

Reference number: RCS/C.6

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TREASURY CIRCULAR NO. 20/2019

THE PREMIER

THE MINISTER OF ECONOMIC OPPORTUNITIES

THE MINISTER OF COMMUNITY SAFETY

THE MINISTER OF CULTURAL AFFAIRS AND SPORT

THE MINISTER OF EDUCATION

THE MINISTER OF FINANCE

THE MINISTER OF HEALTH

THE MINISTER OF HUMAN SETTLEMENTS

THE MINISTER OF LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

THE MINISTER OF SOCIAL DEVELOPMENT

THE MINISTER OF TRANSPORT AND PUBLIC WORKS

THE SPEAKER: PROVINCIAL PARLIAMENT

THE DEPUTY SPEAKER: PROVINCIAL PARLIAMENT

THE EXECUTIVE AUTHORITY: WESTERN CAPE GAMBLING AND RACING BOARD (MINISTER A MAYNIER)

THE EXECUTIVE AUTHORITY: WESTERN CAPE NATURE CONSERVATION BOARD (MINISTER A BREDELL)

THE EXECUTIVE AUTHORITY: WESTERN CAPE INVESTMENTS AND TRADE PROMOTION AGENCY (MINISTER A MAYNIER)

THE EXECUTIVE AUTHORITY: SALDANHA BAY IDZ LICENCING COMPANY (MINISTER A MAYNIER)

THE EXECUTIVE AUTHORITY: WESTERN CAPE CULTURAL COMMISSION (MINISTER A MARAIS)

THE EXECUTIVE AUTHORITY: WESTERN CAPE LANGUAGE COMMITTEE (MINISTER A MARAIS)

THE EXECUTIVE AUTHORITY: WESTERN CAPE HERITAGE (MINISTER A MARAIS)

THE EXECUTIVE AUTHORITY: CASIDRA (MINISTER IH MEYER)

THE EXECUTIVE AUTHORITY: WESTERN CAPE LIQUOR AUTHORITY (MINISTER A FRITZ)

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THE ACCOUNTING OFFICER: VOTE 3: PROVINCIAL TREASURY (MR Z HOOSAIN)

THE ACCOUNTING OFFICER: VOTE 4: COMMUNITY SAFETY (MR G MORRIS)

THE ACCOUNTING OFFICER: VOTE 5: EDUCATION (MR BK SCHREUDER)

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THE ACCOUNTING OFFICER: VOTE 7: SOCIAL DEVELOPMENT (DR R MACDONALD)

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THE ACCOUNTING OFFICER: VOTE 9: ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING (MR P VAN ZYL)

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THE ACCOUNTING OFFICER: VOTE 11: AGRICULTURE (MS J ISAACS)

THE ACCOUNTING OFFICER: VOTE 12: ECONOMIC DEVELOPMENT AND TOURISM (MR S FOURIE)

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THE ACCOUNTING OFFICER: VOTE 14: LOCAL GOVERNMENT (MR G PAULSE)

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THE CHIEF FINANCIAL OFFICER: VOTE 12: ECONOMIC DEVELOPMENT AND TOURISM (MS M ABRAHAMS)

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THE ACCOUNTING AUTHORITY: WESTERN CAPE INVESTMENTS AND TRADE PROMOTION AGENCY (MR B FIGAJI)

THE ACCOUNTING AUTHORITY: SALDANHA BAY IDZ LICENCING COMPANY (DR J STEGMANN)

For information

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 THE DEPUTY DIRECTOR-GENERAL: CORPORATE ASSURANCE, DEPARTMENT OF THE PREMIER (MS H ROBSON)

LOCAL PRODUCTION AND CONTENT THRESHOLD

1. PURPOSE

1.1 The purpose of this communicate is to:

- (a) inform accounting officers and accounting authorities of the Provincial Treasury (PT) stance on the applicable threshold for Local Production and Content for designated sectors and evaluation of bids based on a stipulated minimum threshold.

2. BACKGROUND

- 2.1 In 2012 the National Treasury issued the first of various Instruction Notes (IN's) and Circulars on the Local Production and Content requirements. These IN's and Circulars aim to provide guidance and direction to accounting officers and accounting authorities on how they may procure products which have been designated as a sector for local production and content.
- 2.2 Various challenges have been identified in respect of the pragmatic implementation of these requirements, namely in the main the Local Production and Content requirements emanate out of two specific pieces of enabling legislation, namely the Broad Based Black Economic Empowerment Amendment Act (BBBEEAA), 2013 and the Preferential Procurement Policy Frameworks Act (PPPFA), 2000 (Act no. 5 of 2000) and its regulations (2017), which are specifically driven by two different custodian departments, each with its own mandate and objectives as well as a joint one which exacerbates the challenges as the two are not always aligned in approach and requirements.
- 2.3 More specifically in respect of the applicable threshold for Local Production and Content there has been differing, contradictory and the changing of minds as it relates to the applicable threshold.
- 2.4 This has resulted in implementation impracticalities and challenges from a procurement perspective.
- 2.5 The WCG, in an initiative to fast-track and resolve these challenges made every effort to consult, include and co-opt the two custodian departments; the Department of Trade and Industry (**dti**) and the National Treasury (NT) into its processes for finding solutions in various attempts to resolve the implementation challenges it was experiencing. Whilst the **dti** responded positively and accepted the Province's invitation to assist by attending various engagements and training sessions, the NT advised the WCG to address all enquires with the **dti**.
- 2.6 It must be noted that since the issuance of the Preferential Procurement Regulations (PPR), 2011 the PT requested clarity from NT regarding the applicable local production and content requirements threshold. NT initially indicated in a presentation in 2013 that the local production and content requirements applies to all bids (including price quotations) in excess of R30 000.00, which was confirmed via an email dated, 28th May 2013. The NT indicated that it is in the process of issuing an instruction note in this regard, which to date has not materialised (Copies of the correspondences and presentation are attached herewith marked Annexure A and B).
- 2.7 Subsequent to this, the **dti** communicated that the local production and content requirements must be applied in terms of all procurement methods irrespective of the value of procurement.

3. TECHNICAL CHALLENGES

- 3.1 It is important to note in summary the technical implementation challenges experienced in respect of local content implementation before the PT stance and directions to departments is articulated:
- a) Whilst Local Production and Content for designated sectors is a compulsory requirement of tender, bidders need only indicate their compliance and complete the prescribed bid forms with an indication of compliance. Verification certification by the South African Bureau of Standards (SABS) is a long process and the National Treasury (NT) requirements allows for the award to be made and the verification process to happen *ex post facto* the award.
 - b) This is problematic from a procurement perspective as when a procuring authority defines a specific requirement of tender it must be placed in a position to substantively evaluate the evidence to support compliance to the tender specification requirements.

- c) The process prescribed by the NT does not make provision for this as the method prescribed only allows for a nominal compliance check not a substantive one.
- d) Procuring authorities are also not the technical experts on Local Production and Content and the law mandates such authority for verification with the SABS. This dependency and inability to take charge of the control risk predisposes organs of state to non-compliance, potential irregular expenditure and negative impacts on service delivery.
- e) Verification processes and certification costs must be borne by the bidder and such costs inadvertently are added to the bid price thereby increasing the total cost of ownership (TCO), increasing the premium to be incurred in respect of the policy objectives for local production and content and impacting on value for money.
- f) The supplier market already finds difficulty in meeting the technical compliance requirements for local production and content. Suppliers are unaware of exemption requirements which delays the procurement process having negative impact on service delivery.
- g) Taking cognisance of the points made above it would not be in the interest of value for money, nor from the perspective of practical business efficiency and in the interest of service delivery to apply this cumbersome process to procurement below the threshold value of R30 000.

4. **LEGISLATIVE AND NATIONAL TREASURY REQUIREMENTS UNPACKED**

4.1 Based on the above the PT requested an opinion from the Department of the Premier Directorate: Legal Services to provide a legal opinion on the applicable threshold for Local Content and Production.

4.2 The legal opinion received, confirms the stance of the WCG that the Local Production and Content requirements are only applicable as from R30 000.00.

4.3 In summary the legal opinion provided focuses on two salient points:

- a) The envisaged applicable threshold for the applicability of the PPPFA, 2000 (Act No 5 of 2000) and its regulations (2017); and
- b) The intent of the NT as expressed over various instruction notes as they relate to the applicable threshold of the Preferential Procurement Regulations (PPR's), 2017.

4.4 **In respect of the envisaged applicable threshold for the applicability of the PPPFA, 2000 (Act No 5 of 2000) and its regulations (2017):**

a) Section 2 of the PPPFA stipulates that:

(1) An organ of state must determine its preferential policy framework and implement it within the following framework:

(a) A preference point system must be followed;

(b) (i) for contracts with a Rand value above a prescribed amount a maximum of 10 points may be allocated for specific goals as contemplated in paragraph (d) provided that the lowest acceptable tender scores 90 points for price;

(ii) for contracts with a Rand value equal to or below a prescribed amount a maximum of 20 points may be allocated for specific goals as contemplated in paragraph

(d) provided that the lowest acceptable tender scores 80 points for price;

(c) **any other acceptable tenders which are higher in price must score fewer points, on a pro rata basis, calculated on their tender prices in relation to the lowest acceptable tender, in accordance with the prescribed formula;**

(d) **the specific goals may include -**

(ii) **implementing the programmes of the Reconstruction and Development Programme as published in Government Gazette No. 16085 dated 23 November 1994;**

(2) Any goals contemplated in subsection 1(e) must be measurable, quantifiable and monitored for compliance."

- b) To note that the Local Production and Content requirements, as required by the PPPFA, 2000 (Act No 5 of 2000) was envisaged to be addressed as part of the 10 or 20 points and not as an added requirement. Whilst the 2017 regulations require that Local Production and Content be included as a special condition in the bid document. This is for all intents and purposes not in line with the enabling Act.
- c) The PPR's, 2017 further applies to procurement equal to or above R30 000.00. It may be applied below this value however this is at the discretion of the Institution. Regulation 5 and 8 are utilised to determine the acceptability of bids received in respect of functionality and Local Production and Content. Only if the bids are determined to be acceptable after considering functionality and/or Local Production and Content, will points, in accordance with Regulation 6 and 7 be allocated. To strengthen the argument for all intents and purposes points may only be allocated in terms of the regulations from a threshold value of R30 000 and above.

4.5 **In respect of the NT requirements as expressed over various instruction notes as they relate to the applicable threshold of the Preferential Procurement Regulations, 2017:**

- a) The Guide issued by the NT with the PPR's, 2017 states that the evaluation of bids pursuant to the procurement of good/services in a designated sector follows a two-stage process. During the first stage, bids must be evaluated in terms of the evaluation criteria for Local Production and Content as stipulated in the bid documents. Only thereafter are the compliant bids evaluated further in accordance with the 80/20 or 90/10 preference points system prescribed in Preferential Procurement Regulation 6 and 7.
- b) National Treasury's Practice Note 8 of 2007/2008 setting out threshold values for the procurement for goods, works and series by means of petty cash, verbal/written price quotations or competitive bids paragraph 3.6 reads as follows:
"Accounting Officers and Accounting Authorities should apply the prescripts of the PPPFA, 2000 (Act no 5 of 2000) and its associated Regulations for all procurement equal to or above R30 000.00 (VAT included)."
- c) Two Local Production and Content IN's (i.e. IN 3 of 2016/17 and 5 of 2016/17) contains a financial threshold, stating that they apply to the procurement of goods with a value of R30 000.00 and above, the majority of the Local Production and Content IN's do not set a financial threshold for the applicability of the Local Production and Content requirements.

5. **DEPARTMENTS TO NOTE**

- 5.1 For the reasons stated above and in order to comply with the applicable legislation, Western Cape Government's stance communicated to departments since the issuance of the first designated sector Local Production and Content IN with regards to the applicable threshold remains unchanged.
- 5.2 To note further that to implement the Local Production and Content requirements below R30 000.00 would not have the desired impact on the local economy of South Africa. To do so only places an unnecessary added administrative burden on already over legislated process.
- 5.3 Local Production and Content requirements will therefore **NOT** be applied to procurement processes below R30 000.00 for the reasons mentioned in paragraph 4 above and the legal opinion supports this view.
- 5.4 This view is supported by the legal opinion provided by Legal Services and is available to departments upon request.

6. **DEPARTMENTS AND PUBLIC ENTITIES ARE REQUIRED TO**

- 6.1 Ensure that the content of the Circular is brought to the attention of all relevant officials within their institution; and
- 6.2 Utilise the content of this Circular to address the audit related enquiries regarding Local Production and Content.
- 6.3 Any enquiries relating to this Circular may be directed to:

SCM Helpdesk: SupplyChainManagement.HDPFMA@westerncape.gov.za



TASNEEM RAKIEP
ACTING DIRECTOR: PROVINCIAL GOVERNMENT SUPPLY CHAIN MANAGEMENT
DATE: 24 May 2019

Pauline Love-Fortuin

Subject: FW: Local Content instruction note for electrical and telecom cable products

From: Jeyrel Soobramanian [<mailto:Jeyrel.Soobramanian@treasury.gov.za>]
Sent: 28 May 2013 08:35 AM
To: Tasneem Rakiep
Cc: Ryno Alberts; Clint Starling
Subject: RE: Local Content instruction note for electrical and telecom cable products

Dear Tasneem

You are correct the threshold of R30 000 is applicable to all designated sectors.

We are in the process of issuing an instruction note in this regard.

Kind regards

From: Tasneem Rakiep [<mailto:Tasneem.Rakiep@westerncape.gov.za>]
Sent: 27 May 2013 11:03 AM
To: Jeyrel Soobramanian
Cc: Ryno Alberts; Clint Starling
Subject: Local Content instruction note for electrical and telecom cable products

Hi Mr Soobramanian,

I trust you are well.

Paragraph 9.2 of the attached Instruction Note states that the instruction applies to all bids (written price quotations and advertised competitive bids) in excess of R30 000.00 (all applicable taxes included).

Although not explicitly stated, I assume that the threshold of R30 000 is applicable to all sectors that have been designated and not only for electrical and telecom cable products. Please advise, as we would like to clarify this in our issuing Circular.

Kind regards,

Tasneem Rakiep
Provincial Government: Supply Chain Management
Provincial Treasury
Western Cape Government

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APPLICABILITY

The Instruction Notes apply to all:

- National and Provincial Departments;
- Constitutional Institutions;
- Public Entities listed in schedules 2 and 3 of the PFMA; and
- Municipalities and Municipal Entities to which the MFMA applies.
- Applies to all bids (including price quotations) in excess of R30 000.