



LESOTHO HIGHLANDS DEVELOPMENT AUTHORITY

(“LHDA”)

LHDA – PROCUREMENT POLICY



Revision: [05]

REVISION DATE: [July 2021]

Revision History

Rev.	Issue Date	Amendment Issue	Description of Changes
01	Oct 2014	Initial Version	
02	May 2017	Adjustment of Special Rules for LHWP Phase II	<ol style="list-style-type: none"> 1. Ceiling Amounts that limit participation of companies have been adjusted to take into consideration current estimates or actual values of the contracts. 2. Further refinements of the document and editorials.
03	Oct 2018	Definitions	<ol style="list-style-type: none"> 1. Additional definitions added 2. Provision for single source selection, emergency and specialised works added 3. Alignment of the definition of Main Works with the Phase II Agreement. 4. Further refinements to align with the latest information, lessons learned and approach
04	Sept 2020	Structure and Special Rules for LHWP Phase II	<ol style="list-style-type: none"> 1. Structure updated to align with the approved 2020 LHDA Policy Template 2. Section 6.1.1 revised to align with the LHWC letter of Ref. SEC/LHDA/2800/17949 of 28 August 2019 3. Section 9.1.1 revised to align with the Lenders requirements and rules.
05	July 2021	Adjustment of Special Rules for LHWP Phase II	<ol style="list-style-type: none"> 1. Ceiling Amounts that limit participation of companies have been adjusted to include inflation. 2. Section 9.1.1 revised to align with the latest Lenders requirements and rules. 3. Editorials and improvements in clarity where applicable

Approvals

Revision	LHWC	Effective
Rev.05	SEC/LHDA/2800/20934	25 August 2021

Table of Contents

Revision History	i
Approvals.....	i
ABBREVIATIONS	iii
DEFINITIONS	iii
1. POLICY STATEMENT.....	1
2. BACKGROUND.....	1
3. APPLICABLE LAWS AND LHDA POLICIES	1
3.1 Legal Framework.....	1
3.2 LHDA Policies	1
4. PURPOSE.....	2
5. SCOPE OF APPLICATION	2
6. LHDA PROCUREMENT OBJECTIVES	2
7. LHDA PROCUREMENT PRINCIPLES	3
7.1 Cost Effectiveness.....	3
7.3 Transparency	3
7.4 Quality	3
7.5 Preference	3
7.6 Ethics and Fair Dealings -	3
8. PROCUREMENT RULES	4
8.1 Rules for Infrastructure Contracts.....	4
8.2 Rules for Goods, Services and Works above M 500,000.00	4
8.3 Rules for Goods, Services and Works below M 500,000.00	6
9. SPECIAL RULES FOR LHWP PHASE II.....	6
9.1 The Water Transfer Component	6
9.2 Hydro Power Component.....	7
10. ROLES AND RESPOSIBILITIES	7
11. EFFECTIVE DATE AND REVISIONS/AMENDMENTS	7

ABBREVIATIONS

BoE	Black Owned Enterprise
ESIA	Environmental and Social Impact Assessment
LHDA	Lesotho Highlands Development Authority
LHWC	Lesotho Highlands Water Commission
LHWP	Lesotho Highlands Water Project
RAP	Resettlement Action Plan
RFQ	Request for quotations
SADC	Southern African Development Community
SMME	Small, medium and micro-enterprise
SSS	Single Source Selection
SS	Sole Source
RSA	Republic of South Africa

DEFINITIONS (As may further be expanded in the Procurement Guidelines and Procedure)

Emergency – an event in which the safety, security and/or operations of the Project are threatened

Enterprise – A company or business established in accordance with the applicable legislations in the country of origin.

Infrastructure – As defined in Annexure 1 of the Phase II Agreement. This includes access roads, feeder roads, power supply systems, telecommunication systems, management, lodges, commercial centers, operations buildings and labour camps

RSA Black Individual – As defined in South African legislation and black individuals from the SADC Region who are holders of Permanent Residence Permits for South Africa.

Single Source Selection (SSS) / Sole Source (SS) – Procurement that is made without a competitive process subject to approval or instruction by an authorized authority in terms of the Governance Manual.

Southern African Development Community (SADC): An inter-governmental organization between 15 southern African member states. Its goal is to further socio-economic cooperation and integration as well as political and security cooperation among its members. It complements the role of the African Union.

Prime Sub-Contractor/Consultant – The sub-contractor/consultant whose financial capability and specific experience (with the exception of specialist subcontractors) are considered in the evaluation of a tender/bid.

Tendering Enterprise – All the enterprises tendering to perform the work under the contract, including JV members and Prime Sub-Contractor(s)/Consultant(s)

Waiver – Permission or Agreement to set aside a policy stipulation by the authorized body

1. POLICY STATEMENT

LHDA subscribes to procurement of goods and services in a professional, ethical, fair, equitable, cost effective, competitive and transparent manner in accordance with the provisions under **Article 6** of the Treaty and **Articles 10 and 11** of the Phase II Agreement. The award of contracts to suppliers of goods, services and capital works shall be based on merit and preference parameters.

The procurement provisions mentioned above are aimed at utilizing Project funds effectively, by way of reducing costs and giving local and regional suppliers of goods and services a fair chance to benefit from the Project.

2. BACKGROUND

The Lesotho Highlands Development Authority (LHDA) is a statutory entity established under the laws of Lesotho in terms of the Lesotho Highlands Development Authority Order No 23 of 1986 as amended. As a result, LHDA must comply with the order, the Treaty and its protocols and the Phase II Agreement.

The Procurement Policy recognizes that LHDA (through the implementation of the LHWP) as one of the largest buyers of goods and services the Lesotho and that it has the responsibility to leverage its purchasing power to support local and regional economies.

3. APPLICABLE LAWS AND LHDA POLICIES

3.1 Legal Framework

The overall governance of the LHDA as a public entity in Lesotho is broadly determined by various legislation, in particular the following, without limitation:

- a) LHDA Order No 23 of 1986 as amended;
- b) The LHWP Treaty signed between the Governments of Lesotho and South Africa in October 1986 and applicable Protocols;
- c) Governance Manual Second Edition July 2017 and subsequent amendments;
- d) Phase II Agreement signed between the Governments of Lesotho and South Africa in August 2011 and
- e) Applicable laws of Lesotho.

3.2 LHDA Policies, Guidelines and Procedures

- a) Anti-Corruption Policy
- b) Conflict of Interest Policy
- c) Procurement Guidelines and Procedure

4. PURPOSE

To regulate, provide guidance and to ensure consistency during the procurement of goods and services by the LHDA within the purview of the Lesotho Highlands Water Project.

5. SCOPE OF APPLICATION

This Policy will apply to both the Operations and Maintenance Phase (Phase I) and Phase II activities. Areas that are not applicable to Phase I (or Operation and Maintenance Phase) are highlighted under Section 9. The policy further recognizes and enforces the principle that only budgeted items may be procured, except in cases of Emergency.

6. LHDA PROCUREMENT OBJECTIVES

The main objective is to procure during the construction and operation phases, the services of consultants, service providers and contractors with the skills, expertise and commitment to perform their duties and obligations under the Project in accordance with Internationally Recognized Standards.

The following are central to the LHDA procurement processes and procedures:

- i. To **comply** with the **spirit and objectives** of **Article 6** of the Treaty and **Articles 10 and 11** of the Phase II Agreement, which are to foster **competitiveness and transparency** while increasing participation of individuals from Lesotho, South Africa and SADC Member states.
- ii. To **maximize procurement opportunities** for Lesotho and South African suppliers.
- iii. To **minimize the utilization of imported goods, skills and labour**, where applicable within the ambit of the governing laws of Lesotho.
- iv. To **maximize skills and technology transfer** through **training** of individuals and **enterprise development opportunities** for Lesotho-based Companies and Black Owned Companies in the Republic of South Africa.

To effect the above and to encourage socio economic change in the region, LHDA will use preferential procurement with a focus on the benefit-sharing to the implementing countries, who are Parties to the Treaty (Lesotho and South Africa).

7. LHDA PROCUREMENT PRINCIPLES

LHDA shall apply the following principles during the procurement of works, goods and services:

- 7.1 Cost Effectiveness - Ensures that the cost of procuring the goods and services is at least commensurate with the potential benefits . Cost effectiveness implies the best available outcome when all relevant costs over the procurement / life cycle of the product or service are considered.
- 7.2 Competitiveness – Enables suppliers to compete by ensuring that adequate and timely information is provided. The instructions to tenderers shall be unambiguous, transparent, consistent and easy to follow.
- 7.3 Transparency - Ensures open public tendering subject to 3.2, 8.3 and 8.4, and that potential suppliers have equitable access to procurement opportunities and that available opportunities are notified in the most appropriate medium of communication. The quotes or tenders will be evaluated on the basis of pre-determined and communicated criteria.
- 7.4 Quality - Ensures the best quality of works, services or product that meets performance requirements / specifications. Evaluation will not focus solely on the lowest cost at the expense of performance.
- 7.5 Preference - Preference will be given to suppliers, including contractors and consultants from Lesotho, South Africa, the SADC Member states and others, in that order, provided that the provisions of 7.1 to 7.4 above are satisfied.
- 7.6 Ethics and Fair Dealings - Ensures equal treatment of all suppliers, consultants and contractors whilst promoting the broader procurement objectives. All interested parties shall conduct themselves and their business with integrity, professionalism and fairness. All suppliers, consultants and contractors shall be required to disclose any interests that may present an actual or perceived conflict. Tender Evaluation Team Members must sign declaration of conflict of interest and confidentiality forms.

In conducting its business LHDA is committed to upholding the highest principles of business ethics and conduct. To this end bidders for work under LHWP shall sign a declaration to abide and be bound by the LHWP Anti-corruption Policy.

8 PROCUREMENT RULES

The procurement policy and its guidelines are aligned to the provisions and spirit of **Article 10** of the Phase II Agreement.

8.1 Rules for Infrastructure Contracts

To give effect to Article 10(c) of the Phase II Agreement, the percentage allocation of work for each infrastructure contract will be determined based on complexity of work, operational experience of the pool of Consultants and Contractors from both countries.

8.2 Rules for Goods, Services and Works above M 500,000.00

8.2.1 Quotes or Tenders will be evaluated on the basis of pre-determined criteria which will be based on Quality/functionality (technical ability/technical applicability), Preference and Price (financial viability).

8.2.2 Firms previously involved or implicated in corruption as provided for in the Anti-corruption Policy **may** be excluded from any involvement in the Project.

8.2.3 Contracts will be packaged into the smallest components possible with due consideration for potential effects on quality of service, logistics of implementation and impacts on the project schedule and costs.

8.2.4 No single Tendering Enterprise will be allowed to participate in multiple tenders for a single procurement. However, the Tendering Enterprise will have the flexibility in forming their associations such that Suppliers, Specialist Sub-Contractors and SMMEs are able to tender with multiple teams in a single procurement.

The specialist sub-contract (if any) and/or SMME work will be identified and clearly communicated in the Tender Documents/RFP for the relevant contract.

8.2.5 Lesotho Enterprises are as defined under Article 1 of the Phase II Agreement. Newly registered companies (After 2011) will be considered as Lesotho Enterprises only if they are registered under the Lesotho Companies Act No. 25 of 1967 as amended and more than 75% shareholding is by Lesotho Nationals (Valid Lesotho Passport Holder or Lesotho ID Holder).

- 8.2.6 RSA Enterprises are those residents, operating and managed in the Republic of South Africa, registered in South Africa in terms of the South African legislation and subjected to corporate income tax in South Africa; where 'operating' means carrying out work of a similar nature for a significant period within the last 10 years
- 8.2.7 RSA Black-Owned Enterprises are Black Owned Enterprises (BOEs) in terms of South African legislation (i.e. >50.1% Black ownership and substantial Black management).
- 8.2.8 A margin of preference will be applied to local and regional firms whilst not excluding international firms from participating where special expertise and capacity are needed. Preference points will be based on the following:
- A. **For Lesotho Enterprises** - Shareholding and Participation by Lesotho Nationals
 - B. **For South African Enterprises - Participation by** BOEs and RSA Back Individuals
 - C. **For International Enterprises** - Participation by Lesotho, Republic of South Africa (RSA) Nationals.
 - D. **For All Enterprises** - Engagement of Lesotho & RSA Nationals & women youth and people with disabilities in key positions
- Preference margins shall be determined per contract and approved by the Lesotho Highlands Water Commission.
- 8.2.9 Consideration will be given to the use of labour-intensive construction methods in contract specifications to increase participation of local workers provided no significant impact on the project schedule is introduced.
- 8.2.10 The LHWC approval is required prior to deviation from the above rules

8.3 Rules for Goods, Services and Works below M 500,000.00

Contracts, goods and services with a value less than M500,000.00 may be sourced through the obtaining of three (3) requests for quotations (RFQ) from pre-approved LHDA suppliers, with the proviso that:

8.2.11 Such suppliers have submitted Valid Tax Clearance Forms, Copy of Certificate of Incorporation if a company, and in Lesotho, a valid Trading License to LHDA, and LHDA have validated their existence by doing an inspection of their premises, if not a national, listed or public company.

8.2.12 A Waiver of the prerequisite three (3) quotations for contracts, goods and services must be approved by the Chief Executive.

8.4 Special Procurement

In the case of special procurement, such as Emergency Works or Sole Sourcing, the LHDA will motivate and seek approval to waive some of the Procurement Policy requirements.

9 **SPECIAL RULES FOR LHWP PHASE II**

LHWP Phase II has two distinct components, namely; the Water Transfer Component and the Hydro Power Component. In order to achieve **equitable distribution of work** and to **discourage monopolization** by others, the following restrictions shall apply:

9.1 The Water Transfer Component

9.1.1 The LHDA prefers **not to award** the **dam** and **tunnel contracts** (consultancy and construction) to the same enterprise or Joint Venture. However, tenderers are allowed to tender for both contracts. The dam and tunnel contract **will only be awarded to the same enterprise** or JV subject to the entity being ranked 1st on both contracts and having the necessary capacity to do both in terms of the LHDA Tender Evaluation Criteria.

9.1.2 For Advance Infrastructure Contracts - A single firm or Joint Venture will be allowed to participate (as a Joint Venture member, in association with or as a sub-contractor/consultant) in a maximum of six (6) contracts for others and a maximum of eight (8) contracts for Lesotho firms, provided that the cumulative total value of contracts for which such a firm or Joint Venture participates does not exceed the amounts shown in the table below.

NATURE OF WORK	CEILING AMOUNT	CONDITION
Engineering Consultancy	– M 220 mil	The ceiling amounts exclude contracts related to the main work i.e. dam, tunnel and related RAP or ESIA Contracts.
Environment Consultancy	– M 85 mil	
Combined Eng. & Env. Consultancy	M 300 mil	
Contractor - Construction	M 720 mil	
Other	N/A	

Notes

1. The above restrictions will apply to Phase II contracts advertised after August 2014, save in the event that the **ONLY** qualifying tenders are from entities which have already reached the ceiling amount or maximum number of contracts.
2. In order to enable potential tenderers to plan and formulate their tender strategies, a list of potential contracts to be issued under Phase II will be available at LHDA offices and will also be published on the LHDA's Website. This list will be up dated from time to time.

9.2 Hydro Power Component

As and when more information about the extent of the scope and potential number and type of contracts becomes available, the Special Rules for Phase II will be amended to accommodate the Hydro Power Component.

10 ROLES AND RESPOSIBILITIES

The LHWC shall approve the LHDA Procurement Policy and any changes thereto, following a recommendation from the Technical Sub-Committee and the LHDA Board.

11 EFFECTIVE DATE AND REVISIONS/AMENDMENTS

The Revised Policy will come into effect on the date it is approved by the LHWC and will be reviewed biennially or as and when required.