



REPUBLIC OF KENYA

PARLIAMENT

NATIONAL ASSEMBLY BILLS

(Bill No. 48 of 2024)

**THE PUBLIC PROCUREMENT AND ASSET DISPOSAL
(AMENDMENT) BILL, 2024**

(A Bill published in the Kenya *Gazette* Supplement No. 194 of 2024 and passed by the National Assembly, with amendments, on November 28th, 2024)

N.A. /B/No. 48/2024

**THE PUBLIC PROCUREMENT AND ASSET DISPOSAL
(AMENDMENT) BILL, 2024**

A Bill for

**AN ACT of Parliament to amend the Public Procurement
and Asset Disposal Act and for connected purposes**

ENACTED by the Parliament of Kenya, as follows—

Short title.

1. This Act may be cited as the Public Procurement and Asset Disposal (Amendment) Act, 2024.

Amendment of
section 2 of
Cap. 412C.

2. The Public Procurement and Asset Disposal Act, in this Act referred to as the “principal Act”, is amended—

(a) in the definition of “asset” by inserting the words “or virtual or digital assets” immediately after the words “proprietary rights”;

(b) by inserting the following new definitions in their proper alphabetical sequence—

“debarment” means the exclusion of a person or a firm from entering into a public procurement contract as a supplier, contractor or service provider;

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

“foreign funded procurement” means acquisition of goods, works and services by the government of Kenya which are wholly or partly funded by foreign loans or grants pursuant to a bilateral or multilateral treaty;

“investigative agency” includes the National Police Service, Ethics and Anti-Corruption Commission, Kenya Revenue Authority, Anti-Counterfeit Agency or any other government agency mandated with the role of investigation under any written law;

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

Cap. 486.

“local firm” means a company incorporated in Kenya under the Companies Act or any other written law whose shareholding is wholly owned by a Kenyan citizen; and

“minor deviation” means —

- (a) matter of form and not of substance; or
- (b) an immaterial defect in a bid or variation of a bid from the exact requirements of the invitation that can be corrected or waived without being prejudicial to other tenderers:

Provided that the defect or variation does not affect the price, quantity, quality or delivery or the defect or variation is negligible when contrasted with the total cost or scope of the supplies or services being acquired.

Amendment of section 4 of Cap.412C.

3. Section 4 of the principal Act is amended by inserting the following new subsection immediately after subsection (3)—

“(4) For the avoidance of doubt, except where a bilateral or multilateral agreement between the Government of Kenya and any other foreign government, agency, entity or multilateral agency provides for use of foreign or international financing procurement procedures and guidelines, this Act shall apply to foreign funded procurement for goods, works and services by Government of Kenya.”

Amendment of section 9 of Cap.412C.

4. Section 9 of the principal Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (I)—

“(Ia) monitor and evaluate the transfer of technology, knowledge and skill plans as provided for under this Act and provide annual public reports;”

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Amendment of
section 10 of
Cap.412C.

5. Section 10 (1) of the principal Act is amended by deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) three members who shall be appointed by the Cabinet Secretary after nomination, through a fair process by—

- (i) the Institute of Certified Public Accountants of Kenya;
- (ii) the Kenya Institute of Supplies Management; and
- (iii) the Law Society of Kenya.”

Amendment of
section 33 of
Cap.412C.

6. Section 33 of the principal Act is amended in subsection (2) by inserting the following new paragraph immediately after paragraph (g)—

“(ga) ensure that goods and services manufactured in the respective county are prioritized in the procurement process;”

Amendment of
section 35 of
Cap.412C.

7. The principal Act is amended in section 35 by inserting the following new subsection immediately after subsection 3—

“(4) An act that constitutes an offence under this Act shall be referred to an investigative agency for its action by the Authority, a public institution, or any other person.”

Amendment of
section 40 of
Cap. 412C.

8. The principal Act is amended by deleting section 40.

Amendment of
section. 41 of
Cap.412C.

9. The principal Act is amended in section 41—

- (a) by deleting subsection (4) and substituting therefor the following new subsection —

“(4) A debarment under this section shall be for a specified period of time of not less than three years and not exceeding six years.”

- (b) by inserting the following new subsection immediately after subsection (4)—

“(4A) A person or a firm debarred by an international agency recognized by Kenya shall be deemed to have been debarred in Kenya as if the

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debarment procedures and proceedings were conducted in Kenya.”

Amendment of
section 44 of
Cap.412C.

10. Section 44 of the principal Act is amended in subsection (2) by inserting the following new paragraphs immediately after paragraph (h)-

- “(ha) ensure that locally produced products or services are prioritized in the procurement and asset disposal process;
- (hb) ensure, where applicable, technology, knowledge and skills transfer plans from foreign firms are prioritized in the procurement and asset disposal process;”

Amendment of
section 53 of
Cap. 412C.

11. Section 53 of the principal Act is amended—

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

“(6A) Any procurement of up to 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 percent of the value of the procurement.”

(b) by inserting the following new subsections immediately after subsection (13)—

“(14) A person who registers a company on behalf of a foreigner exhibiting unfair competition and seeks to benefit from the 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.

(15) A foreigner exhibiting unfair competition who registers a company by misrepresenting himself or herself as being Kenyan and seeks to benefit from procurement under this section commits an offence

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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.”

Amendment of section 70 of Cap. 412C.

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

“(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.”

Amendment of section 81 of Cap.412C.

13. The principal Act is amended in section 81 by deleting subsection (2) and substituting therefor the following new subsection—

“(2) A clarification shall not change the terms of the tender or add any new document or information.”

Amendment of section 83 of Cap.412C.

14. The principal Act is amended in section 83 by deleting subsection (2) and substituting therefore the following new subsection—

“(2) The conduct of due diligence under subsection (1) includes but is not limited to obtaining confidential references from persons with whom the tenderer has had prior engagement, visiting contractor’s offices, inspecting of plant, equipment and completed works, in addition to confirming the validity of documents presented.”

Amendment of section 86 of Cap.412C.

15. Section 86 of the principal Act is amended by inserting the following new subsection immediately after subsection (2)—

“(3) A successful tenderer who is a citizen contractor, shall not subcontract a foreign company unless the knowledge, skill, good or service is not available in the country.”

Amendment of section 89 of Cap412C.

16. Section 89 of the principal Act is amended by—

(a) renumbering the existing provision as subsection (1);

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(b) inserting the following new subsection immediately after subsection (1)—

“(2) Where a foreign tenderer participates in the competition for procurement, the respective procuring entity shall obtain an advisory from the Attorney-General on the propriety of the funding of the foreign tenderer.”

Amendment of section 135 of Cap.412C.

17. Section 135 of the principal Act is amended in subsection (6) by inserting the following new paragraph immediately after paragraph (g)—

“(ga) transfer of skills and technology plan, where applicable;”

Amendment of section 136 of Cap.412C.

18. The principal Act is amended in section 136 by inserting the following new subsections immediately after subsection (1)—

“(1A) Upon completion of an evaluation and the successful tenderer is established, the accounting officer shall notify all the other tenderers of the award in accordance with section 87 of this Act.

(1B) Where a successful tenderer declines the contract, the accounting officer may—

- (a) issue the letter and notification of award to the next lowest evaluated tenderer; and
- (b) give a notice in writing to all other persons submitting tenders of the notification of the award.

(1C) A person aggrieved by the decision made by the accounting officer under subsection (1B) may seek administrative review of that decision by the Review Board within fourteen days of notification of award.”

Amendment of section 139 of Cap.412C.

19. Section 139 of the principal Act is amended in subsection (4) by—

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- (a) inserting the words “and works” immediately after the words “for goods” appearing in paragraph (d); and
- (b) deleting the word “professional” appearing in paragraph (e).

Insertion of
new section
139A into
Cap. 412C.

20. The principal Act is amended by inserting the following new section immediately after section 139—

Prompt
payment. **139A.** A procuring entity shall make prompt and timely payments to a contractor who satisfactorily performs the contractual obligations as stipulated in the procurement contract.

Amendment of
section 149 of
Cap. 412C.

21. Section 149 of the principal Act is amended by inserting new subsections—

“(3) The accounting officer shall ensure that priority is given to citizen contractors in sub-contracting of tenders that have been allocated to citizen contractors.

(4) Where it is deemed necessary to subcontract a tender to a foreign contractor—

- (a) the accounting officer shall cause a report to be prepared detailing reasons for the need to subcontract to a foreign contractor; and
- (b) the accounting officer shall ensure that a percentage of the margin preference is applied as shall be prescribed in the Regulations.”

Amendment of
section 150 of
Cap. 412C.

22. Section 150 of the principal Act is amended by inserting the following new subsections immediately after subsection (3)—

“(4) An accounting officer or his or her appointed representative who contravenes subsection (1), commits an offence.

(5) A head of the procurement function or his or her appointed representative who contravenes subsection (2), commits an offence.”

Amendment of
section 155 of
Cap. 412C.

23. Section 155 of the principal Act is amended in subsection (3), by inserting the following new paragraph immediately after paragraph (a)—

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Amendment of
section 157 of
Cap.412C.

“(aa) locally available skilled and unskilled labour;”

24. Section 157 of the principal Act is amended –

(a) in subsection (8)(a) by deleting subparagraph (iii) and substituting therefore the following new subparagraph—

“(iii) the prescribed threshold for exclusive preference shall be above one billion shillings;”

(b) by deleting subsection (9) and substituting therefor the following new subsection—

(9) For the purpose of ensuring sustainable promotion of local industries—

(a) a procuring entity shall have in its tender documents a mandatory requirement as a 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;

(b) a procuring entity shall procure forty per cent of all its goods and services from a local manufacturer or local service provider;

(c) a procuring entity shall, on a quarterly basis, report to the Cabinet Secretary on its compliance with paragraph (b); and

(d) the Cabinet Secretary may publish in the *Gazette* a Preferential Procurement Master Roll specifying the locally manufactured goods that shall be

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procured locally by every procurement entity.

Amendment of section 175 of Cap.412C.

25. The principal Act is amended in section 175 —

(a) by deleting subsection (3) and substituting therefore the following new subsection—

Cap. 21.

“(3) The High Court shall determine the judicial review application in accordance with the Civil Procedure Act.”

(b) by deleting subsection (4) and substituting therefore the following new subsection—

Cap. 9A.

“(4) Appeals from the decision of the High Court shall be made in accordance with the Court of Appeal (Organization and Administration) Act.”

(c) by deleting subsection (5).

Amendment of s. 176 of Cap. 412C.

26. Section 176 of the principal Act is amended—

(a) in subsection (1) by inserting the following new paragraph immediately after paragraph (e)—

“(ea) submit substandard quality of works, goods or services contrary to the contract specifications, terms or conditions at the time of inspection;” and

(b) by inserting the following new subsection immediately after subsection (2) —

“(2A) A person who certifies or delivers substandard goods or works that are incomplete, non-existent, or whose quality is below the specifications contained in the contract commits an offence.”

Repeal and replacement of s. 177 of Cap.412C.

27. The principal Act is amended by repealing section 177 and replacing it with the following new section—

General

penalty and sanctions.

177. (1) A person convicted of an offence under this Act for which no penalty is provided shall be liable upon conviction to—

- (a) if the person is a natural person—
 - (i) a fine not exceeding one million shillings, or to imprisonment for a term of not exceeding ten years, or to both; and
 - (ii) an additional mandatory fine if, as a result of the conduct that constituted the offence, the person received a quantifiable benefit or any other person suffered a quantifiable loss.
- (b) if the person is a body corporate, to a fine not less than ten million shillings in addition to the mandatory fine provided for under subsection (1) (a) (ii).

(2) The mandatory fine referred to in subsection (1)(a) (ii) shall be determined as follows—

- (a) the mandatory fine shall be equal to two times the amount of the benefit or loss described in subsection (1)(a) (ii);
- (b) if the conduct that constituted the offence resulted in both a benefit and loss described in subsection (1)(a)(ii), the mandatory fine shall be equal to two times the sum of the amount of the benefit and the amount of the loss.

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I certify that this printed impression is a true copy of the Bill passed by the National Assembly on the 28th November, 2024.



Clerk of the National Assembly

CLERK OF THE
NATIONAL ASSEMBLY
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Endorsed for presentation to the Senate in accordance with the provisions of Standing Order 142 of the National Assembly Standing Orders.



Speaker of the National Assembly