

ENERGY (LOCAL CONTENT) REGULATIONS, 2014

IN EXERCISE of the power conferred by section 255 (1) (b) of the Energy Bill, 2014, the Cabinet Secretary makes the following Regulations –

PART I – PRELIMINARY

Citation

1. These regulations may be cited as the Energy (Local Content) Regulations, 2014.

Interpretation

2. In this Regulations, unless the context otherwise requires –

“bid rigging” means the manipulation of a bid process by dishonest means;

“cartelization” means a collection of businesses that act together as a single producer and agree to influence prices for certain goods and services by controlling supply through their production and marketing activities;

“Unit” means the Local Content Unit established under Regulation 7;

“common qualification system” means a sole centralized system of pre-qualified service providers in Kenya's upstream petroleum industry based on their capacities, capabilities and local content strength to enable ranking and categorization of the service providers as well as tracking and monitoring their performance;

“front” means to deceive or behave in a particular manner to conceal the fact that a company is not an indigenous Kenyan company;

“indigenous Kenyan company” means a company incorporated under the Companies Act, Cap 486

(a) that has at least fifty-one percent of its equity owned by a citizen of Kenya; and

(b) that has Kenyan citizens holding at least eighty percent of executive and senior management positions and one hundred percent of non- managerial and other positions;

“licensee” means a person who has been granted a license to undertake energy activities under the Act;

“local content” means the use of Kenyan local expertise, goods and services, people, business and financing before the systematic development of national capacity and capabilities for the enhancement of the Kenyan economy;

“local content monitoring” means keeping track of or monitoring compliance with these Regulations;

“long term local content plan” means a local content plan that covers a period of five years as specified in the First Schedule;

“subcontractor” means a third party to whom licensee or a contractor has entered into a contract for the provision of services, works and goods;

“Energy” means any source of electrical, mechanical, hydraulic, pneumatic, chemical, nuclear or thermal power for any use,; and includes electricity, petroleum (excluding upstream petroleum activities), coal, geothermal, fluid, biomass and all its derivatives, municipal wastes, solar, wind and tidal wave power.

“Energy activities” means the totality of activities in the production, transportation and delivery of energy to consumer including the generation, transmission, distribution, retail, trading of energy and related supporting services

3. These Regulations apply to local content with respect to energy sources operations.

PART II – LOCAL CONTENT OBLIGATIONS

Local content requirement

4. A licensee, contractor or its sub-contractor, or any other entity carrying out operations in the energy subsector shall ensure that the local content is a component of their operational energy activities.

Establishment of local office

5. A licensee, contractor or its sub-contractor, or any other entity, before carrying out any work in the energy activities, shall establish a local office, where procurement, project management and implementation decision making are to take place, to the satisfaction of the Commission.

Participation of a Kenya citizen in energy activities

6. (1) Subject to section 251 (1) of the Energy Bill, Kenyans citizens shall be given the first consideration for employment and training in any operations executed by a licensee, the contractor or its sub-contractor, or any other entity in energy activities.

(2) First consideration shall be given to services provided from within Kenya, to goods manufactured in Kenya, to locally available goods and Kenyans citizens subject to the fulfillment of the conditions specified in these Regulations.

(3) A non-indigenous Kenyan company which intends to provide goods, works or services to a licensee, contractor or its sub-contractor, or any other entity within the country shall incorporate a joint venture company or any other business arrangement with an indigenous Kenyan company and afford that indigenous Kenyan company a participation of at least ten percent of equity or contract value.

(4) A licensee, contractor or its sub-contractor, or any other entity, shall before the commencement of energy activities submit a plan to the Commission specifying;

- (a) the role and responsibilities of the indigenous Kenyan company;
- (b) the equity participation or contract value of the indigenous Kenyan company; and
- (c) the strategy for the transfer of technology and know-how to the indigenous Kenyan company.

Establishment of the
Local Content
Development and
Monitoring Unit

7. The Commission shall establish the Local Content Development and Monitoring Unit (“the Unit”) to monitor, coordinate and implement the provisions of these Regulations.

Local Content Plan

8. (1) In the application for any license, permit or interest and before carrying out any energy activity in Kenya, a licensee shall submit a Local Content Plan to the Commission demonstrating compliance with the Kenyan Local Content requirements of these Regulations.

(2) A licensee shall ensure that its contractors or sub-contractor or any other entities it engages in any energy activity shall submit a Local Content Plan to the licensee for further submission to the Commission demonstrating compliance with the Kenyan Local Content requirements of these Regulations.

(3) The licensee shall, within seven (7) days of the receipt of a local content plan from its contractors or sub-contractors or any other entities it engages in any energy activity and lodge the Local Content Plan to with the Commission.

(4) The Commission shall, within seven (7) days of the receipt of a local content plan, acknowledge receipt and lodge the Local Content Plan to with the Unit.

Review of Local
Content Plan

9. (1) The Unit shall within twenty-one (21) days of receipt of the Local Content Plan submitted under Regulation 8(4), review and assess the plan and inform the Commission in writing of its recommendations.

(2) The Unit shall, if satisfied that the Plan complies with the requirements of these Regulations, recommend the Local Content Plan to the Commission for approval.

(3) Where the Unit is dissatisfied with the Local Content Plan the Unit shall recommend with reasons that the Commission rejects a Plan.

(4) The Commission shall approve the Local Content Plan it is satisfied that the Local Content Plan complies with the provisions of these Regulations and shall communicate its decision to the applicant within seven (7) days of the approval of the recommendations of the Unit.

(5) Where based on the recommendations made by the Unit, the Commission determines not to approve the Local Content Plan, in whole or in part, the Commission, shall within seven (7) days of making that determination, notify the applicant and furnish the applicant with a written statement of the reasons for refusal to approve the Local Content Plan.

(6) Where the Commission refuses to approve the Local Content Plan submitted by the applicant, the applicant shall

(a) revise the Local Content Plan taking into account the recommendations of the Commission, and

(b) within fourteen (14) days, submit the revised Local Content Plan to the Commission.

(7) Where the Commission fails to notify the applicant of its approval or otherwise of the revised Local Content Plan, the revised Local Content Plan shall be deemed approved after sixty (60) days of the submission.

Details in the local
content plan

10. (1) The Local Content Plan submitted to the Commission shall ensure that

(a) first consideration is given to services provided within the country and goods manufactured in the country where the goods meet the specifications of the energy sector as established by the Kenya Bureau of Standards or by other internationally acceptable standards;

(b) qualified Kenyans are given first consideration with respect to employment; and

(c) adequate provision is made for the training of Kenyans on the job; and

(2) Without limiting sub-regulation (1), a Local Content Plan shall have the following sub-plans:

(a) an Employment, Training and Succession Plan;

(b) a Research and Development Plan;

(c) a Technology Transfer Plan;

(d) a Legal Services Plan; and

(e) Financial and Insurance Services Plan

as provided in these Regulations.

Local content levels and requirements for contracts

Minimum local content levels

11. (1) The minimum local content for any energy operations in Kenya shall be of the levels specified in the First Schedule.

(2) A licensee, contractor or its subcontractor, or any other entity shall achieve the minimum local content levels specified in the First Schedule.

(3) Without limiting sub-Regulation (2), the Commission shall take into account the operation of a licensee, contractor or its subcontractor, and any other entity specified in the respective agreement, permits or license in determining the minimum local content levels to be achieved;

(4) Notwithstanding sub-Regulation (3), the Cabinet Secretary in consultation with the Commission, may vary the minimum low content level specified in the First Schedule.

Preference to indigenous Kenyan companies

12. A licensee, contractor or its sub-contractors, or any other entity shall establish and implement a bidding process for the acquisition of goods, works and services to give preference to indigenous Kenyan companies.

Basis of bid evaluation

13. (1) A licensee, contractor or its sub-contractors, or any other entity shall not award a contract based solely on the principle of the lowest bidder.

(2) Where an indigenous Kenyan company has the capacity to execute goods, works and services, the indigenous Kenyan company shall not be disqualified exclusively on the basis that it is not the lowest financial bidder.

(3) Where the total value of the bid of a qualified indigenous Kenyan company does not exceed the lowest bid by more than ten percent, the contract shall be awarded to that indigenous Kenyan company.

(4) Where during an evaluation of bids, the bids are adjudged to be equal, the bid containing the highest level of local content shall be selected.

(5) Where a non indigenous Kenyan company is required to provide goods and services to a licensee, contractor, subcontractor, or any other entity, that non indigenous Kenyan company shall

(a) incorporate a company and operate it from Kenya; and

(b) provide the goods and services in association with an indigenous Kenyan company, where practicable.

(6) The Commission shall establish bid evaluation guidelines in accordance with applicable laws and regulations for ensuring that the year on year progression of the local content objectives of these Regulations are met.

Submission of quarterly forecasts

14. (1) A licensee, contractor, or any other entity engaged in energy activities shall not later than the first day of each quarter submit to the Commission a list of

(a) contract or purchase orders to be sole sourced; and

(b) contracts or purchase orders estimated to exceed the Kenya Shilling equivalent of one hundred thousand United States Dollars and intended to be tendered for or executed in the next quarter.

Provided that the aforementioned requirements shall only apply to non indigenous suppliers.

(2) A licensee, contractor or its sub-contractor, or any other entity shall provide the information specified in the Regulation 15 in respect of each contract or purchase order.

Power to review contract

15. (1) The Commission shall, where it considers necessary, review some contracts entered by licensee, contractors or its sub-contractors or any other entity to ensure compliance with local content requirements.

Employment and Training Plan and Succession Plan

Employment and Training Plan

16. (1) The Employment and Training Plan submitted by a licensee, contractor or its-subcontractor, or any other entity to the Commission with respect to energy activities shall include:

- (a) a forecast of the hiring and training needs of the licensee, contractor or its subcontractor, or any other entity which includes
 - (i) a specification of the skills needed;
 - (ii) the anticipated skill shortages in the Kenyan workforce;
 - (iii) the available list of industrial attachment opening;
 - (iv) the specific training requirements; and
 - (v) the anticipated expenditure that will be incurred by the licensee, contractor or its sub-contractor, or any other entity in implementing the Employment, Training and Succession Plan as forecasted;
- (b) a time frame within which the licensee, contractor, or any other entity will provide employment opportunities for the Kenyan workforce for each phase of the energy activities to enable members of the Kenyan workforce prepare for such opportunities; and
- (c) efforts made and procedures adopted for the accelerated training of Kenyans.

(2) The licensee, contractor or its subcontractor, or any other entity shall provide to the Commission a bi-annual report on:

- (a) employment and training activities for the reporting period; and
- (b) a comparative analysis of the Employment and Training Plan and the employment and training activities to monitor compliance.

(3) The quarterly report shall state the number of new Kenyan employees employed during the respective quarter and their job descriptions.

(4) The Commission may request any further information the Commission considers necessary for the purpose of the implementation of these Regulations

(5) Where Kenyans are not employed because of lack of expertise, licensee, contractor or its sub-contractors, or any other entity shall ensure, to the satisfaction of the Commission that every reasonable effort is made to provide training to Kenyans in that field locally or elsewhere.

Succession Plan

17. (1) A licensee, contractor, or any other entity shall, as part of the Employment and Training Plan, submit to the Commission a succession plan for any employment position that is occupied by a non-Kenyan to ensure that the minimum local content levels specified in the First Schedule are met.

(2) The Succession Plan shall make provision for and require Kenyans to understudy the requirements of the position held by a non-Kenyan for a period determined by the Commission on a case-by-case basis after which the position occupied by the non-Kenyan shall be assumed by the Kenyan.

Middle and junior level positions

18. (1) A licensee, contractor or its sub-contractors, or any other entity engaged in energy activities shall employ only Kenyans in junior level or middle level positions.

Programme for Research, Research Development and Budget Plan

Programme for research, research development and budget

19. A licensee, contractor or its sub-contractors, or any other entity shall, after the execution of agreements, permits or licenses and before the commencement of energy activities, submit a programme for research, research development and budget to the Commission for the promotion of education, practical attachments, training and research and research development in the country in relation to its overall operations and activities.

Research, Research Development and Budget Plan

20. (1) A Research and Research Development Plan submitted by a contractor or its sub-contractor, licensee, or any other entity to the Commission in respect to energy activities shall

- (a) outline a revolving three to five year programme for energy related research and research development initiatives to be undertaken in the country;
- (b) provide details of the expected expenditure that will be made in implementing the Research and Research Development Plan;
- (c) provide for public calls for proposals for research and research development initiatives associated with the activities of the contractor or its sub-contractor, licensee, or any other entity and criteria for selecting proposals which qualify for support; and
- (d) provide the manner in which they shall collaborate with Energy and Petroleum Institute, Kenyan universities and other Kenyan training, learning and research institutes in areas of research and research development.

(2) The licensee, contractor or its subcontractor, or any other entity engaged in energy activities shall

- (a) update its Research and Research Development Plan annually, and
- (b) submit the updated plan to the Commission for review and approval.

Technology transfer programmes and reports

National Plan on
technology transfer

21. The Commission shall in consultation with the relevant Ministries, Departments and Agencies, develop and publish the National Plan on technology transfer with respect to the energy sector

Technology Transfer
programme

22. A licensee, contractor or its sub-contractor, or any other entity engage in energy activities shall support and carry out a programme in accordance with the National Plan on technology transfer and priorities for the promotion of technology transfer to Kenya in relation to the energy sector.

Technology Transfer
Plan

23. A Technology Transfer Plan submitted by a licensee, contractor or its sub-contractor, or any other entity engaged in energy activities shall include a programme of planned initiatives aimed at promoting the effective transfer of technologies from the licensee, contractor or its sub-contractor, or any other entity to an indigenous Kenyan company, established centres of excellence or citizens.

Support for technology
transfer to indigenous
Kenyan companies

24. (1) A licensee, contractor or its sub-contractor, or any other entity engaged in energy activities shall support and facilitate technology transfer as regards the formation of joint ventures, partnering of licensing agreements between indigenous Kenyan companies or citizens and foreign contractors and service companies or supply companies.

(2) The Cabinet Secretary shall consult with relevant Government agencies to propose fiscal incentives to assist:

- (a) non indigenous Kenyan companies which aim to develop technological capacity and skills of citizens; and
- (b) indigenous Kenyan companies which establish factories and production units in the country.

(3) For the purposes of sub-Regulation (2), the Government agencies consulted shall collaborate with the Commission.

(4) The Commission shall propose the criteria for obtaining the fiscal incentives.

Technology Transfer
Report

25. A licensee, contractor or its sub-contractor, or any other entity engaged in energy activities shall submit a Technology Transfer report annually to the Commission stating the technology transfer initiatives being pursued and the current results in relation to the Technology Transfer Plan.

Local insurance services content

Insurance and
reinsurance

26.(1) A licensee, contractor or its sub-contractor, or any other entity engaged in energy activities in the country shall comply with the provisions of the Insurance Act, Cap 487.

(2) The insurable risks relating to energy activities in the country shall be insured through Kenyan insurance companies or a Kenyan brokerage firm or where applicable, a reinsurance broker.

Approval of offshore
insurance

27. (1) A person who seeks to obtain an insurance offshore service relating to energy activities in the country shall obtain written approval of the Insurance Regulatory Authority.

(2) In granting an approval for procuring insurance services offshore, the Insurance Regulatory Authority shall ensure that Kenyan local capacity has been fully exhausted.

Legal and Financial services content

Legal services

28. A licensee, contractor and its sub-contractor, or any other entity engaged in a energy activities that requires legal services in the country shall retain only the services of a Kenyan legal practitioner or a firm of Kenyan legal practitioners whose principal office is located in the country.

Legal Services Plan

29. The Legal Services Plan submitted to the Commission shall include

- (a) a comprehensive report on legal services utilized in the preceding six months by expenditure;
- (b) forecast of legal services required during the ensuing six months where applicable, and the projected expenditure for the services; and
- (c) the annual legal services budget for the ensuing year quoted in Kenya Shillings and United States Dollars.

Financial services

30. (1) A licensee, contractor or its sub-contractor, or any other entity engaged in energy activities that require financial services with respect to energy activities shall retain only the services of a Kenyan financial institution or organization.

(2) Despite sub-regulation (1), a licensee, contractor or its subcontractor, or any other entity may with the approval of the Commission engage the services of a foreign financial institution or organization where such services cannot be provided by a Kenyan financial institution or organization.

Financial Services Plan

31. A licensee, contractor or its sub-contractors, or any other entity engaged in energy activities who has submitted a Financial Services Sub-Plan to the Commission shall specify the following:

- (a) the financial services utilized in the preceding six months by expenditure;
- (b) a forecast of financial services required in the ensuing six months and the projected expenditure for the financial services; and
- (c) a list of financial services utilized in the preceding six months, the nature of financial services provided and the expenditure for the financial services made by the licensee, contractor or its subcontractor, or any other entity.

Operation of bank account in Kenya

32. (1) A licensee, contractor or its sub-contractors, or any other entity engaged in energy activities shall maintain a bank account with a Kenyan bank and transact business through banks in the country.

(2) For the purpose of these Regulations, "a Kenyan bank" means a bank in Kenya which has been licensed by the Central Bank of Kenya.

Local content performance reporting

Requirement for submitting local content performance report

33. (1) A licensee, contractor or its sub-contractor, or any other entity engaged in energy activities shall within forty-five (45) days of the beginning of each year after commencement of energy activities submit to the Commission an annual Local Content Performance Report covering all its projects and activities for the year under review.

(2) The report shall be in a format prescribed by the Commission and shall:

- (a) specify by category of expenditure the local content on both current and cumulative cost basis; and
- (b) show the employment achievement in terms of hours worked by Kenyans and foreigners as well as their job positions and remuneration.

- (c) show the training, industrial and technology transfer achievement availed to Kenyans and foreigners.
- (d) show the actual procurement of goods, works and services executed.
- (e) any other information the Commission may require.

Assessment of performance report

34. (1) The Commission shall, within forty five (45) days after receipt of the Local Content Performance Report, assess and review the Local Content Performance Report to ensure compliance with these Regulations.

(2) For the purposes of assessment and verification of the report, a licensee, contractor and its sub-contractor, or any other entity engaged in energy activities shall allow an employee or a designated agent of the Commission access to their facilities, documents and information as the Commission may require.

Requirement of third party reporting

35. (1) A licensee, contractor or its sub-contractors, or any other entity engaged in energy activities shall ensure that its partners, contractors, subcontractors and other entities are contractually bound to report local content information to the Commission and ensure safe custody of the records.

(2) A licensee, contractor or its sub-contractor, or any other entity engaged in energy activities shall allow an agent or official designated by the Commission access to the records of the licensee, contractor, or any other entity for purposes of assessment and verification of the local content information reported to the Commission.

Availability of information

36. (1) The Commission shall maintain a database that shall contain details of local suppliers, service providers and other entities that meet the local content qualification.

(2) A person may during working hours

- (a) access records that relate to local content which is kept by the Commission and designated as public records; or
- (b) request to be furnished with a certified copy or extract from any document that that person is entitled to access.

(3) The right of a person to inspect or obtain a copy of a document filed or kept in electronic form by the Commission shall extend only to the reproductions of the document in written form in a manner that the Commission determines.

(4) An application for an extract or a certified copy of document requested shall be accompanied by a fee determined by the Commission.

(5) The Commission shall publish on its website, information relating to these Regulations and local content and local participation requirements generally.

Public education and sensitization

37. The Commission shall ensure that public education and sensitization activities are undertaken to educate, licensee, contractor, subcontractors or any other entity, the public and industry stakeholders about the local content policy and philosophy and to ensure the implementation of these Regulations.

Communication of Local Content policies

38. (1) A licensee, contractor or its sub-contractor, or any other entity engaged in energy activities shall

(a) communicate local content policies, procedures and obligations to any person engaged by that licensee, contractor or its sub-contractor, or any other entity to perform an aspect of a energy activity, and

(b) monitor and ensure compliance with local content policies, procedures and obligations.

(2) Notwithstanding sub-regulation (1), a licensee, contractor or its sub-contractor, or any other entity shall make available the local content policies, procedures and obligations of that contractor, licensee, or any other entity available on their respective websites.

Electronic filing of documents

39. (1) The Commission may issue guidelines to provide for a system requiring documents under these Regulations to be filed in electronic form.

(2) The system for filing of documents in electronic form shall provide for

(a) the criteria for authorizing persons to file documents in electronic form, and

(b) the security and authentication of the documents filed.

Establishment of guidelines and procedures by Commission

40. (1) The Commission shall establish and constantly review guidelines and procedures for the effective implementation of these Regulations.

(2) Without limiting sub-Regulation (1), the Commission shall, in consultation with relevant institutions, issue guidelines for compliance by a licensee, contractor or its sub-contractor, or any other entity engaged in energy activities in respect of the following:

- (a) requirements and targets for the growth of research and research development of the energy sector of the country;
- (b) minimum standards, facilities, personnel and technology for training in the energy sector of the country;
- (c) investment in or setting up a facility, factory, production unit or other operation in the country to carry out any production or manufacturing or to provide any energy sector related service otherwise imported into the country; and
- (d) generally for the implementation of these Regulations.

Local Content
monitoring

41. The Commission shall monitor the activities of each licensee, contractor or its sub-contractor, or any other entity engaged in energy activities to ensure the achievement of the purpose of these Regulations within the framework of the National Energy and Petroleum Policy on local content.

Investigations

42. (1) The Commission may for the purposes of enforcing these Regulations initiate an investigation into an activity of a licensee, contractor or its subcontractor, or any other entity engaged in energy activities.

(2) Without limiting sub-regulation (1), the Commission may launch investigations to ensure that

- (a) the Kenyan company principle is not diluted by the operation of a front; or
- (b) bid rigging and cartelization are avoided in the procurement process.

Offences and penalties

43. (1) A person who makes and submits a false plan, returns, report or other documents, commits an offence and is liable on summary conviction to a fine of not less than five hundred thousand shillings or to a term of imprisonment of not less than three (3) years, or both.

(2) A citizen who acts as a front or connives with a non indigenous company or foreigner to deceive the Commission as representing a Kenyan company to achieve the local content requirement under these Regulations, commits an offence and is liable on summary conviction to a fine of not less than one million shillings or to a term of imprisonment of not, less than five (5) years, or both.

(3) A person who connives with a citizen, Kenya or an indigenous Kenyan company to deceive the Commission as representing an indigenous Kenyan company to achieve the local content requirement under these Regulations commits an offence and is liable on summary conviction to a fine of not less than five hundred thousand shillings or to a term of imprisonment of not less than three (3) years, or both.

(4) A person who fails to

- (a) support and carry out a programme in accordance with the National Plan on technology transfer or;
- (b) support and facilitate technology transfer as regards the formation of joint ventures, partnering of licensing agreements between indigenous Kenyan companies, Kenyan companies or citizens and foreign contractors and service companies or supply companies; or
- (c) ensure that its partners, contractors, subcontractors and or any other entities report local content information to the contractor; and
- (d) communicate local content policies, procedures and obligations to any person engaged by that licensee, contractor or its subcontractors, or any other entity to perform an aspect of energy activities;

is in contravention of these Regulations and is liable to pay to the Commission an administrative penalty of five hundred thousand shillings in the first instance and a further penalty of five percent of the penalty for each day that the contravention of the Regulation continues.

(5) A person who fails to

- (a) establish a Local office ; or
- (b) comply with the minimum local content levels for any energy activities; or
- (c) comply with regulations 12; or
- (d) employ only Kenyans in junior or middle level positions; or
- (e) insure the insurable risks relating to energy activities in the country through an indigenous brokerage firm or reinsurance broker; or

- (f) obtain the written approval of the Insurance Regulatory Authority when seeking to obtain an insurance service relating to energy activities; or
- (h) retain only the services of a Kenyan legal practitioner or a firm of Kenyan legal practitioners; or
- (i) operate a bank account in Kenya with a Kenyan Bank;

is in contravention of these Regulations and is liable to pay to the Commission an administrative penalty of not less than one million shillings;

- (k) in the case of a contractor, where the contravention continues after the time specified for remedying the contravention, the Commission shall withhold the approvals and permits required by the contractor for the conduct of energy activities until the time that such contravention is remedied; and
- (l) in the case of a subcontractor, licensee or any other entity, where the contravention continues after one time specified for remedying the contravention, the Commission shall expunge the name of the licensee, contractor or its subcontractor, licensee or any other entity from the Register or persons registered to undertake energy activities.

(6) A person who fails to comply with a request to furnish information or a document under these Regulations within the period specified in the request is liable to pay to the Commission a penalty of not less than one million Kenya shillings in the first instance and a further penalty of ten percent of the penalty for each day that the document remains undelivered.

- (7) A licensee, contractor or its sub-contractor, or any other entity that:
 - (a) carries out energy activities without the required local content requirement; or
 - (b) fails to submit a local content plan; or
 - (c) fails to satisfy the requirement of a local content plan; or
 - (d) fails to inform the Commission of proposed contract or purchase order,

is in contravention of these Regulations and is liable to pay to the Commission a penalty of five percent of the value of the proceeds obtained from the energy activities in respect of which the breach is committed but that penalty shall not exceed one hundred million Kenya shillings or to the cancellation of the agreement, permits or licenses in respect of the energy operations.

(8) A penalty required to be paid under sub-regulations (4), (5),(6) or (7) and which is not paid within the period specified in the notice shall be a debt owed to the Republic of Kenya and recoverable by the Commission from the holder in Court of competent jurisdiction.

Complaints to the
Energy and Petroleum
Tribunal

44. A person aggrieved by the decision of the Commission in relation to the implementation of these Regulations may lodge an appeal within thirty (30) with the Energy and Petroleum Tribunal who shall within sixty (60) days of receipt of the complaint make a decision on it in accordance with section 20 of the Energy Bill, 2014.

Transitional provisions

45. Within three (3) months after the commencement of these Regulations, a licensee, contractor or its sub-contractor, or any other entity engaged in an energy activity shall comply with these Regulations.

**FIRST SCHEDULE
MINIMUM LOCAL CONTENT IN GOODS AND SERVICES**

**PART 1 – LOCAL CONTENT LEVELS TO BE ATTAINED FROM DATE OF EFFECTIVENESS OF
LICENCE, PERMIT OR AGREEMENT**

	Item	Start	50% of duration	75% of duration
1.	Goods and services	30%	60%	80%
2.	Recruitment and training			
(a)	Management staff	30%	40% - 60%	70% - 80%
(b)	Technical core staff	20%	40% – 60%	70% - 80%
(c)	Other staff	70%	90%	100%

PART 2 – SPECIFIC LEVELS TO BE ACHIEVED

1. FEED DETAILED ENGINEERING AND OTHER ENGINEERING SERVICES

Description	Start	50% of duration	75% of duration	Measured Unit
1.1 FEED and detailed engineering on Power Plants and High Capacity transforms	10%	50%	80%	Man-Hour
1.2 FEED and detailed engineering on Dams, LNG Facilities or Wells	10%	40%	70%	Man-Hour
1.3 FEED and detailed engineering on High & Medium Voltages Transmission Lines, Substations and Transformers	20%	50%	70%	Man-Hour
1.4 FEED and detailed engineering on Low Voltages Transmission Lines, Substations and Transformers	30%	70%	90%	Man-Hour
1.5 FEED and detailed engineering on geothermal wells	10%	30%	70%	Man-Hour

2. FABRICATION AND CONSTRUCTION

Description	Start	5 Years	10 Years	Measured Unit
2.1 Dams, Reservoirs, Wellheads, Wind & Solar farms,	20%	50%	80%	Volume
2.2 Drilling modules or packages	20%	50%	90%	Tonnage
2.3 Piles, anchors, buoys, jackets, bridges, flare brooms, storage tanks, pressure vessels	20%	50%	80%	Tonnage
2.4 Topside module (process modules and storage modules)	10%	30%	50%	Tonnage
2.5 Accommodation module	10%	40%	70%	Tonnage
2.6 Powerlines System, Pylons & Substations systems	10%	40%	80%	Tonnage
2.7 Pipeline systems	10%	50%	100%	Tonnage
2.8 Biomass Generation Plants	10%	50%	100%	Tonnage
2.9 Utilities module or packages	10%	20%	50%	Tonnage

3. MATERIALS AND PROCUREMENT

Description	Start	5 Years	10 Years	Measured Unit
3.1 Steel plates, flat sheets, sections	40%	80%	100%	Tonnage
3.2 Steel pipes	40%	80%	100%	Tonnage
3.3 Low voltage cables	60%	80%	90%	Length
3.4 High voltage cables	60%	80%	90%	Length
3.5 Valves and pumps	20%	40%	60%	Number
3.6 Drilling mud-baryte bentonite	40%	70%	80%	Tonnage
3.7 Cement	40%	70%	80%	Tonnage
3.8 Heat exchangers and other piping accessories	10%	50%	80%	Number
3.9 Steel ropes and other mooring accessories	30%	60%	80%	Tonnage
3.10 Protective paints	50%	70%	90%	Litres
3.11 Glass reinforced epoxy (GRE) pipes	20%	50%	70%	Tonnage
3.12 Transformers	40%	70%	80%	Number
3.14 Wooden and Concrete Poles	30%	50%	80%	Number
3.15 Conductors	30%	60%	80%	Length
3.16 Meters	50%	70%	90%	Number
3.17 Bolts and Nuts	60%	70%	90%	Tonnage
3.18 Reinforcement Steel	30%	70%	90%	Tonnage
3.19 Roofing Material	50%	70%	90%	Tonnage

4. WELL DRILLING SERVICES FOR GEOTHERMAL

Description	Start	5 Years	10 Years	Measured Unit
4.1 Reservoir services	20%	40%	75%	Spend
4.2 Well completion services (permanent gauges & intelligent wells)	20%	40%	80%	Spend
4.3 Wireline services (electric open holes, electric cased hole, slickline)	30%	50%	60%	Man-Hour
4.4 Logging while drilling (LWD) (direction and inclination or Gamma ray)	30%	50%	70%	Man-Hour
4.5 Production or drilling service	30%	60%	85%	Man-Hour
4.6 2D Seismic data acquisition services	30%	60%	85%	Length
4.7 Well overhauling or stimulation services	30%	60%	95%	Man-Hour
4.8 Wellhead services	30%	60%	85%	Man-Hour
4.9 Directional surveying services	20%	50%	85%	Man-Hour
4.10 Cutting injections or cutting disposal services	40%	70%	90%	Man-Hour
4.11 Recutting inspection services	40%	60%	85%	Man-Hour
4.12 Cased hole logging services (gyro, perforation, gauges, gyro PLT performance, PLT gauges)	40%	70%	90%	Man-Hour
4.13 Well watch services	30%	50%	70%	Man-Hour
4.14 Cement services	40%	60%	75%	Man-Hour
4.15 Coiled tubing services	20%	40%	75%	Man-Hour
4.16 Pumping services	40%	70%	95%	Man-Hour
4.17 Fluid or bottom hole sampling services	40%	60%	80%	Man-Hour

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4.18 OCTS services (cleaning hardbanding, recutting, rethreading, storage)	40%	70%	95%	Man-Hour
4.19 Well crisis management services	20%	60%	90%	Man-Hour
4.20 Other drilling services	30%	60%	80%	Man-Hour
4.21 Petrophysical interpretation services	30%	50%	75%	Volume/Man-Hour
4.22 Extended well test or early production services including provision of floating or jackup production unit	10%	20%	50%	Spend
4.23 Rental of drill pipe	40%	60%	75%	Spend

5. RESEARCH AND DEVELOPMENT RELATING TO IN-COUNTRY SERVICES

Description	Start	5 Years	10 Years	Measured Unit
5.1 Engineering studies-reservoir, facilities, , wind & solar farms, renewable sources etc.	20%	40%	60%	Spend
5.2 Construction methods and techniques studies	20%	30%	90%	Spend
5.3 Safety and environmental studies	40%	70%	90%	Spend
5.4 Local materials substitution studies	20%	40%	75%	spend

6. TRANSPORTATION, SUPPLY AND DISPOSAL SERVICES

Description	Start	5 Years	10 Years	Measured Unit
6.1 Tugs, remotely operated vehicles (ROV) support, driving support vessels	30%	60%	80%	Spend
6.2 Barges	30%	60%	90%	Spend
6.3 Accommodation platforms, vessels	30%	70%	90%	Spend
6.4 Disposal, distribution and waste transport services	80%	90%	100%	Spend
6.5 Rental of cranes and special vehicles	80%	90%	100%	Spend
6.6 Freight forwarding, logistic management services	80%	90%	100%	Spend
6.7 Supply base, warehouse, storage services	50%	80%	90%	Spend
6.8 Truck package product, transportation services	80%	90%	100%	Spend
6.9 Maintenance services	80%	90%	100%	Spend

7. HEALTH, SAFETY AND ENVIRONMENT SERVICES

Description	Start	5 Years	10 Years	Measured Unit
7.1 Site cleanup services	30%	60%	90%	Man-Hour
7.2 Pollution control	20%	30%	45%	Spend
7.3 Waste water treatment and disposal services	40%	60%	80%	Man-Hour
7.4 Fire and gas protection system services	40%	60%	80%	Man-Hour
7.5 Ventilation, heating sanitary services	50%	70%	85%	Man-Hour
7.6 Waste disposal, drainage services	50%	80%	90%	Man-Hour
7.7 Industrial cleaning services	50%	80%	90%	Man-Hour

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Description	Start	5 Years	10 Years	Measured Unit
7.9 Safety, protection, security, firefighting system services	30%	50%	90%	Spend
7.10 Preservation of mechanical and electrical components services	30%	50%	90%	Man-Hour
7.11 Equipment brokerage services	50%	70%	90%	Spend
7.12 Temporary accommodation camp services	50%	60%	80%	Spend
7.13 Catering service	100%	100%	100%	Spend
7.14 Cleaning and laundry services	100%	100%	100%	Spend
7.15 Security services	100%	100%	100%	Spend
7.16 Medical Services	40%	60%	90%	Spend
7.17 Other supporting services	50%	80%	90%	Spend

8. INFORMATION SYSTEMS, INFORMATION TECHNOLOGY AND COMMUNICATION SERVICES

Description	Start	5 Years	10 Years	Measured Unit
8.1 Network installation, support services	80%	90%	95%	Spend
8.2 Software development	40%	60%	80%	Spend
8.3 Software support services	60%	80%	90%	Spend
8.4 Computer based modeling services	20%	50%	70%	Spend
8.5 Computer based simulations and training programme services	20%	50%	70%	Spend
8.6 Hardware installation support services	80%	90%	100%	Spend
8.7 Operating system installation and support services	80%	90%	100%	Spend
8.8 User support and help desk services	20%	50%	80%	Spend
8.9 Information Technology Management consultancy services	30%	50%	80%	Spend
8.10 Data management services	30%	50%	80%	Spend
8.11 Telecommunication installation and support services	50%	70%	90%	Spend
8.12 Other information technology services	30%	50%	80%	Spend

9. MARINE OPERATIONS AND LOGISTICS SERVICES

Description	Start	5 Years	10 Years	Measured Unit
9.1 Telecommunications services	50%	70%	90%	Man-Hour
9.2 Supply of crewmen for domestic coastal services	80%	90%	95%	Number
9.3 Driving or ROV or submersible Operations	20%	40%	70%	Man-Hour
9.4 Hook-up and commissioning including marine installation services	20%	40%	75%	Man-Hour
9.5 Dredging services	50%	70%	90%	Man-Hour or Spend
9.6 Gravel and rock dumping services	80%	90%	95%	Man-Hour
9.7 Floating Storage Units (FSU)	25%	35%	45%	Man-Hour
9.8 Subsea pipeline protection Services	10%	40%	70%	Man-Hour
9.9 Installation of subsea packages	10%	30%	60%	Man-Hour
9.10 Mooring system services	60%	70%	90%	Man-Hour