
POLICY ON COMMUNITY PARTICIPATION AND RECRUITMENT AND SELECTION OF LOCAL LABOUR IN CONSTRUCTION CONTRACTS FOR THE DEPARTMENT OF TRANSPORT AND PUBLIC WORKS

DEFINITIONS

In this Policy, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the legislation governing the process has the same meaning, and-

Client Department means the Department for which an infrastructure project is being undertaken

Community Liaison Officer (CLO) means the person appointed by the Contractor to act as a bridge between the Contractor and the community or community representatives in order to promote and maintain a spirit of mutual trust during the execution of a project, operating mainly through the Steering Committee.

Contractor means the company to whom a tender for the construction of the specific infrastructure project has been awarded by the Department.

Department means the Department of Transport and Public Works of the Provincial Government of the Western Cape.

EPWP: CIIE means the unit in the Department responsible for the Expanded Public Works Programme: Construction Industry Innovation and Empowerment.

Implementing Agent means the Department responsible to implement the infrastructure project.

Labourer means an individual from the local community who is interested in obtaining a job on the construction project and is able to do unskilled or skilled manual work.

Media means newspaper, community newspaper, community radio, etc.

Project Steering Committee means a committee established by the Contractor which consists of representatives nominated from the local Community Forum, the Contractor, the Implementing Agent and the Client Department.

Selection means the process through which members of the community are identified as prospective employees.

PREAMBLE

1. The Department is committed to creating work opportunities so as to maximise economic growth and opportunities.
2. Communities should benefit from infrastructure projects being undertaken in their area in as many ways as possible, including through employment on the project of local community members.
3. The Department is cognisant of the influence and pressure which political parties may have had in the past on the methodologies utilised in the selection of individuals to be employed on construction sites.
4. There is a need for a policy that defines the process for the involvement of communities on infrastructure sites and unlocking employment opportunities for those relevant communities in terms of projects undertaken in their respective geographic areas.
5. The communities take co-ownership of the projects in their respective areas through active participation.
6. The Department creates the environment in which the community is allowed to be actively involved in the decision-making and reporting on opportunities arising as spin-offs from projects undertaken by the Department in those communities.

POLICY ISSUE

7. Policy on community participation and recruitment and selection of local labour in construction contracts for the Department.

REGULATORY FRAMEWORK

8. The Constitution of the Republic of South Africa, 1996, Act 108 of 1996 (as amended), Section 217 and 125(2)(d) respectively.
9. Public Finance Management Act, 1999 (Act 1 of 1999 as amended by Act 29 of 1999) Section 38(1)(a)(iii) inclusive of Treasury Regulations, Provincial Treasury Instructions and other prescripts.
10. National Treasury Regulation 16A.3.2 (a) which requires that a supply chain management system is fair, equitable, transparent, competitive and cost effective.
11. The Constitution of the Western Cape, 1998 , per Section 62.
12. The Preferential Procurement Policy Framework Act, 2000, Act 5 of 2000 and its Regulations, 2001.

MANDATE

13. In terms of section 125(2)(d) of the Constitution of the Republic of South Africa, the Premier exercises the executive authority, together with the other members of the Executive Council, by developing and implementing provincial policy.
14. In turn, Section 217(2) states that:
"Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for-
a) Categories of preference in the allocation of contracts; and
b) The protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination."
Subsection 3: National legislation must prescribe a framework within which the policy referred to in subsection (2) may be implemented.

15. With respect to procurement of goods and services, the Western Cape Constitution stipulates in Section 62 that when the Western Cape government contracts for goods and services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective. It further states that the Western Cape government is not prevented, within a framework of national legislation, from implementing a procurement policy providing for categories of preference in the allocation of contracts; and the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.
16. General procurement guidelines issued by the national government, outlines five pillars of procurement, upon which, it is argued, any proper and successful government procurement rests. These pillars are:
- a. Value for money – best value for money means the best available outcome when all relevant costs and benefits over the procurement cycle are considered.
 - b. Open and Effective Competition – this requires a framework of procurement laws, policies, practices and procedures that is transparent; openness in the procurement process; encouragement of effective competition through procurement methods suited to market circumstances; and observance of the provisions of the Preferential Policy Framework Act. In addition, open and effective competition requires that departments apply every effort and research to ensure that, amongst others, costs incurred in promoting competition are at least commensurate with the benefits received.
 - c. Ethics and Fair Dealing – if all parties comply with ethical standards they can deal with each other on a basis of mutual trust and respect; and conduct their business in a fair and reasonable manner and with integrity.
 - d. Accountability and Reporting – openness and transparency in administration, by external scrutiny through public reporting, is an essential element of accountability
 - e. Equity – in the context of the guidelines, means the application and observance of government policies which are designed to advance persons or categories of persons disadvantaged by unfair discrimination. No public procurement system should be operated if it is not founded on this pillar.
17. Section 38(1)(a)(i) and (ii) of the Public Finance Management Act, 1 of 1999 (as amended) determines that:
- (1) The Accounting officer for a department, trading entity or constitutional institution -
- (a) must ensure that that department, trading entity or constitutional institution has and maintains-
 - (i) effective, efficient and transparent systems of financial and risk management and internal control;
 - (ii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective.

POLICY OBJECTIVES

18. To regulate the selection of local labourers on Departmental construction projects.
19. To enable a fair recruitment and selection process in the appointment of labourers.
20. To reduce the possibility of interference in the selection process of labourers
21. To ensure buy-in and participation of the community on the project.

22. To create an enabling environment for communities to benefit from employment opportunities created through the execution of the project in that particular community.

RISK MANAGEMENT

23. The Department will not be liable for any interference by Local Government that is contrary to the spirit and purport of this policy and the mechanisms created herein.

24. Whilst the Department can create an enabling environment for community participation, it cannot force the community to utilise these mechanisms.

POLICY STATEMENT

25. To enable the Department to regulate and standardise practices for ensuring community participation and facilitate the process of the selection of local labour to be employed on constructions sites by the Contractor.

SCOPE OF APPLICATION

26. This policy is applicable to all infrastructure projects undertaken by the Department in which community members are to be selected to be employed as local labour on the construction site.

POLICY PROVISIONS

27. A memorandum of agreement will be signed between the Department and each respective municipality where the Department undertakes infrastructure projects before the commencement of the project agreeing to be bound in good faith to the terms as set out in this policy.

28. The EPWP Unit must work with the implementing agent to ensure the establishment of a Community Forum (where such Forum does not exist in the relevant community).

29. The Forum will consist of Non Governmental Organizations, church leaders and business associations, relevant government authorities and a Community Liaison Officer.

30. It will be the function of the Forum to create awareness about the project and opportunities forth flowing from the project. The rationale is that the community takes co-ownership of the project and is aware of and takes charge of those interventions that will benefit them throughout the lifecycle of the project.

Establishment of a Project Steering Committee and appointment of the Community Liaison Officer

31. The Contractor is required to establish a Project Steering Committee.

32. The Project Steering Committee is to be made up of the Contractor, the Implementing Agent, the Client Department and representatives nominated from the local Community Forum.

33. The Project Steering Committee's functions are to:

- a. Consult on the progress of the project
- b. Joint problem solving and agreement
- c. Assist with the Identification of labour and SMME opportunities
- d. Oversee the selection process of a Community Liaison Officer (CLO)
- e. Oversee the drawing of names of prospective labourers as per the clauses set out under "*The Process of Recruitment and Selection of Local Labour*".

34. It must be noted that at no time will the Project Steering Committee play a direct role in the appointment of local labour – it purely oversees the process.
35. The Project Steering Committee will be used to oversee the selection process of a CLO for the project, in terms of the criteria contained in *Appendix A*.
36. The CLO is appointed by the Contractor.
37. The CLO must be provided with a formal job description containing the necessary duties and functions (as outlined in *Appendix B*) and the conditions of employment (pro forma attached as *Appendix C*) and he/she is required to sign receipt of such documents.
38. The Departmental EPWP: CIIE unit should be included as an observer in the selection process.
39. The area from which possible local employees are to be drawn must be identified and agreed upon by the Project Steering Committee.
40. A community forum meeting must be well advertised in the area, being cognisant of the main language spoken in the area, as well as the media most accessible to the community.
41. Should the area from which possible local labourers are to be drawn be too large, meetings should be held in each ward.
42. A representative from the relevant client department should be present at the public meetings.
43. The following information should be made available at the meeting:
 - a. Details of the project
 - b. Type of work available in the project
 - c. Explanation of work methods to be used, including Labour Intensive Construction methods
 - d. Number of unskilled and skilled work opportunities available

The process of recruitment and selection of local labour

44. A basic job application form is to be distributed to all present and explained.
45. The process that will be followed to determine the selected local labour is to be explained to all individuals present.
46. A basic job application form is to be completed by all present.
47. The prospective labourer is required to place the application in a sealed box.
48. Different application boxes must be provided for each skill or trade as well as for the unskilled.
49. The Steering Committee is to draw double the number of applications from each box in full view of the entire meeting. One list is to be according to the labour requirements (ie the number of opportunities available) and another with the same amount of names for standby – per application box.
50. Individuals whose names are drawn must be contacted and present themselves at the front of the meeting. (It is compulsory that all applicants attend the Community Forum Meeting where the selection process will take place).
51. After the drawing process has been completed, the meeting should be informed of an appeal process to be followed should individuals have a problem with the drawing process.
52. The meeting must be informed of the date by when the successful applicants will be made public.

53. A database of all applications should be compiled after the meeting by the Contractor to ensure that all applications are captured for future reference should the need arise.
54. Once the appeal period has elapsed, the two lists per category must be made public by putting them up in key locations in the community. Lists are also to be provided to the CLO and the steering committee.
55. Workers are to be appointed in the order in which they were drawn from the box ie in the order on the list.
56. Should the successful applicant not accept the work, his or her name is to be removed from the list. Should all people on the first list have been given a chance or appointed, the individuals on the second list are provided with an opportunity on a first drawn first opportunity basis.
57. Should all individuals on the two lists have been afforded an opportunity, then the individuals whose names have been captured in the database (ie the balance of the individuals' who submitted an application into the respective box) should be provided with an opportunity.
58. Only individuals who applied through this application process and whose names appear on the database may be appointed as local labour on the project.

FINANCIAL IMPLICATIONS

59. The financial implications of ensuring the presence of a Departmental EPWP; CIE representative will be carried by Programme 6: Expanded Public Works Programme.
60. The financial implications of implementing this policy requirement are to be included by the Contractor in the contract price submitted by the Contractor.
61. The financial implications are to be considered when submitting the budget for the project and/or unit during the MTEF period.

PROCEDURE FOR NON-COMPLIANCE

62. Non-compliance by Contractors will be dealt with through the terms of the Contract.
63. Non-compliance by members of staff to include this policy stipulation in tender documentation will be dealt with in terms of the Disciplinary Code.
64. Failure to enforce the provisions of the Policy by Departmental Staff is deemed to constitute misconduct and will be dealt with in terms of the Disciplinary Code.

STAKEHOLDERS CONSULTED

65. Departmental Supply Chain Management
66. Construction Industry Development Board
67. SAFCEC
68. Branch; Roads and Transport Management
69. Branch; Provincial Public Works

APPROVAL AND EFFECTIVE DATE

Approved, effective from 1 April 2011.

APPENDIX A:
SELECTION CRITERIA FOR COMMUNITY LIAISON OFFICERS

1. Person's ability to retain information by reading a report and present the information by answering questions correctly.
2. Proven report writing skills.
3. Problem solving ability.
4. Ability to address the community.
5. Credibility and standing in the community.
6. Proven dispute resolution and conflict management skills.
7. Proven negotiation skills.
8. Ability to be firm and assertive

APPENDIX B:
DUTIES AND FUNCTIONS OF THE COMMUNITY LIAISON OFFICER

1. Facilitation of Effective Community Participation Structures for the Project

- 1.1 Liaise with Project Steering Committee and the broader community leadership as required.
- 1.2 Identify and establish contact with interest groups.

2. Transfer of Project Information and Technology

Keep stakeholders informed of project progress and related matters and attend community structure meetings to transfer information and technology regarding the project such as the nature of the works, the programme for the execution of the works, labour based methods employed on works, training programmes and courses, etc.

3. Report Back on Community Needs and Opinions

Report-back to Employer, Engineer and Contractor regarding community needs and opinions as and when such needs and opinions are expressed, in order that appropriate actions may be taken timeously.

4. Up-to-date Information and Applicable Technologies in Respect of Project

Attend site meetings with Employer, Engineer, Contractor(s) and Community Structures to ensure adequate knowledge of objectives, policies and strategic and operational activities on the project. These meetings will take place as determined by the Contractor in conjunction with the Employer.

5. Employment of Labourers

Assist the Contractor with employment of labourers if and when required. Ensure that workers are informed, by the Contractor, regarding job descriptions, work content, normal working hours, expected duration of employment, reimbursements, compulsory deductions and employment conditions.

Ensure that the Contractor meets his/her obligations in respect of workers, eg registration in terms of the Occupational Health and Safety Act, 1993 and the Compensation for Occupational Injuries and Diseases Act, 1993, Unemployment Insurance Fund (UIF), etc. (UIF not required for projects of duration less than 16 months).

Check attendance lists when possible and/or when requested.

6. Dispute Resolution

Facilitate the process of resolution of disputes resulting from any cause, which is not a contractual matter between the Contractor and the Employer of the Contractor. In this regard, the grievance procedures have to be prepared and made available to all involved.

7. Formal Progress Reports

At weekly intervals, or such other intervals as the Employer may require from time to time, the Community Liaison Officer shall submit to the Employer a report in writing and in a format as may be required by the Employer, regarding the duties and functions executed during the preceding week as well as outstanding issues.

The Community Liaison Officer shall maintain a daily diary, which shall be kept up to date, regarding any of his/her duties or functions executed, which diary shall be used to compile the aforementioned progress reports. The abovementioned daily diaries may be requested for perusal by the Employer from time to time.

8. Signing of Attendance Register

The Community Liaison Officer shall be required to sign an attendance register on every working day.

PRO FORMA CONDITIONS OF EMPLOYMENT FOR COMMUNITY LIAISON OFFICERS

WHEREAS

The Employer and the Employee have agreed to enter into this contract of employment, in accordance with the duties and functions outlined in the job description.

IT IS FURTHER AGREED THAT:

1. Save where inconsistent with the terms and conditions contained herein the statutory provisions applicable to the employment relationship shall apply and be deemed to be incorporated herein;
2. The Employee's employment is on a temporary basis to render a liaison service in respect of the project indicated herein;
3. No bonus is payable;
4. Due to the short duration of this project, paid leave does not apply. Unpaid leave will only be considered if arranged timeously;
5. No medical, pension or other benefits are deductible or payable;
6. The Employee's employment period shall be from to
7. Notwithstanding the provision contained in paragraph 6 hereof, either party may terminate the contract of employment by giving written notice and the notice period shall be at least one calendar day;
8. The nature of liaison work is such that the majority of work may be expected to be performed outside normal construction working hours. The basic hours of work per week all for work to be performed during and outside normal construction working hours, including weekends. Overtime therefore does not apply. The liaison officer shall avail him/herself to the Employer within normal construction working hours.
9. Conditions of employment may be revised and amended from time to time to suit prevailing circumstances;
10. Nothing contained herein shall restrict the right of the employer to terminate this contract without notice for any cause recognised in law;
11. Reimbursement of travelling expenses in connection with the project inside is included in the monthly remuneration (salary) of R
12. The Employer undertakes to observe the provisions of the Occupational Health and Safety Act of 1993 and the Compensation for Occupational Injuries and Diseases Act of 1993.

I, the undersigned (being the Employee referred to herein), acknowledge receipt of a copy of this agreement and confirm that I have been made aware of, and fully understand the agreement.

I hold myself legally bound to this agreement and shall observe its provisions.

THUS DONE AND SIGNED AT THIS DAY OF20.....

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EMPLOYEE

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For the EMPLOYER

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WITNESS

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WITNESS