

PORTFOLIO COMMITTEE ON TRADE, INDUSTRY & COMPETITION

Briefing on the role of the Public Procurement Act in contributing to industrialisation, inclusive growth and transformation, as well as the role of the dtic in ensuring compliance - the Role of the Broad-Based Black Economic Empowerment (B-BBEE) and Localisation in the Public Procurement Act

27 November 2024



the dtic

Department
Trade, Industry and Competition
REPUBLIC OF SOUTH AFRICA

the dtic - together, growing the economy

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Highlights on the Objects of the Public Procurement Act

- 2(1)(a) **introduce uniform treasury norms and standards** for all procuring institutions to implement their procurement systems as envisaged in section 217(1), read with section 216(1), of the Constitution;
- 2(1)(b) **determine a preferential procurement framework for all procuring institutions** within which to implement their procurement policies as envisaged in section 217(2) and (3) of the Constitution.
- 2(2)(a) **ensure value for money** in the use of public funds through, among others, the **assessment of the costs, benefits and risks**;
- 2(2)(c) **advance transformation, beneficiation and industrialisation**;
- 2(2)(d) **stimulate economic development by supporting—**
 - (i) goods that are produced and services provided in the Republic;
 - (ii) **procurement which is developmental in nature**;
 - (iii) **innovation**; and
 - (iv) **investment**;
- (f) provide for effective and expedited dispute resolution of procurement related decisions; and
- (g) **promote a sustainable environment**

Chapter 4: Preferential Procurement Policy

- **17(1)(a)** A procuring institution must **set-aside a bid for a category of persons** in accordance with the **prescribed thresholds and conditions**.
- **18(1)** A procuring institution must, in accordance with the prescribed thresholds and conditions, apply the **following prequalification criteria** for a bid to promote preferences in the allocation of contracts.
- **19(1)(a)** Where feasible, a procuring institution must **subcontract a contract** above the prescribed threshold, to advance persons or categories of persons in subsection (2)(a) to (i) in accordance with the prescribed criteria.
- **20(1) the Minister must, by notice in the *Gazette*—**
 - **designate** a sector, sub-sector or industry or product in accordance with national development and industrial policies for local production and content, where only locally produced or manufactured goods meet the stipulated minimum threshold for local production and content, taking into account economic and other relevant factors;
 - **stipulate a minimum threshold for local production and content;** and
 - **stipulate the period of the designation.**

THE ALIGNMENT OF THE B-BBEE ACT AND PUBLIC PROCUREMENT ACT



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The Alignment of B-BBEE Policy Objectives with the Public Procurement Act

- **B-BBEE policy aims to restructure and transform the economy to enable meaningful participation of the majority of citizens, particularly black individuals.**
- **The advancement of black SMMEs and black industrialists as a catalyst for economic growth, job creation and development through preference in procurement is key for their sustainability and long term growth.**
- **Public procurement and spending by the state must be leveraged:**
 - To enhance transformation and B-BBEE status in SA by ensuring all suppliers are B-BBEE compliant.
 - To increase the number of black owned SMMEs, black industrialists, and Black Designated Group suppliers.
 - To increase the value of procurement-spend towards black owned SMMEs, black industrialists, and Black Designated Group suppliers.

Categories of Qualifying Suppliers in terms of the PPA

- Persons referred to in subsection (1) are limited to—
 - black people;
 - black women;
 - **women;**
 - black people with disabilities;
 - people with disabilities;
 - military veterans;
 - persons referred to any of the paragraphs (a) to (f) within a geographical area;
 - small enterprises owned by—
 - black people;
 - black women;
 - **women;**
 - black people with disabilities;
 - people with disabilities;
 - military veterans;
 - black people who are youth; or
 - **youth;**
 - persons referred to in any of the subparagraphs (i) to (viii) within a particular geographical area;
 - **small enterprises within a particular geographical area;**
 - **small enterprises;**
 - co-operatives which consist of members who are black people; or
 - co-operatives;
 - co-operatives within a particular geographic area

Proposals by the dtic: Public Procurement Regulations: Alignment to the B-BBEE Act

- **the dtic** proposes that in compliance with Section 10 of the B-BBEE Act, a **minimum B-BBEE level** should be compulsory across all bidding processes of the state. This means that only entities with a set minimum B-BBEE level are to be allowed to participate in the BID processes of the state.
- **the dtic** to propose a minimum threshold figure that should apply across for sub-contracting, pre-qualification and set asides.
- **the dtic** propose that the point system (e.g. 80/20 & 90/10) should not be the only system to measure bids. However, where a point system is used then minimum B-BBEE level should be used to measure the empowerment aspect as it is the only measure that provides fairness, and uniformity, it measures broad developmental goals (Ownership, Management, and Employment equity, Skills development, Enterprise and Supplier development, as well Socio-economic development goals) as well as being Constitutional.
- Furthermore, a minimum threshold points for the measurement of empowerment that is higher than the existing point system (e.g. 90/10 and 80/20) to be proposed.

Proposals by the dtic: Public Procurement Regulations: Alignment to the B-BBEE Act

Section 23: Measures for beneficiation and innovation, advancing creation of jobs, intensification of labour absorption and development of small enterprises within particular geographical area

- In addition to defining beneficiaries, **the dtic** recommends that the definition of small enterprises must align and consider what is defined in the Small Business Act, the B-BBEE Act, Generic Codes and Sector Codes for the consistency in the implementation of policies.
- Preference should be given to those who were previously disadvantaged through a legislated processes as defined in the B-BBEE legislation.
- Co-operatives which consist of members who are black people should be prioritised as well.
- **the dtic** recommends that the regulations should outline the process of empowerment to guide procuring institutions.

Proposals by the dtic: Public Procurement Regulations: Alignment to the B-BBEE Act

- *Dispute Resolution measures & Tribunal* - **the dtic** propose that the composition of the dispute resolution committee should include a B-BBEE expert and people who understand transformation;
- **the dtic** propose that *Auditing of transformation* should be included in the overall auditing of tenders;
- *The Act states that if a procuring institution is unable to implement set-aside, pre-qualification criteria and sub-contracting, then the procuring institution must record and report the reasons to the Public Procurement Office and the relevant treasury in the prescribed manner* – **the dtic** propose that the regulations should prescribe conditionality for the implementation of this clause which should include requiring a procuring institution to ensure implementation of an Enterprise and Supplier Development Plan (ESDP).



LOCAL CONTENT AS A PUBLIC PROCUREMENT INSTRUMENT

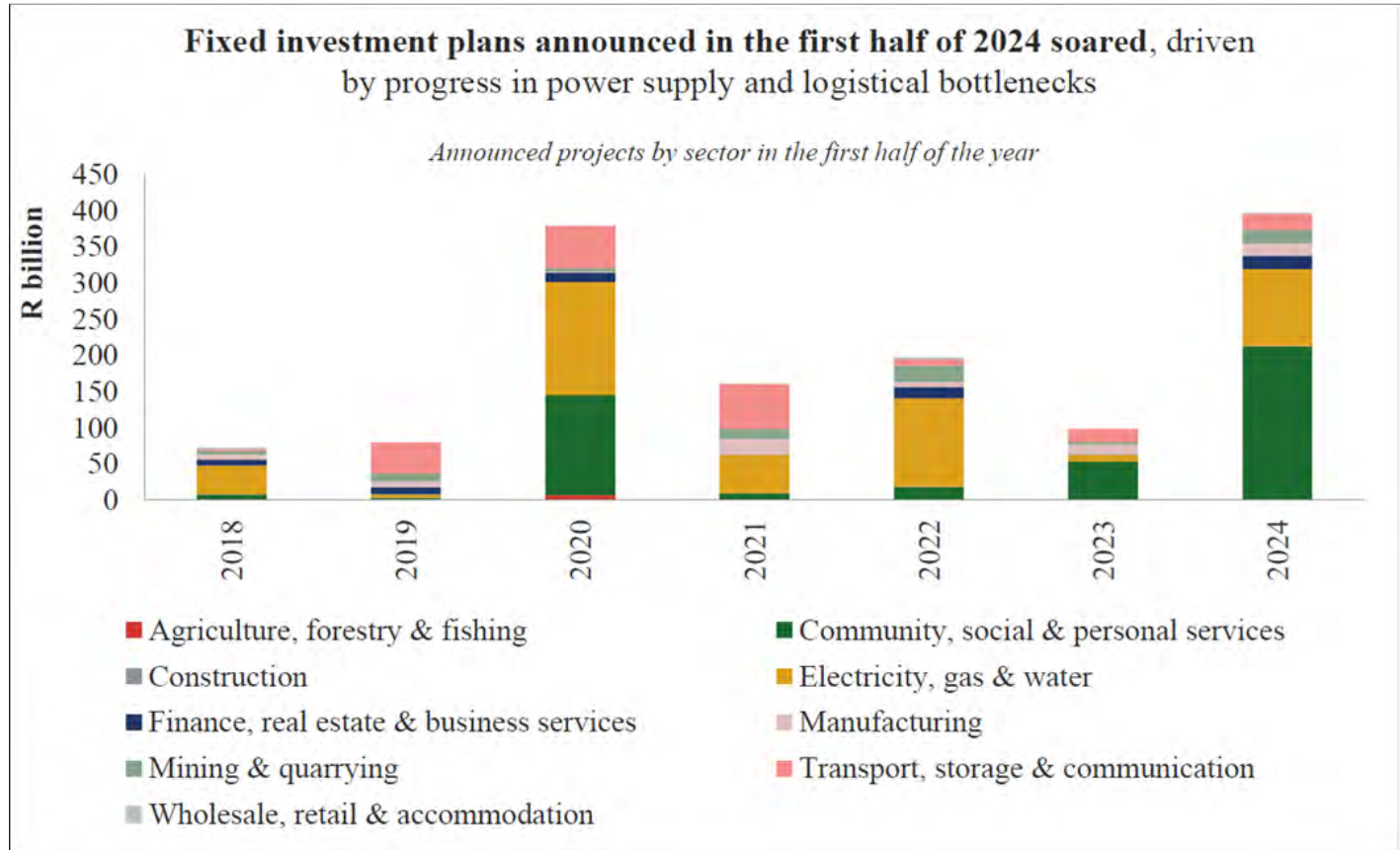


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Industrial Policy Objectives W.R.T Local Content Requirements

- **Designation is measured on the product which must be manufactured in South Africa at a specified minimum threshold rather than on the nature, status and/or category of suppliers.**
- **The purpose is to leverage public expenditure, both CAPEX and OPEX, undertake 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

Fixed investment plans in early 2024



Designated Products And Local Content Thresholds

Designated Products	LC Threshold	Date
1. Rail Rolling Stock	65%	16-07-2012
2. Power Pylons	100%	16-07-2012
3. Bus Bodies	80%	16-07-2012
4. Canned/Processed Vegetables	80%	16-07-2012
5. Textile, Clothing, Leather and Footwear Sector	100%	16-07-2012
6. Solar Water Heaters	70%	19-07-2012
7. Set-top Boxes	30%	26-09-2012
8. Certain Pharmaceutical Products	Per Tender	07-11-2012
9. Furniture Products	85%	15-11-2012
10. Electrical and Telecom Cables	90%	08-05-2013
11. Solar Water Heaters	70%	19-07-2013
12. Valves Products and Actuators	70%	06-02-2014
13. Working Vessels	60%	01-08-2014
14. Residential Electricity and Water Meters	70%	01-08-2014
15. Transformers and Shunt Reactors	90%	28-09-2015

Designated Products	LC Threshold	Date
16. Two Way Radio Terminals	60%	30-06-2016
17. Solar PV Components	70%	30-06-2016
18. Rail Signalling System	65%	30-06-2016
19. Wheelie Bins	100%	18-08-2016
20. Fire Fighting Vehicles	30%	21-11-2016
21. Steel Products and Components for Construction	100%	13-01-2017
22. Rail Perway (Track) Infrastructure	90%	13-11-2017
23. Pumps & Medium Voltage Motors	70%	12-12-2017
24. Plastic Pipes & Fittings	100%	16-08-2019
25. Air insulated MV Switchgear	50%	20-12-2019
26. Bulk Material Handling	85%	20-12-2019
27. Industrial Lead Acid Batteries	50%	20-12-2019
28. Cement	100%	4 -11-2021

Post Award Reporting: Bids Reported From March 2015 To March 2022

Designated Products	Signed Standard Bidding Documents Submitted to the dti	Total Value per Sector R'000	No. of Companies Verified	Tender Value Verified R'000	% Verified: (total verified/ total value)
Textiles & Clothing Products	620	2 960 826,87	21	1 259 322,00	43%
Furniture Products	287	220 796,07	13	27 832,00	13%
Electrical & Telecom Cables	100	2 076 131,38	8	263 810,00	13%
Canned & Processed Veges	23	697 950,41	4	2 269,00	0%
Valves & Actuators	29	300 825,57	8	26 417,00	9%
Rail Rolling Stock	6	49 547 474,46	4	49 547 727,00	100%
Set top boxes*	1	4 300 000,00	3	600 000,00	14%
Power Pylons	11	2 253 000,00	3	1 146 212,00	51%
Solar Water Heaters	15	456 931,72	12	303 055,00	66%
Steel Products	48	820 504,18	5	337,00	0%
Busses	3	806 600,00	1	132 481,36	16%
Working Boats & Vessels	3	4 299 195,00	2	-	0%
Transformers	43	4 492 045,66	3	14 000,00	0%
Construction	38	3 389 382,00	-	-	0%
Prepaid Meter	1	145,50	-	-	0%
Two-way Radio	2	19,28	-	-	0%
Wheelie Bibs	1	790,00	-	-	0%
PPE	62	283 734,10	-	-	0%
Others (HVAC & Water Tanks)	201	124 256,00	-	-	0%
Total	1 494	77 030 608,20	87	53 323 462,36	69%

* One tender but different suppliers appointed as a panel by USAASA

Source: Dept of Trade & Industry & SABS: Local Content databases, 2018

Rolling Stock: Verification has been done on part-delivery and the summary of the activities is provided below.

Vessel: The two vessels projects are at scoping stage.

Post Award Reporting: March 2015 to October 2024

Designated Products	Signed Standard Bidding Documents Submitted to the dti	Total Value per Sector R'000	Tender Value Verified R'000	% Verified: (total verified/ total value)
Textiles & Clothing Products	894	3 085 085	1 294 318	42%
Furniture Products	483	271 963	30 929	11%
Electrical & Telecom Cables	185	2 609 040	1 834 159	70%
Canned & Processed Veges	26	700 923	2 269	0%
Valves & Actuators	119	575 389	29 250	5%
Rail Rolling Stock	9	51 963 105	52 021 869	100%
Set top boxes*	21	5 219 285	600 000	11%
Power Pylons	11	2 253 000	1 146 212	51%
Solar Water Heaters	16	458 382	303 055	66%
Steel Products	279	1 827 659	536 666	29%
Busses	3	806 600	132 481	16%
Working Boats & Vessels	3	4 299 195		0%
Transformers	61	4 512 309	24 132	1%
Construction	648	7 841 769	48 131	1%
Prepaid Meter	9	2 271		0%
Two-way Radio	3	120		0%
Wheelie Bins	7	2 527	836	33%
PPE	115	755 713	116 514	15%
Others (HVAC & Water Tanks)	459	1 168 223	250 563	21%
		-		
Total	3 351	88 352 558	58 371 384	66%

* One tender but different suppliers appointed as a panel by USAASA

Source: Dept of Trade & Industry & SABS: Local Content databases, 2024

Local Content Requirements and the Exemption Process

- 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 3-5 working either with a response or an acknowledgment that the request is being considered
- 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

Areas of Non-compliance in the Application of Local Content

- This is complex matter and has different phases:
 - Advertisement of tenders with local content (LC) conditions
 - Submission of correct LC documents by bidders (Standard/Municipal Bidding Documents 6.2 and accompanying annexures)
 - Self declaration of correct minimum thresholds for local production by bidders
 - Proper evaluation of bids in terms of LC requirements (no points allocated for LC but it is the first hurdle that must be achieved by bidders)
 - Understanding of LC requirements and industrial policy objectives by both Bid Evaluation and Adjudication Committees
 - Post tender award reporting to the dtic by the organs of state (submission of signed Bidding Documents and Annexures)
 - Turnkey projects (design, build, operate and transfer) projects.

DESIGNATION OF PRODUCTS IN THE PROCUREMENT ACT



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Clustering of Designated Products into Sectors

- Steel Products
- Rail
- Autos
- Marine
- Food Products
- Wood Products
- Health Related Products
- Water Infrastructure
- Information and Communication Technology
- Any other relevant sector.

- There is the Transmission Development Plan (TDP) Working Group made up of **the dtic**, Eskom, National Treasury and IDC.
- The aim is to ensure that Eskom's infrastructure expansion programme is fully aligned with the industrialisation and localisation objectives of the government.
- The following Generation Capital Projects are prioritised
 - Generation Plant Refurbishment Projects,
 - Tubatse Pump Storage System (TPSS) ~ 1500 MW,
 - Richards Bay Combined Cycle Power Plant Project (RBCCPPJ) ~ 3000 MW,
 - Battery Energy Storage Systems (BESS), Solar PVs and Wind ~1300 MW, and
 - Just Energy Transition, with emphasis on the Socio-Economic Development (SED) interventions for the Komati Village and feeder areas.

- The Working Group has prioritised the following work streams that have been identified as the key pressure points:
 - Transformers
 - Steel Fabrication
 - Line Construction
 - Primary/Secondary Plant e.g. (insulators, conductors etc.)
 - Battery Energy Storage Systems (BESS) and Solar PV
 - JET Repurposing

Further work to be done by the dtic with regards to designation

- Identification of Mega Infrastructure Projects which have been gazetted by DPWI
- Work closely with DPWI, Infrastructure South Africa, Operation Vulindlela and SOCs in unlocking localisation opportunities in infrastructure projects and the reforms of the network sectors
- Already working with the Trans-Caledon Tunnel Authority (TCTA) on the tender for the construction of Mokolo and Crocodile River Water Augmentation Project. Extension of this partnership to DWS and water boards will ensure policy alignment, aggregation of demand and better preparation of the industry to respond to the demand needs
- Engaging Gautrain Management Authority (GMA) on the procurement of additional fleet
- Previously there was a Transnet, DPE and **the dtic** Industrialisation Working Committee. This must be resuscitated to include DOT to ensure alignment between the new rail policy & reforms and industrial development and transformation imperatives

Way forward: Policy and Legal Matters to Consider

- **The finalisation of regulations to operationalise the Act should be prioritised and fast-tracked. That will give effect the local content policy and close the current legislative gap**
 - Regulations on preference points and thresholds.
 - Regulations on set-asides, subcontracting and rules on the pre qualification criteria.
 - Regulations on goods to be produced in the Republic and services to be provided in the Republic, including rules on the pre qualification criteria.
 - The choice on the evaluation of tenders, especially between industrialisation and transformation.
- **There must be a balance between what is covered by the Act and what is allowable in the Regulations.**

Thank You