



*Office of Inspector General
for the Millennium Challenge Corporation*

September 21, 2011

Mr. Patrick Fine
Vice President of Department of Compact Operations
Millennium Challenge Corporation
875 Fifteenth Street, NW
Washington, D.C. 20005

Management Letter No. M-000-11-002-S

Dear Mr. Fine:

This letter, provided as a follow-up to the management comments provided on May 31, 2011, transmits the final results regarding our observations of the MCA-Mali road project from Niono to Goma-Courra. The primary objectives and results of the review related to government-owned enterprises in Mali was sent in a separate report. This letter discusses reportable issues in MCA-Mali that were outside the scope of our review. In finalizing the results, we considered your written comments on our draft letter and included those comments in their entirety in appendix I of this final letter.

This letter contains four recommendations to address MCC: (1) putting funds to better use, and (2) the establishment of a program to identify contractors with known performance problems. We consider that management decisions have been reached on all four recommendations and final action taken on Recommendation Nos. 1, 2, and 4. Final action will take place on Recommendation No. 3 when MCC incorporates past contract performance evaluation criteria in the next revision of its Standard Bidding Documents. The following are the final results of our review:

At the time of our fieldwork, MCA-Mali had terminated its contract with the road contractor (ASHTROM) because of ASHTROM's lack of timely performance. The 81-km road from Niono to Goma-Courra under the Alatona Project was supposed to have been completed by December 2010. Although more than half of the funding (\$18.7 million) of the 24-month, \$34.8 million contract has been disbursed, the road is far from completion. MCA-Mali communicated its concerns about lack of progress to ASHTROM to "remedy failures" by sending unheeded "Notices to Correct." The contractor did not keep pace and made excuses related to equipment and other problems. MCA-Mali sent the first termination notice to ASHTROM in December 2010, around the time the road project should have been completed. The termination letter

indicated that there had been “18 road accidents including 3 fatal injuries as a result of your obligations.”

All work under the compact is to be completed by September 2012, leaving about 12 months to complete this road project; however, the project is currently held up by legal issues. ASHTROM has taken its case to the Malian court for adjudication, and another contractor will need to be selected to complete the road.

MCA-Mali received the balance of a \$1.3 million advance guarantee and a \$3.4 million performance guarantee that ASHTROM had pledged to secure the mobilization advance provided by MCA-Mali. MCA-Mali stated that this total \$4.7 million had been segregated from the regular operating funds to avoid commingling and facilitate accountability. Decisions involving the \$3.4 million performance guarantee cannot be made until after the Malian court hears the appeal made by MCA-Mali and legal issues associated with this funding are resolved.

The Niono to Goma-Courra road project is the link between the farmers along the canal and the major towns and is a vital element of the compact. ASHTROM had a similar problem completing a MCC road construction project in Georgia. We understand that in this particular situation, due to timing, a debarment and suspension program would not have prevented ASHTROM from receiving an award in Mali. Nevertheless, an effective debarment and suspension program should reduce the risk of a poorly performing contractor at one MCA from receiving additional contract awards from other MCAs. This is especially important when considering high-value construction contracts for which the outcomes have significant impact on achieving compact goals.

On the basis of the road project’s status at the time of our review, we believe that the returned mobilization advance (\$1.3 million) should be allocated or reprogrammed for use on MCA-Mali compact activities. We recommended that MCC’s Vice President for Compact Operations:

Recommendation No. 1: Decide how to use the \$1.3 million advance guarantee deposited into MCA-Mali’s bank account and allocate or reprogram these funds to specific project activities within the compact for better use.

Recommendation No. 2: Establish a plan to monitor the \$4.7 million obtained by MCA-Mali related to the ASHTROM contract for proper funds segregation and to avoid commingling with regular operating funds, and to facilitate accountability.

Recommendation No. 3: Establish a debarment and suspension program to identify and prevent certain contractors with known performance problems from bidding on Millennium Challenge Account program contracts.

Recommendation No. 4: Debar ASHTROM to prevent it from winning any future Millennium Challenge Account contract awards.

With only 12 months remaining before the end of the compact in Mali, the Office of Inspector General is highlighting the above issues so that MCC and MCA-Mali can take action to ensure that the compact is successful and that compact funds are used in the best manner possible.

Sincerely,

/s/

Alvin A. Brown
Assistant Inspector General
Millennium Challenge Corporation

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EVALUATION OF MANAGEMENT COMMENTS

On May 31, 2011, MCC provided a formal response to our draft letter (included as Appendix I). MCC agreed with all four recommendations. We consider that management decisions have been reached on all four recommendations and final action taken on Recommendation Nos. 1, 2, and 4. Final action will take place on Recommendation No. 3 when MCC incorporates past contract performance evaluation criteria in the next revision of its Standard Bidding Documents.

MCC agreed with **Recommendation No. 1** and indicated that MCA-Mali has already transferred the \$1.3 million mobilization advance guarantee received from Ashtrom into the local permitted bank account, so it can be used for other compact activities. MCA-Mali informed MCC that the \$1.3 million of funds will primarily be used for the Alatona Irrigation Project. OIG considers that a management decision has been reached which also constitutes final action.

MCC agreed with **Recommendation No. 2** and MCA-Mali put a plan in place to segregate and monitor the \$4.7 million received from Ashtrom. The funds received from Ashtrom were under litigation, and following the terms of a settlement agreement signed by MCA-Mali and Ashtrom, MCA-Mali returned the performance guarantee of \$3.4 million to Ashtrom. OIG considers that a management decision has been reached which also constitutes final action.

MCC agreed with the intent of **Recommendation No. 3**, namely the need to better track underperforming contractors and utilize records of past performance more effectively as part of the competitive bidding processes employed by all MCA entities. MCC will institute a process to collect, share, and utilize contract performance information collected by MCA countries to inform the evaluation of bids and proposals. MCC will incorporate past performance evaluation criteria in the next revision of its Standard Bidding Documents, a process that is due to be completed in October 2011. OIG considers that a management decision has been reached. Final action will take place on Recommendation No. 3 when MCC incorporates past performance evaluation criteria in the next revision of its Standard Bidding Documents.

MCC agreed with the intent of **Recommendation No. 4**. However, MCC currently does not have its own debarment and suspension procedure. MCC also pointed out that debarring Ashtrom may or may not be appropriate as the issue at hand pertains to poor performance and not fraud, corruption, and/or any criminal violation. OIG considers that a management decision has been reached which also constitutes final action.

MANAGEMENT COMMENTS



DATE: May 31, 2011

TO: Mr. Alvin Brown, Assistant Inspector General
U.S. Agency for International Development
/s/

FROM: Patrick C. Fine, Vice President
Department of Compact Operations
Millennium Challenge Corporation

RE: Follow-up Letter on the MCA-Mali Niono-Goma Coura Road Activity dated
May 11, 2011

Dear Mr. Brown:

Thank you for your letter dated May 11, 2011 with the Office of the Inspector General's (OIG's) observations and recommendations concerning the MCA-Mali Niono-Goma Coura Road Activity. Since the OIG conducted its review in Mali, Millennium Challenge Account (MCA) Mali and MCC have made a great deal of progress in resolving the outstanding issues related to the termination of MCA-Mali's contract with Ashtrom for the construction of the Niono-Goma Coura Road. On April 10, 2011, MCA-Mali and Ashtrom signed a settlement agreement amicably putting an end to all disputes related to the contract and confirming that there would be no future claims. MCC's responses to the OIG's recommendations on the Niono-Goma Coura Road Activity are provided below.

Recommendation 1:

Decide how to use the \$1.3 million advance guarantee deposited into MCA-Mali's bank account and allocate or reprogram these funds to specific project activities within the compact for better use.

MCC Response:

MCC agrees with the recommendation. MCA-Mali has transferred the \$1.3 million mobilization advance guarantee received from Ashtrom into the local Permitted Account. The funds were adequately reported to MCC and were reflected in MCA-Mali's Disbursement Request for quarter 15 (Q-15) covering the period from April 1, 2011 to June 30, 2011. The Q-15 cash and commitment forecast indicated that MCA-Mali would disburse the entire amount of the

mobilization advance guarantee by the end of the current period; MCA-Mali also informed MCC that these funds are primarily being used for the Alatona Irrigation Project. MCC is in agreement with these actions and considers this to be notification of management decision and final action.

Recommendation 2:

Establish a plan to monitor the \$4.7 million obtained by MCA-Mali related to the Ashtrom contract for proper funds segregation and to avoid commingling with regular operating funds, and to facilitate accountability.

MCC Response:

MCC agrees with the recommendation. A plan was put in place by MCA-Mali in order to segregate and monitor the \$4.7 million received from Ashtrom. The funds received from Ashtrom were under litigation, and following the terms of the settlement agreement signed by MCA-Mali and Ashtrom, MCA-Mali returned the performance guarantee of \$3.4 million to Ashtrom. The \$1.3 million mobilization advance guarantee was retained by MCA-Mali, and as stated in our update to Recommendation 1 above, will be used to fund activities related to the Alatona Irrigation Project in the period extending from April 1, 2011 to June 30, 2011. MCC considers this to be notification of management decision and final action.

Recommendation 3:

Establish a debarment and suspension program to identify and prevent certain contractors with known performance problems from bidding on Millennium Challenge Account program contracts.

MCC Response:

MCC agrees with the intent of this recommendation, namely the need to better track underperforming contractors and utilize records of poor past performance more effectively as part of the competitive bidding processes employed by all MCA entities. While MCC's Program Procurement Guidelines already exclude certain persons and entities such as those debarred or suspended by The World Bank or from procurements funded by other entities of the U.S. Government, MCC has formed a working group to explore additional measures that can be taken to respond to poor contractor performance.

In most donor procurement processes, "debarment" generally is reserved for cases involving corrupt or fraudulent practices or criminal violations, but is not generally used in cases of contractor underperformance. Although the Federal Acquisition Regulation (FAR) is not applicable to MCA procurements, it is worth noting that, while the FAR provides for the possibility of debarment for "a history of failure to perform", simply having a contract terminated for the default of the contractor is seldom sufficient to warrant debarment. In contrast, past performance typically is considered as one of a number of criteria used to evaluate a bid or proposal.

As management decision MCC will institute a process to collect, share, and utilize contract performance information collected by MCA countries to inform the evaluation of bids and proposals. MCC will incorporate past performance evaluation criteria in the next revision of our Standard Bidding Documents, a process that is currently underway and is due to be completed in October 2011.

Recommendation 4:

Debar Ashtrom to prevent it from winning any future Millennium Challenge Account contract awards.

MCC Response:

MCC agrees with the intent of this recommendation. Please refer to MCC's response to Recommendation 3 above. MCC does not currently have its own debarment and suspension procedure; however, MCC does require MCAs to verify that prospective contractors are not included on a list of companies debarred by the World Bank or other USG entities. Also, as per our response to Recommendation 3, Ashtrom debarment may or may not be appropriate as the issue at hand pertains to poor performance and not fraud, corruption, and/or any criminal violation. Finally, upon issuing revised Standard Bidding Documents, MCC will require MCA entities to consider appropriate past performance information as part of their evaluation of bids or proposals received by participants. This will ensure information on Ashtrom's failure to perform in Mali and Georgia is considered in any future procurement on which they bid.

Thank you for bringing these important findings to MCC's attention. Please let me know if you have any follow-up questions or comments.

cc: Jonathan Bloom, Deputy Vice President, Department of Compact Operations
Jon Anderson, Resident Country Director, Mali
Sheryl Cowan, Deputy Resident Country Director, Mali
Arlene MacDonald, MCC Compliance Officer