SPECIAL ISSUE

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REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2019

NAIROBI, 4th June, 2019

CONTENT

Bill for Introduction into the National Assembly—

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THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) (NO. 2) 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—

1. This Act may be cited as the Public Procurement and Asset Disposal (Amendment) (No. 2) Act, 2019. Short title.

2. The Public Procurement and Asset Disposal Act (in this Act referred to as "the principal Act") is amended in section 2— Amendment of section 2 of No.33 of 2015.

(a) by deleting the definition of the term "goods" and substituting therefor the following new definition—

"goods" includes raw materials, plant and animal products, equipment, commodities in solid, liquid or gaseous form, electricity and services that are incidental to the supply of the goods, works and services;

3. The principal Act is amended in section 155 by inserting the following new subsection immediately after subsection (5)— Amendment of section 155 of No.33 of 2015.

(6) An accounting officer of a procuring entity shall, when processing procurement, reserve a prescribed percentage of its annual procurement budget, which shall not be less than forty per cent, to the procurement of goods manufactured, mined, extracted, produced or grown in Kenya.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this bill is to amend Section 155 of the Public Procurement and Asset Disposal Act, 2015 to compel all government entities to set a target to procure at least forty per cent locally produced goods and services produced in Kenya.

The amendment intends to stir Kenya's domestic industry into production of goods and services for consumption by government which is the largest consumer of goods and services. Governments across the world have come to the realization that completely open economies run the risk of becoming overly dependent on imports or having important industries not develop. The effect of this amendment is to secure opportunities and productivity in Kenya that guarantees increased consumption of goods and services produced locally.

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

The Bill does not contain any provisions limiting any fundamental rights or freedom.

Statement of how the Bill concerns county governments

The Bill does affect the functions of County governments as set out in the Fourth Schedule to the Constitution and is therefore a Bill concerning county governments.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill may occasion additional expenditure of public funds.

Dated the 3rd June, 2019.

F. M. WAINGAH,
Member of Parliament.

Section 2 of Act No. 33 of 2015 that the Bill proposes to amend-

"**goods**" includes raw materials, products, equipment, commodities in solid, liquid or gaseous form, electricity and services that are incidental to the supply of the goods, works and services;

"**loans**" has the meaning assigned to it under Article 260 of the Constitution;

Section 155 of Act No. 33 of 2015 that the Bill proposes to amend-

155. Requirement for preferences and reservations

(1) Pursuant to Article 227(2) of the Constitution and despite any other provision of this Act or any other legislation, all procuring entities shall comply with the provisions of this Part.

(2) Subject to availability and realisation of the applicable international or local standards, only such manufactured articles, materials or supplies wholly mined and produced in Kenya shall be subject to preferential procurement.

(3) Despite the provisions of subsection (1), preference shall be given to—

(a) manufactured articles, materials and supplies partially mined or produced in Kenya or where applicable have been assembled in Kenya; or

(b) firms where Kenyans are shareholders.

(4) The threshold for the provision under subsection (3) (b) shall be above fifty-one percent of Kenyan shareholders.

(5) Where a procuring entity seeks to procure items not wholly or partially manufactured in Kenya—

(a) the accounting officer shall cause a report to be prepared detailing evidence of inability to procure manufactured articles, materials and supplies wholly mined or produced in Kenya; and

(b) the procuring entity shall require successful bidders to cause technological transfer or create employment opportunities as shall be prescribed in the Regulations.