

PROJECTS AND INFRASTRUCTURE ALERT

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LOCAL CONTENT VERIFICATION PROCEDURE

Local content requirements contained in preferential procurement legislation provide mechanisms for government to promote job creation locally and to ensure that government expenditure is concentrated in products that are locally manufactured and produced.

The revised Preferential Procurement Regulations issued in terms of s5 of the Preferential Procurement Policy Framework Act, No 5 of 2000 and which came into effect during December 2011, make provision for the Department of Trade and Industry (DTI) to designate certain sectors to promote local production in line with national development and industrial policies.

Regulation 9(1) of the Preferential Procurement Regulations prescribes that in the case of tenders issued for goods or services in a designated sector (as designated by the DTI), such tenders must be advertised with the specific bidding condition that only bids that meet a stipulated minimum threshold of locally produced goods, services or works or locally manufactured goods, will be considered. As such, a specific bidding condition may be included that only locally produced services, works or goods or locally manufactured goods with a stipulated minimum threshold for local production and content will be considered.

On the other hand, Regulation 9(3) of the Preferential Procurement Regulations prescribes that where an organ of state seeks to procure goods, services and works for which there is no designated sector, that organ of state has a discretion whether or not to include local contents requirements as a bid condition.

The DTI's sector designation policy is one of a suite of policy levers designed to increase support for domestic manufacturing and production. The DTI has identified sectors where there has been industrial decline, or where jobs are seen to be created. The policy behind local content is to arrest and reverse such industrial decline in support of the private sector. Sectors already designated for local production with minimum local content thresholds are rail rolling stock, power pylons, bus bodies, canned / processed vegetables, certain pharmaceutical products, furniture products, textile, clothing,

leather and footwear, solar heaters as well as the power and telecommunication sector. This list is not complete. Other sectors and products are being researched by the DTI and consultations with industry stakeholders arranged for the purpose of further designation.

A crucial aspect of local content is its verification, and the South African Bureau of Standards (SABS) has established within it the Local Content Verification Office (based in Midrand, Johannesburg) as the verification agency for local content in South Africa. In November 2011 the SABS as the national standards body, published the approved South African Technical Specification (SATS 1286) which is a technical instrument that specifies the requirements and procedures to define, measure, declare and verify the local content of goods, works and services. The SATS 1286 will be administered by the Local Content Verification Office.

The verification procedure begins during the procurement process but is aimed at verification once the tender award has been made. Usually the local content commitments made in a bid response are included into the terms of the award contract, and are held as specific targets that need to be complied with in the implementation of the agreement. The procuring authority has an obligation to ensure, as part of its contract management responsibilities, that local content commitments are being complied with in the implementation of the agreement. Procuring authorities can now rely on the Local Content Verification Office to perform this function on their behalf.

The process for verification is as follows. At the beginning of the bidding process, bidders must complete the standard bidding documents in line with the requirements of the SATS 1286 and the Guidance Document for the Calculation of Local Content together with the Local Content Declaration, the Imported

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Content Declaration and a further Local Content Declaration. Bidders are required to perform a self-assessment of their local content compliance and to provide a local content declaration with their bid response. This is usually a minimum requirement for bid submission.

Once the successful bidder has been appointed or awarded the contract, the procuring authority will be required to forward to the Local Content Verification Office the above documents which are essential to the calculation, measurement and verification of local content.

The verification procedure will be conducted by the Local Content Verification Office in the form of a two-part audit of the local content declaration. The first part of the audit is aimed at the verification of transactional documentation related to the purchasing or manufacturing of the local content claimed by the successful bidder. The second part of the audit comprises an onsite technical verification of the local content purchased

or manufactured. Should the outcome of the audit successfully verify the local content declared, against the threshold, the Local Content Verification Office will issue a Local Content Verification Certificate to certify that the successful bidder has adhered to the legislative requirements regulating local content. This Verification Certificate will be captured on the DTI and SABS database and will be accessible to government departments procuring the specified goods, works or services.

The initiation of the SABS Local Content Verification procedure will create a platform on which to entrench the requirements of local content and production and will set an independent benchmark of quality assurance and integrity of local content in goods, works and services.

Claire Barclay and Tumelo Ngwenya

CONTACT US

For more information about our Projects and Infrastructure practice and services, please contact:

Kieran Whyte
National Practice Head
Director
T +27 (0)11 562 1132
E kieran.whyte@dcladh.com

Claire Barclay
Director
T +27 (0)11 562 1154
E claire.barclay@dcladh.com

Jay Govender
Director
T +27 (0)11 562 1387
E jay.govender@dcladh.com

Badian Maasdorp
Director
T +27 (0)11 562 1777
E badian.maasdorp@dcladh.com

Zahra Omar
Director
T +27 (0)11 562 1144
E zahra.omar@dcladh.com

Goitse Pilane
Director
T +27 (0)11 562 1498
E goitse.pilane@dcladh.com

Jurg van Dyk
Director
T +27 (0)11 562 1216
E jurg.vandyk@dcladh.com

Emma Dempster
Senior Associate
T +27 (0)11 562 1194
E emma.dempster@dcladh.com

Lyle Horsley
Senior Associate
T +27 (0)11 562 1076
E lyle.horsley@dcladh.com

Tasneem Essop
Associate
T +27 (0)11 562 1105
E tasneem.essop@dcladh.com

Cara Gilmour
Associate
T +27 (0)11 562 1084
E cara.gilmour@dcladh.com

Bianca Pollastrini
Associate
T +27 (0)11 562 1123
E bianca.pollastrini@dcladh.com

Themba Sikhosana
Associate
T +27 (0)11 562 1242
E themba.sikhosana@dcladh.com

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