LESOTHO HIGHLANDS WATER PROJECT

CONTRACT PROCUREMENT
&
ADMINISTRATION

LESSONS LEARNT ON PHASE I

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CONTENTS

- Purpose
- Conditions of Contract
- Lessons Learnt in the Procurement Process
- Lessons Learnt in Contract Administration
- Addressing these Challenges going Forward

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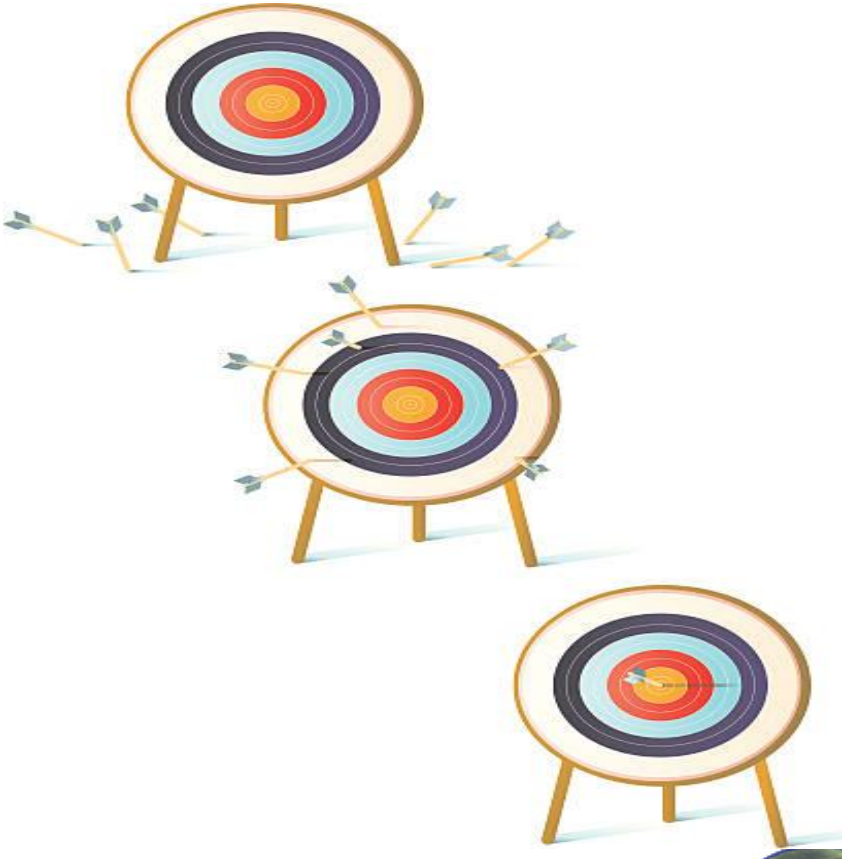
PURPOSE

To provide prospective suppliers/contractors with highlights of the challenges and lessons learnt by LHDA in the procurement and administration of Phase I contracts, with the hope of avoiding some of these problems in subsequent LHDA contracts.



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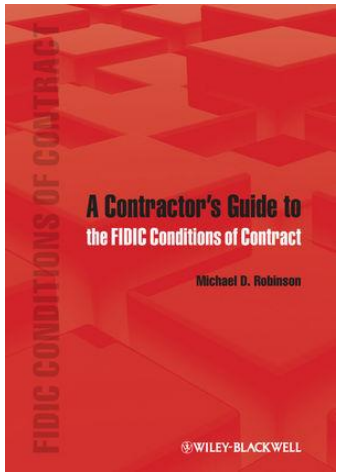
CONTRACT CONDITIONS



- FIDIC Suite of Contracts
- Contract Conditions are copyrighted
- Suite used by LHDA
  - White Book – Client/Consultancy Agreement
  - Green Book – Short Form of Contract
  - Red Book/Pink Book – Construction for Building & Engineering Works
  - Yellow Book – Plant and Design-Build
  - Silver Book – EPC/Turnkey
  - Gold Book – Design, Build and Operate
- Contract Conditions given in the General Conditions of the Tender Document

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TYPICAL CONTENT OF A TENDER DOCUMENT

- Instructions to Tenderers
- Evaluation & Qualification Criteria
- Scope of Work
- Tender Forms
- LHWP Anti-Corruption Policy

Lesotho Highlands Development Authority

Specific Procurement Notice

Request for Proposals (RFP)

Contract LHDA No. 3008:
Professional Services for the Design and Construction Supervision of the Bulk Power Supply and Telecommunications

The Lesotho Highlands Water Project (LHWP) is a multi-billion Maloti/Rand bi-national project which was established by the Treaty of 1986 between the governments of the Kingdom of Lesotho and the Republic of South Africa. The LHWP includes large scale civil engineering, socio-economic and environmental components. Phase II of the LHWP has two components, a water transfer component and a hydro-electricity component. The water transfer component of Phase II will comprise a concrete-faced rockfill dam at Polihali, downstream of the confluence of the Khubelu and Senqu (Orange) Rivers, and a gravity tunnel that will connect Polihali Reservoir to the Katse Reservoir. Other Phase II activities include the establishment of advance infrastructure (roads, camps, power line, telecommunication system, etc.), feeder roads and the implementation of environmental and social impact mitigation measures. To accomplish this, the Lesotho Highlands Development Authority (the implementing authority of the LHWP) intends to procure the following professional services (consultancies):

Contract LHDA No. 3008: Professional Services for the Design and Construction Supervision of the Bulk Power Supply and Telecommunications

GENERAL SCOPE OF SERVICES TO BE PROVIDED

The works for LHWP Phase II will be constructed under the following Advance Infrastructure and Main Works contracts:

Advance Infrastructure:

i) Polihali North East Access Road (PNEAR) which forms the initial access to the Polihali area by the upgrading of an existing gravel road.
ii) Polihali Western Access Road (PWAR), a new, asphalt-surfaced road which forms the main access road from the A8 road (Northern Access Road from Pitseng to Katse) near Ha Seshote to the Polihali site.
iii) Ha Tlhakola, Senqu and Khubelu bridges and associated roadworks with the Tlhakola bridge linking the PWAR to the A1 road to Mokhotlong.
iv) Project housing and associated infrastructure, providing the permanent staff village, accommodation for the engineer and client, and bulk services to all the identified contractors' works areas and labour camps.
v) Bulk power supply and telecommunications, providing utilities' connection points to the camps and works areas.
vi) Feeder roads and bridges to be built later to provide replacement access for local communities affected by the reservoir.
vii) Demarcation of the Polihali Reservoir.

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TYPICAL CONTENT OF A TENDER DOCUMENT

- Form of Agreement
- Particular Conditions of Contract
- General Conditions of Contract
- Tax Requirements

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PROCUREMENT PROCESS LESSONS

Primary challenge

- Tenderers don't read and/or understand the tender requirements:
  - Instructions to Tender
  - Works Requirements & Specifications
  - Evaluation Criteria Requirements
  - Risks associated with the project

PROCUREMENT PROCESS LESSONS

- **Disqualification criteria**
  - Non-attendance of compulsory pre-tender meeting and site visit
  - Unauthorised/Unsigned tender submission
  - Late submission of tender
  - Participation in more than one tender (if not allowed for)

PROCUREMENT PROCESS LESSONS

- **Disqualification criteria**
  - Material deficiencies in the proposal/Non-responsive
  - Including companyies or individuals without their consent
  - Violating the provisions in the Anti-Corruption Policy

PROCUREMENT PROCESS LESSONS

- **Disqualification criteria**
  - Non-submission of Tender Security (if required)
  - Subcontracting more than specified limit (if not allowed for)
  - Providing a Tender Validity which is shorter than the prescribed period
  - Providing alternative Key Staff (if not allowed for)

PROCUREMENT PROCESS LESSONS

- **Disqualification criteria**
  - Non-disclosure of Conflict of Interest
  - Non-disclosure of imposed sanctions
  - Submitting an unidentifiable tender (unmarked)

PROCUREMENT PROCESS LESSONS

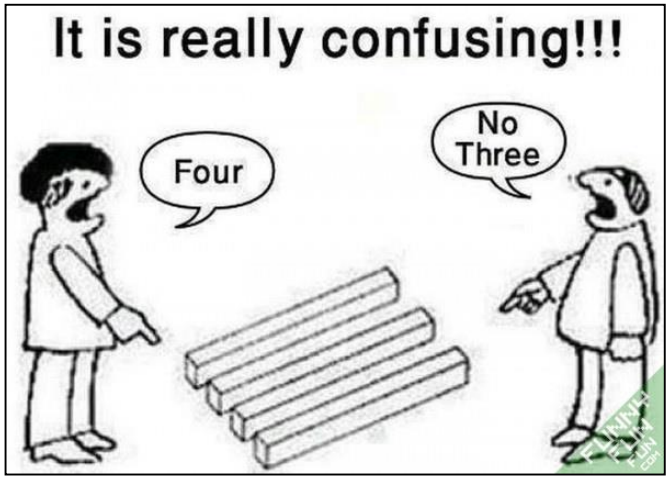
- **Cause of unsuccessful proposals/tenders**
  - Not providing required information
  - Insufficient detail e.g. projects, experience etc.
  - Not demonstrating experience on similar projects

PROCUREMENT PROCESS LESSONS

- **Cause of unsuccessful proposals/tenders**
  - No methodology/Repeating scope of work
  - Project organogram, not company organogram
  - Poor work programme

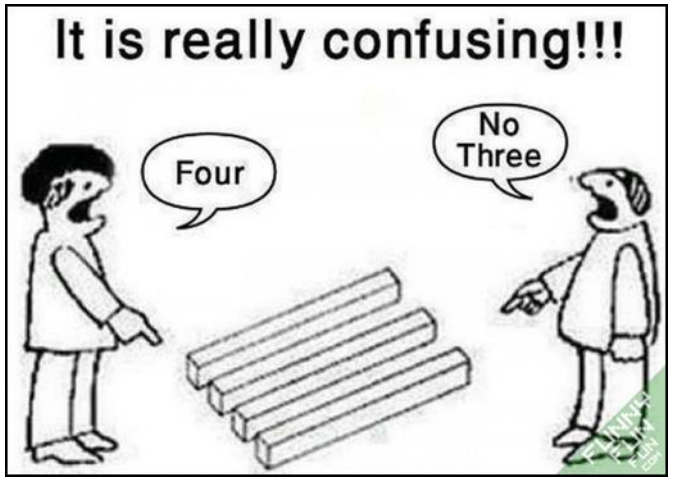
CONTRACT ADMINISTRATION LESSONS

- **Contractors don't know the contract**
  - It's legally binding
  - Don't read it
  - Don't have the general conditions of contract
  - Don't know their rights and obligations
  - Don't know the provisions and procedures to claim



CONTRACT ADMINISTRATION LESSONS

- **Contractors don't know the Contract**
  - Don't exercise their contractual rights
  - Don't issue notices timeously
  - Don't know what is "time barred"
  - No copy of the Contract on site.



CONTRACT ADMINISTRATION LESSONS

- **Contractors don't keep good records**
  - No records or poor records kept on site
  - No established reporting protocols
  - Poor reporting to LHDA on issues that affect communities. They try to resolve on their own.
  - No knowledge of who has the authority to stop, instruct or vary the works

CONTRACT ADMINISTRATION LESSONS

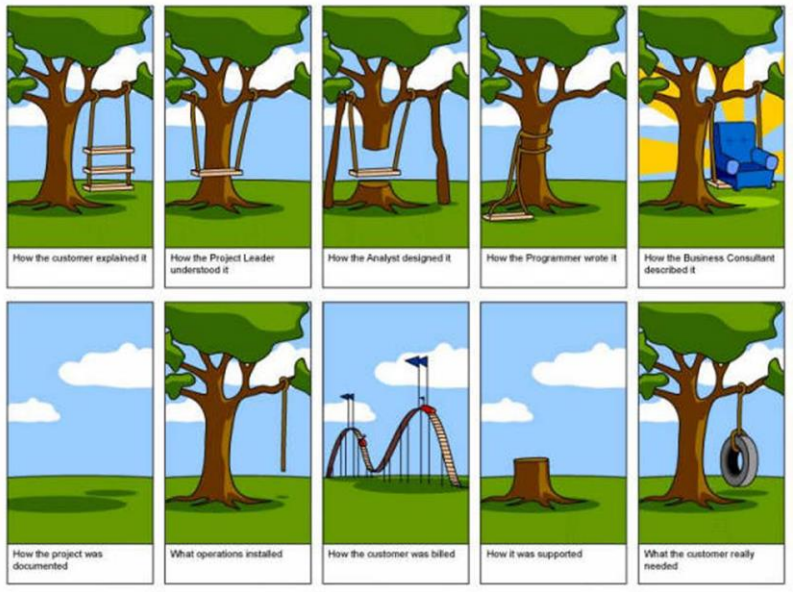
- **Finances, Costing, Invoicing, Cash flows**
  - Late submission of performance guarantees – on demand bank guarantee
  - Poor pricing:
    - Over/Under pricing
    - Risk assessment not done

CONTRACT ADMINISTRATION LESSONS

- **Finances, Costing, Invoicing, Cash flows**
  - Non-payment of Sub-Contractors and/or staff
  - Poor management of cash flow
  - Front load the contract
  - Don’t exercise advance payment option
  - Invoice incomplete items/items not in the contract
  - Non-adherence to tax requirements

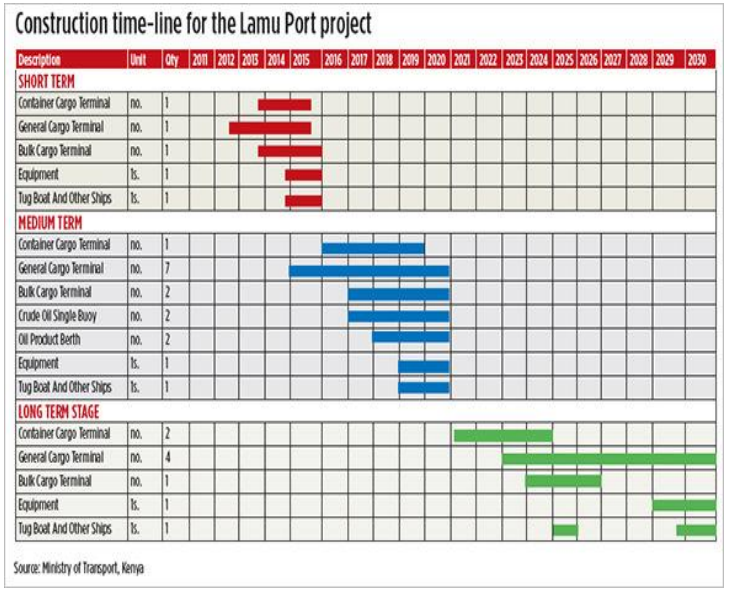
CONTRACT ADMINISTRATION LESSONS

- **Non-adherence to contract specifications & requirements**
  - Not adhering to contract requirements
    - Assume LHDA is like all other client bodies
  - Not providing what is specified
    - Demolish and reinstate
    - Rejected and replaced
    - Substandard works
  - Disputes & Litigation
  - Suspension, Non-payment & Termination



CONTRACT ADMINISTRATION LESSONS

- **Contract timelines & penalties**
  - Poor project scheduling
    - Lack detail
    - No linkages
    - Lead times not included
    - Critical path not included
    - Insufficient float
  - Variations & claims
  - Failure to meet contract completion date
  - Delay damages being imposed



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CONTRACT ADMINISTRATION LESSONS

- **Project resources**
  - Lack of start-up capital
  - Unqualified/Inexperienced staff
  - Inadequate project resources (not priced for)
  - Adding/Billing resources not in the contract

Don’t start a project without resources

CONTRACT ADMINISTRATION LESSONS

- **Safety, Health & Environment**
  - Injuries & fatalities
  - No safety procedures/Safety procedures not used
  - Non-adherence to safety and environmental requirements
  - Uninsured works

CONTRACT ADMINISTRATION LESSONS

- **Collusion, fraud & corruption**
  - Collusion between contractor & consultant
  - Fraud
  - Bribery

ADDRESSING THE CHALLENGES GOING FORWARD

- LHWP Anti-Corruption Policy
- Revised procurement procedures
- Debriefing meetings
- Standardising RFP/Tender documents

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THANK YOU!