

GOVERNMENT OF THE KINGDOM OF LESOTHO



STUDY ON LOCAL CONSTRUCTION INDUSTRY DEVELOPMENT

For

MINISTRY OF PUBLIC WORKS AND TRANSPORT

Integrated Transport Project (ITP)

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MAP OF LESOTHO

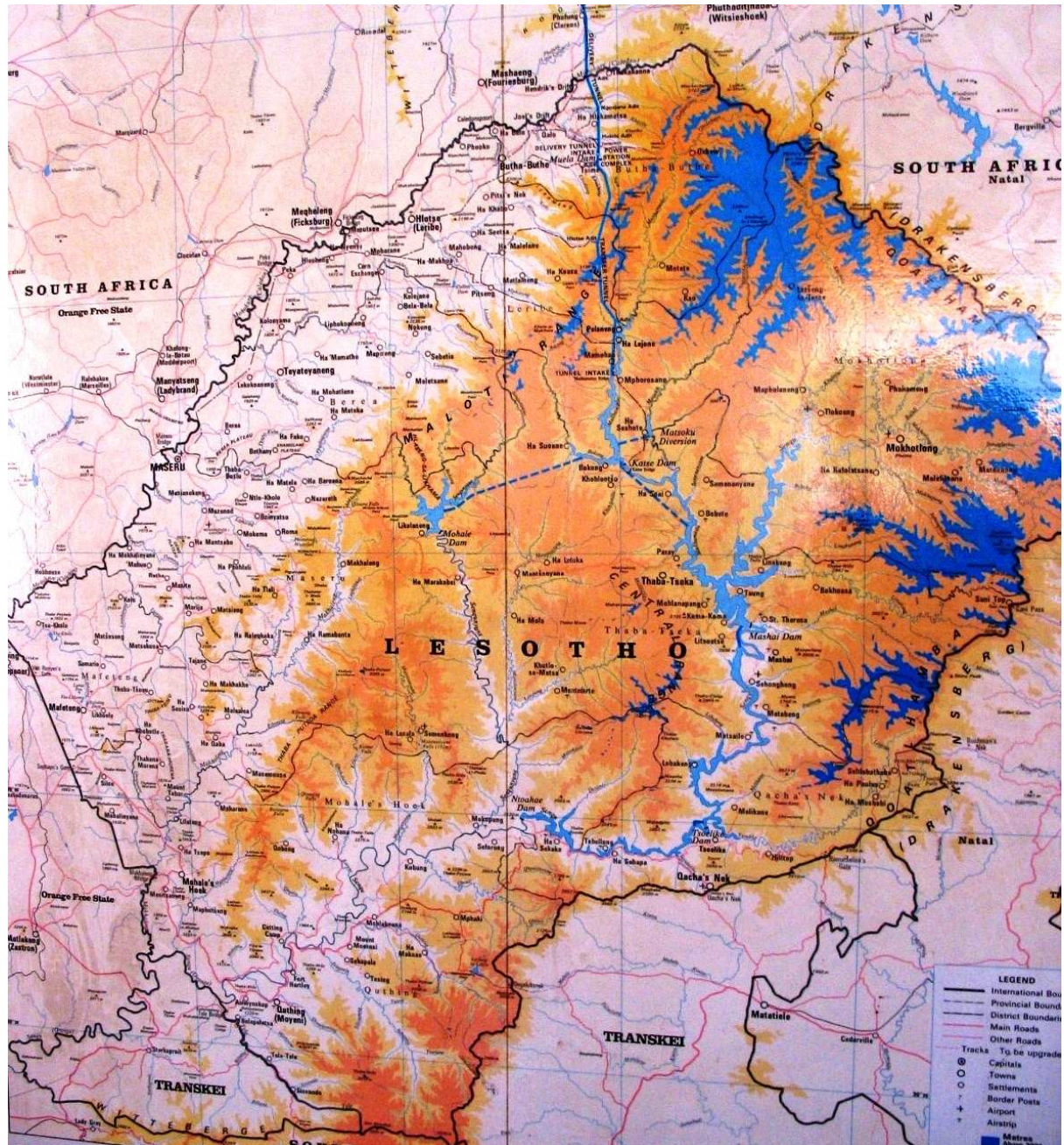


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1 Executive Summary

This report summarises the findings of the Local Construction Industry Development Study which aims to assist the government of Lesotho (GoL) establish an appropriate policy and strategic environment that enhances the participation of its entrepreneurs and professionals in the construction sector of Lesotho and its neighbours. The overall objective of the study is to create a sustainable Local Construction Industry and body of “Built Environment Professionals” that are able to meet the current and future needs of the contracting/construction industry and contribute to Lesotho’s economic growth and poverty reduction strategy.

Recent government policies and initiatives set out in Vision 2020, the imminent start of Phase 2 of the Lesotho Highland Water Scheme, decentralisation and the achievement of the Millennium Development Goals have created great opportunities for the local construction industry to both expand and widen the scale and range of its activities within the country. Yet the study has found that the local construction industry is highly fragmented and poorly coordinated and that government has failed to provide the institutional and regulatory environment that might encourage the development and growth of the industry. Discussions with private sector stakeholders and organisations suggest that Lesotho’s fluctuating workload means that its leading contractor/consulting companies must look outside the country to sustain themselves, while smaller firms depend to a large extent on sub-contracting from these larger companies and projects. They have also identified the lack of professional registration and regulation and poorly coordinated sub-professional training and capacity building resulting in an unregulated cadre of building industry professionals and poorly qualified or un-accredited sub-professionals and skilled workers as another concern. From the government’s perspective, the sector needs a simple clear organisational structure, sound and consistent contractor registration and standardised procurement procedures and contract documentation.

It is recommended that these concerns are addressed by a number of reforms and changes. First, the study recommends the establishment of two independent bodies. First, the Lesotho Industry Construction Council (LCIC) is seen as a means of establishing and sustaining a valid and reliable contractor registration system. The LCIC will also monitoring the performance of contractors as well as their registration, development of contractors and promotion of best practice. Importantly, the LCIC will lead the way in seeking international recognition and accreditation of Lesotho’s Engineers, Architects, Technologists and Technicians. In doing so, it will work closely with a second independent body - the Council for Built Environment Professions (CBEP). This second recommended body will be responsible for the registration, training accreditation and conduct of key built environment professionals. The CBEP will set standards for best practice to be enforced within the rank and file of each profession. It will promote appropriate standards of the education and training, accredit that training and help design suitable courses in Lesotho’s vocational and tertiary education system.

The study recommendations also include the adoption of a national construction industry policy, a draft of which is published in Annex A. This policy is supported by a number of items for legislation:-

- The Construction Industry Development Act, a proposed draft of which is annexed to this report as Annex B. This Act puts into operation most of the objectives of the Construction Industry Development Policy.
- The Built Environment Professionals Act. A proposed draft of this Act is annexed to this report as Annex C. This act puts into operation the Policy objectives concerned specifically with the registration and regulation of construction industry professionals.
- Recommendations for regulations specific to the procurement of construction works for inclusion in the draft regulations being formulated to replace the Financial Regulations of 2007. (Annex D).

The implementation schedule for these recommendations is very tight and requires the MOPWT to take the lead in promoting the changes (Annex E).

As part of the support that will be necessary to sustain these industry bodies the study recommends and includes in the draft policy and acts provision for the raising of a small levy on all large construction projects. This levy will be used to support the activities of the industry and professions councils and to support the training and development of both professional individuals and workers through links to business associations and learned societies.

2 INTRODUCTION

2.1 Country Background

The Kingdom of Lesotho is a small mountainous country with a land area of 30,355 Km². It has been known as the Kingdom in the sky as it is the only country in the world that is totally above 1000m elevation. 80% of the country lies above 1,800m and the land rises to 3400m at Thabana Ntlenyana. It is the most significant of only 3 enclaves in the world being enclosed by one other country. In the case of Lesotho the surrounding country is the Republic of South Africa (RSA), the other two enclaves are the Vatican city and San Marino both nominally independent states within Italy. The western side of Lesotho is called the low lands although the lowest point is some 1,400m above sea level and some areas of the lowlands rise above 2,000m. This lowland strip of the country approximately 30Km wide stretches in an arc from Butha Buthe in the north through Teyateyaneng and the capital Maseru roughly central and continues to the westerly point in Mafeteng district before curving back south eastwards to Mochale's Hoek and Quthing in the south. The rest of the country to the east of this strip is highland that is characterised by rugged mountain terrain, steep mountain passes and high plateaus. Lesotho is often called the roof of Africa and compared to Switzerland in both size and terrain.

Given this difficult terrain, the population is also small, numbering just under 2 million by latest estimates. Approximately 70% of Lesotho's population live in the lowlands or in the foothills zone of the country where some 30% of the land area is considered arable obliging the country to import most of its food staples from its dominant neighbour the RSA. The remaining 30% of the population is spread between the mountain area or in the Senqu River Valley Zone¹. This low overall population density and its uneven distribution make the development and provision of a sustained and adequate infrastructure difficult. Similarly, an equitable distribution of employment opportunities is a high priority for the country. While

The Lesotho economy is characterised by a high dependency on the export of labour, electricity and water to South Africa and the preferential access of a small clothing manufacturing sector to the US market through the Africa Growth and Opportunity Act (AGOA). The 2009 Global Financial Crisis saw both South Africa and the US reduced their imports of these resources from Lesotho and the GDP growth shrank from 4.4% in 2008 to 1.9% in 2009. As the global economy began to recover, improved commodity prices have stimulated growth in the mining sector in the region and Lesotho's gross domestic product (GDP) rose by an estimated 3.8% in 2010. This recovery has also been assisted by high government capital expenditures in the construction sub-sector, notably the employment/raw material effects of constructing the Metolong (Lowland scheme) and Polihali (highland phase 2) dams. Surplus water and electricity from these multipurpose dams will be exported to South Africa, highlighting the continuing interdependence of the two economies.

The government of Lesotho has continued to diversify the economy through the expansion of the manufacturing sector in food processing and the assembly of electrical goods. However, the textile industry is still the largest employer and is likely to remain so until AGOA is replaced or modified in 2015. This dependence on preferential access to the US market has not encouraged competitive manufacturing processes and recently the appreciating rand and competition from Asian suppliers

¹ 2011 Edition: Lesotho Review

has seen investment and employment in textile manufacturing decline. Net foreign private capital investment also fell in 2010 and this trend is forecast to continue in 2011.

Lesotho's economic growth is also expected to slow down in 2011 compared to 2010 due to reduced government investment in construction and a general slowdown in the US and South African economies. This slowdown is likely to be dampened by continued low Southern Africa Customs Union (SACU) revenues, which have in the past been a major source of government revenues. This will have a knock on effect on government expenditure. Thus, government has already taken steps to reduce current expenditure by introducing a freeze on public sector jobs and investments in new projects during 2010/11.

In spite of these efforts to reduce its budget deficit, the government of Lesotho has managed to keep infrastructure improvement as one of its development priorities. Improvements in infrastructure are intended to link remote areas to markets and provide new investments opportunities for adding value, especially in the agriculture sector. However, the country's business environment has remained poor. In 2009, the World Bank "Doing Business Survey" ranked Lesotho as the least business friendly country in southern Africa. This has undoubtedly impacted on inward investments and trade competitiveness and affected the expansion of private-sector activities so that government still accounts for nearly 50% of Lesotho's GDP. Current efforts to reduce the time, effort and costs involved in establishing new businesses are part of a government strategy to promote entrepreneurship, savings and investment thereby increasing private-sector activities. The fundamental elements of this process, however, are either in the very early stages of implementation or have yet to be fully developed and implemented. The passing of the Land Act (2010) and the establishment of the land register, with the pilot phase completed in 2010, will help to address the challenges of financing small and medium-scale enterprises (SMEs) and improve the country's attractiveness for foreign investment.

Similarly, while construction has been seen the key investment needed to drive the economy over the past few years government has failed to establish an overarching strategy that maximises the business opportunities arising from this investment focus. This report aims to address this gap and assist government establish an appropriate policy and strategic environment that stimulates the greater participation of Lesotho entrepreneurs and professionals in the construction sector.

2.2 GOVERNMENT POLICY FRAMEWORK

The proposed Policy framework for the construction industry is laid out in detail in the Policy document that forms one of the main outcomes of the study and is attached here as ANNEX A in Volume 2. This framework is summarised here.

Lesotho government development policy has been guided by Poverty Reduction Strategy Papers (PRSP) in the past when they provided one of the main thrusts of its policy. This policy goal still exists but is now considered as an implementation strategy under an overarching Policy direction which sets out a Vision for the future of the country i.e. VISION 2020. The construction sector is an integral aspect of all seven pillars of the vision but three pillars stand out as having a significant effect. These are an emphasis on infrastructure development to drive growth in the economy,

health and education, the increased use of the private sector and Public Private Partnerships to share the workload of development and the increased use of local technology.

The link with poverty reduction is established through the construction of transport infrastructure and greater access to services where infrastructural provision is essential.

The second major policy of government affecting the construction industry is the decentralisation of political and administrative decision making. This has a number of effects. Decentralisation of the procurement process has widened the client base for construction. It has created more construction opportunities from local authorities. These require the construction industry to respond with greater diversification and widen the development of skills and mobility.

The third policy area affecting construction is that of Transport. Its policy recognises the shortfall not only in transport services but also in physical infrastructure. Its response is the construction, rehabilitation and sustained maintenance of the road network, rural airstrips and bridle ways all of which require greater construction effort.

Finally the realisation of the millennium development goals (MDGs) in almost all sectors will require some level of construction, whether it is rural water supply, rural electrification, roads, bridges hospitals, schools, police stations or facilities for any other service; the construction industry must play an important role.

This four policies highlight the importance of the construction industry in meeting their objectives. Yet, there is no single stated policy that brings together the specific requirements of the industry itself or lays down how this important role will be realised.

In order to begin to reach its potential role in the development of Lesotho the local construction industry must be able to react appropriately to the needs being generated by both government policy implementation and by private investment coming into the country as a reaction to perceived opportunities. If the local construction industry is not ready, the work will be done by others from outside the country who are better able to seize the generated opportunities.

2.3 THE CONSTRUCTION INDUSTRY

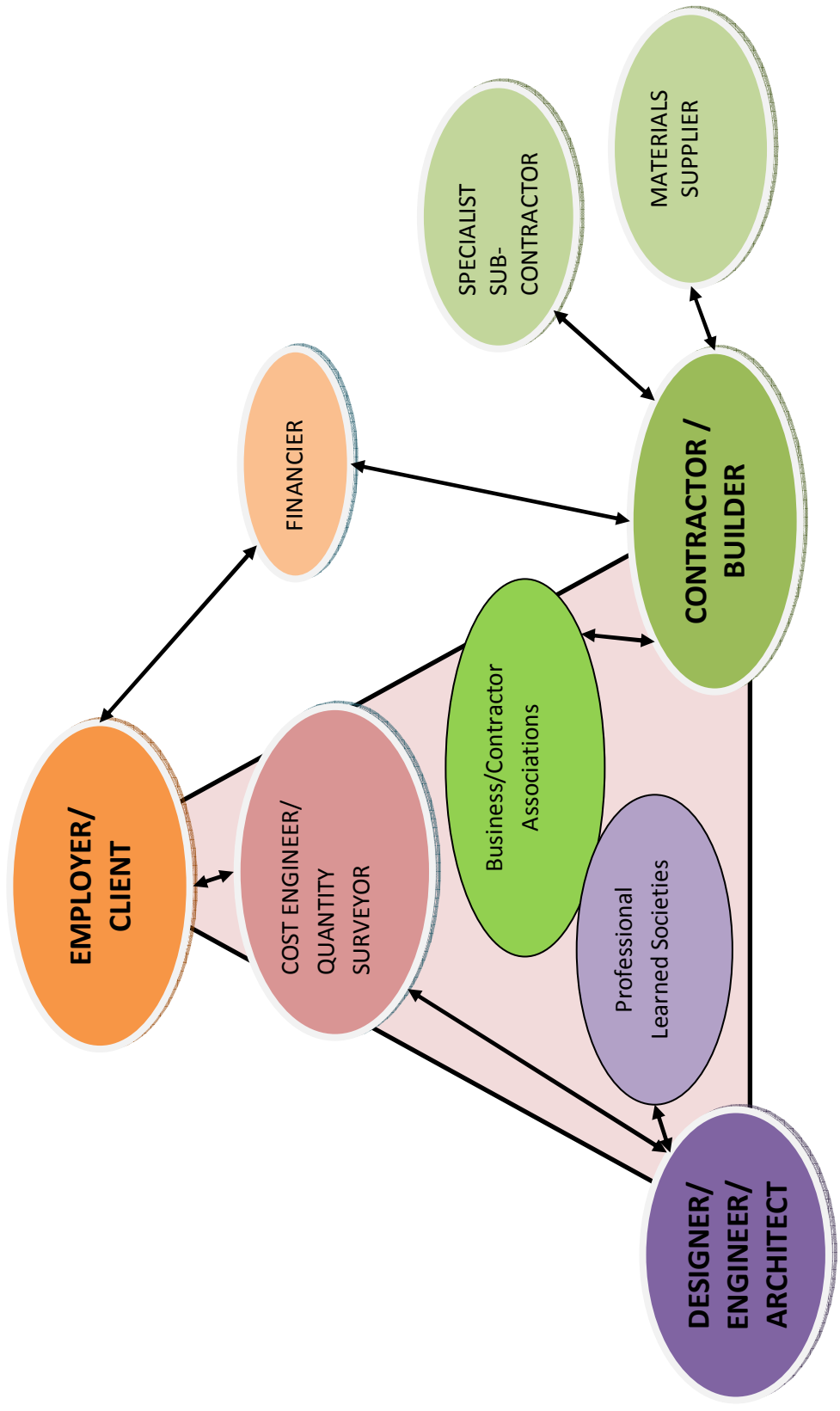
The construction industry in most countries is structured on a traditional, triangular platform of roles between the Client/Employer, the Designer/Architect and the Builder/Contractor as depicted in Figure 1 below. This simple triangle is further enhanced with supporting roles from Financiers, Cost Engineers/Quantity Surveyors, specialist sub-contractors and material suppliers, who all support one or more of the main nodes of the triangle. In addition the professionals working within the industry are normally self-regulated through one or more learned societies, institutions or councils who provide professional codes of conduct and keep a register and/or licence the individuals to practise in the same way as the medical and legal professions do. They normally also protect the name of the profession by restricting the use of the professional titles such as Engineer, Architect or Quantity Surveyor. These organisation can be diverse, with each small specialist having its own society, or inclusive with one organisation covering a large spectrum of disciplines. The Institution of Civil Engineers for example deals with all engineering disciplines excluding the military, from mechanical to chemical to structural and cost engineering. In contrast, the Bureau of Engineering Surveyors admits only specialist assessors for legal compliance of plant and machinery installations. The level

of specialisation of the supporting structures will depend first of all on the size of the industry and the quantity of specialist opportunities provided in each particular country.

Firms and companies working within the construction industry also often form associations again providing self-regulation in the form of codes of conduct, complaints procedures as well as support and training opportunities for skills and business development. These organisations together with the learned societies work within the construction industry to support the main nodes and drive the development of the industry

The traditional triangular setup of the Construction industry is amorphous with different configurations being applied as appropriate to the various types of project under consideration. The main traditional setup as depicted in figure 1 will be most appropriate for a project under an ad-measurement type of construction contract where the employer carries out the design or has a separate, prior contract with a designer to produce the design. This configuration of the main nodal players (employer, consultant, and contractor) must change when the project is a “design and build” or “Turnkey” project. In this instance the designer and builder have to come together to provide a complete package of services to the employer. The supporting structures/institutions still remain mostly in their traditional roles. Going a step further into the “Design Build Finance Operate” (DBFO) type of project all three of the main traditional nodes come together with one or more financiers to provide the whole life cycle project to the users (normally the public). The role of employer or client here is blurred into a regulatory or monitoring role because the consortium of Financier, Contractor and Designer is in a contractual partnership arrangement with the employer who is often a specifically created project authority to distinguish it from the “Client” Government department. These types of project are often undertaken by Government under Private Finance initiatives (PFI) or Public Private Partnership (PPP) arrangements. Different types of contract that are appropriate for these non-traditional configurations of the construction industry and types of projects have been developed over the years both by FIDIC and by ICE in UK who have come up with suites of different forms of contracts and specialist procurement documents for the different types of project. These are normally referred to as different colour books in the FIDIC range e.g. RED Book for traditional ad-measurement contracts with design by employer, YELLOW book for design and build contracts, ORANGE book for Turnkey contracts, PINK Book for Development bank projects, SILVER, or DBO/GREY Book for DBFO and PFI projects. These FIDIC forms of contract have been well tested throughout the world and are now familiar to most international construction industry companies.

Figure 1 Traditional Construction Industry Arrangement

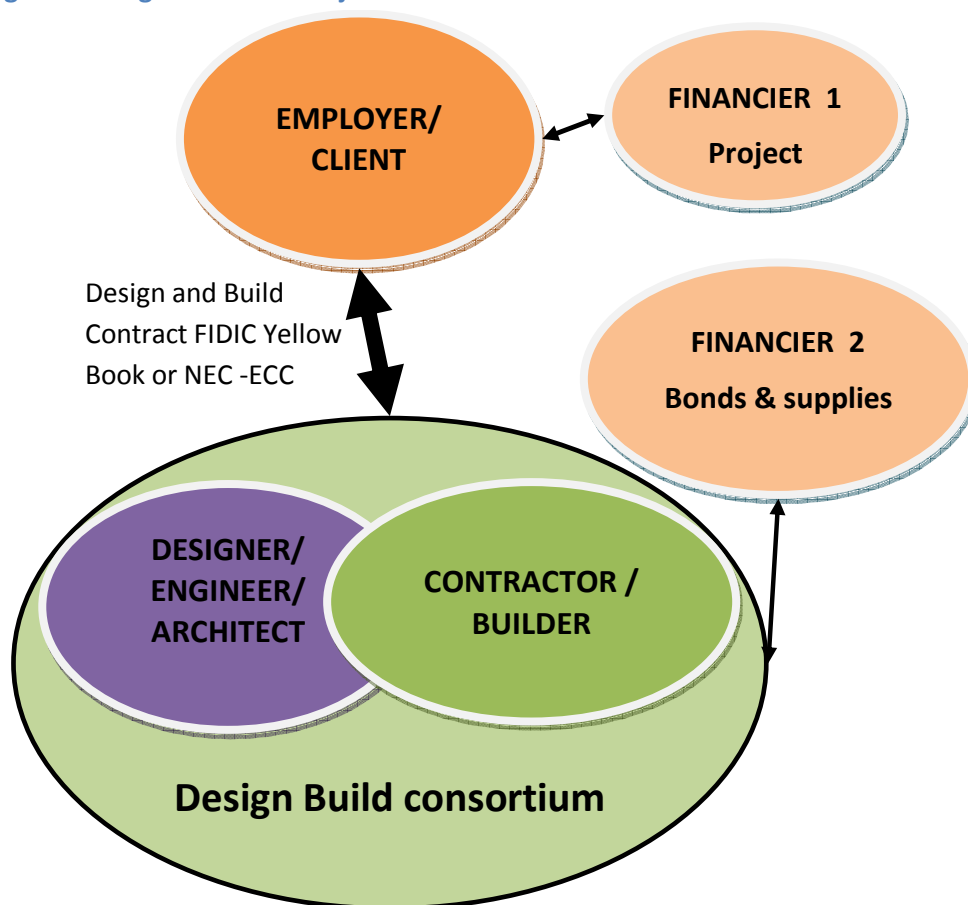


Alternatively, the NEC forms of contract and procurement documents of the ICE are an attempt to change the concept of risk sharing and management responsibility within the contractual situation to better suit the less traditional types of contract. They form a partnering type of contractual arrangement rather than an adversarial situation. This has proved beneficial in many situations and this type of contract is supported by those who have gone through the quite substantial effort to change over to it.

Thus these two organisations provide a small set of generic standard documents for a range of project types from traditional triangular management to PPP and DBFO contracts.

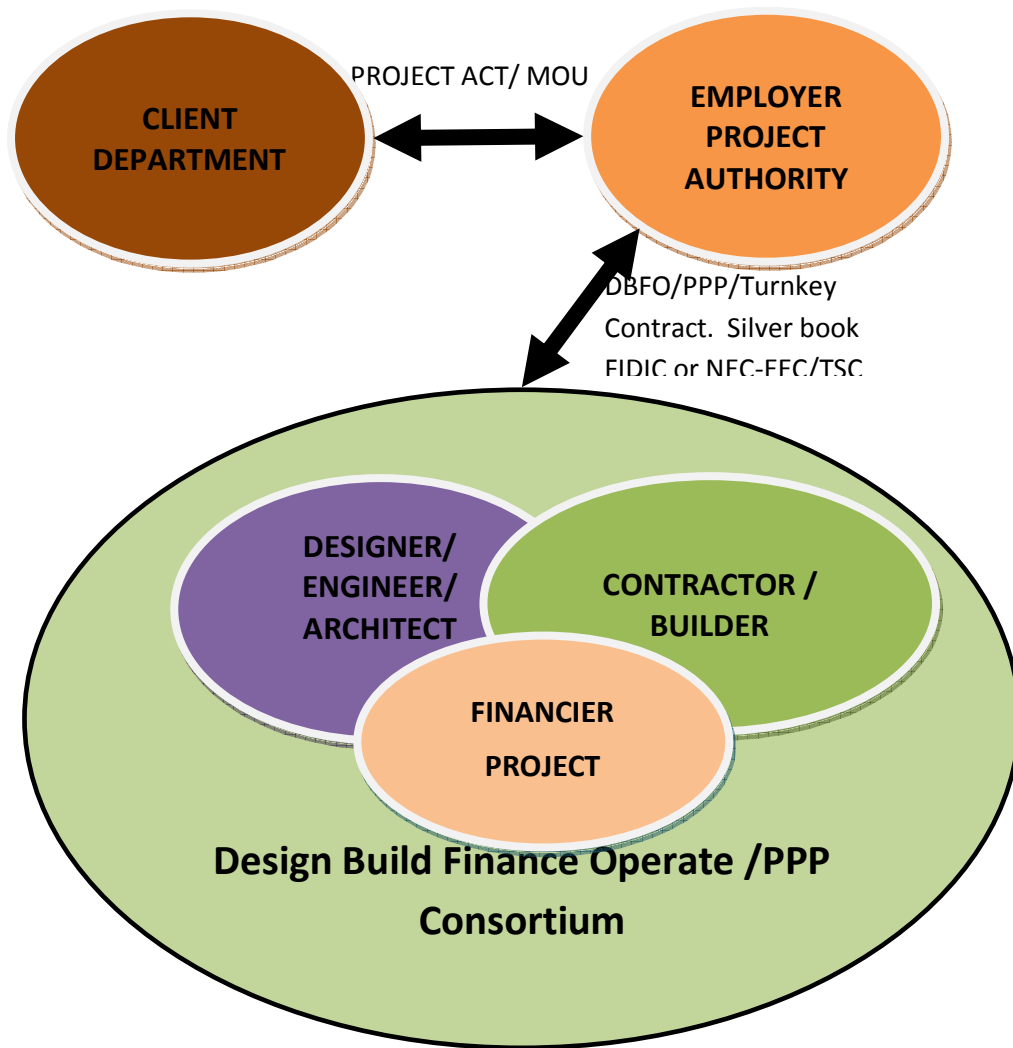
The main changes to the triangular institutional arrangement shown above when the project is for a complete design and build; with responsibility for design being included in the contract package is as shown in Figure 2. This is assuming the other supporting entities still play their traditional role as in figure 1 and are not shown again here .

Figure 2 Design and Build Projects



When the management and financial responsibilities and risks are shared between client and contractor in a PPP or Turnkey contract then the institutional arrangement transforms into an arrangement that is better depicted in Figure 3 below

Figure 3 PPP/DBFO PROJECTS ARRANGEMENTS



All of these arrangements are observable in the construction industry in Lesotho with specific local variations and adjustments as described in Section 4 of this report that sets out the study team's observations of the situation and practises in Lesotho.

3 THE LOCAL CONSTRUCTION INDUSTRY DEVELOPMENT STUDY

The study was required as part of the World Bank funded Integrated Transport Project (ITP) to support its aims and objectives and widen its scope from the narrow interpretation of transport related activities to the poverty reduction development goals of Lesotho. Poverty reduction depends on providing access to many varied services and transport is one of the ways of providing that access. The creation and maintenance of physical infrastructure complements the provision of transport services and together they provide access to many of the services that people need. Thus the construction industry underpins the overall realisation of Government of Lesotho, World Bank and Civil Society objectives of poverty reduction.

The study commenced in April 2011 and is due to be completed in September of the same year.

3.1 OBJECTIVES

In February 2006 the Ministry of Public Works and Transport (MOPWT) compiled and formalized the first Transport Sector Policy in support of the development vision for the Government of the Kingdom of Lesotho (GOL) (Vision 2020) and its Poverty Reduction Strategy (PRS). The International Development Association (IDA) and the European Union (EU) agreed to fund certain components of this policy and these were outlined in the “Integrated Transport Project” (ITP) that was subsequently launched by the MOPWT. The main goal of the ITP is to contribute to the economic growth of the country and support the Poverty Reduction Strategy through a range of efforts; e.g. a general strengthening of the management sector of the transport sector, improvement of road infrastructure and maintenance, institutional reform and to extend reliable access to isolated areas. Importantly, the present study contributes to this wider achievement of Vision 2020/PRS development goals.

This reflects the fact that the Construction Industry of Lesotho constitutes one of the main pillars that provides and maintains the country’s necessary infrastructure. By improving, protecting and expanding the industry the GOL aims to improve the construction quality and maintenance of its infrastructure, as well as create employment, strengthen the national economy, reduce poverty and gain regional recognition for its stakeholders. To do this, the study not only focuses on the transport sector, but also assesses the National Construction Industry (NCI) as a whole, thereby including both the building and civil engineering sectors. In this context, the NCI delivers not only the countries physical infrastructure but also provides opportunities that create business for suppliers, manufacturers etc. as well as creating employment to professional staff and other skilled and unskilled labour. Unfortunately, the NCI has been rather fragmented which suggests that it needs a stronger policy and institutional framework if it is to assume GOL and sector expectations.

The overall objective of the study is to create a sustainable Local Construction Industry and body of “Built Environment Professionals” that are able to meet the current and future needs of the contracting/construction industry and contribute to Lesotho’s economic growth and poverty reduction strategy.

The study will also present programmes and strategies that promote best practice in support of the first objective as well as addressing many of the present deficiencies and constraints within the industry as a whole.

This overall objective will be achieved during the 5 month study period by the drafting of a series of policy documents and supporting legislation, which streamlines the operations and performance of the sector. These are summarised in terms of the delivery of six (6) specific study outputs:

1. To develop and draft the Construction Industry and Built Environment Professions Policy for Lesotho;
2. To develop and draft Local Construction Industry Development Act;
3. To review, develop and draft Built Environment Professions Acts including but not limited to: Lesotho Association of Engineers' Act and Lesotho Association of Engineers, Surveyors and Architects;
4. To draft guidelines for promotion of best practice which will support the long-term development and address many of the present deficiencies and constraints within the industry;
5. To streamline the current Public Procurement Legislation to cater for or to facilitate the procurement of construction services;
6. Prepare an action plan for implementation taking into account the time it takes for approvals of policies and legislations.

All of these outputs are interrelated and due to the relatively short duration of the study require good interaction within and between sector stakeholders. This interaction was achieved through the methods applied during the study.

3.2 METHODOLOGY

The methodology employed during the study has focussed on the collection of qualitative and quantitative data from the stakeholders of the construction industry themselves. This data consists not only of facts but also of opinions, experiences and problems faced, together with any self-analysis of these items by the parties involved. A key component in the methodology has been the bringing together of stakeholder in a number of workshops designed to provide them with an opportunity to share experiences, discuss problems and also to propose solutions. The recording of these discussions and consensus achieved (if any) during these workshops have formed a significant portion of the solutions and proposals underlying the outcomes of the study. All the workshops have been reported on separately and the results recorded in workshop reports that have been disseminated for discussion and comment through the website of the MOPWT.

The workshop data has been supplemented by a comprehensive document review that included not only a vast array of documents pertaining to Lesotho but also the relevant documents from countries within the SADC region and beyond. A list of the most significant documents reviewed is attached as Annex G. This list is not exhaustive but gives an overview of the range of documents used.

4 FINDINGS OF THE STUDY

The study team has put together the results of the data collection and synthesised the findings through internal discussions and meetings with the client steering committee. This collation of the

results has led to the identification of a number of issues and problems facing the construction industry in Lesotho at present. These can be broadly categorised into three areas of constraint associated with institutional, capacity and regulatory concerns. In addition one particular set of regulatory issues is related to the procurement of construction works and services. This set of procurement issues is dealt with separately as it involves regulations that apply to wider aspects than the construction industry alone.

The Lesotho construction industry has the basic make up similar to other countries and fits the generic model depicted in Figure 1 above. Key factors particularly associated with industry in Lesotho that differ from this model can be summarised as follows:

1. The major client organisation is still the Government of Lesotho. Previously all government funded building and civil engineering work was procured through the MOPWT. This has now changed and procurement of construction has been de-concentrated to user departments including the District Authorities under the Ministry of Local Government, the Department of Rural Water Supply under the Ministry of Natural Resources and specific project or programme authorities under various Ministries. The formation of the Roads Directorate and the de-concentration of procurement of works requires a change of role for the MOPWT from that of the main client to one of a regulatory body with responsibility for developing building and construction regulations and enforcing such regulations through inspection, monitoring and enforcement powers.
2. Financiers are of two main types. First are the project financiers in the form of external aid agencies, development banks and investment banks that provide project financing to the Client mainly through agreements with Government. Second, are the local financial institutions that provide support to contractors in the form of loans, guarantees and bonds for material supply and contract milestones.
3. There are 1,411 contractors on the register at the Building Design Services Department (BDS) of the MOPWT but contractors are also on registers at DRWS, LEC, LHDA, LHLDC, Metolong Authority, PPAD of Ministry of Finance (MOF) and others. The number of registered contracting companies seems too large for the size of the country and its population of just less than 2 million. It also does not match the number and value of construction opportunities available. There is anecdotal evidence that many of these companies are "briefcase" contractors, i.e. companies that have no physical facilities or capacity to do work. Thus many of the "companies" on the LEC register are in fact self-employed artisan electricians contracted on a term contract-schedule of rates as intermittent workers, not really electrical contracting companies.
4. There is no active contractor's association within the Lesotho industry and no active association of professionals (Engineers or Architects). A number of such associations existed in the past and some still exist on paper but none are currently active.
5. The contracting and consulting wings of the industry are dominated by a few firms who have both financial and technical capacity as well as political muscle. These firms tend to be awarded most of the lucrative middle sized jobs on offer in the country on the grounds that no other local companies have the capacity to compete. Yet, when it comes to bidding for larger contracts, these companies find themselves squeezed out by international competition from South Africa, Europe or China. These ostensibly foreign companies can be registered in Lesotho and trade as local companies.
6. The skill development of individual workers and the accreditation of such skills is either not available or severely limited. Many of the skills required by the construction industry are not

recognised by the vocational training department of the Ministry of Education and therefore no trade tests for those skills exist. Such skills as road builder, steel erector, steel fixer, site supervisor and clerks of work fall into this category. Where the skills and trades are recognised there is a severe bottleneck in the scheme of service for the progression of the skills to higher levels. The programme of vocational training foresees a progression from trade test C to B to A and so on to Craft or National Certificates as an entry point to higher education. But no application for trade test A has ever been made and no tests at that level take place. This creates an artificial ceiling beyond which no artisan or foreman can progress to a widely recognised National or Craft Certificate. This artificial ceiling affects trades such as Masons, Carpenters/Joiners, Plumbers, Glaziers and Welders.

4.1 Institutional Constraints.

When analysing the institutional aspects of the construction industry in Lesotho it soon becomes apparent that a number of support structures and institutions are absent in Lesotho. The normal triangular format of the industry composed of major nodes of clients, consultants and contractors certainly exists and largely shapes the structure of the industry. The suppliers of materials are numerous and diverse and although many supplies are sourced from outside, agents for the supply of most construction materials can be found within Lesotho's borders. Similarly, local financial support is also available and very active in providing credit facilities, sureties and bonds, although the conditions for their provision has become much harder in the face of the Global Financial Recession. What is missing is the set of institutions that provide technical and bargaining support in the form of business associations and learned societies to industry contractors and consultants. In particular there is no body or society providing for the registration, licensing or accreditation of professional persons working within the industry. At present anybody can set themselves up as an Engineer or Architect without any authority to check and verify credentials and expertise.

Contractors and construction industry businesses have made a number of attempts to form associations to increase their bargaining power and influence with clients and government. So far all of these have failed after a short time so that there are no active construction industry associations currently in Lesotho. This may be due to the lack of support from client organisations, diversified business strategies or the small and fragmented nature of the industry itself. The few large firms that are dominating the industry see little need to join with others as they already have a strong influence on client and government activities. In contrast the large number of small firms are discouraged by the lack of the participation by the larger firms. The same is true to a lesser extent in the consulting business. The lack of professional associations means that self-regulation of the industry is not possible since there is no organised body to monitor and enforce any codes of practise that such association may generate.

The problem here is that government cannot, by rule of law, force people, companies or businesses to associate. Association must remain a voluntary activity that might be encouraged by for example establishing a national body set up for that purpose. This initiative might be supported by government regulations that require companies and individuals to register with an industry wide body in order to be allowed to carry out the business activities within the industry and adhere to a code of conduct in order to remain registered.

In the past, the registration, categorisation and classification of contractors used to be centralised with BDS in the MOPWT. Since the decentralisation of procurement under the 2007 regulations, contractor registration has been taken up by many procurement entities and is found among most user departments, parastatals and private clients. The lack of a single institution where all construction firms are classified has led to confusion among the contractors and poor coordination between client departments. This situation also leads to a conflict of interest when the client awarding work also classifies the same contractors in terms of the level and value of work they are qualified to bid for. The opportunity for corrupt practices in the classification process is high and can only be reduced when the classification is applied and administered by an independent body.

While these institutional constraints remain unresolved, the capacity of the various players in the construction industry to react to the new opportunities in the sector is restricted. Similarly, capacity building proposals will prove unsustainable without the enabling environment created by a harmonised and coordinated institutional setup for the construction industry.

4.2 Capacity Constraints.

For the last century or more one of Lesotho's biggest exports has been its hard working people. At its height in the middle of the twentieth century the migrant labour system under the apartheid regime of neighbouring South Africa took the majority of able bodied and technically qualified men to work in the mining industry. The remittances that these migrant workers provided, formed a large part of Lesotho's national and household economy at that time. Since the 1970's with mechanisation of the mines and the fall of apartheid the opportunity for unskilled mine workers has decreased rapidly and Lesotho has suffered the social upheavals of economic reorientation and structural adjustment concomitant with the legacy of unemployment and migrant-labour-related HIV/AIDs epidemic.

One of the unexpected consequences of the migrant labour system is that the large proportion of able bodied men away working in the mines obliged Basotho women to fend for themselves. Women in Lesotho became highly educated and resourceful, carrying out most of the tasks traditionally reserved for men. So that today Lesotho has one of the highest proportions of women in highly skilled jobs, the professions and in all walks of life compared to most countries in the world.

From the late 70's the GoL and the MOPWT in particular responded to the returning unskilled mine workers by forming the Labour Construction Unit (LCU), whose main aim was to provide local employment for repatriated miners. Later the change over from LCU's force account operations to the contracting and outsourcing of work required the re-training of workers and technicians into businessmen and contracting companies. This has not been as successful as anticipated and most of the companies formed through this initiative have not been able to win any contract work for a number of years.

Basotho, both men and women, have been and still are highly educated. Literacy rates are the highest in Africa although recent figures have seen a decline. Again this has put the Basotho in a unique position to export these skilled workers and professionals to the large dominating neighbouring economy of South Africa where there is a lack of skills and qualified people arising from the "Bantu education system" and the "Lost generation" arising from the boycotting of schools and education as part of the struggle against apartheid. Now with the deliberate policy of the RSA

government for BEE (Black Economic Empowerment) and the enclave status of Lesotho, highly educated and professionally qualified Basotho are particularly well placed to fill middle and high level jobs in South Africa. Since many Basotho have close ties with South Africa and a great many were born or raised in South Africa or have parents or other relatives born there, they are entitled to South African citizenship and do take up the opportunity for employment. This constitutes a silent brain drain in which a high proportion of Lesotho's most able people live and work in South Africa. This is at least as true in the construction industry as it is for other sectors of the economy. The capacity of the construction industry locally is constrained by this drain of resources but at the same time it means that if the local industry grows and develops there is a large latent pool of highly skilled and experienced local people who would welcome the opportunity to return home to work. These same people can also help to guide and lead the development of the local industry with experience of what does, and does not, work in the neighbouring countries.

Lesotho's construction industry, although it has the history and potential to become a key contributor to the national economy, is still small in global and regional terms. Work opportunities are characterised by a small number of large construction projects which reflects the limited size of the national economy. Neither the local industry nor the individual contractors can plan or build capacity around one or two relatively large short term (3 year or less-) contracts only to be left without work once they are finished. This inflexibility has been exacerbated in the past by the engagement of foreign firms, who come in for the duration of the project and then withdraw, leaving the local construction industry undeveloped.

This small industry is also dominated by a few large local companies, who obtain most of the medium to large jobs available. Thus although there are 34 class A contractors registered with the BDS of the MOPWT, only seven (7) of them seem to win the majority of works contracts in any one year. Most local stakeholders associated with the industry can name these seven companies and would include Nthane brothers, Matekane Transport and Lesotho Steel amongst those seven who dominate the industry. This situation, coupled with the competition from across the border and further afield creates a very small restricted market for local contractors and consultants. Those companies unable to compete for the large contracts either look for sub-contracts or take on many small projects stretching their managerial and supervision capacity and profitability. Fortunately, some of these dominating companies provide some opportunities for other smaller contractors to take up sub-contracts but this is becoming less common and if this to be encouraged as a business model then some form of incentive is needed to make it work across the sector as a whole.

At the other end of the scale, there are well over one thousand registered medium to small contractors, many of whom have limited or few qualifications as building or civil engineering contractors except for the desire to tender and win construction work often at uncompetitive rates. Many of these have diversified into construction from the taxi industry where businesses are squeezed with excess competition and low profit margins. These two businesses are seen to be complementary in that the taxi business provides a regular cash flow, while the construction requires a higher cash flow and investment but has the potential to make good profits. This perceived complementarity is more often than not illusory and poor quality of work and workmanship tends to characterise this type of joint business enterprise.

In regional terms, there is a strong mismatch between the number and structure of Lesotho's contractors and the size and economic activity of the country. Zambia, which is twenty-five times larger than Lesotho and has a population approaching 20 million as well as a large construction and contracting industry associated with heavy mining has a total of 1,100 registered contractors of all categories from plumbers to dam constructors. This mismatch points to the difficulty of support the planned development of the industry without proper control and regulation. The technical and managerial capacity of Lesotho's diverse and extensive group of unregulated contractors is bound to be highly variable. Clients, both public and private, will find that any open bidding process will generate a high level of non-responsive bids and, without a strong selection process and unit rate analysis that weeds out the technically and financially unsustainable bids, their projects will fail.

The problem that most clients of local construction companies complain about is the lack of business ability, poor contract administration and time/quality control. This begins with a poor understanding of contract procedures which together with a lack of technical ability and work skills of both the contractor's workforce and the management and even extends to the supervision cadres. This in part may reflect the history of force account operations where working relations were internal to the user departments and the need for documentation of instructions, operations, approvals and "as built" drawings was less evident. The increasing need for environmental protection, health and safety at work and other legal issues that require adherence and tracking throughout the life of a construction project has yet to become embedded in the attitudes and procedures of the construction industry as a whole. The Millennium Challenge Account (MCA) is leading the way in integrating these issues into the design, supervision and construction of its contracts and monitoring their implementation. This is making it very difficult for most local contractors to a) successfully bid for MCA work and b) meet all the stringent requirements for payment. In other words, the underdeveloped local construction industry is allowing the opportunity provided by the MCA compact to slip away and is unable to realise the full potential development gains of the project.

For the most part it is the lack of knowledge and procedural failures related to contract administration and management that is a greater problem for the MCA contractors rather than any particular technical (construction) skill shortfall. Contractors seem unable to make the step from a schedule of rates/work order style of contracting to a fully professional, corporate responsible management system required by the MCA contract procedures. This gap between the requirements of MCA and the work practises of most local construction industry players is so large as to make the leap upwards impossible. For this reason the MCA is likely to find very few local companies able to take up the challenge and participate in the compact. The industry has made progress since the beginning of the Highland Water Project and is better able now to make further development strides. The industry is still fragmented and any development is left to the individuals or individual companies to finance, plan and progress. This has meant that the few companies that find themselves in the dominant positions have been those who took the initiative and the risks to develop themselves. There may still be a long way to go but these companies and individuals are at a level where they can make the next steps. This leaves the majority of individuals and companies without the wherewithal to participate in higher levels of construction required by larger more complex contracts. This needs to change and the construction industry needs a clear strategy, plan and programme to address these weaknesses if the majority of its players are to benefit from the MCA and the like.

In addition to these unique constraints, Lesotho contractors also face similar problems to those faced by contracting companies in other countries. These mainly revolve around restricted access to credit and the limited availability and high cost of construction equipment. Construction is a capital intensive operation and as such credit for materials, labour and equipment hire is key to a successful contracting business. The high costs of mobilisation and work activities requires equally high levels of credit which is difficult to achieve, especially in the current recessionary climate when financiers have been less willing to take risks without full security backing. Similarly, small and medium sized contracting businesses cannot afford to own an equipment fleet that might support the range of construction activities especially across different sectors; civil, building and electrical works. Hiring of equipment is equally fraught as the government operated Plant Hire pool has been disbanded and no private hire company has taken its place. Contractors are forced to hire from each other and from larger contractors who may charge non-competitive prices as well as large deposits and security bonds.

4.2.1 Construction skills training

There are seven technical and vocation schools/institutes and 14 skills training centres in Lesotho. These are spread among the districts with only Quthing district missing such a centre. Three of the seven technical schools do not offer any courses relevant to the construction industry as they concentrate more on home science and secretarial skills. This leaves only four technical school that offer courses in bricklaying, carpentry, electrical installation and plumbing. Of the 14 skill training centres 7 offer bricklaying courses, 12 offer carpentry, and only 2 offer courses in Plumbing, while no training centre offers a single course on electrical installation. It is not surprising then to see that the trade test application and pass figures for 2009 and 2010 at grade C and B levels have no candidates for the fitting and turning, panel beating, plastering, plumbing or welding tests. Furthermore, there were only two candidates for the grade B tests in electrical installation in 2010 and no grade B candidates for bricklaying or carpentry. In addition there are no applications and therefore no tests carried out for any of the above trades at test level A, where practical skills begin to be complemented by basic theory. At the same time the Lerotholi polytechnic is striving to become a university and concentrating on tertiary academic education at the expense of vocational courses and syllabi. These strategic moves in the education system have left a widening gap in the skill levels required for a sustainable construction industry. There are no courses offered or trade tests available at Artisan or Craft level for site supervisors, clerks of work or many other trades that are necessary for the construction industry (Plant operator, steel fixer, steel erector, road builder etc.). The links between the construction industry and the vocational training and education system needs to be re-established and re invigorated.

4.3 Regulatory Constraints

The Building Control Act of 1995 created a Review Board to ensure that building regulations were kept up to date with best practise and modern techniques and materials. This Act also called on the Board, under the Ministry of Local Government, to develop codes of conduct for professionals in the building industry, who were to be registered by the MOPWT. This de-concentration of the law governing building regulations and permits together with the control of professional and contractor behaviour through codes of conduct needs to be regularised under a strategy governed by Vision 2020 and beyond. The regulations need to be coordinated for sustained development of the construction industry. This poor coordination and the identified institutional constraints leads to an

anomalous situation in Lesotho that requires reform and additional regulation for the registration of professionals and consultants and coordinated codes of conduct for all professionals working in the construction industry.

The behaviour of the contractor node of the industry's triangular arrangement is presently unregulated except through the works contracts that they sign in order to take on work for the various projects. These contracts themselves are only defined through the procurement regulations issued from time to time by the MOF to control the conditions under which Government funds can be used to procure goods, services and works. In the current regulations there is no separate regulation governing the procurement of works although there is some advice in the procurement manual on which of the international conditions of contract to be used. Most of the local contractors find it difficult to align themselves to these international standards in full and even reading of the documents such as a full version FIDIC (green book) is difficult. A local standard procurement document/ RFP for small works is in great demand and Metolong Authority has made some progress to formulate an appropriate procurement procedure and standard contract document for medium sized works. This document is based on the harmonised Development Bank Standard Conditions of Contract (Pink book). Even this simplification is proving to be too complex and it is likely that something as simple as a "Chinese contract"² might be required for better performance and understanding by all sides.

In order for the contracting wing of the construction industry to fulfil its role and reach its potential there must be a basic entry level and control of who can be accepted as a contractor and allowed to practise. This control is normally exercised through a filtered register of firms qualified to practise and categorised by the types of work they are willing and able to do (through an assessment of their potential) and classified by the level of work complexity and value that they are allowed to bid for (through an assessment of their ability). At the moment in Lesotho the de-concentration of procurement has led to the registration, categorisation and classification of contractors being carried out by a range of procurement entities and organisations. This serves the purpose of individual clients using their own criteria to get the contractors that they require for the particular types and styles of work that they need but is not good for the development of the industry as a whole. It encourages the diversification and devaluation of standards, promotes potential conflicts of interest and discourages the harmonisation and cross fertilisation of skill development and capacity building. This lack of a central coordinated body for contracting registration and development means that there is no linkage or human resource planning that matches industry needs with the vocational and education systems of the country. Ideally this uncoordinated system should be replaced with a central register of contractors including categorisation and classification managed by an independent authority or a body. This same body can then regulate the behaviour of contractors and plan for the coordinated development of that wing of the industry. It might also act as a complaints centre for the public and construction clients to track and monitor poorly performing contractors.

² *The Empty Raincoat*, Charles Handy, Hutchinson 1994

4.3.1 PROCUREMENT (current problems)

Unlike most countries in the SADC region, Lesotho does not currently have a law that deals specifically with procurement. Regulations addressing procurement have consistently been enacted under a series of Finance Acts, the main purpose of which has been the control and management of public funds. This need to control and management of public funds has become more important today than in the past due to the shrinking economy that the country, and the rest of the world, is currently experiencing. Situations like this call for the selective channelling of existing limited financial and other resources into sectors that show potential for sustainable growth and maximum returns.

In addition, strong procurement management in the public sector is also seen as part of Government's arsenal for meeting stakeholders' increased demands for accountability as well as meeting national political, economic and social goals. Any streamlining of procurement must therefore review existing public procurement legislation in order to ascertain the extent to which it reinforces the control and management of public funds and accountability. This judgement cannot be made without an inquiry into the existence, availability, quality and use of the legal and regulatory framework together with the more detailed operational procedures, handbooks, guidelines, model tender documents and standard conditions of contract, among others. These documents serve to elucidate and clarify issues such as the range and context of procurement methods used, advertisement rules and time limits, content of tender documents and technical specifications, tender evaluation and award criteria, procedures for submission, receipt and opening of tenders, as well as the structure and sequence of the complaints system.

The following pieces of legislation are relevant in this regard:

- Financial Regulations 1973 (issued under Section 34 of the Finance Act 11/1973)

Up until 2007, the 1973 Financial Regulations were the authoritative reference for all public procurement of goods, services and works. These Regulations created a Central Tender Board which was charged with responsibility for all government procurement. They provided for procurement thresholds and dealt mainly with procedural issues such as procedures for calling for and dealing with tenders, consideration and award of contracts. A couple of matters of importance to the construction industry are covered by the Regulations related to the authority given to the Ministry of Public Works to register contractors under categories A to D depending on the types and value of buildings they could do; and the recognition for the need to separate procurement of works from other procurement which was dealt with as one.

Paragraph 2112 of the Regulations charged Ministry of Public Works with responsibility for the procurement of building and engineering works. It also provided for the engagement of private consultants or firms for the purposes of carrying out design and supervision of any work where this could not be done by Government professional officers. While the Regulations may have been a good starting point, some of its notable weaknesses included the lack of guidance on procurement methods to be used, tender evaluation and award criteria and a complaints system. The lack of clear guidance at this level led to varying practices, some of which may be inappropriate, unfair and uncompetitive.

- Public Procurement Regulations, 2007 (LN 1/2007):

The Public Procurement Regulations, 2007 repealed Chapter 21 of the 1973 Financial Regulations which dealt with public procurement. Probably as a way of aligning procurement with Government's policy on local governance pursuant to the Local Government Act 41/1996, the Regulations introduced a decentralized procurement system. Ministries, district councils, state owned legal entities, bodies covered by public law and project implementing authorities were constituted as procurement units/entities with authorization to carry out public procurement. Since local authorities under the Local Government Act are expected in terms of section 5 to engage in construction of minor roads and bridle paths, they are arguably procurement units for this purpose.

As its function, a unit is required to manage the procurement process and to apply government standard conditions of contract appropriate to the nature of the purchase; to maintain, update and disseminate the same; and to place advertisements for procurement and award of contracts in the Contracts Bulletin of Government. The Regulations provide comprehensive guidance to the units on different aspects of the procurement cycle including introducing some aspects of electronic procurement, and also have a separate part dealing specifically with consulting services. The Public Procurement Advisory Division (PPAD) was established to support the units, monitor compliance with legislation and policy, and maintain an approved suppliers register and database. PPAD is required to set up an Appeals Panel to deal with suppliers' complaints that are not settled by the unit.

A notable omission of the Regulations is the lack of a distinct and separate treatment for procurement of works and construction. The provisions of Chapter 6 of the Government of Lesotho Procurement Manual 2007 are an acknowledgement of the uniqueness of this type of contract, which justifies the devotion of special attention. The manual recommends the use of the terms used for goods and services as a starting point, but cautions their inappropriateness in certain circumstances, where it might be necessary to look to internationally accepted models such as FIDIC, the World Bank and NEC. It further advises units to seek expert help from either MOPWT or PPAD in procurement terms and legally when securing contracts for works and construction.

In effect, the procurement units had to decide themselves what terms to apply in each case, with the obvious resultant dangers of lack of uniformity and transparency. While this is recognition that MOPWT are in a better position to decide and advise on what system to apply, they themselves are not given clear guidance as to the system to apply to different types of contract. Undesirable variances in the application of the manual were therefore inevitable. This continues to be the case after the enactment of the Roads Directorate Act 16/2010. Section 4 which sets out the functions of the Roads Directorate gives it power to procure and manage contracts for the development and maintenance of roads without reference to the form of contract to be used for the different types of work they could let. On the contrary, the Directorate is required to determine and establish best practices that promote procurement management and reform.

- Public Financial Management and Accountability Act, 2011

On June 17th 2011, the Public Financial Management and Accountability Act came into force. In similar fashion as its predecessors, the Act does not set out specifically to deal with public procurement. Its object is stated to be “ ..to establish and sustain transparency, accountability and sound management of the receipts, payments, assets and liabilities of the Government of Lesotho”. The Statement of objectives and reasons for the Act indicates that it seeks to bring about changes in public financial management by the ownership by spending units or ministries of their respective accounts through preparing them themselves, subjecting them to audit and presenting them to Parliament. In the past, this would have been done by MOF. The only connection the Act makes with procurement is the establishment of a Procurement Tribunal under Part IX to hear appeals against decisions of the PPAD established in terms of the Public Procurement Regulations which are effectively non-existent technically on the coming into force of the Act by virtue of its repeal of the Finance Act 6/1988.

Despite this technicality, however, the 2007 Regulations are the procurement regime that is still being used as they have not been replaced yet. On information obtained from the MOF, a fresh set of procurement regulations is already at an advanced stage of preparation for publication. This provides construction industry stakeholders with a golden opportunity. The 2007 Regulations had a number of deficiencies including the lack of clarity on the structure of the complaints system. Above all, they failed to provide clear guidance on works and construction procurement, leaving it to the units to make their own choices on matters that should have been the subject of regulation. For legal and practical purposes, dwelling on these Regulations would not be advisable as they will be effectively repealed in the near future.

5 PROPOSALS (Solutions)

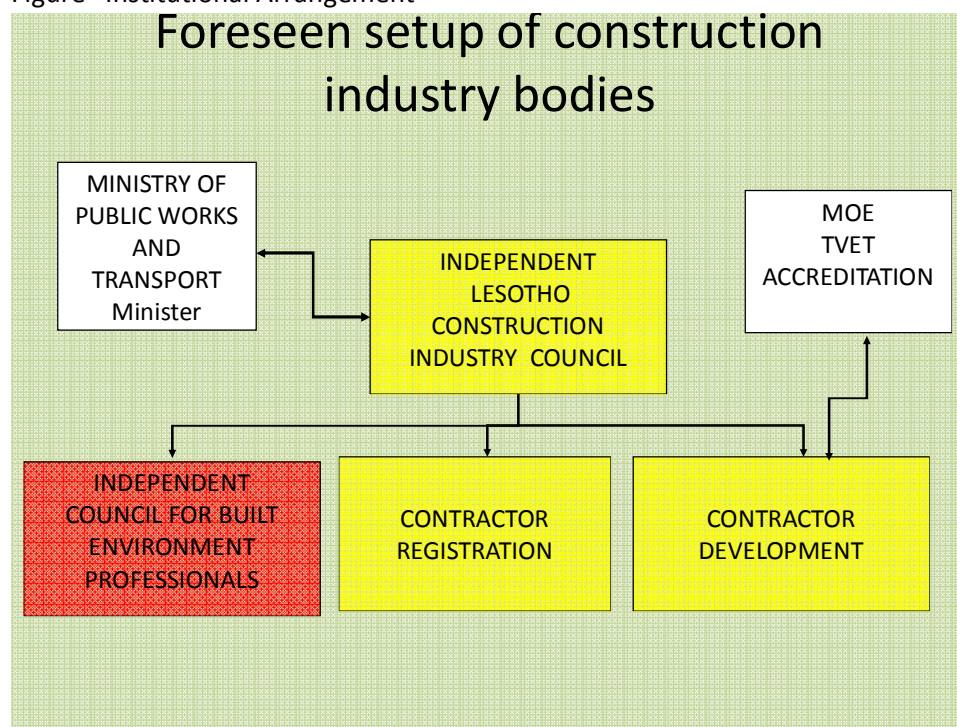
5.1 INSTITUTIONS

As far as the institutional issues are concerned it is clear that one solution can solve more than one problem. The issues of the fragmentation of the industry, the de-concentrated categorisation process and the uncoordinated and unplanned development of industry players can all be addressed through the introduction of an independent industry development body specifically charged with the registration, categorisation and classification of contractors and the regulation and development of those same contractors and the industry as a whole. The stakeholder meetings and workshops that proposed this solution have proposed that the body should be called the Lesotho Construction Industry Council (LCIC). This body will maintain a register both of construction industry contractors and construction projects above a certain value limit.

In addition to the registration of contractors and projects the LCIC will promote the development of individuals and companies through the organisation and coordination of development skill training and the promotion of accredited courses for industry workers. The LCIC will work together with DVT to develop curricula for the trades and skills that are not yet available under the accreditation system of DVT. The council will promote the training of contractors and other stakeholders through the arrangement of skills training sessions, workshops and seminars and the support to longer term training of individuals proposed to the council by recognised business associations, whose creation

and sustainability will also be supported by the industry council. The council will also support the industry recognised business associations to help their members access credit and access equipment through the use of a construction industry levy.

Figure Institutional Arrangement



The function of the main construction industry council will include regulation and monitoring of contractors as well as their registration, development of contractors and promotion of best practice.

Promoting Best Practice

The construction industry tends to be conservative and change is difficult to initiate within the industry due to the prevalence of tried and tested methods and practises and the need to minimise financial and structural failure as well as the loss of human life. This risk averse strategy of construction industry workers and professionals makes innovation difficult. At the same time, technology is rapidly changing and new materials and techniques are being discovered and applied to buildings and structures in the drive for more efficient and cost effective construction techniques and methodologies. Similarly, landlocked and remote locations like Lesotho need to be able to use local materials and techniques if contractors are to build and maintain sustainable and durable structures and infrastructure. Standard specifications and traditional contracting tends to discourage this type of innovation and method related changes that may ultimately benefit the industry and the country as a whole. Therefore government needs to support the development of cost effective techniques, methods and materials through research and on site applications in trials and the dissemination of information from outside the country that advances best practise for the country's construction industry. This will involve the following types of support: :-

- Research activities for the industry will be encouraged by technical institutes and on site trials to test transferred technology.

- The LCIC will be mandated to actively search for advanced technologies that will serve the country and to arrange for the site trials that will promote and adapt these technologies to the Lesotho situation.
- The use of local materials will be encouraged and specifications will be adapted to facilitate this while ensuring there is no reduction in the standards is involved.

The government working in collaboration with business associations, private industry and the LCIC will identify methods, procedures and processes that constitute best practice and will develop dissemination method and procedures best suit the delivery of this knowledge to the widest audience within the construction industry. This will include but not be limited to:-

- The development of manuals and guidelines for use within the industry.
- The development of training materials for best practice methods.
- The design and delivery of promotional campaigns through the media, both print and mass communications.
- The formulation and periodic selection of examples of best practise performance from among the registered contractors and registered projects. These examples are to be highly publicised for greatest effect.

The ability of the construction industry to develop and enhance its contribution to Lesotho's socio-economic development goals is largely dependent upon the existence of a cadre of appropriately qualified built environment professionals. Engineers, architects and surveyors do work on a daily basis that fundamentally impacts on the safety, health and wellbeing of the general public. It is almost impossible for a modern civilization to exist without these professions. Their skills are critical to the efficient construction of safe and sustainable buildings and infrastructure ranging from relatively simple buildings to the more complex structures such as dams, bridges, airports, highways and high rise buildings, their skills are critical. Architects influence the look and feel of our towns and cities. The delivery of clean water and sanitation, one of the country's MDGs which is fundamental for healthy communities, can only be realized through the application of engineering skills which also make it possible to build safe, strong and durable shelters. Working together with surveyors who deal with the cost aspects, these professionals provide information which is essential for key project and investment decisions. In this era when livelihoods are threatened by climate change and natural disasters, built environment professions can make a significant contribution to sustainability through the adoption of fresh alternatives on construction materials and technologies, energy use and the integration of environmental concerns in project design and management.

The challenge lies in ensuring that built environment professionals are provided with an environment that permits them to flourish and develop skills. In the current state of disarray, the built environment professions have no institution that might provide leadership, nurture them and champion their cause. To their detriment and that of the general public, technicians and technologists often carry out professional work without the necessary expertise and supervision. On the other hand, aggrieved members of the public have nowhere to turn in the event of grievances against professionals. This highlights the need for a professional body that will not only look after the interests of the professionals, but will also serve to provide assurance to the public on the integrity of the professions. To respond to these challenges, the study proposes the establishment of the Lesotho Council for Built Environment Professions (CBEP) which will be run by a board of directors made up of government representatives and senior built environment specialists who are knowledgeable about professional issues.

One of the main functions of the CBEP will be the registration of professionals and sub-professionals who will be mentored and work under appropriate supervision until they satisfy the criteria for the conferment of professional status in the respective professions. Registered persons will be bound to a professional code of conduct issued and enforced by the Council to ensure the efficiency and effectiveness of any professional work they undertake. The CBEP will support professionals by setting standards for best practice to be enforced within their rank and file. It will promote appropriate standards of education and training for each profession, accredit that training and help design suitable courses and offer the necessary support to ensure that standards are constantly appraised in line with changes in the market place. It will thus ensure the highest professionalism possible and validate educational institutions where courses relevant to the professions are offered. In addition to supporting professional development and standards, the CBEP will exercise disciplinary control. It will be empowered to enter construction sites in order to verify that professionals adhere to the professional code of ethics, and may, in befitting circumstances, revoke or cancel a professional's registration.

Through the CBEP and its affiliation to the separately established LCIC, Lesotho is encouraged to join other Commonwealth countries including South Africa, the USA, Mexico, South Korea and other countries in ratifying the accords for mutual accreditation of Engineers, Architects, Technologists and Technicians that are the Washington accord, Sydney accord, Canberra accord and the Dublin accord as well as joining the International Cost Engineers council.

The CBEP will be established for the development and regulation of professionals working within the construction industry. It will be affiliated to the Main construction council but will act independently and carry out the registration of professionals. The professionals will include Architects, engineers, surveyors and the associated technologists and technicians. The CBEP will have the power to discipline individuals who break the code of conduct and charge anyone who practises as a registered professional without having the correct registration. The CBEP council will also be supported financially through the use of the construction levy.

5.2 REGULATIONS

The proposed regulatory reforms are contained in the various proposed Acts and described in some detail both in the annexed drafts of the Acts and in section 6 below. Consideration has been given to reducing government control of the industry and recommended regulation has been kept to a minimum. The institutional reforms described above are enacted through the implementation of the Construction Industry Development Act and the Built Environment Professions Act. In addition the councils created by that institutional reform are given functions and powers that amount to regulatory authority and responsibilities under the same acts.

The main regulatory function that falls to the construction industry council LCIC are:-

- the registration, categorisation and classification of contracting companies.
- The development and enforcement of codes of conduct for contracting companies.

In addition the LCIC is charged with the support and development of contractor's access to credit, equipment and staff training. The council will also be the focal point for coordinating industry requirements for curricula development and liaising with industry and educational and training authorities.

The main regulatory functions of the Built Environment Professional Council created under the specific act are

- to register and categorise professionals working within the construction industry.
- to develop and enforce codes of conduct for professionals.

5.2.1 CONTRACTOR REGISTRATION, CATEGORISATION AND CLASSIFICATION

It is proposed that the main register of contractors be held by the Lesotho Construction Industry Council (LCIC). A company entry in the register will be categorised by the type of work that they do and classified by the level of contract (in terms of difficulty and value) that they are deemed able to carry out. Contractors will have to apply to be registered and a fee will be charged for processing of the application, whether successful or not. A further fee will be charged for entry into the register. Companies will be required to register annually.

The registrar will maintain the register in a relational database that will ease manipulation and analysis through SQL operations. Among the database tables that are likely to be required are tables of “categories”, “classes”, “firms”, “Countries”, “Professions” and others making up the criteria for categorisation and classification as well as basic company data.

The categories of contractor are based on the type of work that they carry out and companies will be registered under the different categories according to their applications. Companies will be able to apply for registration in more than one category. The main categories are buildings, civil engineering, roads, water, electrical and specialist. A contracting company will be registered under the main category only if they are deemed capable of doing all the types of work under that main category including all the works in the sub-categories. Within each of the main categories there are sub-categories that represent types of work that make up the main category of work. In many cases the sub-category type of work can be done by sub-contractors specialising in that work. Companies that specialise in these works or are deemed to be capable only of carrying out that type of work will be registered under the sub-category and not the main category. Companies will be allowed to apply for registration in more than one category of work but will only be classified at one level for each category in which they are registered.

The classification of contractors is an assessment of their level of competence in terms of financial, technical and administrative ability that determines the value and difficulty of contract that they will be able to undertake. Contracting companies will be classified within the category of work in which they have been registered.

Classification will be determined by a scoring system where points will be awarded for different criteria according to checks carried out on the information provided in the application forms. The criteria, categories and levels of classification together with their boundary conditions are set out in a schedule to the draft Act contained in Annex B in volume 2 of this report.

The criteria combine the financial, physical, technical and administrative capability of the company to give an overall score that determines the level of registration. The proposed scoring system is arranged such that the critical criteria for larger contracts i.e. the highest level of classification depend mainly on financial ability of the company while critical criteria for smaller contracts (the lower levels of classification) depend mainly on technical ability of the personnel within the company. It can be seen that to qualify for classification at levels 4 and 5, a company may have a

low annual turnover but a small cadre of competent technical staff and still qualify at that level. At the higher levels even a relatively large cadre of qualified staff will not be sufficient to reach the required score without a significantly large financial capacity demonstrated by a high turnover and credit facilities.

The criteria and scoring system in the tables both in the schedule to the Act and separately below in section 6 are indicative only and will be determined from time to time by the LCIC as the industry develops and according to the needs of the client organisations and the competences available within the industry. The client organisations that use contractors will advise the LCIC on the criteria for classification that are required in their branch of the construction industry.

5.2.2 Procurement Regulations

The current problems with procurement regulations as it affects the construction industry have been outlined in some detail in section 4 above. The regulations are presently under review by the MOF and the PPAD department of that ministry. It is the proposed solution that the MOPWT should make a concerted input into the review and formulation of regulations pertinent to the procurement of goods, works and services for construction. It is found that the existing (2007) regulations provide adequately for the procurement of goods. They also deal well and specifically with consultancy services, however there is no specific provision for the procurement of works, even the procurement manual that advises on the application of the regulations does not offer any advice on the procurement of works .

The proposed solution is for the MOPWT to make representations to MOF and submit a draft section for the regulation of procurement of works. A possible sample of such a regulation section is described in section 6.4 below and the regulation section is included in full in Annex E of this report.

6 DELIVERABLES

The deliverables from the study consist of:-

1. A draft Construction Industry Development Policy
2. A draft Construction Industry Development Act
3. A draft Built Environment Professions Act
4. Recommendations for streamlining the Procurement Regulations in respect of the construction industry.

These deliverables have been prepared and are annexed to this report in full as the main content of the annexes in Volume 2. The process of developing the said drafts and a summary of the actual content is set out in this section of the report.

6.1 POLICY

While construction plays such a major role in the social and economic development of the country, consultations with stakeholders makes it clear that there are few policies regulating the construction industry and they are not well coordinated. This issue is recognised as one of the major impediments to the growth and development of a vibrant industry. The absence of a clear policy which encapsulates the baseline conditions, identifies the strengths and challenges of the industry, and sets a clear vision for the future undermines the ability of industry stakeholders to strengthen their capacity for growth.

The study has followed an interactive methodology with key stakeholder groups to produce a draft policy for the regulation, development and growth of the construction industry . Other government policies and priorities impinging on the sector have been studied to ensure close alignment and a coordinated approach to national development.

The formulation and drafting process involved a range of approaches with stakeholder interviews and workshop discussions being the most important. These qualitative inputs have proved to be the main source of information for analysis and formulation of the draft policy. Attempts to apply quantitative data were less successful due to the low response rate to our questionnaire which meant there was insufficient data for large scale analysis. Nevertheless, the study team used these questionnaire responses to cross reference and triangulate the findings from the interviews and workshop focus group discussions.

Importantly, the above approach was complemented by the introduction of similar construction industry policy and legislative frameworks from other countries within the region. This regional experience was used as an input to the workshop focus groups to allow more informed discussion.

At the end of this data collection/interactive process, the study team was able to determine the main areas of policy concern that needed to be addressed and which gaps and issues would require clauses in the recommended legislation. These were then synthesised and drafted into the proposed draft policy that is annexed to the report as annex A of Volume 2.

The draft policy itself is broad enough to cover all the major areas of concern with clear goals, roles and responsibilities. It follows a logical sequence of sections starting with the policy statements i.e. its vision, mission and goals. The Lesotho construction industry situation is then described with its issues in the various sub-sections (contracting, consulting, procurement etc.) being identified specifically. This is followed by a description of the existing policy background in Lesotho with reference to the challenges that the local industry faces. This section leads directly to a description of intended interventions to address the challenges identified.

The section on interventions is followed by one that describes the institutional arrangement required to be put in place, their roles in addressing the challenges and this leads to a section of summarised Policy statements. The final section expands on the brief policy statements of the previous section and describes in general terms how the policy will be implemented.

The policy is summarised at the beginning of the document and it is envisaged that this synopsis will form the basis of the Cabinet paper needed to initiate the legislative process.

6.2 Construction Industry Development Act

In line with the approach and methodology adopted for all the outputs of this study, the production of this initial draft of the Construction Industry Development Act was informed primarily by the views of stakeholders on the desired end state of the industry as outlined in the study terms of reference, namely, "... a sustainable Local Construction Industry; with Built Environment Professions and Contractors having the ability to participate competitively and undertake works efficiently and effectively". It was clear from the individual consultations carried out during the inception phase that there was a body of concerns and challenges that had been identified as constraints on the

sustainable growth and development of the industry. These preliminary findings were validated by the first stakeholder's workshop which produced a consensus on: (1) the main elements that a national construction industry policy needed to address; (2) a set of enforceable rights and obligations for the industry stakeholders and (3) the legislation that would create the necessary legal and institutional framework that would enforce (1) and (2)

The drafting exercise has taken into account the existence of other relevant laws and policies with a view to maintaining harmony, promoting collaboration, and avoiding duplication and contradictions. It has also taken on board experiences from other SADC countries in order to ensure an effective and efficient legal framework devoid of the elements that have been shown not to work elsewhere. The Consultant team has, to the extent possible, followed the simple language drafting style to assure maximum accessibility of the legislation to members of the general public by avoiding unnecessary cross referencing and inaccessible legal terminology, among others. The draft aims to confer specific and clearly identifiable rights and obligations, and leaves certain levels of detail to promulgation through subsidiary legislation in the form of ministerial regulations and other notices to be published through the medium of the government gazette. The draft will undergo further development after inputs are obtained from the remaining stakeholder workshops and from on-going consultations.

The main elements of the draft Act relate to the establishment of the Lesotho Construction Industry Council (LCIC) and the registration and development of contractors. The LCIC is created as a focal point for all construction industry developments, with primary responsibility for the provision of industry wide strategic leadership and coordination. It is charged with responsibility for the registration of contractors, the stimulation of local capacity for international competitiveness, and with influencing policy by advising the Minister and working with others to develop contractors through training and skilling programmes, inter alia.

The LCIC will carry out research, establish data bases and disseminate industry relevant information to empower stakeholders. It will issue standards, codes of practice and guidelines. It is to be run by a board of directors, and managed on a day to day basis by an executive director who has overall control over the Council's other staff. The funds of the Council comprise an allocation from Government, a levy charged on projects above a certain value threshold, and other moneys raised by loans or otherwise. The draft Act requires the LCIC to work to a predetermined work plan and budget each year, to submit to an audit of its books of account, and to engage with stakeholders on its annual report. To enhance accountability and transparency, the LCIC is required in addition to report to the Minister on its activities annually.

Contractor registration is made mandatory so that no one may carry out construction work without being registered with the LCIC. Clear criteria are set out for registration for different categories of work, and temporary registration for foreign contractors is also provided for. Registration may be cancelled or suspended, and persons aggrieved by LCIC decisions may appeal to an Appeals Board.

An outline of the draft Act dealing with the content of each section was attached as Annex B in volume 2 of the interim report and is not repeated in this report. The schedule to the draft act dealing with contractor categorisation and classification is also reproduced below for ease of reference.

SCHEDULE 1 TO CONSTRUCTION INDUSTRY DEVELOPMENT ACT

CATEGORIES OF CONTRACTORS

MAIN CATEGORY	CODE
1. GENERAL BUILDING & HOUSING	B
2. GENERAL CIVIL ENGINEERING WORK	C
3. GENERAL ROADS, BRIDGES & EARTHWORK	R
4. GENERAL DAMS, WIERS, BOREHOLES and WATER SUPPLY	W
5. ELECTRICAL & TELECOMMUNICATION WORK	E
6. SPECIALIST WORK	S

LESOTHO SUB-CATEGORISATION OF CONTRACTORS

CATEGORY	DESCRIPTION	CODE
Main Category	General Building and Housing	B
Sub Category	Brick/Masonry works/Wet trades, Concrete in Buildings, Building Frame/Shell,	Ba
Sub Category	Partitions and Ceiling finishes (Aluminium, Steel, Timber, Boards, etc.)	Bb
Sub Category	Carpentry, Joinery, Roofing & Waterproofing Services.	Bc
Sub Category	Painting, Interior & Exterior Decorating Services	Bd
Sub Category	Electrical Installations to Buildings	Be
Sub Category	Flooring & Tiling Services	Bf
Sub Category	Glazing	Bg
Sub Category	Plumbing, drains and Sanitary Installations	Bp
Main Category	General Civil Engineering work	C
Sub Category	Bridges and other related ancillary works	Cb
Sub Category	Concrete-Precast & Pre-stressed	Cc
Sub Category	Dams and Earthworks	Cd
Sub Category	Foundation Engineering and Piling	Cf
Sub Category	Geotechnical Survey, Bore-hole Drilling and other related works	Cg
Sub Category	Railway Construction and Maintenance	Cr
Sub Category	Structural Steel Engineering Works, Piping	Cs
Sub Category	Water & Public Health Engineering Works (Incl. Water, Drainage & Sewerage Infrastructure)	Cw

CATEGORY	DESCRIPTION	CODE
Main Category	Road works	R
Sub Category	Bituminous Surfacing & Paving Applications	Rb
Sub Category	Earthworks, Embankments, Cuttings, Non-Bituminous Surfacing	Re
Sub Category	Drainage Structures, minor Bridges, Box Culverts, Vented Drifts, Drifts , Culverts. Bridges <30m span	Rs
Sub Category	Road Maintenance	Rm
Sub Category	Road Furniture, Signage & Markings	Rf
Sub Category	Drilling & Blasting	Rd
Sub Category	Quarrying & Crushing	Rq
Main Category	ELECTRICAL TRANSMISSION AND INSTALLATION	E
Sub Category	Works related to Heavy Current Transmission & Distribution Power Lines above 11KV<W	Ea
Sub Category	Works related to Heavy Current Transmission & Distribution Power Lines 11KV>W>400V	Eb
Sub Category	Light Current Transmission, Distribution and Industrial Installation up to 400V	Ec
Sub Category	Household & Commercial Electrical Installation 240v	Ed
Sub Category	ICT and Communication Infrastructure, Installation of CCTV, Access Control, and Fire Detection systems	Et
Sub Category	Civil Works to Power Stations, Sub-Stations, Communication Systems	Ez
Sub Category	Works related to Telecommunication Network Installations(including Towers, etc)	En
Main Category	SPECIALIST WORK	S
Sub-category	Lift and Escalator Installers	Sl
Sub-category	Heating and Ventilation, Air Conditioning and Refrigeration.	Sh
Sub-category	Armco Pipe Arch Bridge	Sp

LOCAL CONTRACTORS CLASSIFICATION

Scoring system based on scores determined by Council for each category of contractor.

	1	2	3	4	5
1	Classification Level				
	Annual Turnover average of best 3 years in the past 5 years	0.5 Points for every M500,000	0.5 Points for every M500,000	0.5 Points for every M500,000	0.5 Points for every M500,000
2	Fixed and Moveable assets Value	0.5 points for every M500,000	0.5 points for every M500,000	0.5 points for every M500,000	0.5 points for every M500,000
3	Credit Facilities proven availability	0.5 points for every M500,000	0.5 points for every M500,000	0.5 points for every M500,000	0.5 points for every M500,000
4	Professional Staff (registered)	5 points for every professional	5 points for every professional	5 points for every professional	5 points for every professional
5	Technical Staff (registered)	4 points for every technologist/technician	4 points for every technologist/technician	4 points for every technologist/technician	4 points for every technologist/technician
6	Artisans/craftsmen (accredited)	2 points for every artisan/craft person	2 points for every artisan/craft person	2 points for every artisan/craft person	2 points for every artisan/craft person
7	Accounting/financial staff	1 point for every CPA staff	1 point for every CPA staff	1 point for every CPA staff	1 point for every CPA staff
8	Legal Staff	1 point for every Lawyer	1 point for every Lawyer	1 point for every Lawyer	1 point for every Lawyer
	Total Minimum Score required	75	40	25	10

FOREIGN CONTRACTORS CLASSIFICATION

	1	2	3	4	5
Classification Level	1	2	3	4	5
1 Annual Turnover average of best 3 years in the past 5 years	0.5 Points for every US\$500,000	0.5 Points for every US\$500,000	0.5 Points for every US\$500,000	0.5 Points for every US\$500,000	0.5 Points for every US\$500,000
2 Fixed and Moveable assets	0.5 points for every US\$500,000	0.5 points for every US\$500,000	0.5 points for every US\$500,000	0.5 points for every US\$500,000	0.5 points for every US\$500,000
3 Credit Facilities	0.5 points for every US\$500,000	0.5 points for every US\$500,000	0.5 points for every US\$500,000	0.5 points for every US\$500,000	0.5 points for every US\$500,000
4 Professional Staff (registered) allocated to project and resident in Lesotho	5 point for every professional	5 point for every professional	5 point for every professional	5 point for every professional	5 point for every professional
5 Technical Staff (registered) allocated to the project and resident in Lesotho.	4points for every technologist/ technician	4points for every technologist/ technician	4points for every technologist/ technician	4points for every technologist/ technician	4points for every technologist/ technician
6 Artisans/Craftsmen (accredited) Allocated to project and resident in Lesotho	2 points for every artisan/ craft person	2 points for every artisan/ craft person	2 points for every artisan/ craft person	2 points for every artisan/ craft person	2 points for every artisan/ craft person
7 Accounting/Financial staff on project in Lesotho	1 point for every CPA staff	1 point for every CPA staff	1 point for every CPA staff	1 point for every CPA staff	1 point for every CPA staff
8 Legal Staff on project in Lesotho	1 point for every Lawyer	1 point for every Lawyer	1 point for every Lawyer	1 point for every Lawyer	1 point for every Lawyer
Total Score	85	70	55 (Specialist)	N/A	N/A

NOTES:

Foreign contractors classified in the first level (classification 1) will be expected to manage mentoring programmes during the currency of each contract and to show at each payment stage the transfer of technology and skill provided to local companies.

Foreign companies classified in the second level (classification 2) will be expected to sub-contract 20% of the value of the contract to local contractors.

Foreign specialist contractors classified in the third level (classification 3) will be expected to employ a minimum of 2 local technicians and artisans to learn and gain the specialist practical skills during the currency of the contract in Lesotho.

NO foreign contractor below level 3 is expected to be allowed to work in the country as Local contractors of higher level should be able to do all jobs at this level.

6.3 Built Environment Professions Act.

The ability of the construction industry to develop and enhance its contribution to the achievement of Lesotho's socio-economic development goals is largely dependent upon the existence of a cadre of built environment professionals which reflects the required expertise. Engineers, architects and surveyors do work on a daily basis that fundamentally impacts on the safety, health and wellbeing of the general public. It is almost impossible for a modern civilization to exist without these professions. From relatively simple buildings to the more complex structures such as dams, bridges, airports, highways and high rise buildings, their skills are critical. Architects influence the look and feel of our towns and cities. The delivery of clean water and sanitation, one of the country's MDGs which is a fundamental requirement for healthy communities, can only be realized through the application of engineering skills which also make it possible to build safe, strong and durable shelters. Working together with surveyors who deal with the cost aspects, these professionals provide information which is essential for key project and investment decisions. In this era when livelihoods are threatened by climate change and natural disasters, built environment professions can make a significant contribution to sustainability through the adoption of fresh alternatives on construction materials and technologies, energy use and the integration of environmental concerns in project design and management.

The challenge lies in ensuring that built environment professionals are provided with an environment that permits them to flourish and develop skills. In the current state of disarray within the built environment professions, no institution is available to the professionals to provide leadership, to nurture them and champion their course. To their detriment and that of the general public, technicians and technologists often carry out professional work without the necessary expertise and supervision. On the other hand, aggrieved members of the public have nowhere to turn in the event of grievances against professionals. This highlights the need for a professional body that will not only look after the interests of the professionals, but will also serve to provide the assurance to the public on the integrity of the professions. To respond to these challenges, the study proposes the establishment of the Lesotho Council for Built Environment Professions which will be run by a board of directors made up of government representatives and professionals knowledgeable about built environment professional issues.

One of the main functions of the Council will be the registration of professionals and sub-professionals who will be mentored and work under appropriate supervision until they satisfy the criteria for the conferment of professional status in the respective professions. Registered persons will be bound to a professional code of conduct issued and enforced by the Council to ensure the efficiency and effectiveness of actions undertaken by professionals. The Council will support professionals by setting standards for best practice to be enforced within their rank and file. It will see to the education and training of professionals, accredit training and help design suitable courses and offer the necessary support to ensure that standards are constantly appraised in line with dynamic changes in the market place. It will thus ensure the highest professionalism possible and validate educational institutions where courses relevant to the professions are offered. Other than supporting professionals, the Council will exercise disciplinary control. It will be empowered to enter construction sites in order to verify that professionals adhere to the professional code of ethics, and may, in befitting circumstances, revoke or cancel a professional's registration.

6.4 Streamlining Public Procurement Legislation

As the Procurement Regulations are presently legally in limbo the interests of the construction industry stakeholders will be better served by making an input into the draft procurement regulations that are currently being prepared for ministerial approval and publication in line with the recommendations from the three workshops held during the course of this study.

In line with this course of action, it is recommended that a separate section dealing specifically with the procurement of works should be proposed to PPAD for inclusion in the draft procurement regulations currently being finalized for publication. To increase transparency, public confidence and accountability and to promote the integrity of the procurement system, this section should eliminate confusion and address issues specific to this type of contract. It should deal, for instance, with the level of detail required in describing the scope of the works in question in the request for tenders, prescribe the format and type of evaluation methodology to be used, and when the different types of construction contracts are appropriate. An example of the proposed section, which takes into account the views expressed by stakeholders, takes into account best practice in this area of procurement, and is also, to some varying degree, already applied by some local stakeholders, is provided as ANNEX D to this report in volume 2:

The key elements of this proposal are:-

- i. Reference to the general procurement best practise principles that are assumed to be contained in the clauses and sections preceding the proposed section on specific procurement of works, (as they already exist in regulations 2007).
- ii. A separate section to the regulations for the procurement of works. Note: there is already a separate section in the 2007 regulations for the procurement of consultancy services and this is expected to be retained in the revised regulations.
- iii. Restrictions as to the standard conditions of contract advisable for. These allow a choice by the client organisation for the use of FIDIC, JBCC, NEC or a specific Lesotho Standard document.
- iv. Minimum requirements for the content of any request for proposals for works.

This proposal needs to be considered as a matter of urgency by the Ministry of Public Works and Transport and other stakeholders of the construction industry as the PPAD and MOF will need to rush the new regulations for signature by the Minister to replace the old (2007) regulations in line with the new (June2011) Financial Management and Accountability act.

7 IMPLEMENTATION PLAN

From both MOPWT and the stakeholder consultations carried out during the course of this study, it is clear there is a sense of urgency attached to the implementation of the study recommendations. All stakeholders are of the opinion that the regulation and development of the construction industry are long overdue. Development and regulation are seen as the twin pillars on which to lay a sound foundation for contractors and consultants to compete fairly and effectively for available job opportunities while delivering good value for money to clients. The sense of urgency around implementation of the recommendations of this study is accentuated by the imminence of large projects such as Phase II of the Lesotho Highlands Water Project and the Lowland Water Project's Metolong dam, among others. The participation of local contractors and consultants in these projects will be conditioned by the extent to which they can participate with larger international firms as joint venture partners or subcontractors where possible. In addition, a well-organized and professional construction industry would promote subcontracting among local businesses and could encourage bigger contractors to subcontract in the course of other on-going construction projects, such as the LNDC factory shell programme.

Implementation planning is intended to ensure that MOPWT has a management tool designed to assist them to manage and monitor implementation of the study recommendations effectively, so that the perceived benefits may be realised. The outputs of this study:- the proposed Construction Industry Policy, the Construction Industry Development Act, the Lesotho Council for the Built Environment Professions Act, and recommendations on the procurement of construction works proposed for incorporation in the forthcoming procurement regulations – are of a legal and regulatory nature. They will have the foundational effect of defining the context and playing field for all the stakeholders in the construction industry, and redefining the choices they may have had open to them in the previous dispensation. For this reason, and for the reason that the ITP under which the study is funded will be retired in June 2012, the implementation plan proposed below is scalable and flexible, taking into account not only the sensitivity, but also the urgency of the recommendations. The plan leaves it to MOPWT to exercise judgment on the best course of action as the time frames specified are indicative, and a number of actions can be carried out in parallel.

7.1 Plan for adoption of Construction Industry Policy and laws:

Ideally, before the proposed draft laws can be processed through the system of approvals leading to enactment by Parliament, the draft policy must first be adopted. This is because laws are used to operationalise policies and render them enforceable. In the particular circumstances of this case, however, it is recommended that all the consultations should, from the onset, be comprehensive in their coverage, including not only the policy and the two proposed laws, but also the section proposed to be included in the forthcoming procurement regulations. In this way, all stakeholders will be given a full picture of the proposed changes all at once, and time savings will be realised.

While the draft policy and bills are a result of a broad range of construction industry stakeholder inputs, further consultations are required within government before the necessary approvals are granted. The consultant team has been advised that depending on the resources and effort invested by the originating ministry in the process, it can take as little as three months or as long as a number of years for formal approvals to be obtained.

In line with these advices, the following plan assumes that government consultations on the draft policy and bills will commence within a maximum of three weeks of the final report submission at the end of September 2011. It is considered that three weeks will be adequate for a full and proper dissemination of the study recommendations internally within MOPWT, and allow those responsible for the process to identify key government stakeholders and familiarize themselves sufficiently with the recommendations to assume the necessary ownership themselves.

With respect to the proposed section for inclusion in the Procurement Regulations, however, it is advised that on-going lower level consultations with PPAD be taken over by the DG Roads Directorate immediately upon receipt of the draft final report by end of August 2011, where after a period of four weeks will be allowed for comments and finalisation of the report by end of September 2011.

The Actions in the following table have been numbered for ease of reference and while the numbering is generally indicative of the sequence of necessary actions many of the actions can and must be performed in parallel and the numbering does not necessarily indicate the timing sequence.

No.	ACTION	TIMELINE	RESPONSIBILITY	NOTES
1	Internal MOPWT consultations for dissemination of study recommendations and identification of those responsible for external consultations necessary for government approvals	3/10/11 – 21/10/11	DG Roads Directorate MOPWT	Includes all relevant MOPWT stakeholders up to PS and Minister. Should have roles and responsibilities explained and be requested to commence informal consultations with their counterparts.
2	Consultations with Directors and Directors General from other ministries and departments	24/10/11 – 30/11/11	DG Roads Directorate MOPWT	Individual and general meetings advised depending on availability. Comprehensive and inclusive consultations needed at this first level, covering all ministries and all study recommendations.
3	Brief Attorney General and Chief Parliamentary Counsel	24/10/11 – 30/11/11	PS, DG Roads Directorate, Legal Officer MOPWT	Necessary to get the AG on board early so the Chief Parliamentary Counsel can identify desk officer for drafting purposes

No.	ACTION	TIMELINE	RESPONSIBILITY	NOTES
4	Informal consultations with desk officer at the office of the Parliamentary Counsel	1/12/11 – 31/1/12	Legal Officer MOPWT	On-going consultations with desk officer providing full brief on the policy behind the proposed laws, including a comprehensive run down of the bills and their detailed provisions.
5	Consultations with PPAD on section proposed for inclusion in Procurement Regulations	1/09/11 – 9/09/11	DG Roads Directorate, Legal Officer MOPWT	Formal submission of draft final recommendation immediately upon receipt of draft final report as PPAD regulations in final stages. DG to address the policy behind the proposal backed by Legal Officer for legalities. Assumed that DG will have consulted with PPAD informally even before receipt of draft final report.
6	Consultations with Principal Secretaries of other ministries	1/12/11 – 9/12/11	PS MOPWT	Comprehensive briefings at PS weekly meetings covering all deliverables
7	Ministerial consultations	9/12/11 – 20/1/12	Minister MOPWT	After informal consultations, formal memo and presentation to Cabinet for concurrence. POLICY APPROVED.
8	White paper on Construction Industry Development Bill and Lesotho Built Environment Professions Bill	20/1/12 – 31/1/12	Minister MOPWT	Follows shortly after policy approval while the issues are still fresh in the minds of all. Cabinet approval is obtained. ASSUMED – cabinet may not have considered policy and the bills at once. Also allows Minister time for individual follow ups and clarifications as necessary.
9	Issuance of drafting instructions to Parliamentary Counsel	1/2/12 – 8/2/12	Minister, PS and DG MOPWT	Although drafting instructions would be issued to the Chief Parliamentary Counsel by the Minister responsible for

No.	ACTION	TIMELINE	RESPONSIBILITY	NOTES
				Parliamentary Affairs, PS and DG to follow up with his ministry and seek assistance of Minister, MOPWT if necessary.
10	Consultations with Attorney General and Chief Parliamentary Counsel	9/2/12 – 10/2/12	DG Roads Directorate	After receipt of drafting instructions by Attorney General's office, formally present the bills as approved by Cabinet and seek speedy assistance. Review progress made by desk officer and Legal Officer MOPWT
11	Clearance of draft bills by Attorney General	13/2/12 – 24/2/12	DG Roads Directorate	The Attorney General's clearance certificate together with copies of the bills to be followed up by DG
12	White paper for cabinet approval and concurrence	27/2/12 – 2/3/12	PS, DG, Legal Officer, Minister MOPWT	DG, Legal Officer and PS to brief Minister and help him prepare for cabinet presentation armed with Attorney General's clearance certificate.
13	Portfolio committee presentation and sign off	2/3/12 – 16/3/12	PS,DG, Legal officer and Parliamentary Counsel	Identify allies to champion the course through the system of Parliamentary approvals
14	Presentation to National Assembly and approval	19/3/12 – 30/3/12	PS, DG, Legal Officer and Parliamentary Counsel	
15	Reading, debate and sign off by Senate	2/4/12 – 14/4/12	PS, DG, Legal Officer and Parliamentary Counsel	
16	2 nd reading in the National Assembly for consideration of Senate recommendations and approval	16/4/12 – 27/4/12	PS, DG, Legal Officer and Parliamentary Counsel	
17	Royal Assent and publication	30/4/12 –	DG, Legal Officer	

No.	ACTION	TIMELINE	RESPONSIBILITY	NOTES
		12/5/12		

The timelines for all the actions in this plan are quite tight, and will require forward planning on the part of the concerned officials. High priority action areas are allocated to high ranking officials such as the DG and the PS who will also assist the Minister for his actions. It must be emphasized that consultations have to be carried out on an on-going basis from beginning to end.

In addition to the official actions set out above it is recommended that a workshop for the major stakeholders mentioned in the table should be convened at the appropriate time for presentation and discussion of the proposed policy and legislative documents for the purpose of ensuring full understanding and support as the documents proceed through the ratification process. This item has been included in the sequence of action as depicted in the Gantt chart in Annex E of volume 2 in addition to the actions described above. The decision on this workshop format and timing will be dependent on the initial progress realised in actions 1, 2, 3 and 5.

8 CONCLUSION & RECOMMENDATIONS

Over the four and a half months of the study period the study team has built up a clear picture of the local construction industry in Lesotho, its difficulties, strengths and opportunities. The industry is at a cross roads with relatively enormous opportunities just around the corner but at this time most of the local industry is ill prepared to meet and take advantage of the opportunities to come.

In the late 1980's and through the 1990's the construction industry in Lesotho was bypassed by the first phase of the Lesotho Highland Water Scheme. For the most part certain well placed individuals derived opportunities and developed skills and expertise from the scheme. A small number of companies managed to develop themselves on the spin offs from phase 1 but most were unprepared and unable to participate in any meaningful way. The scheme itself also did not manage to reach its objectives of local participation in the main because the development level of the local companies was over estimated. Today with phase 2 about to begin and other schemes including the lowland water scheme already operational, the same problems can be observed. Although the local industry has moved on and certain developments have taken place the level of development is still being over-estimated. There are imperatives for including local strengthening of the construction industry in the strategies for the large programmes; and the organisation of that local industry with full government support is itself an imperative for development.

The fragmented and uncoordinated structure of the local construction industry cries out for institutional reform, strong management and regulation. The small size of the industry demands simple clear organisation and standardisation of both procurement procedures and contract

documentation. The inevitably variable workload within the country means that growth is dependent on larger companies sustaining themselves with work outside the country: while smaller firms will depend to a large extent on sub-contracting from larger companies and projects. These changes in business model will need to be encouraged by construction industry organisations set up and supported by Government through wide spread holistic industry reforms.

ANNEX G: Reference Documents