

LHWP ANTI-CORRUPTION POLICY - 2019

Adopted by the Lesotho Highlands Water Commission in January 2019

1. This Policy has been adopted pursuant to Article 16 of the Agreement on Phase II of the Lesotho Highlands Water Project between the Government of the Kingdom of Lesotho and the Government of the Republic of South Africa.

Definitions:

2. In this Policy:
 - 2.1. the Lesotho Highlands Water Project will be referred to as the Project and includes Phases IA, IB and II thereof;
 - 2.2. the Project Authority includes the Lesotho Highlands Water Commission (“the LHWC”) and the Lesotho Highlands Development Authority (“the LHDA”);
 - 2.3. employees of the Project Authority include employees and board members of the LHDA and employees of and delegates to the LHWC;
 - 2.4. in the context of this Policy, an agent is not a *bona fide* business, practice or individual which provides facilitation services to consultants and contractors for the purposes of registration with government authorities and for obtaining the necessary licenses, permits and clearances to practice within the Kingdom of Lesotho (e.g. Income tax clearance, trading license, work permits, etc.). In the context of this Policy, such facilitators are legitimate service providers for purposes of assisting consultants and contractors to comply with the legal requirements for permitting, licensing and registration.

Background:

3. Phases IA and IB of the Project were tainted by corruption which caused the integrity of the Project to be undermined and questioned.
4. Despite the best efforts of the Lesotho prosecuting authorities, working in conjunction with the Project Authority, and by reason of the insidious nature of corruption, the full extent of the corruption in connection with these Phases is not known, nor the identity of each and every entity or individual involved.

5. In the light of these experiences the Phase II Agreement provides in Article 16 for the development and adoption of an Anti-Corruption Policy for the Project.

Principles:

6. All persons or entities involved in the Project must observe the highest standards of compliance and ethics.
7. The Project Authority shall take all appropriate measures to combat corruption in all its forms.
8. All contracting parties or entities, and persons otherwise involved in the Project, shall take all appropriate measures to prevent and combat corruption and to refrain from engaging in corruption in connection with their involvement in the Project.

Application of Policy:

9. The provisions of this Policy shall apply to all contractors and consultants involved in the Project, including the pre-qualification of bidders and tenderers (where applicable), the evaluation of bids and tenders and the award of contracts.
10. Henceforth every contract entered into under the Project shall provide for the incorporation of this Policy into such contract.
11. The provisions of this Policy shall apply to the employment and the conduct of employees of the Project Authority.
12. The provisions of this Policy shall apply to recipients of compensation in terms of the Project.
13. For the purposes of this Policy corruption shall include the following:
 - 13.1. A “corrupt practice”, such being the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of any person or entity in connection with the Project.
 - 13.2. A “fraudulent practice”, such being any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, any person or entity in connection with the Project, to obtain a financial or other benefit or to avoid an

obligation.

- 13.3. A “collusive practice”, such being an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of any person or entity in connection with the Project. Such practices may include:
 - 13.3.1. Personal conflict of interest (CoI) as defined in the **Procedure for Dealing with Conflict of Interest** (copy attached); or
 - 13.3.2. Corporate conflict of interest, where two or more firms are engaged in joint pursuits elsewhere with a common business goal such that the firm or its employees “have the potential or ability to influence or be influenced in their judgement or evaluation of an offer, bid or tender of one of the firms engaged with them elsewhere such that the evaluation/assessment cannot be completely impartial/unbiased and objective”; or
 - 13.3.3. Perceived conflict of interest, defined as “when a third party observing the procurement process considers the process to be influenced or biased based on the perception of business or other relationships between the corporate entities”.

13.4. A “coercive practice”, such being impairing or harming, or threatening to impair or harm, directly or indirectly, or to influence improperly, any person or entity in connection with the Project.

13.5. An “obstructive practice”, such being:

13.5.1. the destroying, falsifying, altering or concealing of evidential material relevant to an investigation, as referred to in paragraphs 29 and 30 hereunder, or the making of false statements to investigators in order to materially impede such investigation; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to such investigation or from pursuing such investigation; or

13.5.2. acts intended to materially impede the exercise of the Project Authority’s right to access to information, as referred to in paragraphs 29 and 30 hereunder.

Participation in Contracts:

14. Where a contractor or consultant, or any employee or former employee of such contractor or consultant, or any individual, was previously involved or implicated in corruption, such contractor, consultant or individual may be excluded from any involvement in the Project. Such exclusion will be at the sole discretion of the Project Authority based on a reasonable assessment of all the facts at its disposal.

15. Any contract awarded in relation to the Project will commit the contractor, consultant or individual concerned not to involve itself or himself in corruption, whether relating to the specific contract or not, concerning any employee of the Project Authority or any other entity or person having an interest in the Project.

16. The Project Authority in dealing with the pre-qualification of bidders and tenderers, the evaluation of bids and tenders, as well as the award of contracts, will have regard to the use of agents by contractors or consultants, both in the procurement or execution of previous contracts as well as their intended involvement in the Project. Here the Project Authority will be entitled to assume,

unless shown otherwise, that such use or intended use of agents involved or will involve corruption.

Confidential Business Information/Client Privilege

17. Confidential Business Information (CBI) shall include all forms of client privilege information pertaining to fees, cost estimates, engineering design, specifications, method statements, reports, prototypes, bid and tender evaluation reports, etc. All CBI shall be protected by signed declarations by all individuals engaged on the Project or contracted to the Project Authority for purposes of carrying out professional services related to the implementation of Phase II. Such declarations shall take the form of Non-Disclosure Agreements (NDA) which will be signed by the other party and retained by the Project Authority. Examples are attached.

Specific Obligations of Prospective Contractors and Consultants:

18. Every prospective contractor or consultant shall at the earliest opportunity in any bid or tendering process disclose to the Project Authority any prior involvement by it or any of its current or former employees in corruption.
19. Every prospective contractor or consultant shall disclose both its past and present use of agents in the procurement or execution of contracts and such disclosure will specifically include the contractual arrangement with such agent including the basis upon which such agent was or will be remunerated.
20. Every prospective contractor or consultant shall at the earliest opportunity in the bidding or tendering processes or at any point during the execution of a contract, disclose to the Project Authority any conflict or potential conflict of interest, whether personal or corporate, whether real or perceived, including but not limited to any employee of the Project having an interest, financial or otherwise, in the contractor or consultant or such contractor's or consultant's proposed involvement in the Project.
21. All contractors and consultants, as well as their employees and agents, as well as employees of the Project Authority, involved in the Project, shall commit themselves to taking all appropriate measures to prevent corruption and shall immediately report to the Project Authority any corruption that comes to their attention, and any failure to so report shall be deemed to constitute corruption.

22. The Project Authority shall do everything in its power to protect the identity of employees who act in terms of their aforesaid obligation to report instances of corruption. In addition, the Project Authority shall seek to ensure that such employees are not victimised or otherwise discriminated against as a result of their so reporting.
23. The Project Authority has implemented a “Whistle-blower” policy which shall be available for anonymous reporting of corrupt or perceived corruption to ensure early warning and reaction by the Authority. All reports shall be treated as confidential and will provide protection/asylum to any party making a disclosure.
24. All contractors and consultants, as well as their employees and agents, as well as employees of the Project Authority, involved in the Project, shall, if called upon to do so, fully co-operate with the Project Authority and/or the Lesotho Director of Public Prosecutions or any person

designated by him, in any investigation into allegations of corruption, whether against them or their employee or agent, or against any other entity or person.

Sanctions:

25. In addition to any contractual rights in terms of specific contracts, the Project Authority shall have the right to cancel any contract under the Project in the event that the award of such contract or its execution is shown to have involved corruption. The Project Authority shall be entitled to exercise this right once it is reasonably satisfied on the information at its disposal that such corruption has indeed occurred. It will not however exercise such right without giving the contracting party involved a reasonable opportunity to refute any allegation or evidence of corruption levelled against it.
26. Any breach of this Policy by an employee of the Project Authority shall be deemed a material breach of his or her conditions of employment.
27. Compliance with this Policy through early disclosure will not necessarily result in punitive action or disqualification but will be subject to the ruling and determination of the Project Authority's Conflict of Interest Committee or legal counsel.
28. Determination of a Conflict of Interest is by the Project Authority and not by the respondent.

Investigation and Access to Information:

29. The Project Authority shall have the right, in the event of allegations of corruption against any contractor or consultant, or any of their employees, former employees or agents, as well as employees of the Project Authority, to investigate such allegations, and such right shall include the right of access to the said entity or person's records and/or other evidential material which in the opinion of the Project Authority may be relevant to such investigation.
30. The entity or person referred to in paragraph 29 shall be obliged to fully co-operate with any such investigation and shall make available to the Project Authority any records or other evidential material as the Project Authority may require for purposes of such investigation.
31. The investigation referred to in paragraphs 29 and 30 shall be conducted by independent investigators appointed by the LHDA Board or the LHWC.

Training and Compliance:

32. The Project Authority will require that all employees, consultants and contractors undergo Ethics and Compliance training at the commencement of services and shall undergo annual refresher courses for as long as the individual/entity is engaged on the Lesotho Highlands Water Project Phase II. The Project Authority will direct and cause to be presented appropriate training and will conduct regular audits to ensure compliance by consultants and contractors on the Project.