SUBMISSION

Comment on the General Public Procurement Regulations of 2026

15 July 2026

Attention: Members of the National Treasury, the Public Procurement Office, and the Department of Trade, Industry, and Competition

On behalf of the Institute for Economic Justice (IEJ), thank you for the opportunity to make this written submission in response to the General Public Procurement Regulation of 2026 published in the Government Gazette No 54528 on 16 April 2026.

Given the centrality afforded to public participation in our constitutional democracy, we trust that you will give meaningful consideration to our submission and the considered and substantiated proposals.

Should you have any questions regarding this submission, please feel free to contact Jezri Krinsky, the IEJ's Just Energy Transition Researcher, at jezri.krinsky@iej.org.za.

1. Introduction

Over the past three years, the IEJ has researched the potential for local manufacturing of components for renewable energy systems in South Africa (Alexander and Krinsky, 2026 and forthcoming). During this research, local manufacturers in the sector have reported that many local content requirements appear to have been either waived or simply evaded. This has caused a crisis in the local industry. Many companies stopped receiving orders for renewable energy components. They were driven out of business and forced to diversify into lower value-added, lower employment-intensive activities. This has led to significant job losses and will soon result in a permanent loss of industrial capacity if it is not remedied promptly. It is within this context that we write to you regarding the General Public Procurement Regulations of 2026.

The new draft regulations offer significant progress, after years of legal uncertainty due to the Constitutional Court ruling regarding the Preferential Procurement Regulations of 2017. The new Act of 2024 and the draft 2026 regulations to operationalise the Act form a way forward towards greater enforcement. This ensures the alignment of public procurement with public interest objectives. Within the draft regulation, more detailed consequences for infringement of procurement policy offer a promising solution to frequent disregard for regulations. Further, the maintenance of prequalification strengthens the ability of public procurement to act as a vehicle for broad-based development.

2. Limited reference to local procurement may cause confusion

The new proposed Public Procurement Regulation heavily references the 2024 Public Procurement Act, giving more detail and specificity to many of its core pillars. It forms part of the regulations needed to bring the Act into operation. However, the 2026 Regulations make only minimal reference to Section 20 of the Act on “Designation of sectors for local production and content”.

The only direct references are:

- Section 17(1)(c), which allows for direct state procurement from local manufacturers.
- Section 24(1)(a)(v), which specifies that local content should be used as an evaluation criteria.
- Section 70(1), which includes it in preference obligations.

This limited reference leaves significant details regarding local content requirements unclear, which risks delaying the operationalisation of this section of the Act.

Recommendations

Ensure the Regulations deal more thoroughly with Section 20 of the Act. In particular, ensure the Regulations explain in detail the way in which local content requirements are to be integrated into procurement processes, including:

- How they should be integrated into the selection of contractors for procurement.
- How they should be monitored and enforced.
- What repercussions would arise for contractors who do not enforce them.

3. Local content as prequalification vs points for evaluation

Linked to misunderstandings from a minority judgement within the Constitutional Court case cited above, it is unclear whether local content requirements should form *prequalification* criteria or merely *evaluation* criteria for points-based selection. Prequalification forces all firms submitting bids for public procurement to ensure local content requirements are met within the bid proposal. In contrast, the evaluation based on points makes this an optional addition which may help firms win but is not mandatory. Given the reluctance of Independent Power Producers (IPPs) and Engineering, Procurement, and Construction firms (EPCs) to meet local content requirements (discussed in more detail below), it is possible that firms will simply choose to avoid local content if it is not mandatory. If all bidders do not include significant local content commitments, the procurer would then be forced to choose the bidder with the highest points as described in Section 25 of the draft Regulations.

Recommendations

Clearly move local content requirements to prequalification criteria, rather than simply points used for evaluation.

4. Addressing evasion of local content requirements

A significant local manufacturing base exists. However, it has been heavily damaged by evasion of industrial policies, dumping (particularly of steel products),[1] and a historically irregular demand pipeline for IPP projects. Currently, within the renewable energy sector, many firms are on the verge of closing down due to a lack of demand. Extremely low and erratic order volumes have done massive damage to the local industry. This has resulted in massive layoffs in the sector and prevents sustained skills development. It also means that when employers can rehire, they cannot offer any significant job security. This is because they need a stable demand pipeline, not just one or two contracts.

This can cause a vicious cycle. Low demand reduces the local industry's capacity to meet requirements for local content to be enforced. Local producers may be unable to meet the lead times, technical requirements, or price point required. This could result in a waiver being granted. Further, many firms argue that these requirements have been manipulated by IPPs and EPCs specifically to get waivers. For example, unreasonable technical standards are demanded of local companies, orders are placed with them unnecessarily late, and higher price options are sought from them in quotes deliberately to portray them as uncompetitive. This then further reduces the demand they face. State contractors benefiting from cheap imports may be well aware of this weakness and be able to benefit from playing a long game. That is, they may deliberately drive local manufacturers out of business, even if they incur some disciplinary measures from the state in the short run. Whether or not this long-term destruction of South African industrial capacity is intentional on the part of contractors, it will be an irreversible result if their evasion of local content requirements is left unchecked.

Thus the most important corrective action is that firms should be made to place orders with local manufacturers. This course of action should be favoured because the mass purchase and deployment of locally manufactured goods is vital to the survival and ongoing development of the local sector. This will allow local manufacturers to benefit not only from fiscal sustainability but also from learning by doing, developing experience on the production line, handling relationships with local procuring firms, and demonstrating their products in actual large-scale deployment.

It has further proved difficult during our research to identify written records of waivers granted, or other non-compliance. The Act states:

> (6)(a) If the required quantity of goods subject to a designation in terms of subsection (1) cannot be wholly sourced from local manufacturers or at the designated local content threshold for the period of the designation, or both, the procuring institution may submit a request for a waiver, in the form determined by the responsible Minister.
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> (b) The responsible Minister must, within 30 days, respond to the request for a waiver giving reasons for the decision, failing which approval will be deemed to be granted to the procuring institution that made the request.
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> (c) The responsible Minister may determine by notice in the Gazette and on its website that, until further notice, procuring institutions are granted a waiver from procuring at the

[1] ITAC Notice 3828 of 2026 and Notice 3764 of 2026

stipulated minimum thresholds for local production and content as envisaged in paragraph (a).

(7) If the responsible Minister does not grant the waiver referred to in subsection (6), and the procuring institution has sufficient evidence that the quantity of goods required cannot be wholly sourced from local manufacturers or at the designated local content threshold for the period of the designation, or both, the procuring institution—

(a) may advertise the invitation to bid without a specific condition that only locally produced goods or locally manufactured goods, meeting the stipulated minimum threshold for local production and content, will be considered; and

(b) must, within 14 days after the advertisement, inform the responsible Minister accordingly and of the reasons.

This does not ensure publication in a government gazette under Section 20 (7)(b). This section requires the Minister to be informed that the local content requirements have been dropped and the reasons for dropping them. However, it does not ensure that this information is gazetted. Consequently, this information may not be made publicly available.

Another issue discussed in interviews with state officials is that the state is undercapacitated in its ability to monitor local content requirements. This is a costly and time-consuming activity, and enforcement capacity has been lost due to budget cuts within relevant enforcement authorities.

Recommendations

The Draft Regulation should stipulate that:

- In the event of an investigation (South African Bureau of Standards (SABS) local content verification process) uncovering non-compliance with local content requirements, the deceitful bidder must rectify this by ordering and deploying equipment bought from local manufacturers at their own cost or face debarment.
- DTIC should ensure that all waivers on behalf of either the DTIC or procuring institutions of state are gazetted by the DTIC. This should be written with respect to Section 20 (7) (b) of the Act to ensure that in this eventuality, the public remains informed.
- DTIC should ensure that procuring committees are equipped with skilled personnel who can evaluate claims, and that local suppliers are unable to meet technical standards (which appear to have been abused by contractors to gain waivers).
- Firms should verify their products for local content in a process administered by the SABS. The SABS would award firms that have verified their products a local content certificate that specifies the proportion of local content embedded in the product. The certificate would be used by the firm to bid. Therefore, this would move the verification cost to firms and would standardise the verification processes.

5. Addressing other difficulties and limitations of local content requirements

Several interviews with firms in both the solar and wind sectors have suggested that orders for local manufacturers have been given unreasonably late. As IPPs and EPCs are required to come online at a specified time, this means that local manufacturers would have to be able to supply goods in an impossibly short space of time. Local companies must procure input materials and subcomponents, recalibrate factories to meet exact specifications of orders and potentially retrain staff. The problem is exacerbated by the unstable pipeline faced by local manufacturers. This prevents them from taking any measures which would lower their lead time. They cannot keep excess stock of either finished products or input materials and subcomponents without reliable demand. Factories are often out of work for long periods between contracts. Workers are laid off and must be rehired, and potentially new workers must be trained. Further, manufacturers are unwilling to expand operations or move to high capacity for temporary work as this may be financially ruinous.

Section 20 (4) of the Act states that:

> The sufficient local manufacturers referred to in subsection (3)(a) must be determined by the responsible Minister but may not be less than three local Manufacturers

However, this is an unreasonable requirement which risks destroying local industry. Some strategic sectors have only one supplier. However, this is not due to their intrinsically monopolistic nature but to severe under-demand, forcing many firms to close down or shift sectors. For example, two local manufacturers of solar panels, ArtSolar and Seraphim, used to both manufacture for the South African market. Seraphim appears to have subsequently shut down due to low demand, while ArtSolar has often had to let its plant sit idle (retrenching about 300 workers) in preparation for orders that have never come. There is enough demand in the South African solar market to easily support both local companies and potentially more, but such a competitive local market cannot emerge without local content requirements.

Recommendations

The Draft Regulation should stipulate that:

- Extra time should be granted where necessary to meet local content requirements.
- In consultation with the Competition Commission, local content requirements will be enforced even in cases where there are fewer than three local manufacturers, if it can be shown that competition is likely to emerge in the sector given a more stable demand pipeline.

6. Local content as a tool for ensuring value for money, job creation, and economic development.

A number of other concerns raised in the Regulation would be best addressed by stricter enforcement of local content regulations. These include concerns expressed over driving economic development, alignment with sectoral master plans, decent job creation and obtaining value for money.

The draft Regulations require value for money to be a key consideration for procurement. Within value for money considerations, project lifecycle cost assessments are discussed as a central measure. This should align with local content requirements. While local inputs may have greater upfront costs, there is reason to believe that they will have lower lifecycle costs due to higher quality, greater compliance with local standards, and the creation of a local maintenance industry, which can improve the lifespan and reduce repair costs. Additionally, our research shows that evasion of local content requirements is linked to evasion of quality requirements and specifications. IPPs or EPCs can use comparisons between domestic goods meeting high quality specifications and imports meeting loose specifications to make local industry appear less competitive. Additionally, without on-site checks, neither quality misspecification nor the improper use of imported goods will be detected.

Without linking requirements for these criteria directly to the enforcement of local content requirements, they are detached from their most important potential implementation mechanism.

Recommendations

The Draft Regulation should stipulate that:

- Any investigation uncovering imported goods used in place of local goods committed to by projects should further investigate potential failings to meet quality standards and vice versa.
- Job creation criteria should be met through local content enforcement as an effective policy instrument.
- Local content enforcement should be linked to local manufacturers making meaningful commitments to decent work creation as a condition for the continued support of their industries.
- Lifecycle value for money and sustainable development should be met through local content requirements as an effective policy instrument to deliver these wider policy objectives.

7. Coordination with Tariff Policies

Another important area of policy overlap is with tariff policy. Tariffs have been evaded through staged consignment (a tariff classification where a single tariff heading is used for multiple goods that are part of a single working machine) and the misclassification of components. This has two results that reduce the effectiveness of local content requirements. First, it prevents coordination between demand from the public sector, driven by local content requirements, and the private sector. Low tariffs (through evasion) in the private sector mean that local firms supported by local content requirements are unable to compete in the private sector, and hence benefit from larger, more stable demand. Second, it increases the incentives and perceived competitiveness of evading or gaining waivers for local content requirements. The more discounted imports are compared to local goods, the greater the incentive to use them anyway, whether or not local content is technically required.

Recommendations

The Draft Regulation should stipulate that:

- Any investigation uncovering imported goods used in place of local goods committed to by projects should further investigate potential tariff evasion through mislabeling of goods and vice versa.
- Any waivers issued based on high price differentials between imported and locally manufactured goods must first investigate the possibility that such a difference is exaggerated by tariff evasion.

- Local content requirements should be coordinated with tariff protection to align public and private sector demand for local goods.
- local content policies should be coordinated with tariffs and other industrial policies.

8. Conclusion

In conclusion, the IEJ makes the following recommendations:

Ensure the Regulations deal more thoroughly with Section 20 of the Act. In particular, ensure the Regulations explain in detail the way in which local content requirements are to be integrated into procurement processes, including:

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- Local content enforcement should be linked to local manufacturers making meaningful commitments to decent work creation as a condition for the continued support of their industries.
- Lifecycle value for money and sustainable development should be met through local content requirements as an effective policy instrument to deliver these wider policy objectives.
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- Local content requirements should be coordinated with tariff protection to align public and private sector demand for local goods.

The Institute for Economic Justice (IEJ) is a progressive economic policy think tank committed to advancing economic justice, systemic change, and the equitable distribution of resources to ensure rights realisation and planetary wellbeing.

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