisions approved under Millennium Challenge Account Nepal Development Committee Employees Administration Bylaws, 2075 (by the 4th Amendment of the Bylaws approved on 2077/08/12 BS and by the 7th Amendment of the Bylaws approved on 2079/06/12 BS), Executive Director of MCA-Nepal is authorized to take decision on implementation of the consequence of performance-based rewards based on in-principle approval of the Board.
- 5.4.4.** The consequence of performance evaluation for year 2023 will be from 1st January 2024 onwards as prescribed in Employment Bylaws for the employees, who are on payroll of MCA-Nepal on 1st January, 2023. This consequence will not be higher than 4% as prescribed in the Employee Bylaws.
- 5.4.5.** Under Cost Principles for Government Affiliates dated May 15, 2019, DCO-2007-2.1 issued by MCC (Cost Principles), Under Section 5.3.8 (c) (i), the performance based award has been provided and the same has been incorporated in the Millennium Challenge Account Nepal Development Committee Employees Administration Bylaws, 2075 (by the 4th Amendment of the Bylaws approved on 2077/08/12 BS and by the 7th Amendment of the Bylaws approved on 2079/06/12 BS). The employees of the Accountable Entity (MCA-Nepal) are allowed to receive the performance based award after the compact has entered into force (EIF). As per Cost Principles, awards must be based on measurable performance goals and documented supervisor appraisals of the employee's performance and may only be made under an established, written and MCC-approved organizational compensation policy. Due to this, annual performance bonus and incentives will be paid for Dignity Appraisal 2023 after due MCC No Objection received on the report. In Compliance with Cost Principles, the average incentive to be paid for MCA-Nepal Employees is computed on the basis of basic salary.
- 5.4.6.** On this agenda, MCA-Nepal Board of Directors suggested that MCA-Nepal to brief the matter in details in the next board meeting and the Board would make necessary decision on it.

6. Discussion Agendas and Updates



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6.1. Sub-station Update

6.1.1. The total budget of the substation is US\$130,000,000 for Ratmate (Lot 1), Butwal (Lot 2), and Damauli (Lot 3) and was published in IFB. The bid was launched in March 2023, and the submission deadline was in October 2023. The technical evaluation was completed on 24 February, 2024 and financial opening was done 26 February, 2024. Combined Evaluation Report (CER) for Substation Bids is ongoing as of March 6, 2024. Contract negotiation with successful bidder(s) for different Substation lots to initiate by end March 2024 and continue through April 2024 provided timely approval of CER and no bid challenge on the same. Construction time of 44 months from the Contract Date given on IFB Dec 2027. The Board was also apprised of read out price of each bidder recorded at the time of opening of financial offers, and it was informed that certain clarifications are being asked from the bidders before finalization of Combined Evaluation Report.

6.1.2. MCA-Nepal will expedite with respect to the construction of Butwal substation and seek the reduction of construction time while negotiating with top ranked bidder though the IFB had provided the time of 44 months from the Contract Date given on IFB. MCA-Nepal also opined that it will be prudent to find alternative connectivity in case the substation is not completed within the completion of the cross-border transmission line.

6.1.3. MCA-Nepal will provide its reply to the letter received from Ministry of Energy, Water Resources and Irrigation ('MoEWRI') on expediting cross-border line and Butwal substation immediately after launching the bid for 18 Kms. cross-border line.

6.2. Update on TL Works (for remaining 297 Kms.)

6.2.1. MCA-Nepal Supervision Consultant is working on technical parameters and specifications, bid documents and budget estimates for the remaining 297 Kms of transmission line. The Planned Bid Launch Date is August, 2024 due to environmental issues of access tracks, and the Bid Submission Date would be October, 2024. Based on this time line, the Contract signing would be by January, 2025 (44 months remaining in the Compact Period). The Defect Notification Period (DNP/DLP) would be outside and beyond the Compact end date, i.e. after August, 2028. There could be a possible shortfall in budget and it will be discussed with the Board upon completion of the estimation.

6.3. Electricity Regulatory Commission (ERC) Activities

6.3.1. Proposals from prospective consultants for procurement of consulting services for Embedded (Resident) Advisors for ERC was opened on 14 Dec, 2023. Seven proposals have been received. The evaluation of the proposals for consulting services for Embedded (Resident) Advisors is going on.

6.4. Land Acquisition : Appointment of Preliminary Officer by Cabinet and Cabinet Approval for Acquisition of Land cultivated by non-title holders



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6.4.1. The Board was appraised on the issue of appointment of Preliminary Officer by Cabinet and Cabinet approval for acquisition of land cultivated by non-title holders. The Board decided to request Ministry of Finance (MoF) to expedite the matter and for necessary actions.

6.5. Forest development Fund

6.5.1. MCA-Nepal presented to the Board, the area required for plantation and the amount to be deposited in Forest Development Fund. The Board decided to request Ministry of Finance (MoF) to expedite the matter and for necessary actions after consultation with Ministry of Forests and Environment (MoFE).

6.5.2. The Board also decided to invite a member from Ministry of Forests and Environment (MoFE) in all MCA-Nepal board meetings as invitee member so as to resolve any forest clearance, permit and plantation issues. The Board decided to request Executive Director of MCA-Nepal to expedite the matter and for necessary actions.

6.6. Tax refund – waiver or exemption on fuel tax, telecom tax etc.

6.6.1. Schedules A to K of ANNEX VII of the Compact identify specific taxes and mechanisms to implement compliance with the tax exemption under the Compact. Among those identified in the Schedules, MCA-Nepal has not got exemption or refund of taxes mentioned under Schedules F, G, J and K which mention about *Taxation of Petroleum Products*, *Taxation of Telecommunication Services*, *Other National Taxes* and *Local Taxes* respectively. Similarly, in respect of Schedule H that allows exemption or refund of *Property Taxes*, some of the taxes and charges fall under the jurisdiction of Provinces where there is no provision for full exemption in their Finance Acts.

6.6.2. The representative from Ministry of Finance apprised the Board that there are no mechanisms to seek refund of these taxes as the tracking software and system does not individually track each invoices. Instead, the journal and voucher entries are made in bulk to match the total quantity of sale as most of the transactions are done by multi-layer vendors, and by small enterprises which have been provided facility of “summary invoices”. Therefore, the Board decided to request MCC representative in the Board to consider this special situation and requested Executive Director of MCA-Nepal to discuss the issue with MCC to get waiver on the refund of such taxes mentioned in the Compact Schedule from F to K, and waiver on refund of all other future taxes which are not separately accounted, and difficult to track the payment against each invoices.

6.7. Other information and updates

6.7.1. MCA-Nepal presented to the Board information and updates on selection of land/area for like-for-like plantation, bifurcation of land under RoWs, and Annual Report for FY 2079/80 BS as information agendas.

7. RECORDING OF THE DISCUSSIONS AND DECISIONS

7.1. RESOLVED THAT the Board of Directors directs the Executive Director to record these minutes



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with the minute book of Millennium Challenge Account Nepal and to submit the synopsis of such minutes for publication on the website of Millennium Challenge Account Nepal within two (2) weeks from the date of signing of these Minutes.

8. CLOSE

There being no further business, the members of Board of Directors did not have to consider any other agendas. The meeting closed at 5.30 PM.

This minute is prepared by:

Rajib Dahal, Chief Legal Officer, MCA-Nepal

This minute is prepared and signed on: 12/03/2024