

**SPECIAL ISSUE**

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REPUBLIC OF KENYA

**KENYA GAZETTE SUPPLEMENT**

**NATIONAL ASSEMBLY BILLS, 2019**

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**NAIROBI, 13th May, 2019**

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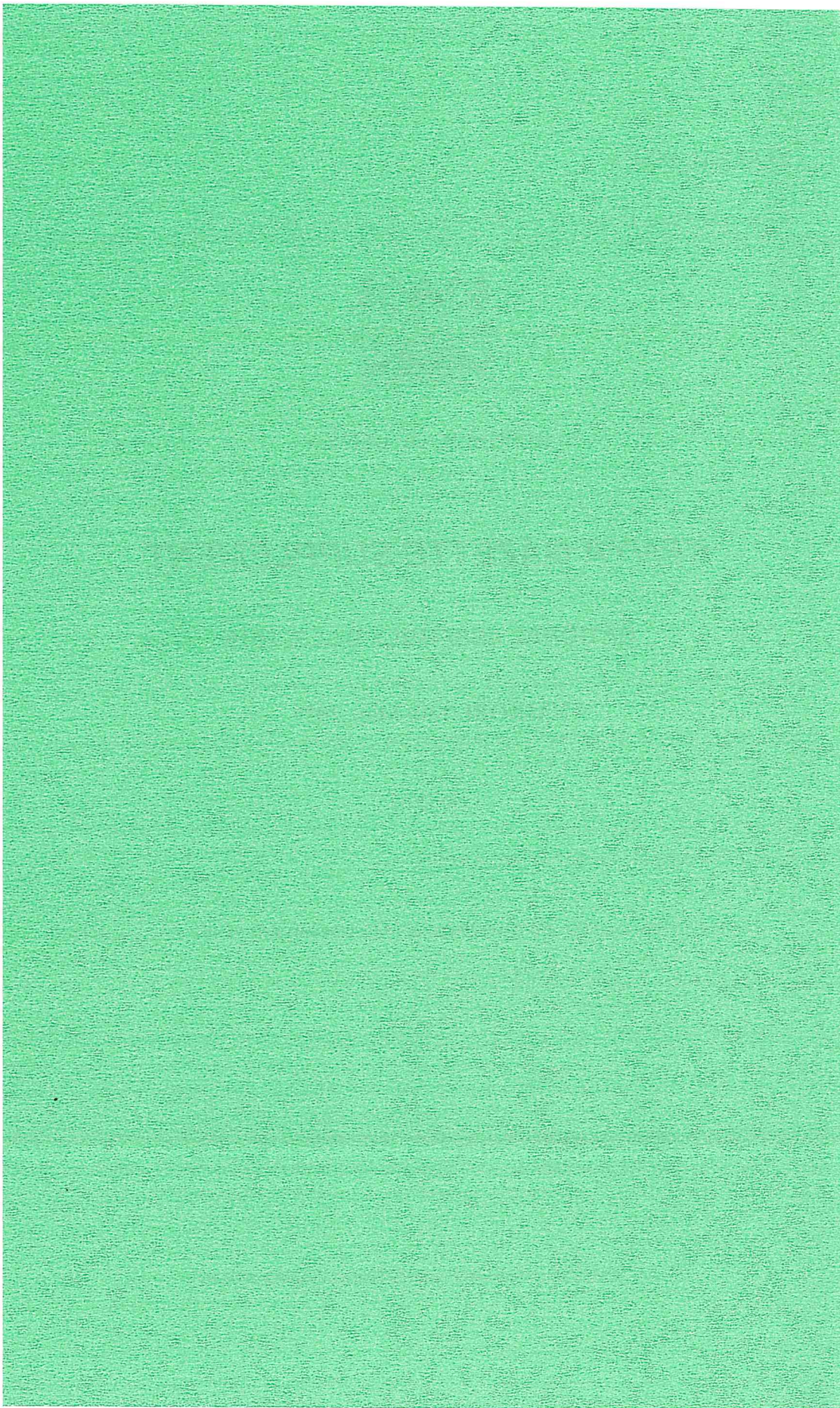
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**THE PUBLIC PROCUREMENT AND ASSET  
DISPOSAL (AMENDMENT) BILL, 2019**

**A Bill for**

**AN ACT of Parliament to amend the Public  
Procurement and Asset Disposal Act.**

ENACTED by the Parliament of Kenya, as follows—

**PART I—PRELIMINARY**

1. This Act may be cited as the Public Procurement and Asset Disposal (Amendment) Act, 2019.

Short title.

2. The Public Procurement and Asset Disposal Act, 2015 (hereinafter referred to as “the Principal Act”) is amended in section 2 by inserting the following new definition in the proper alphabetical sequence—

Amendment of  
section 2 of No.  
33 of 2015.

“local firm” means a firm which is wholly owned by a Kenyan and duly incorporated in Kenya; and

“foreign firm” means a firm whose shareholding is more than thirty per cent owned or is wholly owned by a non-Kenyan and duly incorporated in or outside Kenya;

“joint venture procurement” means a procurement that is jointly undertaken by a grouping of two or more persons.

3. Section 53 of the Principal Act is amended—

Amendment of  
section 53 of No.  
33 of 2015.

(a) by inserting the following new subsections immediately after subsection (6)—

(6a) Any procurement of less than one billion shillings shall be awarded to a local firm.

(6b) A foreign firm shall be eligible for procurement of contracts of more than one billion shillings where the foreign firm has entered into joint venture procurement with a local firm for not less than thirty per cent of the value of the procurement.”



(b) by inserting the following new subsections immediately after subsection (12)—

(12) A person who registers a company on behalf of a non-Kenyan with the intention of benefiting from procurement under this section commits an offence and shall be liable upon conviction to a fine not exceeding five million shillings or to a term of imprisonment not exceeding three years or to both.

(13) A foreigner who registers a company on behalf of a non-Kenyan with the intention of benefiting from procurement under this section commits an offence and shall be liable upon conviction to a fine not exceeding five million shillings or to a term of imprisonment not exceeding five years or to both.

4. Section 70 of the Principal Act is amended by inserting the following new subsection immediately after subsection (6)—

Amendment of  
section 70 of No.  
33 of 2015.

(6a) Where a procurement is of a value exceeding one billion shillings, in addition to the requirements set out in subsection (6), a procuring entity shall set out specific goods, works and services to be undertaken by a local firm under joint venture procurement.



## **MEMORANDUM OF OBJECTS AND REASONS**

### **Statement of Objects and Reasons for the Bill**

The objective of this Bill is to amend the Public Procurement and Asset Disposal Act.

**Clause 1** of the Bill provides for the short title of the Bill

**Clause 2** provides for definition of new terms to be introduced in the Act.

**Clause 3** seeks to amend section 53 of the Act by inserting new subsections (6a) and (6b) that will prescribe threshold for procurement by a local firms and a foreign firm in order to promote of local industries; and to provide for a penalty for any person who registers a firm on behalf of a non-Kenyan for purposes of benefiting g for a procurement that falls within a prescribed threshold.

**Clause 4** seeks to amend section 70 of the Act; this will ensure that procuring entities shall set out specific goods, works and services to be undertaken by a local firm in a joint venture procurement.

### **Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

The Bill does not delegate any legislative powers, and it does not limit fundaments rights and freedoms.

### **Statement on how the Bill does concerns county governments**

The Bill does not concern county governments in terms of Articles 110(1)(a) of the Constitution.

### **Statements that the Bill is not a money Bill within the meaning of Article 114 of the Constitution**

The Bill is a not money Bill for the purposes of Article 114 of the Constitution, the enactment of this Bill may not occasion loss of revenue to the Government.

Dated the 28th March, 2019.

**RIGATHI GACHAGUA,**  
*Member of Parliament.*



**Sections to be amended by the Bill Section 53. Procurement and asset disposal planning**

(1) All procurement by State organs and public entities are subject to the rules and principles of this Act.

(2) An accounting officer shall prepare an annual procurement plan which is realistic in a format set out in the Regulations within the approved budget prior to commencement of each financial year as part of the annual budget preparation process.

(3) Any public officer who knowingly recommends to the accounting officer excessive procurement of items beyond a reasonable consumption of the procuring entity commits an offence under this Act.

(4) All asset disposals shall be planned by the accounting officer concerned through annual asset disposal plan in a format set out in the Regulations.

(5) A procurement and asset disposal planning shall be based on indicative or approved budgets which shall be integrated with applicable budget processes and in the case of a State Department or County Department, such plans shall be approved by the Cabinet Secretary or the County Executive Committee member responsible for that entity.

(6) All procurement and asset disposal planning shall reserve a minimum of thirty per cent of the budgetary allocations for enterprises owned by women, youth, persons with disabilities and other disadvantaged groups.

(7) Multi-year procurement plans may be prepared in a format set out in the Regulations and shall be consistent with the medium term budgetary expenditure framework for projects or contracts that go beyond one year.

(8) Accounting officer shall not commence any procurement proceeding until satisfied that sufficient funds to meet the obligations of the resulting contract are reflected in its approved budget estimates

(9) An accounting officer who knowingly commences any procurement process without ascertaining whether the good, work or service is budgeted for, commits an offence under this Act.

(10) For greater certainty, the procurement and disposal plans approved under subsection (5) shall include choice of procurement and disposal methods and certain percentages referred to under subsection (6).

(11) Any state or public officer who fails to prepare procurement and disposal plans shall be subject to internal disciplinary action.



## **Section 70. Standard tender documents**

(1) The Authority shall issue standard procurement and asset disposal documents and formats as prescribed for use by procuring entities.

(2) A procuring entity shall use standard procurement and asset disposal documents prescribed under subsection (1), in all procurement and asset disposal proceedings.

(3) The tender documents used by a procuring entity pursuant to subsection (2) shall contain sufficient information to allow fair competition among those who may wish to submit tenders.

(4) An accounting officer of a procuring entity shall be responsible for preparation of tender documents in consultation with the user and other relevant departments.

(5) A procuring entity may charge a fee for obtaining tender documents as prescribed by regulations and stated in the tender documents.

(6) The tender documents shall set out the following—

- (a) the specific requirements prepared under section 60 relating to the goods, works or services being procured and the time limit for delivery or completion;
- (b) if works are being procured, relevant drawings and bills of quantities shall be disclosed and the projects total estimated cost evaluated only on the basis of criteria disclosed, but a person shall not be disqualified on the basis that a bidder quoted above or below a certain percentage of engineer's estimates;
- (c) the general and specific conditions to which the contract will be subject, including any requirement that performance security be provided before the contract is entered into.
- (d) the tender number assigned to the procurement proceedings by the procuring entity;
- (e) instructions for the preparation and submission of tenders including—
  - (i) the forms for tenders;
  - (ii) the number of copies to be submitted with the original tender;
  - (iii) any requirement that tender security be provided and the form and amount of any such security;
  - (iv) any requirement that evidence be provided of the qualifications of the person submitting the tender;



- (v) the procuring entity facilitation and the submission of tender documents by the tenderer through either soft or hard copy, but it will be the onus of the tenderer to ensure the adequate submission of said documents;
- (vi) the procurement function ensuring that where necessary, the preferences and reservations of the tender are clearly spelt out in the bidding documents.
- (f) an explanation of where and when tenders shall be submitted, a statement that the tenders will be opened immediately after the deadline for submitting them and an explanation of where the tenders will be opened;
- (g) a statement that those submitting tenders or their representatives may attend the opening of tenders;
- (h) a statement of the period during which tenders must remain valid;
- (i) the procedures and criteria to be used to evaluate and compare the tenders;
- (j) a statement that the accounting officer of a procuring entity may, at any time terminate the procurement proceedings without entering into a contract in accordance with section 63 of the Act;
- (k) a provision for providing details of sub-contractors for the bidder, where applicable, and a declaration that the sub-contractors have complied with this Act; and
- (l) anything else required, under this Act or the regulations, to be set out in the tender documents.