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REPUBLIC OF KENYA

PARLIAMENT

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**NATIONAL ASSEMBLY BILLS**  
*(Bill No. 31 of 2013)*

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**THE PUBLIC PROCUREMENT AND DISPOSAL  
(AMENDMENT) BILL, 2013**

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(A Bill published in the Kenya Gazette Supplement No. 139 of 2013 and passed by the National Assembly, with amendments, on 23<sup>rd</sup> April, 2014)

N.A./B/No.31-2013

**THE PUBLIC PROCUREMENT AND DISPOSAL (AMENDMENT) BILL,  
2013**

**A BILL for  
AN ACT of Parliament to amend the Public Procurement and  
Disposal Act, 2005**

**ENACTED** by the Parliament of Kenya, as follows—

- Short title and commencement.
1. This Act may be cited as the Public Procurement and Disposal (Amendment) Bill, 2013 and shall come into operation after ninety days from the date of publication.
- Amendment of section 2 of No. 3 of 2005.
2. Section 2 of the Public Procurement and Disposal Act, 2005 (hereinafter referred to as “the principal Act”) is amended by inserting the following new paragraph immediately after paragraph (f)—
- “(g) to facilitate affirmative action for the youth in accordance with Article 55 of the Constitution and also advance the youth participation in the procurement process in accordance with Article 227 of the Constitution”.
- Amendment of section 3 of No. 3 of 2005
3. Section 3 of the principal Act is amended by inserting the following new definitions in their proper alphabetical sequence—
- “disadvantaged group” means a group of persons perceived to be denied by mainstream society of access to resources and tools which are useful for their survival in a way that disadvantages them, or individuals who have been subjected to prejudice or cultural bias because of their identity as members of a certain group without regard to their individual qualities, and includes enterprises in which a majority of the members or shareholders are youth, women or persons with disability;

“persons with disability” means a person with disability who has attained the age of eighteen years and includes a company, association or body of persons, corporate or unincorporated in which at least seventy percent of the shareholders, members or persons and a majority of the directors are persons with disability;

“women” means a person of the female gender who has attained the age of eighteen years and includes a company, association or body of persons, corporate or unincorporated in which at least seventy percent of the shareholder, members or persons and a majority of its directors are of the female gender;

“youth” means a person who has attained the age of eighteen years and has not attained the age of thirty-five years and includes a company, association or body of persons, corporate or unincorporated in which all its directors or proprietors are persons who have attained the age of eighteen years and have not attained the age of thirty-five years.

Amendment of  
section 9 of No.  
3 of 2005.

4. The principal Act is amended in section 9 by—
- (a) inserting the following new paragraph immediately after paragraph (d)—
    - “(e) to ensure the procurement entities implement the preference and reservations and provide data to the Authority disaggregated to indicate the number of disadvantaged groups that have benefitted”;
  - (b) renumbering the existing paragraph (e) as paragraph (f).

*The Public Procurement and Disposal (Amendment) Bill, 2013*

Amendment of  
section 39 of  
No. 3 of 2005

5. The principal Act is amended in section 39 by—

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

“(4) The preferences and reservations shall apply to—

(a) candidates such as disadvantaged groups;

(b) micro, small and medium enterprises;

(c) works, services and goods, or any combination thereof;

(d) identified regions; and

(e) such other categories as may be prescribed”;

(b) inserting the following new subsections immediately after subsection (8)—

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

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

(11) The procuring entities at the national and county level shall make a quarterly report to the Authority.

(12) A report under subsection (11) shall—

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

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

(14) The Cabinet Secretary shall prescribe the preferences that shall facilitate the attainment of the quota specified in subsection (9) in order for the State to achieve the objectives of Articles 55 and 227(2) of the Constitution.

(15) The preferences referred to in subsection (14) shall—

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

(16) The right of equality and freedom from

discrimination under Article 27 of the Constitution shall be limited as specified under this section for the purposes of—

- (a) facilitating affirmative action to ensure that the youth access employment and have opportunities to participate in economic spheres of life as contemplated by Articles 54, 55, 56 and 227 of the Constitution;
- (b) protection or advancement of the youth in accordance with Article 227 of the Constitution who have previously been disadvantaged by unfair competition or discrimination in the procurement process.

(17) For the purpose of Article 94 of the Constitution—

- (a) the purpose and object of the delegation of legislative power under this section is to enable the Cabinet Secretary devise mechanisms that safeguard against possible abuse in the legislative endeavor for the attainment of the objects specified in paragraphs (a) and (b) of subsection (12); and
- (b) the principles and standards applicable to the regulations made under this subsection are those set out in this Act and in the Interpretations and General Provisions Act and the Statutory Instruments Act, 2013.

*The Public Procurement and Disposal (Amendment) Bill, 2013*

Amendment of  
section 129 of  
No. 3 of 2005.

6. Section 129 of the principal Act is amended by inserting the following new subsection immediately after subsection (3)—

“(3A) Despite subsection (3) or any other provisions of this Act, radioactive or electronic waste shall be disposed of only to persons licensed to handle the respective waster under section 88 of the Environmental Management and Co-ordination Act, 1999.”

*The Public Procurement and Disposal (Amendment) Act, 2014* <sup>Bill 3</sup>

I certify that this printed impression is a true copy of the Bill passed by the National Assembly on the 23<sup>rd</sup> April, 2014.



*Clerk of the National Assembly*

Endorsed for presentation to the Senate in accordance with the provisions of Standing Order 142 of the National Assembly Standing Orders.



*Speaker of the National Assembly*

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