

SPECIAL ISSUE

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REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2020

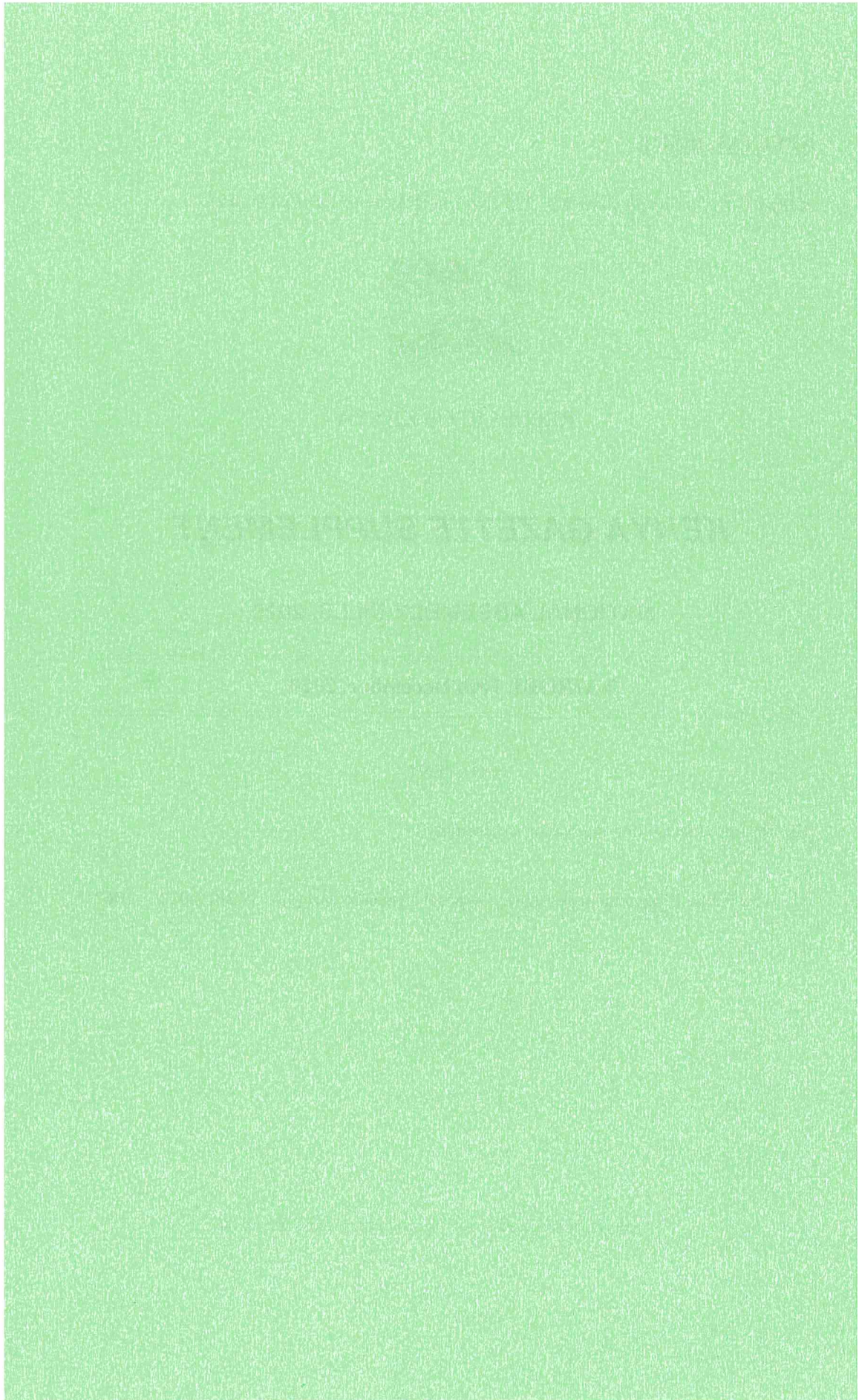
NAIROBI, 10th December, 2020

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**THE PUBLIC PROCUREMENT AND ASSET
DISPOSAL (AMENDMENT THE) (NO. 3) BILL, 2020**

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. 3) Act, 2020.

Short title.

2. Section 157 of the Public Procurement and Asset Disposal Act is amended in sub section (8) by deleting the words “five hundred million” appearing immediately after the word “above” in paragraph (a) (iii) and substituting therefor the words “twenty billion”.

Amendment of
section 157 of No.
33 of 2015.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Public Procurement and Asset Disposal Act, 2015 to enhance the amount for tenders where Kenya citizens are given exclusive preference from the sum of five hundred million shillings to twenty billion shillings. This is to protect the Kenyan traders from foreign competitors.

Clause 1 of the Bill provides for the short title.

Clause 2 of the Bill increases the amount for exclusive preference of tenders for Kenyans from five hundred million shillings to twenty billion shillings.

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

The Bill does not limit any fundamental rights and freedoms as provided under the Constitution.

Statement that the Bill concerns county governments

The Bill affects the functions of the county governments and is therefore a Bill concerning counties for purposes of the Standing Orders.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 9th December, 2020.

BENJAMIN GATHIRU MWANGI,
Member of Parliament.

Section 157 of the Act which it is proposed to amend—

Participation of candidates in preference and reservations

(1) Candidates shall participate in procurement proceedings without discrimination except where participation is limited in accordance with this Act and the regulations.

(2) Subject to subsection (8), the Cabinet Secretary shall, in consideration of economic and social development factors, prescribe preferences and or reservations in public procurement and asset disposal.

(3) The preferences and reservations referred to in subsection (2) shall—

- (a) be non-discriminatory in respect of the targeted groups;
- (b) allow competition amongst the eligible persons; and
- (c) be monitored and evaluated by the Authority.

(4) For the purpose of protecting and ensuring the advancement of persons, categories of persons or groups previously disadvantaged by unfair competition or discrimination, reservations, preferences and shall apply to—

- (a) candidates such as disadvantaged groups;
- (b) micro, small and medium enterprises;
- (c) works, services and goods, or any combination thereof;
- (d) identified regions; and
- (e) such other categories as may be prescribed

(5) An accounting officer of a procuring entity shall, when processing procurement, reserve a prescribed percentage of its procurement budget, which shall not be less than thirty per cent, to the disadvantaged group and comply with the provisions of this Act and the regulations in respect of preferences and reservations.

(6) To qualify for a specific preference or reservation, a candidate shall provide evidence of eligibility as prescribed.

(7) The Authority shall maintain an up-to-date register of contractors in works, goods and services, or any combination thereof, in order to be cognizant at all times of the workload and performance record.

(8) In applying the preferences and reservations under this section—

- (a) exclusive preferences shall be given to citizens of Kenya where—

- (i) the funding is 100% from the National Government or county government or a Kenyan body; and
- (ii) the amounts are below the prescribed threshold;
- (iii) the prescribed threshold for exclusive preference shall be above five hundred million shillings;

(b) a prescribed margin of preference shall be given—

- (i) in the evaluation of tenders to candidates offering goods manufactured, assembled, mined, extracted or grown in Kenya; or
- (ii) works, goods and services where a preference may be applied depending on the percentage of shareholding of the locals on a graduating scale as prescribed.

(9) For the purpose of ensuring sustainable promotion of local industry, a procuring entity shall have in its tender documents a mandatory requirement as preliminary evaluation criteria for all foreign tenderers participating in international tenders to source at least forty percent of their supplies from citizen contractors prior to submitting a tender.

(10) Despite subsection (2) or any other provisions of this Act, every procuring entity shall ensure that at least thirty percent of its procurement value in every financial year is allocated to the youth, women and persons with disability.

(11) Every procuring entity shall ensure that all money paid out to an enterprise owned by youth, women or persons with disability is paid into an account where the mandatory signatory is a youth, woman or a person with disability.

(12) The procuring entities at the national and county level shall make a report after every six months to the Authority.

(13) A report under subsection (12) shall—

- (a) certify compliance with the provisions of this section; and
- (b) provide data disaggregated to indicate the number of youth, women and persons with disability whose goods and services have been procured by the procuring entity.

(14) The Authority shall make a report to Parliament after every six months for consideration by the relevant committee responsible for equalization of opportunities for youth, women and persons with disability, which report shall contain details of the procuring entities and how they have complied with the provisions of this section.

(15) The Cabinet Secretary shall prescribe the preferences that shall facilitate the attainment of the quota specified in subsection (10) in order for the State to achieve the objectives of Articles 55 and 227(2) of the Constitution.

(16) The preferences referred to in subsection (15) shall—

- (a) be prescribed within ninety days after commencement of this Act;
- (b) be subject to such conditions as the Cabinet Secretary may specify therein but such conditions shall not pose any unnecessary impediment to the youth from participating in public procurement.

(17) The National Treasury shall operationalize a preference and reservations secretariat to be responsible for the implementation of the preferences and reservations under this Act which shall be responsible for—

- (a) registration, prequalification and certification of the persons, categories of persons or groups as provided for in under Part XII;
- (b) training and capacity building of the above target groups;
- (c) providing technical and advisory assistance to procuring entities in the implementation of the preferences and reservations under this Act; and
- (d) monitoring and evaluating the implementation of the preferences and reservations under this Act.

(18) The National Treasury shall provide adequate staff and resources for the operations of the secretariat.

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