

1. PURPOSE

The purpose of this procedure is to provide guidance to both LMDA project managers, procurement administrators and service providers on the status of eligibility or otherwise of service providers' involvement to LMDA's procurement activities.

2. SCOPE OF APPLICATION

These procedure shall govern the removal and or non-acceptance of manufacturers, suppliers, distributors, contractors, consultants and directors thereof from getting involved in future LMDA procurements for offenses or violations committed during tendering and or contract implementation period, in contravention with Sections P2.4, P10.1.3, P10.3.1 of the PPGs.

Section P2.4

LMDA's Contractor Past Performance Reporting System ("CPPRS") mandates regular reporting on contractor performance, thereby facilitating information sharing and standardized use of information relating to contractor performance so that better informed decisions can be made in awarding new contracts or maintaining current contracts with specific contractors. To that end, the LMDA shall (a) ensure that, for each procurement resulting in a total contract award, a past performance report on the contractor's performance is submitted at half yearly or more frequently if one or more aspects of performance are problematic during the period of contract performance, (b) consult the national and international source at specific stages in the procurement process to seek relevant past performance information on bidders or potential bidders and use such information in its evaluation and review panels, and (c) include a provision within their solicitation document(s), and contracts, as the case may be, to ensure that contractors are aware of the CPPRS obligation and how information gathered as a result of compliance with the CPPRS might be used. Further information regarding the procedures and forms to be used by the LMDA in performing these tasks is provided in LMDA's "Guidance on Reporting and Considering Past Performance by Contractors in LMDA Procurements" posted at: LMDA Website (www.lmda.org.ls).

Section P10.1.3

In addition, any person or entity that has been blacklisted or debarred by the World Bank or a firm whose performance was found to be "Unacceptable" under MCA-L/LMDA's CPPRS, shall also be ineligible to be awarded LMDA contracts.

Section P10.3.1

Documentation of the process takes two forms. The World Bank List of Debarred Firms and Individuals is a searchable database that returns a positive or negative search results page upon submission of a name to be searched. In order to document the eligibility of a given contractor or consultant, the LMDA should print out the search results page, which reads, "No Matching Records found!" and in case the Contractor/Consultant had poor CPPRs form, the copy of CPPRS form also needs to be attached. These documents should be printed and retained as part of the overall record of the procurement.

The procedure shall apply for all LMDA procurements and contracts.

3. ELIGIBILITY SCHEDULE

Bidders for works, supply and consultancy services including directors thereof remain eligible to tender for LMDA procurements as long as they remain in good standing with regards to LMDA Blacklisting criteria.

4. BLACKLISTING SCHEDULE

Bidders for works, supply and consultancy services including directors thereof shall be enlisted on the LMDA Blacklisting schedule and therefore be removed from the Eligibility Schedule if they qualify for such as shown in the Blacklisting Qualifications.

5. BLACKLISTING QUALIFICATIONS

LMDA service providers, being bidders, individual or company contractors, and directors if so involved, shall be disqualified from the Eligibility Schedule and therefore be enlisted on the Blacklisting Schedule for a period of 3 years if they commit at least one of the following offenses - if:

- a) LMDA's evaluation on the Contractor's Past Performance Reporting System (CPPRS) found the contractor failing.
- b) The company or an individual has previously been involved in any fraudulent or corrupt practices. Proven beyond reasonable doubt.
- c) The service provider or bidder has committed misrepresentation of information with evidence
- d) The service provider or bidder has provided false information such as non-existent references in order to qualify in a bid process
- e) Based on authentic information from the Government of Lesotho agency (e.g. DCEO)
- f) The company or an individual is blacklisted by the Government of Lesotho
- g) The company or individual is blacklisted in other countries
- h) The company or an individual is blacklisted by the world bank
- i) There is an ongoing litigation with MCA-L/LMDA

6.1.CPPRS – LMDA has a contractors' performance system in place to assess the level of service of its contractors, be it companies or individuals, including directors of the said service providers. Annexure 1 provides the detail of the said document. Service providers are encouraged to be aware of this document ahead of providing services so as to be fully aware of expectations and outcomes thereof.

The form shall be filled by the project manager and the contractor as guided. Poor performance leading to failure to achieve the project goals shall lead to blacklisting of the contractor.

- 6.2. Fraudulent and Corrupt Practices – The LMDA Code of Conduct and the Lesotho laws do not allow fraudulent and corrupt practices by any one. Any contracting company or individual shall be blacklisted with immediate effect upon conviction that he has committed or was involved in fraudulent and or corrupt practices related to LMDA business.
- 6.3. Misrepresentation of Information – Misrepresentation of information is tantamount to fraud and shall be treated with the same attitude as 2 above.
- 6.4. Information from Government Agency Leading to Exclusion – if a service provider has been declared by the any Agency of the Government of Lesotho as having been blacklisted for performance either because of quality of service or liquidity or fraud and corruption, such service provider shall automatically be enlisted on the Blacklisting Schedule of LMDA.
- 6.5. Blacklisting by GoL – if the service provider has been declared by the Government of Lesotho as having been blacklisted for performance either because of quality or service or liquidity or fraud and corruption, such service provider shall automatically be enlisted on the Blacklisting Schedule of LMDA.
- 6.6. Blacklisting by Other Countries – if the service provider has been declared by any country as having been blacklisted for performance either because of quality of service or liquidity, or fraud and corruption, such service provide shall automatically be enlisted on the Blacklisting Schedule of LMDA
- 6.7. Blacklisting by The World Bank Eligibility System – if the service provider is found on the list of blacklisted companies by the World Bank (Worldcheck), such service provider shall automatically be blacklisted by LMDA. The following is one of the websites that will be used by LMDA to check the listing of contractors by the World Bank.
<http://web.worldbank.org/external/default/main?contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984&querycontentMDK=64069700&theSitePK=84266>

7. THE BLACKLISTING PROCEDURE

The following shall be the procedure followed leading to blacklisting of a company director, contracting company, or and individual:

- 7.1. Following Contractor's Performance – LMDA shall run its contractors' performance assessment semi-annually. If after any assessment, the service provider is found underperforming to the extent that leads to failure to reaching the project goals, he shall be given a warning and an opportunity to correct. If he fails to correct, the contract may be terminated with blacklisting. If he successfully corrects, he may be given another chance depending on the gravity of the failure or effort made. The directors' effort and attitude towards the company's performance is taken into consideration during the assessment. Elements that constitute fatal flaws leading to blacklisting shall be identified in the CPPRS form ahead of performance. Every assessment made by LMDA shall also have a counter response or concurrence by the service provider.

Once LMDA decides that the service provider is enlisted on the Blacklisting Schedule, the Procurement Head in consultation with Projects and Adjudication shall draft a letter for CEO's signature informing the bidder or contractor accordingly. The contractor or bidder shall be given 14 days from the date of receipt of the blacklisting to contest it, failing which the blacklisting shall stand for the period of 3 years therefrom. If the blacklisting is contested, the process shall be halted until a decision is reached. During the contestation, while a decision is not reached, LMDA shall not award any other contract to the service provider.

- 7.2. Resulting from Fraudulent and Corrupt Practice – at any point during or after LMDA's tendering or contracting process, if LMDA identifies that any of its bidders or contractors were or are involved in fraudulent and corrupt practice, such bidders or service providers shall be enlisted on the LMDA Blacklisting Schedule. The Procurement Head in consultation with Projects and Adjudication shall draft a letter for CEO's signature informing the bidder or contractor accordingly. The contractor or bidder shall be given 14 days from the date of receipt of the blacklisting to contest it, failing which the blacklisting shall stand for the period of 3 years therefrom. If the blacklisting is contested, the process shall be halted until a decision is reached. During the contestation, while a decision is not reached, LMDA shall not award any other contract to the service provider.
8. Automatic Blacklisting – This shall be the procedure followed based on information obtained from others than LMDA, leading to blacklisting of a service provider. Information obtained from GoL, GoL Agency, World Check, and other countries. Information obtained shall be authenticated and be provided by authentic and reliable legal source or entity.

9. THE DELISTING PROCEDURE

The following shall be the procedure to remove a company director, contracting company, or an individual from the LMDA Blacklisting Schedule at the end of 3 years without additional commitment of disqualification:

- (a) Initiated by LMDA – at the end of the blacklisting period, the Procurement Manager in consultation with the project manager and LMDA procurement adjudication office shall, actually delist the vendor and through CEO's letter, advise the service provider of the delisting. If the finding is negative, the letter will advise the service provider to the negative.
- (b) Initiated by the Service Provider – at the end of the blacklisting period, the service provider may apply for delisting from the LMDA Blacklisting Schedule. Upon receipt of the application, the LMDA procurement manager in consultation with the project manager and LMDA procurement adjudication office shall confirm the status. If found qualifying for delisting, the Procurement Head shall request approval for delisting from LMDA CEO. If the contractor does not qualify for the delisting, the Procurement Head shall draft a responding letter to the service provider to the negative.

Annexure 1: Contractor Past Performance Reporting System (CPPRS)