



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - THIRD SESSION (2024)

IN THE MATTER OF ARTICLE 118 (1)(B) OF THE CONSTITUTION
AND

IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF—

- (1) THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) (NO. 3) BILL, (NATIONAL ASSEMBLY BILL NO. 44 OF 2024);**
- (2) THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) (NO. 4) BILL (NATIONAL ASSEMBLY BILL NO. 45 OF 2024);**
AND
- (3) THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL, 2024 (NATIONAL ASSEMBLY BILL NO. 48 OF 2024)**

INVITATION TO SUBMIT MEMORANDA AND NOTIFICATION OF PUBLIC HEARINGS

WHEREAS, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the **Public Finance Management (Amendment) (No. 3) Bill (National Assembly Bill No. 44 of 2024)**, the **Public Finance Management (Amendment) (No. 4) Bill (National Assembly Bill No. 45 of 2024)** and the **Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 48 of 2024)** were Read a First Time on Wednesday, 13th November, 2024, and thereafter committed to the **Departmental Committee on Finance and National Planning** for consideration and reporting to the House.

IT IS NOTIFIED that—

- (1) The Public Finance Management (Amendment) (No. 3) Bill (National Assembly Bill No. 44 of 2024)** is a Bill sponsored by the **Leader of the Majority Party** which seeks to amend the Public Finance Management Act, Cap. 412A, to provide for the financing of transferred functions between the two levels of government in accordance with Article 187 of the Constitution. The Bill provides that transferred functions shall continue to be funded from previous sources as contained in the approved budgets of the transferring level of government and that the cost of the transferred functions shall be based on the costing framework provided in the national and county government manuals. Additionally, the Bill provides that a transfer agreement between the two levels of government shall include a provision on acquisition, disposal and transfer of assets and liabilities. Further, that the transferring level of government shall be required to prepare cash flow projections based on revenue projections from various sources of revenue. Further, the Bill provides for the obligation of the accounting officer in a county government and the accounting officer in the national government to submit quarterly and annual financial and non-financial report in case of a transfer of function between the two levels of government.
- (2) The Public Finance Management (Amendment) (No. 4) Bill (National Assembly Bill No. 45 of 2024)** is a Bill sponsored by the **Leader of the Majority Party** which seeks to amend the **Public Finance Management Act (Cap. 412A)** to clarify the effective dates of the debt threshold requirement for the Cabinet Secretary National Treasury to ensure compliance; and provide a framework for implementation of accrual accounting in Government and risk management by the Public Sector Accounting Standards Board.
- (3) The Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 48 of 2024)** is a Bill sponsored by the **Hon. Kuria Kimani, MP** which seeks to amend the **Public Procurement and Asset Disposal Act (Cap. 412C)** to—
 - (a)** provide for new definitions including “debarment”, “foreign firm”, “foreign funded procurement”, “investigative agency”, “joint venture procurement”, “local firm”, and “minor deviation”;
 - (b)** ensure that foreign procurement contracts that have not been subjected to provisions international procurement guidelines or laws, adhere to Kenya’s procurement laws;
 - (c)** mandate the Public Procurement Regulatory Authority to monitor and evaluate technology, knowledge and skills transfer programmes and provide annual reports;
 - (d)** include a representative from the Law Society of Kenya as a member of the Public Procurement Regulatory Board (“Board”);
 - (e)** mandate each County Treasury to ensure that the procurement function prioritizes procurement of goods and services manufactured in that respective county;
 - (f)** to allow the Authority, a public institution or any other person to refer actions that constitute offences under the Act to an investigative agency;
 - (g)** enable investigations to proceed despite the fact that the issues under investigation are in relation to an issue that the Review Board is reviewing or has reviewed under the relevant provisions of the Act;
 - (h)** limit the period that a person can be debarred from public procurement and approve any debarment done by an international agency recognized in Kenya;
 - (i)** task an accounting officer to ensure that locally produced products or services are prioritized and technology, knowledge and skills transfer plans from foreign firms are prioritized in the procurement and asset disposal process;
 - (j)** prescribe the threshold for procurement that shall be awarded to a local firm and to prescribe a penalty for any person who registers a firm on behalf of a foreigner for purposes of benefiting for a procurement that falls within a prescribed threshold;
 - (k)** require procuring entities to set out in their standard tender documents specific goods, works and services to be undertaken by a local firm in joint venture procurement where a procurement is of a value exceeding one billion shillings;
 - (l)** provide that a clarification of a tender shall not add any new document or information;
 - (m)** provide additional forms of conduct of due diligence by an evaluation committee to include visiting contractor’s offices, inspection of plant, equipment and completed works and confirmation of the validity of documents presented;
 - (n)** prohibit citizen contractors who become successful tenderers from sub-contracting to foreign companies unless the knowledge, skill, good or service is not available in the country;
 - (o)** obligate procuring entities to seek the advice of the Attorney-General before accepting bids from a foreign company;
 - (p)** include a transfer of skills and technology plan as part of the tender documents;
 - (q)** provide the process for issuing a letter and notification of award to the next lowest evaluated tenderer where a successful tenderer fails to sign the contract;
 - (r)** provide for prompt and timely payments to a contractor upon completion of contractual obligation;
 - (s)** obligate the Authority to ensure that priority is given to citizen contractors in the sub-contracting of tenders;
 - (t)** provide for an offence for an accounting officer or his or her appointed representative who fails to ensure that the goods, works and services are of the right quality and quantity;
 - (u)** give preference to procurement of locally skilled and unskilled labour;
 - (v)** increase the maximum amounts for citizen contractors, to prohibit subcontracting of local procurement contracts to foreign contractors and to prioritise contractors from respective counties where a project is fully funded by the county government unless such services are unavailable;
 - (w)** provides for the mandatory procurement of forty percent of goods and services from local manufacturers or local service providers;
 - (x)** empower the Cabinet Secretary to prescribe the Preferential Procurement Master Roll;
 - (y)** align the provisions of the Act to the Court of Appeal (Organization and Administration) Act and the Civil Procedure Act;
 - (z)** provide for an offence of a contractor who submits substandard quality of works, goods or services and also a person who certifies substandard goods or works; and
 - (aa)** provide for mandatory fines for instances where an offence results in a benefit or loss.

NOW THEREFORE, in compliance with Article 118(1) (b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bills to the **Departmental Committee on Finance and National Planning**.

Written Memoranda should indicate the name of the person or organization submitting it, their contact details and the Bill that the submission relates to and should be addressed to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi**; hand-delivered to the Office of the Clerk, First Floor, Main Parliament Buildings, Nairobi or emailed to financecommittee@parliament.go.ke to be received **on or before Friday 22nd November 2024 at 5.00 p.m.**

A Public Views Template providing guidance on the form of submission to be received is available on <http://parliament.go.ke>

IT IS FURTHER NOTIFIED that the Departmental Committee on Finance and National Planning shall hold Public hearings on the Bills on **Friday 22nd November, 2024** and **Saturday, 23rd November, 2024** at the **Mini Chamber, 1st Floor, County Hall, Parliament Buildings from 10.00am to 5.00pm.**

The Committee shall discuss the contents of the Bills and their implications during the hearings. Members of the public are invited to attend and share their views on the Bills during the sessions.

Copies of the Bills are available at the National Assembly Table Office or <http://www.parliament.go.ke/the-national-assembly/house-business/bills>.

S. NJOROGE, CBS
CLERK OF THE NATIONAL ASSEMBLY
14th November 2024

“For the Welfare of Society and the just Government of the People”