



**REPUBLIC OF KENYA**

**ELEVENTH PARLIAMENT – (THIRD SESSION)**

**THE NATIONAL ASSEMBLY**

**ORDERS OF THE DAY**

**SUPPLEMENTARY**

**THURSDAY, APRIL 23, 2015 AT 2.30 P.M**

**ORDER OF BUSINESS**

**PRAYERS**

1. Administration of Oath
2. Communication from the Chair
3. Messages
4. Petitions
5. Papers
6. Notices of Motion
7. Statements

**8\*. COMMITTEE OF THE WHOLE HOUSE**

The Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014)  
(The Leader of the Majority Party)

**9\*. MOTION - THE SPECIAL REPORT OF THE PUBLIC INVESTMENTS COMMITTEE**

(The Chairperson, Public Investments Committee)

**THAT**, this House adopts the Special Report of the Public Investments Committee on the Recapitalization and Balance Sheet Restructuring of Telkom Kenya Limited, laid on the Table of the House on Tuesday, April 29, 2014.

*(Resumption of debate interrupted on Thursday, April 23, 2015 – Morning Sitting)*

**10\*. THE PROHIBITION OF ANTI-PERSONNEL MINES BILL (NATIONAL ASSEMBLY BILL NO. 7 OF 2014)**

(The Leader of the Majority Party)

Second Reading

**11\*. THE FISHERIES MANAGEMENT AND DEVELOPMENT BILL (NATIONAL ASSEMBLY BILL NO. 20 OF 2014)**

(The Leader of the Majority Party)

Second Reading

**12\*. THE PRIVATE SECURITY REGULATION BILL (NATIONAL ASSEMBLY BILL NO. 4 OF 2014)**

(The Leader of the Majority Party)

Second Reading

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**\* Denotes Orders of the Day**

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**N O T I C E S**

**I. THE PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL**  
**(NATIONAL ASSEMBLY BILL NO. 40 OF 2014)**

**Notice is given that the Chairperson of the Departmental Committee on Finance, Planning and Trade intends to move the following amendments to the Public Procurement and Asset Disposal Bill, 2014 at the Committee Stage—**

**CLAUSE 2**

**THAT**, clause 2 be amended—

- (a) in the definition of the expression “consultancy services” by inserting the words “and includes services offered by all professionals” immediately after the word “nature”;
- (b) in the definition of “design competition” by deleting the words “ and fine arts, and graphic designs” and substituting therefor the words, “fine arts, interior design, marketing, advertising and graphic designs”;
- (c) in the definition of the term “disadvantaged group” by inserting the words, “enterprises in which a majority of the members or shareholders are youth, women, persons with disability or” immediately after the words “and includes”;
- (d) in the definition of the term “procurement professional” by deleting the words “, or a recognized institute of purchasing and supply” appearing immediately after the words “Practitioners Management Act”;
- (e) in the definition of the term “standard” by deleting the word “generally” appearing immediately after the words “ other products is”;

- (f) in the definition of the term “supply chain management” by inserting the words “contract management” immediately after the words “stock control”;
- (g) in the definition of the term “works” by deleting the words “ and commissioning” appearing in paragraph (a) and substituting therefor the words “ , commissioning and setting up” ;
- (h) in the definition of “writing” by inserting the word “facsimile,” immediately after the word “photography”;
- (i) by inserting the following new definitions in the proper alphabetical sequence—

“corruption” has the meaning assigned to it under section 2 of the Anti-corruption and Economic Crimes Act, 2009;

“professional” means a person who has professional qualifications in a specialized field and who is engaged in the practice of a skill or trade, having undertaken the relevant formal academic and professional training including undertaking practical learning in the form of apprenticeship or tutelage under the guidance of a suitably qualified and experienced person in the field of training or tutelage;

“professional body” means a body representing members of a profession, which is regulated by statute, code of conduct or rules as may be amended from time to time.

“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 at least seventy percent of shareholders are persons who have attained the age of eighteen years and have not attained the age of thirty-five years.

### **CLAUSE 3**

**THAT**, clause 3 of the Bill be amended by inserting the following new paragraph immediately after paragraph (i) —

“(j) promotion of citizen contractors”.

**CLAUSE 4**

**THAT**, clause 4 of the Bill be amended in subclause (1) by inserting a new paragraph immediately after paragraph (d)—

“(e) contract management.”

**CLAUSE 5**

**THAT**, clause 5 of the Bill be amended—

(a) in subclause (1) by inserting the words “except in cases where procurement of professional services is governed by an Act of Parliament applicable for such services” immediately after the word “disposal”;

(b) in subclause (2) by inserting the words “ the entire” immediately after the words “ respect to”.

**CLAUSE 7**

**THAT**, clause 7 of the Bill be amended in subclause (2) by inserting a new paragraph immediately after paragraph (i)—

“(ia) to facilitate affirmative action for disadvantaged groups in accordance with the Constitution and advance their participation in the procurement process.”

**CLAUSE 9**

**THAT**, clause 9(1) of the Bill be amended—

(a) by

(i) deleting the word “in” appearing immediately after the word “if” appearing in paragraph (b);

(ii) inserting the words “and the county executive member for finance in each county,” immediately after the words “ the Cabinet Secretary” in paragraph (b);

(b) in paragraph (d), by inserting the words “specific items of” immediately before the word “security”;

(c) inserting the following new paragraph immediately after paragraph (d) –

(da) to monitor the implementation of the preference and reservation schemes by procuring entities;

(d) deleting paragraph (h);

(e) inserting the following new paragraph immediately after paragraph (k)—

“(ka) to monitor and evaluate the preference and reservations provided for under this Act and provide quarterly public reports.”

(f) by inserting the following new paragraph immediately after paragraph (p)—

“(pa) 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”;

**CLAUSE 10**

**THAT**, clause 10 of the Bill be amended—

(a) in subclause (1), by—

(i) deleting the words “There is established a board” and substituting therefor the words “The management of the Authority shall vest in a board”;

(ii) deleting paragraph (b) and substituting therefor the following new paragraphs—

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

(i) the Law society of Kenya;

(ii) the Institute of Certified Public Accountants of Kenya;

(iii) the Kenya Institute of Supplies Management;

(iv) the Association of Professional Societies in East Africa provided that the appointed nominee is not a member a professional body under subparagraphs (i)-(iii);

(ba) two persons nominated by the respective organizations representing—

(v) the youth; and

(vi) persons with disabilities.

**CLAUSE 11**

**THAT**, clause 11 of the Bill be amended—

(a) in subclause (1), by—

(i) deleting the words “ or a member” and “under section 12” appearing immediately after the words “as a chairperson” and “the Board” respectively;

(ii) inserting the words “in a relevant field” immediately after the words “a university degree” in paragraph (a);

(iii) inserting the following new subparagraph immediately after subparagraph (iv) in paragraph (b)—

(v) economics;

(b) by inserting the following new sub clause immediately after sub clause (1) —

(2) A person shall be eligible for appointment as a member of the Board if that person—

(a) holds a university degree from a recognized university in Kenya;

(b) has knowledge and relevant experience of not less than five years in a management position; and

(c) meets the requirements of Chapter Six of the Constitution.

**CLAUSE 12**

**THAT**, clause 12 of the Bill be amended in paragraph (1) (c) by deleting the words “manage, control and administer the assets of” and substituting therefor the words “oversee the management, control and administration of the assets of”.

**CLAUSE 14**

**THAT**, clause 14 of the Bill be amended in subclause (3) by deleting the word "Three" and substituting therefor the word "Five".

**CLAUSE 15**

**THAT**, clause 15 of the Bill be amended in—

- (a) subclause (2) (b), by inserting the words "and can demonstrate a logical progression in acquiring the academic qualifications" immediately after the word "Kenya";
- (b) subclause (3), by inserting the words "and the Secretary to the Board" immediately after the word "Authority".

**CLAUSE 19**

**THAT**, clause 19 of the Bill be amended—

- (a) by numbering the first clause as (1);
- (b) insub clause (1), by inserting the words ", Public Service Commission and the Salaries and Remuneration Commission" immediately after the words "the Cabinet Secretary";
- (c) insubclause (2), by inserting the words "and the Public Service Commission" immediately after the words "the Cabinet Secretary".

**CLAUSE 22**

**THAT**, clause 22 of the Bill be amended by deleting the words "or during a vacancy in the office" appearing immediately after the words "of the Director-General".

**CLAUSE 23**

**THAT**, clause 23 of the Bill be amended by inserting the words " ethnic and" immediately after the words " the need for".

**CLAUSE 24**

**THAT**, clause 24 of the Bill be amended in subclause (3) by inserting the following new paragraph immediately after paragraph (f) —

"(g) capital expenditure to be undertaken by the Authority."

**CLAUSE 26**

**THAT**, clause 26 of the Bill be amended —

- (a) in subclause (3) by—
  - (i) deleting the words "have issues" and substituting therefor the words "are subject of controversy or litigation" in paragraph (b);
  - (ii) inserting the following new paragraph immediately after paragraph (d)—

"(e) a report on the compliance with this Act by each county government".
- (b) insubclause (5) by deleting the word "the" appearing immediately before the word "Parliament".

**CLAUSE 27**

**THAT**, clause 27 of the Bill be amended—

- (a) in subclause (1) by deleting the words “There is established” and substituting therefor the words “There shall be a”; and
- (b) by deleting subclause (2).

**CLAUSE 29**

**THAT**, clause 29 of the Bill be amended—

- (a) in subclause (1), by—
  - (i) inserting the words “ whose qualifications and experience shall be as that of a Judge of the High Court” immediately after the word “chairperson in paragraph (a);
  - (ii) inserting the words “whose qualifications and experience shall be as prescribed in the regulations” appearing immediately after the word “member” in paragraph (b);
- (b) by deleting subclause (2) and substituting therefor the following new subclause—
  - (2) A person appointed as a member under subsection (1) shall be nominated by the following professional bodies from amongst their members as follows—
    - (i) three persons nominated by the Law Society of Kenya;
    - (ii) one person nominated by the Chartered Institute of Arbitrators, Kenya Chapter;
    - (iii) three persons nominated by the Kenya Institute of Supplies Management;
    - (iv) three persons nominated by the Institute of Certified Public Accountants of Kenya; and
    - (v) four persons nominated by the Association of Professional Societies in East Africa provided that the appointed nominees are not members professional bodies mentioned under subparagraphs (i)-(iv).
- (c) by inserting the following new sub clause immediately after sub clause (2)—

“(3) The procedure for nominating the persons mention under subsection (2) shall be as prescribed.”

**CLAUSE 30**

**THAT**, clause 30(1) of the Bill be amended in paragraph (b) by deleting the figure “10” and substituting therefor the word “ seven”.

**CLAUSE 32**

**THAT**, clause 32 of the Bill be amended in subclause (1) by inserting the words “and the Salaries and Remuneration Commission” immediately after the words “the Cabinet Secretary”.

**CLAUSE 33**

**THAT**, clause 33 of the Bill be amended in subclause (2) by —

- (a) inserting the words “establish a procurement function which shall” immediately after the words “County Treasury shall”;
- (b) inserting the words “citizen contractors, women, youth, persons with disabilities, minorities and marginalized groups” immediately after the words “disadvantaged group” in paragraph (f);

**CLAUSE 36**

**THAT**, clause 36 of the Bill be amended in subclause (3), by inserting the words “by Regulations” immediately after the words “be prescribed”.

**CLAUSE 37**

**THAT**, clause 37 of the Bill be amended by inserting the words “or her” immediately after the word “his”.

**CLAUSE 41**

**THAT**, clause 41(1) of the Bill be amended by—

- (a) inserting the words “of Kenya or any other jurisdiction” immediately after the words “Act or Law” in paragraph (b);
- (b) inserting the words “or the code of ethics of the relevant profession regulated by an Act of Parliament” immediately after the word “Act” appearing in paragraph (f);
- (c) inserting the words “or her” immediately after the word “his” in paragraph (g);
- (d) inserting the word “or fraudulent” immediately after the word “corrupt” in paragraph (h);

**CLAUSE 44**

**THAT**, clause 44 of the Bill be amended—

- (a) in subclause (2) by deleting the expression “section 68 ” appearing in paragraph (e) and substituting therefor the expression “sections 68, 147, 148 and 149”;
- (b) by inserting the following new paragraph immediately after paragraph (h) —  
“(ha) submit to the Authority the part in its procurement plan demonstrating application of preference and reservations schemes in relation to the procurement budget within sixty days after commencement of the financial year; and”.

**CLAUSE 45**

**THAT**, clause 45 of the Bill be amended in subclause (3) by inserting the following new paragraph immediately after paragraph (b) —

- “(c) undertaken in strict adherence to Article 227 of the Constitution”;

**CLAUSE 46**

**THAT**, clause 46 of the Bill be amended—

- (a) in subclause (3) by —
- (j) deleting the word “gotten” and substituting therefor the word “obtained”;
- (ii) deleting the words “or whoever is responsible for procurement” appearing immediately after the words “procurement function”;



- (i) by deleting the words “of at least three heads of department of the procuring entity, one of whom shall be the head of the user department” appearing in paragraph (b) and substituting therefor “heads of user department and two other departments or their representatives” ;
- (ii) by inserting the words “,or professionals who shall advise on the evaluation of the tender documents and give a recommendation on the same to the committee within a reasonable time” immediately after the words “procured consultants” in paragraph (b);
- (ii) by inserting the word “procedurally” immediately before the word “disbanded” and by deleting the word “by a disciplinary body” in paragraph (d).

**CLAUSE 47**

**THAT**, clause 47 of the Bill be amended by inserting the following new subclause immediately after sub clause (2)—

“(3) The Cabinet Secretary shall make regulations for the better carrying out of this section in respect to low value procurement.”

**NEW CLAUSE**

**THAT**, the Bill be amended by inserting the following new clause immediately after clause 47—

Inspection and  
acceptance  
committee.

**47A.** (1) An accounting officer of a procuring entity may establish an ad hoc committee known as the inspection and acceptance committee.

(2) The inspection and acceptance committee shall be composed of a chairman and at least two other members appointed by the accounting officer or the head of the procuring entity on the recommendation of the procuring unit.

(3) The inspection and acceptance committee shall immediately after the delivery of the goods, works or services-

- (a) inspect and where necessary, test the goods received;
- (b) inspect and review the goods, works or services in order to ensure compliance with the terms and specifications of the contract; and
- (c) accept or reject, on behalf of the procuring entity, the delivered goods, works or services.

(4) The inspection and acceptance committee shall-

- (a) ensure that the correct quantity of the goods is received;
- (b) ensure that the goods, works or services meet the technical standards defined in the contract;
- (c) ensure that the goods, works or services have been delivered or completed on time, or that any delay has been noted;
- (d) ensure that all required manuals or documentation has been received; and
- (e) issue interim or completion certificates or goods received notes, as appropriate and in accordance with the contract.”

**CLAUSE 52**

**THAT**, clause 52 of the Bill be amended by—

(a) inserting the following new subclause immediately after subclause (5)—

“(5A) All procurement and asset disposal planning shall reserve a minimum of thirty per cent of the budgetary allocations for enterprises owned by women, youth, persons with disabilities and other disadvantaged groups.

(b) inserting the following new subclause immediately after subclause (7) —

“(7A) An accounting officer who knowingly commences any procurement process without ascertaining whether the good, work or service is budgeted for, commits an offence under this Act.”

(c) deleting the words “reserved for the disadvantaged groups targeted” appearing in subclause (8) and substituting therefor the words “referred to under subsection (5A)”.

**CLAUSE 54**

**THAT**, clause 54 of the Bill be amended—

(a) in sub clause (1) —

(i) by deleting the words “and is not the subject of legal proceedings relating to the foregoing” appearing in paragraph (b);

(iii) paragraph (g) by inserting the word “or fraudulent” immediately after the word “corrupt”.

(b) by inserting a new subclause immediately after subclause (2)—

“(2A) Despite the provisions of subsection (2), a person or other body having a substantial or controlling interest shall be eligible to bid where—

(a) such person has declared any conflict of interest; and

(b) performance and price competition for that good, work or service is not available or can only be sourced from that person or consortium.”

**CLAUSE 55**

**THAT**, clause 55 of the Bill be amended by deleting the words “or public entity’s registration list of all registered persons in category provided that the list is valid and developed through a competitive process in accordance with relevant provisions of this Act” appearing in subclause (1) and substituting therefor the words “public entity’s or regulated professional body’s registration list of all registered persons in the category provided that the list is valid and developed through a competitive process in accordance with the relevant provisions of this Act or, in the case of regulated professional bodies, developed through a process in accordance with relevant provisions of the legislation regulating the particular profession.”

**CLAUSE 56**

**THAT**, clause 56 (1) of the Bill be amended by deleting the words “procurement management unit” appearing immediately after the words “head of the” and substituting therefor “procurement function”.

**CLAUSE 58**

**THAT**, clause 58 of the Bill be amended in subclause (1) by deleting paragraph (c).

**CLAUSE 59**

**THAT**, clause 59 of the Bill be amended—

- (a) in sub clause (1) by deleting the word “shall” and substituting therefor “may taking into account the opinion or input of a regulated professional where technical or professional expertise is required” immediately after the words “procuring entity”;
- (b) in sub-clause (3)—
  - (i) by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) conform to design, specification, functionality and performance”.
  - (ii) by inserting the words “servicing and” immediately before the word “maintaining” appearing in paragraph (g);

**CLAUSE 60**

**THAT**, clause 60 of the Bill be amended —

- (a) by deleting subclause (3) (b);
- (b) in sub clause (4), by deleting the word “shall” and substituting therefor the word “may”;
- (c) in subclause (5), by inserting the words “women, youth, persons with disabilities and other” immediately after the words “owned by”.

**CLAUSE 61**

**THAT**, clause 61 of the Bill be amended by inserting the words “or fraudulent” immediately after the words “any corrupt”;

**CLAUSE 62**

**THAT**, clause 62 of the Bill be amended—

- (a) in subclause (1) by inserting the following new paragraphs immediately after paragraph (f)—
  - (fa) force majeure;
  - (fb) civil commotion, hostilities or an act of war;
  - (fc) upon receiving subsequent evidence of engagement in fraudulent or corrupt practices by the tenderer;”
- (b) by inserting the following new subclause immediately after subclause (3)—

"(4) An accounting officer shall notify all persons who submitted tenders of the termination within fourteen days of termination and such notice shall contain the reason for termination."

**CLAUSE 64**

**THAT**, clause 64 of the amended by inserting the following new subclause immediately after subclause (2)—

"(3) Upon completion of the evaluation process, a tenderer may communicate with the procuring entity on the procurement proceedings".

**CLAUSE 65**

**THAT**, clause 65 of the Bill be amended by inserting the following new subclause immediately after subclause (8) —

(8A) The ownership of, or right in, any property referred to in subsection (8)(b) shall not include rights arising by virtue of owning shares in publicly listed companies".

**CLAUSE 67**

**THAT**, clause 67 of the Bill be amended insubclause (3) by inserting the words "or any interested member of the public where such information held is aligned to the principle of public interest" immediately after the words "or quotation or".

**CLAUSE 68**

**THAT**, clause 68(4) of the Bill be amended by deleting the words "procurement management unit" and substituting therefor "procurement function".

**CLAUSE 69**

**THAT**, clause 69 of the Bill be amended—

(a) by deleting subclause (5) and substituting therefor the following new subclause (5)—

"(5) A procuring entity may charge a fee for obtaining tender documents as prescribed by regulations and stated in the tender documents."

(b) in subclause (6)—

(i) by deleting the word "engineer" appearing in paragraph (b) and substituting therefor "engineer's";

(ii) by deleting the words "procurement management unit" appearing in paragraph (e) sub paragraph (vi) immediately before the words " ensuring that" and substituting therefor "procurement function".

**CLAUSE 70**

**THAT**, clause 70 (1) of the Bill be amended by deleting the words "procurement management unit" and substituting therefor "procurement function" .

**CLAUSE 73**

**THAT**, clause 73 of the Bill be amended—

- (a) by renumbering the existing provision as subclause (1);
- (b) in subclause (1) by—
  - (i) deleting the words “person responsible for procurement” appearing immediately before the words “shall ensure” and substituting therefor the words “accounting officer”;
  - (ii) deleting the word “will” and substituting therefor the word “shall” in paragraph (e).
- (c) inserting the following new subclause immediately after the renumbered subclause (1) —  
“(2) All tender documents shall be sent out to eligible bidders by recorded delivery”.

**CLAUSE 74**

**THAT**, clause 74 of the Bill be amended in subclause (5) by inserting the words “or the time remaining is less than the period indicated in instructions to tenderers” immediately before the words “the accounting”.

**CLAUSE 77**

**THAT**, clause 77 of the Bill be amended in subclause (9) by inserting the words “where applicable” immediately after the words “discounts” in paragraph (b).

**CLAUSE 79**

**THAT**, clause 79 of the Bill be amended—

- (a) by deleting subclause (2) and substituting therefor the following new subclause—  
“(2) The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and, in the tender for professional services, shall have regard to the provisions of this Act and statutory instruments issued by the relevant professional associations regarding regulation of fees chargeable for services rendered”.
- (b) in sub clause (3 (b) by inserting the word “,time” immediately after the word “quality”.

**CLAUSE 81**

**THAT**, Bill be amended by deleting clause 81 and substituting therefor the following new clause—

No correction  
errors

**81.** The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity.

**CLAUSE 82**

**THAT**, clause 82 of the Bill be amended by inserting the following new sub clause immediately after sub clause (1)—

“(1A) The conduct of due diligence under subsection (1) may include obtaining confidential references from persons with whom the tenderer has had prior engagement”

**CLAUSE 85**

**THAT**, clause 85 of the Bill be amended by—

- (a) renumbering the existing provision as sub clause (1)—
- (b) inserting the following new paragraph immediately after paragraph (c) in the renumbered sub clause (1)—

“(ca) the tender with the highest technical score, where a tender is to be evaluated based on procedures regulated by an Act of Parliament which provides guidelines for arriving at applicable professional charges.”
- (c) inserting the following new sub clause immediately after the renumbered sub clause (1)—

“(2) For the avoidance of doubt, citizen contractors, or those entities in which Kenyan citizens own at least fifty-one per cent shares, shall be entitled to twenty per cent of their total score in the evaluation, provided the entities or contractors have attained the minimum technical score.”

**CLAUSE 87**

**THAT**, clause 87 of the Bill be amended by deleting sub clause (3) and substituting therefor the following new sub clause—

“(3) An extension under subsection (1) shall be restricted to not more than thirty days and may only be done once.”

**CLAUSE 88**

**THAT**, clause 88 of the Bill be amended by deleting the word “persons” wherever it appears and substitute therefor “tenderers”.

**CLAUSE 89**

**THAT**, clause 89 of the Bill be amended by inserting the following new sub clause immediately after sub clause (8) —

“(8A) A person who in order to avoid open tendering, procures items that ought to be subjected to open tendering as though they were included in the list of classified items commits an offence;”

**HEADING**

The heading to “PART IX” of the Bill be deleted and substituted therefor with the following new heading—

**“PART IX— METHODS OF PROCUREMENT OF GOODS, WORKS AND SERVICES”**

**CLAUSE 90**

**THAT** clause 90 of the Bill be amended—

- (a) in sub clause (1) by deleting the words “non-consultancy” appearing immediately before the word “services”;

- (b) in sub clause (3) by deleting the words “non-consultancy” appearing immediately before the words “services for the threshold”.

**CLAUSE 91**

**THAT**, clause 91 of the Bill be amended by—

- (a) deleting the words “non-consultancy” appearing immediately before the words “services by a method”.
- (b) inserting the following new paragraphs immediately after paragraph (i)—
- “(ia) competitive negotiations”;
- “(ib) request for proposals”;
- (c) by deleting paragraph (k) and substituting therefor the following new paragraph—
- “(k) any other procurement method and procedure as prescribed in regulations and described in the tender documents.”
- (d) by inserting the marginal note “methods of procurement”.

**CLAUSE 92**

**THAT**, clause 92 of the Bill be amended—

- (a) by deleting the word “non-consultancy” appearing immediately before the word “ services”;
- (b) in the marginal note by deleting the word “procedures”

**CLAUSE 94**

**THAT**, clause 94 of the Bill be amended —

- (a) by deleting sub clause (2) and substituting therefor the following new sub clause—
- “(2) The record of results prepared under subsection (1) shall be submitted with recommendations of the evaluation committee and the professional opinion of the head of procurement function to the accounting officer for approval.”
- (b) by inserting the following new sub-clause immediately after sub clause (3) —
- “(4) A procuring entity shall notify every candidate who submitted an application for pre-qualification but did not qualify”;
- (c) by inserting a new sub –heading “*Details of Procurement Methods*” immediately after clause 94.

**CLAUSE 95**

**THAT**, clause 95 of the Bill be amended in sub clause (2) by deleting the word “one” and substituting therefor the word “two”;

**CLAUSE 99**

**THAT**, clause 99 of the Bill be amended by inserting the words “physical planning and any other design scheme” immediately after the word “architectural”

**CLAUSE 100**

**THAT**, clause 100 of the Bill be amended—

(a) in sub clause (4), by deleting the word “one” appearing immediately before the word “technical”;

(b) by inserting the following new sub clauses immediately after sub clause (5) —

(6) In participating in design competitions, all bidders shall undertake to transfer all copyrights, intellectual property rights and patents relating to their designs to the procuring entity;

(7) Upon completion of the design competition, all the submitted design schemes shall become property of the procuring entity.

**CLAUSE 102**

**THAT**, clause 102 of the Bill be amended in sub clause (2), paragraph (e) by inserting the words, “and compares well with known prices of goods, works or services” immediately after the word “reasonable”

**CLAUSE 103**

**THAT**, clause 103 of the Bill be amended in paragraph (c) by inserting the word, “ensure” immediately before the word “appropriate”;

**CLAUSE 107**

**THAT**, clause 107 of the Bill be amended by inserting the words “in the Regulations” immediately after the word “prescribed”;

**CLAUSE 108**

**THAT**, clause 108 of the Bill be amended in sub clause (4) by inserting the words “in the Regulations” immediately after the word “prescribed”;

**CLAUSE 113**

**THAT**, clause 113 of the Bill be amended in sub clause (1), paragraph (b), by inserting the word, “of” immediately after the word “quantity”;

**CLAUSE 114**

**THAT**, clause 114 of the Bill be deleted.

**CLAUSE 118**

**THAT**, clause 118 of the Bill be amended in sub clause (1), paragraph (b), by deleting the expression “section 77” and substituting therefor the expression “section 56”.

**CLAUSE 119**

**THAT**, clause 119 of the Bill be amended in sub clause (3), by deleting the word “or” appearing immediately after the words “tender’s portal” and substituting therefor the word “and”.



**CLAUSE 121**

**THAT**, clause 121 be amended by deleting sub clause (2) and substituting therefor the following new sub clause—

“(2) The evaluation and comparison shall be done using the procedures and criteria set out in the expression of interest documents and shall, in the case of expression of interest for professional services, have regard to the provisions of this Act and statutory instruments issued by the relevant professional associations regarding regulation of fees chargeable for services rendered”.

**CLAUSE 123**

**THAT**, clause 123 of the Bill be deleted.

**CLAUSE 125**

**THAT**, clause 125 of the Bill be amended in—

(a) sub clause (6), by inserting the following new paragraph immediately after paragraph (c) —

“(ca) assignments and professional services which are regulated by Acts of Parliament which stipulates fees and charges applicable for such assignments;

(b) sub clause (11), by deleting the word “appropriate” appearing immediately after the words “may be” ;

(c) sub clause (13), by deleting the word “advert” and substituting therefor the word “advertisement”;

**CLAUSE 129**

**THAT**, clause 129 of the Bill be amended in sub clause (3) by deleting the words “be a better offer than” and substituting therefor the words “have any price advantages over”.

**CLAUSE 135**

**THAT**, clause 135 of the Bill be amended by—

(a) deleting sub clause (2) and substituting therefor the following new sub clause—

“(2) An accounting officer of a procuring entity shall ensure that all complex and specialized contracts of a value exceeding Kenya shillings five billion are cleared by the Attorney-General before they are signed”.

(b) deleting sub clause (3) and substituting therefor the following new sub clause—

“(3) Each Cabinet Secretary shall regularly inform the Cabinet and national treasury of all government contracts exceeding Kenya shillings five billion”.

(c) inserting a new sub clause immediately after sub clause (3)—

“(4) Notwithstanding the provision of subsection (3) above, any Cabinet Secretary may brief Cabinet on any other project of national importance irrespective of its value”.

**CLAUSE 136**

**THAT**, clause 136 of the Bill be amended by deleting paragraph (c) of sub clause (6) and substituting therefor the following new paragraph—

“(c) price schedule or bills of quantities submitted by the tenderer”.

**CLAUSE 137**

**THAT**, clause 137 of the Bill be amended by—

- (a) deleting the words “the accounting officer of a procuring entity may notify, under section 86 (1), the person who submitted the second lowest evaluated tender” appearing in sub-clause (1) and substituting therefor the words “he or she shall forfeit his or her tender security and the procurement process shall proceed with the next lowest evaluated tenderer”;
- (b) deleting sub clause (2);
- (c) deleting sub clause (3)
- (d) deleting sub-clause (4).

**CLAUSE 140**

**THAT**, clause 140 of the Bill be amended—

- (a) in sub clause (2) by deleting the words “ a tender committee” appearing immediately after the words “ recommendation of” and substituting therefor the words “evaluation committee”;
- (b) by deleting sub clause (3) and substituting therefor the following new sub clause (3)—

“(3) No contract price shall be varied within 12 months from the date of the signing of the contract.”
- (c) in sub clause (4) —
  - (i) by deleting the word “ten” appearing in paragraph (b), and substituting therefor the word “fifteen”
  - (ii) by deleting the word “fifteen” appearing in paragraph (c) and substituting therefor the word “twenty”;
- (d) by inserting the following new sub clause immediately after sub clause (5) —

“(6) Where variations result in an increment of the contract price by more than twenty-five percent, such variations shall be tendered for separately”.

**CLAUSE 141**

**THAT**, clause 141 of the Bill be amended by inserting a new paragraph immediately after paragraph (c)

—

“(ca) the methods of computing interest and liquidated damages shall be as prescribed in the Regulations.”

**CLAUSE 143**

**THAT**, clause 143 of the Bill be amended—

(a) by deleting sub clause (1) and substituting therefor the following new sub clause—

“(1) Subject to the regulations, a successful tenderer shall submit a performance security equivalent to no more than ten per cent of the contract amount before signing of the contract”

(b) in sub clause (3) by inserting the words “or works and supplies reserved for women, youth, persons with disabilities and other disadvantages groups and for these categories, the performance securities that may be waived or fixed at no more than one per cent of the contract price immediately after the word “Regulations”;

**CLAUSE 144**

**THAT**, clause 144 of the Bill be amended by deleting the word “shall” appearing immediately after the words “and it shall” and substituting therefor the word “may”.

**CLAUSE 145**

**THAT**, clause 145 of the Bill be amended—

(a) in sub clause (1) by deleting the word “of” appearing immediately after the word “performance”;

(b) by inserting a new sub clause immediately after sub clause (4) —

“(5) The Cabinet Secretary shall make regulations for the better carrying out of this section.”

**CLAUSE 146**

**THAT**, clause 146 be amended in sub clause (2) by inserting the words “except in cases of procurement for works where the period shall commence from the date of practical completion or handover, whichever is earlier “immediately after the words “retention period”.

**CLAUSE 148**

**THAT**, clause 148 of the Bill be amended by—

(a) renumbering the existing provision as sub clause (1);

(b) by inserting a new sub clause immediately after the renumbered sub clause (1) —

“(2) The Cabinet Secretary shall make regulations for the better carrying out of this section.”

**CLAUSE 151**

**THAT**, clause 151 of the Bill be amended in—

- (a) sub clause (1), by inserting the words “or his or her appointed representative” immediately after the word “officer”;
- (b) sub clause (2), by inserting the words “or professionals engaged to work on behalf of the accounting officer” immediately after the word “department”;
- (c) sub clause (3), by inserting the words “or professionals engaged to work on behalf of the accounting officer” immediately after the word “department” wherever it occurs.

**CLAUSE 156**

**THAT**, clause 156 (4) of the Bill be amended by deleting the word “as prescribed” appearing immediately before the words “shall be” and substituting therefor the words “above fifty-one percent of Kenyan shareholders”.

**CLAUSE 152**

**THAT**, clause 152 of the Bill be amended in sub clause (2) by deleting the word “act” appearing in paragraph (j) and substituting therefor the word “acts”.

**CLAUSE 158**

**THAT**, clause 158 of the Bill be amended—

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

“(4) For the purpose of protecting and ensuring the advancement of persons, categories of persons or groups previously disadvantaged by unfair competition or discrimination, reservations, preferences and 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) in sub clause (5) by inserting the words “which shall not be less than thirty per cent” immediately after the words “procurement budget”;

- (c) in sub clause (8) by inserting a new subparagraph immediately after subparagraph (ii) —  
“(iia) the prescribed threshold for exclusive preference shall be above five hundred million shillings.”

- (d) by inserting the following new subsections immediately after subsection (9)—

(10) 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”.

(11) 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”.

(12) The procuring entities at the national and county level shall make a report after every six months to the Authority”.

(13) A report under subsection (12) 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.

(14) The Authority shall make a report to Parliament after every six months 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”.

(15) The Cabinet Secretary shall prescribe the preferences that shall facilitate the attainment of the quota specified in subsection (10) in order for the State to achieve the objectives of Articles 55 and 227(2) of the Constitution”.

(16) The preferences referred to in subsection (15) 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.

(17) The national treasury shall operationalize a preference and reservations secretariat to be responsible for the implementation of the preferences and reservations under this Act which shall be responsible for—

(a) registration, prequalification and certification of the persons, categories of persons or groups as provided in for under Part XII;

(b) training and Capacity building of the above target groups;

(c) providing technical and advisory assistance to procuring entities in the implementation of the preferences and reservations under this Act; and

(d) monitoring and evaluating the implementation of the preferences and reservations under this Act.

(18) The national treasury shall provide adequate staff and resources for the operations of the secretariat”.

**CLAUSE 159**

**THAT**, clause 159 be amended in sub clause (3) by inserting the words “with disaggregated data” immediately after the words “reported”.

**CLAUSE 163**

**THAT**, clause 163 of the Bill be amended in sub clause (2) by deleting the word “twice” and substituting therefor the word “quarterly”.

**CLAUSE 164**

**THAT**, clause 164 (1) of the Bill be amended by inserting the words “and when” immediately after the words “disposal committee as”.

**CLAUSE 166**

**THAT**, clause 166 be amended by inserting the following sub clause immediately after sub clause(1)—

“(2) Despite subsection (1) 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.”

**CLAUSE 167**

**THAT**, clause 167 of the Bill be amended by—

- (a) renumbering the existing provision as sub clause (1);
- (b) inserting the following new sub clause immediately after the renumbered sub clause (1)—

“(2) An accounting officer who, pursuant to artificial valuation, disposes off assets to an employee of the public entity or a member of a board or committee of the public entity commits an offence.

**CLAUSE 168**

**THAT**, clause 168 of the Bill be amended—

- (a) in sub clause (1) by inserting the word “or” appearing immediately after the words “this Act”;
- (b) by inserting the following new sub clause immediately after sub clause (1) —

“(1A) A request for review shall be accompanied by such fees as may be prescribed in the regulations, and such fees shall not be less than ten per cent of the cost of the contract”;

**CLAUSE 173**

**THAT**, clause 173 of the Bill be amended by inserting the words “and the applicant shall forfeit the fees paid” immediately after the word “contract”;

**CLAUSE 174**

**THAT**, clause 174 of the Bill be amended by inserting the following new paragraph immediately after paragraph (d)—

“(da) order termination of the procurement process and commencement of a new procurement process;”

**CLAUSE 176**

**THAT**, clause 176 of the Bill be amended by inserting a new sub clause immediately after sub clause (3) —

“(4) Where a decision of the Review Board has been quashed, the High Court shall not impose costs on either party.”

**CLAUSE 177**

**THAT**, clause 177 of the Bill be amended –

(a) by renumbering the existing provision as sub clause (1)

(b) in sub clause (1), by inserting the following new paragraphs immediately after paragraph (i) —

“(ia) knowingly withholds the notification of award to a successful tenderer;”

“(ib) knowingly withholds notification to unsuccessful tenderer;”

**CLAUSE 181**

**THAT**, clause 181 of the Bill be amended by inserting the words “and such regulations shall not take effect unless approved by Parliament pursuant to the Statutory Instruments Act, 2013”.

**FIRST SCHEDULE**

That the First Schedule of the Bill be amended in paragraph 3(2), by deleting the word “his” and substituting therefor the word “their”.

**SECOND SCHEDULE**

That the Second Schedule of the Bill be amended in paragraph 3(2), by deleting the word “his” and substituting therefor the word “their”.

**THIRD SCHEDULE**

**THAT**, the Third Schedule of the Bill be amended by inserting a new paragraph immediately after paragraph 10—

Time specification for  
the Regulations.

10A. Regulations contemplated under this Act shall be made within a period of one year immediately after the effective date of the Act.

**The House resolved on Wednesday, February 11, 2015 as follows:-**

- I. **THAT**, notwithstanding the provisions of Standing Order 97(4), each speech in a debate on a **Report of a Committee**, including a Report of a Joint Committee of the Houses of Parliament, a Sessional Paper or any other Report submitted to the House, shall be limited as follows: - A maximum of sixty (60) minutes for the Mover in moving and thirty (30) minutes in replying, and a maximum of ten (10) minutes for any other Member speaking, except the Leader of the Majority Party and the Leader of the Minority Party, who shall be limited to a maximum of fifteen (15) minutes each; and that priority shall be accorded to the Leader of the Majority Party and the Leader of the Minority Party, in that Order.
- II. **THAT**, notwithstanding the provisions of Standing Order 97(4), each speech in a debate on **Bills sponsored by a Committee, the Leader of the Majority Party or the Leader of the Minority Party** shall be limited as follows:- A maximum of forty five (45) minutes for the Mover, in moving and fifteen minutes (15) in replying, a maximum of thirty (30) minutes for the Chairperson of the relevant Committee (if the Bill is not sponsored by the relevant Committee), and a maximum of ten (10) minutes for any other Member speaking, except the Leader of the Majority Party and the Leader of the Minority Party, who shall be limited to a maximum of fifteen Minutes (15) each (if the Bill is not sponsored by either of them); and that priority in speaking shall be accorded to the Leader of the Majority Party, the Leader of the Minority Party and the Chairperson of the relevant Departmental Committee, in that Order.

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...../Notice Paper



# NOTICE PAPER

Tentative business for

Tuesday, April 28, 2015

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*(Published pursuant to Standing Order 38(1))*

It is notified that the House Business Committee, at their last meeting, approved the following **tentative** business to appear in the Order Paper for Tuesday, April 28, 2015:-

A. **MOTION - THE SPECIAL REPORT OF THE PUBLIC INVESTMENTS COMMITTEE ON THE PROCUREMENT PROCESS OF THE KENYA PIPELINE COMPANY LTD LINE 1 CAPACITY ENHANCEMENT PROJECT**  
(The Chairperson, Public Investments Committee)

B. **THE PROHIBITION OF ANTI-PERSONNEL MINES BILL (NATIONAL ASSEMBLY BILL NO. 7 OF 2014)**  
(The Leader of the Majority Party)

Second Reading

*(If not concluded on Thursday, April 23, 2015 – Afternoon Sitting)*

C. **THE FISHERIES MANAGEMENT AND DEVELOPMENT BILL (NATIONAL ASSEMBLY BILL NO. 20 OF 2014)**  
(The Leader of the Majority Party)

Second Reading

*(If not concluded on Thursday, April 23, 2015 – Afternoon Sitting)*

D. **THE PRIVATE SECURITY REGULATION BILL (NATIONAL ASSEMBLY BILL NO. 4 OF 2014)**  
(The Leader of the Majority Party)

Second Reading

*(If not concluded on Thursday, April 23, 2015 – Afternoon Sitting)*

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