

# Unlocking Inclusive Procurement: Reforming Eswatini's Framework for Donor-Funded Infrastructure

Paper by Eswatini Contractors Association (ECA)

## 1. INTRODUCTION

Eswatini stands at a critical juncture in its infrastructure development journey. While donor-funded and nationally financed projects continue to expand, the exclusion of Swati contractors from meaningful participation undermines national development goals, equity, and economic empowerment. A recent African Union study found only 16% of large projects involve domestic private contractors<sup>1</sup>. This imperative was underscored by Mr. Mongezi Mnyani, who stated in a recent interview: “As Africans, we can’t treat investors like they are doing us a favour. They invest because they will get a return on their investment in due time. Ensuring maximum benefit for local economies and communities must be structured into investment agreements.” Similar sentiments are echoed in the briefing note by *Engineers Against Poverty*, a UK-based NGO, which highlights that: “Much of the funding currently invested in infrastructure in low-income countries does not benefit contractors, suppliers and workers from these countries”.

Eswatini is no exception in this challenge as critical infrastructure growth has largely relied on foreign contractors, with domestic contractors being effectively side-lined by procurement rules and practices. Major donor-funded works e.g., the MR14/MR21 roads, the Mkhondvo–Ngwavuma water project, Central Bank expansion, have exposed systemic procurement constraints that disproportionately exclude domestic contractors from meaningful participation. Domestic contractors cite rigid bond/security requirements. Government press statements highlight “*persistent barriers*” keeping Eswatini Contractors Association’s (ECA) affiliated contractors from effectively participating in large construction projects.

As Eswatini deepens its engagement with development finance institutions including the African Development Bank (AfDB), World Bank, Bilateral Donor Grants, and IMF-backed facilities it becomes imperative to evolve the national procurement framework. Beyond regulatory compliance, reforms must be designed to ensure that economic benefits flow meaningfully to the country through:

- **Local Industry Participation:** Strengthening access for domestic contractors through tailored eligibility criteria, scalable security instruments.
- **Post-Pandemic Recovery:** Leveraging infrastructure investment to stimulate domestic employment, enterprise growth, and sectoral resilience.

This paper outlines systemic challenges and proposes actionable reforms to embed local content into procurement frameworks. First it undertakes an analysis, comparing regional procurement models that favour local content. Finally, it synthesizes reforms and propose data/improvement strategies. By making local participation a *procurement priority*, Eswatini can ensure infrastructure investments translate into broad-based growth, skills development, and resilient supply chains<sup>2</sup>.

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<sup>1</sup> AfricaLive, 2021. Only 16% of construction on Africa’s infrastructure is built by local firms. AfricaLive.net. <https://africalive.net/article/only-16-of-construction-on-africas-infrastructure-is-conducted-by-local-firms/> (Accessed 6 Oct. 2025).

<sup>2</sup> Engineers Against Poverty, 2008. Briefing note: Increasing local content in the procurement of infrastructure projects in low income countries. <https://engineersagainstopoverty.org/resource/briefing-note-increasing-local-content-in-the-procurement-of-infrastructure-projects-in-low-income-countries/> (Accessed 6 Oct. 2025)

## 2. BACKGROUND: Contextual Concern in Infrastructure Development

### 2.1. The Eswatini Contractor's Association

**The Eswatini Contractors Association (ECA)** is a representative trade body dedicated to advancing, protecting, and promoting the interests of contractors across Eswatini. Its diverse membership includes small, medium, and large-scale contractors operating in various sectors of the national construction industry. ECA is committed to fostering an enabling environment that champions the integration of local content in infrastructure delivery. It actively advocates for the recognition and participation of local contractors as prime implementers on national projects.

A central issue within Eswatini's infrastructure development landscape is the persistent underutilization of local content in the implementation of infrastructure projects. This occurs despite the presence of national procurement policies that explicitly support and encourage domestic participation. This disconnect between policy intent and implementation practice has raised significant concerns among industry stakeholders. This concern was formally articulated in a press statement issued on 7 September 2025, which underscored the systemic exclusion of Swati contractors from donor-funded construction projects.

#### Definition of Local Content in Construction

In the context of infrastructure development, *Local Content* refers to the meaningful participation of domestic economic actors in the delivery of construction projects. This includes:

- **Local businesses** that are domiciled, registered, and/or licensed within the country where the infrastructure is being implemented.
- Entities that **predominantly employ local nationals**, thereby contributing to domestic job creation and skills development.
- Firms whose inputs whether labour, materials, services, or capital generate benefits that are **retained within the host country's economy or community**, rather than being externally extracted.

While principles such as transparency, value for money, and quality assurance are central to international procurement standards, they must be balanced with Eswatini's constitutional obligation to promote national development and citizen welfare. Lawther, P., Phelps, R. & Hamilton, D., with Tovutovu, R. & Utoikamanu, S., 2018 report<sup>3</sup>, underscores this tension. It emphasizes that procurement frameworks must not only deliver infrastructure efficiently but also ensure that domestic stakeholders benefit meaningfully from public investment.

Evidence from Tanzania (Kikwasi, Ardhi University)<sup>4</sup> illustrates the misalignment between policy and practice regarding local contractors' exclusion from donor-funded projects, which include fewer bidders drive up prices, excluded contractors lose key personnel, weakening the local industry as well as contractors barred from bidding face financial collapse. In addition to the effects is that exclusion can trigger liquidity issues for contractors, and hence affecting their entire supply chain.

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<sup>3</sup> Lawther, P., Phelps, R. & Hamilton, D., with Tovutovu, R. & Utoikamanu, S., (2018). Enhancing procurement practice and local content in Pacific infrastructure. Pacific Region Infrastructure Facility (PRIF).

<sup>4</sup> Geraldine J. Kikwasi from Ardhi University, (2016) "**Exclusion of Contractors in Construction Contracts: An Unrevealed Risk in the Construction Industry**", the *Journal of Construction Project Management and Innovation*, Volume 6, Issue 2

### 3. PROBLEM STATEMENT

#### 3.1. Persistent Barriers to Local Inclusion

Eswatini has made notable progress in establishing a public procurement framework, including the Public Procurement Act of 2011 and the creation of the Construction Industry Council (CIC) under the 2013 Act. In addition to national legislation, Eswatini is signatory to several regional and international trade and procurement agreements such as SACU, SADC, COMESA, AfCFTA, amongst others<sup>5</sup>. These agreements have direct implications for public procurement, particularly in promoting fair competition, regional integration, and domestic industry development.

The country’s procurement regulations expressly allow for a margin of preference for local Eswatini firms, commonly referred to as domestic preference. Under the Public Procurement Regulations 2020, specifically Sections 11 and 12, procuring entities are empowered to apply a price preference ranging from 5% to 15% in favour of Eswatini-registered businesses and for the Government to put in place measures that promote Swati companies. However, despite the clarity of these regulations, domestic preference is rarely applied in practice. This gap between policy and implementation undermines the intent of the law and limits opportunities for local contractors to compete effectively especially in donor-funded and large-scale infrastructure projects.

Case Matrix: Barriers to Local Participation

TYPE OF BARRIER	PROJECT / INSTANCE	WHAT HAPPENS / EFFECT ON LOCAL FIRMS
<b>FINANCIAL SECURITY &amp; COLLATERAL REQUIREMENTS</b>	<i>MR14/MR21 Road Tender:</i> E45.5 million bid security; E250 million performance security; E375 million advance security; total > E675 million required.	Most local contractors cannot raise such amounts; excluded from bidding or forced into unfavourable joint ventures with foreign firms.
<b>TENDER SIZE &amp; LOTTING</b>	<i>Siphofaneni–Siphambanweni road:</i> local contractors requested splitting into smaller lots due to large scope and collateral demands.	Without smaller lots, only large international firms can compete; local firms are excluded despite capacity to deliver portions.
<b>PERCEPTION OF INCAPABILITY / EXCLUSION BY ASSUMPTION</b>	<i>Emalangenji CBE Headquarters:</i> local contractors told by government that “emaSwati cannot design and build” such projects.	Discourages local bidding; reinforces dependency on foreign firms.
<b>LACK OF CREDIT / FINANCING AND HIGH COMPLIANCE COSTS<sup>6</sup></b>	CIC data shows 36% use Standard Bank, 20% Nedbank, 14% Eswatini Bank; many rely on private lenders.	High upfront costs and limited access to credit reduce liquidity; contractors risk missing tenders or failing to meet bonding requirements.
<b>EMPLOYMENT TRENDS</b>	CIC reports ~11,082 workers in construction (2023/24), down from ~11,492	Local contractors rely on local labour, but lack of consistent work undermines employment stability and sector investment

<sup>5</sup> AfCFTA National Implementation Strategy: Kingdom of Eswatini 2024 – 2028

<sup>6</sup> **Construction Industry Council (CIC).** *Access to Credit and Financial Inclusion Report*, Eswatini, 2024.

### 3.2. Systemic Consequences of Weak Local Participation Enforcement in Infrastructure Planning

#### Liquidity Crises

Weak enforcement of local participation requirements in infrastructure planning is not merely a policy oversight it is a direct consequence of systemic delays and inconsistencies in government payments on domestically funded projects. These financial irregularities severely undermine the competitiveness and stability of local contractors. Local firms struggle to compete with foreign entities that possess superior financial and material resources. The imbalance is exacerbated by internal liquidity challenges, most commonly stemming from poor cash flow and delayed payments particularly the government's failure to honour certified payment certificates in a timely manner. This creates a significant barrier to financing public sector projects. Contractors often wait months for disbursements, forcing them to rely on high-interest loans to sustain operations. The inability to repay these loans leads to defaults, business liquidation, and long-term financial damage. This erosion of financial standing compromises relationships with banks and suppliers, limiting access to working capital and depleting contractor reserves and poor financial standing limits access to performance bonds and insurance, excluding contractors from future bids.

#### This issue is intertwined with misalignment in Contractor Grading Systems

The shift from the Ministry of Public Works and Transport's grading system to the Construction Industry Council (CIC) framework has introduced ambiguity in project eligibility and disrupted transparent access for Swati contractors. This system provided clear alignment between contractor categories and project values, enabling transparent eligibility for both local and donor-funded projects. Consequences of the Transition is that planning frameworks fail to reflect domestic capacity, leading to project scopes that are inaccessible to local firms, local contractors are excluded early, not due to lack of skill, but due to systemic design flaws and grading ambiguity and public investment fails to build local industry, instead reinforcing dependency on foreign firms.

Categories	Project Category Eligible to tender for
Category 1	Local and internationally funded construction projects above R20 million.
Category 2	Local and internationally funded construction projects above R10 million.
Category 3	Local and internationally funded construction projects above R5 million.
Category 4	Local and internationally funded construction projects above R1 million.
Category 5	Local and internationally funded construction projects above R500, 000 but below E3million.
Category 6	Local and internationally funded construction projects below R500,000

Historical Grading Categories (Source: Marques Sierra, 2014; Ministry of Public Works and Roads, Swaziland 2007)

#### Exclusion from Prime Contracts

The weak enforcement has led to Local contractors relegated to sub-contractor roles without guaranteed work allocations or management responsibilities. Tender documents routinely impose high bid bonds, performance guarantees, and financial thresholds that local contractors cannot meet. These barriers effectively relegate Swati contractors to sub-contractor roles, often without guaranteed minimum allocations of work or management responsibilities.

#### Preferential financing disparities

Weak enforcement of local participation in infrastructure planning, especially as it relates to preferential financing disparities. Foreign firms, especially those backed by sovereign guarantees (e.g. Chinese SOEs), access low-interest loans, export credit, and state-backed insurance. These mechanisms allow them to undercut bids, meet stringent qualification thresholds, and absorb project risks that local contractors cannot. Swati contractors, lacking similar financial instruments, are excluded from high-value tenders, reinforcing a cycle of marginalization.

### Entrenchment of Competitive Imbalances

Foreign firms, particularly state-backed entities such as Chinese contractors, benefit from preferential financing mechanisms and sovereign guarantees that are unavailable to Swati contractors. These advantages enable international firms to meet qualification requirements for tendered works, entrenching competitive imbalances and stifling the growth of a resilient domestic construction ecosystem. This reduces economic multipliers in that infrastructure spending flows outward rather than circulating within the domestic economy.

### Failure to Adopt Inclusive Procurement Models

The failure to adopt procurement mechanisms such as Contract Splitting, Unbundling, and Set-Asides undermines efforts to align infrastructure planning with local capacity. These models are designed to facilitate meaningful participation by Swati contractors, by tailoring project scopes to their operational scale and resource base.

## 4. Regional Frameworks and Practices

Eswatini, as a member of regional bodies such as SADC, COMESA, and the Pan-African Regional Contract and Development Commission (PARCDC), is party to procurement frameworks that actively promote local participation. These frameworks encourage the use of domestic preference provisions, joint ventures, and subcontracting rules to ensure inclusive economic development.

Key Regional Instruments:

- SADC Procurement Policy and Grants Guidelines: Advocate for member states to embed local content and preferential treatment in donor-funded projects.
- COMESA Procurement Frameworks: Promote harmonized procurement standards that prioritize regional suppliers and contractors.
- PARCDC Guidelines: Support the integration of local firms in cross-border infrastructure delivery through structured joint ventures and capacity-building clauses.

Table 1: Comparative Regional Practices

Country	Key Legal / Procurement Reforms	What Eswatini Can Adapt
<b>Zambia</b>	Requires foreign bidders to partner or subcontract with Zambian firms; includes set-asides for citizen-owned businesses; enforces local content laws.	Mandate joint ventures or subcontracting with Swati firms; introduce legal thresholds for local participation in public and donor-funded projects.
<b>Kenya</b>	Implements the <i>Access to Government Procurement Opportunities (AGPO)</i> policy, uses e-procurement platforms; reserves 30% of contracts for youth, women, and persons with disabilities.	Adopt digital procurement systems to enhance transparency; set measurable targets for local goods and services; monitor compliance through real-time data dashboards.
<b>Tanzania</b>	Embed local content in procurement legislation; apply preferential scoring for domestic firms; establish support funds for contractor development.	Create a national contractor development fund; integrate scoring preferences for Swati contractors in bid evaluations.
<b>South Africa</b>	The <i>Preferential Procurement Policy Framework Act (PPPFA)</i> grants scoring advantages to local firms, with Broad-Based Black Economic Empowerment (BBBEE) includes	Require foreign firms to demonstrate local resource integration; embed domestic participation incentives in bid scoring frameworks.

	scoring benefits for international bidders who commit to using domestic resources; BBBEE integrated into evaluation criteria.	
<b>Botswana</b>	The <i>Citizen Preference Act</i> mandates prioritization of citizen-owned businesses in public procurement. Procurement policies allow non-price evaluation criteria such as employment creation, decent work, social inclusion, equal opportunity, accessibility, and sustainability.	Mainstream local content as a cross-cutting criterion in project prioritization; mandate inclusion of Swati contractors and social impact metrics in infrastructure planning and evaluation

## 5. Reform Proposals

To catalyse equitable development and strengthen national capacity, Eswatini must undertake a bold and deliberate restructuring of its procurement strategy. Central to this reform is the strategic use of Local Content as a lever for economic empowerment particularly for Swati contractors through targeted adjustments to procurement rules, bidding practices, and contract structuring.

### 5.1 Leveraging Existing Guidelines for Local Empowerment

A key pillar of this reform is the shift toward more autonomous use of national procurement regulations. The National Government and its implementing agencies must actively utilize the opportunities already embedded within existing procurement legislation, regulations and guidelines to set aside contracts for local contractors. These provisions, often underutilized, offer a practical pathway to broaden participation and build domestic capacity.

Alignment with regional and international frameworks is also critical. Eswatini should harmonize its procurement practices with the Southern African Development Community (SADC) procurement frameworks, particularly regarding preferential provisions. Article 19 (“Regional Preference”) provides a legal basis to negotiate explicit local-content and price-preference clauses into all international and donor-funded agreements. Where no standard preference mechanism exists, Article 19(4)(c) can be leveraged to persuade cooperating partners to adopt Swati domestic rules, thereby embedding local empowerment into externally funded projects.

Multilateral Development Bank (MDB) procurement guidelines further support this approach. These guidelines encourage the development of domestic industries and permit borrowers to give preference to tenders offering goods manufactured within the borrowing country. Countries below a specified GDP threshold are also allowed to prioritize bids from eligible domestic contractors through targeted procurement procedures. Eswatini must capitalise on these provisions to ensure a fairer chance for local contractors in securing construction contracts.

### 5.2 Tender and Award Practices: Unbundling and Lot Structuring

To operationalize this vision, the tendering process must be restructured through unbundling and strategic lot structuring. The proposed split-tendering model allocates 40% of total project value to national bids, exclusively reserved for Swati-owned companies. These bids will be further broken into manageable lots, tailored to the scale and specialization of local contractors. This granular approach ensures that even emerging firms can compete, build capacity, and deliver value.

The remaining 60% of project value will be opened to international competition, preserving access to global expertise and innovation. This dual-track system strikes a balance between national empowerment and international benchmarking, ensuring that Eswatini's infrastructure and development projects benefit from both local ownership and global standards.

### **5.3 Strengthening Financial Viability and Risk Management**

Beyond procurement design, government and its agencies must ensure the prompt honouring of payment certificates as enshrined in contract conditions. Regular and timely payments are essential for contractors to service loans obtained from financial institutions, thereby boosting their creditworthiness and financial sustainability.

Additionally, a Pre-Exclusion Risk Assessment should be developed and institutionalized whenever exclusion of local contractors is proposed. This assessment must evaluate the potential impacts on project schedule, cost, market dynamics, and overall industry health. Such a tool ensures that exclusion decisions are evidence-based and aligned with broader national development objectives.

## **6. Conclusion**

Regardless of how infrastructure procurement is financed be it through fiscal allocations, debt instruments, or donor grants there remains a consistent and compelling opportunity to embed local content. While certain infrastructure projects may exceed domestic capacity due to their scale or technical complexity, this should not preclude the identification and integration of local content components. Even within large-scale undertakings, there are meaningful roles for Swati contractors, suppliers, and service providers.

To maximize these opportunities, local content must be considered from the earliest stages of project development ideally during concept formulation. This proactive approach ensures that local inclusion is not an afterthought but a foundational principle. It also requires strong government commitment: a willingness to advocate for local content, enforce its integration, and champion its long-term benefits.

A calibrated split-tender model offers a viable pathway forward. By balancing local inclusion with international efficiency, Eswatini can structure procurement to allocate a defined portion of project value to Swati-owned construction firms while leveraging global expertise for more complex components. When supported by robust risk-assessment tools, skilled negotiation, market development mechanisms, and clear local-content rules, this model can unlock a new era of sustainable infrastructure delivery and inclusive prosperity.

However, without deliberate reform including enforceable local content mandates, transparent grading systems, and donor alignment protocols Eswatini risks perpetuating a procurement system that extracts value rather than builds capacity.

The **Eswatini Contractors Association** (ECA) affirms that procurement reform is not only timely it is essential. By learning from regional peers and aligning national policies with both international best practices and local empowerment goals, Eswatini can cultivate a more resilient, inclusive, and competitive construction industry.

Local contractors, entrusted with delivering public infrastructure, also bear the responsibility of serving the public interest. State funds regardless of their source belong to the people. Every disbursement must generate public value, and every contractor must strive to deliver value for money. This ethos must guide both procurement authorities and service providers.

At ECA, we recognize that many of our members require ongoing capacity building across various dimensions of the built environment. To address this, we will be conducting regular training workshops, including targeted programs through our dedicated ECA Women in Construction Wing, “Balingani.” These initiatives aim to uplift both male and female contractors, equipping them with the skills and knowledge needed to thrive.

Yet the true measure of these efforts lies in opportunity. Contractors must be given consistent access to projects where they can demonstrate their capabilities and contribute meaningfully to national development. Ensuring a steady flow of work to local contractors is not merely a matter of fairness—it is a strategic investment in Eswatini’s future.

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