



**Road Development Agency**

**20 PERCENT  
MANDATORY SUB-CONTRACTING GUIDELINES**

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**(2nd Issue)**

**Prepared by  
The  
Road Development Agency**

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## Abbreviations

BDS	Bidding Documents
BOQs	Bill of Quantities
CFI	Construction Finance Initiative
EIZ	Engineering Institution of Zambia
EoI	Expression of Interest
ERB	Engineers Registration Board
GRZ	Government of the Republic of Zambia
LRAs	Local Road Authorities
NCC	National Council for Construction
RDA	Road Development Agency
RSASP	Road Sector Annual Work Plans
VAT	Value Added Tax
ZPPA	Zambia Public Procurement Authority

## Definitions and Interpretations

“Bill of Quantities” (BOQs) means the priced and completed Bill of Quantities.

“Client” or Employer means the Procuring Entity or implementing agency that signs the Contract for the works or services with the selected contractor or consultant

“Coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the procurement process or affect the execution of a contract;

“Consultant” means a legally-established professional consulting firm or an entity that may provide or provides the consulting services to the Client.

“Collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of the Employer, designed to establish bid prices at artificial, non-competitive levels.

“Conflict of interest” Parties may be considered to have a conflict of interest with one or more parties, if they are associated, or has been associated in the past, directly or indirectly, with any other entity that has prepared the design, specifications, and other documents for the works.

“Contract” means a legally binding written agreement signed between the Client and the Contractor. The Contract is the Contract between the Employer and the Contractor to execute, complete, and maintain the Works.

“Corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the procurement process or in contract execution.

“Days” are calendar days; “months” are calendar months.

“Defect” is any part of the Works not completed in accordance with the agreed specifications.

“EoI” means the Expression of Interest to be prepared by the Client for the shortlisting of Subcontractors.

“Fraudulent practice” means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract.

“Fronting” acting as a representative of a subcontractor for another entity who may themselves not be permitted to interact directly with the other party due to otherwise existing regulatory restrictions.

“Government” means the government of the Republic of Zambia, any Procuring Entity or the relevant approvals authority as defined in the Public Procurement Act of 2008.

“Local Road Authority” means a city council, municipal council or district council established under the Local Government Act appointed by RDA to act as a Road Authority.

“Materials” are all supplies, including consumables, used by the Contractor or Subcontractor for incorporation in their Works.

“Plant” is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.

“The Main Contractor” or “Contractor” is a person or corporate body who’s Bid to carry out the Works has been accepted by the Employer.

“The Project Manager” and or “Consultant” is the firm or person appointed by the Employer who is responsible for supervising the execution of the Works and administering the Main Contract.

“The Works” are what the Contract requires the Contractor to construct, install, and turn over to the Employer, as defined in the Main Contract.

“Sub-contract Manager” is the person employed by the Main Contractor who is responsible for supervising the execution of the Subcontract Works and administering the Subcontract Contract.

“Subcontractor” is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract, which includes work on the Site.

“Sub-contractor’s BoQ” means the priced and completed bill of quantities for the subcontractor to be included in the subcontract agreement.

“Subcontract Agreement” means the agreement between the Main and Subcontractor to which the Employer or Client is not Part of.

“Sub-contractor’s works” Means the works to be subcontracted and what the Subcontract agreement requires the Subcontractor to construct, install, and turn over to the Contractor for certification as defined in the Subcontract Agreement.

“Shortlisted subcontractors” means subcontractors shortlisted by the client through an evaluation process and available for the main contractor to subcontract.

## 1. Background

The construction sector in Zambia has been dominated mostly by contractors that have originated from China and South Africa at the expense of local contractors. Major construction projects are carried out by foreign contractors because of deficiencies in indigenous local construction capacity. The Road Development Agency (RDA) Annual reports from 2006 to 2013 consistently refer to the lack of local contracting capacity as one major challenge in the implementation of the Road Sector Annual Work Plans (RSAWP). The local contractors have been continuously facing challenges such as poor capital and equipment base, failure to secure project securities. Inevitably this has sometimes led to poor workmanship and generally poor project management. In an effort to mitigate the challenges being experienced by local contractors, the Government of the Republic of Zambia (GRZ) in 2012 introduced the 20 percent Mandatory Subcontracting Policy.

The policy dictates that a minimum of 20 percent of the works on all road contracts awarded should be executed by Zambian citizen-owned companies. A “citizen-owned company” means a company where at least fifty point one percent (50.1) of its equity is owned by citizens and in which citizens have significant control of the management of the company. Significant control refers to a majority of citizen executive directors. This is in line with the shareholding structure specified in the Citizens Economic Empowerment Act No. 9 of 2006 whose overall goal is to contribute to sustainable economic development, by building capacity in Zambian citizen-owned construction companies. Local contractors now have the opportunity to have contract management and technical knowledge transferred to them. Furthermore, GRZ also introduced the Construction Finance Initiative (CFI) to complement the Subcontracting Policy.

The 20 Percent Sub-contracting Policy is only applicable to all civil and road works exceeding K30 million. Contracts below the K30 million thresholds have been reserved for citizen-owned, citizen-influenced and citizen empowered companies in line with the Citizen Economic Empowerment (Preferential Procurement) Regulations of 2011. In order

to enforce the 20 percent Mandatory Sub-contracting Policy, the Government through the RDA prepared and issued the first set of Guidelines in 2012.

Despite the introduction of these initiatives outlined above, little change has been noted in the plight of the local contractors. They still face challenges in accessing plant and equipment, access to lines of credit, skilled personnel and construction management and organization skills. The RDA therefore, through a consultative process reviewed the sub-contracting framework and guidelines with the objective of meeting the challenges that were not addressed in the first set of guidelines. This document therefore outlines the new additions to the 20 per cent sub-contracting guidelines which are intended to achieve the objectives described in Section 2.

The subcontractor's performance shall be subject to monitoring and evaluation by the client in accordance with its "Consultants' and Contractors' Vendor Rating System - RDA Policy & Procedure Manual, January 2013".

## 2. Objectives

The specific objectives of the 20 percent Sub-Contracting Policy is as follows:

1. Create sustainable capacity in the local contracting industry targeting **grades 1 to 6 through skills and knowledge transfer; (see Appendix 1B)**
2. Create more than **20,000 job opportunities for Zambian citizens in the road construction industry before 2017;**
3. Have a sizeable number of local contractors in Grade 1 (At least 20) by 2020; and increase the number of local contractors in Grade 1 to 20No.
4. Provide a sustainable growth pattern for contractors in Grades 6 up to 1 in Road (R) Category.

### 3. Modalities and Guidelines

The revised 2015 Sub-contracting Guidelines are herein given as follows:

#### 3.1.1 *Minimum Sub-contracting amount*

- a. The RDA in recognition of the Citizen Economic Empowerment (Preferential Procurement) Regulations of 2011 will require that all contracts falling above K30 million be subcontracted to a minimum of 20 percent of the contract sum to a Zambian citizen owned company where 50.1 percent shares are owned by Zambian citizens.

#### 3.1.2 *What to sub-contract*

- a. The RDA and their appointed Local Road Authorities (LRAs) will specify the items to be sub-contracted.
  - 1) The items to be sub-contracted will be clearly specified in the bidding documents with a clear distinction from the main contractors works;
  - 2) The scope of works shall constitute at least 20% of the contract sum with a defined chainage (length) VAT inclusive.
- b. The works to be sub-contracted shall include but not limited to the works defined in Section 3.1.5.

#### 3.1.3 *Sub-contracting Limitations*

- a. Each subcontractor will only be allowed to be engaged in a limited number of subcontracts at any given time depending on the grade as defined in Table 3-1 below.

**Table 3-1: Sub-contracting Limitations**

Contractor Grade [R]	Limitation on No. of Sub Contracts	NCC Classification Thresholds (K' Million)
Grade 1	4	>150
Grade 2	3	>50-150
Grade 3	2	>30-50
Grade 4	2	>15-30



Contractor Grade [R]	Limitation on No. of Sub Contracts	NCC Classification Thresholds (K' Million)
Grade 5	1	>5-15
Grade 6	1	>0-5

- b. A single contract will be allowed a maximum of five (05) sub-contracts. The actual number of subcontracts will be determined after assessing the scope of works in each bidding document.
- c. The subcontracting values shall be in accordance with NCC guideline thresholds which are subject to change in accordance with the NCC regulations.
- d. The RDA and the respective Local Road Authorities shall predetermine the scope of works to be done by each subcontractor in accordance with the NCC Grades and Thresholds.

#### 3.1.4 *Eligibility requirements under Sub-Contracting Policy are:<sup>1</sup>*

- a. Be a Zambian citizen owned company where 50.1 percent shares are owned by Zambian citizens;
- b. Must be a contractor registered with the National Council for Construction (NCC) from grades one (1) to six (6) in category R. Depending on the circumstances, the RDA and their appointed Local Road Authorities (LRAs) shall be bound to restrict sub-contracting to certain grades and this shall be defined as such in the solicitation documents. Such restricted grades shall still fall within Grades one (1) to Six (6);
- c. Each sub-contractor is expected to have at least one (1) qualified registered relevant engineering or construction professional in key management position. They will be required to be members of a relevant professional body such as the Engineering Institution of Zambia (E.I.Z) and registered to practice by an appropriate body such as the Engineers Registration Board (E.R.B);
- d. The main contractor will need to employ a Sub-contract Manager who will be part of the key staff. The main contractor will accommodate the subcontract

manager as part of his key personnel. The subcontract manager shall be a Zambian citizen with Contract or Project management skills.

- e. Subsidiaries of the main contractor shall not be eligible for subcontracting on that particular contract.
- f. The subcontractor is expected to provide professional services to the RDA and its appointed Local Road Authorities (LRA) and its directors shall be required to declare any conflict of interest as defined in the ACC Act that impacts its capacity to serve the best interest of the agency. Failure to disclose such situations may lead to non-consideration or disqualification.
- g. No sub-contractor with a current Past Performance Rating of less than 60 percent in accordance with the clients' "Consultants' and Contractors' Vendor Rating System - RDA Policy & Procedure Manual, January 2013" will be considered for sub-contracting as the Client may so determine.

### ***3.1.5 Categories of works to be sub-contracted***

The works to be sub-contracted shall include but not limited to the following:

- i. Culvert Construction;
- ii. Bridge Construction;
- iii. Earthworks;
- iv. Construction of Diversions;
- v. Pavement layer works;
- vi. Surfacing;
- vii. Weighbridges;
- viii. Toll Plazas;
- ix. Provision of road furniture;
- x. Construction of drains;
- xi. Installation of street lights;
- xii. Construction of walkways;
- xiii. Clearing and grubbing; and
- xiv. Ancillary works.

### 3.1.6 Guidelines for selecting Sub-Contractors:

#### I. Shortlisting Process

- a. The RDA will issue an Expression of Interest (EoI) for the anticipated sub-contracting works in the 4<sup>th</sup> quarter of each year for registration of sub-contractors for the following year.
- b. Each subcontractor will be required to express interest in not more than three (03) works categories.
- c. Shortlisting of subcontractors will be in accordance with the works categories defined in clause 3.1.5. The shortlisting will be the subject of an evaluation process in accordance with the criteria defined in the EoI document.
- d. The shortlisted subcontractors (for each work category) for the given period will be published in the print media and RDA website.

#### II. Selection of Sub-contractors

- a. The bidders for the main works will be availed the list of shortlisted subcontractors from which they will choose eligible subcontractors to bid with.
- b. The subcontractor shall submit their proposal to the main contractor for their consideration.
- c. Subcontractors with running contracts exceeding the limitation set in Table 3-1 will not be availed to the bidders (contractors for the main works) for shortlisting.
- d. Only a maximum of five (05) sub-contractors on a tender will be permitted. The RDA will specify in the Bidding Document the total number of sub-contractors required as well as works to be subcontracted

#### III. Pre-Contract Negotiation

- a. The successful bidder for the main works will be required to attend contract negotiations with the Client together with the selected subcontractors.
- b. Works to be sub-contracted will be reviewed and programme of implementation to be agreed prior to issuance of commencement order.

#### IV. Administration of the Sub-contract

- a. A Subcontract Manager will be part of the key staff for the main contractor (to be evaluated) whose responsibilities shall include, inter alia, management of all the sub-contracts, comprising project management, contract management, financial management and operations management and other detailed roles and responsibilities will be provided in the solicitation documents.
- b. The Main Contractor shall within 14 days of signing the main contract submit the programme of works to RDA and their appointed Local Road Authorities (LRAs)
- c. The Sub-contract shall be signed at the same time as the main contract and a copy submitted to RDA.
- d. The sub-contract shall be treated as part of the main contract and the main contractor shall be responsible for all of the works.
- e. The standard form of agreement to be used between the main contractor and sub-contractor is given in Appendix 1A.
- f. The sub-contractor's BOQ shall be incorporated together with the main BOQs from which the payments will be based. The subcontractor shall sign the BOQ as confirmation of the billed items.
- g. Should the sub-contractor fail to do the works, absconds, delays the main contractor, is declared bankrupt or goes into liquidation, the contractor in liaison with the RDA shall be expected to facilitate the engagement of a suitable alternative sub-contractor from the shortlist within twenty eight (28) days from the date of notice. Measures for any subsequent penalties to be instituted in accordance with the subcontract agreement and these guidelines and the laws of Zambia.
- h. The Subcontractor shall provide all the relevant securities to the main contractor for their works and such securities may be covered through the Construction Financing Initiative (CFI) or any other Financing alternatives.

The main Contractor shall be required to advance sub-contractors for respective works at the same percentage as the main contract.

- i. Alternatively, the Sub-contractor may request to be advanced the equivalent in materials, plant & equipment and/or operational funds from the main Contractor.
- j. Payments for the works done by the sub-contractor shall be made directly to the sub-contractor's bank account by the National Road Fund Agency. No payment to the sub-contractor shall be made through the main contractor's bank account, unless as may be agreed between the contractors.
- k. The main contractor will be **responsible** for the supervision and management of the sub-contractor on site. The main contractor will certify all works done by the sub-contractor. Certification of the sub-contractor's works by the main contractor will not imply acceptance of the works by the agency or engineer or project manager or consultant on site. The works shall only be accepted by the Engineer or Project Manager as the case may be.
- l. RDA to impose penalty clauses for non-compliance to subcontracting; major breach of contract (Termination of contract) to be fully described in BDS
- m. Penalty to be effected in the main contract (Amounts and percentages to be defined)
- n. Fronting is a fundamental breach of contract leading to termination and blacklisting.
- o. Subcontracting of Subcontract and allowing of main contractor to carry out works for the subcontractor shall not be permitted.
- p. Monthly reports to include subcontracting details.
- q. Subcontractor information to be included on Project Sign Boards.
- r. Cross Checks for equipment and personnel for the subcontractor shall be conducted periodically by the main contractor or client/supervisor either during site meetings or evaluation of their performance.

## 4. Roles and Responsibilities

The roles and responsibilities of the Client, the Consultant, Main Contractor, Sub-Contractor and Subcontract Manager shall be defined in the bidding documents and Subcontract Agreements in addition to the following major roles.

### 4.1 Client's Roles and Responsibilities

- i. The client shall be responsible for defining the scope of works, shortlisting the sub-contractors and paying the subcontractors.
- ii. To ensure the effective implementation and monitoring of the adherence to the guidelines.
- iii. Provide an Engineer/Supervisor and He/She will be responsible for the final certification of all works done on the project.
- iv. Performance assessment to be conducted periodically by engineer.

### 4.2 Main Contractor's Roles and Responsibilities

- i. Supervision of the Sub-contractor and ensure transfer of knowledge and skills.
- ii. The mentoring role of subcontractors to rest with the main contractor
- iii. Certification of the subcontractor's works.
- iv. Engage/ employ and accommodate the subcontract manager on as part of his key personnel.
- v. Ensure that all claims from the sub-contractor should be cleared at final account.

#### 4.2.1 Sub-Contract Manager's Roles and Responsibilities

- i. Management of all the sub-Contracts, comprising project management, Contract management, financial management and operations management and other project related duties.
- ii. He / she shall do a needs analysis and be responsible for ensuring that Knowledge and Skills are transferred from the main contractor to the Sub-contractor. The roles and performance of the subcontract manager shall form a critical evaluation criteria under Vendor Rating and future consideration in the award of future works.

### 4.3 Subcontractor's Roles and Responsibilities

- i. The subcontractor shall be responsible for taking and performing instructions from the main contractor in accordance with the agreement.
- ii. The Subcontractor shall carry out the Subcontractor's Work in a prompt and diligent manner.
- iii. The Subcontractor shall cooperate with the Contractor and other subcontractors or contractors on site.

## 5. Penalties for defaulters

The penalties for defaulters shall be defined in the main contract documents and / or subcontract agreements and shall include among others:

### I. Penalties for Defaulting Subcontractors

- i. **Fronting, Selling of Contract:** Blacklisting of the defaulting subcontractor in accordance with the Public Procurement Act No 12 of 2008.
- ii. **Failure to correct a defect, Absconding:** Applying Liquidated damages in accordance with the agreements.
- iii. **Bankruptcy** - Termination of the agreements in line with Sub-contracting agreement.
- iv. **Subletting a Subcontract** - Termination of the agreements in line with Sub-contracting agreement.
- v. **Underperformance** - Termination of the agreements in line with Sub-contracting agreement.
- vi. **Misuse of Advance Payment** - Termination of the agreements in line with Sub-contracting agreement.
- vii. **Submission of False Information** - Termination of the agreements in line with Sub-contracting agreement.
- viii. **Corrupt, Fraudulent, Collusive and Coercive practices:** Termination of the agreements in line with Sub-contracting agreement.
- ix. **Non Adherence to Main Contractor's Instructions:** The defaulting subcontractor should be sent a warning letter from the main contractor and their defaulting action should be communicated to RDA in writing.

### II. Penalties for Defaulting Main Contractors

If the main contractor fails in his obligations to honour subcontract guidelines and/ or the subcontract agreement, the penalties defined in the main contract document shall apply in addition to the following:

- i. **Fronting and Corrupt, Fraudulent, Collusive and Coercive practices:** Is a fundamental breach to lead to Termination of the main contract which will result in blacklisting.
- ii. **Failure to supervise the subcontractors:** Warning letters to the main contractor and replacement of Subcontract Manager. The main contractor shall be charged a penalty fee in the amount indicated in the Bid Data Sheet if determined to have failed to supervise the subcontractors.

- iii. **Failure to adhere to the 20 percent subcontract guidelines:** Termination of the main contract which will result to blacklisting.

## **6. Dispute resolutions**

Any disputes amongst any parties shall be resolved in accordance with the contract documents and / or the Subcontract agreements and in accordance with the laws of Zambia.

## **7. Review of the guidelines**

The 20 percent guidelines shall be reviewed every after 3 years beginning in 2019 but the on-going performance of the subcontractors shall be tracked and reported annually. However, should there be a compelling need to review the guidelines, the review will be conducted immediately.



## Appendix 1A- Standard form of Agreement

## Appendix 1B- Sub-Contract Categories of Works

1. Culvert Construction
2. Bridge Construction
3. Earthworks
4. Construction of Diversions
5. Pavement layer works
6. Surfacing
7. Weighbridges
8. Toll Plazas
9. Provision of road furniture
10. Construction of drains
11. Installation of street lights
12. Construction of walkways
13. Clearing and grubbing
14. Ancillary works