

PORTFOLIO COMMITTEE ON TRADE & INDUSTRY AND TRANSNET FOLLOW-UP COLLOQUIUM ON LOCALIZATION

DATE: Tuesday, 12 February 2019
VENUE: Parliament Cape Town, Room V227
TIME: 11:00 – 13:00



**FEEDBACK ON THE PORTFOLIO COMMITTEE'S
RESOLUTIONS OF 04 DECEMBER 2018**

UPDATE ON LOCOMOTIVES DELIVERY

FEEDBACK ON PORTFOLIO COMMITTEE'S RESOLUTION OF 04 DECEMBER 2018

Topics



TRANSNET'S COMMITMENT TO LOCALIZATION

**TRANSNET'S INVESTIGATION INTO
PROCUREMENT PROCESSES**

ZONDO COMMISSION PARTICIPATION

PORTFOLIO COMMITTEE ON TRADE AND INDUSTRY 04 DECEMBER 2018 RESOLUTIONS

During its sitting of 04 December 2018, the Portfolio Committee on Trade and Industry
Resolved as follows:

- ❖ Transnet to provide a detailed response on: **Update on the development with respect to Transnet's commitment to localization;**
- ❖ Transnet to provide a detailed response on: **Transnet's investigations with respect to its procurement processes;** and
- ❖ Transnet to make sure that any allegation relating to contracts on localization and graft should be referred to the **Zondo Commission**.

REQUEST FOR PROPOSAL: LOCAL CONTENT THRESHOLD AND EVALUATION METHODOLOGY AND CRITERIA

Transnet Request for Proposal (RFP) for the supply of 599 New Dual Voltage Electric Locomotives & 465 New Diesel Locomotives

Part 1: Section 5. Local Content Threshold

5. LOCAL CONTENT THRESHOLD

It is a prerequisite of the Preferential Procurement Policy Framework Regulations 2011 that all procurement activities undertaken by Transnet which involve "designated sectors" [i.e. the purchase of textile, clothing, leather and footwear, power pylons, rolling stock (locomotives and wagons), canned/processed vegetables and/or buses (bus bodies)] shall be subject to the requirements of Regulation 9(1) thereof. Since this RFP falls within these designated sectors, "local content" is a pre-qualification for this acquisition of Electric Locomotives. The stipulated minimum threshold for electric locomotives is 60%. Only locally produced or locally manufactured electric locomotives with this stipulated minimum threshold for local production will be considered.

Transnet reserves the right to evaluate bids in accordance with any instructions issued by National Treasury. Transnet also reserves the right to approach the Minister of Finance for exemption from the Regulations or instructions and to evaluate the bids in accordance with such exemption if granted.

Please note that apart from the stipulated minimum threshold of 60% for Electric Locomotives, the following thresholds must also be met in respect of certain components or activities:

No	Component / Activity	% local content (years)	% local content (3 – 5 years and above)
1	Assembly of locomotives and EHV	100%	100%
2	Car body: - Car body shell - Door system - Windows - Seats (for each interior) - Lighting - Grab pillars and rails - Interior glazing - Cable and wire - Safety equipment - Pipe works and ducts	100%	100%
3	Bogie: - Bogie frame	100%	100%

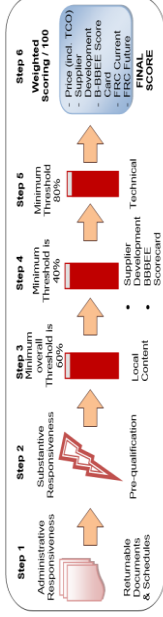
	- Motor suspension unit - Wheel sets and wheel components - Axle and axle boxes - Bearings - Bolster	100%	100%
4	Coupling Equipment - Coupler body - Coupler hook - Yoke - Pin - Draft gear	100%	100%
5	Suspension - Shock absorbers and dampers - Springs	100%	100%
6	Heat, Ventilation and Air Conditioning - Fabrication - Power Coating - Heat Exchangers - Fans - Compressors - Refrigeration components - Electrical components - Fasteners - Insulation and liners	60%	70%
7	Braking system	70%	80%
8	Alternators	90%	100%
9	Traction motors	65%	80%
10	Electric systems	80%	90%

Respondents must complete and return the Declaration Certificate for Local Production and Content appended hereto as Annexure A, C, D & E Only the South African Bureau of Standards (SABS) approved technical specification number SATS 1286:2011 must be used to calculate local content (Annexure L).

Part 2: Section 5. Evaluation Methodology and Criteria

5. EVALUATION METHODOLOGY AND CRITERIA

Transnet will utilise the following methodology and criteria in selecting a preferred Bidder, if so required:



5.3. STEP THREE – LOCAL CONTENT

Respondents to provide a Local Content declaration as requested in the following Annexures of Part 1:

Annexure A: Declaration Certificate for Local Production and Content [FORM SBD 6.2] and Annexure C: Local Content Declaration: Summary Schedule.

The test for a minimum threshold of 60% for Local Content and designated components/activities threshold [Step Three] must be passed for a Respondent's Proposal to progress to [Step Four] for further evaluation.

5.7. SUMMARY: EVALUATION THRESHOLD AND WEIGHTINGS

PRE-QUALIFICATION EVALUATION CRITERIA	MINIMUM THRESHOLD
Local content and Component/ Activity	60% and as stipulated in Annexure C
Supplier Development and B-BBEE	40%
Technical	80%

DEVELOPMENT WITH RESPECT TO TRANSNET'S COMMITMENT TO LOCALIZATION

- ❑ Local Content was included on the Request for Proposal, however, upon conclusion of the Contracts in March 2014, the Contracts made no provision of Local Content remedies should the OEMs not fulfil the Department of Trade and Industry (the DTI) obligations as stipulated in the Rail Rolling Stock Instruction Note.
- ❑ Forensic Investigations conducted at Transnet's instance have found that the 1064 Locomotive Tender process was fraught with irregularities as a result the Acquisition Contracts with the four Original Equipment Manufacturers (OEMs) will be re-negotiated to regularise, to the extent possible, those Clauses in the Contracts that gave rise to the irregularity. Local Content and Supplier Development commitments will form part of the renegotiation of the Contracts process.
- ❑ Transnet has met with the DTI, who has committed to support Transnet in any engagements with the OEMs to enforce Local Content.

TRANSNET'S INVESTIGATION WITH RESPECT TO ITS PROCUREMENT PROCESSES

- ❑ Transnet SOC Ltd (Transnet) has contracted MNS Attorneys earlier in 2018 after the investigation conducted by Werksmans Attorneys was deemed inconclusive. The recommendation following the MNS investigation was that the Transnet Board of Directors initiates disciplinary actions to all employees concerned;
- ❑ To date, Transnet has acted on the recommendations and undertook to suspend/dismiss the employees concerned;
- ❑ Criminal cases have been instituted upon the said employees;
- ❑ Summons have been issued against these employees to recoup any monies that were lost by Transnet in the 1064 Locomotives Acquisitions and related transactions;

TRANSNET'S INVESTIGATION WITH RESPECT TO ITS PROCUREMENT PROCESSES

- ❑ Summons have also been issued against Regiments Capital and Trillian, who were Transaction Advisors in the 1064 Acquisition Process, to recover monies unlawfully paid to them by/or at the instance of the following employees:
 - Siyabonga Gama;
 - Brian Molefe;
 - Anoj Singh;
 - Garry Pita;
 - Thamsanqa Jiyane;
 - Lindiwe Mdletshe; and
 - Phetolo Ramosebudi.
- ❑ The Zondo Commission, the SIU, the Asset Forfeiture Unit and the Hawks are investigating the 1064 Locomotive transactions and Transnet is fully co-operating with these investigations.

PROGRESS UPDATE ON 1064 LOCOMOTIVES DELIVERY

Topics



LOCOMOTIVES DELIVERY UPDATE

BACKGROUND

SUMMARY OF IRREGULARITIES

STATUS OF THE CONTRACT

**POSITION ON LOCAL CONTENT AND
PRODUCTION**

	Inception to 31 December 2018**			FY 2018/19 to 31 December 2018**		
	Planned	Actual *	Δ	Planned	Actual *	Δ
GESAT (233)	233	233(233)	0	0	20 (20)	20
CRRC D (232)*	30	21 (21)	-9	8	0 (0)	-8
CRRC Z (359)	294	220(213)	-74	84	48 (41)	-36
BTSA (240)***	110	30(30)	-80	71	18 (18)	-53
Total	667	504 (497)	-163	163	86 (79)	-77

(*Quantities in brackets indicate delivery to 25 December 2018)

*New schedule from CRRC Dalian (March 2018) displayed

** Take note that schedules are based on calendar months when measuring OEM's

*** BTSA schedule as per the signed addendum dated October 2017

BACKGROUND TO THE 1064 LOCOMOTIVES INVESTIGATIONS

- ❑ The investigation of the 1064 transaction has various components *viz.*:
 - Procurement processes followed in the appointment of the 4 OEMs (**completed**);
 - Capital raising or funding of the 1064 transaction (**about to be finalised**);
 - Appointment and role played by various transaction advisors (**about to be finalised**);
 - Relocation of two of the 1064 OEMs to Transnet Engineering's (TE) Durban facility (**about to be finalised**).

- ❑ This presentation highlights the key findings on the irregularities in the procurement of the 1064 locomotives

SUMMARY OF THE IRREGULARITIES LAWFULNESS OF THE RFP

- Treasury Instruction Note of 16 July 2012, discontinued Transnet's PPPFA exemption;
- Instruction Note issued in terms of section 76 of the PFMA, therefore it has legislative import;
- Section 3(3) of the PFMA prevails over other inconsistent legislation;
- All bids issued after this Instruction Note had to comply with various provisions stipulated therein incl.
- Compliance with Local Content thresholds;
- 90/10 evaluation of Price and BBBEE.
- Only bids meeting the minimum threshold of local content would be evaluated further, whilst price would be evaluated on a 90/10 preference point system.
- Parts 1 and 2 RFPs do not comply with the 90/10 evaluation criteria;
- These contraventions undermined section 217 of the Constitution;
- PPM requires evaluation criteria to be in the tender document; and
- This indicates that PPM does not support splitting of the RFP in two parts with the evaluation criteria only being determined after the issuance of Part 1.

SUMMARY OF THE IRREGULARITIES

UNLAWFUL CHANGE IN THE EVALUATION CRITERIA

Bo-Bo v Co-Co locomotives

- Bidders that submitted bids for both Bo-Bo and Co-Co locomotives were evaluated and scored in accordance with the Functionality evaluation criteria in the RFP
- During evaluation decision taken to change criteria and exclude all the Bo-Bo submissions in favour of the Co-Co ones.
- CNR (which submitted only Co-Co) was excluded from further evaluation of its Electric Bo-Bo submission.
- Transnet deprived of the benefit of properly assessing all the competitive bids that passed the Functionality stage.

TCO Evaluation

- Pre- approved evaluation criteria on Total Cost of Ownership was amended leading to the reduction of Mitsui's score on this sub-element

SUMMARY OF THE IRREGULARITIES

LOCAL PRODUCTION & CONTENT

- Treasury issued Practice Note on 16 July prescribing minimum threshold % for local content production: Rail Rolling Stock as follows:

<i>Classes of Rail Rolling Stock</i>	<i>Stipulated minimum threshold</i>
<i>Diesel locomotive</i>	55%
<i>Electric locomotive</i>	60%
<i>Electric Multiple Units (EMU)</i>	65%
<i>Wagons</i>	80%

SUMMARY OF THE IRREGULARITIES

LOCAL PRODUCTION & CONTENT (cont.)

- Bombardier, CSR and CNR after the Post Tender Negotiations no longer complied with the minimum thresholds on local content production

CNR	GE	Bombardier	CSR
37.57%	56.26%	52.49%	49.58%
Minimum threshold 55%	Minimum threshold 60%		

- Their appointments contrary to PPPFA and Instruction Note was irregular

SUMMARY OF THE IRREGULARITIES

BATCH PRICING

- the RFP : *Transnet does not expect to pay a price premium should it exercise an option of changing quantities*

Negotiations Baseline Worksheet – Price			
Negotiation Point:	Batch Pricing		
Current Offer:	Price changes based upon quantity ordered		
Negotiation Issues	Price remains fixed as if order placed for full 599 electric or 465 diesel		
Comments:			
Most Desirable Outcome (MDO)	Least Acceptable Agreement (LAA)		Target Agreement
Remove batch pricing	Remove batch pricing		Remove batch pricing

- Extra R2,7 billion incurred by Transnet on Batch Pricing only;
- Agreeing to Batch Pricing contrary to the provisions of the RFP was irregular.

SUMMARY OF THE IRREGULARITIES

INCREASE IN THE ETC

- Only the Board can bind Transnet to transactions envisaged in s66(3) which must be read with section 54(2);
- No Ministerial approval and Treasury notification of the revised ETC per s 54(2);
- Board/Molefe incapable of concluding Agreements that are contrary to the PFMA s 54(2);
- Ratification *ex post facto* was invalid i.e. illegal act is incapable of ratification.

FUTURE STATUS OF THE CONTRACTS

- The irregularities identified renders the appointment of the conclusion of the contracts to be irregular
- Transnet is to approach the courts to declare the conduct followed preceding the conclusion of the contracts to be irregular
- The court has a discretion to order a just and equitable remedy on the fate of the 4 contracts after considering amongst others:
 - The extent of delivery of the locomotives by the OEMS
 - Transnet's business needs;
 - Any evidence of corruption in the award, etc.
- Based on the above, Transnet will be in better position to determine future status of each of the contracts

POSITION ON LOCAL PRODUCTION AND CONTENT

- From the earlier slides, it clear there was non-compliance with the required LC thresholds by some of the OEMs at the award stage
- This aspect will be the subject of the court ruling on just and equitable remedy
- DTI assistance required on the ongoing monitoring of LC going forward
- SD compliance is continuously being monitored and Transnet will use the provisions of the Agreement to enforce non-compliance, if any

THANK YOU

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