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**REPUBLIC OF KENYA
KENYA NATIONAL ASSEMBLY
NINTH PARLIAMENT - FOURTH SESSION**

**REPORT
OF THE
DEPARTMENTAL COMMITTEE
ON
FINANCE, TRADE, TOURISM & PLANNING**

**ON
THE PUBLIC PROCUREMENT AND DISPOSAL
BILL, 2005**

JULY, 2005

1.0 INTRODUCTION

Mr. Speaker Sir, on behalf of the Members of the Departmental Committee No. F on Finance, Trade Tourism & Planning and pursuant to the provisions of Standing Order No. 162, I would like to take this opportunity to present to the House, the Committee's Report on the Public Procurement and Disposal Bill, 2005.

The membership of the Committee comprise of the following:

The Hon. Mutahi Kagwe, MP (**Chairman**)
The Hon. (Dr.) Oburu Oginga, MP (**Vice Chairman**)
The Hon. Chrysanthus Okemo, MP
The Hon. (Dr.) Adhu Awiti, MP
The Hon. John Mutinda Mutiso, MP
The Hon. Abdi Tari Sasura, M.P.
The Hon. Jakoyo W. Midiwo, MP
The Hon. Nyaga Wambora, MP
The Hon. Wycliffe A. Oparanya, MP
The Hon. S. K. Kanyingi, MP
The Hon. Joel Onyancha, MP
Mrs Florence Abonyo - Secretary to the Committee

The functions of this Departmental Committee as established under Standing Order No. 151 are *inter alia*:-

- (i) to study and review all legislation after First Reading subject to the exemptions under Standing Order No. 101 A (4)**
- (ii) to make reports and recommendations to the House as often as possible including recommendations of proposed legislation.**

The Public Procurement and Disposal Bill, 2005 was referred to the Departmental Committee on Finance, Planning and Trade upon a motion moved by the Minister for Finance pursuant to the provisions of Standing Order No. 101(1).

The Committee held a one day workshop for all Members of Parliament and a consultative meeting with the following stakeholders to deliberate on the Bill:-

- ◆ Kenya Association of Manufacturers
- ◆ Kenya Institute of Supplies Management
- ◆ Institution of Engineers of Kenya
- ◆ Kenya Civil Society Alliance
- ◆ East African Cables Limited
- ◆ Institute of Certified Public Accountants of Kenya
- ◆ Kenya Federation of Master Builders
- ◆ Small Suppliers

The government through all its public entities is the largest trader in the country and leading in the magnitude of procurement of goods and services. Therefore, public procurement is a key area of focus in public sector management. However, there have been challenges in the way public procurement and disposal has been handled due to lack of adequate legal framework which is also scattered among several Acts of Parliament. The Bill, which seeks to address *inter alia* transparency, efficiency in the procurement process and protection of the local industries is therefore, timely and critical for the country.

2.0 DELIBERATION ON THE PUBLIC PROCUREMENT AND DISPOSAL BILL, 2005

Clause 1	-	Agreed to
Clauses 2-6	-	Amendment proposed
Clauses 7-8	-	Agreed to
Clauses 9-10	-	Amendment proposed
Clause 11	-	Agreed to
Clauses 12-13	-	Amendment proposed
Clauses 14-19	-	Agreed to

Clause 20	-	Amendment proposed
Clause 21	-	Agreed to
Clause 22	-	Amendment proposed
Clauses 23-24	-	Agreed to
Clauses 25-31	-	Amendment proposed
Clauses 32-34	-	Agreed to
Clauses 35-36	-	Amendment proposed
Clauses 37-38	-	Agreed to
Clause 39	-	Amendment proposed
Clauses 40-42	-	Agreed to
Clauses 43-45	-	Amendment proposed
Clause 46	-	Agreed to
Clauses 47-49	-	Amendment proposed
Clauses 50-53	-	Agreed
Clause 54	-	Amendment proposed
Clauses 55-59	-	Agreed to
Clause 60	-	Amendment proposed
Clauses 61-73	-	Agreed to
Clauses 74-75	-	Amendment proposed
Clauses 76-91	-	Agreed to
Clause 92	-	Amendment proposed
Clause 93	-	Agreed to
Clause 94	-	Amendment proposed
Clauses 95-96	-	Agreed to
Clause 97	-	Amendment proposed
Clauses 98-99	-	Agreed to
Clause 100	-	Amendment proposed
Clauses 101-103	-	Agreed to
Clause 104	-	Amendment proposed
Clause 105	-	Agreed to
Clauses 106 -111	-	Amendment proposed.

Clause 112	-	Amendment proposed
Clause 113 -122	-	Agreed to
Clause 123	-	Amendment proposed
Clause 124 -126	-	Agreed to
Clauses 127-129	-	Amendment proposed
Clause 130 - 132	-	Agreed to
Clause 133- 134	-	Amendment proposed
Clause 135 - 139	-	Agreed to
Clause 140	-	Amendment proposed
Clause 141-144	-	Agreed to
First, Second, Third, & Fourth Schedules	-	Agreed to

3.0 OBSERVATIONS ON THE BILL

Clause 3

The definition of public entity such as parastatals, corporations should be governed by specific acts of parliament in existence. The state corporations are also under separate Acts and should comply with procurement regulations.

Clauses 5 and 6

Clause 5 seeks to repudiate the various existing acts which regulates the profession while Clause 6 does not give directions on how conflicts between the proposed act and the existing acts may be resolved hence the need for harmonization.

Clause 7

The bias given to donors and agreements with other governments negates the spirit of addressing past flaws in procurement. The donor has absolute right to dictate whoever is accessing the donor funds and has also been given open access to all local projects

funded by taxpayers money. There is need for specific negotiations on donor funding.

Clause 10

The qualification requirements are limiting as they lock out other qualified professionals such as lawyers, engineers, architects, quantity surveyors and accountants. Many officers in the Ministerial and District Tender Committees lack the necessary qualifications and capacity to handle procurement matters efficiently. Therefore, the directorate should include persons qualified in specialized fields.

Clause 15

There is no provision on how to determine incompetence or involvement in corruption as regards the dismissal of the Director-General.

Clause 22(1) (a)

The Clause provides that the Public Procurement Oversight Advisory Board shall consist of a Director-General and nine members appointed by the Minister from persons nominated by the prescribed organizations which are not named and is not clear who will determine the said organizations.

Clause 28

The Clause provides for the employment of procuring agents pre-qualified by the Authority where a public entity has inadequate capacity to undertake procurement. Critically the Clause is providing for middlemen whose qualifications are not set by the Bill and whose activities may be difficult to control or monitor. The

Clause should set qualifications for procuring agents otherwise this provision may prove inimical to the procuring process.

Clause 30

Section 30(2) provides that a person who splits a tender shall be guilty of an offence without specifying the penalty. This should either be specified or tied to Clause 138, which stipulates penalties.

Clause 31

Although the Clause appear as away of getting competent persons to carry out procurement requirements efficiently, it is loaded with effective tools to bar otherwise qualified persons from bidding for works, goods and services. Any company doing business with the government should be registered in Kenya with local shareholding

Recent advertisements in the water sector have put for instance a clause requiring bidders to have carried out consultancy services worth 20 Million Euros (Kshs. 2 Billion) while lawyers to show proof of litigation cases they have undertaken in excess of of Kshs. 5 million.

These are meant to favour international consultants and the donors are using these conditions to secure procurement services for their people at the expense of qualified and competent local professionals. This should be the time for reconstruction and development of the country and the government should take a central role in creating an enabling business environment for its people and not embracing difficult conditions created by donors.

Clause 32

Pre-qualification promotes corruption and should be done away with. The evaluation exercise is carried out by supplies personnel who use their discretion to short list 6 to 8 companies per category of goods and there is no room for appeal. The supplies officers are expected to contact the short listed companies for the second phase of the exercise i.e. quotation. However, the officers normally contact a few preferred companies and not the rest on grounds of telephone or fax not working. This is done in order to minimize competition and in the process ensures that the companies associated with them win the tenders.

Clause 39

The Clause is not explicit on the manner in which the government shall give maximum opportunities to the small and medium scale entrepreneurs. The clause is too vague and does not reflect special and affirmative treatment for local and medium enterprises as the participation is irrespective of nationality.

If the general rule is that contractors and suppliers are to participate in the procurement process regardless of their nationality, then the procurement entities cannot promote domestic firms or companies from neighbouring countries for a particular contract. The establishment of national treatment as the general principle from which access for domestic enterprises is treated as derogation, is detrimental to a developing country like Kenya.

Their participation should be expressly provided for in the Bill rather than leaving to be covered by subsidiary legislation. Therefore, its crucial for Kenya to award public contracts to

domestic companies with the aim of developing its local industry, generate employment and economic growth.

In other countries such as Tanzania, Uganda, Botswana, South Africa etc non citizens are required by law to incorporate local citizens on an 51%-49% shareholding while it is impossible for non citizens to do business in developed countries. Therefore, the Clause should categorically provide that all procurement should have 30% or more local participation.

Clause 44

The Clause prohibits disclosure of information by an employee of the procuring entity during or after the procurement proceedings. However, this needs to be reconsidered and the exceptions to those who can disclose information should be expanded to include whistle blowers.

Reason being that, the transparency, fairness and impartiality of the process will depend a great deal on public exposure of situations in which a public entity or its officials breach the procurement rules and such information may only be known through information from employees of the entity involved in the procurement process.

Clause 55

The Clause is very vague as it has no timeframe and this can give room for abuse. Therefore, there is need to specify a reasonable procurement period as pre-qualifications and procurement for construction works for instance takes upto two years thereby causing a lot of delays in projects implementation.

Cumbersome procurement procedures have also attributed to pending bills which attract interests due to disputes. The government should therefore ensure that the departments have adequate funds before entering into a contract to avoid penalties due to delayed payments.

Clause 93

The fourteen days notice is inadequate.

Clause 100

There should be a provision that if an appeal is lodged in the High Court and is not determined within a specified time, say forty-five days, then the procurement process shall continue. However, if the aggrieved tenderer is successful in his appeal, then he should be paid for damages by the procuring entity.

Clause 118

Frivolous appeals through court system delays the procurement process. There is need therefore, to find out why appeals have been successful in the past and the Bill should also provide that the Appeals Board machinery should be exhausted by the aggrieved parties before going to court.

Clause 126

There is no time guidance on the management of stores and surplus to determine when to dispose off the stores yet a lot of money is usually tied in stores. Surplus should not be there in the first place because procurement should be based on actual needs and there should be follow up on delivery of goods.

Tendering conditions

- (i) There has been abuse on tendering procedures that has led to formation of cartels so as to reduce the number of participants in a tender. The tender documents are very expensive and the procedure for purchasing tender documents is also frustrating to participants. Therefore, money should be refunded when a tender is cancelled or the varied tender should be given free.
- (ii) Although bid bonds and performance is justified to ensure that the successful bidder does not pull out, the amount should be reasonable and not exorbitant. Bonds offered by insurance companies should also be accepted as bank's conditions are very stringent and require a considerable financial outlay.
- (iii) Current procurement regulations protect procuring entities while the suppliers are not protected. Successful tenderers are given specific period by the procuring entities to supply goods failure to which the LPO is cancelled. However, some procuring entities take many months before paying for the supplied goods.
- (iv) It is now a standard procedure for procuring entities to remit Out-Put-VAT deducted from suppliers to Kenya Revenue Authority in the form of withholding tax. Suppliers are supposed to claim input VAT refund from KRA upon production of withholding tax certificates. However, KRA takes upto six months to refund the claims and this is driving small suppliers out of business due to the fact that they are expected to repay bank overdraft with interest.

- (v) Variation orders should not be encouraged especially in cases where feasibility studies have been done. Japan for instance has fixed contracts. Variation orders should have a limit which should be adhered to after which the contract should be reviewed and re-tendered.

4.0 RECOMMENDATIONS ON THE BILL

- ◆ To enhance transparency and accountability, the Bill should provide that the Public Procurement Oversight Authority should publish in the Kenya Gazette quarterly reports on procurements. One area that has been a great concern is the defence and security procurements because of the implications for national security. However, the procurements have been undertaken in secretive manner and usually on the basis of single sourcing or restricted tendering and the result has been massive loss of public funds. Therefore, while recognizing the interest of national security, it is important that Parliament be very vigilant on the issue of defence contracts, as they have tended to be the major area of abuse in procurement and there is need to define security as defence and security procurement has been a source of scandals.
- ◆ The Ministerial Tender Committees should meet every week and quarterly performance report should be embedded in the bill.
- ◆ Detailed regulations on the Bill should be prepared and the relevant Parliamentary Committee should oversight the regulations.

- ◆ There is need for database in all ministries on common supplies so that the price range is known across the board to avoid overpricing.

Clause 22

There should be a provision in the Clause to the effect that the names of the persons nominated by the prescribed organizations shall be approved by Parliament through the relevant committee. Various bodies are being established by the Bill and the appointments to these bodies should be subjected to Parliamentary approval.

Clause 26(10)

The Authority should facilitate through an Act of Parliament the establishment of an examination body for procurement professionals. The examination body should be established just like Accountants and Secretaries Examination Board which is established by an Act of Parliament and which also establishes the institute of professional Accountants of Kenya.

Clause 28

There should be a provision that the procurement agent shall be registered with the Procurement Oversight Authority and that where the procuring agent is undertaking procurement on behalf of a procurement entity then the procuring agent shall use the provisions of this Act or other regulations provided for by the Authority or the Minister.

Clause 33(1)(c)

The Clause should provide that only the relatives of persons

working for the procuring entity or a Minister in charge or closely associated to the procuring entity should be barred from tendering for procurement. Reason being that almost everyone in the country has a relative who is a public servant and this may be a source of black mail if one would like to harass a successful person in tender proceeding.

Clause 38

The penalties should be commensurate with the offence and should be a percentage of the quantum of the contract. The penalties provided for in the bill, will negatively impact on local entrepreneurs and will drive them out of business.

Clause 39

- (i) There is need to give preference to the local manufacturers in order to support the growth and development of our industries since local manufacturers irrespective of their size create jobs for Kenyans and are adversely affected by resourced foreign competitors.
- (ii) There should be classification of micro, medium and large-scale enterprises in order to determine whether procurements should be classified as local or international. The government should also reserve a percentage for small and micro scale enterprises.
- (iii) In order to maintain integrity and ethical practices in the professional field, procurement of professionals should be done through the relevant acts and the list of those pre-qualified retained by the procuring entities for engagement when procurement exists.

Clause 48

The interest charges should be in conformity with the bank rate to avoid chances of collusion.

Clauses 50-70

There is no provision for standards and contractors should be given specific standards for major contracts on infrastructure as a guarantee like no potholes or spill-off etc on constructed roads.

Clause 71

Lack of local capacity should be clearly defined to justify the invitation of international bidders to tender.

Clause 86

The Clause should provide for some parameters of what would constitute effective competition for instance where expertise required may not be available locally to avoid influence of powerful multinationals that are touting for international markets. This is necessary for the sake of the infant industries that the government is seeking to protect.

Clause 97

The review period should be reduced to fourteen days.

Clause 98

Clause 98(c) should be deleted and the decision should be final and binding.

Clause 106

The fee should be clarified and be pegged to either a percentage or quantum of the contract.

5.0 PROPOSED AMENDMENTS TO THE BILL

CLAUSE 2

THAT, Clause 2 be amended by inserting the following new subsection (f):-

2(f) to facilitate the promotion of local industry and economic development.

CLAUSE 3

THAT, Clause 3 be amended as follows

- (i) by inserting the word **“assets”** after the word **“goods”** under the definition of **“procurement”**.

- (ii) by introducing the following under definitions.

“Public funds” has the meaning assigned to it in the Exchequer and Audit Act Cap 412 and include monetary resources appropriated to procuring entities through budgetary process, as well as extra budgetary funds including aid grants and credits put at the disposal of procuring entities by foreign donors, and revenues of procuring entities.

“Citizen contractor” means a natural person or an incorporated company wholly owned and controlled by persons who are citizens of Kenya”.

“Local contractor” means a contractor who is registered in Kenya under the companies Act and whose operation is based in Kenya.

“Urgent need” means the need for goods, works or services, where there is an imminent and or actual threat to public health, welfare, safety, or damage to property, and so engaging in the tendering proceedings or other procurement methods would therefore not be practicable.

CLAUSE 4

THAT, Clause 4 amended as follows

(i) **In sub-clause (1)**

(a) By deleting **subsection 1(b)** and inserting the following in place thereof:

4(1)(b) Contract management

(b) By inserting the following new subsections **(c)**

4(1)(c) Supply chain management which include inventory and distribution.

* **(c) In subsection 4(1) (d)** by inserting the word **“assets** after the word **stores”**.

(ii) **In sub-clause (2)** by deleting section **“133(3)(a)”** and inserting section **“129(3)(a)”** in place thereof.

(iii) **In sub-clause (3)(a)** by deleting **(e)** and substituting with **(c)**

CLAUSE 5

THAT, Clause 5(1) be amended by inserting the following words at the end: -

“In matters relating to procurement and disposal”

CLAUSE 6

THAT, Clause 6 be deleted and insert the following new Clause.

- 6(1)** To the extent that this Act conflicts with any obligations of the Republic of Kenya under or arising from any treaty or other agreement to which Kenya is a party, the Kenyan law shall prevail except for the negotiated grants and loans.
- 6(2)** Where such treaty or agreements contains provisions favorable to citizens and local contractors, full advantage shall be taken of these in the interest of promoting domestic capacity development
- 6(3)** if Kenya is required under the terms of any treaty or agreement to which she is a party to contribute from her own resources, in any form, to any procurement activities within Kenya in part or wholly, jointly or separately, then procurement through such contributions shall be-
- (a) in discrete activities where possible.
 - (b) subject to the applicable provisions of this Act.
- 6(4)** the disposal of any, or all of the goods, or public assets accruing to Kenya as a result of procurement activities made under subsections (1) and (2) shall, similarly, be subject to the appropriate provisions of this Act.
- 6(5)** where the procurement, in the context of (1) above favours an external beneficiary, then-
- (a) the procurement through contributions made by Kenya, shall be undertaken in Kenya through contractors registered in Kenya .

- (b) all insurances relevant shall be placed with companies registered in Kenya and goods shall be transported in carriages registered in Kenya.

CLAUSE 9

THAT, Clause 9 be amended as follows:-

By introducing new **subsection (d)** and renumbering the old **(d) to be (e)** as follows:-

(d) To initiate public procurement policy and propose amendments to the Act and regulations for gazettment by the Minister.

(e) To ~~perform such other functions and duties~~ as are provided for under this Act.

CLAUSE 10

THAT, Clause 10 be amended as follows:-

- (i) In **subsection (2)**, by inserting the following words at the end.

“With the approval of Parliament through the relevant Committee”. ✕

- (i) In **subsection (3)** by inserting the following words after the word **“economics”**

“engineering or related field of study”.

CLAUSE 12

THAT, Clause 12 be amended by deleting the words **“after being appointed”** and inserting the following words in place thereof.

“During the period of his or her appointment”

CLAUSE 13

THAT, Clause 13 be amended by inserting the following words at the end.

“in accordance with the State Corporations Act”

CLAUSE 20

THAT, Clause 20 be amended as follows:

- (i) In **subsection 20(3)(c)** by deleting the word ***“specifically”*** and inserting the word ***“specially”*** and by substituting section **“93”** with section **“92”**.

- (ii) By inserting the following new **subsection (d)**.
20(3)(d) a report on the on the extent of positive bias to local participation.

CLAUSE 22

THAT, Clause 22(1)(a) be amended by inserting the following words at the end.

~~***“The names recommended should be approved by Parliament through the relevant committee”.***~~

CLAUSE 25

THAT, Clause 25 be amended by deleting the word **“Complaints”** and inserting the same before the word **“Review”**.

CLAUSE 26

THAT, Clause 26 be amended as follows:

- (i) By inserting the following marginal heading

“Threshold matrix and segregation of responsibilities”

- (ii) In sub-clause (3) by inserting the following **new subsections (b) and (c).**

26(3)(b) procurement shall be undertaken by a procuring entity as per the threshold matrix as set out in the regulations.

26(3)(c) procurement initiation, processing and receipt of goods, works and services shall be handled by different officers respectively.

- (iii) By deleting **subsection 26(5)** and inserting the following new subsection in place thereof.

26(5) The tender committee shall be as prescribed and shall be composed of not less than five members. The secretary to the tender committee shall be the procurement professional heading the procurement unit.

- (iv) In **subsection 26(10)** by deleting the word "**establish**" and insert the following words:

"facilitate the establishment of".

CLAUSE 27

THAT, Clause 27 be amended by inserting the following new **subsections (2),(3) and (4)** after subsection (1) and renumbering the subsequent sections accordingly.

27(2) Contractors, suppliers and consultants shall comply with all the provisions of this Act and the regulations."

27(3) The Accounting Officer may use the procurement unit and tender committee of another procuring entity which shall carry out the procurement in accordance with this Act and regulations.

27(4) The Authority shall have power to transfer the procuring responsibility of a procuring entity to another procuring entity or procuring agent in the event of delay and as may be prescribed.

CLAUSE 28

THAT, Clause 28 be amended as follows:-

- (i) By deleting **subsection (1)** and inserting the following new subsection.

28(1) - "A procuring entity may appoint a procurement agent on competitive basis to carry out procurement proceedings on its behalf as prescribed".

- (ii) By inserting the following new **subsection (3)**

28 (3) A procuring agent shall be registered with Public Procurement Oversight Authority and where the procuring agent is undertaking procurement on behalf of a procurement entity, the procuring agent shall use the provisions of this Act and regulations.

CLAUSE 29

THAT Clause 29 be amended by inserting the following **new subsection (4)**

29(4) - A procuring entity shall use standard tender documents as prescribed.

CLAUSE 30

THAT, Clause 30 be amended as follows:

- (i) By inserting the following marginal heading
“No procurement at inflated prices”

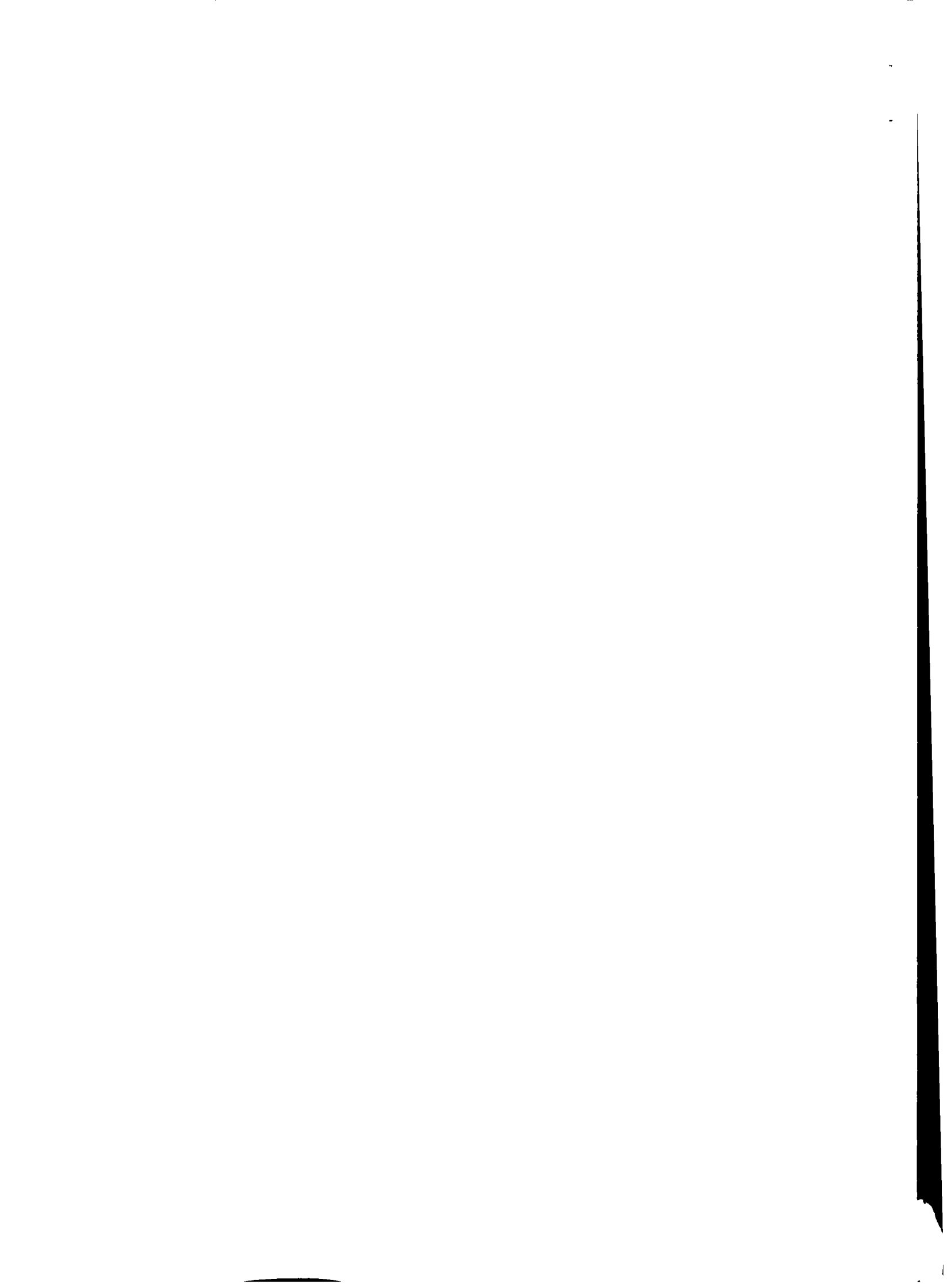
- (ii) By inserting the following new **subsections (3) and (4)**
30(3) Standard goods, services and works with known market prices shall be procured at the prevailing real market price.

30(4) Public officials involved in transactions in which standard goods, services and works are procured at unreasonably inflated prices shall be required to pay to the procuring entity for the loss resulting from their actions, this is in addition to other sanctions in this Act and Regulations.

CLAUSE 31

THAT, Clause 31 be amended by inserting the following new subsection (7)

31(7) the procuring entities shall be expected to use creative approaches such as design and build in order to enhance efficiency of the procurement process and project implementation.



CLAUSE 35

THAT, clause 35 be amended by inserting the following words at the end.

“and shall declare that he will not engage in any corrupt practice”.

CLAUSE 36

THAT, Clause 36(3) be amended by inserting the following words at the end.

“Within 14 days of the request”.

CLAUSE 39

THAT, CLAUSE 39 be amended as follows:-

- (i) By deleting the marginal heading “ ***participation in procurement*** ” and inserting the following in place thereof:-

“Preference and reservation scheme”.

- (ii) By deleting Clause 39 and insert the following new clause in place thereof:-

39(1)

(a) Candidates are allowed to participate in procurement proceedings without discrimination except where participation is limited in accordance with this Act and the Regulations.

(b) In consideration of economic and social development factors, the Minister shall prescribe preferences and or reservations in public procurement and disposal.

39(2) Such preferences and reservations stated in sub-section (1) (b) shall:

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

39(3) The preferences and reservations shall apply to:-

- (i) Candidates such as disadvantaged groups, Micro, Small and Medium Enterprises;
- (ii) Works, services and goods or any combination thereof;
- (iii) Identified regions; and
- (iv) Any other as may be prescribed.

(iii) By inserting the following new **subsections (4), (5) and (6)**

39(4) A procuring entity shall, when processing procurement, comply with the provisions of this Act and the Regulations in respect of preferences and reservations.

39(5)(a) To qualify for a specific preference or reservation, a candidate shall provide evidence of eligibility.

39(5)(b) The authority shall maintain an up to date register of contractors in works, goods and services or any combination in order to be cognizant at all times of the work load and performance record of contractors.

39(6) The preferences and reservations shall apply as follows:

- (a) **Exclusive Preference** to the nationals of Kenya is given where the following conditions are met:

- (i) the funding is 100% from the Government of Kenya and/or a Kenyan body
- (ii) the amounts are below the prescribed threshold.

(b) Margin of preference

- (i) the procuring entity may grant a margin of preference as prescribed in the evaluation of bids to candidates offering goods manufactured, mined, extracted and grown in Kenya.
- (ii) for works, goods and services, a preference may be applied depending on the percentage of shareholding of the locals on a graduating scale as prescribed.

CLAUSE 43

THAT, Clause 43(6)(b) be amended by deleting the word ***“spouse”*** and inserting the same at the end.

CLAUSE 44

THAT, Clause 44(2)(c) be amended by inserting the following sentence at the end.

“provided that the disclosure to an applicant seeking a review under Part VII as aforesaid shall constitute only the summary referred to in section 45(2)(e)”.

CLAUSE 45

THAT, Clause 45 be amended by inserting the following new subsection (6).

45(6) - A procuring entity shall maintain a proper filing system with clear links between procurement and expenditure files.

CLAUSE 47

THAT, Clause 47(b) be deleted and insert the following new subsection in place thereof.

47(b) contract variations shall be on the basis of price variation, quantity variation for goods, works and services as prescribed.

CLAUSE 48

THAT, Clause 48 be amended by inserting the following new subsection (b) and renumbering accordingly.

48(b) The interest rates to be paid under paragraph (a) shall be in accordance with prevailing commercial bank rate.

CLAUSE 49

THAT Clause 49(2) be deleted since the word “contractor” is already defined and renumber accordingly.

CLAUSE 54

THAT, Clause 54(2) be amended by deleting all the words from the words “the invitation” to the end and inserting the following words

“the procuring entity shall advertise at least twice in a newspaper of general nationwide circulation which has been

regularly published for at least 2 years before the date of issue of the advertisement and if the procuring entity has a website, on its website and posted at any conspicuous place reserved for this purpose in the premises of the procuring entity as certified by the head of the procurement unit”.

CLAUSE 60

THAT, Clause 60(5)(b) be amended by inserting the following words after the word **“tender”**.

“except where not applicable as may be prescribed”

CLAUSE 74

THAT, Clause 74 be amended by deleting subsection **74(4)** and renumber accordingly

CLAUSE 75

THAT, Clause 75(b) be deleted and renumber accordingly.

CLAUSE 92

THAT, Clause 92(3) be amended by renumbering correctly

CLAUSE 93

THAT Clause be amended as follows:-

- (i) **In subsection 93(1)** by deleting the word “person” and inserting the word “candidate” in place thereof.
- (ii) **In subsection 93(b)** by deleting “33” and inserting “36” in place thereof.
- (iii) **In subsection 93(2) (c)** by deleting “63” and inserting “68” in place thereof.

CLAUSE 94

THAT, **Clause 94** be amended by deleting **subsection 94(1)** and inserting the following new subsection.

94(1) upon receiving a request for a review under Section 93 the secretary to the Review Board shall notify the procuring entity of the pending review and the suspension of the procurement proceedings in such a manner as prescribed.

CLAUSE 97

THAT, **Clause 97** be amended by inserting the following new **subsection 97(2)** and renumbering accordingly

97(2) In no case shall any appeal stay or delay the procurement process beyond the stipulated time in this Act and regulations.

CLAUSE 100

THAT, **Clause 100** be amended as follows:-

- (i) **In subsection (1)** by inserting the following words at the end-
“unless a judicial review commences within fourteen days from the date of the Review Board decision.”
- (ii) **In subsection (3)**, by deleting the words **“procuring entity”** appearing on both the first and third lines and inserting the words **“party to the review”** and **“such party”** respectively.
- (ii) By inserting the following new **subsection (4)**
100 (4) If, a judicial review is not declared by the High Court within 30 days from the date of filing, the

decision of the Review Board shall take effect. The High Court may grant damages once the case is determined.

CLAUSE 104

THAT, Clause 104 be amended by deleting **subsection (b)** and renumbering accordingly.

CLAUSE 105

THAT, Clause 105 be amended as follows:

- (i) In subsection **105(d)** by inserting the marginal heading **“2003”**.
- (ii) By inserting the following new **subsection (d)**.

105(1) (d) prepare a summary of the investigator’s findings and recommendations and give a copy of the summary to the procuring entity and to the Kenya Anti-Corruption Commission established under the Anti-Corruption and Economic Crimes Act 2003.

CLAUSE 112

THAT, Clause 112 be amended by substituting the word **“from”** with the word **“against”** and by deleting the word **“thirty”** and inserting the word **“fourteen”** in place thereof.

CLAUSE 123

THAT, Clause 123 be amended by deleting **“thirty”** and inserting **“fourteen”**

CLAUSE 127

THAT, Clause 127(1) be amended by inserting the word “*in*” after the word “*with*” and substituting the word “*to*” with the word “*of*” all appearing on the third line.

CLAUSE 128

THAT, Clause 128 be amended by inserting the following new subsection (2).

128(2) The disposal committee shall meet within the prescribed time to report on the items and subject to a technical report, recommend the best method of disposal.

CLAUSE 129

THAT Clause 129 be amended by inserting the following new subsection 3(e).

129(3)(e) Trade-in

CLAUSE 133

THAT, Clause 133 be amended as follows:

(i) **In subsection (4)**, by inserting the following words after the word “*audit*”
“by the Controller and Auditor General or his appointee”

(ii) **In subsection (5)**, by inserting the following new sections:

- (e) Administration Police
- (f) Kenya Wildlife Service
- (h) Any other institution as prescribed.

CLAUSE 134

THAT, Clause 134 be amended as follows:-

- (i) **In subsection (1)**, by deleting the words "**three years**" and insert the words "**once annually**".
- (ii) **In subsection (4)**, by deleting the words "**in the regulations**".

CLAUSE 140

THAT, Clause 140 be amended as follows;

- (i) By substituting the word "**may**" appearing on the first line with the word "**shall**".
- (ii) **In subsection (d)** by deleting the words "**single members or**".

SCHEDULES

THIRD SCHEDULE

- (i) The marginal heading be amended by substituting **2003/2004** with **2005/2006**.
- (ii) In section 16, by deleting the year **2003/2004** and inserting **2005/2006** in place thereof.

FOURTH SCHEDULE

Be amended in section 4 by deleting the year **2004** and inserting **2005** in place thereof.

TITLE

THAT, the title be amended by inserting following words:-

“ the word “**efficient**” after the word “**for**” and the word “**assets**”
after the word “**stores**”

6.0 CONCLUSION

The Committee recommends that the House adopts its Report on the Public Procurement & Disposal Bill, 2005. Mr. Speaker Sir, may I take this opportunity to thank all Members and the Committee for their input and valuable contributions during the deliberations on the Bill.

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Hon. Mutahi Kagwe, MP
Chairman- Departmental Committee on
Finance, Trade, Tourism and Planning

Date.....