

## An industry-led manufacturing initiative



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## RSA Clusters Group

Passion for local manufacturing.  
Innovative ideas.  
Empowering networks.

# Preferential Procurement Regulations (2022)

To whom it may concern,

**To:** National Treasury

**Att:** [CommentDraftLegislation@treasury.gov.za](mailto:CommentDraftLegislation@treasury.gov.za)

**Cc:** DTIC - Messrs T. Phele, T Makube, N. Dlambulo, M. Komani, B. Mamba, S.Ntshobane, L. Gxowa, and M. Shunmoogam

RSA Clusters Group: Casting, Forging and Machining Cluster, Electro Technical Industries Cluster, Rail Manufacturers Cluster, members of the cluster, and affiliated associations

## **RE: PUBLIC COMMENT TO THE PUBLISHED PPR (2022)**

To whom it may concern,

Thank you for the opportunity to make public comment in response to the Preferential Procurement Regulations PPR (2022), as drafted and circulated for comment.

## Introducing RSA Clusters Group NPC

The RSA Clusters Group NPC (henceforth the “manufacturing cluster”) is a non-profit, industry-led cluster initiative with members, consisting of manufacturers and service providers active in various industries across the manufacturing value chain. RSA Cluster Group has a Board and is managed by a Steering Committee of elected leaders. We afford independent businesses the opportunity to work collaboratively to overcome challenges and achieve objectives that would otherwise be too difficult to achieve as individual companies, for the benefit of the cluster and industry as a whole. The manufacturing cluster is focused on growth and development in the manufacturing sector, and aims to increase local content, skills, and employment.

By creating alliances and using collective resources, the cluster aims to stimulate capacity development and utilisation, through the improved competitiveness of South African made products. As a result, the cluster has made localisation, import replacement, and driving down input costs (e.g. energy, raw materials, etc) key focus areas.

We strongly believe that provided the opportunity to address the challenges, South African manufacturers can become globally competitive, more innovative, contribute to local economic development, and create jobs.

Our objectives:

1. Economic Growth and Development where the cluster is concentrated, facilitated by the retention and expansion of manufacturing production.
2. strengthening the cluster community.
3. Addressing challenges and removing roadblocks.

## Table of Contents

<b>Introducing RSA Clusters Group NPC</b>	<b>1</b>
<b>Industry Response to the PPR (2022)</b>	<b>2</b>
Concerning texts identified	3
Concerning omissions from the body of the text	3
Background for our comments on the PPR (2022)	3
<b>Conclusion</b>	<b>4</b>
<b>Annexure A: Additional Comments Related the PPR (2022)</b>	<b>5</b>
Preferential Procurement Policy	5
PPPFA and associated framework	6
PPR (2022)	7
Policy Certainty	8
Affected regulations, directives, and instructions	8
Good governance principles	8
Functionality	9
Decision-making discretion	10
Preference point system	10
Competitiveness	11
Local manufacturing and content designation	12
Broad-based Black Economic Empowerment (B-BBEE)	14
<b>General Recommendations</b>	<b>14</b>
<b>Annexure B: Survey Comments</b>	<b>15</b>

## Industry Response to the PPR (2022)

The sustainability of manufacturing producers in South Africa is at risk without clear guidelines to regulate the action of public procuring entities in the body called “organs of state”. The importance of this proposed regulation has a wide-reaching impact on industries throughout the country, and we believe requires more time for engagement and public comment. We suggest an additional 30-90 days should be added to the comment period.

## **1. Concerning texts identified**

### **A. Section 8. (1) Criteria for breaking deadlock in scoring**

The concerning text: "...contract must be awarded to the tenderer that scored the highest points for specific goals".

Concern details: there are no regulations to guide how and when specific goals are to be applied, and what methodology should be applied to weighting points.

### **B. Section 10. (1) Remedies**

The concerning text: "...false information regarding specific goals, or any matter, in terms of the Regulations..."

Concern details: There are no regulations to guide the structure of how specific goals would be defined and adjudicated, which would be important factors to determine whether there are false declarations.

## **2. Concerning omissions from the body of the text**

A. It is our view that the PPR (2022) is a hollow document has omitted to provide a framework or guide for fear of failing the tests applied by the courts in recent Supreme Court of Appeal and Constitutional Court judgements regarding prior Preferential Procurement Regulations (i.e., the invalidity of PPR (2017)). In doing so, however, the authors of the PPR (2022) document have erred on the side of caution, and as a result caused an array of associated challenges that will need to be dealt with before PPR (2022) could be promulgated.

B. The additional comments provided below (please see Annexure A below), together with survey responses (please see Annexure B below) form an essential part of our Response, and are to be read in conjunction with this review of PPR (2022).

## **3. Background for our comments on the PPR (2022)**

1. South Africa has a substantial manufacturing sector, with concentrations of manufacturing clustered in close proximity to each of the Metros, and to many of the local municipalities.
2. This important sector provides a very good jobs multiplier<sup>1</sup>, and although many of the manufacturing sectors have been in decline in recent years, these industries remain the backbone for development and substantial additional job creation, especially amongst manufacturing producers in the SME sector.

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<sup>1</sup> Supporting the existing industry increases demand and therefore the need for employees to deliver the necessary output. Unlike when procurement spend is sent abroad and only benefits a single local agent or tenderpreneur, the same spend is used to pay staff at a manufacturer that spans from artisans and factory floor workers, to engineers, admin and middle management, marketing, finance and executive management. These people spend their income locally, supporting local stores and vendors, and they may even hire others to help look after their children, clean their home, tend their garden or help them with a side-project SME company.

3. According to the Department of Small Business Development classification of business sizes, over 80% of local manufacturing production companies in South Africa meet the criteria for a small or medium sized business enterprise.
4. The manufacturing Supply Chain in South Africa consists of an extensive grid of interconnected companies, trading with one another for goods and services. Harm to any one company, will have a ripple effect on all those companies linked to it.
5. Manufacturing is an industry that brings with it more self-reliance and independence, as opposed to an economy built on the importation of goods, and a large amount of jobs are tied to the fortunes of foreign countries and companies, the country has less control over its future prospects. Skills also tend to become support focused, losing value when there is no longer support required. Manufacturing skills remain valuable, as they are tangible technical skills.

## Conclusion

South Africans cannot deny that we have many challenges facing us, or that there are some things that we keep trying, even though nothing good has come of them. All stakeholders in our economy are affected, no matter what their status or their role in life. As such this diverse group (for example including: preachers, politicians, teachers, judges, fathers, mothers, investors, grant recipients, business men and women, property owners, or impoverished people), we dream and have a deep held desire for improvement. We are anxious about unemployment, and want our children to have a chance at a better future. As such, we believe that we have a common goal, and that we share the same such obligation: to use our resources wisely.

De-industrialisation has caused jobs to be lost and has exacerbated unemployment. It will take time, resources, and effort to create new jobs, and to restore those that had been lost, before we can start building and expanding. We need to remove constraints blocking economic activity, and reward positive action. Preferential Procurement Regulation will be used to guide that process. Rather than think that Preferential Procurement should be used as yet another tool to drive transformation, we should come to understand that Preferential Procurement really should be used to grow the economy, and in so doing, we will create opportunities for disadvantaged persons. A focus on growing the economy will need to give preference to South African manufactured goods and services. We need to imagine new ways to encourage start-ups, and to nurture businesses through the various business life cycles. More facilitation is needed to help businesses to progress, without restricting them. This remains a problem as South African businesses need to jump through hoops and check boxes, simply to meet the multiple, and sometimes conflicting expectations on them. The cluster is interested in working with the NT and others to address this challenge.

A policy of South African-based companies first is recommended, as these companies are the creators and providers of jobs. To that end, the PPR (2022) needs to be biased in favour of South African companies. The very same directive has been given to companies and state operators in the countries with which we develop strong ties and compete fiercely (e.g. China, India, Brazil and Russia). Ideally, within the South African companies, ownership and B-BBEE compliance can result in the award of additional points.

To create a situation where a South African manufacturing company is eliminated as a supplier, when compared to a services provider who is able to import or supply purely on the basis of a previously disadvantaged status, is what has in recent years served to devastate the South African manufacturing sector This will unfortunately continue until the issue is addressed.

Kind regards,

Steve Jardine  
Managing Director

**RSA CLUSTERS GROUP NPC**

Company Registration: 2021/333769/08



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Signature • 11 April 2022

# **Annexure A: Additional Comments Related the PPR (2022)**

## **1. Preferential Procurement Policy**

By definition, the Preferential Procurement Policy Framework Act (PPPFA), is by our understanding, the framework for the implementation of the procurement policy as contained in Section 217 of the Constitution. We do not profess to be lawyers, but want to establish our baseline for measuring our responses contained in this letter.

The court rulings in the *Afribusiness NPC v The Minister of Finance* (Case no. 1050/2019) provide a clear view of how the courts have interpreted Preferential Procurement and how it should be approached:

1. The correct approach to evaluating tenders is to first ascertain the highest points scorer, and thereafter only considering if there are objective criteria that justify the awarding of the tender to a tenderer with a lower score.
2. A framework (to be created) will guide the organs of state in the exercise of their discretion, should they choose to apply the pre-qualification requirements.
3. Any pre-qualification requirement must have as its objective the advancement of the requirements of s 217(1) of the Constitution.

The judge went further in the analysis (Paragraph 37) and states that “the Minister has failed to create a framework”, and “the Minister cannot create a framework that contradicts the mandated framework” (Paragraph 40).

This raises a number of important questions regarding both the current and the past approaches to Preferential Procurement, to name some:

1. What is the framework referred to here?
2. How is the discretion of organs of state regulated / guided, should they choose to apply pre-qualification requirements?
3. Why was it not implemented before?
4. Why has the National Treasury (NT) struggled to implement an effective framework which deals with “Historically Disadvantaged Individuals” (HDI’s), and the objective criteria as envisaged in the Reconstruction and Development Programme (RDP), and incorporated into the PPPFA?
5. What does this mean for other NT Regulations, many of which have references to preferential procurement?

Our view is that there are important legal issues that need to be dealt with relating to the framework that needs to be addressed in detail before proper public consultation can be initiated. We struggle to understand why this issue raised by the courts was not dealt with earlier by the NT, as it is apparent from their regulations and guides that they have struggled with the concept.

## **2. PPPFA and associated framework**

The court's order of invalidity of the Preferential Procurement Regulations puts the NT, and all stakeholders in a very difficult position. Whilst we urgently need a new PPR to provide clarity on the framework and the regulations, and to fast track public procurement of infrastructure and other projects, it is important to move forward proactively and deal with the issues properly at this time. We cannot afford another procurement set-back. State procurement is intended to help the country shake the current unemployment dilemma and current agendas include massive expenditure on infrastructure. Once implemented, the infrastructure programme is expected to create construction and manufacturing jobs. Without a framework and associated Regulations, however, we will find ourselves in deep water.

We accept that the PPPFA is not without its difficulties, and that there is a new Procurement Bill that has been drafted for review, that will in due course replace the current Act. We also accept that it may suitably address many of the concerns in question. Timing is, however, an imperative, and we may not have the luxury of time to wait for that bill to be promulgated.

We think that we need to accept the PPPFA, despite short-comings, and focus the majority of our attention on finding suitable remedies to the current challenges presented to us, as the PPPFA does still provide a sound platform from which to move forward.

## **3. PPR (2022)**

The concerns raised by the courts, and the development of an appropriate framework to guide the organs of state to apply their discretion, should be regarded as a critical matter to guide the way forward.

1. We are not able to prescribe, but we can anticipate that the NT will regulate how the individual organs of state implement their independent Preferential Procurement Policies.
2. In our humble view, the responsibility of the Office of the Chief Procurement Officer (OCPO) is to develop policies, set uniform norms and standards for policy application, and to standardise processes. Therefore, it is essential to guide the organs of state to ensure that personal views and ideologies are excluded from the procurement process, with the aim that the state should get good value for each purchase made.
  - a. We do not see that financial rules are the problem, but rather that the rules in the PPR (2022) need to be expanded to include a volume of regulation that provides a clear guide to organs of state, regarding all aspects of procurement related to Preferential Procurement. It needs to ensure that corrective actions are focused on public procurement, the way public procurement deals with preferential goals in their policy, the pre-defined preferences are managed and the method to be applied in weighting preferences for use in the points system. There is no room for random interpretation and wide discretion.
  - b. Certain of the functional requirements of procurement, for instance "Functionality", should not receive special attention in the PPR (2022) as they should be regulated within the core procurement regulations.

- c. The PPR (2022) will need to provide clarity on issues relating to the application of the RDP provisions
- d. The PPR (2022) only focuses on tenders and contracts, but fails to address any of the requirements for preferential procurement in the public procurement of goods and services valued below R 30 million. The value may be of less importance, and interest than that for higher value contracts, but the volume of the transactions, and the cumulative value of these orders is significant, and requires attention in the Regulations.
- e. Associated concerns will also need to be addressed, as procurement processes have been manipulated by some organs of state to introduce and enforce prejudices, and distort the sourcing selection.
- f. Accordingly, the PPR (2022) should make specific mention of: how preferences are identified and adjudicated in the the procurement of goods and services valued below R30 million; how organs of state should apply rotational buying practices, how approved supplier lists are to be used, and the purpose of the Consolidated Supplier Database (CSD) and how it should be applied. In drafting the Regulations, NT should seek to address the concerns of manufacturers, in a system that is not without its own problems. It is frustrating, but innovative methods are currently used to bias decision-making, causing local production to lose out to middlemen, and foreign production.
- g. The practice of over-paying for goods that are freely available from a manufacturer at a lesser price portrays how hollow the process has become, to benefit a few at the cost of upsetting, and causing instability in our manufacturing base.

#### **4. Policy Certainty**

It is on public record that the Minister of Finance, Mr. Enoch Godongwana, has decided to bring an urgent application to the Constitution Court to seek confirmation that the order of invalidity of PPR (2017) has been and continues to be suspended. This interpretation from the court is critical to bring clarity, and to avoid conjecture. Pending that clarification from the courts, there is a lack of policy certainty, and accordingly, none of the stakeholders are able to fully understand or contextualise the impact of the court orders on public procurement, and indirectly on stakeholders.

Should it be ruled that the 12 month order of suspension given by the Supreme Court of Appeal (SCA) to be implemented from the February 2022 date of the Constitutional Court Judgement, there is some time (albeit limited) to take corrective action and facilitate processes that will bring clarity on the policy and PPR (2017) end date, and bring some comfort to all stakeholders.

If there is an alternate view held by the Constitutional Court and the SCA order, i.e. the 12 months suspension was effected from the September 2020 date of the Supreme Court of Appeal Judgement, the problems faced are more immediate and create an environment in which, to our understanding, the preferential provisions of the PPPFA would come into effect.



Despite the uncertainty caused by the court order invalidating PPR (2017), and the resulting impact that it has had on procurement policy certainty, there are still good grounds for us to respond to the PPR (2022) document, as drafted. In the letter and in an annexure thereto, we provide additional comments that we trust will be taken into consideration and hopefully provide useful insights to NT, and other readers.

## **5. Affected regulations, directives, and instructions**

A quick review of NT Regulations has identified that corrective actions are needed to update and clarify regulations, directives, and instructions contained in many of the National Treasury (NT) regulations available on the NT's main and "e-tender" websites. This volume of work will need to be reviewed to remove references to "invalid practices" contained in the PPR (2017).

The review has also revealed that as a number of the Regulations give consideration to the RDP, the task to draft updated PPR (2022) Regulations might be easier to fast-track.

## **6. Good governance principles**

In our view, governance principles developed by the Office of the Chief Procurement Officer in National Treasury (OCPO) should help guide the development of the framework practices that are to be included in the PPR (2022). They ought to guide, instruct, and regulate the procurement-related actions of all organs of state.

We accept that there may be numerous different organs of state, covering a diverse range of focused activities, each with their own independent needs. We imagine that it would be difficult to regulate, unless there are clear guidelines for specific functions that have universal application across all organs of state. Our understanding is that Regulations governing finance and procurement serve a universal function, and accordingly NT, and the OCPO should standardise processes, and provide Regulations to guide the development of the universal understanding, and to limit the functional discretion of procurement practitioners.

We are concerned that some organs of state think that they have unlimited discretion, and that the NT Regulations are simply guidelines that have no direct bearing on their operations. This view of unconstrained discretion has unintended consequences.

We acknowledge that the NT has recognised the need to standardise the multiple regulations that impact procurement (and that there may be as many as 80 such regulations) in an effort to make it easier for procurement practitioners and the suppliers to know what regulations are relevant. This, as a means to guide what is expected of, and ultimately allowed, pertaining to different types of procurement. However, if procurement is to be standardised, and if this standardisation is to help focus attention and reduce wide discretion in the interpretation of preferential procurement, we would suggest that there should be a more concise and properly catalogued guide.

Once developed, This guide will, like a roadmap, help to hone a reader's attention to relevant regulations, and to instructions that will help interpret the regulations. By virtue of this guide, it is possible that less misunderstandings, selective interpretations, and deviations would occur. The guide should be available in a central place, easily accessible to stakeholders. The cluster would like to help provide a third party perspective to the development of the guide, and hope that the OCPO will accept our offer.

## **7. Functionality**

It is in our view that functionality is an essential part of any procurement or supply chain process, and should be dealt with as such. Functionality should be unlinked from preferential procurement management. Non-compliance would be a performance issue and should be managed as such. In addition, the use of rotation buying practices does not encourage supplier development and open competition (See Competition Paragraph 10 Pg.11)

Avoiding irregular and wasteful expenditure is a primary objective of the organs of state, and as such, it makes sense that the goods to be procured would be properly specified, including functional requirements, without which it would be impossible to quantify whether the purchase was relevant, or met the needs of the procuring entities. Specifications define what is needed, and any interpretations thereof, other than what is already regulated, should be dealt with by appropriate mechanisms within the NT.

Those suppliers unable to meet the specifications required, are not suitably qualified. Importantly, they are not disadvantaged, but rather prospects for future development.

It is important to note that organs of state that routinely procure equipment and parts of equipment, should develop their technical competencies. By doing this, they will develop a pool of buyers with specialised skills that will greatly enhance value creation for the state, drive local suppliers to become more competitive, assist industry development, and facilitate the emergence of strong South African competencies. It is vital that buyers understand the nuances of the equipment they procure.

## **8. Decision-making discretion**

It is, in our view, unfair to organs of state and to the procurement practitioners working there, to burden them by leaving them wide discretion on preferential topics, without guidance as to how they might apply that discretion. The procurement practitioners should be spending their time doing procurement related activities, and using their discretion on activities that will improve efficiencies and drive costs down.

## **9. Preference point system**

Organs of state will need clear directives, detailed procurement rules, and process guidelines to help them to navigate the procurement processes related to local

manufacturing and content. The only tool available to them currently as per the PPPFA (and elaborated on in the PPR 2022), for identifying and adjudicating between suitable suppliers, is limited to the point scoring mechanism wherein the vast majority of points are allocated to price. No other framework guide, or tools, are provided to help organs of state to apply their discretion. We think that this is an oversight.

We believe that another mechanism (perhaps external to procurement) should be provided to help drive the decision making process, and whilst it is not immediately clear as to what that mechanism would be, and how it could be applied in the PPR (2022), this mechanism should be the focus of deeper discussion. What is clear, however, is that the point system on its own is not useful.

We are particularly concerned with the points system and the PPR (2022) as drafted, as it provides a strong incentive for the importation of low cost products. We know that South African suppliers suffer numerous challenges that weaken their ability to compete with foreign competitors. It is easy for us to imagine that imported goods will score very well on both the 90:10 and 80:20 evaluations. It is not so easy for us to envisage how organs of state might use the remaining points for development goals.

Applying the full points to local content for instance, would be problematic, as it does not consider other preferential requirements as defined in the PPPFA. By our calculations, even if one preference category was applied, and all preference points were allocated to it, a low cost supplier scoring full points for cost, may nonetheless, still win on points. As discussed above, strengthening of the PPR (2022) is required to clarify and bolster the supply chain and procurement regulations, to ensure that functional aspects of the purchase are dealt with by binding regulations, either in, or external to the PPR (2022). The points system without further regulations presents a significant risk to domestic manufacturers, as they will lose out on new contracts to foreign companies, or importers, and become excluded from their domestic market, which is certainly not in the best interests of our country.

We refer to the PPR (2022) as a 'free market' document, and suggest the NT should reconsider their approach. As it stands, it would appear that they would not be acting in alignment with recognised economic development policies.

## **10. Competitiveness**

The health of our economy and the competitiveness of local suppliers are important issues to consider, agree on, and to take collective action on, in the interest of addressing the short-comings. The role out of incentives to grow the economy require that energy is exerted towards common purpose goals, and that the actions are regulated to avoid discrimination and anti-competitive behaviors.

We cannot ignore the need to invest our resources in improving the economy, to use our know-how and experience to improve businesses and their products, and to use our ambition and passion to drive ideas. We do so with the hope that it will make a meaningful difference.

To compete, we can differentiate our products on price, or we can differentiate the product or service to make it unique. We need enablers, as opposed to constraints to facilitate growth. Preference points to achieve specific goals should encourage and incentivise positive action to create jobs, and discourage inaction and doubt. The impact of competition on business is implied, by using the points system, and cannot be otherwise ignored or left out of the PPR (2022).

The preference points system (See Paragraph 9 Pg. 10), gives preference to the lowest cost bid, and makes allowances for preference categories. Competitiveness is an inherent assumption that, by choosing the lowest price, that bid is the most competitive bid. The PPR (2022) is otherwise silent on competitiveness. We suggest that further guidance is needed, and it is suggested that references to competition are to be made more explicit, and that references to functionality, and to local content designation, are added. Unguided, independent actions of individual organs of state and public procurement practitioners, has the effect of minimising demand volumes, increasing variability, and stifling the ability of local manufacturers to compete. This position is not conducive to driving growth in the economy, nor does it assist to increase competitiveness in the domestic market. Furthermore, we are concerned that the part played by the government in the manufacturing value chain is not well understood, and that isolated decisions taken without clear guidelines on assessing relative competitiveness, are not left to unfettered discretion.

Our concern explained: South Africa has dropped down the International Competitiveness Index (managed locally by Productivity SA) to a level significantly below other developing countries, placing South Africa near the bottom of the International Competitiveness Index. The issues at hand entail a wide range of concerns universal to all of South Africans, including for example: a lack of skills, a lack of reliability of tariffed infrastructure, unemployment and poor service delivery. In this difficult environment, we find it frustrating that importers are considered fair competition, when they do not have to jump through the same hurdles as local manufacturers.

Municipalities are not coordinated, and having not done the necessary maintenance (which presumably could have used local goods and services), and infrastructure is crumbling. This is a double burden as the breakdowns are costly to industry. Operations are often forced to stop, and are unable to run at full efficiency; whilst the lack of maintenance has decreased the volume of work available. This is not sustainable; many manufacturing companies have left South Africa, or simply stopped operating.

Manufacturing production is hard hit by state driven inefficiencies and tariffs that, rather than being competitive to global benchmarks, are forced on industry - paying surcharges and other taxes to subsidise municipal budgets. It has become so bad that cost structures have become totally skewed, and the cost of utility services are now regarded as a major cost driver (sometimes more than 30%) of production costs. The intensifying decline in manufacturing capacity is shown in various economic indicators (e.g. Manufacturing's contribution to the National GDP, and the decrease in electricity demand for Manufacturing).

Skills are another competitiveness driver, yet skills continue to leave the country faster than they are being meaningfully replaced. The scarce skills list includes engineering and management skills, both critical to the management and successful running of manufacturing operations. It is no longer about establishing new homegrown

manufacturers, and although there are some fantastic start-ups, the general trends are downward. We are now in a fight for retention of efficient manufacturing capacity. Rather than being able to attract the skills from elsewhere to work in our factories, we now stand the risk that investors will simply relocate manufacturing production to another country. A good example of this trend is the smelting and mineral conversion industries, which has become too expensive to be run competitively in South Africa.

Whilst we support the principle of competition between local companies, and lowest cost selection in that regard, regulation is needed to guide organs of state as to how their discretion is to be applied in relation to competitive bids. Accordingly, to increase aggregate demand, and give manufacturing the chance to make goods locally. Put simply, we need to retain local content preferences.

## **11. Local manufacturing and content designation**

Those manufacturers remaining in South Africa are made up of an exciting mix of exporters, manufacturers striving to improve their productivity, manufacturers innovating, manufacturers inventing new things, providers of manufacturing services, some well-funded manufacturing start-ups, and a large number of small and medium sized manufacturing businesses. Although many are struggling, there is a hope that conditions will improve. Workers in manufacturing (especially in the steel industry) remain well paid, receiving wages far in excess of the minimum wages. Many other workers have long service with their employers, and are provided support to improve themselves and their families.

Although there are challenges, South Africa has huge market potential in some areas, for example in the manufacture of green hydrogen and ammonia, where a new industry is expected to emerge. In other industries there is potential to expand the market in Regional Value Chains. Every effort is needed to coordinate activities that will retain and expand manufacturing output in line with national objectives.

It is our understanding that local content designation remains an important South African policy intervention, which was not included in the unlawful preferences cited by the SCA. It is an approved policy, which has caused investments into local capacity, and has caused several public and private initiatives to be established. Local content aims to maintain and expand productive output and business revenues, whilst converting South African mineral, human, and capital resources for the benefit of the domestic economy. The preference for local is a decision that was made by the state, and the designation of local manufacturing directs organs of state to buy local. This is not a discretionary choice for an organ of state, and it is certainly not prejudicial to importers, or foreign companies. In our view, foreign companies wanting to supply the private sector in South Africa would, volumes allowing, consider establishing manufacturing facilities in South Africa. Unfortunately, South Africans recognise that there is a massive development need at home, but the international trade community does not. South Africa is in many circles, not considered to be a developing nation, and is not treated as such. This distinction should not cloud domestic thinking, however, as South Africans have a common purpose to find its competitive advantages in today's global marketplace. That being said, there is a need for the levers applied to grow the economy and reduce unemployment, in parallel with, an opening up of our markets.

Our understanding is that local manufacturing and content is a key economic fundamental around which nations across the world have, over the course of time, strived to exert their influence and create competitive advantages for their domestic industries. Preferential considerations are needed from time to time to take advantage of domestic demand to achieve volume scale, improve productivity, facilitate investments into retention and expansion of manufacturing capacity, into new technologies, and to create and retain jobs in South Africa.

Although there may be exceptional circumstances when imported goods need to be procured, the procurement rules should treat importation on designated goods, by exception, requiring an exemption from the Department of Trade and Industry (DTIC) and special approvals from a senior executive in the organ of state, before any such orders are approved. In this instance, the procurement practitioner would have no discretion beyond making the business case for an imported good, and getting approval from a designated senior executive.

There is, however, a need for some discretion that would be applied in terms of the framework (to be developed) to allow for the import of goods that have not been designated for local manufacture and content.

There should be no room for independent and random interpretations of the regulations to be applied, and accountability to deliver the PPR (2022) should be enforced. As there are no regulated processes identified in the PPR (2022), that we could see, that would guide the organs of state as to how they should identify, apply, and adjudicate on local manufacturing and local content, there is a risk that random interpretations of the PPR (2022) could disrupt the development process. This could have unintended consequences for the local economy.

Related regulations need to be developed, and will need to provide a methodology to evaluate and give weighting to conflicting priorities, and provide a guide as to how the associated points would be applied.

We recognise that preference for local manufacturing and content does have its problems, and the dynamics between cost and economic drivers will encourage facilitated actions to reduce the cost deficit. In our view, the preference for local manufacturing and content falls well within the scope of the five major policy objectives outlined in the RDP, as it contains distinct linkages to economic and skills development, job creation and retention, and the provision of meaningful work.

## **12. Broad-based Black Economic Empowerment (B-BBEE)**

We support changes that promote the inclusion and increasing involvement of more previously disadvantaged persons in the economy. Our experience, however, is that B-BBEE has hindered the advancement of black owned manufacturing businesses, and has mostly benefited middlemen that import the majority of goods sold to the organs of state. In some instances where these middlemen buy from domestic manufacturers, they would onward sell the products to an organ of state at a huge profit.

We realise that it is not the B-BBEE Act and associated Regulations that are under review here, but do think that B-BBEE has been unfairly used as a specified goal when allocating preferential points. We agree with the NT rationale that arrived at a similar conclusion, when in the Rationale for the draft PPR (2022), it concludes that ‘the B-BBEE status level of contributor does not provide the opportunity to choose specific preference goals’. The damage that has been caused, has placed a huge burden on the organs of state that have blindly followed the PPR (2017), and in doing so, failed to be able to use B-BBEE to cause the scale of transformation and job creation needed. The judgement is not an attack on transformation, but rather an alert that the PPR (2022) needs to provide a framework to guide the organs of state, to meet the criteria left in their discretion (including B-BBEE).

In our view, there is an imperative for NT to provide the framework, and a methodology for the calculation of preferential points for specific goals relating to Historically disadvantaged persons. We also have a view that the term ‘previously disadvantaged persons’ need to be reviewed, and amended, as needed. Many of the persons falling into this group are no longer disadvantaged, having benefited from B-BBEE and other preferential programmes for several years.

## **General Recommendations**

1. Procurement Practitioners responsible for the purchase of technical goods should be encouraged / required to work in a factory for two weeks to build an awareness and understanding of the products made, and of the associated cost structures, and cost drivers.
2. PPR (2022) should not be limited to contracts alone, and instead should be applicable for all purchases for which preferences apply. Additional regulations are needed to guide organs of state to meet the criteria for values below R30 million, currently left to their own discretion.
3. There should be no preferential price premiums paid to B-BBEE companies. Instead, development funding should be provided to support the development of prospective suppliers (Enterprise Development) and existing suppliers (Supplier Development).
4. B-BBEE should no longer be used as a pre-qualification selection criteria.
5. Surveillance, policing, law enforcement, and collaborative action is needed between the private and public sectors to reduce the number of illicit imports of goods and the export of raw materials and scrap metals.
6. Increasing trade duties is a weak mechanism that might be applied to support increases in the local demand made available to domestic manufacturers in both the public and the private sectors. However, it has draw-backs, and may serve to defeat some of the export potential in the country.

## Annexure B: Survey Comments

We facilitated working groups in order to create awareness, and identify concerns that included our members, and other clusters: MEMSA, Pumps Cluster; and other associations: Middelburg Chamber of Commerce, SAEFA, and Solidarity.

The Response provided here, is collection of ideas and concerns gathered from the broader discourse and does not represent any specific views of any cluster or association mentioned above. They were encouraged to submit their own responses directly to NT.

We also conducted an online survey. Four manufacturers responded to our survey. We asked them what the impact on them would be, if there was no local content designation, and no B-BBEE. These respondents speak for themselves - the answers are unedited.

1. Immediate impact on the company?
  - a. Company A: Loss of sales--job losses
  - b. Company B: If BEE and preferential procurement policies were scrapped, traditional manufacturers like myself would receive better quantities and more orders, and bonus SOCs would save a fortune. Local content would harm the local manufacturers, due to unfairly price weighted imports, which would not allow local manufacturers to get the volumes needed to become competitive through process upgrades and streamlining.
  - c. Company C: Local content is a positive but it always goes hand in hand with backward BEE restrictions. Therefore if BEE were to be removed we would benefit as we would not have to work through BEE middle men which often don't give us the work anyway.
  - d. Company D: The removal of the local content, BBEE and other regulations will result in a re-evaluation of our local investment and more than likely trigger a strategy change to supply SA from Europe.
2. How would the change enable or restrict your company moving forward?
  - a. Company A: Producing less therefore not efficient and higher unit costs
  - b. Company B: If designation of local supply were scrapped it would be utterly devastating for local manufacturing viability, because the imports would flood in very quickly at an unfair price advantage, and in many cases inferior quality, which would be detrimental to the final product.
  - c. Company C: minimal effect
  - d. Company D: Local investment is no longer required and this will enable full imports.
3. What effect would it have on your clients?
  - a. Company A: Inferior imported products
  - b. Company B: We could lose clients to competitors who import because of the unfair pricing. A lot of clients don't care about quality, they only care about cost.
  - c. Company C: Minimal effect
  - d. Company D: Probably higher prices and longer lead times.
4. What effect would it have on your suppliers?
  - a. Company A: Less demand from me to them--loss of sales for them
  - b. Company B: Our suppliers would suffer due to our diminished order quantities or no orders at all.
  - c. Company C: Minimal effect



- d. Company D: We will not procure from South African Suppliers
5. Would you continue to operate as you do now?
- a. Company A: Have to scale operation down
  - b. Company B: I would import more just to be able to offer my customers better prices and to hang onto my business and survive.
  - c. Company C: Continue as normal. We only import where there is no local supply option.
  - d. Company D: Import a lot more
6. How many jobs would be created or lost in your company?
- a. Company A: loss of 60 jobs (employ 250)
  - b. Company B: we could lose all the jobs and either import and supply reducing labour to a minimum (employ 8)
  - c. Company C: loss of 35 (employ 158)
  - d. Company D: 55 jobs will be lost (employ 62)
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