



# Falkland Islands Government

December 2014



## Code of Practice for Procurement by Oil and Gas Companies and their Subcontractors Operating in the Falkland Islands

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## **1. Description**

- 1.1 A Code of Practice setting out the principles, strategies and practices FIG requires to be adhered to in order to ensure that local people and companies benefit to the fullest extent possible from opportunities generated by oil and gas exploration and production.

## **2. Applicability**

- 2.1 This Code of Practice applies to contracts and employment opportunities relating to both onshore & offshore, field-related and non-field related projects. Compliance with the Code is voluntary. Details of compliance will be published.

## **3. Statement of Purpose**

- 3.1 The Code of Practice seeks to advance the stake of the people of the Falkland Islands in the developing oil and gas industry in a sustainable manner and to ensure capacity development and employment of Falkland Islands' people, use of Falkland Islands' goods and services, transfer of technology and know-how, localisation of knowledge and ownership. This in turn seeks to create a legacy of long term benefit and growth to the Islands economy and helps to retain as much 'value' locally as possible.
- 3.2 The Code is expected to encourage the integration of the oil and gas sector with the other sectors of the Falkland Islands' economy to effectively support national growth and development through the development of joint projects/facilities, joint ventures and partnerships.
- 3.3 The intent of this Code is to ensure that at every stage of the exploration, production and marketing of the oil and gas resources as well as related businesses, maximum use shall be made of available local capacity. It will ensure that the capability of Falkland Islands' people is developed sustainably to ensure progressive increases in local content and local participation.

#### **4. Definitions, Certification and Register**

- 4.1 For the purpose of this Code, the term 'Falkland Islander' when referring to people shall mean any person who is ordinarily resident in the Falkland Islands and holds either:
- a) Falkland Islands status as defined within the Constitution of the Falkland Islands; or
  - b) A Permanent Residence Permit under the Falkland Islands Immigration Ordinance 1999.
- 4.2 FIG will create a Local Content Board which shall be responsible for creating and maintaining a Local Content Register listing businesses that have been assessed by FIG to qualify as local content for the purposes of this Code. This will provide clarity to oil and gas companies and their contractors regarding the status of individual companies when awarding contracts or forming local partnerships and joint ventures.
- 4.3 The Local Content Board will utilise the criteria and process listed in Appendix 1 to this Code in order to determine whether a company or organisation is eligible for entry on to the Local Content Register.
- 4.4 Certification under this Code does not infer any guarantee on the quality of goods and services provided by the certified business.
- 4.5 References within this Code to "local suppliers", "local companies", "local contractors" or "local businesses" are references to businesses which have been approved for admission to the Local Content Register. References to "local content" are references to products and services supplied to the oil and gas industry by businesses that are listed on the Local Content Register.

#### **5. General Undertaking and Overriding Principles**

- 5.1 FIG encourages oil and gas companies to have a clear documented local content policy and that this, together with a Statement of Intent, setting out multi-year plans and targets, is submitted to the Falkland Islands Government for approval as early as possible in the preparation stages of a Field Development Plan. Oil and gas companies are encouraged to ensure that all contractors have a local content policy and that this Contractor Local Content Policy is included within contract terms between the oil and gas companies and all contractors.
- 5.2 Such a local content policy for both oil and gas companies and contractors will be public documents and should describe the:
- Approach to sourcing goods, services and human resources from within the Falkland Islands at different stages of operation;

- Approach to, and programmes for, providing employment and training opportunities for residents and nationals of the Falkland Islands;
- Programmes and processes to improve the ability of local suppliers and contractors to support operations and carry out projects.
- Approach to encouraging the formation of joint ventures with existing oil industry suppliers, and to facilitating the award of contracts to such joint ventures incorporating local content

**5.3 Notwithstanding anything else in this Code of Practice oil and gas companies, their contractors and sub-contractors shall comply with the following overriding principles**

**5.3.1 Competition**

5.3.1.1 The procurement of local services will remain subject to competition. The aim is to increase the proportion of goods, services and jobs that are sourced locally in the Falkland Islands without compromising on cost, competencies, quality and safety.

5.3.1.2 Local suppliers will not be treated differently to other suppliers with regard to price, service, safety, environmental impact or any other commercial or technical requirements.

**5.3.2 Scope**

5.3.2.1 All local businesses with suitable skills will be given equal opportunities to tender for the contracts and services required.

5.3.2.2 Where these contracts and services form part of large contracts, the oil and gas companies will ensure that their contractors are aware of and comply with the principles of this Code of Practice.

**6. Specific Undertakings**

**6.1 Commercial & Economic Development**

6.1.1 Compliance with this Code requires that oil and gas companies and their contractors will seek local suppliers and services, and undertake to use local suppliers and services where possible, as an integral part of their operational planning strategy.

6.1.2 It is acknowledged that establishing local JVs and partnerships can be a valuable mechanism to progress local content and local participation in the oil and gas business. In the Statement of Intent, each Oil and Gas Company will set out a review of using local JVs and partnerships, and use such mechanisms if they would lead to increased local content.

Oil and gas companies and their contractors will follow a tendering process which:

- Aims to identify and reserve a proportion of contract value or a whole contract for execution by local companies;
- Will ensure that contracts are specified in a way that maximises local company participation. This will include the unbundling of large contracts into smaller ones wherever it makes opportunities more accessible to local companies
- Enables local companies to understand what services, standards and certification are required by oil and gas companies for their offshore activity and supporting onshore services; and
- Enables oil and gas companies and their contractors to understand what services are available from local businesses individually (or in partnership with overseas businesses).

6.1.4 The principal characteristics of this tendering process are:

- a) **Public Notice** through advertisement in the local media and on the SAROS website of the offshore or onshore services required by the oil and gas company or its contractors, inviting local companies to pre qualify for the service. Oil and gas companies should provide a clear statement of their position on local content and expectations of their subcontractors. It is required that such public notice be advertised in the Falkland Islands as near as reasonably practicable to the date on which procurement processes are commenced with non-Falkland Islands suppliers; with a request for prequalification documentation to be received by the oil and gas company or its contractors within 14 days of advertisement.
- b) **Pre qualification documents** supplied to the oil and gas company or its contractors would at a minimum include
  - A statement of the services available from the local business individually (or in partnership with an overseas business)
  - A statement of previous experience in working with the oil and gas industry in the Falkland Islands and elsewhere
  - A list of relevant qualifications and or certifications to international oil and gas standards
  - Submission of the local businesses HSE policy and HSE Management Systems
  - A statement of financial solvency and financial backing such as an accountants prepared prior year financial results and balance sheet

The oil and gas company and its contractors undertake to provide the specific reasons for rejection and recommended remedial actions that would make future bids acceptable.

6.1.5 **Tendering**

- a) **Tender** – The oil and gas company and its contractors will provide tender documents to those local businesses (individually or with an overseas business) who have successfully pre qualified at the same time as tender documents are provided to other international businesses in line with their own internal procurement practices. Oil and gas companies will assess all local tenders on the same basis as other tenders received and provide constructive feedback to local companies if unsuccessful in their tender.
- b) **Tender evaluation** – Oil and gas companies and their contractors will evaluate all local businesses which tender (individually or with an overseas business) on the same competitive commercial basis as all international businesses which have been invited to submit a tender in line with their own internal procurement procedures.
- c) **Award of contract** – Successful tenderers and unsuccessful tenderers will be notified by the oil and gas company or its contractors of the award of contract at the same time in line with their internal procurement practices.

6.1.6 The appointment of local companies in the provision of services or supplies will occur where the standards, performance, quality and price for that service/supply are competitive.

6.1.7 In seeking applications for prequalification or submission of tenders, oil and gas companies and their contractors will have due regard to the practical limitations on postal and electronic communication to the Falkland Islands and undertake not to introduce requirements for returning original documentation which disadvantage bids from Falkland Islands based businesses.

## 7. Onshore Development

7.1 Oil and gas companies and their contractors will advertise the intent to undertake onshore projects (both field-related and non-field related) as soon as project sanction is reached and will invite tenders from local companies to participate in this economic opportunity under the same conditions as described in Section 6 above.

7.2 In addition, oil and gas companies and their contractors are expected to submit their long-term onshore development plans to FIG for inclusion in the national Development Plan as and when this is requested.

## 8. Payment Terms

8.1 Oil and gas companies, their contractors and subcontractors will standardise their credit terms in line with Falkland Islands market expectations in regard to

local companies in order to facilitate payment of invoices within 30 days of the date of the invoice.

## **9. Health & Safety**

- 9.1 The HSE requirements in a contract will be determined by the oil and gas company and its contractors. Successful tenderers will be expected to meet or exceed those requirements.

## **10. Development of Local Capacity**

- 10.1 Oil and gas companies and their contractors will develop, and commit to, a strategy for the transfer of knowledge and the upgrade of existing capabilities that encourages international contractors to proactively engage with local companies/businesses in a way that supports skill upgrading and enhanced competition.

## **11. Education, Training & Employment**

- 11.1 Oil and gas companies and their contractors will take a comprehensive and multi-faceted\* approach to local workforce development, which is co-ordinated and focussed on long-term success. (\*includes off-site training, personal development, internship, placements, scholarships).
- 11.2 Oil and gas companies will develop programmes for post-development phase demobbing planning including re-training of the employed local workforce (to facilitate their moves to other industry projects).
- 11.3 The oil and gas companies and their contractors undertake to recruit from the local workforce where qualification requirements are met.

## **12. Research & the Environment**

- 12.1 The oil and gas companies and their contractors acknowledge that the natural environment (both terrestrial and marine) of the Falkland Islands is a valuable national asset and, by signing this Code of Practice, undertake to respect, maintain and protect this environmental status.
- 12.2 When undertaking research, oil and gas companies and their contractors will involve and utilise the local scientific expertise and agencies in all phases and aspects of that research.



### **13. General Development & the Future**

- 13.1 Projects generated by, and with assistance from, the oil and gas companies and/or their contractors that contribute to meeting the aims of the Falkland Island Economic Development Strategy or can clearly demonstrate valuable benefit to the community of the Falkland Islands or the public interest are strongly encouraged.
- 13.2 Oil and gas companies and their contractors will work closely with the private sector, NGOs and the community to determine areas where there is a skill shortage and/or in which there is scope for further development, and in which the oil and gas industry can play a facilitating role.
- 13.3 Oil and gas companies and their contractors will work alongside FIG, local NGOs and other local businesses to ensure that there are long-term benefits for the Falkland Islands and their community, from the oil and gas sector, beyond the life of a particular project/operation.

### **14. Notes to the Code of Practice**

#### *14.1 Local content in different project phases*

- 14.1.1 It is acknowledged that different phases of the oil and gas exploration and extraction industry allow for different levels of local content by virtue of the specialisations involved.
- 14.1.2 Notwithstanding this, it is expected that there will be, on average, an increase in the amount of local content within the industry throughout the years of a project.

#### *14.2 Monitoring*

- 14.2.1 Oil and Gas Companies operating in the Falkland Islands will, over time, continually monitor and review their local content use, with the aim of increasing it year on year.
- 14.2.2 Oil and Gas Companies operating under this Code agree to monitor (in respect of their own activities and those of their contractors);
- the number of contracts put out to tender;
  - the number of local bids per contract;
  - the value of local content where contract won by local private sector;
  - reasons for rejection of local bids;
  - proportion of money spent on services and goods locally;
  - activity to assist supplier development;

- percentage of employees based in the Falkland Islands, and of those, the percentage who are Falkland Islanders;
- number of employees who are Falkland Islanders receiving training in other assets (local and non-local) of the company;
- indication of indirect job creation as a result of the company's activities;
- number of training opportunities taken up by Falkland Islanders;
- indication of indirect activities in other sectors as a result of the company's investment/support

14.2.3 Statistics on the above will be produced annually, in a format agreed with FIG and made available to FIG upon request. In addition Oil and Gas Companies will provide an annual summary of progress together with an updated multi-year plan in line with their Policy and Statement of Intent. The yearly summary of progress will be made available to the public

14.2.4 The Department of Mineral Resources will periodically carry out informal reviews of contracting strategy and performance with each active operator at intervals commensurate with the level of activity in that operator's licence interests

14.2.5 The Falkland Islands Government will make available an aggregated industry summary of the statistics in Article 14.2.2 for public consultation.

14.2.6 The Falkland Islands Government will keep a register of all contracts tendered and awarded over the life of the Code in order to monitor the outcome of the approach taken and have a global view of the performance of the sector in its application of this Code.

### *14.3 Concerns procedure & Non-compliance*

14.3.1 A concern on a breach of code may be reported, in writing, to the Director of Mineral Resources, detailing the reasons for this concern and be submitted with supporting information/evidence where this is available.

14.3.2 Company performance in regard to meeting local content will be assessed annually against this Code by the Department of Mineral Resources and reported to Executive Council for information.

## **Appendix 1: Local Content Assessment Process**

There shall be a Local Content Register listing companies which are considered to be local companies, and this register will be created and administered by a Local Content Board.

### **Local Content Board**

There shall be a Local Content Board, the membership of which shall be approved from time to time by Executive Council. Representatives and their immediate family (spouses/partners and children/parents) must have no business interest in applications to ensure impartiality, and it is therefore recognised that the Board membership may vary.

The Local Content Board will normally receive applications on a monthly basis to be assessed against the criteria in this Appendix. Applications will normally be collated and considered at the end of each calendar month and any applications received after the end of each month may be deferred to the following month. Applicants will receive a response to their application no later than 60 days from submitting their application.

Applications may be made by any business entity including sole traders, and are not necessarily restricted to limited companies.

Contact with the Local Content Board can be made to the designated reporting point, details of which will be published on the Department of Mineral Resources website **[www falklands-oil.com](http://www.falklands-oil.com)** following appointment of the Board.

Records of meetings of the Local Content Board shall be kept including the membership present at each meeting, assessment of decisions that have been made and any declarations of interest.

### **Local Content Register**

Approved entrants to the Local Content Register shall be listed in a schedule to be published and updated monthly and made available to oil company operators and their subcontractors. The Register will be published on the Department of Mineral Resources website [www.falklands-oil.com](http://www.falklands-oil.com)

Businesses listed on the Local Content Register may be struck off the register if their circumstances change and they no longer meet the required criteria. An example would be if a controlling share in a locally owned company was purchased by an overseas company.

Businesses or persons who have been previously approved for entry on to the Register but who are subsequently assessed as no longer meeting the requirements

to qualify as Local Content will be notified of the reasons for this in writing. A period of 30 days from the date of notification will be allowed for response and the provision of further information prior to the status of that business or person being reviewed.

Businesses, their subsidiaries or group companies that are subject to the Defence Contractors' Employees Tax Exemption Orders or hold a Production License under the Offshore Petroleum Licensing Regulations are not eligible to apply to the Register unless they qualify under Second Pass criteria 3 (c).

### **Assessment Criteria**

Assessment of individual applications for entry onto the Local Content Register shall be made in two stages. References to "Falkland Islanders" in this Appendix are as defined in section 4.1. Corporate applications shall include Joint Ventures

Non-corporate applications shall be assessed for control and ownership on an equivalent basis so far as is practicable e.g. whether the majority of partners in a partnership, or the applicant if a sole trader, is a "Falkland Islander" as defined under section 4.1 of this Code.

### **First Pass Selection**

Corporate applications shall initially be assessed against the following criteria in order

- A) All shares in issue are held by individuals who qualify as "Falkland Islanders" and are ordinarily resident in the Falkland Islands
- B) All company directors are individuals who qualify as "Falkland Islanders" and are ordinarily resident in the Falkland Islands
- C) The business pays more than 50% of its worldwide tax within the Falkland Islands \*

Applications found to meet all three of criteria A and B and C above, shall be approved for entry into the Local Content Register without further consideration.

### **Second Pass Selection**

Applications failing to qualify under the first pass selection shall be assessed via a second pass selection process using the additional criteria below. To gain approval for entry into the Local Content Register, the Local Content Board shall apply the following initial test to define second pass selection:

- 2A) A minimum of 50% of shares in issue are held by individuals who qualify as “Falkland Islanders” and are ordinarily resident in the Falkland Islands
- 2B) A minimum of 50% of company directors are individuals who qualify as “Falkland Islanders” and are ordinarily resident in the Falkland Islands

1) In the event that criteria 2A and 2B are met by the applicant, the applicant must then meet at least three of the individual criteria listed at D to M to qualify for entry onto the LCR

2) In the event that the applicant only meets either criteria 2A or 2B, the applicant must then meet at least five of the individual criteria listed at D to M to qualify for entry onto the LCR

3) In the case of a Joint Venture Company set up after 01 January 2010 whose primary function is to service the Oil & Gas industry that doesn't meet 2A or 2B, the following criteria shall have to be met in order to join the register:

- a. Falkland Island Ownership and Directorship must account for at least 25% of the JV
- b. The JV must meet 5 of the criteria laid out in D to M
- c. The JV Company must submit as part of its application to join the register a clear evidenced and measurable pathway to how it will fulfil the requirement for the FI company, or companies, individually becoming at least equal partners, with equal shares and controls, in the JV arrangement and satisfying the partial second pass scenario (i.e. meeting either criteria 2A or 2B) within an agreed period.
- d. If the Joint Venture includes a company excluded under Defence Contractors or Oil Production License rules, they will be eligible provided
  - i. they are the minority partner, or
  - ii. At a maximum, hold an equal holding to any other company within the JV with equal shares and controls.
  - iii. The JV must be incorporated in the Falkland Islands
  - iv. The JV pays more than 50% of its worldwide tax within the Falkland Islands

### **Second pass selection criteria**

Applicants shall be assessed to determine whether the following criteria are satisfied:

- D) The head office of the business\* is located in the Falkland Islands
- E) The day to day operational management of the business is based in the Falkland Islands
- F) Independent and autonomous operational management of the business is carried out mainly by Falkland Islanders
- G) More than 50% of the workforce are Falkland Islanders
- H) If the business is a company, the company is registered in the Falkland Islands, has its main place of business within the Falkland Islands and pays tax within the Falkland Islands.
- I) The business is established in business in the Falkland Islands with a separate and significant non-oil-industry client base
- J) The business pays more than 50% of its worldwide tax within the Falkland Islands \*
- K) At least 50% of the business is beneficially owned by Falkland Islanders\*
- L) At least 50% of the Board of Directors are Falkland Islanders\*
- M) The Principal Executive Officer is a Falkland Islander\*

In all the above criteria marked with \*, tests applied to a “business”, when applied to a subsidiary company within a group (or an equivalent business structure), shall apply to ultimate beneficial ownership or control of the ultimate parent company. This further test shall not be applied to companies registered, operating in the Falkland Islands prior to 1 January 2010.

#### Grandfathering provision

In the event that the business fails under the first and second pass selection process it may, provided that it has operated continuously within the Falkland Islands since prior to 1 January 2010, qualify for entry onto the LCR if it meets three of the above criteria D to M, but within five years to retain its position on the local content register the business must either:

- a) Qualify under first or second pass criteria, or
- b) Meet a minimum of five of criteria D to M listed as second-pass criteria

The Grandfathering Company must submit as part of its application to join the register a clear evidenced and measurable pathway to how it will fulfil the above criteria within the 5 year period in order to be accepted on to the register.

## **Appendix 2 - Governing Principles and ongoing management of the Code of Practice and the Register:**

The Local Content Code of Practice and Register seeks to create a legacy of long term benefit and growth to the Islands economy and help to retain as much 'value' locally as possible. There are therefore a series of principles which will govern the Code of Practice and the Local Content Register, these are:

1. If a company fails to meet the conditions of either first, second pass or grandfathered options then it is not eligible for admission to the Falkland Islands Local Content Register.
2. Falkland Islands Government will endeavour to assess and inform applicants of the outcome of their application as soon as is practically possible. With this in mind a company will be notified of the outcome of their application in writing within 60 days of a satisfactorily completed application being submitted
3. If a company has been rejected from joining the Register and wishes to re-apply to the register after addressing the reasons for this rejection, it may do so no less than 12 weeks after closure of a previous application.
4. An appeals process will be set up to give companies the opportunity to appeal decisions made by the Board. This process will be published along with the details of the Board membership and process once the Code is adopted

### **Changes to a company on the register:**

5. In the case of changes in a company's situation, it is the responsibility of the applicant to inform FIG in the event of any change in the organisation which may have a material effect on its holding of a position on the Register or its current position, regardless of whether it is a First Pass, Second Pass or Grandfathered company. Failure to disclose information to the Local Content Board may result in removal from the register.

### **Review of the code:**

6. This Code will be subject to a review a minimum of 12 months from its adoption and will include a period of consultation.
7. Particular focus will be given to the practical effectiveness of this Code in facilitating local content, the performance of companies in complying with the spirit of the code, and assessing evidence of benefits being generated in the

Falkland Islands private sector such as the formation of effective and fully functional joint ventures incorporating genuine local content.

### **Infringements and Sanctions:**

8. The Falkland Islands Government has assessed that the potential requirement for sanctions will be determined by early performance against the code. The Code is currently voluntary, so no sanctions will apply. However, that position will be kept under review, and the Falkland Islands Government will explore the potential for a compulsory regime, which could take the shape of the following:
  - a. Developing a stringent approach involving legislation to enforce the principles contained within the Code and a structured set of sanctions to ensure compliance
  - b. Financial penalties – in line with the offence and linked to tender value



For further information please contact:

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