



# **Policy on Preventing, Detecting and Remediating Fraud and Corruption in LMDA Operations**

**May 22, 2017**

**ANNEX 3 – FRAUD AND CORRUPTION POLICY**

**Policy on Preventing, Detecting and Remediating Fraud and Corruption in LMDA Operations**

<b>ACTION:</b> Approved	<b>Authority</b> LMDA Board of Directors	<b>DATE:</b> June 8 <sup>th</sup> 2017
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## 1. KEY DEFINITIONS

**Lesotho Millennium Development Agency (LMDA)** - an entity established by the Government of Lesotho (GoL) under MCA-Lesotho Authority Act No.1 of 2008 ("**Act**") as amended through Legal Notice No.151 of 2013 ("**Legal Notice**") to finish off all projects that had not been completed by MCA-Lesotho during Compact implementation. The Agency's mandate was further expanded to manage the development of Lesotho's second Compact and the ongoing Health Facilities Maintenance Programme.

**Coercive practice** - impairing or harming or threatening to impair or harm, directly or indirectly, persons or their property, to influence their participation in a procurement process, or affect the execution of a contract.

**Collusive practice** - a scheme or arrangement between two or more parties, with or without the knowledge of LMDA, designed to establish prices at artificial, non-competitive levels or to otherwise deprive LMDA of the benefits of free and open competition.

**Corrupt practice** - the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of a public official including LMDA staff and LMDA Board, and employees of other organizations taking or reviewing selection decisions in the selection process or in contract execution, or the making of any payment to any third party, in connection with or in furtherance of a contract, in violation of Prevention of Corruption and Economic Offences Act No.5 of 1999 (as amended) or any other applicable laws of Lesotho.

**Fraud and corruption** – collectively, any corrupt practice, fraudulent practice, collusive practice, coercive practice, obstructive practice, or prohibited practice, as each is defined herein. Examples include collusion on bid prices, favouritism in procurement, and manipulation of project implementation strategies for fraudulent purposes, and lack of performance on contracts.

**fraudulent practice** - any act or omission, including any misrepresentation, in order to influence (or attempt to influence) a selection process or the execution of a contract, to obtain a financial or other benefit, or avoid (or attempt to avoid) an obligation.

**Obstructive practice** - (a) any act that results in the destroying, falsifying, altering or concealing of evidence or making false statements to investigators in order to impede an investigation into allegations of a corrupt, fraudulent, collusive, coercive, or prohibited practice; and threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (b) acts intended to impede the exercise of the inspection and audit rights of LMDA.

**Prohibited practice** - any action that is in violation of any section of Prevention of Corruption and Economic Offences Act No.5 of 1999

## 2. PURPOSE

The purpose of this policy is to provide guidance on how to **prevent, detect and remediate fraud and corruption**. It sets boundaries and identifies the practices that are considered to be corrupt in implementation of the projects under LMDA

LMDA's success therefore, in fulfilling its objectives requires effective assessment and management of risk through a comprehensive approach to prevent, detect and remediate instances of fraud and corruption in all its activities.

## 3. SCOPE

This policy outlines the principles to which LMDA will adhere to with respect to detecting, preventing and remediating the risk of fraud and corruption in all its activities. It will apply to all LMDA projects, Contractors, Suppliers, Consultants, beneficiaries and employees.

## 4. RELEVANT LEGISLATION, POLICIES AND PROCEDURES

### 4.1 Related LMDA Policies and Procedures

- a. LMDA's Procurement Policy Guidelines create safeguards in an effort to ensure that all LMDA contracts are subject to open, fair and competitive procurement processes.
- b. Cost Principles require that all costs incurred by LMDA and Implementing Entities in the implementation of the projects be allowable, allocable and reasonable.
- c. Fiscal Accountability Plan (FAP) serves as a base policy on all financial and procurement issues undertaken under LMDA. The FAP defines management procedures, internal controls and compliance to set procedures. The FAP provides a framework for management of financial structures of LMDA in implementing all project activities.
- d. Whistle-blower Policy: For all public to lodge complaints against any fraud and corrupt practice.

## **5. POLICY GUIDING PRINCIPLES**

### **5.1. Guiding Principles for Preventing, Detecting and Remediating Fraud and Corruption**

LMDA adheres to the following key principles in its effort to prevent, detect and remediate fraud and corruption:

1. Fraud and corruption diminish benefits to intended recipients and impede economic growth and poverty reduction.
2. Development and follow up on a comprehensive and consistent approach to preventing, detecting and remediating incidents of fraud and corruption in its projects. LMDA recognizes that the risks of fraud and corruption may also occur outside the procurement context and its approach to prevention, detection and remediation will address these risks.
3. LMDA will help all its Implementing Entities, contractors, suppliers, consultants, beneficiaries and other partners do the same, through capacity building.
4. Promotion of the highest standards of integrity and ethical behaviour in its staff.
5. LMDA, through its implementing partners, will require that companies and entities receiving LMDA funds have processes in place to address fraud and corruption.
6. Adopt the lessons learned and best practices from the Government of Lesotho, other institutions, donors, governments and civil society to the greatest extent possible.
7. Share information about fraud and corruption with the Government of Lesotho and its partners.
8. LMDA retains ultimate responsibility to ensure that Government of Lesotho (GoL) funds are used for their intended purposes.
9. In project development and implementation, prevention of fraud and corruption is the direct responsibility of LMDA or the Implementing Entity, as the case may be. LMDA is responsible for taking all reasonable measures outlined in this policy to ensure that all these duties are effectively met, including, but not limited to, remediation measures
10. LMDA management will demonstrate leadership under this policy by clearly communicating roles and responsibilities, providing adequate resources and supporting training on this policy, continuous learning and evaluation (including for managers) as may be necessary to motivate and empower LMDA staff to implement this policy effectively.
11. Implementing Entities, through their employees, have a fiduciary responsibility to guard the resources entrusted to them. This responsibility is not limited in any way by an employee's function or location, and as such, all are expected to take reasonable measures to prevent, detect and remediate fraud and corruption and to ensure that LMDA funding is used consistent with its purpose.

## 5.2. Actions

LMDA's existing policies and current practices included in the; Procurement Operations Manual, Procurement Policy Guidelines and Fiscal Accountability Plan, technical due diligence, monitoring and evaluation and the structure of legal agreements governing funding, controls and transparency contribute to its ability to exercise fiduciary responsibilities. The measures that LMDA will undertake to enhance its capacity to detect, prevent and remediate instances of fraud and corruption include, but are not limited to the following:

### 5.2.1. Detection and Prevention

- i. ***Tools and Techniques to Prevent Fraud and Corruption,***
  1. Provide guidance to LMDA and Implementing Entity staff by creating and maintaining a package of material (a "tool kit") containing basic information and suggested methods and strategies staff may use in preventing fraud and corruption.
- ii. ***Formalizing Lines of Internal LMDA Reporting,***
  1. to ensure that allegations are adequately and consistently addressed internally by LMDA staff and referred to the Office of the Directorate of Corruption and Economic Offences (DCEO) for investigation using whistle blowers policy.

### 5.2.2. Remediation

1. ***Use of administrative interventions,***
  - in the event that fraud and corruption are detected, the following interventions may be executed:
    - a) Declaration of misprocurements for procurements over which LMDA has an oversight role;
    - b) Through the Procurement Adjudication and Fiscal Services sections, heightened oversight of particular transactions determined to be most at-risk, in all forms of procurements and deliverables payments;
    - c) Performance of additional audits, or focusing existing audit requirements on areas of concern in consultation with the Office of the Auditor General, and
    - d) Imposition of a modification of thresholds for LMDA approvals at stages of the contracting or contract administration process.

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### **2. Sanctions,**

- In the event that fraud and corruption are detected, the following sanctions may be executed:
  - a)** Prohibition from further participation in any LMDA programs/projects if contractors and third parties commit the fraud and/or corruption;
  - b)** Administrative measures such as:
    - temporary or permanent ineligibility
    - removal from competition in a procurement activity
    - assignment of an adverse performance rating
    - withholding of LMDA disbursements for payments on affected contracts, and
  - c)** other similar actions, in the event an Implementing Entity's employee commits an act of fraud or corruption, recommendation to the Implementing Entity or other appropriate government official to take administrative action; and
  - d)** Termination of the project activity if the Implementing Entity commits the fraud and/or corruption.

LMDA does not impose legal sanctions such as fines, imprisonment, or payment of damages, which may be imposed by the appropriate state organs, such as DCEO or Courts of Law.

### **5.2.3. Monitor, Evaluate and Report**

Details regarding the further development and implementation of the measures set forth in this Section 5.2 will be set forth in separate guidance for implementation of this policy. LMDA recognizes that effective risk management will require flexible, responsive, continuous learning and adaptation of its practices, incentives, and skills.

As a result, management will

- a. update as relevant the specific objectives of the above-listed measures;
- b. introduce additional measures as may become relevant
- c. report to DCEO through the Board on the fraud and corruption (if any) as and when there is a case.

LMDA shall report to LMDA Board on progress in the implementation of the anti-corruption plan and this will be done quarterly.

## 6. EFFECTIVE DATE

**6.1.** This policy shall become effective on the day it is approved by the LMDA Board of Directors.