



LESOTHO HIGHLANDS WATER PROJECT PHASE II

CLARIFICATION OF ADVANCE INFRASTRUCTURE CONSTRUCTION CONTRACTS PROCUREMENT PROCESS

Questions have been raised regarding the current procurement process for Advance Infrastructure construction contracts on Phase II of the Lesotho Highlands Water Project (LHWP). The Lesotho Highlands Development Authority (LHDA) would like to clarify these processes for all interested parties to address those questions and the apparent misunderstanding regarding the LHWP contractor procurement process.

The LHDA would like to re-emphasise its commitment to implementing Phase II of the Lesotho Highlands Water Project in line with the Treaty, the Phase II Agreement and relevant Lesotho legislation. The LHDA's procurement processes have the objective of amongst others, maximizing procurement opportunities for Lesotho and South African suppliers of goods and services.

Phase II is implemented under the terms of the LHWP Phase II Agreement, signed between the Governments of Lesotho and South Africa in August 2011. Article 10 of the Phase II Agreement addresses the procurement of goods and services for the project.

Article 10 (a) states that "all procurement processes shall foster competitiveness, transparency, cost effectiveness and quality". Article 10 (b) states that in procurements of goods and services, preference shall be given to suppliers of goods and services, including consultants and contractors, starting in Lesotho, then South Africa followed by suppliers from the SADC member states and then internationally, provided that the provisions of Article 10 (a) shall always be satisfied; lastly Article 10 (c) states that consultants and contractors registered in Lesotho and in South Africa shall share the value of all infrastructure works on an equal monetary basis, taking into account, amongst other things, their shareholding and operational experience;

In order to meet the requirements of Article 10 of the Phase II Agreement, the LHDA has developed procurement documents for both consultants and contractors which encourage Joint Ventures of Lesotho and South African-based firms. These are designed to encourage the sharing of participation while achieving the requirements of Article 10 (a), which the Agreement stipulates '*shall always be satisfied*'.

Each construction contract Tender Document is based on LHDA standard documentation, adjusted by the respective engineering consultant to suit the particular contract.

The Tender Documents contain mandatory minimum 'preference' requirements for a range of parameters including (i) employment of Lesotho and RSA nationals, (ii)

participation by Lesotho and RSA national contractors, (iii) procurement of goods and services from Lesotho and RSA national enterprises, (iv) development of Lesotho and RSA Black enterprises, and (v) skills development of employees.

In addition to the above listed mandatory minimum requirements, the evaluation process awards points for achieving values higher than the set minimum requirements. In accordance with the Phase II Agreement, quality criteria are also set to ensure that successful tenderers are competent to construct the works. These include demonstration of relevant previous experience, technical capability, financial status and suitably qualified and experienced staff.

In order to provide opportunities to as many contractors as practicable, the project's works have been broken down into a substantial number of small separate construction contracts.

The LHDA has developed a contractor categorisation system that draws on the existing categorisation systems of both RSA and Lesotho (the Roads Directorate, Department of Public Works systems in Lesotho and the CIDB in RSA) and adapted these to suit the requirements of the LHWP.

Under this categorisation system, Lesotho firms registered at category A with either the Roads Directorate or the Department of Public Works are automatically 'deemed to satisfy' the requirements for LHWP II designation Z.

Although the scope of a certain contract may be beyond the capability of a single particular contractor, the Tender Documents are structured in such a way as to encourage participation of smaller contractors as either Joint Venture partners or as sub-contractors, thus maximising opportunities. In addition the LHDA Categorisation Table makes provision for combining up to 3 lesser grades to achieve a higher grade. Furthermore, there is no requirement that every individual member of a Joint Venture must be registered with either the Government of Lesotho Authorities or the CIDB of South Africa. Similarly, there is no requirement that every individual member of a Joint Venture must meet all the requirements of the Tender Document.

It is the expectation of LHDA that the Lesotho based firms will have the opportunity to participate in the project as part of Joint Ventures or similar arrangements. This will not only ensure a sharing of the work, but also give the opportunity for Basotho firms to gain experience and expertise on larger projects, equipping them to compete for larger contracts in future. The Tender Documents are written to ensure joint participation by Lesotho and South African firms and to preclude monopolization of any contract by nationals of either country.

The LHDA categorisation table is explained as follows:

Table 1: The LHDA categorisation table

Upper limit of tender value range LSL million	Best Annual Turnover LSL million	Available Capital LSL million	Largest completed similar contract LSL million	Number of Professional staff in relevant technical	CIDB Designation	Approximate Public Work categories for building Contractors	Approximate Roads Directorate Categorization	LHWPII Categorization
0.2	Not required	Not required	Not required	0	1	D	E3	R
0.65	Not required	Not required	0.15	0	2	D	E3	S
2	1	0.1	0.5	0	3	C	E3	T
4	2	0.2	1	0	4	C/B	E1/E2	U
6.5	3.25	0.65	1.6	0	5	A/B	E1	V
13	7.8	1.3	3.25	1	6	A	C/D	W
40	24	4	10	2	7	A	A/B	X
130	90	13	32.5	3	8	A	A	Y
>130	270	40	100	4	9	A	A	Z

The table should be interpreted as follows:

1. In RSA, the CIDB system does not differentiate between roads, building or civil engineering works. However, in Lesotho a company can either register with the Ministry of Public Works, the Roads Directorate or both.
2. For companies registered with Lesotho Roads Directorate, Ministry of Public Works in Lesotho or the CIDB in RSA, a certificate or confirmation by the relevant authority is adequate to confirm the equivalent LHWPII category.
3. For example, if the tender document requires that the contractor should be **Grade T**, any company with the **CIDB Grading of 3** or Lesotho company with **Grade C**, from the Ministry of Public Work or **Grade E3**, from the Roads Directorate, would be eligible to tender for the advertised contract.
4. Similarly, if the tender document requires that the contractor should be **Grade Z**, any company with the **CIDB Grading of 9** or Lesotho company with **Grade A**, from the Ministry of Public Work or **Grade A**, from the Roads Directorate, would be eligible to tender for the advertised contract.
5. However, it must be noted that for companies that are not registered with either of authorities mentioned above, the grading will be determined on the basis of **value of tender, Best Annual Turnover, Available Capital, Largest Completed Contract & Number of Professional Staff Proposed**.
6. For Joint Ventures, the combined JV capability will be assessed in accordance with Table 2 which follows:

Table 2: Determination of LHWP2 Designation for Joint Ventures

LHWP II Designation	Equivalent LHWP II Designation
T	<ul style="list-style-type: none"> • Three contractors, each demonstrating an LHWP2 Designation Grade S
U	<ul style="list-style-type: none"> • Three contractors, each demonstrating an LHWP2 Designation Grade T
V	<ul style="list-style-type: none"> • Two contractors, each demonstrating an LHWP2 Designation Grade U • One contractor demonstrating an LHWP2 Designation Grade U and two contractors each demonstrating an LHWP2 Designation Grade T
W	<ul style="list-style-type: none"> • Two contractors, each demonstrating an LHWP2 Designation Grade V • One contractor demonstrating an LHWP2 Designation Grade V and two contractors each demonstrating an LHWP2 Designation Grade U
X	<ul style="list-style-type: none"> • Two contractors, each demonstrating an LHWP2 Designation Grade W • One contractor demonstrating an LHWP2 Designation Grade W and two contractors each demonstrating an LHWP2 Designation Grade V
Y	<ul style="list-style-type: none"> • Three contractors, each demonstrating an LHWP2 Designation Grade X
Z	<ul style="list-style-type: none"> • Three contractors, each demonstrating an LHWP2 Designation Grade Y