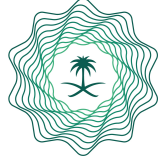


وزارة المالية
Ministry of Finance



شعبة الترجمة الرسمية
Official Translation Department

Regulations on Preference for Local Content and Local SMEs and Companies Listed on the Capital Market in Business and Procurement Transactions

Council of Ministers Resolution No. 245
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Translation of Saudi Laws



NOTE:

The translation of Saudi laws takes the following into consideration:

- Words used in the singular form include the plural and vice versa.
- Words used in the masculine form include the feminine.
- Words used in the present tense include the present as well as the future.
- The word “person” or “persons” and their related pronouns (he, his, him, they, their, them) refer to a natural and legal person.



Regulations on Preference for Local Content and Local SMEs and Companies Listed on the Capital Market in Business and Procurement Transactions

Part 1: Definitions and General Provisions

Article 1

In these Regulations, the following terms and phrases shall have the meanings assigned thereto, unless the context requires otherwise:

Law: Government Tenders and Procurement Law.

Regulations: Regulations on Preference for Local Content and Local SMEs and Companies Listed on the Capital Market in Business and Procurement Transactions.

Minister: Minister of Finance.

LCGPA: Local Content and Government Procurement Authority.

EXPRO: Expenditure Efficiency and Projects Authority.

Committee: The committee, formed in accordance with Article 88 of the Law, in charge of reviewing violations committed by bidders and contracted parties pursuant to the provisions of the Law and concluded contracts.

Government Agency: Ministries, government agencies, and public corporations, authorities, and institutions, as well as entities with independent public legal personalities.

Local SMEs: Local micro-, small-, and medium-sized enterprises, as classified by the Small and Medium Enterprises General Authority, of which 50% or more of the capital is owned by Saudi citizens.

Portal: A unified government procurement portal supervised by the Ministry.

National Product: Any product manufactured in the Kingdom, including all extractive, agricultural, animal, and industrial products, whether in its raw form or at any subsequent stage of assembly, processing, or manufacturing.

Share of National Products: The ratio of the value of national products a bidder undertakes to supply compared to the total bid value, excluding products on the mandatory list.

Local Content: Total spending in the Kingdom through national elements, including goods, services, assets, technology, workforce, and the like.

Local Content Gradual Plan: A mandatory plan prepared and submitted by a contractor which indicates the local content percentage to be reached during execution of the contract.

Local Content Percentage: A percentage indicating the amount of spending on Saudi elements in the contract or in the establishment as compared to total spending.



Targeted Local Content Percentage: The percentage of local content a bidder, upon submitting his tender, undertakes to reach by the end of the contract.

Minimum Local Content: A minimum amount of local content that a contractor is required to reach by the end of the contract.

Baseline: The local content percentage fulfilled by a bidder's establishment upon submitting his tender.

Mandatory List: A list of national products issued and updated by the LCGPA on a regular basis.

Article 2

The provisions of these Regulations shall not prejudice the powers of the General Authority for Military Industries granted thereto under the law.

Article 3

For the application of these Regulations, the amount of a high-value contract shall be determined by the LCGPA in agreement with EXPRO.

Article 4

Upon tendering its projects and procurements, a government agency shall:

1. comply with the mandatory list in accordance with Articles 8 and 9 of these Regulations;
2. grant local SMEs a price preference, by assuming that the bid prices of other establishments are 10% higher than the price stated in the bid documents; such approach shall, with the exception of supply contracts, be applied to all contracts that are not deemed to be high-value contracts;
3. adopt, without prejudice to paragraphs (1) and (2) of this Article, the following local content mechanisms:
 - a) The price preference mechanism for national products, as provided for in Chapter 1 of Part 2 of these Regulations.
 - b) The local content weight mechanism in financial evaluations, as provided for in Chapter 2 of Part 2 of these Regulations.
 - c) The mechanism for determining the minimum local content requirements, as provided for in Chapter 3 of Part 2 of these Regulations.

Article 5

1. The LCGPA shall establish and manage a local content portal linked to the Portal to:
 - a) enable a bidder to register and enter data to assess his local content contribution using LCGPA forms;
 - b) enable a bidder to submit to a government agency his local content obligations using LCGPA forms;



- c) enable a contractor to estimate his local content contribution and monitor its increase during the execution of the contract using LCGPA forms; and
 - d) enable a government agency to monitor and assess the contractor's compliance with local content requirements.
2. If the local content portal is out of service for more than three consecutive days due to technical reasons, the LCGPA shall provide government agencies, bidders, or contractors, an alternative channel for the provision and submission of forms referred to in these Regulations.

Article 6

1. The LCGPA shall prepare the mechanisms and the terms, conditions, and requirements of the local content and submit the same to the Unified Procurement Agency to be included in the contract forms, tender documents, and contractor performance assessment forms.
2. The Unified Procurement Agency shall submit to the LCGPA tender documents for projects and procurements with a value equal to or higher than the amount of high-value contracts to review the mechanisms and the terms, conditions, and requirements of local content, and the LCGPA shall provide its comments, if any, to the Unified Procurement Agency.
3. A government agency shall assess a contractor's performance in terms of his compliance with the provisions of these Regulations using the contractor performance assessment forms referred to in paragraph (1) of this Article.

Article 7

Subject to the provisions of Article 6(1) of these Regulations, a government agency shall ensure that tender documents include, according to their type and value, the following information:

1. A list of the products included within the mandatory list in government projects and procurements.
2. The local content mechanisms required in government projects and procurements in accordance with these Regulations.
3. The terms and conditions of local content mechanisms and bid assessment criteria.
4. A provision excluding the bidder if the targeted local content percentage is not included in the technical bid; such statement shall be included when using either the local content weight mechanism in financial evaluation or the mechanism for determining the minimum local content requirements.

Article 8

1. The LCGPA shall, in agreement with EXPRO, set the rules and criteria required for inclusion in the mandatory list or exclusion therefrom, in coordination with the Ministry of Industry and Mineral Resources, the Saudi Standards, Metrology and Quality Organization, and the Federation of Saudi Chambers.
2. The LCGPA shall issue the mandatory list and regularly update it in accordance with the rules and criteria referred to in paragraph (1) of this



Article.

Article 9

1. Bids which do not comply with the mandatory list shall be excluded from supply tenders or mixed tenders which include supply items. If a bid is divisible, only items not complying with the mandatory list shall be excluded.
2. The government agency shall monitor the contractor's compliance with the mandatory list during execution of the contract and shall not receive any supplied products in violation of the mandatory list; this shall not apply to products that have been exempted for the contractor.
3. The contractor shall comply with LCGPA instructions regarding the delivery of products included in the mandatory list.

Part 2: Local Content Preference Mechanisms

Chapter 1: National Product Price Preference Mechanism

Article 10

1. A government agency shall, in all contracts, apply the National Product Price Preference Mechanism to national products not included in the mandatory list.
2. A national product shall be granted a price preference by assuming that the price of a foreign product is 10% higher than the price stated in the bid documents. Said percentage may be increased upon agreement between the LCGPA and EXPRO, provided that the adjusted percentage is stated in the tender documents.

Article 11

1. In supply tenders, a government agency shall compare the shares of national products of bidders for the purpose of financial evaluation. Financial evaluation shall be based on the adjusted bid value in accordance with the following equation:

$$\text{Adjusted bid value} = \text{bid price (in riyals)} + 10\% \times \text{bid price (in riyals)} \times (1 - \text{share of national products})$$

2. If the tender includes products on the mandatory list and other products, the bid price referred to in the equation provided for in paragraph (1) of this Article shall indicate the value of the other products; the value of the listed products shall be added to the value of the adjusted bid after calculation thereof.



3. In supply tenders, the bidder shall include in the bid the share of national products and shall specify in the bill of quantities whether the supplied products are of national or foreign origin. If the bidder fails to do so, the products shall be deemed foreign and shall not be granted the price preference provided for in Article 10(2) of these Regulations.
4. The percentage provided for in the equation referred to in paragraph (1) of this Article shall be adjusted if the percentage of price preference is increased in accordance with Article 10(2) of these Regulations.

Article 12

A contractor with a government agency shall give preference to national products when purchasing any materials or tools required for the execution of the contract in accordance with the equation referred to in Article 11(1) of these Regulations.

Article 13

1. In a supply contract, a contractor shall provide a government agency with a final report within 30 days from the contract's end date which proves that the supplied products are of national origin, in accordance with the instructions issued by the LCGPA. The government agency shall, prior to approving the report, review the actual share of national products according to the documents submitted by the contractor within 10 working days from receipt of the report. If the government agency does not respond within said period, the report shall be deemed approved.
2. The government agency shall provide the LCGPA through the Portal with a copy of the final report referred to in paragraph (1) of this Article.

Chapter 2: Local Content Weight Mechanism in Financial Evaluation

Article 14

1. A government agency shall apply the local content weight mechanism in financial evaluation to high-value contracts, except for supply contracts.
2. For the purpose of implementing this mechanism, the targeted local content percentage of a contract or establishment shall be calculated according to the terms and conditions stated in the tender documents and the form provided on the local content portal.

Article 15

1. The LCGPA may, in projects and procurements designated thereby, set the minimum local content baseline in coordination with the government agency; the agency shall include the same in tender documents.
2. If the minimum local content baseline is set, a bidder must provide the local



content baseline in his technical bid in accordance with the terms and conditions stated in the tender documents. If the minimum baseline is not met, the bidder shall be disqualified at the technical evaluation phase.

Article 16

1. A bidder shall, subject to the terms and conditions stated in the tender documents, include the targeted local content percentage in his technical bid and shall comply therewith.
2. A bidder shall provide any additional clarifications concerning the targeted local content percentage submitted in his bid upon the request of the government agency or the LCGPA during the bid review phase. The government agency may, in coordination with the LCGPA, disqualify a bid if the clarifications on targeted local content percentage included therein are not adequate.

Article 17

1. A bid which passes the technical evaluation phase shall be evaluated according to the local content weight mechanism in financial evaluation. In such case, the weight of the financial bid shall be 60% (price weight), and the weight of the baseline, the targeted local content percentage, and whether or not the company is listed in the Capital Market during the evaluation shall be 40%. The evaluation shall be calculated based on the following equation:

Financial evaluation outcome =

(the price of the lowest technically qualified bid (in riyals)) ÷ (the bid price under evaluation (in riyals)) × 60% + (targeted local content percentage × 50% + baseline × 50% + 5% for a listed company) × 40%.

2. The LCGPA and EXPRO may increase in the financial evaluation the weight of the baseline, the targeted local content percentage, and the percentage for the company listed in the Capital Market referred to in the equation set out in paragraph (1) of this Article.

Article 18

Notwithstanding the provision of Article 14 of these Regulations, a government agency must apply the local content weight mechanism in financial evaluation to the following cases:

1. Supply contracts designated by the LCGPA, provided that a government agency uses the adjusted bid value in accordance with the equation set in Article 11(1) of these Regulations when applying the equation referred to in Article 17(1) of these Regulations.
2. Government projects and procurements designated by the LCGPA which are



not classified as high-value contracts, provided that a government agency uses the adjusted bid value after granting a price preference of 10% to SMEs in accordance with Article 4(2) of these Regulations.

Article 19

The bid shall be awarded to the bidder with the highest evaluation, provided that the difference between the bid price of such bidder and the lowest bid price of any of the technically qualified bids does not exceed 10%. If the difference in price exceeds said percentage, the bid shall be awarded to the bidder with the second highest evaluation. Said percentage may be increased by agreement between the LCGPA and EXPRO, provided that the adjusted percentage is indicated in the tender documents.

Article 20

A contractor shall submit to a government agency a gradual plan for the local content, whether of the contract or the establishment, using the form designated therefor on the local content portal within a period not exceeding 60 days from the date of awarding the contract. Such plan must be in compliance with the targeted local content percentage. The contractor's compliance shall be reflected in his evaluation, in accordance with Article 6(3) of these Regulations.

Article 21

1. A contractor shall, in accordance with the terms and conditions of the tender documents, submit periodic reports to the government agency to keep it apprised of the extent to which the targeted local content percentage is reached, using the form designated therefor on the local content portal. The government agency shall monitor the contractor's performance during the contract period to evaluate his compliance with the gradual plan, provided that the contractor's compliance with this Article is reflected in his evaluation, in accordance with Article 6(3) of these Regulations.
2. Periodic reports shall, if stipulated in the tender documents, be approved by the LCGPA prior to their submission to the government agency. The LCGPA shall respond within 15 working days from the date of submission; otherwise, such reports shall be deemed approved.
3. The LCGPA may require the annual periodic report to be audited, provided that the conditions for such audit are stated in the tender documents.

Article 22

1. A contractor shall provide the government agency with a final report indicating the local content percentage reached to verify his compliance with the targeted local content percentage, in accordance with the terms and conditions provided in the tender documents.
2. The final report referred to in paragraph (1) of this Article shall be approved by the LCGPA prior to its submission to the government agency. The LCGPA



shall respond within 15 working days from the date of submission; otherwise, the report shall be deemed approved.

3. The LCGPA may require the final report to be audited, provided that the conditions for such audit are stated in the tender documents.

Chapter 3: Mechanism for Determining the Minimum Local Content Requirements

Article 23

A government agency shall apply the mechanism for determining the minimum local content requirements to high-value contracts designated by the LCGPA in agreement with EXPRO, except in supply contracts.

Article 24

1. A government agency shall conduct the studies necessary to determine the minimum local content requirements and shall submit the same to the Unified Procurement Agency for approval, in coordination with the LCGPA, within 15 working days from the date of receipt thereof; if the Unified Procurement Agency fails to respond within said period, the findings of the studies shall be deemed approved.
2. If the minimum local content proposed by the government agency is rejected, the Unified Procurement Agency shall, in agreement with the LCGPA, propose another minimum local content within 15 working days from the date of rejection. If the Unified Procurement Agency fails to respond to said proposal within such period, the mechanism for local content weight in financial evaluation shall be applied to the project.

Article 25

1. A bidder shall, along with his technical bid, submit the targeted local content percentage in a contract, in accordance with the provisions of the tender documents and using the designated form on the local content portal.
2. The targeted local content percentage shall not be less than the minimum limit stated in the tender documents; otherwise, the bidder shall be disqualified at the technical evaluation phase.

Article 26

The provisions provided for in Articles 15, 16(2), 17, 19, 20, 21, and 22 of these Regulations shall apply when implementing the mechanism for minimum local content requirements.

Article 27

Notwithstanding the provision of Article 23, a government agency shall apply



the mechanism for minimum local content requirements to the following:

1. Supply contracts designated by the LCGPA in agreement with EXPRO, provided that the government agency uses the adjusted bid value provided for in the equation referred to in Article 11(1) of these Regulations when applying the equation referred to in Article 17(1) of these Regulations.
2. Government projects and procurements designated by the LCGPA in agreement with EXPRO which are not classified as high-value contracts, provided that the government agency uses the adjusted bid value after granting a price preference of 10% to SMEs in accordance with Article 4(2) of these Regulations.

Part 3: Fines

Article 28

Without prejudice to the right of a government agency to evaluate a contractor's performance in accordance with Article 6, a fine shall be imposed for violating the provisions of these Regulations according to the provisions provided in this Part.

Article 29

If a contractor fails to comply with the share of national products in the national product price preference mechanism provided for in the tender documents, a government agency shall impose on the contractor a fine not exceeding 10% of the value of the supply contract.

Article 30

If a contractor violates the provision of Article 12, as provided for in the tender documents, a government agency shall impose on the contractor a fine not exceeding 10% the value of the item subject of the default.

Article 31

If the difference between the targeted local content percentage and the local content percentage reached by the end of the contract exceeds 5% when applying the local content weight mechanism in financial evaluation and the minimum local content requirements mechanism, as provided for in the tender documents, a government agency shall impose on the contractor a fine not exceeding 10% of the contract value.

Article 32

If the contractor fails to submit the final report referred to in Article 22(1) of these Regulations within the period specified in the tender documents, a government agency shall impose on the contractor a fine not exceeding 10% of the contract



value; said fine shall be calculated as provided for in the tender documents.

Article 33

Upon the approval of the Minister, the fine percentage stipulated in this Part may be increased, provided that bidders are informed thereof prior to bid submission.

Article 34

The fines stipulated in these Regulations shall be imposed on the contractor, provided that the total amount of fines imposed by a government agency under the Law and its implementing regulations and these Regulations does not exceed 20% of the contract value. Such percentage may be increased upon the approval of the Minister provided that bidders are informed thereof prior to bid submission.

Part 4: Final Provisions

Article 35

Without prejudice to the jurisdiction of judicial and monitoring agencies, the LCGPA shall set necessary procedures for receiving and addressing complaints regarding the application of these Regulations. To this end, the LCGPA may coordinate with relevant government agencies and submit necessary recommendations to competent agencies.

Article 36

A committee chaired by the Minister of Economy and Planning with the membership of the Minister of Finance and the Chairman of the LCGPA Board of Directors shall be formed to decide on cases of disagreement between the LCGPA and EXPRO regarding the provisions of Articles 3, 10, 17, and 19 of these Regulations. Committee decisions shall be passed by majority vote.

Article 37

Without prejudice to the provisions of Part 3 of these Regulations, a government agency shall refer a contractor's violations to the Committee for consideration. The Committee may, pursuant to Article 88(3) of the Law, ban a violating contractor from contracting with government agencies or, if classified, lower his classification, or both, if:

1. the difference between the share of national products submitted by the contractor in his bid and the actual share of national products exceeds 50% in supply contracts; the difference shall be calculated as provided for in the tender documents;
2. the difference between the targeted and reached local content percentage



exceeds 15%; the difference shall be calculated as provided for in the tender documents; or

3. the contractor fails to submit the final report referred to in Article 22(1) of these Regulations within the period provided for in the tender documents.

Article 38

Without prejudice to the provisions of Part 3 of these Regulations, a government agency shall refer a contractor's violations to the Committee for consideration. The Committee may, pursuant to Article 88(3) of the Law, ban the contractor from contracting government agencies or, if classified, lower his classification, or both, if:

1. the contractor, in supply contracts, fails to abide by the share of national products stated in his bid in three contracts over three consecutive years and the difference between the share of national products stated in his bid and the actual share of national products exceeds 25% in such contracts;
2. the contractor fails to abide by the targeted local content percentage in three contracts over three consecutive years, regardless of whether the contracts are concluded with one government agency or more, and the difference between the targeted and the reached local content percentage exceeds 10% in such contracts; or
3. the contractor fails to submit the final report referred to in Article 22(1) of these Regulations for three contracts over three consecutive years, regardless of whether the contracts are concluded with one government agency or more.

Article 39

These Regulations shall enter into force on the date the Law enters into force and shall repeal any provision conflicting therewith.