

# **IMPEDIMENTS THAT PROHIBIT STATE-OWNED-COMPANIES (Eskom & Transnet) from advancing industrialisation and the Developmental Agenda**

Portfolio Committee on Public Enterprises  
Wednesday, 25 May 2022 (Africa Day)



**the dtic**

Department:  
Trade, Industry and Competition  
REPUBLIC OF SOUTH AFRICA

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# PRESENTATION OUTLINE



1.

Strategic Guidance

2.

Preferential Procurement  
Policy Framework Act 5 of  
2000

3.

Industrialisation and Public  
Spend

4.

General Challenges

5.

Specific Challenges: Eskom

6.

Specific Challenges: Transnet

- The **Economic Reconstruction and Recovery Plan (ERRP)** places emphasis on **Industrialisation Through Localisation**.
- The programme to drive industrialisation through localisation, as stipulated in the ERRP, seek to achieve the following strategic objectives:
  - ❖ Reduce the proportion of imported intermediate and finished-goods;
  - ❖ Improve the efficiency of local producers; and
  - ❖ Develop export competitive sectors that can expand the sales of South African made products on the continent and beyond.

# Procurement Levers in the South African Public Procurement System

- **Government purchasing power** through public procurement contributes between 15% and 25% to GDP (value that is extracted from large scale procurements)
- **National Industrial Participation Programme (NIPP): Imported Content => US\$10 million**
- **Defence Industrial Participation (DIP):** managed by Armscor and applicable to all defence procurement. **Imported Content => US\$2 million**
- **Competitive Supplier Development Programme (CSDP):** no more in operation but was managed by DPE in conjunction with State Owned Companies (SOCs) .
- **Designation & Local Production**
- **The Renewable Energy Independent Power Producer Procurement Programme (REIPPPP)**
- **The Local Procurement Accord**

# Eskom & Transnet: Localisation Policy Positions

## ❖ Eskom:

*Roadmap for Eskom, October 2019:*

“At the centre of Eskom’s financial problems has been its inability to leverage its **large procurement spend** to achieve greater efficiencies and **promote industrialisation.**”

*Integrated Report 2021* “We aim to deliver sustainable supplier development, **localisation and industrialisation by leveraging our procurement spend** to deliver on both Eskom's and Government's policies and transformation strategy. “

## ❖ Transnet

*Integrated Report 2021* “Targeted at Enterprise and Supplier Development initiatives that support localisation and industrialisation, and provide opportunities for black people, youth, women, small businesses, people with disabilities and people living in rural communities”.

Presentation to Select Cmte. Trade & Industry, November 2021 “Contribute more effectively to South Africa’s development goals: **Industrialisation**, Regional Integration, Economic Transformation, Energy Efficiency, Socio-economic development”

# Legislative Requirements on Public Procurement in South Africa

- Section **217(1)** of the Constitution requires that when an organ of state contracts for goods and services, it must do so in accordance with principles of *fairness, equitability, transparency, competitiveness and cost-effectiveness*
- .
- **s.217(2)** - Subsection (1) **does not prevent the organs of state or institutions** referred to in that subsection from implementing a procurement policy providing for
  - a. categories of preference in the allocation of contracts; and
  - b. the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.
- **s.217(3)** National legislation **must** prescribe a framework within which the policy referred to in **subsection (2)** must be implemented.
- **The Preferential Procurement Policy Framework Act** (Act 5 of 2000) (PPPFA) prescribes the framework within which the preferential procurement policies may be implemented.
- On the 16<sup>th</sup> February 2022, the Constitution Court declared the Preferential Procurement Regulations to be invalid in totality.
- National Treasury has drafted the 2022 Preferential Procurement Regulations which are still under consideration for public comments.
- Some Organs of State, **including Eskom and Transnet**, have been exempted from the PPPFA.
- **In the absence of the PPPFA, both Eskom & Transnet can use their Supply Chain Management policies to drive localisation and industrialization. The Board of Directors must approve such policies.**



# Preferential Procurement Policy Framework Act 5 of 2000

*Minister of Finance v Afribusiness NPC [2022] ZACC 4*

The Supreme Court of Appeal and Constitutional Court did not rule that local content cannot be implemented as the policy of the government but that **the Minister of Finance does not have authority to determine a framework (regulations) for implementation but rather**

- **An Organ of State must** “determine its preferential procurement policy” and implement it within the Framework laid down in the PPPFA Act 5 of 2000.
- The PPPFA 2(1) maintains that “An organ of state **MUST** determine its preferential procurement policy and implement it within the following framework:
  - (a) a preference point system must be followed,
  - (d) the specific goals may include –
    - (ii) contracting with persons or categories of persons, historically disadvantaged by unfair Discrimination on the basis of race, gender or disability
    - (ii) implementing the programmes of the Reconstruction and Development Programme as published in Government Gazette No. 16085 dated 23 November 1994.

**In the absence of the PPPFA, both Eskom & Transnet can use their Supply Chain Management polices to drive localization and industrialization. The Board of Directors must approve such policies.**

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# INDUSTRIAL POLICY INSTRUMENTS

- ✓ Industrial Finance
- ✓ Tax Incentives
- ✓ Tariffs
- ✓ Non-tariff instruments (e.g. environmental standards)
- ✓ Technological Transfer
- ✓ Research & Development
- ✓ Design & Innovation
- ✓ **Local Procurement**
- ✓ Technical standards (SABS, NRCS, SANAS)
- ✓ Water and Electricity Prices
- ✓ Skills Development
- ✓ Empowerment



# INDUSTRIAL POLICY OBJECTIVE W.R.T LOCAL CONTENT REQUIREMENTS

- **Leverage public expenditure, both CAPEX and OPEX, made by organs of state (all spheres of government and SOCs) to:**
  - Develop and enhance local manufacturing capacity and capabilities
  - Support industrial innovation and technological developments
  - Create employment and sustain jobs
  - Boost exports and ensure suppliers are integrated into OEMs global value chains
  - Support broader economic empowerment through the creation of black industrialists

# PRODUCTS DESIGNATED FOR LOCAL PRODUCTION IN PUBLIC PROCUREMENT

| Designated Products                               | LC Threshold | Date       | Designated Products                                | LC Threshold | Date       |
|---|--------------|------------|--|--------------|------------|
| 1. Rail Rolling Stock                             | 65%          | 16-07-2012 | 16. Two Way Radio Terminals                        | 60%          | 30-06-2016 |
| 2. Power Pylons                                   | 100%         | 16-07-2012 | 17. Solar PV Components                            | 70%          | 30-06-2016 |
| 3. Bus Bodies                                     | 80%          | 16-07-2012 | 18. Rail Signalling System                         | 65%          | 30-06-2016 |
| 4. Canned/Processed Vegetables                    | 80%          | 16-07-2012 | 19. Wheelie Bins                                   | 100%         | 18-08-2016 |
| 5. Textile, Clothing, Leather and Footwear Sector | 100%         | 16-07-2012 | 20. Fire Fighting Vehicles                         | 30%          | 21-11-2016 |
| 6. Solar Water Heaters                            | 70%          | 19-07-2012 | 21. Steel Products and Components for Construction | 100%         | 13-01-2017 |
| 7. Set-top Boxes                                  | 30%          | 26-09-2012 | 22. Rail Perway (Track) Infrastructure             | 90%          | 13-11-2017 |
| 8. Certain Pharmaceutical Products                | Per Tender   | 07-11-2012 | 23. Pumps & Medium Voltage Motors                  | 70%          | 12-12-2017 |
| 9. Furniture Products                             | 85%          | 15-11-2012 | 24. Plastic Pipes & Fittings                       | 100%         | 16-08-2019 |
| 10. Electrical and Telecom Cables                 | 90%          | 08-05-2013 | 25. Air insulated MV Switchgear                    | 50%          | 20-12-2019 |
| 11. Solar Water Heaters                           | 70%          | 19-07-2013 | 26. Bulk Material Handling                         | 85%          | 20-12-2019 |
| 12. Valves Products and Actuators                 | 70%          | 06-02-2014 | 27. Industrial Lead Acid Batteries                 | 50%          | 20-12-2019 |
| 13. Working Vessels                               | 60%          | 01-08-2014 | 28. Cement   | 100%         | 4-11-2021  |
| 14. Residential Electricity and Water Meters      | 70%          | 01-08-2014 |  |              |            |
| 15. Transformers and Shunt Reactors               | 90%          | 28-09-2015 |  |              |            |

# LOCALISATION OF TRANSPORT EQUIPMENT

| OEM                | PROGRESS  |
|--------------------|---|
| <b>Rail</b>        | <ul style="list-style-type: none"><li>• Manufacturing of Rail Rolling Stock systems and components (locomotives, electric multiple units, wagons, and coaches)</li><li>• Manufacturing of Rail Infrastructure systems and components (signalling, perway, and over head track equipment)</li><li>• Maintenance &amp; refurbishment of Rail Infrastructure &amp; rolling stock</li></ul> |
| <b>Automotive</b>  | <ul style="list-style-type: none"><li>• Manufacturing of motor vehicles</li><li>• Manufacturing of motor cycles</li><li>• Manufacturing of components</li></ul>   |
| <b>Ships</b>       | <ul style="list-style-type: none"><li>• Building &amp; repair of ships</li><li>• Building &amp; repair of working boats/vessels</li><li>• Building &amp; repair of pleasure / sporting boats</li></ul>  |
| <b>Aeronautics</b> | <ul style="list-style-type: none"><li>• Manufacturing of components for aircraft and space craft</li></ul>  |



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## EXEMPTIONS FROM LOCAL CONTENT REQUIREMENTS

- If the quantity of materials and/or products cannot be wholly sourced in South Africa, **the dtic**, in consultation with the procuring entity, will grant exemption on a case-by-case basis
  - *Specifications, designs, standards, material availability, technological choices and volumes are the main causes of exemptions*
  - Bidders must clearly indicate in their bids the quantities of material and products to be supplied and the level of local content for each product
- **the dtic** will revert back to the bidder within 48 hours either with a response or an acknowledgment that the request is being considered
- If an exemption is requested on the product that has already being exempted, then **the dtic** takes 48 hours to process the request
- In certain instances, **the dtic** consults with the industry, especially if the exemption is volume-based and/or based on the particular type of material. That can take up to a week to revert back to the bidder

# Some Challenges Pertaining to Localisation in Public Procurement

## SPECIFICATIONS

- Sometimes specifications are written to meet import product grades and not local market. The requirement in tenders most instances for Brand specific components which are manufactured abroad. RFPs are specific on proven design (most instances outside of SA) thus making innovation in the industry impossible.

## LOCAL MARKET LEAD TIME AND CONSULTATION

- Lead time for local industry to “turn around” operations to supply to specific programme not considered. Procuring entities do not give an opportunity for the development of the local design. Local engineers are not consulted.

# Some Challenges Pertaining to Localisation in Public Procurement

## PERFORMANCE BONDS

- Procuring entities requirements for performance bonds as a requirement to qualify for a tender is hampering the ability of industry to apply for tenders.

## PROCUREMENT PLANS AND TIME-SENSITIVE PUBLICATIONS

- The lack of **PROCUREMENT PLANS** and the **URGENT** NATURE OF SOC'S PROCUREMENTS do not give industry the needed time to get ready thus lead to importation. The lack of commitment to localisation requirements by SOC's hampers the implementation process.

- **Industry Negotiated pricing agreements (NPA)**
  - Identify and supporting sector specific instead of company specific NPA
- **Implementing security measures, working with SAPS and crime intelligences, to stop economic sabotage activities.**
- **Finalise adjudication of Scrap Metal sales to legitimate upstream & downstream processing entities.**



### Freight Rail

- **Private-sector participation strategic sectors focus to support industrialisation**

### Container ports

- **Upgrade technology**
- **Finalisation of structural reform policy**

### Localisation Projects

- **Rail tracks and locomotives local manufacturing – engagement with local industry to meet specification and alignment to projects in an open and transparent manner, upholding good governance.**
- **Scrap Metal Policy for sales to legitimate upstream & downstream processing entities**

## The DTIC's Engagement with SOCs

Since implementation of localisation, **the dtic** had numerous engagements with SOCs to emphasise the strategic role of procurement as a lever for industrialisation and the negative impact of imports on the economy. While the following actions have been taken:

- **the dtic** wrote letters to procuring entities to request their procurement plans;
- **the dtic** had engagement with procuring entities for the determination of critical components
- **the dtic** continuously participates in briefing sessions with bidders to highlight the local content requirements.

**Alignment with public procurement that enables industrialisation is still difficult to be achieved!**

# CONTINUED IMPLEMENTATION OF LOCALISATION

1. The policy uncertainty created by the ConCourt judgement and mis-interpretation thereof will be disastrous for the SA economy and our transformation agenda, especially as we begin to implement the R791 billion allocated for public infrastructure over next 3 fiscal years.
2. DTIC has engaged Cosatu, Numsa, Solidarity, the Black Business Council, and BUSA. There is overwhelming consensus that removing support for local content and B-BBEE is counter-productive and will undermine economic development.
3. Mis-interpreting the ConCourt ruling also puts at risk the implementation of 'set-asides' for SMMEs, Women and Youth-owned enterprises.
4. Organs of State – across all 3 spheres – are asking for assistance to interpret the ConCourt judgement.
5. The request to **Portfolio on Public Enterprise** is:
  - Confirm the policy position of Government that places local content and B-BBEE at the centre of our economic policy;
  - Confirm the policy position of Government that public procurement must give preference to local content and B-BBEE; and
  - Support that NT and DTIC engage organs of State to ensure coherence in the interpretation of the ConCourt judgement and assist organs of State to implement preferential procurement in full accordance with the Court's judgement.

**Thank You**