



**THE GOVERNMENT OF THE
KINGDOM OF LESOTHO
THE PUBLIC
PROCUREMENT POLICY**

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ACRONYMS

ICT	Information, Communications and Technology
NSDP	National Strategic Development Plan
PPAD	Procurement Policy and Advisory Division
PFM	Public Finance Management
PEFA	Public Expenditure Financial Accountability
PSIRP	Public Sector Improvement and Reform Programme
IFMIS	Integrated Financial Management Information System

DEFINITION OF TERMS

- (a) **Chief Accounting Officer** means the person appointed as a head of a Procuring Entity.
- (b) **Goods** means objects of every kind and description, including commodities; raw materials; products; equipment; and objects in solid, liquid, or gaseous form, and all kinds of livestock.
- (c) **Government** means the Government of the Kingdom of Lesotho.
- (d) **Procurement** means the acquisition by any contractual means of goods, works, services and concession agreements, and disposal of unserviceable, obsolete, or surplus supplies and equipment.
- (e) **Public Procurement Authority** is an autonomous oversight body enacted by Act of Parliament and is responsibility for all public procurement.
- (f) **Procuring Entity** means a public entity making procurement to which the law shall stipulate.
- (g) **Procurement Unit** means the Unit established within the Procuring Entity.
- (h) **Public Funds** means any monetary resources of the state budget, or aid, loans, and credits under agreement with foreign donors; or extra budgetary resources of procuring entities, used for public functions.
- (i) **Public Officer** means a person holding or acting in an office of emolument in the public service of the Government of Lesotho.
- (j) **Services** means any activity of an intellectual nature or otherwise that does not lead to a physical output.
- (k) **Unsolicited proposal** means a proposal submitted to the Procuring Entity by a private entity for an infrastructure or service project, without having received an explicit request or invitation from the Government.
- (l) **Works** means all work associated with construction, installation of equipment or materials, and services incidental to construction.

PART 1 INTRODUCTION

1. Introduction

The Government of Lesotho has long time realised the significant economic development role played by procurement function in the country. In 2007, the Government reformed the public procurement system from a centralised public procurement to a decentralised system. This is in line with the National Vision 2020 on the Public Sector Improvement and Reform Programme that focuses on improving financial management and accountability; improving public service management; and decentralisation for service delivery. The Public Procurement System failed to make procurement more efficient and transparent in line with best international practices – 2016-2017 Budget Speech. The decentralised procurement system was made without certainty and uniformity in procurement processes, standards and did not dictate how public procurement would be conducted. Public procurement is not profiled as a strategic function in the public sector, strengthening institutions involved in public procurement technical and human resources capabilities is important in the public financial management. It is best for the country to first adopt principle of action in public procurement that informs formulation of Public Procurement Legal Framework. Therefore, this Procurement Policy document is the first step in the establishment of an effective public procurement system.

The Ministry of Finance has developed Public Procurement Policy to provide for clear procedures in procuring goods, works and services while ensuring value for money, affordability, risk management, open and effective competition and transparent and ethical behaviour.

2. Background

Prior to 2007 reforms, the procurement system of Lesotho had been a centralised function based at Ministry of Finance through the department of the Central Stores lead by Central Tender Board. The Ministry of Finance was procuring for all Government Ministries, Districts and Agencies (MDAs) using, Financial Regulation of 1973 and Stores Regulation of 1967. The reform in 2007 decentralised public procurement functions and brought in the new Public Procurement Regulations of 2007 repealing chapter 21 of the old Financial Regulation of 1973 followed by a total repeal of the mentioned Financial Regulations in 2014 by enactment of Treasury .The 2007

Regulations introduced the following Public Procurement Institutions, PPAD, and Procurement Units at respective line Ministries, Districts and Government Agencies with their respective Tender Panels.

The Public Procurement Regulations, 2007 provide for procurement methods and procedures to be followed, but the procurement methods are not organized hierarchically

and precedence is not clearly established. Open Competitive Tendering (single-stage and two-stage) is not defined as the default method, with all other methods as exceptional.

The main objective of decentralised procurement was to ensure that accountability and responsibility lies with the Chief Accounting Officers for ensuring efficient and effective use of public money. The National Vision goals embedded in the National Strategic Development Plan (NSDP) call for reduction of poverty and promotion of sustainable development in Lesotho. Overarching NSDP objectives are to pursue high, shared and employment creating economic growth, develop key infrastructure and strengthen planning, budgeting, monitoring and accountability systems to deliver timely, efficient and effective use of public funds. The monitoring aspect, since 2007 public procurement reforms have not been done effectively, were no clear procedural steps drawn, the line of communication was not clearly well defined and more importantly, there is no standard record keeping and reporting formats.

3. Justification

The Government's well intended vision should be realised. Parts of NSDP objectives can be achieved by prudent adopting sound public procurement practices, building a robust public procurement framework. The overriding Public Procurement Policy requirement is that all public procurement must be based on value for money. Policy is formed through such a framework and that is line with the PFM laws.

The Public Procurement Policy shall provide for freedom from discrimination, and opportunity to work for every person without any obstruction.

PART 2. POLICY CONTEXT

4. The Vision

To obtain optimal value for money.

5. The Mission

To put in place systems that ensures effective and efficient administration and management of public procurement.

6. Objectives

- (a) To develop public procurement policies, legislation, guidelines and processes;
- (b) To capacitate and promote procurement professionals in public entities to enable them reach their procurement goals;
- (c) Monitor compliance with the laid down procurement rules, regulations and procedures;
- (d) To take timely action in case of poor public procurement performance and wanton non-compliance with laid down procurement rules and procedure.
- (e) To develop synergies between such areas as public sector management and governance and anti-corruption;
- (f) To enhance publicity by ensuring that all stakeholders to the public procurement function have easy and friendly access to information on public procurement function;
- (g) address socio-economic issues by enhancing business opportunities to vulnerable groups and protecting its business community from aggressive international competition;
- (h) To establish and empower an Oversight body to access information from public Procuring Entities, to enable it carry out compliance monitoring reviews and investigations, take enforcement measures, and carry out capacity building activities.
- (i) To separate an oversight body from procurement operations.

7. Scope

The Public Procurement Policy applies to all public procurement actions of all public procuring entities including Local Government.

PART 3. GUIDING PRINCIPLES

8. Core Principles of the policy

(a) Economy

The Procuring Entity shall achieve economy through reducing the cost of inputs, waste such as using resources which are not necessary for the achievement of the desired outputs or results; overpaying, to obtaining resources which are used, but could have been obtained at a lower cost; and gold-plating, that is paying for a higher quality of input than what is required to achieve the desired outputs or results.

(b) Efficiency

The Procuring Entity is required to execute tasks in time that is understanding the relationship between products of goods, works and services generated by an activity and the cost of inputs used to produce them in a certain period of time while maintaining the quality patterns.

(c) Effectiveness

The Procuring Entity shall achieve best desired results by avoiding risks in faulty policy design, such as inadequate assessment of needs, unclear or incoherent objectives, inadequate means of intervention or impracticability of implementation; and management failures.

(d) Equity

The Procuring Entity shall provide genuine equality of opportunity, and to cater for those with disabilities and those in socially disadvantaged areas. Equity may involve the preference and reservation schemes that are meant to assist national suppliers when competing with international firms.

(e) Professionalism

The procurement professional shall have the relevant academic qualification, professional procurement qualifications, are members of their national procurement professional body, have signed an ethical code of conduct and have the relevant experience. These elements enable the professional to achieve procurement objectives in the most ethical manner.

(f) Non-Discrimination

A bidder shall not be excluded from participating in public procurement on the basis of nationality, race, religion, gender or any other criterion unrelated to qualification. The exemptions are in the case of preferences and reservations in order to achieve equity among bidders. This principle requires that comparable situations are not treated differently and that different situations are not treated similarly unless such a difference or similarity in treatment can be justified objectively.

(g) Transparency

The Procuring Entity shall provide information on the public procurement process and be made available on time to all public procurement stakeholders, unless there are valid and legal reasons for keeping certain information confidential.

(h) Accountability

Procuring Entity with its employees involved in the procurement process shall be responsible for their actions and decisions.

(i) Fairness

The Procuring Entity shall make unbiased decisions and apply no preferential treatment to individuals or organizations.

(j) Competition

Procurement should be carried out in a manner that maximizes competition and achievement of value for money.

(k) Value for Money

Procuring Entity shall strive to achieve the optimum combination of all benefits and costs over the life cycle of the project, good, service, or works.

PART 4. LEGISLATIVE FRAMEWORK

9. The legislative framework will provide a set of procedures which will govern procurement of goods, services and works by public entities. In case of conflicts with other policies regarding public procurement the provisions of this policy shall prevail.

10. Procurement Funding

The Funds committed in Public Procurement shall follow the PFM laws that are linked to central budgetary system approved in Parliament and processed through IFMIS, unless provided otherwise in financing agreements with specific donors, development partners or other external financing sources.

PART 5. INSTITUTIONAL FRAMEWORK

11. The functions and responsibilities will be organized in a manner that allows segregation of duties between established institutions as follows :

(a) **The Public Procurement Authority** shall be an oversight body responsible for monitoring, regulating procurement activities and harmonising the processes of public procurement, formulate, promote support and implement capacity-building programs in public procurement.

(b) **Procuring Entity** shall be responsible for conducting the procurement and disposal processes.

(c) **Procurement Committee** shall be maintained by every procuring entity responsible for approving of procurement plans, methods of procurement, tender award and overseeing the open competitive tender's processes.

(d) **Evaluation Committee** shall be constituted at ad hoc bases for evaluation of tenders or proposals.

(e) **The Procurement Tribunal** shall be charged with the responsibility to hear appeals against decisions made by the Procuring Entity. The dispute between the parties shall not be taken to the courts of law unless it has been heard first by the procurement entity and

Tribunal. Any party not satisfied with the decision of the Tribunal shall refer the appeal to the courts of law.

PART 6. MANAGEMENT OF PUBLIC PROCUREMENT FUNCTION

12. The Chief Accounting Officer shall be responsible for ensuring that the Procuring Entity complies with the public procurement laws.

13 Ethics in Public Procurement Administration

Public officials involved in requisitioning, planning, preparing, disposal, and conducting procurement proceedings and administering the implementation of contracts shall follow and be guided by public procurement laws.

PART 7. PUBLIC PROCUREMENT POLICY CONCERNS

14 Empowerment of the disadvantaged groups

The Procuring Entity shall be allowed to limit participation by applying some reservation categories in its procurement proceedings in accordance with the law. The conditions and procedures for the reservation categories shall be established to ensure only targeted groups benefit from the reserved tenders. These groups are youth, women, physically disabled people and small, medium enterprises (SMEs).

15 Environmentally and Socially Responsible Procurement

Public Entity shall develop and sustain demand for particular types of goods or production processes with characteristics that are considered necessary or desirable as part of their environmental and/or social policies. These include in particular the encouragement of the use of “green” or energy efficient products which promote sustainable end-use as well as encourage industry innovation or mandate more equitable production standards.

16 Development and application of Procurement activities in ICT.

The Procuring Entity shall have procurement system operations for improved efficiency, effectiveness; improve relationships and information sharing within all public procurement stakeholders and keep up with the modern world of technology. The system shall integrate with IFMIS and any system that government may adopt from time to time.

17 Unsolicited Proposal

Unsolicited proposals may be accommodated where a Procuring Entity is approached directly by private sector entities who submit proposals for the development of projects in respect of which no selection procedures have been opened. Unsolicited proposals may result from the identification by the private sector of an infrastructure need that may be met by a privately financed project. They may also involve innovative proposals for infrastructure and services management and offer the potential for transfer of new technology to the country