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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY



THIRTEENTH PARLIAMENT – THIRD SESSION – 2024

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPORT ON:
THE CONSIDERATION OF
THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL, 2024
(NATIONAL ASSEMBLY BILLS NO. 48 OF 2024)



CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

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LIST OF ABBREVIATION

KEPSA	Kenya Private Sector Alliance
KISM	Kenya Institute of Supplies Management
KURA	Kenya Urban Roads Authority
MP	Member of Parliament
ODM	Orange Democratic Movement
PPRA	Public Procurement Regulatory Authority
UDA	United Democratic Alliance

ANNEXURES

Annexure 1: Adoption Schedule

Annexure 2: Minutes

Annexure 3: The Public Procurement and Asset Disposal (Amendment) Bill, 2024 (National Assembly Bills No. 48 of 2024)

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Annexure 8: Copies of Memoranda by stakeholders

CHAIRPERSON'S FOREWORD

This report contains the proceedings of the Departmental Committee on Finance and National Planning on the consideration of the Public Procurement and Asset Disposal (Amendment) Bill, 2024 (National Assembly Bills No. 48 of 2024), sponsored by the Honourable CPA Kuria Kimani, M.P, the Chairperson of the Departmental Committee on Finance and National Planning. The Bill was published on 1st November 2024, read a First Time on 13th November 2024 and was committed to the Committee for consideration and reporting to the House pursuant to Standing Order 127.

The Bill contains a raft of amendments to the Public Procurement and Asset Disposal Act, Cap. 412C that include the following:

- (a) **Prioritization of locally produced products or services in the procurement and asset disposal process:** The Bill seeks to amend section 44 of the Act to task an accounting officer to ensure that locally produced products or services are prioritized. In addition, accounting officers shall ensure that technology, knowledge and skills transfer plans from foreign firms are prioritized in the procurement and asset disposal process;
- (b) **Preferential treatment of local firms vis-a-vis foreign firms:** The Bill seeks to amend section 53 of the Act to provide that any procurement of less than one billion shillings shall be awarded to a local firm. It also provides that a foreign firm shall be eligible for procurement of contracts of more than one billion shillings where the foreign firm has entered into a joint venture procurement with a local firm for not less than 30% of the value of the procurement;
- (c) **Prohibition of citizen contractors from subcontracting a foreign company:** The Bill seeks to amend section 86 of the Act to 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;
- (d) **Increase of maximum contract amounts for citizen contractors from 500 million to 1 billion:** The Bill seeks to amend section 157 of the Act to increase the maximum amounts for citizen contractors to above one billion shillings;
- (e) **Sustainable promotion of local industries:** The Bill proposes to amend section 157 of the Act to prohibit subcontracting of local procurement contracts to foreign contractors and to prioritise contractors from respective counties where the project is fully funded by the county government unless such services are unavailable. It also provides for the mandatory procurement of forty percent of goods and services from local manufacturers or local service providers and grants the Cabinet Secretary the power to prescribe the Preferential Procurement Master Roll.

In compliance with Article 118(b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly placed an advertisement in the print media on 14th November 2024 inviting the public to submit memoranda by way of both oral and written submissions on the Bill.

In addition, the Clerk of the National Assembly vide letter Ref. No.NA/DDC/F&NP/2024(126) dated 15th November 2024 invited key stakeholders to submit views on the Bill and attend a public participation forum on Friday 22nd November and Saturday 23rd November 2024. The memoranda were to be received on or before 21st November 2024 at 5.00 pm (East African Time). By the close of the submission deadline, the Committee had received twelve (12) submissions.

Additionally, the Committee on diverse dates between Monday 18th and Wednesday 20th November 2024, conducted public participation forums in six (6) counties, namely Isiolo, Bungoma, Siaya, Mombasa, Kericho, and Taita Taveta Counties, where the Committee received views from the members of the public.

The Committee commends the Mwananchi for the many oral submissions presented during the public participation forums and the twelve (12) stakeholders who presented written submissions before the Committee.

The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its consideration of the Bill. Additionally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who made invaluable contributions towards the preparation and production of this report.

It is my pleasure to report that, the Committee has considered the Public Procurement and Asset Disposal (Amendment) Bill, 2024 (National Assembly Bills No. 48 of 2024) and wishes to report to this August House with the recommendation that, the House approves the Bill with amendments

HON. CPA KURIA KIMANI, M.P.

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

ACKNOWLEDGMENT

The Committee extends its sincere gratitude to the Office of the Speaker of the National Assembly and the Clerk of the National Assembly for their invaluable logistical and technical support throughout its sittings. Their assistance facilitated the Committee's deliberations and ensured the smooth progress of its work.

The Committee especially acknowledges and appreciates the participation of all stakeholders and members of the public who diligently submitted their comments on the Bill. Their insights and contributions have enriched the Committee's understanding of the various perspectives on the proposed measures.

Further, the Committee wishes to express its heartfelt appreciation to the Honourable Members of the Committee and the dedicated Committee Secretariat whose commitment, expertise and collaborative efforts were instrumental in preparing and producing this report. I particularly commend the Secretariat for their diligent work that enabled the Committee to fulfill its constitutional mandate by thoroughly analyzing the Bill to the Committee.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to Standing Order 199 (6), it is both a privilege and an honor to present to the House, the Report of the Departmental Committee on Finance and National Planning on its Consideration of the Public Procurement and Asset Disposal (Amendment) Bill, 2024 (National Assembly Bills No. 48 of 2024). The Committee trusts that this report will serve as a valuable resource for informed debate and decision-making by the members of this House.

CHAPTER ONE

1.0 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Finance and National Planning is one of the twenty Departmental Committees of the National Assembly established under **Standing Order 216 (5)** whose mandate is as follows:
 - (i) *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
 - (ii) *To study the program and policy objectives of Ministries and departments and the effectiveness of their implementation;*
 - (iii) **To study and review all the legislation referred to it;**
 - (iv) *To study, access, and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - (v) *To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - (vi) *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No. 204 (Committee on Appointments);*
 - (vii) *To examine treaties, agreements and conventions;*
 - (viii) *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - (ix) *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - (x) *To examine any questions raised by Members on a matter within its mandate.*

1.2 MANDATE OF THE COMMITTEE

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, public finance, monetary policies, public debt, financial institutions (excluding those in securities exchange), investment and divestiture policies, pricing policies, banking, insurance, population revenue policies including taxation and national planning and development.
3. In executing its mandate, the Committee oversees the following government Ministries and Departments:
 - i. The National Treasury;
 - ii. State Department for Economic Planning;
 - iii. Commission on Revenue Allocation; and
 - iv. Office of the Controller of Budget.

1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Finance and National Planning comprises of the following Members:

Chairperson

Hon. CPA Kuria Kimani, MP
Molo Constituency

UDA Party

Vice-Chairperson

Hon. (Amb). Benjamin Langat, CBS, MP
Ainamoi Constituency

UDA Party

Hon. (Dr). Adan Keynan, CBS, MP
Eldas Constituency

Jubilee Party

Hon. Andrew Okuome, MP
Karachuonyo Constituency

ODM Party

Hon. David Mwalika Mboni, MP
Kitui Rural Constituency

Wiper Party

Hon. CPA. Joseph Oyula, MP
Butula Constituency

ODM Party

Hon. Joseph K. Makilap, MP
Baringo North Constituency

UDA Party

Hon. Umul Ker Kassim, MP
Mandera County

UDA Party

Hon. CPA Julius Rutto, MP
Kesses Constituency

UDA Party

Hon. (Dr.) Shadrack Ithinji, MP
South Imenti Constituency

Jubilee Party

Hon. Paul K. Biego, MP
Chesumei Constituency

UDA Party

Hon. Joseph Munyoro, MP
Kigumo Constituency

UDA Party

Hon. (Dr.) John Ariko Namoit, MP
Turkana South Constituency

ODM Party

Hon. Mohamed S. Machele, MP
Mvita Constituency

ODM Party

Hon. George Sunkuyia, MP
Kajiado West Constituency

UDA Party

1.4 COMMITTEE SECRETARIAT

5. The following staff facilitated the Committee:

Mr. Benjamin Magut
Principal Clerk Assistant /Head of Secretariat

Ms. Jennifer Ndeto
D/Director, Legal Services

Mr. Salem Lorot
Legal Counsel I

Mr. James M. Macharia
Media Relations Officer I

Mr. Benson Kamande
Clerk Assistant III

Ms. Winfred Kambua
Clerk Assistant III

Mr. George Ndenjeshe
Fiscal Analyst III

Mr. Mwangi Muchiri
Audio Officer

Ms. Nelly W.N Ondieki
Research Officer III

Mr. Benson Muthuri
Serjeant-At-Arms

Ms. Joyce Wachera
Hansard Officer III

CHAPTER TWO

2.0 OVERVIEW OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT)

BILL, 2024 (NATIONAL ASSEMBLY BILLS NO. 48 OF 2024)

2.1 BACKGROUND

6. The Public Procurement and Asset Disposal (Amendment) Bill, 2024 (National Assembly Bills No. 48 of 2024), is sponsored by the honourable CPA Kuria Kimani, MP, the Chairperson of the Departmental Committee on Finance and National Planning. The Bill was published on 1st November 2024 and read a First Time on 13th November 2024, thereafter committed to the Committee for consideration and reporting to the House pursuant to Standing Order 127.

2.2 SUMMARY OF LEGAL PROVISIONS

7. The Bill contains a raft of amendments to the Public Procurement and Asset Disposal Act, Cap. 412C. Some of the major amendments are the following:
 - (a) **Prioritization of locally produced products or services in the procurement and asset disposal process:** The Bill seeks to amend section 44 of the Act to task an accounting officer to prioritise locally produced products or services. In addition, accounting officers shall ensure that technology, knowledge and skills transfer plans from foreign firms are prioritized in the procurement and asset disposal process.
 - (b) **Preferential treatment of local firms vis-a-vis foreign firms:** The Bill seeks to amend section 53 of the Act to provide that any procurement of less than one billion shillings shall be awarded to a local firm. It also provides that a foreign firm shall be eligible for procurement of contracts of more than one billion shillings where the foreign firm has entered into a joint venture procurement with a local firm for not less than 30% of the value of the procurement.
 - (c) **Prohibition of citizen contractors from subcontracting a foreign company:** The Bill seeks to amend section 86 of the Act to 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.
 - (d) **Increase of maximum contract amounts for citizen contractors from 500 million to 1 billion:** The Bill seeks to amend section 157 of the Act to increase the maximum amounts for citizen contractors to above one billion shillings;

- (e) **Sustainable promotion of local industries:** The Bill proposes to amend section 157 of the Act to prohibit subcontracting of local procurement contracts to foreign contractors and to prioritise contractors from respective counties where the project is fully funded by the county government unless such services are unavailable. It also provides for the mandatory procurement of forty percent of goods and services from local manufacturers or local service providers and grants the Cabinet Secretary the power to prescribe the Preferential Procurement Master Roll.

2.2.1 OVERVIEW OF THE BILL

Definitions of terms used in the Bill

8. **Clause 2** of the Bill seeks to amend **section 2** of the Act to provide for new definitions, including “debarment”, “foreign firm”, “foreign-funded procurement”, “investigative agency”, “joint venture procurement”, “local firm”, and “minor deviation”. These definitions have been used in the Bill.

Procurement law to apply to foreign procurement contracts

9. **Clause 3** of the Bill seeks to amend **section 4** of the Act to ensure that foreign procurement contracts that have not been subjected to provisions of international procurement guidelines or laws, adhere to Kenya's procurement laws. The proposed amendment provides that the Act shall apply to foreign-funded procurement for goods, works and services by the Government of Kenya except where bilateral or multilateral agreements between the Government of Kenya and any other foreign government, agency, entity or multilateral agency provide use of foreign or international financing procurement procedures and guidelines.

Additional function of the Authority

10. **Clause 4** of the Bill seeks to amend **section 9** of the Act to provide for an additional function of the Public Procurement Regulatory Authority (“Authority”) to monitor and evaluate technology, knowledge and skills transfer programmes and provide annual public reports.

Additional LSK member to the Board

11. **Clause 5** of the Bill seeks to amend **section 10** of the Act to include a representative from the Law Society of Kenya as a member of the Public Procurement Regulatory Board (“Board”).

Additional role to the County Treasury

12. **Clause 6** of the Bill seeks to amend **section 33** of the Act to provide for an additional role to the County Treasury to ensure that the procurement function shall prioritize goods and services manufactured in that respective county.

Referral of offences to investigative agencies

13. **Clause 7** of the Bill seeks to amend **section 35** of the Act to allow the Authority, a public institution or any other person to refer actions that constitute offences under the Act to an investigative agency.

Repeal of section 40 to allow the conduct of investigations

14. **Clause 8** of the Bill seeks to repeal **section 40** of the Act to 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. Section 40 of the Act provides as follows—

40. No investigation if the issue before Review Board

(1) No investigation shall be commenced or continued under this Part, and no order shall be made under this Part, in relation to an issue that the Review Board is reviewing or has reviewed under the relevant provisions of this Act.

(2) Subsection (1) ceases to apply if, after the Review Board has completed its review, information comes to the attention of the Director-General that was not brought before the Review Board in the course of its review.

15. The repeal of section 40 of the Act is in conformity with the proposed amendment to section 35 of the Act contained in clause 7 of the Bill.

Local and international debarment

16. **Clause 9** of the Bill seeks to amend **section 41** of the Act to limit the period that a person can be debarred from public procurement to a period not exceeding ten (10) years. It also provides that a person or a firm debarred by an international agency recognized by Kenya shall be considered to have been debarred in Kenya as if the debarment procedures and proceedings were conducted in Kenya.

Prioritization of locally produced products or services in the procurement and asset disposal process

17. **Clause 10 of the Bill** seeks to amend **section 44** of the Act to task an accounting officer to ensure that locally produced products or services are prioritized. In addition, accounting officers shall ensure that technology, knowledge and skills transfer plans from foreign firms are prioritized in the procurement and asset disposal process.

Preferential treatment of local firm's vis-a-vis foreign firms.

18. **Clause 11** of the Bill seeks to amend **section 53** of the Act to provide that any procurement of **less than one billion shillings** shall be awarded to a local firm. It also provides that a foreign firm shall be eligible for procurement of contracts of more than one billion shillings where the foreign firm has entered into a joint venture procurement with a local firm for not less than 30% of the value of the procurement. Finally, the clause provides for two offences: *one*, of registering a company on behalf of a foreigner exhibiting unfair competition and seeking to benefit from the procurement and the *second*, the offence of a foreigner who registers a company by misrepresenting himself or herself as being Kenyan exhibiting unfair competition and seeks to benefit from procurement. In this respect, the clause provides for the offences in the following manner:

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

Standard tender documents on local procurement of a value exceeding one billion shillings

19. **Clause 12** of the Bill seeks to amend **section 70** of the Act to 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**.

Clarification does not add new document or information

20. **Clause 13** of the Bill seeks to amend **section 81(2)** of the Act to provide that a clarification of a tender shall not add any new document or information. Section 81(2) states, “A clarification shall not change the terms of the tender.”

Additional forms of due diligence by an evaluation committee

21. **Clause 14** of the Bill seeks to amend **section 83 (2)** of the Act to 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. The current subsection only lists one form of due diligence: obtaining confidential references from persons with whom the tenderer has had prior engagement.

Prohibition against subcontracting to foreign companies

22. **Clause 15** of the Bill seeks to amend **section 86** of the Act to prohibit citizen contractors who become successful tenderers from sub-contracting to foreign companies unless the knowledge, skill, good or service is unavailable in the country.

Attorney General’s advisory on foreign tenderers

23. **Clause 16** of the Bill seeks to amend **section 89** of the Act to obligate the procuring entity to seek the advice of the Attorney-General on the propriety of the funding of the foreign tenderer in a case where a foreign tenderer participates in the competition for procurement.

Transfer of skills and technology plan to constitute tender documents

24. **Clause 17** seeks to amend **section 135** of the Act to include as part of the tender documents the transfer of skills and technology plan.

Next steps in case of decline of contract

25. **Clause 18** of the Bill seeks to amend **section 136** of the Act to provide for 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. It also provides for administrative review if a person is aggrieved by the decision made after a successful tenderer declines a contract.

Correction of inconsistencies

26. **Clause 19** of the Bill seeks to amend **section 139** of the Act to correct inconsistencies in the section. It proposes subsection (4) by inserting the words “and works” immediately after the words “for goods” appearing in paragraph (d), and deleting the word “professional” appearing in paragraph (e).

Prompt and timely payments to a contractor

27. **Clause 20** of the Bill seeks to insert **a new section 139A** to provide prompt and timely payments to a contractor upon completion of contractual obligation.

Priority to citizen contractors in sub-contracting of tenders

28. **Clause 21** of the Bill seeks to amend **section 149** of the Act to obligate the Authority to ensure that priority is given to citizen contractors in the sub-contracting of tenders. Further, where it is deemed necessary to subcontract a tender to a foreign contractor, the accounting officer shall cause a report to be prepared detailing reasons for the need to subcontract to a foreign contractor; and the Authority shall ensure that a percentage of the margin preference is applied as shall be prescribed in the Regulations.

Creation of an offence of failing to ensure that the goods, works and services are of the right quality and quantity

29. **Clause 22** of the Bill seeks to amend **section 150** of the Act to provide for an offence for an accounting officer, a head of the procurement function or his or her appointed representative who fails to ensure that the goods, works and services are of the right quality and quantity.

Preference to procurement of locally skilled and unskilled labour

30. **Clause 23** of the Bill seeks to amend **section 155** of the Act to give preference to procurement of locally skilled and unskilled labour.

Exclusive preference to citizen contractors

31. **Clause 24** of the Bill seeks to amend **section 157** of the Act to provide exclusive preference to citizen contractors. These are:

- (a) Increase of the maximum amounts for citizen contactors to above one billion shillings
- (b) 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
- (c) A procuring entity shall procure forty per cent of all its goods and services from a local manufacturer or local service provider
- (d) A procuring entity shall, on a quarterly basis, report to the Cabinet Secretary on its compliance with paragraph (b)
- (e) The Cabinet Secretary may publish in the *Gazette* a Preferential Procurement Master Roll specifying the locally manufactured goods that shall be procured locally by every procurement entity.

Align of the Act to other court-related statutes

32. **Clause 25** of the Bill seeks to amend **section 175** of the Act to align the provisions of the Act to the High Court (Organization and Administration) Act, Cap. 8C; the Court of Appeal (Organization and Administration) Act, Cap. 9A; and the Civil Procedure Act, Cap. 21.

Offence of submitting, certifying or delivering substandard goods or works

33. **Clause 26** of the Bill seeks to amend **section 176** of the Act to provide for an offence of a contractor who submits substandard quality of works, goods or services contrary to the contract specifications, terms or conditions at the time of inspection. It also provides for an offence of 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.

Amendment of general penalty and sanctions

34. **Clause 27** of the Bill seeks to repeal and replace section 177 (*providing for general penalties and sanctions*). The proposed amendments are as follows:
- General penalty for natural persons decreased from a fine not exceeding four million shillings or to imprisonment for a term not exceeding ten years or to both to a fine not exceeding one million shillings, or to imprisonment for a term of not less than ten years, or to

both; and 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.

The penalty for natural persons has been decreased from 4 million shillings to 1 million shillings; further, an additional mandatory fine has been introduced.

- The general penalty for a corporate body has been retained at not less than 10 million shillings, but this will be in addition to a 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.

The Bill provides that mandatory fines apply in instances where an offence results in a benefit or loss.

CHAPTER THREE

3.0 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

3.1 LEGAL FRAMEWORK ON PUBLIC PARTICIPATION

35. Article 118 (1)(b) of the Constitution provides that:

"Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees."

36. The National Assembly Standing Order 127 (3) and (3A) stipulates that:

*"(3) The Departmental Committee to which a Bill is committed shall **facilitate public participation on the Bill** through an appropriate mechanism including-*

- (a) inviting submission of memoranda;*
- (b) holding public hearings;*
- (c) consulting relevant stakeholders in a sector; and*
- (d) consulting experts on technical subjects.*

(3A) The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House."

3.2 MEMORANDA RECEIVED ON THE BILL

37. Pursuant to the aforementioned provisions of law, the Clerk of the National Assembly placed an advertisement in the print media on 14th November 2024, inviting the public to submit memoranda through written statements on the Bill. Further, the Clerk of the National Assembly vide letter Ref. No. NA/DDC/F&NP/2024(126) dated 15th November 2024 invited stakeholders to submit views on the Bill and attend a public participation forum on 22nd November and 23rd November 2024 respectively.

38. The Committee received memoranda from the twelve (12) entities, namely PPRA, KISM, KURA, KEPSA, Mr. David Chiaji, Cliffe Dekker Hofmeyr - Kenya (CDH), Ernest and Martin, Okoa Uchumi. Further, the Committee received views from Isiolo County, Mombasa County, Kericho County, and Siaya County residents. The memoranda are annexed to this report as Annexure 8.

Clause 2(a)

KISM

39. KISM submitted that, the proposal to include the term 'virtual asset' is a repetition. The currently already provides definition using the term 'intangible'.

Committee Observation

40. **The Committee took the view that, it is important to include 'digital asset' in the definition in addition to "Virtual asset" for a broader interpretation.**

Clause 2(b)

KISM

41. KISM recommended amending the proposal defining—
- a) the term 'investigative agency' to include Kenya Institute of Supplies Management as it has an investigative mandate on matters relating to professional misconduct as provided for in section 22 of the Supplies Practitioners Management Act, Cap 537.
 - b) the term 'foreign firm' to align it to the already existing provisions of law.
 - c) the term 'local firm' to include the words 'or any other written law and whose operation is based in Kenya' immediately after the words 'Companies Act'. This accommodates firms registered under legal regimes other than the Companies Act, such as the Partnerships Act and the Limited Liability Partnership Act.
 - d) the term 'debarment' to include third parties that may be linked to the debarred person/firm in line with international best practice.

Committee Observation

42. **The Committee adopted the proposal to include firms or legal entities registered under other laws. This will ensure the definition includes sole proprietorships, partnerships, etc.**

Clause 2

PPRA

43. PPRA made submissions to amend the definition of "local firm" by deleting the definition and retaining the word "local contractor" since it implies both a person and a firm that is wholly owned and controlled by persons who are citizens of Kenya.

Committee Observation

44. **The Committee noted the stakeholder's comments. However, the Committee resolved to retain the definition of 'local firm' to ensure consistency with other proposed amendments in the bill.**

Ernest and Martin

45. Ernest and Martin proposed amendments to the definition of "local firm" by deleting the definition and replacing it with "A local firm means a firm that is not a foreign firm, and remains so during the continuance of the entire of any contract made under this Act." This is because a local firm should be a

negation of a foreign firm to ensure that there is no overlapping in definition with a local firm.

46. They also proposed amendments to the definition of Minor Deviation by deletion part (a) with the words "matters of form and not substance" because the remaining definition in part (b) is sufficient.

47. They further proposed amendments to the definition of "foreign firm" by adding the words "or beneficial ownership" after the phrase "whose shareholding" so that it includes ownership in foreign firms.

Committee Observation

48. **The Committee noted the stakeholder's comments. However, the Committee resolved to retain the definition of 'local firm' to ensure consistency with other proposed amendments in the bill.**

Clause 3

Siaya County

49. The residents of Siaya County stated that by ensuring foreign procurement contracts align with Kenyan laws, national interest would be safeguarded, local suppliers would be prioritized, and projects would meet economic and social objectives. They further stated cases of underpayment of workers and suppliers by foreign contractors stating that the proposal will ensure equitable contract terms and conditions to prevent exploitation from foreign contractors.

Clause 4

Siaya County

50. The residents of Siaya County noted that the monitoring and evaluation of knowledge and skills programs would help build local expertise, reducing dependency on foreign contractors. They further stated that the requirement for annual public reports would hold entities accountable for fulfilling their obligations and ensure the public and stakeholders can monitor progress, fostering trust in the procurement process.

Clause 5

Isiolo County

51. The residents of Isiolo County noted that, most government tenders are often awarded to foreign contractors who take the money back to their countries of origin, leaving little benefit for the local economy. They argued that, this

practice not only deprives local businesses of opportunities but also hinders the growth of the domestic market.

KISM

52. KISM were of the view to amend the proposal to increase the membership of Procurement and Supply Chain Management Professionals in the PPRA Board from the current one to three. This is to enhance the capacity, skills, and competencies required for the achievement of the Board's long-term goals on matters of procurement.

Committee Observation

53. **The Committee noted that the Act in Section 10(1) (f) has four (4) persons to be appointed by the Cabinet Secretary who shall have, in addition to other qualifications, procurement and supply chain management and therefore, the Board is well constituted.**

Mombasa County

54. The residents of Mombasa County made submissions in support of the proposal to have local firms primarily benefit from 30% of government tenders. They encouraged the implementation of the proposal by noting the need for inclusivity and fairness when awarding tenders. They also urged the government to observe the principle of conflict of interest, as a way to curb corruption.

Clause 6

Siaya County

55. The residents of Siaya County stated that prioritizing locally manufactured goods and services safeguards the interests of local manufacturers. This prevents the market from being dominated by external suppliers, fostering regional economic stability. They also stated that prioritizing county-based products aligns with the constitutional principles of devolution by enhancing local participation in public procurement.

Clause 8

KISM

56. KISM proposed the deletion of the clause to retain Section 40 as currently obtained in the Act for the following reasons—

- a) to prevent a vacuum in the investigation process;
- b) to prevent double jeopardy by subjecting a respondent to two parallel investigation processes; and

- c) to ensure that the Review Board and the PPRA do not expend their energy reviewing the same information without justification.

Committee Observation

- 57. The Committee observed that the provision is unconstitutional as it contravenes Articles 47 and 50 of the Constitution of Kenya, 2010, on fair administrative action and fair hearing, respectively.**

PPRA

58. PPRA was of the view that the Clause be deleted because it would affect the order of handling complaints by the Board and the Authority. Further amend Section 40(2) of the Act to read: "Notwithstanding, Subsection (1) the Authority may commence investigations, audits, reviews or take any other appropriate actions on a matter reviewed by the Review Board taking into consideration the findings of the Review Board.

Committee Observation

- 59. The Committee observed that the provision is unconstitutional as it contravenes Articles 47 and 50 of the Constitution of Kenya, 2010, on fair administrative action and fair hearing, respectively.**

Okoa Uchumi

60. Okoa Uchumi agreed with provisions of Clause 8, as it initially gave the Review Board veto powers, which could breed opulence, graft and lack of accountability and transparency in review processes.

Clause 9(a)

KISM

61. KISM proposed that the clause be amended to read as follows:
"A debarment under this section shall be for a period of time of not less than three (3) years and not exceeding ten (10) years."
62. They further proposed that the clause be amended to include a new subsection to read as follows:
"A suspension under this section shall be for a specified period of time of not less than one (1) year and not exceeding three (3) years."
63. The rationale for these amendments is to ensure a balance between deterrence while ensuring that the sanctioned supplier(s) have a chance for rehabilitation and restitution by capping the period to no more than ten years. Further, providing for both suspension and debarment differentiates the sanctions for mild cases and debarment, respectively.

64. They were also of the view to amend the proposal to provide for applicable considerations in determining the period of suspension or debarment such as—
- a) the severity of the misconduct;
 - b) the magnitude of the harm caused by the misconduct;
 - c) interference by the sanctioned party in the Board's/relevant agency investigation process;
 - d) the sanctioned party's past history of misconduct as adjudicated by the Board, or by any multilateral development bank in cases where debarment decisions has been made against the sanctioned party;
 - e) mitigating circumstances, including where the sanctioned party played only a minor role in the misconduct, took voluntary corrective action or cooperated in the investigation or resolution of the case, including through settlement; and
 - f) any other factor that may be considered relevant by the Board to the sanctioned party's culpability or responsibility concerning the impugned conduct.
65. They were of the opinion that the proposal further provides for extension or early termination mechanisms of debarment periods to allow for further corrective action or restitution as appropriate.

Committee Observation

66. **The Committee noted the stakeholder's proposal and proposed that the debarment be provided for a period of not less than three (3) years and not exceeding six (6) years. This, in the Committee's view, will be enough of a deterrent**

Clause 9(b)

KISM

67. KISM supported the proposal as it recognizes the concept of mutual enforcement of debarment decisions by key International Finance Institutions, signatories to the Agreement for Mutual Enforcement of Debarment Decisions dated 9th April 2010.

Clause 9

Mr. David Chiaji

68. Mr. Chiaji was of the opinion that the clause be amended to include clear provisions for reviewing debarments to ensure a transparent review process.

Committee Observation

69. **The Committee noted the stakeholder's proposal and proposed that the debarment be provided for a period of not less than three (3) years and not exceeding six (6) years to avoid ambiguity.**

PPRA

70. PPRA proposed that, Clause 9 be amended by deleting the words "not exceeding ten years" and replacing it with "not exceeding three years" because the three years period will be sufficient and monitoring and keeping track of the firms/directors debarred will be effective.

Committee Observation

71. **The Committee noted the stakeholder's proposal and proposed that the debarment be provided for a period of not less than three (3) years and not exceeding six (6) years.**

Okoa Uchumi

72. Okoa Uchumi supported the provision of Clause 9 as this will ensure that corrupt entities and conflicted or fraudulent individuals and organizations are not procured.

Clause 10 and 11

Mr. David Chiaji

73. Mr. Chiaji was of the opinion that, the clause be amended to introduce monitoring mechanisms to ensure the local companies involved receive the stipulated 30% of the project value and that they are empowered through capacity building and technology transfer.

Committee Observation

74. **The Committee noted that one of the key responsibilities of the Authority is to monitor and enforce the provisions of the Act. Therefore, the concerns of the stakeholder had already been catered for in the Act.**

Clause 11(a)

PPRA

75. PPRA proposed that Clause 11 (a) be amended by:
- a) Deleting the proposed Subsection 6A since it is already provided for in the Regulations.
 - b) Amending the proposed Subsection 6B to read as: "A foreign firm shall be eligible for procurement of contracts of value exceeding set threshold for

exclusive preference where the foreign firm has entered into a joint venture procurement with a local firm for not less than thirty percent of the value of the procurement.”

Committee Observation

76. **The Committee noted the stakeholder’s views. However, the Committee resolved to retain the provision as proposed in the bill as the provisions of a statute supersede those in regulations.**

Cliffe Dekker Hofmeyr - Kenya (CDH)

77. CDH proposed that Clause 11 (a) be amended by deleting Subsection 6A and substituting it with: “(6A) any procurement of one billion shillings or less shall be awarded to a local firm.” This is because the proposed subsection is ambiguous and amending it will clarify on the local firms being awarded the tenders.

Committee Observation

78. **The Committee agreed with the stakeholder and proposed an amendment to remove the ambiguity by introducing the word 'up to' instead of 'less than.'**

Clause 11

Kericho County

79. While supporting the proposed amendment, the residents of Kericho County noted that reserving contracts below KES 1 billion exclusively for Kenyans will create a conducive environment for local companies to thrive and compete. Kenyan contractors have previously competed with foreign companies to get such contracts. They highlighted the challenges the contractors have faced with increase of instances of corruption for one to secure a contract. They emphasized that these amendments will ensure fair distribution of wealth by requiring foreign firms to partner with local entities on larger contracts, guaranteeing at least 30% local participation. The mandatory sourcing 40% of goods and services from local manufacturers supports industrial growth and job creation.

Siaya County

80. The residents of Siaya County supported the clause, stating that the proposal to reserve tenders below Kshs. 1 billion for Kenyan firms is a protective measure from competing with foreign companies. They further noted that for tenders exceeding the threshold, they emphasize that foreign firms must enter joint ventures with local companies, allocating at least 30% of the procurement value to the local company, ensuring equitable sharing of economic benefits and fostering sustainable development.

Okoa Uchumi

81. Okoa Uchumi supported the provisions of the clause because its introduction will aid in increasing and promoting domestic companies and procurement of Kenyan companies.

Clause 12

PPRA

82. PPRA proposed that, Clause 12 be amended by deleting Subsection 6A and replacing it to read as follows: "Where a procurement is of value exceeding set threshold for exclusive preference, 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."

Committee Observation

83. **The Committee did not agree with the proposal and noted that the proposed amendment in the Bill was vital as it enhanced citizen participation in public procurement.**

KURA

84. KURA made submissions proposing sub-clause (6) be amended to provide for the rejection of bids that are abnormally low and unbalanced and/or frontloaded bids that expose procuring entities to risks associated with uncertainties that could result in implementation challenges and termination of the contract.

85. They also submitted that section 70(6) might be amended to substitute the words 'but a person shall not be disqualified on the basis that a bidder quoted above or below a certain percentage of engineer's estimates' with the following words—

"but a person shall be disqualified on the basis that a bidder quoted below a certain percentage of engineer's estimates."

Clause 13

KISM

86. KISM proposed that, clause 13 of the Bill be deleted and instead retain the current provision in section 81 to allow a supplier to provide evidence through new documents and/or information relating to the clarification sought.

Committee Observation

87. **The Committee while noting stakeholder's comments, observed that the main intention of the amendment in the Bill was to provide clarification and not to change the terms of a tender.**

Clause 15

Ernest and Martin

88. Ernest and Martin proposed that, Clause 14 be amended by deleting the words "lowest evaluated" and replacing it with "the tender evaluated to have met the qualifying requirements set out in Section 86(1) because the evaluation of bidders is based on Section 86(1) and not based on the lowest evaluation only.

Committee Observation

89. **The Committee noted that the provisions of subsection 1 in the Act as currently obtained are sufficient.**

Okoa Uchumi

90. Okoa Uchumi supported the clause, noting that the expansion is holistic and opens the scope for conducting due diligence to ensure the tender has the required experience, skills and qualifications to execute the job.

KISM

91. KISM supported the proposal as it aligns with the guiding values and principles of public procurement and asset disposal to promote the local industry and citizen contractors in section 3 of the Act.

KURA

92. KURA proposed amendments to the proposal to avoid bureaucracy and align with provisions of section 134(2) of the Act with regard to clearance of contracts above five billion by the Attorney-General.

93. They also submitted that section 86 of the Act may be amended in sub-clause (1) to read as follows—

"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 for procurements worth 5 billion and above."

Clause 16(b)

PPRA

94. PPRA proposed amending Clause 16 (b) to confine it to the successful bidder as part of the due diligence. Additionally, a threshold may be set in terms of the value of the contract requiring advisory.

Committee Observation

95. The **Committee while noting the stakeholder's views was of the contrary view that, all government entities should seek advice from the Attorney General when dealing with foreign firms.**

Cliffe Dekker Hofmeyr - Kenya (CDH)

96. CDH proposed amending Clause 16(b) by adding the words: "The Attorney General shall provide the advisory opinion to the procuring entity within fourteen days of receiving the written request from the procuring entity." This will provide the specific timelines within which the Attorney General should provide an advisory opinion.

Committee Observation

97. The **Committee noted that the timelines within which the Attorney General's Office should provide an Advisory opinion may be provided for in the regulations.**

Clause 17

KISM

98. KISM submitted that clause 17 of the Bill be amended to insert a new subsection immediately after subsection 6(h) as follows—
"all contracts shall include the transfer of skills and technology plans, where applicable."

Committee Observation

99. The **Committee agreed with the stakeholder. However, it noted that the proposal refers to the contracts (foreign contracts) where there is a need to transfer skills to the locals.**

Clause 18

KISM

100. KISM made submissions to amend the proposed sub-section (1A) to replace the words 'the Authority' appearing after the word 'established' with 'the Accounting Officer of the Procuring Entity'.

Committee Observation

101. **The Committee was in agreement with the stakeholder's proposal.**

PPRA

102. PPRA proposed to amend clause 18 by deleting the word "Authority" in Subsection 1A and replacing it with the word "Accounting Officer".

Committee Observation

103. **The Committee was in agreement with the stakeholder's proposal.**

Clause 20

KURA

104. KURA was of the view that the proposed 139A be amended to cater for any delays in the release of Exchequer funds and align with Regulation 150 of the Public Procurement and Asset Disposal Regulations 2020. This will prevent any litigation against the procuring entity where the release of funds is beyond their control. Therefore, the proposed 139A should read as follows—

"Subject to the availability of funds a procuring entity shall make prompt and timely payments to a contractor who satisfactorily performs the contractual obligations as stipulated in the procurement contract."

Okoa Uchumi

105. Okoa Uchumi proposed the amendment of the clause to provide that timely and prompt payment shall mean payment within the same quarter the invoice is paid and no later than the close of the fiscal year.

Committee Observation

106. **The Committee, while agreeing with the stakeholder, was of the view that the proposal may be provided for in the regulations.**

Clause 21

PPRA

107. PPRA proposed that clause 21 be amended by deleting the word "Authority" in Subsection 3 and replacing it with the word "Accounting Officer".

Committee Observation

108. **The Committee agreed with the proposal as the function highlighted was a function by the Accounting Officer as opposed to the Authority.**

Clause 22

KISM

109. KISM were of the view to reconsider the proposed offences taking into account the extraneous factors that could hinder the accounting officer or his or her representative from fulfilling their mandate.

Committee Observation

110. **The Committee observed that, there was a need to streamline procurement and ensure that, accounting officers comply with the Act to avoid loss of public funds.**

Clause 24 (a)

Ernest and Martin

111. Ernest and Martin proposed amending Clause 24(a) by deleting "7(a)" and replacing it with "8(a)" since the threshold is provided for in "8(a)".

Committee Observation

112. **The Committee agreed with the stakeholder.**

Clause 24 (b)

Ernest and Martin

113. Ernest and Martin proposed amending Clause 24(b) by deleting the word "forty" and replacing it with "thirty" and also deleting the word "citizen contractors" and replacing it with "local firm". This is to make it consistent with Clause 11 of the Bill.

Committee Observation

114. **The Committee had a contrary opinion from the stakeholder as clause 11 of the bill relates to joint venture procurement, while the proposal in clause 24 related to sourcing supplies from citizen contractors.**

Clause 24 (a)(iii)

PPRA

115. PPRA made submissions to amend Clause 24 (a) (iii) by deleting the word "one billion shillings" and replacing it with the word "500 million shillings" because enacting it will lead to increased prices of supplies as well as increased costs of implementing projects as there will be no effective competition in the tendering process as outlined in Article 227(1) of the Constitution hence occasioning additional expenditure of public funds.

Committee Observation

116. **The Committee had a contrary opinion on the proposal and noted that it was important to enhance citizen participation in public procurement.**

Clause 25(a)

KISM

117. KISM were of the view to delete the clause and retain the current section 175(3) of the Act. This is because subjecting judicial review applications relating to public procurement to the Civil Procedure Code regime will present a challenge to procuring entities resulting in lengthier court appearances.
118. On the contrary, they submitted that the proposal be amended to compel the High Court to apply Article 159(4) of the Constitution and Section 10(1) of the Fair Administrative Act, Cap 7L by hearing and determining matters without undue regard to procedural technicalities.
119. In addition, they submitted that the proposal be amended to provide for a simple procurement judicial review process.
120. Moreover, they proposed the deletion of the current section 175(4) and (5) and replace with a new subsection to read as follows—
*“If the High Court fails to make a decision within the prescribed timeline under subsection (3), the decision of the Review Board shall be final and binding to all the parties.
If the Court of Appeal fails to decide within the prescribed timeline under subsection (4), the decision of the High Court shall be final and binding to all parties, provided that the High Court shall have made the appealed decision within the prescribed timelines.”*

Committee Observation

121. **The Committee had a contrary opinion from the stakeholder as the provision lays out the procedure for judicial review for appeal to the High Court and subsequently to the Court of Appeal in accordance with the Civil Procedure Act and the Court of Appeal (Organization and Administration) Act.**

Clause 25

KEPSA

122. KEPSA proposed amending the proposal to provide appellants sufficient time to adequately prepare their case(s). The clause be amended to read as follows—
“Appeals from the decision of the High Court shall in 14 days be made in accordance with the Court of Appeal (Organization and Administration) Act.”

Committee Observation

123. **The Committee had a contrary opinion from the stakeholder as the provision lays out the procedure for judicial review for appeal to the High Court and subsequently to the Court of Appeal in accordance with the Civil Procedure Act and the Court of Appeal (Organization and Administration) Act.**

Clause 25

KISM

124. KISM made submissions proposing to delete the proposal to avoid delays in procurement matters, noting that a procuring entity cannot conclude procurement during the judicial review of procurement proceedings, resulting in a negative impact on business and a hampered service delivery to the public.

Committee Observation

125. **The Committee had a contrary opinion from the stakeholder as the provision lays out the procedure for judicial review for appeal to the High Court and subsequently to the Court of Appeal in accordance with the Civil Procedure Act and the Court of Appeal (Organization and Administration) Act.**

Clause 26

KISM

126. KISM was of the view that, there is a need to reconsider the proposal and align it to the existing provisions of the Supplies Practitioners Management Act, Cap 537, that provide a clear framework for handling and mitigating matters of professional misconduct. Matters relating to professional misconduct should be handled by KISM, while other matters may be handled by the procuring entity's internal disciplinary processes and through administrative action.

Committee Observation

127. **The Committee observed that, there was a need to streamline procurement and ensure that accounting officers comply with the Act to avoid loss of public funds.**

Siaya County

128. The residents of Siaya County made the submission in support of the clause stating that the amendment will ensure that contractors delivering substandard goods and services face severe penalties. This will ensure quality outcomes in public projects.

Clause 27

KISM

129. KISM proposed relooking the proposal because it imposes an extremely harsh fine. A fine should not be extreme but severe enough to promote deterrence.

Committee Observation

130. **The Committee observed that, there was a need to streamline procurement and ensure that accounting officers comply with the Act to avoid loss of public funds.**

General

KEPSA

1. KEPSA made other proposals relating to other provisions of the Public Procurement and Asset Disposal Act, Cap 412C as follows; -

Section 2

131. The current definition of the term 'public money' is ambiguous and potentially allows donor funds to be considered as public money even when managed by private entities, particularly if those funds are used for the public good. Therefore, amend the definition to read as follows—

"includes monetary resources appropriated to procuring entities through the budgetary process as well as extra-budgetary funds, including aid, grants, and loans to the Government of Kenya which are under the control of a public entity."

132. Amend the definition of the term 'accounting officer' to include a more inclusive definition to eliminate any ambiguity regarding who serves as the accounting officer in all public procuring entities.

133. Amend the definition of the term 'disposal' to ensure that the sale, lease or other divestiture of assets is considered disposal only in situations where the Act prescribes a specific procedure for how such divestiture should take place. The definition should be amended to read as follows—

"means the divestiture of unserviceable, obsolescent, obsolete or surplus public assets, including intellectual and proprietary rights and goodwill and other rights of a procuring entity by any means including sale, rental, lease, franchise, auction or any combination however classified."

Section 30

134. Amend the section to include an additional qualification for members, requiring training and/or experience in public finance or procurement, in addition to their existing fields of expertise. This is to ensure members are well

equipped to handle complex procurement issues thereby resulting in more accurate and efficient decision-making and the creation of a more robust and competent oversight body.

Section 35

135. Amend the section to require the Authority to adopt a specific timeframe of 21 to 30 days for conducting and completing investigations. This is to prevent investigations from hindering time-sensitive procurement processes.

Section 41(1)

136. Amend the section to limit debarment to persons convicted of an offence under the Act to ensure fairness and objectivity.

Section 171

137. Amend the section to include a requirement for publication of decisions made upon completion of reviews by the Review Board.

New Provision

138. Amend the Act to create a specific category for innovative procurements allowing for more flexible tendering procedures such as competitive negotiations or direct procurement when procuring cutting-edge technologies or solutions.

Committee Observation

139. **The Committee noted with appreciation the submissions by the stakeholders and noted that the National Treasury may consider the additional proposals in a future review of the Act.**

CHAPTER FOUR

4.0 COMMITTEE OBSERVATIONS

140. The Committee having considered the Public Procurement and Asset Disposal (Amendment) Bill, 2024 (National Assembly Bills No. 48 of 2024) observed that-

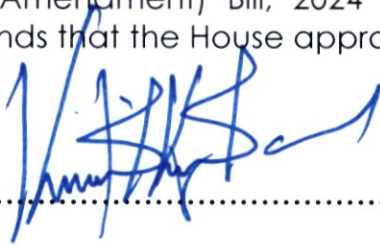
- I. The proposed period for debarment of not more than 10 years was too punitive and there is need to provide for lesser period but punitive enough to be a deterrence. In view of this, the Committee is proposing a period not less than three (3) years and not exceeding six (6) years.
- II. The proposal to amend the Act to provide for the threshold of one (1) billion for local contractors is a welcome move as this will promote local entrepreneurs
- III. The Bill seeks to amend section 44 of the Act to task an accounting officer to ensure that locally produced products or services are prioritized. In addition, accounting officers shall ensure that technology, knowledge and skills transfer plans from foreign firms are prioritized in the procurement and asset disposal process;
- IV. In relation to the preferential treatment of local firms vis-a-vis foreign firms, the Bill seeks to amend section 53 of the Act to provide that any procurement of less than one billion shillings shall be awarded to a local firm. It also provides that a foreign firm shall be eligible for procurement of contracts of more than one billion shillings where the foreign firm has entered into a joint venture procurement with a local firm for not less than 30% of the value of the procurement;
- V. In respect to the prohibition of citizen contractors from subcontracting to a foreign company, the bill seeks to amend section 86 of the Act to 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;
- VI. Finally, in relation to the proposal to increase of maximum contract amounts for citizen contractors from 500 million to 1 billion, the Bill seeks to amend section 157 of the Act to increase the maximum amounts for citizen contractors to above one billion shillings;

CHAPTER FIVE

5.0 COMMITTEE RECOMMENDATION

141. The Committee having considered the Public Procurement and Asset Disposal (Amendment) Bill, 2024 (National Assembly Bills No. 48 of 2024) recommends that the House approves that Bill with amendments.

SIGNED.....




DATE.....

26th November, 2024

HON. CPA KURIA KIMANI, MP
CHAIRPERSON

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

 THE NATIONAL ASSEMBLY PAPERS LAID	
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**THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - THIRD SESSION - 2024**

**DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING.
ADOPTION LIST**

**REPORT ON THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT)
BILL, (NATIONAL ASSEMBLY BILL NO 48 OF 2024)**

We, the Members of the Departmental Committee on Finance and National Planning have pursuant to Standing Order 199, adopted this Report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity today, Monday 25th November, 2024.

S/NO.	NAME	SIGNATURE
1.	HON. (CPA). KURIA KIMANI, MP - CHAIRPERSON	
2.	HON. (AMB). BENJAMIN KIPKIRUI LANGAT, MP – VICE CHAIRPERSON	
3.	HON. DR. ADAN KEYNAN WEHLIYE, MP	
4.	HON. GEORGE SUNKUYIA RISA, MP	
5.	HON. (CPA) JOSEPH MAERO OYULA, MP	
6.	HON. ANDREW ADIPO OKUOME, MP	
7.	HON. DAVID MWALIKA MBONI, MP	
8.	HON. JOSEPH MAKILAP KIPKOROS, MP	
9.	HON. JOSEPH KAMAU MUNYORO, MP	
10.	HON. (CPA) JULIUS KIPLLETING RUTTO, MP	
11.	HON. PAUL KIBICHIY BIEGO, MP	
12.	HON. UMUL KER SHEIKH KASSIM, MP	
13.	HON. DR. SHADRACK MWITI ITHINJI, MP	
14.	HON. DR. JOHN ARIKO NAMOIT, MP	
15.	HON. MOHAMED SOUD MACHELE, MP	

**MINUTES OF THE 95TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE AND NATIONAL PLANNING HELD ON MONDAY, 25TH NOVEMBER
2024, IN THE KENYA INTERNATIONAL CONVENTION CENTRE (KICC)
AMPHITHEATRE, NAIROBI, AT 5.00 PM.**

PRESENT

1. Hon. CPA Kuria Kimani, MP - Chairperson
2. Hon. (Amb) Benjamin Kipkirui Langat, MP - Vice- Chairperson
3. Hon. (Dr) Adan Keynan Wehliye, MP
4. Hon. Joseph Makilap Kipkoros, MP
5. Hon. CPA. Joseph Maero Oyula, MP
6. Hon. Joseph Kamau Munyoro, MP
7. Hon. CPA Julius Kipletting Ruto, MP
8. Hon George Sunkuiya Risa, MP
9. Hon. Dr. John Ariko Namoit, MP
10. Hon. Paul Kibichiy Biego, MP
11. Hon Umul Ker Sheikh Kassim, MP

ABSENT WITH APOLOGY

1. Hon David Mwalika Mboni, MP
2. Hon. Dr Shadrack Mwiti Ithinji, MP
3. Hon. Andrew Adipo Okuome, MP
4. Hon Mohamed Soud Machele, MP

IN ATTENDANCE

SECRETARIAT

1. Ms. Jennifer Ndeto - Deputy Director, Legal Services
2. Mr Benjamin Magut - Principal Clerk Assistant II
3. Ms Brigitta Mati - Legal Counsel I
4. Mr. Salem Lorot - Legal Counsel I
5. Ms Winfred Kambua - Clerk Assistant III
6. Mr Bemson Kamande - Clerk Assistant III
7. Mr Mabut Mutua - Legal Counsel II
8. Mr. James Macharia - Media Relations Officer
9. Mr. George Ndenjeshe - Fiscal Analyst III
10. Ms. Nelly Ondieki - Researcher Officer III
11. Ms Gladwel Amimo - Fiscal Analyst II
12. Mr Onyango Adera - Fiscal Analyst III
13. CPA Cyrille Mutali - Fiscal Analyst
14. Mr Lenny Muchangi - Legal Counsel II
15. Ms Joyce Wachera - Hansard Reporter II
16. Mr. Benson Muthuri - Serjeant At Arms
17. Mr Allan Kimani - Intern
18. Mr Ian Kinuthia - Intern

AGENDA

Consideration and adoption of the following reports.

1. Consideration and Adoption of the report on The Public Procurement and Asset Disposal (Amendment) Bill, (National Assembly Bill No 48 of 2024)
2. Consideration and Adoption of the report on The Public Finance Management (Amendment) Bill 2024. (Amendment No. 3.) Bill (National Assembly Bill No. 44 Of 2024)
3. Consideration and Adoption of Report on The Public Finance Management (Amendment) Bill 2024. (Amendment No. 4) Bill (National Assembly Bill No.45 of 2024)

MIN No. NA/F & NP/2024/340: PRELIMINARIES

The meeting was called to order at 5.15 pm followed by prayer by Hon. Joseph Kamau Munyoro, MP

MIN No. NA/F & NP/2024/341: CONFIRMATION OF PREVIOUS MINUTES

Confirmations of the minutes of the previous sittings were deferred to the next sitting.

MIN No. NA/F & NP/2024/342: CONSIDERATION AND ADOPTION OF REPORT ON THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO 48 OF 2024)

The Committee adopted the report, which was proposed by Hon. Joseph Kamau Munyoro, MP, and seconded by Hon. CPA. Joseph Maero Oyula, MP.

Committee Recommendations

The Committee, having reviewed The Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No 48 of 2024), recommended that the House approve the report.

MIN No. NA/F & NP/2024/343: CONSIDERATION AND ADOPTION OF REPORT ON THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL 2024. (AMENDMENT NO. 3.) BILL (NATIONAL ASSEMBLY BILL NO. 44 OF 2024)

The Committee adopted the report having been proposed by Hon. George Sunkuiya Risa, MP and seconded by Hon. Paul Kibichiy Biego, MP.

Committee Recommendations

The Committee having reviewed The Public Finance Management (amendment) Bill 2024. (amendment No. 3.) Bill (National Assembly Bill No. 44 of 2024) recommended that the House approves the report.

MIN No. NA/F & NP/2024/345: CONSIDERATION AND ADOPTION OF REPORT ON THE PUBLIC FINANCE MANAGEMENT

(AMENDMENT) BILL 2024. (AMENDMENT
NO. 4) BILL (NATIONAL ASSEMBLY BILL NO.
45 OF 2024)

The Committee adopted the report having been proposed by Hon. Joseph Makilap Kipkoros, MP and seconded by Hon. CPA Julius Kipletting Ruto, MP

Committee Recommendations

The Committee having reviewed The Public Finance Management (amendment) Bill 2024. (Amendment No. 4) Bill (National Assembly Bill No. 45 of 2024) recommended that the House approves the report.

MIN No. NA/F & NP/2024/346: ADJOURNMENT

There being no other business, the meeting was adjourned at 6:25 PM. The next meeting will be held on notice.

SIGNED: DATE: 25th Nov, 2024

HON. CPA. KURIA KIMANI, MP
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON FINANCE AND
NATIONAL PLANNING.



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 SESSIONAL PAPER NO. 6 OF 2024 ON THE NATIONAL AVIATION POLICY

INVITATION TO SUBMIT MEMORANDA

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 WHEREAS Sessional Paper No. 6 of 2024 on the National Aviation Policy was submitted to the National Assembly and referred to the Departmental Committee on Transport and Infrastructure for consideration and reporting to the House;

IT IS NOTIFIED that Sessional Paper No. 6 of 2024 on the National Aviation Policy seeks to strengthen Kenya's position in the global aviation industry. Specifically, the Policy seeks to-

- (1) foster growth of the aviation business in Kenya to support job creation;
(2) maximize contribution of the aviation sector to Kenya's economic growth and development;
(3) enhance Kenya's connectivity nationally and internationally by ensure safe, secure and competitive access;
(4) maintain aviation safety through robust, effective and efficient regulation;
(5) promote high level of competition among airlines operating in Kenya while protecting the consumers and country's national interests;
(6) provide a regulatory framework for aviation that reflects best international practice;
(7) develop aviation infrastructure; and
(8) Support aviation training institutions in preparing young skilled professionals.

NOW THEREFORE, in compliance with Article 118(1)(b) of the Constitution, the Clerk of the National Assembly hereby invites the public to submit memoranda on the Sessional Paper to the Departmental Committee on Transport & Infrastructure.

Copies of the Sessional Paper are available at the National Assembly Table Office, Main Parliament Buildings and on www.parliament.go.ke.

The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to cna@parliament.go.ke to be received on or before Friday, 22nd November 2024 at 5.00 p.m.

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

'For the Welfare of Society and the just Government of the People'



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

IN THE MATTER OF ARTICLE 110 (C)(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.
(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-

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 cna@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 https://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 https://www.parliament.go.ke/the-national-assembly/business-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'

ARM Cement PLC (In Liquidation) Office 5B, 1st Floor, Tower I, The Mirage, Chromo Road, Westlands P.O. BOX 41908 - 00100 Nairobi, Kenya

To Creditors, ARM Cement PLC (In Liquidation) P.O. Box 41908 - 00100 Nairobi, Kenya 12 November 2024 Dear Sirs/Madams,

Subject: Notice of a Meeting of the Creditors of ARM Cement PLC (In Liquidation) ("ARM" or "the Company") As you are aware, the Company was placed under Administration effective 17 August 2020 pursuant to Section 334 (1) of the Insolvency Act 2015 of Kenya ("the Act").

The Act provides that, if the liquidation of the Company continues for a period of twelve months or more, the Liquidator shall convene a meeting of the Creditors to be held:

- (a) within three months after the end of that period of twelve months; and
(b) within three months after the end of each subsequent period of twelve months.

In view of the above, notice is therefore hereby given that a Third Meeting of the Creditors of ARM Cement PLC (In Liquidation) will be held virtually on Monday, 2 December 2024 at 10.00 a.m., 12.00 p.m., 2.00 p.m., 4.00 p.m. and 6.00 p.m. The purpose of the meeting will be to be before the meeting of the liquidation's acts and dealings, and of the conduct of the liquidation during the preceding year.

- (1) Creditors wishing to participate in the meeting should register for the meeting by doing the following:
a) Dialing *433*3028 for all networks and follow the various prompts regarding the registration process; or
b) Sending an email request to be registered to info@arm-liquidation.com
(2) Creditors with registered email addresses will receive a registration link via email through which they can use to register.
(3) Creditors with registered telephone numbers will receive a short message service (SMS) prompting them to register for the meeting.

(4) Creditors wishing to pose any questions or clarifications regarding the meeting may do so:
a) By dialing the USSD code above and selecting the option (Ask Question) on the prompts (For Creditors who will have registered to participate in the meeting)
b) By sending their written questions by email to info@arm-liquidation.com
c) To the extent possible, physically delivering their written questions to Comp-nite Kenya Limited at 2nd Floor, Muthiga Mini Market, Limuru Road or
d) Sending their written questions by registered post to Comp-nite Kenya Limited at P.O. Box 63428, 00619 Nairobi.

(5) Creditors entitled to attend the meeting are entitled to appoint a proxy to attend and ask questions on their behalf. A proxy need not be a member of the Company. The appointed proxy will need access to a mobile telephone. A proxy must be signed by the appointor or his attorney duly authorized in writing. If the appointor is a body corporate, the instrument appointing the proxy shall be given under its common seal or under the hand of an officer or duly authorized attorney of such body corporate. A completed form of proxy should be emailed to info@arm-liquidation.com or delivered to Comp-nite Kenya Limited, 2nd Floor, Muthiga Mini Market, Limuru Road, P.O. Box 63428 - 00619 Nairobi, so as to be received not later than Friday, 29 November 2024 at 11.00 a.m.

(6) The meeting will be streamed live via a link which shall be provided to all Creditors who are registered to participate in the meeting. Daily registered Creditors and proxies will receive a short message service (SMS/USDD) prompt on their registered mobile numbers, 24 hours prior to the meeting acting as a reminder of the meeting. A second SMS/USDD prompt shall be sent three hours ahead of the meeting reminding duly registered Creditors and proxies that the meeting will begin in three hours time and providing a link to the live stream.

(7) Ahead of the meeting, the Liquidators will consult a report to creditors by 20th Monday, 25 November 2024. Any creditor that does not receive a copy of this report by this date can reach out to us at the arm.administrator@pwc.com for a copy of the report.

(8) The Liquidators have also been making distributions to creditors in relation to their claims as submitted in the Administrators' Liquidation of the Company. Any unsecured creditor that has not received at least four dividend distributions should bring this to the attention of the liquidators through the arm.administrator@pwc.com.

The Joint Liquidators act on behalf of the Company without any personal liability. Yours faithfully, For and on behalf of ARM Cement PLC (In Liquidation) George Wanjau Joint Liquidator Without Personal Liability

c/o Muthiga Thotho and George Wanjau, PwC Tower, Nairobi West (Chromo Road), Westlands P.O. Box 42982 - 00100, Nairobi T: +254 (20)285 5000 F: +254 (20)285 5001 Email: the_arm_administrator@pwc.com

The Joint Liquidators act as agents of the Company and contract without personal liability



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

IN THE MATTER OF ARTICLES 118(1)(b), 250(2) OF THE CONSTITUTION
AND
IN THE MATTER OF SECTION 11(5) OF THE INDEPENDENT POLICING OVERSIGHT ACT (CAP. 86)
AND
IN THE MATTER OF THE PUBLIC APPOINTMENTS (PARLIAMENTARY APPROVAL) ACT (CAP. 7F)
AND
IN THE MATTER OF APPROVAL BY THE NATIONAL ASSEMBLY OF PERSONS NOMINATED FOR APPOINTMENT AS CHAIRPERSONS AND MEMBERS OF THE COMMISSION ON ADMINISTRATIVE JUSTICE, SALARIES AND REMUNERATION COMMISSION, NATIONAL GENDER AND EQUALITY COMMISSION AND THE BOARD OF THE INDEPENDENT POLICING OVERSIGHT AUTHORITY

NOTIFICATION OF APPROVAL HEARINGS AND INVITATION TO SUBMIT MEMORANDA

WHEREAS, in accordance with Article 250(2) of the Constitution and section 11(5) of the Independent Policing Oversight Authority Act (Cap. 86); H.E. the President is empowered to nominate and, with the approval of the National Assembly, appoint the Chairpersons and Members of the Commission on Administrative Justice (CAJ), Salaries and Remuneration Commission (SRC), and the National Gender and Equality Commission (NGEC); and the Board of the Independent Policing Oversight Authority (IPOA);

AND WHEREAS, following receipt of the nominations from H.E. the President, the Hon. Speaker of the National Assembly vide a Communication made on Wednesday, 13th November 2024 conveyed the Messages to the House and referred the names and curriculum vitae of the nominees to the Departmental Committees on Justice and Legal Affairs, Labour, Social Protection and Administration and Internal Security for consideration and reporting to the House;

IT IS NOTIFIED to the general public that pursuant to Article 118(1)(b) of the Constitution and section 6(4) of the Public Appointments (Parliamentary Approval) Act (Cap. 7F), the Departmental Committees shall conduct Approval Hearings (Vetting) of the nominees on Friday, 22nd November, 2024 at Parliament Buildings as per the schedule below—

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS ENTITY: COMMISSION ON ADMINISTRATIVE JUSTICE				
S. No.	NOMINEE	POSITION	TIME	VENUE
1.	Mr. Charles Orinda Dulo	Chairperson	8:30am	Committee Room 19, 3 rd Floor Bunge
2.	Hon. Charles Njugua Kanyi	Member	9:45am	Lower, Parliament Buildings
3.	Ms. Dorothy Lemator Kuregech	Member	11:00am	
DEPARTMENTAL COMMITTEE ON LABOUR ENTITY: SALARIES AND REMUNERATION COMMISSION				
S. No.	NOMINEE	POSITION	TIME	VENUE
1.	Mr. Sammy Chepkwony	Chairperson	8:30am	Committee Room 9, 1 st Floor, Main Parliament Buildings
2.	Maj. Gen. (Rtd) Martin Kizito Ong'oi, CBS	Member	9:45am	
3.	Mr. Mohamed Aden Abdi	Member	11:00am	
4.	Ms. Jane Gataaka Njage	Member	12:00pm	
5.	Mr. Leonid Ashindu	Member	2:00pm	
6.	Dr. Gilda Odera	Member	3:00pm	
7.	Dr. Geoffrey Apollo Omondi	Member	4:15pm	
DEPARTMENTAL COMMITTEE ON SOCIAL PROTECTION ENTITY: NATIONAL GENDER AND EQUALITY COMMISSION				
S. No.	NOMINEE	POSITION	TIME	VENUE
1.	Hon. Rahema Dida Jaldesa	Chairperson	8:30am	Committee Room 7, 1 st Floor, Main Parliament Buildings
2.	Mr. Michael Mbituka Nzomo (PWD)	Member	9:45am	
DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND INTERNAL SECURITY ENTITY: BOARD OF THE INDEPENDENT POLICING OVERSIGHT AUTHORITY				
S. No.	NOMINEE	POSITION	TIME	VENUE
1.	Mr. Ahmed Issack Hassan, CBS	Chairperson	8:30am	Mini Chamber, 1 st Floor, County Hall, Parliament Buildings
2.	Ms. Ann Wanjiku Mwangi	Member	9:30am	
3.	Dr. Micah Onyiego Nyakago	Member	10:30am	
4.	Mr. Boniface Kipkamoi Samati	Member	11:30am	
5.	Dr. Annette Mbogoh	Member	12:30pm	
6.	Hon. John Muchiri Nyaga	Member	2:00pm	
7.	Mr. Ken Williams Nyakom'tah	Member	3:00pm	
8.	Ms. Jackline Lukalo Mwenesi	Member	4:00pm	

AND WHEREAS, section 6(9) of the Public Appointments (Parliamentary Approval) Act (Cap. 7F) provides that "any person may prior to the approval hearing and by written statement on oath, provide the Clerk with evidence contesting the suitability of a candidate to hold the office to which the candidate has been nominated";

IN COMPLIANCE with Article 118(1)(b) of the Constitution and section 6(9) of the Public Appointments (Parliamentary Approval) Act (Cap. 7F), the Clerk of the National Assembly hereby invites members of the public to submit any representations they may have, by way of written statements on oath (affidavits) with supporting evidence contesting the suitability of the candidates for appointment to the offices they have been nominated to.

The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to ca@parliament.go.ke to be received on or before Thursday, 21st November 2024 by 5.00 p.m.

IT IS FURTHER NOTIFIED THAT the nominees are required to—

- Appear for the approval hearings with the original identity cards, academic and professional certificates and other relevant testimonials; and
- Obtain letters/certificates of compliance from the following institutions—
 - Ethics and Anti-Corruption Commission;
 - Kenya Revenue Authority;
 - Higher Education Loans Board;
 - Directorate of Criminal Investigations; and
 - Office of the Registrar of Political Parties.

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

"For the Welfare of Society and the just Government of the People"



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—
- 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, 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—

- 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.
- 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.
- 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—
 - provide for new definitions including "debarment", "foreign firm", "foreign funded procurement", "investigative agency", "joint venture procurement", "local firm" and "minor deviation";
 - ensure that foreign procurement contracts that have not been subjected to provisions international procurement guidelines or laws, adhere to Kenya's procurement laws;
 - mandate the Public Procurement Regulatory Authority to monitor and evaluate technology, knowledge and skills transfer programmes and provide annual reports;
 - include a representative from the Law Society of Kenya as a member of the Public Procurement Regulatory Board ("Board");
 - mandate each County Treasury to ensure that the procurement function prioritizes procurement of goods and services manufactured in that respective county;
 - to allow the Authority, a public institution or any other person to refer actions that constitute offences under the Act to an investigative agency;
 - 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;
 - limit the period that a person can be debarred from public procurement and approve any debarment done by an international agency recognized in Kenya;
 - 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;
 - 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;
 - 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 to of a value exceeding one billion shillings;
 - provide that a clarification of a tender shall not add any new document or information;
 - 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;
 - 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;
 - obligate procuring entities to seek the advice of the Attorney-General before accepting bids from a foreign company;
 - include a transfer of skills and technology plan as part of the tender documents;
 - 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;
 - provide for prompt and timely payments to a contractor upon completion of contractual obligation;
 - obligate the Authority to ensure that priority is given to citizen contractors in the sub-contracting of tenders;
 - 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;
 - give preference to procurement of locally skilled and unskilled labour;
 - 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;
 - provide for the mandatory procurement of forty percent of goods and services from local manufacturers or local service providers;
 - empower the Cabinet Secretary to prescribe the Preferential Procurement Master Roll;
 - align the provisions of the Act to the Court of Appeal (Organization and Administration) Act and the Civil Procedure Act;
 - 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
 - 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"



THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

P. O. Box 41842-00100
NAIROBI, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
Email: coa@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote

REF: NA/DDC/F&NP/2024/ (126)

15th November 2024

FCPA Nancy Gathungu, CBS
Auditor-General
3rd Floor, Anniversary Towers,
University Way,
NAIROBI

Dr. Margaret Nyakang'o
Controller of Budget
The Office of Controller of Budget
Bima House, 12th Floor
Harambee Avenue,
NAIROBI

Hon. Shadrack J. Mose
Solicitor General,
State Law Office
Sheria House, Harambee Avenue
NAIROBI

Hon. Dr. Kipkurui S. Chepkwony
Secretary/Chief Executive Officer
The Intergovernmental Relations
Technical Committee (IGRTC).
Parklands Plaza, 3rd Floor, Chiromo
Lane, Westlands
NAIROBI

CPA Dr. Grace Kamau, Ph.D
Chief Executive Officer
Institute of Chartered Public Accountants of
Kenya (ICPACK)
CPA Center, Ruaraka, Thika road.
NAIROBI.

Ms. Mary Mwiti
Chief Executive Officer
Council of Governors
Delta House, Rhapta Road
NAIROBI

Ms. Faith Mony Odhiambo
President, Law Society of Kenya
Lavington, Opposite Valley Arcade,
Gitanga Road
NAIROBI

Mr. Kwame Owino
Chief Executive Officer,
The Institute of Economic Affairs
1st Ngong Avenue, ACK Garden House
NAIROBI

Ms. Edna Gitachu
Associate Director,
PricewaterhouseCoopers Limited
PWC Tower, Waiyaki Way/Chiromo Road
Westlands
NAIROBI

Ms. Arwinder Sandhu
Senior Consultant
Westminster Consulting
6th Floor, the Address, Muthangari
Drive, Off Waiyaki Way
NAIROBI

Mr. Alex Mathini

Partner,
Bowmans LLP
5th Floor, West Wing, ICEA Lion Centre
Riverside Park, Chiromo Road,
NAIROBI

Mr. Daniel Ngumy

Partner
Anjarwalla & Khanna LLP
Eldama Ravine Close, Off Eldama Ravine
Road, Westlands
NAIROBI

Mr. Patrick Wanjuki

Ag. Director General
Public Procurement Regulatory Authority
6th Floor KISM Towers
Ngong Road
NAIROBI

Ms. Jane Mugo

Partner
Tax Law Advisory
I&M Bank House, 7th Floor
2nd Ngong Avenue
NAIROBI

Mr. (FCPA) Philip Muema

Managing Partner
Andersen Consulting Kenya
7th Floor, Rapta Heights
Rhapta Rd, Westlands
NAIROBI

Mr. Michael Mburugu

Regional Tax Partner
PKF Taxation Services Ltd
Kalamu House, Grevillea Grove,
Off Brookside Drive, Westlands
NAIROBI

Mr. Fred Omondi

Partner, Tax & Legal Leader
Delloitte en Touche
Parklands/Highridge, Waiyaki Way,
Deloitte Plc
NAIROBI

Mr. Alex Kanyi

Cliffe Dekker Hofmeyr (Kieti Law LLP)
Merchant Square, Block D, 3rd Floor
Riverside Drive
NAIROBI

Mr. Ernest Muriu

Partner
Ernest & Martin Associates
Certified Public Accountants
Haven Court, Block B, Rm
Slip Road off Waiyaki Way,
NAIROBI

Ms. Jilna Shah,

Tax Director,
RSM (Eastern Africa)
1st Floor, Pacis Centre, slip rd
Off Waiyaki Way
NAIROBI

Mr. Jeff Kiraguri

Legal and Tax Associate
Grant Thornton
5th Floor,
Avocado Towers,
Muthithi Rd,
NAIROBI,

Ms. Diana Gichengo

Executive Director
The Institute for Social Accountability
Westlands Avenue, Wendy Court, Hse
no.10, David Osieli Rd, Westlands
NAIROBI

Eng. Joseph Anvar A lot
Chief Executive Officer
Roads and Civil Engineering Contractors
Association
Simba Sikh Union, Parklands,
NAIROBI

Chief Executive Officer
Federation of Kenya Registered Electrical
Engineers
Thika Super Highway,
Waka Business Centre
NAIROBI

Mr. Kenneth Matiba
Chief Executive Officer
Kenya Institute of Supply Management
KISM TOWERS, 12th Floor, Ngong Road,
NAIROBI

Hon. Sabulei Philemon Kiplangat
The Chairperson
County Assembly Forum
Flamingo Towers, 5th Floor Wing B, Mara
Road, Upper Hill,
NAIROBI

Mr. James Muraguri
Chief Executive Officer
Institute of Public Finance
Rosami Court, Muringa Road off Elgeyo
NAIROBI

Mr. George Aluru
Chief Executive Officer
Energy Sector Contractors Association
NAIROBI

Ms Carole Kariuki
Chief Executive Officer
Kenya Private Sector Association
7th Floor, South Tower, Two Rivers,
Limuru Rd,
NAIROBI

CPA James Katule
Chief Executive Officer/ Commission
Secretary
Commission on Revenue Allocation
14 Riverside Drive, 2nd Floor
NAIROBI

Mr. Raimond Molenje
Ag. Chief Executive Officer Kenya
Bankers Association
13th Floor, International House
Mama Ngina Street
NAIROBI

Chief Executive Officer
Bajeti Hub
Kilimani Business Centre, Office 9,
Kirichwa Road
NAIROBI

Dear Sir/Madame

**RE: STAKEHOLDER ENGAGEMENT ON 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 BY
THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL
PLANNING**

The Departmental Committee on Finance and National Planning is established pursuant to National Assembly Standing Order 216 which mandates it *inter alia*, to **study and review all the legislation referred to it.**

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) underwent the First Reading pursuant to Standing Order 127(3) on **Wednesday, 13th November 2024** and were committed to the Departmental Committee on Finance and National Planning for consideration and reporting back to the House. The principal object of the Bill (s) is as follows;

1. The Public Finance Management (Amendment) (No.3) Bill (National Assembly Bill No. 44 of 2024)

The Bill seeks 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.

2. The Public Finance Management (Amendment) (No.4) Bill (National Assembly Bill No. 45 of 2024)

The Bill 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)

The principal object of the bill is to amend the Public Procurement and Asset Disposal Act (Cap 412C) to prescribe the threshold of procurements that shall be awarded to local firms to promote the growth of local industries. The Bill also prescribes a penalty for any person who registers a firm on behalf of a non-Kenyan for purposes of benefitting from a procurement that falls within a prescribed threshold.

Pursuant to the provisions of Article 118(1) (b) of the Constitution of Kenya and Standing Order 127 (3), the Committee hereby invites you for a meeting to receive your submission and comments on the said Bill(s). The meeting will be held on **Friday, 22nd November and Saturday, 23rd November 2024** at **Mini Chamber, County Hall, Parliament Buildings** from 9.00 a.m. as per the attached schedule.

You are requested to prepare comprehensive submissions on **any representations you may have of the Bill (s)** and email a soft copy to cna@parliament.go.ke on or before the day of the meeting. Copies of the Bills are available at the National Assembly Table Office, or on www.parliament.go.ke/the-national-assembly/house-business/bills.

The Committee's Liaison Officers for the meeting are **Mr. Benjamin Magut**, who may be contacted on **Tel. No. 0712974966** or **email address: benjamin.magut@parliament.go.ke**; **Mr. Benson Kamande** of telephone number **0789459387** or **email address: benson.kamande@parliament.go.ke** or **Ms. Winfred Kambua** on **Tel. No 0720571777** or **email address winfred.kilonzo@parliament.go.ke**.

Yours


JEREMIAH W. NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

Copy to **H.E FCPA Ahmed Abdullahi, EGH**
Chairperson
Council of Governors
Delta House, Rhapta Road
NAIROBI

Alex Kanyi<Alex.Kanyi@cdhlegal.com>

To

Clerk of the National Assembly

Cc

benjamin magut

benson kamande

winfred kilonzo

Sammy Ndolo

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Dear Hon. Samuel Njoroge

We thank you and the team for inviting our firm, Cliffe Dekker Hofmeyr (Kenya) to provide comments on the Public Finance Management (Amendment) (No.3 &4) Bill, 2024 and the Public Procurement and Asset Disposal (Amendment), Bill, 2024.

The Bills generally provide positive changes.

We propose the below amendment to the Public Finance Management (Amendment) (No.3) Bill, 2024:

Issue	Proposal	Justification
Public participation on transfer of functions	We propose that a section be added in the proposed Bill to require that public participation is done before transfer of functions from level to the other.	<p>The transfer of functions from one level of government to another is a critical task that affects a huge population therefore a matter of public interest. We have in the past experienced a tussle when Nairobi County transferred its functions to the National government with the governor alleging that he was incapacitated.</p> <p>https://www.citizen.digital/news/sonko-withdraws-from-agreement-transferring-nairobi-county-functions-to-nms-339866</p> <p>The effects to the residents of Nairobi continued notwithstanding.</p> <p>In this regard, we propose that such transfer of functions from one level to another be subjected to public participation so that the public can have their views considered before the transfer is done.</p> <p>The Public Finance Management (Amendment) (No.3) Bill, 2024 should therefore be amended to add Clause 186 (F) stating that:</p> <p><i>The Cabinet Secretary and the County Executive Committee member for finance for the affected County shall ensure that there is public participation in the process of transferring functions from one level of the government to the other.</i></p>

We propose the below amendment to the Public Procurement and Asset Disposal (Amendment), Bill, 2024:

Issue	Proposal	Justification
<p>Ambiguity in section 11 (a) of the Bill on where to place a procurement that is exactly one billion shillings</p>	<p>We propose that section 11 (a) of the Public Procurement and Asset Disposal (Amendment), Bill, 2024 should be amended to read as follows:</p> <p style="padding-left: 40px;">a. By inserting the following new subsections immediately after subsection (6)-</p> <p>"(6A) any procurement of <i>one billion shillings or less</i> shall be awarded to a local firm.</p> <p>Clause (6B) should remain as currently drafted.</p> <p>"6(B) A foreign firm shall be eligible for procurement of contracts of more than one billion shillings where the foreign firm has entered into a joint venture procurement with a local firm for not less than thirty percent of the value of the procurement."</p>	<p>If the clause is amended as proposed, it will be clear that any procurement of one billion shillings or less will be awarded to a local firm. This will resolve a potential problem with the current drafting of the Bill where a procurement that is worth exactly one billion shillings can neither be to a local firm or a foreign firm.</p>
<p>Timelines for the Attorney(AG) General to provide an advisory on propriety of the funding of a foreign tenderer</p>	<p>We propose that section 16 of the Bill be amended to provide for the specific timelines within which the Attorney General should provide an advisory opinion to the procuring entity. We propose fourteen (14) days.</p> <p>The section should be amended to read as follows:</p> <p>" 16(2) Where a foreign tenderer participates in the competition for procurement, the respective procuring entity shall obtain an advisory opinion from the Attorney-General on the propriety of the funding from the foreign tenderer. <i>The Attorney General shall provide the advisory opinion to the procuring entity within fourteen days of receiving the written request from the procuring entity.</i></p>	<p>The current wording of the section gives an unlimited time to the Attorney General to give an advisory opinion on the propriety of the foreign tenderer. This exposes the procuring entity and the tenderer to abuse or unnecessary bureaucracy. It is important to provide a specific timeline for the Attorney General to provide the opinion for clarity.</p>

We trust that our submissions will be considered.

Kind Regards

Alex Kanyi

Partner - Tax

Kieti Law LLP

Merchant Square, 3rd Floor, Block D, Riverside Drive, Nairobi, Kenya

P.O. Box 22602-00505, Nairobi, Kenya

Tel. +254 731 086 649 / +254 710 560 114 Mobile. +254 724 498 999

Alex.Kanyi@cdhlegal.com

| <https://www.cliffedekkerhofmeyr.com - kieti.html>



KEPSA MEMORANDUM ON THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL, 2024 AND PROPOSALS ON POSSIBLE AREAS FOR AMENDMENTS TO THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT, 2015

About KEPSA

The Kenya Private Sector Alliance (KEPSA) is the apex body for the private sector in Kenya. KEPSA brings together local and foreign business associations, federations, chambers of commerce, professional bodies that are sectoral umbrella bodies and individual sectoral business membership organizations, corporates, from multinationals to large and medium-sized companies, SMEs, and start-ups from all sectors of the economy, across all parts of the country. This gives KEPSA a reach of over 2 million businesses directly and indirectly. KEPSA also serves as the national focal point of the East Africa Business Council (EABC), the umbrella body of businesses in East Africa. It hosts the International Chamber of Commerce (ICC) Kenya Chapter, a member of the ICC with a reach of over 45 million businesses globally.

KEPSA coordinates businesses to speak with one voice and engage local and foreign governments, development partners, and other stakeholders on cross-cutting policies, laws, and regulations for private sector development. It allows sectoral business organizations to engage in sectoral issues.

Additionally, KEPSA runs projects for the private sector and the country's socioeconomic development, such as youth and jobs and climate change initiatives. It does this by being the focal point for all stakeholders to reach businesses in a coordinated manner. Through the projects, KEPSA supports business development with opportunities for training and capacity building, networking, financial linkages, mentorships and coaching, access to markets, value chain enhancement, and investment opportunities with partners worldwide.

Its social arm, KEPSA Foundation's, mandate is to strengthen socio-economic transformation by engaging private sector members in social projects, ensuring its expertise and resources are utilized for impactful interventions in the community and with stakeholders. The Foundation coordinates businesses' engagement with the government, development partners, and other stakeholders on social issues that address the environment and vulnerable communities as well as issues of governance under the five priority areas, namely: Fostering Governance and National Value System; Empowerment of Women, Youth, Persons with Disabilities & Childcare; Community Climate Action and Sustainability; Community Outreach and Partnerships; and Knowledge Institute and Think Tank.



What the Amendments Seek to Achieve

The proposed amendments to the Public Procurement and Asset Disposal Act, 2015, aim to strengthen the principles of fairness, transparency, competitiveness, and cost-effectiveness in public procurement, as outlined in Article 227 of the Constitution of Kenya. The changes are designed to address emerging issues, align the procurement framework with global best practices, and incorporate insights gained since the Act's implementation. The amendments focus on improving procurement management systems for both national and county governments, enhancing transparency, and eliminating avenues for corruption, conflicts of interest, and abuse of office. Ultimately, these reforms ensure that public procurement consistently delivers value for money while upholding accountability and integrity across the public sector.

Following the call for submissions, we as KEPSA submit as follows:

NO.	CLAUSE OF THE ACT	PROPOSED AMENDMENT/ RECOMMENDATION	JUSTIFICATION/ RATIONALE
PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL, 2024			
1.	Clause 26 <i>Right to judicial review of procurement</i> "Appeals from the decision of the High Court shall be made in accordance with the Court of Appeal (Organization and Administration) Act, 2015"	Amend clause 26 in the Bill to read; "Appeals from the decision of the High Court shall in 14 days be made in accordance with the Court of Appeal (Organization and Administration) Act	Currently, the PPADA does not provide a timeline after a High Court determination for an aggrieved party to seek redress at the Court of Appeal. Given that the appeal must be supported by High Court proceedings, which are not issued immediately, extending the appeal window to 14 days would provide appellants with sufficient



			time to adequately prepare their case.
ADDITIONAL PROPOSALS TO THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT, 2015			
2.	<p>Section 2 <i>Interpretation</i></p> <p>The definition of “Public Money” which states <i>‘includes monetary resources appropriated to procuring entities through the budgetary process, as well as extra-budgetary funds,</i></p> <p><i>including aid, grants, and loans, put at the disposal of procuring entities by donors;’</i></p>	<p>Proposal to amend the definition to read as follows: - <i>‘includes monetary resources appropriated to procuring entities through the budgetary process as well as extra-budgetary funds, including aid, grants, and loans to the Government of Kenya which are under the control of a public entity’</i></p>	<p>Extra-budgetary funds should only be classified as public money when they consist of aid or loans provided to the Government of Kenya and specifically put at the disposal of a public procuring entity.</p> <p>The current definition is ambiguous, as it potentially allows donor funds to be considered public money even when managed by private entities, particularly if those funds are used for the public good or in a manner that benefits a public entity.</p> <p>Any aid, grants, and loans to programs funded and managed by private development partners for the benefit of a public entity or public initiative are not public funds.</p>



			<p>This ambiguity should be addressed to:</p> <ul style="list-style-type: none">a) ensure that only funds directly controlled by public entities are classified as public money, thereby preventing unintended classification of private procurement activities; andb) avoid unnecessary hurdles in the implementation of donor-funded programs i.e. encourage collaboration between public entities and donors.
3.	<p>Section 2</p> <p>The definition of “Accounting Officer” which states: - <i>has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012 (No. 18 of 2012);</i> <i>"accounting officer" means—</i></p>	<p>Recommendation that either the Public Procurement Asset Disposal Act (PPADA) or the Public Finance Management Act (PFMA) be amended to include a more inclusive definition of the accounting officer in a procuring entity.</p>	<p>The PFMA identifies the accounting officer for national government entities, county government entities, the Judiciary, and the Parliamentary Service Commission but does not explicitly specify the accounting officers for other public bodies, such as commissions, state corporations, public schools and universities,</p>



	<p>(a) an accounting officer of a national government entity referred to in section 67;</p> <p>(b) an accounting officer of a county government entity referred to in section 148;</p> <p>(c) in the case of the Judiciary, the Chief Registrar of the Judiciary; or</p> <p>(d) in the case of the Parliamentary Service Commission, the Clerk of the Senate;</p>		<p>urban areas, and public entity pension funds.</p> <p>Given the critical role of the accounting officer at various stages of the procurement process, it is essential to eliminate any ambiguity regarding who serves as the accounting officer in all public procuring entities.</p>
4.	<p>Section 2</p> <p>The definition of “Disposal” which states ‘<i>means the divestiture of public assets, including intellectual and proprietary rights and goodwill and other rights of a procuring entity by any means including the sale, rental, lease, franchise, auction, or any combination however, classified;</i>’</p>	<p>Proposal to amend the definition to include the words “<i>unserviceable, obsolescent, obsolete or surplus</i>” before ‘public assets’ to read as follows: -</p> <p>“<i>means the divestiture of unserviceable, obsolescent, obsolete or surplus public assets, including intellectual and proprietary rights and goodwill and other rights of a procuring entity by any means including sale, rental, lease, franchise, auction or any combination however classified.</i>”</p>	<p>Amending the definition of ‘disposal’ will ensure that the sale, lease, or other divestiture of assets is considered disposal only in situations where the PPADA prescribes a specific procedure for how such divestiture should take place.</p>



5.	Section 30 <i>Qualifications of members of the Review Board</i>	Proposal to include an additional qualification for members, requiring training and/or experience in public finance or procurement, in addition to their existing fields of expertise.	Ensuring that members possess this additional training and/or experience in public finance or procurement means they will be better equipped to handle complex procurement issues, leading to more accurate and efficient decision-making, and ultimately creating a more robust and competent oversight body. The absence of such qualifications can hinder the Board's ability to make timely and well-informed decisions on procurement matters.
6.	Section 35 <i>Investigations</i>	The Authority adopts a specific timeframe for conducting and completing investigations, with a suggested timeframe of 21 to 30 days.	The Authority, under this Act, is empowered to investigate procurement or asset disposal proceedings and determine breaches of the Act, after which the Director General issues orders. However, this process currently does not have a defined timeframe.



			<p>Given the limited duration of tender validity periods, it would be beneficial to impose a time limit on the investigation period, similar to the strict time limitations applied to disputes under the PPADA, to prevent investigations from hindering time-sensitive procurement processes.</p>
7.	Section 41(1) <i>Debarment</i>	<p>The criteria for debarment under Section 41(a) and (b) should apply only if a person has been convicted of an offense under the PPADA or any other Kenyan law or any other jurisdiction</p>	<p>The current wording, which sets the grounds as having “committed an offense,” is overly subjective and open to interpretation. It allows for potential debarment without the legal certainty of a conviction.</p> <p>To ensure fairness and objectivity, debarment should be based solely on a conviction.</p>
8.	Section 171 <i>Completion of Review</i>	<p>Proposal to amend the section to include a requirement for publication of decisions made upon completion of reviews by the Review Board.</p>	<p>While the Review Board currently publishes decisions on its website, the portal is not always up to date. This proposed amendment will formalize the practice.</p>



			Additionally, as a practical measure, the Review Board should consider making its database 'searchable' to facilitate the process of finding precedents on decided matters, enabling users to efficiently search the database for relevant decisions.
9.	New Innovation Provision	We recommend the creation of a specific category for innovative procurements , allowing for more flexible tendering procedures, such as competitive negotiations (S. 131) or direct procurement (Ss. 103-104), when procuring cutting-edge technologies or solutions.	Standard procurement methods like open competitive bidding may not be ideal for procuring innovative or complex solutions. Flexible procedures will encourage suppliers with innovative capabilities to participate in government contracts without being constrained by rigid procurement requirements.

Thank you for your consideration and attention.

Yours Sincerely,

Carole Kariuki, EBS, MBS, HSC

Chief Executive Officer



Mr. Samuel Njoroge
Clerk of National Assembly,
P. O. Box 41482-00100 Nairobi
23rd November 2024

Dear Sir,

**RE: OKOA UCHUMI SUBMISSIONS ON THE PUBLIC FINANCE MANAGEMENT
(AMENDMENT) BILLS AND THE PUBLIC PROCUREMENT AND ASSET DISPOSAL
(AMENDMENT) BILL**

The Okoa Uchumi Campaign is a civil society platform working with stakeholders to redress Kenya's public debt crisis. The coalition seeks to push for political accountability, and bolster constitutional safeguards in public debt management, for debt sustainability through a balanced and equitable budget.

The Institute for Public Finance and the Institute for Social Accountability as sector experts in the coalition prepared this joint proposal for The National Assembly on the Campaign's recommendations to be considered in the Public Finance Management Amendment Bills and the Public Procurement and Asset Disposal Amendment Bill 2024. The submission highlights the proposed amendment to the law, supported by a statement on the issues to be addressed and a justification for the proposed amendments. We are available to highlight our submissions to the Finance and National Planning Departmental Committee. We look forward to hearing from you and engaging in this important national exercise that will shape the fiscal landscape of Kenya.

Yours sincerely,


Diana Gichengo,
Executive Director TISA

CC Mr. Benson Kamande ;Clerk National Assembly Departmental Committee on Finance and National Planning

INTRODUCTION

The 13th Parliament approved the Public Finance Management (Amendment) Bill 2023 on June 2023 before it was assented into law by the President in October 2023 and implementation commenced by November 2023 changing the debt ceiling from Ksh.10 trillion to a debt anchor of 55% of GDP in present value in Section 50 of PFM Act¹. The amendment further introduced subsection 2C allowing the Cabinet Secretary five years to comply with the debt anchor². One year later, Members of the National Assembly are taking the public to the same section and subsections not to safeguard the fiscal responsibility principles but to create room for more borrowing by removing the 55% debt anchor that was breached before implementation. Public debt as a percentage of GDP in present value stood at 67% in December 2022 and increased to 68.2% in December 2023 before slightly declining to 67.2% in December 2024³. While the 2024 Budget Review and Outlook Paper (BROP) suggests sustainable debt levels, the International Monetary Fund assessment places Kenya at a high risk of default. As indicated above, setting the 55% debt anchor and allowing more compliance period to the CS Treasury continuously debased the economy by overseeing wanton borrowing. Following a similar strategy after one year is not right because the focus should be on sustainability and reduction of the public debt stock by ensuring the National Government only borrows to finance development expenditure as opposed to allocating only 46% (Ksh.350.7 billion) of the Kshs.766.4 billion borrowed in FY 2023/24 to development⁴. Other indicators such as the debt-to-exports ratio in present value, Public and Publicly Guaranteed external debt-to-exports and PPG debt service-to-revenue ratios have all breached the set threshold to confirm how unsustainable the situation remains⁵.

While the Medium-Term Debt Management Strategy and BROP focus more on enhanced revenue mobilization through tax policy and administrative reforms, we propose that the National Assembly and the Executive to fast track the roll out of an end-to-end e-procurement system to increase transparency. The President in his State of the Nation Address revealed that it has taken the National Treasury 10 years to achieve, hence the need for parliament's support towards realizing the 2025 Quarter one deadline. E-procurement is vital for prudent debt management because it will reflect acquired debts in principal amounts and automatically calculate the interest at agreed rates. Conversely, as of 30th June 2024, Pending Bills in the National Government piled to Ksh.516.3 billion with State Corporations commanding the largest charge at 73.6% with the highest claims being for contractors⁶. Another aspect highlighted in the BROP that should be of priority is the implementation of accrual accounting for seamless cash management for all government assets and liabilities. Zero-based budgeting is another way to curb the ever-increasing recurrent expenditure that exacerbates budgets thus contributing to more borrowing. The current austerity measures were not objective because they primarily targeted devolution through counties, Judiciary, Parliament, and independent institutions. At the same time, the Executive budget still accounted for 97% of allocations to the National Government, thus highly contributing to the Executive capture and compromise in oversight roles. Cutting down the number of

¹ https://kenyalaw.org/ku/fileadmin/pdfdownloads/Acts/2023/ThePublicFinanceManagement_Amendment_Act_2023.pdf

² <https://www.businessdailyafrica.com/bd/economy/mps-approves-conversion-of-sh10trn-debt-ceiling-to-anchor-4280354>

³ <https://www.treasury.go.ke/wp-content/uploads/2024/10/2024-Budget-Review-and-Outlook-Paper.pdf>

⁴ http://parliament.go.ke/sites/default/files/2024-02/2024%20Medium-Term%20Debt%20Management%20Strategy_1.pdf

⁵ <https://taxjusticeafrica.net/sites/default/files/publications/Hanging%20on%20a%20Precipice.pdf>

⁶ <https://www.treasury.go.ke/wp-content/uploads/2024/10/2024-Budget-Review-and-Outlook-Paper.pdf>

advisors under the Presidency, unconstitutional appointments and positions, merging state corporations duplicating roles is crucial in freeing up funds for enhanced service delivery.

The identified issues confirm where the priority for prudent public debt management lies. Therefore, we are convinced that amending section 50 of the PFM Act annually to allow reckless borrowing with a five-year compliance period to the CS Treasury cannot be a Kenyan Priority at a time when parliament and the Office of the Auditor General are not sure of the actual debt stock contrary to Article 211 of the Constitution of Kenya, 2010. Based on the above position, TISA and IPF submit their views as follows:

The Public Finance Management (Amendment) (No. 3) Bill, 2024				
Clause 2: Financial Management in the Transfer of Functions	-	<p>The Bill introduces amendments to Section 186 of the Public Finance Management Act, incorporating new provisions to streamline the financing of functions transferred between the national and county governments. It stipulates that such transferred functions will continue to be funded from the sources as outlined in the approved budgets of the transferring level of government. Additionally, the cost of the transferred functions will be determined based on the costing framework detailed in the manuals of the national and county governments.</p>	<p>These provisions are a significant and commendable development, as they provide much-needed clarity on the financing framework for functions transferred between county and national governments—a process that has faced numerous challenges in the past. By aligning with Article 187 of the Constitution, which governs the transfer of functions between levels of government, the amendments ensure that transferred functions are financed based on the approved budget allocations of the transferring government.</p>	
		<p>Furthermore, the Bill requires that any transfer agreement between the two levels of government must include provisions addressing the acquisition, disposal, and transfer of assets and liabilities. It also mandates that the transferring level of government prepares cash flow projections based on anticipated revenue from various sources, ensuring a</p>	<p>Additionally, the provisions place a clear obligation on the government receiving the transferred functions to publish cash flow projections and quarterly implementation reports. This promotes transparency and accountability in the management and execution of transferred functions, addressing existing gaps in the transfer process.</p>	

	structured and transparent approach to resource allocation.			
The Public Finance Management (Amendment) (No.4) Bill, 2024				
Clause 2: Amendment of Section 50 of the Principal Act	The bill amends section 50 by deleting the previous subsection 2C and inserting a new one that states that the provisions of subsection 2A and 2B shall come into force five years after the date of commencement of the Act.	The previous proposition stated that the Cabinet Secretary should take measures to ensure that the borrowing by the national government complies with the threshold prescribed in subsection 2A in a period of no later than five years after the commencement date of subsections 2A and 2B.	This is meant to clarify the effective dates of the debt threshold requirement for the Cabinet Secretary and National Treasury for compliance, thus moving compliance requirements to the 14th Parliament. Debt sustainability and prudence was at the core of the current regime's manifesto and campaigns. Capped with unattainable living costs, the country cannot afford the luxury of allowing further borrowing spree with the hope of postponing the debt problem. If unchecked and assumed, this amendment will escalate inequality in carrying the debt burden between current and future generation	Delete the proposal.
	The bill introduces a new subsection after subsection 2C that states that the Cabinet Secretary is to ensure that the borrowing by the National government complies with the threshold prescribed in subsection 2A within a period of no later than five years after the commencement date.		The introduction of this new subsection extends the debt threshold by five years after the Act's commencement which allows the government an opportunity to borrow without being constrained by the current debt limit of 55% of GDP. This creates room for increased borrowing in the short term which would lead to significant increase in Kenya's overall debt.	Delete the proposal.
Clause 3: Amendment of Section 194 of the Principal Act	The bill inserts paragraphs (h) and (i) in subsection (1) and new subsection (6) in the framework of the implementation of accrual accounting by the government and the risk management framework by the Public Sector Accounting Boards.		This is meant to ensure that the government has a clear picture of its financial obligations, improves its financial management and enhances the public sector financial reporting as accrual accounting records financial transactions when they are incurred, hence improving transparency and governance. It will also help to deal with the	Adopt the proposal.

		The subsection shall also include a transition period of three years from the commencement date.	problem of pending bills and other contingent liabilities .	
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Public Finance Management (Amendment) No 2 Bill 2024 :

We support the proposed amendments because they clarify revenue-raising and budgeting measures at county level and the proposals create a good sense of uniformity with the procedures for the national government as outlined in the Medium-Term Debt Management Strategy and the 2024 Budget Review and Outlook Paper.

The Public Procurement and Asset Disposal Act No 48 of 2024

Overall we welcome the strengthening of procurement principles to give effect to articles 10 and 201 of the constitution. The bill has a raft of amendments that will go along way to curb graft because 70% of graft cases emerge from procurement processes. It also priorities national interest by giving priority to Kenyan Citizens in the procurement process.

Public Procurement and Asset Disposal Act No. 48 2024				
Clause 8	Previously, the Act indicated that there would be no investigations when an issue is before the Review Board, and no order could be allowed at such a time.	The Bill proposes to wholly delete section 40	This is a significant milestone because the section was giving the Review Board veto powers that could breed opulence, graft and lack of accountability and transparency in review processes.	Adopt the proposal
Clause 9	The bill seeks to delete subsection 4 of section 41 to substitute it for the new subsection 5	This section clarifies that a person debarred by by an international agency recognized by Kenya shall be deemed have been barred in kenya if the debarment	This will ensure that corrupt entities and conflicted or fraudulent individuals and organizations are not procured.	Adopt proposal

		procedures and proceedings were conducted in Kenya	Maintaining the integrity of the process will protect Kenyans in realizing the value for their taxes and enjoying good services.	
Clause 11:	Amendment of section 53: The bill seeks to introduce a new subsection 14	Under this sections, the bill seeks to provide penalties for 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 offense	This introduction will aid in increasing and promoting domestic companies and procurement of Kenyan companies.	Adopt proposal
	The bill under subsection 15 seeks to introduce penalties for foreigners who register companies by misrepresenting themselves as being Kenyan.		This will discourage foreign entities claiming to be Kenyan from doing so in order to benefit from the procurement.	Adopt proposal
Clause 14:	Previously, subsection (2) of section 83 of the Act was limited to obtaining confidential references from persons with whom the tenderer has had prior engagement.	The amendment expands to include, without limiting to, obtaining confidential ref from persons with whom the tender has had prior engagement, visiting their offices, inspecting of plant, equipment and completed works in addition to confirming the validity of documents presented.	This expansion is holistic and opens the scope for conducting due diligence to ensure the tenderer has required experience, skills and qualifications to execute the job. The approach provides an objective spectrum for qualifying a tenderer in an open and competitive approach.	Adopt amendment
Clause 20:	Section 139A on Prompt payment	Amendment seeks to entrench in law the culture of prompt payment.	This is a good proposal that will go along way in increasing the money in circulation, reduce on pending bills however the prompt and timely payment is not defined	Amend to provide that timely and prompt payment shall mean payment within the same quarter the invoice is paid and no later than the close of the fiscal year.



KENYA INSTITUTE OF SUPPLIES MANAGEMENT

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KISM Towers, 12th Floor | Ngong Road | P.O. Box 30400-00100 Nairobi, Kenya
Mobile: +254 111 024 800 | Email: admin@kism.or.ke | Website www.kism.or.ke

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

A. INTRODUCTION

Dear Hon. Chairman, Dear Hon. Members of the Committee,

1. The Kenya Institute of Supplies Management (“the Institute”) is a statutory body established under section 3 of the Supplies Practitioners Management Act, 2007 (SPMA). The Institute is mandated to register, license, train, and discipline supplies practitioners; and to regulate their practice among other functions.
2. The Institute is the national professional body for supplies practitioners in Kenya. In the course of the execution of its mandate under the SPMA, the Institute deals with professionals as they execute their duties as prescribed in the Supplies Practitioners Management Act 2007, Public Procurement and Asset Disposal Act, 2015 (“the Act”) and the Public Procurement and Asset Disposal Regulations, 2020 (“the Regulations”).
3. It is in that context that the Institute submits these proposals on the Public Procurement and Asset Disposal (Amendment) Bill, 2024 (“the Bill”) in line with the invitation from the National Assembly vide a letter **Ref.NA/DDC/F&NP/2024/ (126) dated 15th November 2024.**

B. PROPOSAL, VIEWS AND COMMENTS ON THE BILL

4. The Institute makes the following submissions on the various clauses in the Bill for consideration by the National Assembly Departmental Committee on Finance and National Planning (“the Committee”).

Clause 2(a) of the Bill – Interpretation

5. The Bill proposes to amend the definition of the term “**asset**” which under the current law is defined as “movable and immovable property, tangible and **intangible**, including immovable property, stores, equipment, land, buildings, animals, inventory, stock, natural resources like wildlife, intellectual rights vested in the state or proprietary rights” by inserting the word “virtual asset” immediately after the words “Proprietary rights.”



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6. We submit that this is already provided for in the current Act by the use of the word “intangible” and therefore the term virtual asset maybe a repetition.
7. The Clause also seeks to define the term **“Investigative Agency”** to include the NPSC, EACC, KRA, ACA or any other government agency mandated with the role of investigation under any written law.”
8. We propose that KISM be included since it has an investigative mandate under section 22 of the SPMA, 2007 on matters of professional misconduct.
9. The Committee may consider defining the term as *“any government entity, any government agency or professional body mandated with the role of investigations under any written law such as National Police Service Commission, Ethics and Anti-Corruption Commission, Kenya Revenue Authority, Anti-Counterfeit Agency, Kenya Institute of Supplies Management”*.
10. The definition of a **“foreign firm”** has the meaning assigned to it under the Companies Act, Cap 486 which defines a foreign company as “a company incorporated outside Kenya”.
11. Our proposal is that the proposed definition of foreign firm should line up with the already existing provisions of the law.
12. The proposed definition of a **“local firm”** as per the Bill is “a company incorporated in Kenya firm under the Companies Act whose shareholding is wholly by Kenyan citizens”.
13. Our proposal is that immediately after the words “Companies Act” in the Clause, there should be added “or any other written law and whose operation is based in Kenya.” This is because a firm does not have to be only registered under the Companies Act. Firms can also be registered under the Partnerships Act, and the Limited Liability Partnership Act.



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Clause 2(b) of the Bill – Interpretation

14. The Bill proposes to amend the definition section of the principal Act to include the definition of **debarment** as follows: “**debarment**” means the exclusion of a person or a firm from entering into a public procurement contract as a supplier, contractor or service provider.”
15. Our observation is that this definition only limits debarment to the exclusion of person(s) or firm(s) getting into public procurement contracts as supplier, contractor or service provider and does not include third parties that may be linked to the debarred person/firm.
16. Though Regulation 22(8) provides that “where a person is debarred from participating in procurement proceedings under section 41 of the Act, the debarment shall extend to any legal entity in which the debarred person has a controlling interest”, it is important that this comes out clearly in the definition section of debarment.
17. In line with the international best practice, the Committee may consider adapting the following definition from the concept of debarment from the World Bank Group¹ as follows:

“The sanctioned party is declared ineligible, either indefinitely or for a stated period of time, (i) to be awarded or otherwise benefit from a World-Bank-financed contract, financially or in any other manner;² (ii) to be a nominated³ sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract”.

¹ World Bank Group’s Bank Procedure: Sanctions Proceedings and Settlements in Bank Financed Projects, available at <https://www.worldbank.org/content/dam/documents/sanctions/other-documents/osd/Bank%20Procedure%20Sanctions%20Proceedings%20and%20Settlements%20in%20Bank%20Financed%20Projects%20-%20November%2030%2c%202023.pdf> accessed 20 November 2024.

² This includes, a sanctioned party’s ineligibility to be awarded a contract shall include, without limitation, (i) applying for pre-qualification, expressing interest in a consultancy, and bidding, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract.

³ A nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider is one which has been: (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower.



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Clause 5 of the Bill – Membership of the PPRA Board

18. Given the nature and functions of the Authority under Section 9 of the Act, the Institute proposes an increase in the number of Procurement & Supply Chain Management Professionals (KISM Members) in the PPRA Board from the current one (1) to three (3) members.
19. Justification: This will enhance the capacity, skills and competencies required for the achievement of the Board’s long-term goals on matters Procurement. It is also fair that this being a largely procurement related Board, the representatives from KISM, the national professional body for supplies practitioners should form the majority, even as we consider and embrace diversity.

Clause 8 of the Bill – No investigation if issue before Review Board

20. This Clause proposes to delete section 40 of the Act in its entirety.
21. The Institute proposes the retention of Section 40 for the following reasons:
 - i) Deletion of the entire section without an alternative creates a vacuum in the investigations process;
 - ii) Subjecting the respondents to two parallel investigations actions is a cause for double jeopardy where the respondent would be subject to the same legal process twice over with potentially conflicting decisions; and
 - iii) Finally, section 40(2) of the Act already allows for investigations by PPRA once a matter is reviewed by the Review Board if there is new information that was not before the Review Board.

Clause 9(a) of the Bill - Debarment

22. The Institute proposes redraft of section 41(4) as follows: “(4) A debarment under this section shall be for a specified period of time of not less than three (3) years and not exceeding ten (10) years”.
23. The Institute proposes to add a new sub-section after sub-section 4 as follows “(4A) A suspension under this section shall be for a specified period of time of not less than one (1) year and not exceeding three (3) years”.



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Justification: This is to facilitate a balance between deterrence while also ensuring that the sanctioned supplier(s) have a chance for rehabilitation and restitution by capping the period to no more than ten (10) years.

Section 41 should have provisions for both Suspension and Debarment. Suspension can be invoked when the offence committed by the Supplier is not very severe for a short duration and Debarment for severe cases.

24. Currently, section 41(4) of the Act provides that the debarment is for a specified period of not less than three (3) years. This new approach caps the debarment period to a maximum of ten (10) years which is a departure from the current provision which only limited the minimum period to three years (3) with no limit on the maximum period.
25. It is recommended that if the proposal is passed and the section is amended, it will be prudent to provide a list of considerations to be made by the Public Procurement Regulatory Board (“the Board”) in determining the debarment period. The current Regulations do not provide for any applicable considerations in the determination of this period.
26. The Committee can consider including factors such as:
 - i) the severity of the misconduct;
 - ii) the magnitude of the harm caused by the misconduct;
 - iii) interference by the sanctioned party in the Board’s/relevant agency’s investigation process;
 - iv) the sanctioned party's past history of misconduct as adjudicated by the Board, or by any multilateral development bank in cases where debarment decisions has been made against the sanctioned party;
 - v) mitigating circumstances, including where the sanctioned party played only a minor role in the misconduct, took voluntary corrective action or cooperated in the investigation or resolution of the case, including through settlement;
 - vi) any other factor as may be considered relevant by the Board to the sanctioned party’s culpability or responsibility in relation to the impugned conduct.



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27. This will create predictability and uniformity in the application of the law, which are key principles for the rule of law, thus ensuring that the determination of the debarment period is consistent and appropriate.
28. In addition to the factors for consideration, the debarment provisions should be enhanced to provide for extension or early termination mechanisms of debarment periods thereby allowing for further corrective action or restitution as appropriate.

Clause 9(b) of the Bill – Debarment by International Agencies

29. Our view is that this Clause seeks to recognize the concept of mutual enforcement of debarment decisions or cross-debarment, a concept that has also been adopted by the key international finance institutions through the Agreement for Mutual Enforcement of Debarment Decisions dated 9 April 2010.⁴ The participating institutions in this Agreement are the African Development Bank Group (AfDB), the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank Group and the World Bank Group (WBG). The signatories to this Agreement mutually recognize each other’s debarment decisions.
30. The AfDB and WBG are some of the key funding institutions for various projects in the country thus, a proposal to also enforce the debarment decisions they make will be key in promoting relations with these institutions and fostering transparency in projects that they fund.

Clause 13 of the Bill – Clarification

31. We propose retention of the Section as currently provided for under the Act. The words “*or add any new document or information*” should be deleted because clarification is evidence based and therefore it is expected that the supplier will add new documents or information to make the clarification required.

⁴<https://www.afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/AGREEMENT%20FOR%20MUTUAL%20ENFORCEMENT%20OF%20DEBARMENT%20DECISIONS.pdf> accessed 20 November 2024.



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Clause 15 of the Bill – Successful Tender

32. This Clause seeks to amend section 86 of the Act to provide that successful tenderers who are citizen contractors do not subcontract a foreign company unless the knowledge, skills, goods or services are unavailable in the country.
33. We recommend that this provision be passed as it aligns with the guiding values and principles of public procurement and asset disposal in section 3 of the Act, particularly that there be promotion of local industry and promotion of citizen contractors.

Clause 17 of the Bill – Creation of Procurement Contracts

34. The Institute proposes to amend section 135 of the Act by adding subsection (6A) immediately after subsection 6(h) to state as follows:
“all contracts shall include the transfer of skills and technology plans, where applicable”

Clause 18 of the Bill – Refusal to sign contract

35. The Institute is in concurrence with the proposed amendments, save that for sub-section (1A), the words “the Authority” coming after the word “established” should be replaced by “the Accounting Officer of the Procuring Entity”.

Clause 22 of the Bill – Contract Administration

36. We propose a relook of the proposed creation of offences in subsections (4) and (5).

Justification: there could be extraneous factors that could hinder the accounting officer or his or her representative from fulfilling their mandate.

Clause 25(a) of the Bill – Right to Judicial Review to Procurement

37. This Clause proposes to delete the 45-days limit currently placed on the High Court for the determination of a Judicial Review of a procurement. Section 175(3) of the Act currently states *“The High Court shall determine the judicial review application within forty-five days after such application”*.



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38. The Institute proposes retention of the current Subsection 3. The 45-day timeline is meant to ensure that public procurement disputes are heard and determined on a priority basis, given that the public could be in dire need of the goods or services being procured.
39. The Clause proposes that the judicial review application shall be determined by the High Court in accordance with the Civil Procedure Act, Cap 21. Order 53 of the Civil Procedure Rules, 2010 on Judicial Review does not provide any time line for the determination of judicial review applications. However, Order 21 of the Civil Procedure Rules, more generally, provides for the delivery of judgment within 60 days of the conclusion of the hearing.
40. Comparatively, judicial review of a determination by the Public Procurement Tribunal in South Africa’s newly enacted Public Procurement Act No. 28 of 2024, does not have a time limitation and is only required to be in line with the Promotion of Administrative Justice Act, 2000 which has no time limits within which the review must be completed. Similarly, the Singaporean procurement law and regulations⁵ do not have any time limitations on judicial review of the challenge proceedings.
41. Though many jurisdictions allow for appeals to the High Court to proceed in the normal course for appeals, it is worth noting the increase in time from the current 45 days to the proposed 60 days as per the Civil Procedure Act. This presents a challenge to procuring entities who may be caught up in lengthier court appearances due to the appeals process through the courts. It is recommended to the Committee to reconsider this proposal.
42. We propose a reconsideration of the proposal to have the High Court apply the Civil Procedure Act and/or Civil Procedure Rules in the determination of judicial review application. The Institute instead proposes to have the High Court apply Article 159(2)(d) of the Constitution and Section 10(1) of the Fair Administrative Action Act, by hearing and determining the matters

⁵ Government Procurement Act 1997 & Government Procurement Regulations 2014.



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without undue regard to procedural technicalities. In fact, we would propose that the Procurement judicial review matters have a simple, standalone procedure that is easy to use, and that can enable Parties particularly tenderers to argue their case even without an Advocate.

43. The Institute proposes a reconsideration of deletion of Subsection 4 and 5 as well as the proposed subsection 4 for reasons already explained above.
44. We however propose that the Section be amended to read “If the High Court fails to make a decision within the prescribed timeline under subsection (3), the decision of the Review Board shall be final and binding to all parties. If the Court of Appeal fails to decide within the prescribed timeline under subsection (4), the decision of the High Court shall be final and binding to all parties, provided that the High Court shall have made the appealed decision within the prescribed timelines”.

Clause 25(b) of the Bill – Right to Judicial Review to Procurement

45. This Clause proposes to delete the timelines for appeals to the Court of Appeal for decisions of the High Court in judicial review of public procurement proceedings. Currently, the law states “A person aggrieved by the decision of the High Court may appeal to the Court of Appeal within seven days of such decision and the Court of Appeal shall make a decision within forty-five days which decision shall be final”.
46. The new proposal is that appeals from the decision of the High Court shall be made in accordance with the Court of Appeal (Organization and Administration) Act.⁶ The Court of Appeal Rules, 2022 provide in Rule 34 that judgments are to be delivered within one hundred and twenty days (120 days) of the hearing of an appeal. This is a substantial departure from the 45 days limit that is in the present procurement law in Kenya.

⁶ Cap. 9A of the Laws of Kenya.



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47. Interestingly, both the Ugandan⁷ and Tanzanian⁸ procurement laws provide that the decision by the High Court on appeal from the respective tribunals is binding upon the parties and no further appeals are allowed.
48. The proposal to expand the time limit on appeals will substantially affect the running of procurement proceedings by procuring entities whose processes are challenged at the Review Board and beyond. This will likely cause delays in procurement matters bearing in mind that during the judicial review of procurement proceedings, the procuring entity cannot conclude the procurement and has to wait for the conclusion of the court matters.
49. The Committee should reconsider this proposal and drop it due to the net negative impact it is likely to have on procurement in the country. Business shall be slowed down due to these extended periods of appeal and the delays in procurement are also likely to hamper service delivery to the public.

Clause 26 of the Bill – Prohibitions and Offences

50. Our proposal is that not all actions or inactions/commissions and omissions should be considered as criminal offences. Some matters can be efficiently and effectively dealt with by KISM especially matters of professional misconduct. The Supplies Practitioners Management Act, 2007 has provided a clear framework for handling and mitigating matters of professional misconduct.
51. Other matters can be handled by the Procuring Entities’ Internal Disciplinary Processes, and through administrative action. There is need to harmonize the legal provisions in this area to entrench clarity.

Clause 27 of the Bill – General Penalty and Sanctions

52. The Clause seeks to impose a fine of not exceeding one million or to imprisonment for a term of not less than ten years and an additional mandatory fine of two times the quantifiable loss suffered or benefit gained.

⁷ The Public Procurement and Disposal of Public Assets Act, Cap. 205 of the Laws of Uganda, section 118.

⁸ The Public Procurement Act, Cap. 410 of the Laws of the United Republic of Tanzania, section 101.



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53. We propose a reconsideration of this proposal. Whereas a fine should be severe enough to promote deterrence, it should not be extreme. There ought to be a balance.

C. CONCLUSION

54. In conclusion, the Institute remains committed to the professionalization of the procurement and supply chain management profession and therefore appreciates the invitation to appear before this Committee to present its submissions on these very important proposals in the Bill.
55. We thank you most sincerely Hon. Chairman and Hon. Members for according us this opportunity.

Kenneth Matiba, MKISM, MKIM, MIRSK
SECRETARY/CHIEF EXECUTIVE OFFICER

Dated this **22nd November 2024.**

public Procurement amendment act

1	<p>Clause 2</p> <p>Delete the proposed definition of local firm and replace with “local firm” means a firm that is not a foreign firm, and remain so during the continuance of the entire of any contract made under this act.</p>	<p>A local firm should be a negation of a foreign firm, to ensure there is no overlapping in definition with a local firm. A local firm awarded a contract should remain a local firm. To avoid abuse</p>
2	<p>In the definition of minor deviation delete “matters of form and not substance”</p>	<p>The remaining part of the definition is sufficient.</p>
3	<p>In the definition of foreign firm add the words “or beneficial ownership” after the words “whose shareholding”</p>	<p>To include beneficial ownership in foreign firms</p>
4	<p>Clause 16</p> <p>Add new subsection 16</p> <p>16. Any local firm that converts to a foreign firm between the date of award of award of a contract under this act, and the date of completion of the contract, commits an offence unless they voluntarily withdraw from the contract prior to the conversion</p>	
5	<p>Clause 12</p> <p>Add new subsection 6B</p> <p>6B. The procuring entity shall demonstrate compliance with subsection 6A, otherwise it commits an offense and shall be liable to a fine not exceeding 20% of the contract value.</p>	
6	<p>Clause 14</p> <p>In section 83(1) delete the words “lowest evaluated” and replace with “the tender evaluated to have met the qualifying requirements set out in section 86(1)”</p>	<p>Evaluation of bidders is based on section 86(1) not on the basis of the lowest evaluation only.</p>
7	<p>Clause 15</p> <p>Delete “citizen” and replace with “local firm”</p> <p>At the end add of the sentence add “and where the local firm intends or requires subcontracting a foreign firm, it shall disclose this fact and include the details of the foreign firm and reasons in the bid document.</p>	
8	<p>Clause 16</p> <p>Delete “foreign tenderer” and replace with a “foreign firm tendering”</p>	
9	<p>Clause 17</p> <p>Insert the following additional paragraphs</p>	

	(gb) reserved for local firms or other groups (gc) requirements for entering into joint venture procurement with a local firm of not less than 30% of procurement value for contracts with a value exceeding Kshs one billion (gd) if subcontracting is prohibited	
10	Clause 18 delete the words “lowest evaluated” and replace with “the tender evaluated to have met the qualifying requirements set out in section 86(1)”	
11	Clause 21 Delete “citizen” and replace with “local firm” In subsection 4 After the words “where its deemed necessary to subcontract to a foreign contractor” add “under section 86(3)” In subsection 4 add the following paragraph (c) (c) the authority shall detail how skills transfer shall be done, and the arrangement for monitoring and evaluating the skills transfer	
12	Clause 24 (a) delete “7(a)” and replace with “8(a)” (b) delete “forty” and replace with “thirty” Replace “citizen contractor” with “local firm”	Make consistent with clause 11

David Chiaji<davidopiyo18@gmail.com>

To
financecommitteena

CAUTION: This Mail Originated from outside of the Organization. Do not click links or open attachments unless you can confirm the sender and know the content is safe.

I, the undersigned concerned citizen of the Republic of Kenya, hereby submit this petition regarding the Public Procurement and Asset Disposal (Amendment) Bill, 2024. I commend the parliament for its commitment to transparency and accountability in public procurement, as well as the support for local businesses embedded in the proposed amendments. However, I urge the Assembly to consider specific refinements that would further enhance the Bill's effectiveness, fairness, and implementation:-

1. Strengthening support for local businesses in subcontracting arrangements

Amendment of section 53 which requires that foreign firms form joint ventures with local companies for tenders over KSh1 billion is a positive step. However, I urge further clarification regarding monitoring these partnerships to ensure fair allocation of work and resources to local firms. Additionally, mechanisms should be introduced to guarantee that the local companies involved receive the stipulated 30% of the project value and that they are empowered through capacity building and technology transfer.

2. Protection of due process for blacklisted entities

While I fully support the barring of firms blacklisted for fraud or corruption, I urge for the inclusion of clear procedures for reviewing such debarments. Firms should have the opportunity for transparent review processes, ensuring that genuine cases of rehabilitation or correction of past wrongdoings are recognized.

In conclusion, I support the spirit of the Public Procurement and Asset Disposal (Amendment) Bill, 2024, and recognize its potential to advance local economic growth, transparency, and good governance. I believe, however, that my proposed refinements will further strengthen the Bill's objectives. By implementing these suggestions, we can create a more equitable and effective procurement environment that will benefit both the government and Kenyan businesses. I respectfully urge the National Assembly to consider and incorporate these recommendations to create a more inclusive and robust public procurement framework.

Regards,

David Chiaji
+254712239807



[NOVEMBER, 2024]

THIRTEENTH PARLIAMENT – (THIRD SESSION)
THE NATIONAL ASSEMBLY

IN THE MATTER OF CONSIDERATION OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL, 2024

(Pursuant to Articles 1(2), 10(2)(a) And 118 of the Constitution)

Section A — Object of the Bill

The **Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 48 of 2024)** is a Bill sponsored by the **Leader of the Majority Party** which seeks to amend the Public Procurement and Asset Disposal Act (Cap. 412C) to, among others, prescribe the threshold of procurements that shall be awarded to local firms in order to promote growth of local industries.

Section B—Personal Information


1. Name: KENYA URBAN ROADS AUTHORITY
2. Gender: N/A _____
3. Constituency: N/A _____
4. County: N/A _____
5. Identification No. (National ID/Passport/Kenyan Driving Licence): N/A _____

Section C—Views on Bill

6. What are your views on the Bill? (Fill Table as appropriate)

S/No.	Clause/Page of the Bill	Proposal	Justification
1.	70/1053	Amend Section 70 (6)(b) by deleting the words “but a person shall not be disqualified on the basis that a bidder quoted above or below a certain percentage of engineer's estimates.” And substituting the same with the words “but a person shall be disqualified on the basis that a bidder quoted below a certain percentage of engineer's estimates.”	Bids that are abnormally low and unbalanced and/or frontloaded bids expose the procuring entity to risks associated with uncertainties during works implementation due to failure to identify potential costing issues upfront, that could lead to implementation challenges and termination of contract. It is proposed to provide for rejection of bids that are abnormally low and unbalanced and/or frontloaded bids based on the engineers estimates.
2.	86/1053	Amend proposal by inserting the words “for procurements worth 5 billion and above” immediately after words “foreign tenderer” in the proposed insertion in subsection (1) — “(2) Where a foreign tenderer participates in the competition for procurement, the respective	Qualify the proposed requirement for procuring entities to obtain an advisory opinion from the Attorney-General before awarding contracts to foreign tenderers.

		procuring entity shall obtain an advisory from the Attorney-General on the propriety of the funding of the foreign tenderer for procurements worth 5 billion and above.”	This will avoid bureaucracy and align with provisions of Section 134(2) of the Act with regard to clearance by the Attorney General of Contracts above 5 billion.
3.	139/1054	Amend the proposed amendment by inserting the words “ Subject to the availability of funds ” immediately before the words “A procuring entity” The Clause will thus read as follows:- 139A. “ Subject to the availability of funds a procuring entity shall make prompt and timely payments to a contractor who satisfactorily performs the contractual obligations as stipulated in the procurement contract.”	Propose to amend the proposed amendment 139A. requiring prompt and timely payments to a contractor who satisfactorily performs the contractual obligations as stipulated in the procurement contract. This will cater for any delays in release of Exchequer funds and align with provision of Regulation 150 of the Public Procurement and Asset Disposal Regulations 2020. It will avoid any litigation against the procuring entity where release of funds is beyond its control

SIGNED  DATE: 18th November, 2024

Instructions:

*Fill this Template.

*You may fill more than one form on a Bill.

*Filled should forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to financecommitteena@parliament.go.ke to be received on or before **Friday, 22nd November, 2024 at 5.00 p.m.**

Appreciation: The National Assembly appreciates your participation in this process.

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

ISSUE	PROPOSED AMENDMENT	RATIONALE
<p>Exemption from PPAD Act.</p>	<p>THE PUBLIC PROCUREMENT AND ASSETS DISPOSAL ACT</p> <p>1. The Principal Act is amended by deleting section 2 (o): <i>"public entity includes:-</i> <i>....</i> <i>(o) a pension fund for a public entity.</i></p>	<ul style="list-style-type: none"> ➤ Pension funds worldwide are not regarded as public funds and do not fall within the public procurement laws. ➤ Pension Funds comprise private property of a member. It comprises of contributions deducted from a member's salary and the same earned by employee at the point of deduction. ➤ The same is therefore protected as such under Article 40 of the Constitution of Kenya. ➤ Under the Retirement Benefits Act, pension Funds vest in a member immediately the same is received in the Scheme. ➤ Pension Funds do not fall within the definition of public funds under the Public Finance Management Act. Section 2 thereof defines public money as follows:

		<p>“public money includes all money that comes into the possession of, or is distributed by, a national government entity and money raised by a private body where it is doing so under statutory duty; and money held by national government entities in Trust for third parties and any money that can generate liability for government.”</p>
<p>THE RETIREMENT BENEFITS ACT, CAP 197</p>		
<p>Pension Scheme procurement guidelines</p>	<p>The principal Act is amended under 5. to insert the following new paragraph. “The Authority may issue guidelines to govern all procurement of goods works and services by a retirement benefits scheme.”</p>	<ul style="list-style-type: none"> ➤ Amend the Retirement benefits Act to provide for regulation of retirement benefits procurement by RBA. ➤ Ensure compliance with the Constitution of Kenya, the Law of Trust and the Retirement Benefits Act in treating procurement and disposals for pension schemes in Kenya. ➤ Avoid multiplicity of regulatory authorities within the pension sector.