



**LESOTHO MILLENNIUM DEVELOPMENT
AGENCY [LMDA]**

BID CHALLENGE SYSTEM

Effective Date: 8th June 2017

BACKGROUND

The Lesotho Millennium Development Agency is a statutory body established by Act of Parliament as the Millennium Challenge Account Lesotho Authority, Act, 2008. In terms of Legal Notice no.151 (dated October 18, 2013), MCA-Lesotho was renamed the Lesotho Millennium Development Agency (LMDA) with effect from January 15, 2014. The LMDA mandate is to complete, oversee and manage implementation of work in progress of projects that were not finalized by MCA-Lesotho when the Compact terminated on January 14, 2014, as well as maintenance of health facilities and development of second compact.

The LMDA Program Procurement Guidelines further require the Agency to establish and publish a Bid Challenge System that provides bidders on LMDA procurements with the ability to challenge and seek review of LMDA procurement actions and decisions.

To comply with these requirements, LMDA has established the rules and procedures set forth in this document referred to as the LMDA Bid Challenge System (BCS), to govern the review of all challenged LMDA procurement actions and decisions which shall be incorporated in all solicitation documents distributed to potential Bidders.

GOVERNING PRINCIPLES

The purpose of this Bid Challenge System is to provide bidders who believe that they have been deterred by LMDA procurement action or decision the ability to seek a prompt, impartial and cost-effective review of the action or decision in order to promote and maintain the integrity and transparency of the LMDA procurement process. This BCS does not address or provide any mechanism to resolve contract disputes once an LMDA contract has been awarded. To that end, this BCS is based on the following principles:

- a) LMDA shall provide clear explanations of why bidders are disqualified or not selected.
- b) A procedurally simple and expeditious process is essential to address concerns about the application of procurement rules and procedures to specific procurement actions.
- c) While a challenge remains outstanding, the related procurement proceedings shall be suspended to prevent, in normal circumstances, the signing of a contract.
- d) Challenges shall be initially reviewed and a decision issued by the Procurement Adjudication Section through the secretariat.

PART I - TERMINOLOGY

Rule 1. Definitions, Interpretation and Modification

Capitalized terms used in this BCS will have the following meanings:

Appeal: a challenge to a Level 1 Authority decision and request for review of that decision by the Level 2 Authority.

Appeal Panel: a group of experts given responsibility to execute decisions as Level 2 Authority. The panel will be nominated as appropriate for the Case. This panel should comprise an expert representing LMDA, an expert representing the appellant and their choice of a chair whose decision will be final in case of absence of consensus. The Level 1 chair will observe the proceedings of the appeal panel per **Rule 7.2**.

BCS: this Bid Challenge System and the rules and procedures set forth herein.

Bidder: any consultant, contractor or supplier that

- (a) participates in an LMDA procurement process to provide goods, works or services in furtherance of the Compact or
- (b) would have participated in an LMDA procurement process to provide goods, works or services in furtherance of the Compact/LMDA but for an alleged mistake or violation of LMDA in the application of the Procurement Rules.

Challenged Procurement: the procurement out of which a Protest arises.

Challenger: a Bidder who files a Protest.

Comment: a filing made by:

- (a) an Interested Party, in the case of a Protest or
- (b) any party that participated in a Protest proceeding, in the case of an Appeal, pursuant to which the filer argues in favor of, or against, upholding the Protest or decision of the Level 1 Authority, as applicable.

Comment Deadline: the last date by which a person wishing to join and participate in a Protest or Appeal may file its Comment, which is

- (a) in the case of filing a Comment to a Protest, 5 days after the Secretariat sends notice of the Protest pursuant to **Rule 2.4**, and
- (b) in the case of filing a Comment to an Appeal, 5 days after the Secretariat sends notice of the Appeal pursuant to **Rule 3.3**.

Interested Party: as defined in **Rule 2.5**.

Level 1 Authority: A panel of 3 experts given responsibility to execute decisions on a bidder protest as Level 1 in accordance with **Rule 3** procedures.

Level 2 Authority: as defined in **Rule 6**.

Master List: as defined in **Rule 4.1**.

LMDA: Lesotho Millennium Development Agency.

PPG: the LMDA Program Procurement Guidelines, as the same may be amended from time to time.

Procurement Action: means any action or decision by LMDA relating to the LMDA process of procuring goods, works, or services in furtherance of the Compact.

Procurement Adjudication: means the natural or legal person engaged by LMDA as procurement adjudicator in accordance with the LMDA PPG. PA assembles a team comprising of LMDA Legal office, PA and appellant representatives. PA representative will serve as the chair of the protest discussions.

Procurement Rules: the PPGs, or the solicitation documents applicable to the challenged Procurement Action, or both.

Protest: the initial challenge to a Procurement Action and request that such Procurement Action be reviewed in accordance with this BCS.

Protest Deadline: as defined in **Rule 2.3**.

Secretariat: The LMDA Projects Control, Procurement and Information Management Section to act as the secretariat for proceedings under this BCS.

Working Day: means any day in *Lesotho* that is not a

- (a) public holiday,
- (b) weekend, or
- (c) day when work is suspended by public authorities due to natural calamities.

LESOTHO MILLENNIUM DEVELOPMENT AGENCY

BID CHALLENGE SYSTEM

PART II - PROTEST PROCEEDINGS

Rule 2. Protests

Rule 2.1. Any bidder that claims to have suffered or that it may suffer loss or injury because of a Procurement action may file a protest, except that:

- (a) Sub-contractors, sub-consultants and members of the general public are not permitted to file a protest;
- (b) A protest cannot be used to cure a deficiency in the Challenger's bid or proposal;
- (c) A protest cannot be used to allege fraud, corruption or intent of wrong doing in the procurement process, which allegation must be processed in accordance with LMDA's *Policy on Preventing, Detecting and Remediating Fraud and Corruption in LMDA Operations*, a copy of which is available on LMDA's website (www.lmda.org.ls); and
- (d) The following procurement actions may not be the subject of a protest:
 - i. The choice of the method of procurement (e.g., QCBS, QBS, etc.);
 - ii. The choice of the type of procurement (e.g., goods, works, non-consultant services, or consultant services);
 - iii. Scores assigned by the technical evaluation panel, unless the determination of such scores is alleged to have been arbitrary or capricious or characterized by an abuse of discretion; and
 - iv. A decision to cancel a procurement or reject all bids, proposals, offers or quotations.

Any bidder who submits a protest is referred to herein as a "Challenger." A Challenger shall only emerge out of a group of bidders.

Rule 2.2. For a protest to prevail, a Challenger must prove by clear and convincing evidence that:

- (a) The Procurement Action:
 - a. (i) violates the Procurement Rules; or
 - b. (ii) is arbitrary or capricious or characterized by an abuse of discretion; and
- (b) The Challenger has suffered or will suffer loss or injury because of the Procurement Action.
- (c) The Challenger is indeed a direct bidder in the procurement in question; and
- (d) The Challenger complied with the timelines provided for the bid challenge.

Rule 2.3. Protests must be filed in accordance with the procedures of this **Rule 2.2**. Any protest that is not filed in accordance with such procedures will not be considered.

- (a) A Challenger must file its protest with the Secretariat on or before the applicable date set forth below (each, a “***Protest Deadline***”) to be considered as timely filed:
 - (a) For protests of Procurement Actions in pre-qualification or short listing proceedings, [***the fifth calendar day***] after notification of the pre-qualification or short listing decision or action;
 - (b) For protests of the solicitation documents, [***the fifth calendar day***] after LMDA issues an invitation to prequalify or issues an invitation to submit a bid or a proposal;
 - (c) For protests of any two-envelope procurement proceedings (i.e., separate technical and financial bid or proposal), [***the fifth calendar day***] after notification of the technical rankings or results; and
- (b) A protest must be substantially in the form set forth in **Annex A**, and must state at least the information required in the said form.

Rule 2.4. No later than 5:00 p.m. (Lesotho time) on the first working day after the date that a protest is filed, the Secretariat (Head-PCPIM) will:

- (a) Post a notice of the filing of the protest regarding the suspension of the Challenged Procurement on the LMDA website; and
- (b) Send to the **Head - Procurement Adjudication**, and all Bidders who submitted bids for the Challenged Procurement a copy of such notice and instructions (if any), a copy of the Protest, and if the automatic suspension of the Challenged Procurement was lifted by the Secretariat prior to such Working Day, notice thereof. The notice to Bidders will advise Bidders (including the apparent winning Bidder) of their ability to file a Comment in accordance with **Rule 2.5** and that failure to file a Comment in the required time period (Standstill period as laid in the bid document) will prevent any future participation in the Protest.

Rule 2.5. Any Bidder, other than the Challenger, that believes that it may be affected by the decision to be made by the LMDA Procurement with respect to the Protest may join and participate in the Protest by filing a Comment with the Secretariat (with a copy previously or simultaneously provided to the Challenger) (each, an “***Interested Party***”) by the Comment Deadline (Standstill period as laid in the bid document). The Comment must be substantially in the form set forth in **Annex B**, and must state at least the information required in said form. Any Interested Party that does not join the Protest in accordance with this **Rule 2.5** cannot thereafter file a Comment related to the Protest or otherwise participate in the Protest.

Rule 2.6. Upon the filing of a Protest, the Challenged Procurement will be automatically suspended until a final decision with respect to the Protest is issued, unless the LMDA Procurement lifts the suspension after determining that:

- (a) The Protest does not clearly show that the Challenger will suffer irreparable harm if the Challenged Procurement is not suspended;
- (b) The claim is frivolous;
- (c) LMDA or Bidders other than the Challenger may sustain disproportionately greater damage by the suspension, compared to the damage to be possibly sustained by the Challenger;

- (d) The suspension of the Challenged Procurement will compromise public interest; or
- (e) There are urgent or compelling reasons not to suspend the Challenged Procurement, including potential harm to the LMDA program.

Rule 2.7. If not lifted earlier, the automatic suspension will be lifted five Working Days after the written decision of the LMDA Procurement Adjudication has been sent in accordance with **Rule 2.4**, or if an Appeal has been filed, immediately after a written decision of the Level 2 Authority has been sent in accordance with **Rule 6.3**. During any suspension period, the *LMDA Procurement Adjudication* will suspend the procurement proceeding to the extent necessary to ensure that the Challenger's potential remedies are not compromised should the Protest be upheld.

Rule 3. Level 1 Review of Bid Challenge

Rule 3.1. Each protest decision will be for approval by the LMDA Chief Executive Officer (in this capacity, the "*Level 1 Authority*"), and will be decided by the LMDA Head Procurement Adjudication (chair), Senior Legal Officer and a section head of a project under the challenge.

- (a) The Protest decision issued by the Level 1 Authority will be based on review and consideration of the applicable principles and provisions of the Procurement Rules, the Protest and the Comments, if any.
- (b) After reviewing the Protest, the Level 1 Authority will issue a decision:
 - (a) To dismiss the Protest because:
 - i. the Procurement Action is not subject to protest under **Rule 2.2**,
 - ii. the Challenger has failed to meet its burden of proof under **Rule 2.2** or
 - iii. the Protest was not filed in accordance with the procedures of **Rule 2.3**; or
 - (b) If the Challenger has met its burden of proof under **Rule 2.2**, to uphold the Protest (in whole or in part) and grant one or more of the remedies described in **Rule 2.2**.
- (c) The Level 1 Authority decision will become final, and any suspension of the Challenged Procurement will be lifted in accordance with **Rule 2.6**, if no party files an Appeal within the period prescribed by this BCS.

Rule 3.2. The Level 1 Authority may grant one or more of the remedies set forth in Section P.5.4.3 of the PPG, provided that any monetary compensation will be subject to a price reasonableness analysis in accordance with the PPG and will not include attorney fees or lost profits.

Rule 3.3. The Level 1 Authority will issue its decision no later than five Working Days after the Comment Deadline, provided that the Level 1 Authority may extend this period for an additional five Working Days with sufficient cause. The decision must be in writing, delivered to the Secretariat, and must state:

- (a) the date of the decision;
- (b) the reasons upon which the decision is based;
- (c) the remedy granted; and

(d) the date by which an Appeal must be filed.

Rule 3.4. No later than one Working Day after the date of the Level 1 Authority decision, the Secretariat will:

- (a) Post a notice of the decision and the issuance of any written instruction by the Level 1 Authority to proceed with the Challenged Procurement, if any, on the LMDA website; and
- (b) Send a copy of such notice to all parties who participated in the Protest proceedings, along with instructions for depositing any Appeal fee in the event any such party wishes to file an Appeal of the decision.

Rule 3.5. Prior to issuing a decision, the Level 1 Authority may, at its discretion:

- (a) consolidate the Protest with other relevant Protests involving either the same Procurement Action or related Procurement Actions; and
- (b) take such actions and issue such orders as may be necessary or desirable for a prompt decision on the Protest.

PART III – APPEAL PROCEEDINGS

Rule 4. Appeal

Rule 4.1. Any Challenger or Interested Party who is dissatisfied with the decision of the Level 1 Authority may seek review of that decision by filing an Appeal to the Level 2 Authority; provided that:

- (a) An appeal may only allege that the decision of the Level 1 Authority was inconsistent with the Procurement Rules or was in some way clearly erroneous; and
- (b) The Level 2 Authority review is limited to a review of the record before the Level 1 Authority.

Rule 4.2. Appeals shall be filed in accordance with the procedures of this **Rule 3.2**. Any appeal that is not filed in accordance with such procedures will not be considered.

- (a) The Challenger or Interested Party (as applicable) must file the Appeal with the Secretariat on or before the fifth calendar day after the date the Level 1 Authority decision has been sent in accordance with **Rule 2.4** to be considered as timely filed.
- (b) An Appeal:
 - (a) must be substantially in the form set forth in **Annex C**,
 - (b) must state at least the information required in said form,
 - (c) must include all the documents submitted by the Challenger or Interested Party (as applicable) to the Level 1 Authority,
 - (d) must not allege any theory or argument that was not alleged in the Protest or Comment,
 - (e) must not assert any new information or include any new documents that were not provided to the Level 1 Authority, and

- (f) must be accompanied by proof that the Challenger or Interested Party (as applicable) has paid the appropriate Appeal fee.
- (c) The Challenger or Interested Party (as applicable) must pay an Appeal fee of 20,000 LSL before or at the time it files the Appeal by depositing the same in accordance with the instructions provided by the Secretariat in its notice to such party of the Level 1 Authority decision.

4.2.c.1. If the Challenger or Interested Party (as applicable) prevails in the Appeal, the Appeal fee will be refunded to such party. If the Challenger or Interested (as applicable) does not prevail in the Appeal, the Appeal fee will be applied to the expenses of the Appeal.

Rule 4.3. No later than one working day after the Appeal is filed, the Secretariat will:

- (a) Post a notice of the filing of the Appeal on the LMDA website; and
- (b) Send a copy of such notice and a copy of the Appeal to all parties who participated in the Protest.

Rule 4.4. No later than three working days after the Appeal is filed:

- (a) the Level 1 Authority will submit the record of the Protest proceedings to the Secretariat, who will promptly forward the record to the Level 2 Authority once identified in accordance with **Rule 4**; and
- (b) LMDA will provide a response to the Appeal.

Rule 4.5. Any other party who participated in the Protest proceedings who believes that it may be affected by the decision to be made by the Level 2 Authority with respect to the Appeal may join and participate in the Appeal by filing a Comment with the Secretariat (with a copy to the party that filed the Appeal) by the Comment Deadline. The Comment must be substantially in the form set forth in **Annex D**, must state at least the information required in said form. Any party that does not join the Appeal in accordance with this **Rule 3.5** cannot thereafter file a Comment to the Appeal or otherwise participate in the Appeal.

Rule 4.6. The Challenged Procurement will remain suspended, if it has been suspended, and no award will be made while the Appeal is pending.

Rule 5. Level 2 Authority Master List and Selection

Rule 5.1. LMDA will maintain a list of competent and qualified persons (also known as ‘approved pool of legal experts’, who have signed Framework Agreement with LMDA) who will serve as independent reviewers of Appeals (the “**Master List**”). The Master List will contain a minimum of six (6) independent reviewers, and each person serving as a reviewer must meet certain qualifications set by LMDA, including but not limited to, that each person:

- (a) is impartial and independent;
- (b) is well-versed in procurement rules, principles and processes under one or more of the following:
 - (i) laws of *Lesotho*, or
 - (ii) international procurement rules; and
- (c) is trained in LMDA procurement principles, practices and procedures.

5.1.a.1.LMDA will post the Master List on its website, along with a copy of each person's curriculum vitae.

Rule 5.2. No later than the *five (5)* working days after an Appeal is filed, the Secretariat will procedurally select two individuals from the Master List to review and decide the Appeal (collectively, the "**Level 2 Authority**"), by establishing the demands of the Appeal, considering the relevance of the experts' experience and qualifications, and considering the turns taken by experts on the procurement matters.

- (a) The Secretariat will provide the names of the Appeal parties and the underlying Procurement Action documents to the individuals selected to serve as the Level 2 Authority within two working days of the selection, and request that the individuals identify any conflicts of interest or other reasons why they would not be able to serve as Level 2 Authority. In particular, each individual must confirm that he/she has no interest (through financial, family, business, beneficial ownership, or otherwise) in the outcome of any LMDA procurement, and is not involved in or related to any LMDA procurement.
- (b) If the individuals selected can serve, each will execute a declaration substantially in the form of **Annex E**, and the Secretariat will then notify the parties to the Appeal of the names of the individuals, and charge each individual with service as the Level 2 Authority.
- (c) A party to the Appeal may object to any individual selected by the Secretariat by filing an objection notice with the Secretariat no later than two working days after the selection notice is sent in accordance with **Rule 4.2.2**, which objection notice must be substantially in the form of **Annex F**, and cite the reason that the individual does not meet the qualifications for service set forth in **Rule 4.1**. The Secretariat will rule on the objection no later than two working days after the objection notice is filed.
- (d) If any individual established by the Secretariat to serve as Level 2 Authority declines or is otherwise unable to serve, or if the Secretariat grants an objection filed by a party to the Appeal, the Secretariat will proceed to the first alternate individual, and then to the second alternate individual if necessary.

Rule 6. Level 2 Authority Review

Rule 6.1. Each Appeal will be decided by the Level 2 Authority selected in accordance with **Rule 4**. The Level 2 Authority will have the authority to decide procedural and organizational matters in consultation with the LMDA Procurement Director and such other technical experts as the Level 2 Authority deems appropriate.

- (a) The Level 2 Authority decision will be based on review and consideration of the applicable principles and provisions of the Procurement Rules, the bid challenge record from the Protest proceedings and the written decision of the Level 1 Authority.
- (b) After reviewing the Appeal, the Level 2 Authority will issue a decision:
 - (a) To uphold the Level 1 Authority decision; or
 - (b) To overturn the Level 1 Authority decision if it determines that the decision has no reasonable basis or is a clear error of judgment in the application of the Procurement Rules, and grant one or more of the remedies set forth in Section P.5.4.3 of the PPG, provided that any

monetary compensation will be subject to a price reasonableness analysis in accordance with the PPG and will not include attorney fees or lost profits.

- (c) The Level 2 Authority decision will be:
 - (a) Final and binding on all parties to the Appeal with no further recourse available in any jurisdiction; and
 - (b) Implemented by the LMDA Procurement Director immediately after the date that the Level 2 Authority decision is sent in accordance with **Rule 5.3**.
- (d) In accordance with **Rule 2.6**, any suspension of the Challenged Procurement will be automatically lifted immediately after the Level 2 Authority decision has been sent by the Secretariat pursuant to **Rule 5.3**.

Rule 6.2. The Level 2 Authority will issue its decision no later than 10 working days after the Comment Deadline for the Appeal, provided that the Level 2 Authority may extend this period for an additional five working days with sufficient cause. The decision must be in writing, delivered to the Secretariat and must state:

- (a) the date of the decision;
- (b) the reasons upon which the decision is based; and
- (c) the remedy awarded to the successful party.

Rule 6.3. No later than the *[fifth]* working day after the date of the Level 2 Authority decision:

- (a) the Secretariat will:
 - i. post a notice of the decision on the LMDA website, and
 - ii. send a copy of such notice to all parties who participated in the Appeal; and
- (b) The responsibilities of the Level 2 Authority will be considered complete.

Rule 7. LMDA as Observer

Rule 7.1. Bidders will have no right to appeal to LMDA regarding decisions resulting from this BCS and its procedures.

Rule 7.2. LMDA, will serve as the Chair on all Level 1 Protests and as Observer on all Appeal proceedings, and provide secretariat serve on both. LMDA's exercise of its right to be an observer to any proceeding will not constitute consent to the jurisdiction of the courts or any other body of the *Lesotho* or any other jurisdiction. Consistent with the PPGs, LMDA may determine to withhold funding for a contract if LMDA determines that a challenged Procurement Action was not resolved appropriately.

PART IV – GENERAL PROVISIONS

Rule 8. Basis and Application

Rule 8.1. This BCS is issued by LMDA on the basis of all relevant LMDA Policies and procedures. The provisions of the Procurement Operations Manual, the

Procurement Guidelines and Fiscal Accountability Plan will prevail, in the order stated, if any provision of this BCS conflicts with the provisions of any other existing documents.

- Rule 8.2. The rules and procedures of this BCS will apply to the acceptance, review and disposition of all Protests and Appeals.
- Rule 8.3. The provisions of this BCS will be construed in accordance with the laws of *Lesotho*.
- Rule 8.4. This BCS will be interpreted in a manner that will:
- (a) achieve the purpose of this BCS; and
 - (b) preserve LMDA's rights under the Procurement Rules, including its right to provide additional information, make clarifications, corrections or modifications to the solicitation documents, reject all bids in the Challenged Procurement, and cancel the Challenged Procurement.
- Rule 8.5. LMDA may modify this BCS at any time with the prior written approval of LMDA Board. The version of this BCS that is in force at the time of the issuance of the solicitation documents for a particular LMDA procurement will govern any Protest or Appeal with respect to said procurement, unless this BCS is modified at least 7 days before the bid closing date by LMDA, in which case, such modified version will apply.

Rule 9. Documents

- Rule 9.1. The English language or Sesotho will be used for all documents filed or provided in accordance with this BCS.
- Rule 9.2. All notices, filings and other communications hereunder will be in writing, and may be sent by hand delivery, mail (if mailed by registered or certified mail, return receipt requested, postage prepaid commercial carrier, facsimile transmission or electronic mail.
- (a) A notice or document is "filed" on a particular day when it is received by the Secretariat by 5:00 p.m., Lesotho time, on that day. All other notices, documents and communications hereunder will be deemed sent or delivered:
 - (a) on the scheduled date of delivery if sent by courier;
 - (b) on the fifth working day following the mailing date if sent by mail; or
 - (c) on the date sent by facsimile or electronic mail if sent during normal business hours of the recipient during a working day, and otherwise on the next working day if sent after normal business hours of the recipient.
 - (b) All notices, filings and other communications hereunder must be addressed to the physical, facsimile or electronic address provided by the addressee under this BCS or the relevant solicitation documents. The following address will be used for the Secretariat (unless such other address is indicated by the Secretariat through the LMDA website with specific reference to this BCS):

Lesotho Millennium Development Agency
Attention: The Chief Executive Officer
Copy to: *Head Procurement Adjudication*
Copy to: *Senior Legal Officer*

Copy to: **Head Project Control, Procurement and Information Management**
Subject: Bid Challenge
Address: P. O. Box 7014, Maseru, Lesotho
Telephone Number: +266 22317017
Fax to Mail Number: 22267209
Email address: chalatsek@lmda.org.ls

Annex A

Form of Protest

Challenger		
Name:		
Choose one: <input type="checkbox"/> Bidder <input type="checkbox"/> Other <i>(please specify)</i>		
(For legal persons only) Country under whose laws Challenger was organized:		
Postal address for Protest purposes:		
Email address for Protest purposes:	Telephone number for Protest purposes:	Fax number for Protest purposes:
Name of authorized representative for the Protest (if any):		
Signature of Challenger or authorized representative:		

Challenged Procurement
Name:
Number:

Protest	
Date when Challenger became aware of Procurement Action:	Date of filing of Protest:
Description of Procurement Action:	
Procurement Rules provisions violated by Procurement Action:	
Explanation of reason why Procurement Action constitutes a violation of the Procurement Rules provisions:	

Explanation of reason why Challenger has been damaged by Procurement Action:
If Challenger requests suspension of the Challenged Procurement, explanation of reason why Challenger will suffer irreparable damage if the Challenged Procurement is not suspended:

Relief Sought
Description of relief sought:
Explanation of reason why Challenger is entitled to relief sought:

Instructions:

1. Please use additional sheets for the required information if necessary.
2. Please attach copies of the relevant documents if available.

Annex B

Form of Comment to the Protest

Interested Party		
Name:		
(For legal persons only) Country under whose laws Interested Party was organized:		
Postal address for Protest purposes:		
Email address for Protest purposes:	Telephone number for Protest purposes:	Fax number for Protest purposes:
Name of authorized representative for the Interested Party (if any):		
Signature of Interested Party or authorized representative:		

Challenged Procurement
Name:
Number:

Comment	
Date when Interested Party received a copy of the Protest:	Date of filing of Comment:
Explanation of why the Interested Party believes that the Protest should/should not be upheld:	
If Interested Party requests that the Challenged Procurement not be suspended, explanation of reason why:	
(a) the Protest does not clearly show that the Challenger will suffer irreparable harm if the Challenged Procurement is not suspended; or	
(b) the Interested Party may sustain disproportionately greater damage by the suspension, compared to the damage to be possibly sustained by the Challenger; or	
(c) the suspension of the Challenged Procurement will compromise public interest; or	
(d) there are urgent or compelling reasons not to suspend the Challenged Procurement.	

Relief Sought**Description of relief sought:****Explanation of reason why Interested Party is entitled to relief sought:****Instructions:**

1. Please use additional sheets for the required information if necessary.
2. Please attach copies of the relevant documents if available.

Annex C

Form of Appeal

Appellant		
Name:		
Postal address for Appeal purposes (if different from postal address for Protest purposes):		
Email address for Appeal purposes:	Telephone number for Appeal purposes:	Fax number for Appeal purposes:
Name of authorized representative for the Appellant (if any):		
Signature of Appellant or authorized representative:		

Challenged Procurement
Name:
Number:

Appeal	
Date when Appellant became aware of Level 1 Authority Decision:	Date of filing of Appeal:
Explanation of reason why the Appellant believes that the Level 1 Authority failed to decide the Protest in accordance with the Level 1 Authority's duty:	

Relief Sought**Description of relief sought:****Explanation of reason why Appellant is entitled to relief sought:****Instructions:**

1. Please attach a copy of each of the following documents, if available to the Appellant: (a) the Protest and its attachments, and any Comment and their attachments, if any, (b) the Level 1 Authority decision, and (c) proof of timely payment of the appropriate Appeal fee.
2. Please use additional sheets for the required information if necessary.

Annex D

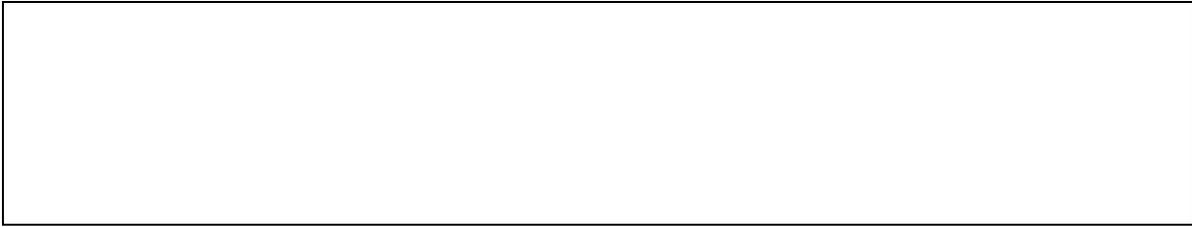
Form of Comment to the Appeal

Appeal Party		
Name:		
Postal address for Appeal purposes (if different from postal address for Protest purposes):		
Email address for Appeal purposes:	Telephone number for Appeal purposes:	Fax number for Appeal purposes:
Name of authorized representative for the Appeal (if any):		
Signature of Appeal Party or authorized representative:		

Challenged Procurement
Name:
Number:

Comment	
Date when Appeal Party received a copy of the Appeal:	Date of filing of Comment:
Explanation of reason why the Appeal Party believes that the Appeal should/should not be upheld:	

Relief Sought
Description of relief sought:
Explanation of reason why Appeal Party is entitled to relief sought:



Instructions:

1. Please attach a copy of the proof of timely payment of the Appeal fee.
2. Please use additional sheets for the required information if necessary.

Annex E

Level 2 Authority Declaration

1. Except for the reasons stated in the attachment, I am not aware of any reason why I should not serve as the Level 2 Authority constituted under the Bid Challenge System (the “**BCS**”) of Lesotho Millennium Development Agency, with respect to the Appeal filed by _____ . Capitalized terms used herein and not defined herein have the respective meanings given to such terms in the BCS.
2. I will keep confidential all information coming to my knowledge as a result of my participation in this proceeding, as well as the contents of any decision made by the Level 2 Authority.
3. I will be fair to the parties, and will exercise impartiality and independence in deciding the Appeal. I will not accept any instruction with regard to this proceeding, or receive any compensation with regard to this proceeding from any source except as provided in the BCS and my services agreement with LMDA.
4. Attached is a statement of (a) my past and present professional, business and other relationships (if any) with the parties and (b) any other circumstance that might cause doubt as to my ability to exercise impartiality and independence in deciding the Appeal. By signing this declaration, I promise to promptly notify LMDA of any such relationship or circumstance that subsequently arises during this proceeding.

Signature:

Name:

Date:

[With attachment]

Annex F

Form of Objection to the Appointment of a Level 2 Authority

Appeal Party filing the Objection
Name (Indicate whether Challenger, LMDA or other Appeal Party):
Name of authorized representative for the Appeal Party(if any):
Signature of Appeal Party or authorized representative:

Challenged Procurement
Name:
Number:

Objection	
Name of objected Level 2 Authority:	
Date when Appeal Party became aware of the ground for Objection:	Date of filing of Objection:
Ground for Objection:	
Factual basis to support the ground for Objection:	

Instructions:

1. Please use additional sheets for the required information if necessary.
2. Please attach copies of the relevant documents if available.