



MINISTRY OF MINES AND MINERALS DEVELOPMENT

**STAKEHOLDER CONSULTATION ON LOCAL
CONTENT REGULATIONS**

1. Background

Zambia's economy has historically been dominated by copper mining, despite post-independence policies to industrialize and diversify the economy. Copper mining accounts for over 70% of the country's foreign exchange earnings and contributed 14.6% to GDP in 2014. Total employment stood at 82,725 people in 2014.

The industry consumed upwards of US\$3 billion annually in input goods and services. While the services are significantly procured locally, almost all the goods are imported. Some estimates put the value of goods procurement at over US\$ 2.5 billion annually. The share of domestic firms in the mining market is less than 4% while the market share of indigenous firms is less than 1%. It is clear therefore that localizing a significant portion of the industry's supply chain, through manufacturing linkages, would not only contribute to industrialization and economic transformation but support greater welfare gains, thus directly alleviating the continuing high levels of poverty and inequalities.

It is against this background that the Ministry of Mines and Minerals Development with the support of the African Development Bank carried out a study on input goods and services in the mining sector in 2017. The study which was completed and launched in 2019 recommended among policy proposals to support implementation of the findings, a legal framework to introduce margins of preference for locally manufactured goods and services and to compel all large-scale mining companies to reserve a proportion of procurement for local goods and services.

In view of the recommendations of the stakeholder meeting to launch the study report on input goods and services in the mining sector, the Ministry has commenced the process of developing a statutory instrument to enforce Section (20) of the Mines and Minerals Development Act No.11 of 2015 and implement the strategy paper on the promotion of local content. This is expected to enhance the participation of Zambians across the mining value chain by localizing a significant portion of the mining companies' procurement expenditure.

2. Introduction

The Ministry in collaboration with Prospero Zambia Ltd conducted stakeholder consultations on the draft statutory instrument to enforce section 20 of the Mines and Minerals Development Act, No.11 of 2015. The consultative workshops were held in Solwezi, Kitwe and Lusaka from 19th to 27th July 2020. The purpose of the consultations was to enrich the SI in its content and to ascertain ways of how to move the SI for adaptation and implementation.

2.1 Composition of officers

The team that undertook the exercise constituted the following officers from the Ministry;

- (i) Ms. Pamela Nakombe - Principal Planner;
- (ii) Mr. George Milongo - Senior Mining Engineer;
- (iii) Mr. George Lungu - Senior M&E officer;
- (iv) Mr. Daniel Chisala - Economist

The team also included the following officers from the Ministry of Justice;

- (i) Ms. Olipa Jere-Sakala -Deputy Parliamentary Counsel
- (ii) Mr. Laston Banda -Parliamentary Counsel
- (iii) Mrs. Helen Phiri Lungu -Senior Bills Transcriber

Team from Prospero

- (i) Mr. Mutale B. Kapilikisha - Sector Lead Mining and Mining services
- (ii) Ms. Sophia Mutalani - Compliant Financial Analyst
- (iii) Dr. Sangwani P. Ngambi - Team Leader and Legal Expert
- (iv) Dr. Marja Hinfelaar - Workshop Facilitator

2.2 Organisation and Attendance

The consultative meetings brought together stakeholders from different constituencies that have a bearing on LC development in Zambia's mining value chain. These included government ministries, private sector business associations, mining companies and civil society organizations. The mix of stakeholders was intended to facilitate consensus building on the diversity of, and sometimes conflicting views and perceptions on local content policies (LCPs) and initiatives in Zambia.

3. Summary of recommendations from Consultative workshops

3.1. Application of the statutory instrument

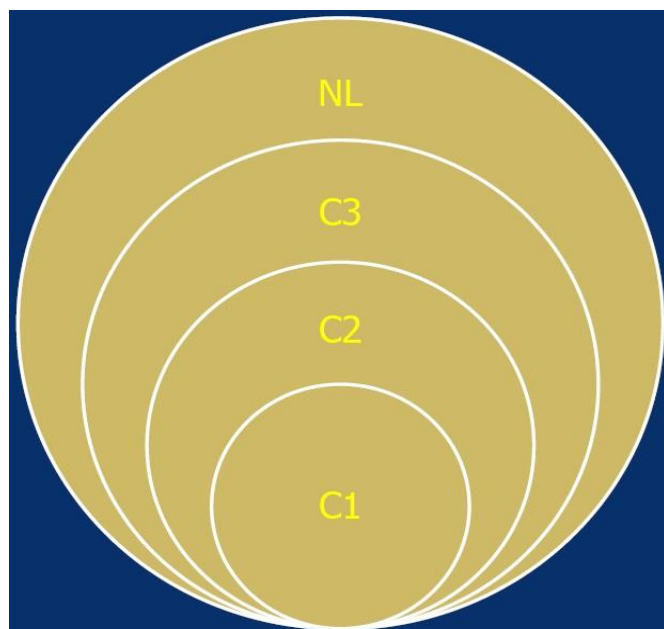
There was a concern that the statutory instrument should not only apply to large scale mining licenses, but also to small scale and mineral processing licenses.

3.2. Possible local content model

In addition to drawing upon mining procurement legislation in Tanzania, Ghana, and Kenya, it was recommended that Zambia's local content SI also utilize the examples of Botswana, South Africa and Brazil.

3.3. Definition of Local Content

“Local content “must be clearly defined in the statutory instrument. It was proposed that in addition to locally manufactured goods and locally sourced services, local content should also include local labour inputs and locally-sourced raw materials. There was also a proposal to categorize local procurement by geographical locations by refereeing or adopting the barrick Lumwana model. This would give priority and advantage to indigenous locals. Below is barrick lumwana procurement categorization scheme.



- **C1:** Means the Principal office is located in the immediate impact area (i.e. Mumena, Matebo or Mukumbi)
- **C2:** Principal office is outside the immediate impact area, but located in North Western Province
- **C3:** Principal office is based anywhere in Zambia except North Western Province

It was also proposed that the statutory instrument should clearly provide detailed targets and timeframes, specify policy objectives and allocate various regulatory and stakeholder responsibilities.

3.4. Governance

The following are some of the recommendations on the proposed governance framework for the roll out of the SI's provisions: Broadening the membership of the local content Unit to include representatives from private sector and public sector in addition to the already listed in the briefing. Some of the institutions that were proposed include:

Private Sector	Public Sector
Association of Mines Suppliers and Contractors (AMSC)	Citizen Economic Empowerment Commission
Zambia Chamber of Commerce	Zambia Revenue Authority
Engineering Institute of Zambia	Ministry of Finance
Zambia Institute of Purchasing	Department of Immigration, Home Affairs

- Decentralize the local content Unit membership and include representatives from local chambers of commerce and proposed towns include Solwezi, Kitwe and Chingola
- Encourage more private sector participation in the local content Unit
- Inclusion of Academia in the local content Board especially representative from University of Zambia –School of Mines
- The Ministry of Mines and Minerals Development should determine the appointments to the Local Content Unit and appointment should be limited to 3 year terms
- The Local Content Unit should report to the office of the Vice President/ Secretary to the Cabinet to ensure inter-ministerial coordination and not the Mining Licensing Committee as indicated in the briefing document.

3.5. Local Content Plans and Progress Reports

- It was proposed that local content plans be submitted by mining rights holders and mineral processing license holders every 2-3 years and that

local content progress report should be submitted on quarterly basis, not annually as proposed in the briefing.

- In addition to the six proposed sub plan in the briefing document, there was a proposal to include manufacturing/ import substitution sub-plan in the local content plans. This should clearly outline how the license holder plans should assist local manufacturing firms and to replace imported manufactured goods with locally manufactured.
- There is need to standardize local content progress reports and ensure that the templates are included as an annex of the SI.
- All mining rights and mineral processing license holders should be legally obligated to establish a “local content department” to facilitate the aforesaid planning and reporting.
- Internship should also be included as part of the gender and youth Sub-Plan
- Facilitation of Joint Venture between foreign and local contractors should be included as part of the Technology transfer sub-plan.
- There is need to prioritize local expertise in lieu of hiring expatriates and there should be the provision of technical training to be included in the employment and training sub-plan.
- There should be full public disclosure of reported information to the Zambia Extractive Industry Transparency initiative (ZEITI) as opposed to the limited disclosure of information proposed in the briefing. However, the decision should be ultimately be determined by the local content board.

3.6. Access to Finance

- It was proposed that an SME fund be included as part of the Supplier Development Programme to be domiciled in the Zambian Commercial Bank e.g. ZANACO, Invest rust etc.
- Introduce and implements Off-take guarantees for local manufacturers (purchasing guarantees). It was further discussed that this measure would discourage competitiveness, promote seeking
- Workshop participants agreed with the proposed provision to cap payment periods for mine suppliers to 30 days to remedy tight short-term cash flows.
- The mine procurement departments/ Tier 1 contractors should provide tender award letters to facilitate access to finance. However, access to finance cannot be adequately remedied by the proposed SI. Lowering lending rates, through reductions in domestic public borrowing and expanding capital markets must be carried out.

3.7. Supplier Development Programme(s)

From the three workshops that were conducted, several participants were in favor of a hybrid Supplier Development Programme which is a combination of options (b) and (c) outlined in the briefing. Option (b) a mining Industry-wide SDP which includes an SME Fund administered by the Zambia Development Agency, under the guidance of Local Content Board that makes targeted interventions in the mining supply chain. Option(c) these are several mine specific SDPs. These are local business development plans currently in force under the Mines and Minerals Development Act no.11 of 2015.

3.8. Procurement

Most of the procurement- related provisions that were recommended by the briefing and the ADB report were supported by the workshop participants. These include the following:

- A reservation scheme for non-core services such as catering, haulage, environmental services, cleaning, security, transportation, and others to provide greater opportunities for citizen-owned, citizen-empowered, and citizen-influenced companies.
- Mandatory joint ventures for core services such as equipment repair, drilling, mine development, instrumentation services, contract mining, etc. These are contracts over a certain monetary threshold providing a minimum equity stake to citizen-owned companies.
- Creation of a list of targeted core and non-core goods for local manufacture. This was developed in consultation with mining industry stakeholders and reference to the Ghanaian model.

3.8.1. Procurement – Health/ Safety Services

Below is the proposed procurement procedure for health/safety services.

Description	Start	5 years	10 years	Measurement Unit
(a) Site cleanup services	30%	60%	90%	Man Hour
(a) Pollution control	20%	30%	45%	Spend

(a) Waste water treatment and disposals services	40%	60%	80%	Man Hour
(a) Industrial cleaning services	50%	80%	90%	Man Hour
(a) Safety, protection, security, firefighting system services	30%	50%	90%	Spend
(a) Preservation of mechanical and electrical component services	30%	50%	90%	Man Hour
(a) Equipment brokerage services	50%	70%	90%	Spend
(a) Temporary accommodation, camp services	50%	60%	80%	Spend
(a) Catering Services	100%	100%	100%	Spend
(a) Cleaning and Laundry Services	100%	100%	100%	Spend
(a) Security Services	100%	100%	100%	Spend
(a) Medical Services	40%	60%	90%	Spend
(a) Other Supporting Services	50%	80%	90%	Spend

3.8.2. Procurement- IT Services

Below is the proposed procurement procedure for IT services.

Description	Start	5 years	10 years	Measurement Unit
(a) Network installation, support services	80%	90%	95%	Spend
(a) Software development	40%	60%	80%	Spend
(a) Software support services	60%	80%	90%	Spend
(a) Computer based modelling services	20%	50%	70%	Spend
(a) Computer based simulations and training programme services	20%	50%	70%	Spend
(a) Hardware installation support services	80%	90%	100%	Spend
(a) Operating system installation and support services	80%	90%	100%	Spend
(a) User support and help desk services	20%	50%	80%	Spend
(a) Information Technology Management consultancy services	30%	50%	80%	Spend
(a) Data Management Services	30%	50%	80%	Spend
(a) Telecommunication installation and Other Information Technology services	50%	70%	90%	Spend
(a) Support services	30%	50%	80%	Spend

However, one possible provision from the briefing that was met with some trepidation was mandatory subcontracting and the example used was the RDA's 20% sub-contracting policy for contracts over 30 million Kwacha. In this view, majority of workshop participants proposed several criticism for the RDA's 20% sub-contracting policy and this includes;

- Poorly enforced with no legislative backing
- Problem of “ front” sub- contractors as outlined in the briefing
- Opportunistic usage of the policy
- 20% subcontracting is not enough and some participants suggested increase to 60%

The consultant responded to the above outlined criticisms by clearly explaining that the proposed SI would give provisions that would possess legislative backing of the Mines and Minerals Development Act No.11 of 2015. The local content unit will be established in the Ministry of Mines and Minerals Development to enforce the provision and a common qualification system would be implemented to conceivably disqualify “front” subcontractors. Therefore, mandatory subcontracting would effectively compel the Mines to unbundle large contracts awarded to Tier 1, OEMs and EPCM contractors

3.9. Enforcement

- Most participants supported the proposed Local Content Unit that will be housed in the Ministry of Mines and Minerals Development to enforce the provisions of the proposed local content regulations.
- In addition to financial penalties for non-compliance, some participants suggested that sustained non-compliance with the provisions of the SI should result in mining license revocation.
- There was also disagreement over the length of the grace period for enforcement of the SI's provisions. The briefing proposed 3-6 months , but participants in Kitwe suggested 2-3 months and Lusaka 6-12 so that running contracts are accommodated

In assessing tenders for goods and services on the local procurement list, the bid containing the highest level of Zambian participation in terms of ownership and management by Zambians and employment of Zambians shall be selected as set out below:

- For bids of ZMW equivalent of \$4,500,000.00 and above, the margin of preference shall be 2.5% of each other
- For bids of ZMW equivalent of \$2,000,000.00 to \$4,499,999.99, the margin of preference shall be 3.0% of each other

- For bids of ZMW equivalent of \$1,000,000.00 to \$1,999,999.99, the margin of preference shall be 5% of each other
- For bids of ZMW equivalent of below \$1,000,000.00 the margin of preference shall be 10% of each other

Opportunity Profiles for Target Goods and Services

1. Diversify Manufacture of Iron and Steel Intermediate Inputs
2. Localise Manufacture of Mill Balls and Rods, and Mill Liners; and Crusher and Feeder Wear Plates.
3. Manufacture of Nuts and Bolts (and wire and nails)
4. Manufacture of Centrifugal Pumps
5. Manufacture of Valves
6. Manufacture of Refractory Bricks and Cements
7. Localise Inputs into the Manufacture of Electrical Components
8. High and Low Tension Porcelain Ceramic Insulators
9. Manufacture of Ammonium Nitrate Feedstock for Explosives
10. Manufacture of Sodium Hydrosulphide
11. Limit Foreign Participation in Non-core Services (Catering, cleaning and security)
12. Participation in Core Business Services (mine development and drilling services, equipment)

Jobs to be done by Zambians only

- i. General Manager roles after three years from the commencement of mining operations;
- ii. Mine Manager roles
- iii. All non-technical services and non-engineering roles irrespective of the level or grade including but limited to the following areas and as may be published by the Ministry :
 - Human Resource and related roles
 - Finance and Accounting and related roles
 - Communication, Community Relations or Sustainability and related roles
 - Legal and Compliance and related roles
 - Corporate Affairs and related roles
 - All roles below the grade of supervisor

The stakeholders agreed that the following services should be left to Zambian firms only:

- a) Supply of stationery, printing of name tags;
- b) Supply of provisions including toiletries;
- c) Provision of weeding, grassing, reshaping/cutting/trimming of hedges, mowing and fencing services;

- d) Provision of cleaning, painting and disinfection/fumigation services;
- e) Provision of rubbish collection, emptying of sewages and other sanitary services;
- f) Physical training, gym training and swimming instructions
- g) Provision of local security/local patrol/neighbourhood watch services by local opinion leaders;
- h) Provision of local health education services;
- i) Provision of minor maintenance services including plumbing, electrical fittings.

4.0 Conclusion

Following the finalization of the consultative meetings, a validation meeting was held with the stakeholders on Monday, 27th July 2020 in Lusaka at the Radisson Blu Hotel. During the validation, it was agreed by participants that Ministry of Mines and Minerals Development should be the Chair of the local content Unit. Participants also expressed their views on the need to have the SI on local Content which has been overdue, considering that participation by Zambians in the mining sector was so low. Further, participants were of the view that the SI be promulgated under the Mines and Minerals Development Act No.11 of 2015 for easy regulation. In terms of managing the common qualification systems of expatriates, the meeting agreed that key institutions and departments such as Engineering Institution of Zambia, Immigration, and Labour etc. will provide relevant guidance.

