



## MCA-Vanuatu Steering Committee Meeting Minutes

Type of Meeting: Regular Steering Committee

16<sup>th</sup> April 2007

3:00 pm to 6.00pm

MCA Vanuatu Conference Room

### **Board Members:**

#### ***Present:***

Jean Sese:	Chairman & Director-General Prime Ministers Office
Russel Nari:	Director General Ministry of Lands
Simil Johnson	Principal Statistician
Benjamin Shing	Director of Finance
Willie Watson	A/Director Department of Public Works
Gregoire Nimbtik:	Director of Department of Strategic Management
Jimmy Qwero	Representative Director General, MIPU
Jerryson Lapi	Representative, Director, DESP

#### ***MCA Vanuatu Program Management:***

Lennox Vuti,	Program Director
Catherine Malosu	Environment & Social Impact Officer
Tony Amos Sewen	Economics Analyst
Allen Faerua,	Infrastructure Analyst
Dolsie Amos-Kalo,	Admin Support Staff

#### ***MCC Representative:***

Jeff Stubbs	MCC Country Resident Director
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#### ***Absent:***

Simeon Athy :	Vice-Chairman & Director General of Ministry of Finance & Economic Management
George Maniuri	Director General, Ministry of Foreign Affairs
John Aruhuri	General Manager, Chamber of Commerce
Victor Rory	Head of Development Cooperation's
Henry Vira	Secretary General, Vanuatu Non Government Organizations

***Quorum present?***     **Yes**

The meeting was quorate.

***Person Acting as Chairman:*** Jean Sese, Director General, Office of the Prime Minister

***Person Acting as Secretary:*** Lennox Vuti, Program Director

## **Proceedings:**

The meeting called to order at 3.30pm by Chairman Sese.

### **Welcome and Introduction by Chairman**

The Chairman welcomed every one to the first SC meeting of the year 2007. Chair reiterated the importance of SC Members attending SC meetings and reminded members of the Governance Agreement Article 2, section 2.9.

He stated that it was not possible to meet for sometimes since last SC meeting last October 2006 due to certain reasons;

- SC Members commitment to their work activities
- Unavailability of Quorum. The Committee is too large. However there was agreement on the part of each SC Member to be a member of this SC and all must make every effort to attend. The Chair has attempted to schedule meetings five times but was not able to hold such meeting because of a lack of quorum. The Chairman mentioned there were attempts and approaches taken to reduce the size of the committee, however, after consultation the size of the committee will remain at 13.

On behalf of the committee, the Chairman thanked the Program Management for continuing and progressing the activities of the MCA program. The Chairman requested comments from the Committee relating to the announced agenda.

### **Agenda Approval**

Other SC Members made no input into the agenda proposed. The Program Director requested that two agenda items be added to 'Other Matters', i.e (1) MCA Legal Counsel, and (2) Engineers Support Unit (originally titled Project Management Supervisory Support).

No members of the Steering Committee attending the meeting or those who did not attend objected to the calling of the meeting or declined discussing the agenda.

The Acting Principal Statistician moved that the agenda be approved, and seconded by Acting Director Public Works Department. All members voted in agreement to the Agenda. The Chairman requested the Program Director to present to the committee the agenda items:

#### **I. Discussion and Action Items**

##### **A: Design Build – Invitation for Bid (IFB)**

#### **Background**

The IFB is in its final form ready for approval for issuing to the three pre-qualified bidders. The bidders have to include in their bids the cost of the site investigations, design and construction. Recently the mechanism for pricing the works and for price adjustment (if any) during the design and construction was changed. The intention is for the bidders to submit a fixed price bid for the whole of the works with minimum allowance for variations. There is a bill of quantities included in the supplementary information issued with the IFB but this is for information only and the bidders are expected to make their own estimates of quantities as the basis of their bids. There is no survey or geotechnical information provided with the IFB and not sufficient time for the bidders to obtain their own.

## **Issues**

MCA-Vanuatu is responsible for delivery of the project and there are a number of concerns regarding the proposed arrangements for the bidders to price the works.

There is limited information provided with the IFB for the bidders to base their bids. They are likely therefore to bid a very high price to cover their risk or they may bid on the basis that they can manage the design and construction standards to the price they bid. Or they may decide not to bid because the risk is too great. The IFB includes design and construction standards that the contractor has to follow, but in many cases these are guides and would not force the contractor to build something to a standard satisfactory to MCA-Vanuatu.

The design must be completed to the approval of the Engineer, but the bid documents have to provide reasonable information as to what the Engineer will approve and if the contractor can argue the design is not in breach of the design standards it is not possible to instruct him to change the design to a standard more acceptable to the Employer. The contractor will design for the minimum standard possible (such as the road geometry and minimum earthworks, minimum number of drainage culverts) and the Engineer (and MCA-Vanuatu) will be constantly arguing with the contractor to improve the standard of the design. This will make the contract difficult to manage for MCA-Vanuatu, and could lead to significant variations if some improvements on the contractors design are seen as essential.

While the Employer's bill (to be included in the supplementary information) will be qualified as "for information only", the bidders won't have any other information nor the time to do their own detailed investigations and will have to rely on the Employer's bill to base their estimates of quantities. The bill is based on estimates only, and if actual quantities (measured at completion of design) are higher it is likely that the contractor will have a very strong case for a variation. If no bill is included in the bid documents and the bidders prepare their own based on their own estimates it is likely that these bills would be seen as a reasonable measure of the scope of work included in the bid, and the contractor would be entitled to a variation if the Engineer insisted on a standard that resulted in increased quantities and costs.

## **Summary**

If the contractor has to bid a fixed price at tender with no adjustment following the site surveys and design, he will probably bid a high price (because of the high level of risk) and will try to get away with the lowest standard of design he can.

It will be difficult to compare bids, the bidders may have different ideas of "acceptable standard".

It will be a difficult project to manage.

The Employer has little control of the balance between standard and cost in many areas (such as road alignment and drainage).

## **Recommendation**

It is recommended that the IFB be amended so the contract price is based on the following:

- Provide the bidders with a detailed bill of quantities (for each subproject) to be the basis of the bid. Bidders are able to add items to the bills as part of the bid but have to confirm that the bills Bidders provide a rate for each item as part of the bid. The rates are for the purpose of measuring any change to the scope of work.

- Designs will be developed by the Contractor in consultation with the Engineer and MCA-Vanuatu. Decisions will be made regarding road alignment, drainage and other issues that affect the quantities in the works.
- The benefits/dis-benefits of different design options including differences including implications for quantities will be presented by the Contractor in the design reports.
- The contractor's price is based on the tender bill of quantities. MCA-Vanuatu, with advice from the Engineer, will assess the design options and select the preferred option. The quantities of some items are expected to differ from the tender bill (some higher, some lower) and the price will be adjusted in accordance with the tendered rates to match the approved design. No new items will be allowed to be introduced (except in the case of the Contractor
- proposing a different design approach, such as for a bridge, the adjustment will be limited to revised quantities.
- The adjusted price becomes the approved construction price and will be a fixed lump sum price.

After much discussion, every SC Member supported the presentation and rallied behind the recommendation of the Program Management. The Director of Department of Strategic Management moved that the recommendation be approved, and seconded by Director of Finance. All members voted in favour of the motion. The Chairman asked that the Program Management continue to correspond with MCC on this matter until finalized.

#### **B: Review of Approved Flying Minutes (26<sup>th</sup> July 2006 – 3<sup>rd</sup> April 2007)**

The Program Management compiled a report on all Flying Minutes of July 2006 till April 2007 – this report was circulated to all members. The Chairman noted that this system of approval ensured progress and advancement of program activities.

The Chairman requested that the Program Director briefed members on the Flying Minute approvals which the Director obliged. The list of approvals is attached as Appendix 1.

#### **Issues and Discussions**

- The chairman stated that the thick document (about 100 pages) does not reflect a show of commitment by Members, and request members to find time to attend SC meetings. He indicated that the option to amend the Governance Agreement is open and that if members continue not to attend meetings, he is prepared to recommend amendment.
- Because a quorum is seven (7), any approval by signatories through Flying Minute must legally constitute signatories by seven members. The Program Director confirmed that this has been the case.
- The Director of Finance noted that some approvals regarding finances have not been shown to him. In circumstances where he was away his deputy or some one appointed in charge of the Department of Finance during his absence should be given the opportunity to sign on his behalf. The Infrastructure Analyst, who most times was responsible to collecting the SC members' signatures, pointed out that in times the Director was away, his deputy or person appointed to take charge declined to sign the document saying they have not been granted the authority by their Director to execute any document relating to the MCA program. The Program Director added that sometimes the documents are of priority and urgent and needs

to be approved within certain deadlines, and in these type of circumstance any seven members (quorum) signatories are considered to be legally sufficient to conclude that an agreement has been reached.

The Director, Department of Strategic Management moved to accept and endorsed all Flying Minute approvals, from July 2006 till April 2007. The Acting Principal Statistician seconded the motion. All voted in favour of the motion.

## **C: Progress Reports from Program Management**

### **Financial Briefing:**

When asked by the Chairman to present the second agenda item, the Program Director invited the Economic Analyst to make the presentation given that he prepared the financial report. On March 31<sup>st</sup>, 2007 the bank balance stood at USD1, 292,281.33. Interests returned to the US Dept of Interior amounted to USD\$8,321.58 by November 2006 with the remaining interests of US\$12,000 which has yet to be returned to the US. Two major costing so far are that of the MCA program Management operations and Procurement Agent costs. (see Financial Briefing [Appendix 2.](#) )

The Economic Analyst presented by the use of statistical graphs highlighting expenditure comparisons, and indicating that delays on spending was due to delays in procurement activities.

### **Financial Plan**

Hard copies of the financial plans were distributed to SC Members. According to the draft Implementation Plan, much of the funds would be incurred during compact years two, three and four.

### **Quarterly Financial Report**

The Economist also presented this to the committee and requested approval after changes were made to it by MCC. The SC noted and approved the changes.

### **Disbursement Request Form**

The next disbursement is expected by June 10<sup>th</sup> 2007. However as we have funds under-utilized it is unlikely that MCC will be sending us further funds until we have started spending the funds. As stated before, delays were due to delays in procurement activities.

The Director of Finance complemented the reports and stated that he would like to see a separation of the Fiscal Agent and Procurement Agent. As it stands it appears as if the Fiscal Agent is incurring costs but these are costs borne by the Procurement Agent only. Therefore a separation will present a more vivid picture.

### **Monitoring and Evaluation Report**

The Economist made this presentation. He remarked the community consultations conducted by Program Management. Such tours and visits were made around the island of Efate, Santo and Malo. Stakeholders Meetings were also held with Environment, Lands Ministry and Departments, Geology and Mines, Cultural Centre and NGOs at Melanesian Hotel as well as personal visits to agencies of government.

The Economist informed the committee about the new additional indicators MCC is intending adding to the existing 16 set of criteria. These additional indicators are:

- National Resource Management
- Land Rights and Access

In regards to GAO visits, the Economist explained that they were here to examine our methodology of calculating the Economic Rate of Return, and found out how the Vanuatu Program was justified for MCC funding. Their audit is of normal nature. Report is expected in May 2007.

The Director of Finance voiced concerns over the two new indicators added to the eligibility criteria. He went on to say that if the new indicators require additional work, say if it requires fundamental changes to the country's legislation then this must be a concern. Not only burdening the Government financially but also contributing towards internal policy changes in favour of the US. Land is a sensitive issue in Vanuatu.

The Chairman questioned whether MCC has submitted the "new added indicators" formally to MCA Vanuatu. But the Program Director responded by saying he has not received any formal correspondence on this matter from MCC. He believes the Economics Analyst saw the new indicators through internet.

The Principal Statistician reported that the HIES is progressing slowly but well. Data entries for SHEFA and TAFEA are presently being undertaken. Too, the Accommodation Survey is currently being enumerated. He also stated that MCC have also asked questions in the Questionnaire (HIES) relating to the two new indicators, i.e land rights and access and national resource management.

However, given the concerns of most members of the SC in regards the new indicators, the Director of the Department of Strategic Management was of the view the new indicators are consistent with Vanuatu's capabilities.

The M&E Report is attached as Appendix 3.

### **Conditions Precedent**

The MCA Economist presented in detail the Conditions Precedent for SC understanding and emphasized that no disbursement would happen without fulfillment of the CPs. The CPs are attached as Appendix 4.

### **Condition Precedent Deferral Letter**

The MCA Economist clarified that this is a standard letter prepared by the Program Management for the Chairman to send to John Hewko, MCC's Vice-President in circumstances where a deferral is required.

The Director of Finance questioned whether MCC responds to these letters. The Program Director confirmed receipt of MCC's approval in regards to CP deferrals.

### **Infrastructure Analyst's Report**

The Program Director explained that during the absence of a Procurement Agent for the past six months, the Accountable Entity also performed activities of the Procurement Agent, as MCC-hired EMG provided transition procurement assistance with restrictive responsibility.

The Infrastructure Analyst presented a report on all procurement activities. All procurement actions had received SC approvals via Flying Minute.

#### Status of procurement

1. Infrastructure of Civil works, stage 3
2. Supervision TA, Stage 2 awaiting short-listed
3. Environmental and Social Assessment Consultant, awaiting short listing. Stage 2
4. Institutional Strengthening Activity
5. Equipment PWD, Stage 3
6. Public Awareness
7. M&E – HIES, Tourism Survey, Road Side Enterprise Survey, Traffic Count, Outer Island wharfs survey, Data quality Auditor etc.

#### **Environmental and Social Impact Report**

There was a written report but the officer concerned did not present it orally. Her report is attached as Appendix 6.

#### **F: Other Business**

- **PWD/Engineer's Support Unit**

The Program Director presented a paper he authored on this item and stated that PWD's added role in this MCA program is numerous. Given its traditional role and current responsibility of infrastructure maintenance for Vanuatu, the MCA program's activities are additional. Already their non-responsive attitude and slow delivery of information requested by the MCA program provides a risk to the program if they are imposed additional responsibility of providing the Engineer with support. The Program Director recommended in his paper that the ESU be relocated from PWD to MCA Vanuatu to be directly supervised and controlled by MCA Vanuatu as he finds it to be difficult for PWD to change over night given their past performance. He, together with the MCC Resident Country Director, met with the MIPU's Acting Director General and PWD's Acting Director to discuss this matter. Both officials concurred to relocating ESU to MCA Vanuatu.

The Director of Finance strongly opposed the relocation of ESU from PWD to MCA Vanuatu and expressed that it should be based with PWD and he does not support creating another unit within another unit. The Program Director responded that he is concerned that PWD becomes a risk to the program, and that their deliverables consistent with Schedule 1 of the Disbursement Agreement may not be fulfilled. PWD is expected to deliver consistent with the Implementing Entity Agreement and the Service Performance Agreement now being finalized. According to his assessment, it would be difficult for PWD to meet these expected deliverables additional to their traditional role and coordinating other development projects funded (e.g Airports Project funded by AFD) by other donors.

The Director of Finance suggested that PWD be given the opportunity to perform. If they fail during the process, say after six months, then options such as that recommended by the Program Director can be pursued.

Other members of the SC are also of the view that ESU be located with PWD. Every effort must be made by PWD to institutionalize staffing levels necessary to maintain the additional PWD's responsibilities.

- **MCA Legal Counsel**

The Program Director highlighted to the SC that after the previous Legal Counsel's contract concluded, MCA Vanuatu was without a lawyer. MCC has requested that MCA Vanuatu undertake prepare an IEA with Customs and Inland Revenue and that this needs to be done as soon as possible.

In one past SC Meeting the Committee mandated the Program Director to hunt for lawyers that are prepared to provide legal advice to MCA Vanuatu. To fast track recruitment, the Program Director advised that this be done through "personnel action" consistent with the recruitment of the past legal counsel. However, the MCC Resident Country Director contested this and stated that it has to go through the Procurement Agent. The Program Director indicated that this can take months and is not the preferred option. However, the MCC Country Director insisted. The Chairman instructed the Program Director to liaise with MCC Procurement to ascertain what process to pursue.

The Chairman was of the view that a full time Legal Counsel should be considered in concert with MCA Vanuatu's past held view.

- **SC Meetings**

The Chairman again reiterated the importance of attending SC Meetings on a regular basis consistent with the Governance Agreement. To facilitate scheduling of meetings the members agreed that meetings be held every third week of every month, on Mondays at 2pm. The Chairman emphasized the importance of a quorum and suggested that members send their representatives if they are unable to attend.

The next Steering Committee Meeting will be held on Monday 21<sup>st</sup> May 2007 @ 2 pm at the MCA Vanuatu Conference Room.

The MCA Vanuatu Steering Committee meeting officially closed at 6.40pm

**Certified by:** \_\_\_\_\_ /S/  
**Secretary, MCA-Vanuatu**

**Acknowledged by:** \_\_\_\_\_ /S/  
**Chair of the Steering Committee**

## Appendix

### **MCA Vanuatu Steering Committee Approvals through Flying Minutes**

<b>Date</b>	<b>Approval</b>
<b>July 26, 2006</b>	Approval for Medical and Dental Services
<b>July 27, 2006</b>	Approval to use Services of Health wise Pharmacy for Medical Prescription for MCA Vanuatu Staff
<b>September 20, 2006</b>	Approval of Amendments to Tourism Survey Evaluation Report
<b>September 21, 2006</b>	Approval of Amendments to Implementing Entity Agreements for National Statistics Office
<b>October 3, 2006</b>	Endorsement of Panel decision to Employ Catherine Malosu as Environment and Social Impact Officer for MCA Vanuatu Project Management Unit
<b>October 6, 2006</b>	Approval of (i) Bid Challenge System, (ii) Salary Scale for Staff (iii) NSO IEA (iv) Specific Invitation Notice (v) Procurement Plan
<b>October 11, 2006</b>	Approval to employ Services of a Cleaner for MCA Vanuatu Office
<b>October 13, 2006</b>	Approval of Final Expressions of Interest Report – Targeted Environmental and Social Assessments MCA 13-02
<b>October 13, 2006</b>	Approval of Final Expressions of Interest Report – Data Quality Auditor MCA 18-03
<b>October 13, 2006</b>	Approval of Final Expressions of Interest Report – PWD TA for Supervision MCA 13-01
<b>October 18, 2006</b>	Approval of Prequalification Document for Construction of Civil Works (Design & Build)
<b>October 19, 2006</b>	Approval of Negotiation Documents for Data Quality Auditor MCA 18-03
<b>October 19, 2006</b>	Approval of Request for Proposal Tourism Survey MCA 18-04
<b>October 31, 2006</b>	Approval of Financial Plan for 3 <sup>rd</sup> Disbursement Request
<b>December 8, 2006</b>	Approval of Procurement Plan and General Procurement Notice
<b>December 8, 2006</b>	Approval of Financial Plan for the Second Disbursement Request
<b>December 8, 2006</b>	Approval of the Technical Evaluation panel for the Prequalification of the Design and Build Project
<b>December 8, 2006</b>	Approval of Audit Plan
<b>December 8, 2006</b>	Approval of Fiscal Accountability Plan
<b>December 8, 2006</b>	Approval of Second Disbursement Request Documents
<b>December 18, 2006</b>	Approval of Successor Procurement Agent
<b>December 21, 2006</b>	Approval of Advertisement Notice for Public Awareness Consultant MCA 18-05
<b>December 22, 2006</b>	Approval of Expressions of Interest Evaluation Report MCA Van 01 Invitation for Prequalification for Construction of Civil Works (Design and Build)
<b>January 5, 2007</b>	Approval of Tourism Survey Evaluation Panel
<b>January 5, 2007</b>	Approval of Request for Proposals for Auditor Services to be provided to MCA Vanuatu
<b>January 18, 2007</b>	Approval of Technical Proposal Evaluation Report for Tourism Survey – Tender No MCA-VAN 18-04
<b>January 18, 2007</b>	Approval of Second Disbursement Request Documents
<b>January 24, 2007</b>	Approval of Selection Procedures of Individual Consultants
<b>February 8, 2007</b>	Approval of Issue of Request for Proposal to GRM on Sole Source Basis for Procurement Agent for MCA Vanuatu
<b>February 8, 2007</b>	Approval of Technical Proposal Evaluation Report for M&E Tourism Survey
<b>February 13, 2007</b>	Approval of Issue of Technical Proposal Evaluation Report for M&E Tourism Survey: MCA 18-04
<b>February 26, 2007</b>	Approval of Procurement Agent Agreement Between GRM and MCA Vanuatu
<b>March 15, 2007</b>	Approval of Tourism Survey Combined Technical and Financial Report
<b>April 2, 2007</b>	Approval of Cancellation of Procurement of Public Awareness Consultant MCA 17-01-001
<b>April 3, 2007</b>	Approval of Withdrawal of Port Vila Dental Centre (Dr Ken Hutton) as a Service Provider of MCA Vanuatu