



REPUBLIC OF KENYA

ELEVENTH PARLIAMENT – THIRD SESSION

NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

TUESDAY, APRIL 28, 2015

1. The House assembled at thirty minutes past two O'clock.
2. The Proceedings were opened with Prayer.
3. **Presiding** – the Speaker
4. **COMMUNICATIONS FROM THE CHAIR**

The Speaker conveyed the following Communications –

(i) **Delegation from the Parliament of Zambia**

"Honourable Members,

I wish to introduce to you a Delegation from the Parliament of Zambia's Committee on Legal Affairs, Governance, Human Rights, Gender Matters and Child Affairs, which is seated at the Speaker's Row. The delegation comprises the following Honourable Members:

(i) The Hon. J.J. Mwiimbu, MP	-	Chairperson
(ii) The Hon. M.A. Malama, MP	-	Member
(iii) The Hon. B.M. Ntundu, MP	-	Member
(iv) The Hon. J.M. Kapyanga, MP	-	Member
(v) The Hon. V. Kalima, MP	-	Member
(vi) The Hon. H. Kunda, MP	-	Member
(vii) The Hon. M. Kapeya, MP	-	Member
(viii) The Hon. S. Masumba, MP	-	Member

They are accompanied by Ms. C. Musonda, an Assistant Committee Clerk.

The delegation is in the country to learn from and share experiences with Members of this House and other government institutions on constitutional, judicial and electoral reforms, including prevention and management of conflict in the electoral process. They have been with us since Sunday, 26th April 2015 and are scheduled to complete their tour on Friday, 1st May 2015. On my behalf and that of the Honourable Members, I wish to welcome them to the National Assembly and wish them fruitful engagements.

Thank you".

(ii) **Measures to Enhance Security within Parliament Buildings**

Honourable Members, as you may be aware, there have been heightened security checks around all critical government installations including Parliament. The Parliamentary Service Commission, which I chair, is implementing meticulous measures aimed at enhancing the security of all persons and facilities within and around the precincts of Parliament. In this regard, Members and parliamentary staff are required to be vigilant and to cooperate with the security agencies as they implement these measures.

Honourable Members, from now on, the Speaker's Rules on admittance of strangers will be strictly enforced, including the requirement that a Member will not be allowed to have more than two visitors at any one time. Visitors will also not be allowed access to the precincts of Parliament without duly authorized visitor's cards. Further, no Member of Parliament will be allowed to bring in visitors aboard the Member's vehicle, except a driver and official bodyguards. All other passengers will be required to alight from the vehicle at the gates for screening and scrutiny of the invitation cards.

Honourable Members, you may also be aware that a member of staff of the Parliamentary Service is being questioned by security agencies on security related issues and has been arraigned in Court today. I wish to assure you that the Commission is keenly following up on this matter to its logical conclusion.

Finally, I also wish to assure all Members, parliamentary staff and the public at large that stringent security measures have been put in place to secure you and all parliamentary facilities as you discharge your duties within the precincts of Parliament.

I thank you".

5. PAPERS LAID

The following Papers were laid on the Table –

- (i) the Report of the Auditor-General on the Financial Statements of the Jomo Kenyatta Foundation for the year ended 30th June 2014, and the certificate of the Auditor-General therein; and,
- (ii) the Report of the Auditor-General on the Financial Statements of Kenya Power and Lighting Company Limited for the year ended 30th June 2014, and the certificate of the Auditor-General therein.

(The Leader of the Majority Party)

- (iii) Reports of the Departmental Committee on Agriculture, Livestock and Co-operatives on -

- (a) The Message from the Senate on the Fertilizer and Animal Foodstuffs (Amendment) Bill, 2013; and
- (b) The Fisheries Management and Development Bill, 2014.

(Vice Chairperson, Departmental Committee on Agriculture, Livestock and Co-operatives)

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

Order of Second Reading read;

Motion made and Question proposed -

THAT, the Prohibition of Anti-Personnel Mines Bill (National Assembly Bill No.7 of 2014 be now read a Second Time

(The Deputy Majority Party Whip – 23.04.2015)

Debate on the Second Reading having been concluded on Thursday, 23rd April, 2015;

Question put and agreed to;

Bill read a Second Time and committed to the Committee of the Whole House tomorrow.

7. **COMMITTEE OF THE WHOLE HOUSE**

Order for Committee read;

IN THE COMMITTEE

The First Chairperson of Committees in the Chair

The Public Procurement and Assets Disposal Bill (National Assembly Bill No.40 of 2014)

Clause 3 - amendment proposed –

THAT, clause 3 of the Bill be amended by inserting the following new paragraph immediately after paragraph (i) —
“(j) promotion of citizen contractors”.

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 3 - as amended agreed to

Clause 4 - amendment proposed –

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

“(e) contract management.”

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 4 - as amended agreed to

Clause 5 - amendment proposed –

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”.

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 5 - as amended agreed to

Clause 6 - agreed to

Clause 7 - amendment proposed –

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.”

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 7 - as amended agreed to

Clause 8 - agreed to

Clause 9 - amendment proposed –

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”;

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 9 - as amended agreed to

Clause 10 - amendment proposed –

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 of a professional body under subparagraphs (i)-(iii);
- (ba) two persons nominated by the respective organizations representing—
 - (v) the youth; and
 - (vi) persons with disabilities.

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 10 - as amended agreed to

Clause 11 - amendment proposed –

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.

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 11 - as amended agreed to

Clause 12 - amendment proposed –

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”.

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 12 - as amended agreed to

Clause 13 - agreed to

Clause 14 - amendment proposed –

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

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 14 - as amended agreed to

Clause 15 - amendment proposed –

THAT, clause 15 of the Bill be amended in—

(a) sub clause (2) (b), by inserting the words “and can demonstrate a logical progression in acquiring the academic qualifications” immediately after the word “Kenya”;

(b) sub clause (3), by inserting the words “and the Secretary to the Board” immediately after the word “Authority”.

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 15 - as amended agreed to

Clauses 16, 17 & 18 - agreed to

Clause 19 - amendment proposed –

THAT, clause 19 of the Bill be amended—

(a) by numbering the first clause as (1);

(b) in sub clause (1), by inserting the words “, Public Service Commission and the Salaries and Remuneration Commission” immediately after the words “the Cabinet Secretary”;

(c) in subclause (2), by inserting the words “and the Public Service Commission” immediately after the words “the Cabinet Secretary”.

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 19 - as amended agreed to

Clauses 20 & 21 - agreed to

Clause 22 - amendment proposed –

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”.

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 22 - as amended agreed to

Clause 23 - amendment proposed –

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

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 23 - as amended agreed to

Clause 24 - amendment proposed –

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.”

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 24 - as amended agreed to

Clause 25 - agreed to

Clause 26 - amendment proposed –

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) in sub clause (5) by deleting the word “the” appearing immediately before the word “Parliament”.

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 26 - as amended agreed to

Clause 27 - amendment proposed –

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).

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to:

Clause 27 - as amended agreed to

Clause 28 - agreed to

Clause 29 - amendment proposed –

THAT, clause 29 of the Bill be amended—

(a) in sub clause (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."

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 29 - as amended agreed to

Clause 30 - amendment proposed –

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

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 30 - as amended agreed to

Clause 31 - agreed to

Clause 32 - amendment proposed –

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".

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 32 - as amended agreed to

Clause 33 - amendment proposed –

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);

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 33 - as amended agreed to

Clauses 34 & 35 - agreed to

Clause 36 - amendment proposed –

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

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 36 - as amended agreed to

Clause 37 - amendment proposed –

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

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 37 - as amended agreed to

Clauses 38, 39 & 40 - agreed to

Clause 41 - amendment proposed –

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);

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 41 - as amended agreed to

Clauses 42 & 43 - agreed to

Clause 44 - amendment proposed –

THAT, clause 44 be amended—

(a) in sub clause (2), by inserting the words “subject to subsection (2A)” immediately before the word “submit” in paragraph (c);

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

“(2A) The procurement plans prepared by the national security organs shall be exempted from submission to the National Treasury”.

(Hon. Aden Duale – Leader of Majority Party)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Further amendment proposed –

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”.

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 44 - as amended agreed to

Clause 45 - amendment proposed –

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”;

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 45 - as amended agreed to

Clause 46 - amendment proposed –

THAT, clause 46 of the Bill be amended—

(a) in subclause (3) by —

(a) 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”;

(b) in subclause (4) —

(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).

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 46 - as amended agreed to

Clause 47 - amendment proposed –

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."

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 47 - as amended agreed to

Clauses 48, 49, 50 & 51 - agreed to

Clause 52 - amendment proposed –

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)".

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 52 - as amended agreed to

Clause 53 - agreed to

Clause 54 - amendment proposed –

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."

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 54 - as amended agreed to

Clause 55 - amendment proposed –

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."

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 55 - as amended agreed to

Clause 56 - amendment proposed –

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".

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 56 - as amended agreed to

Clause 57 - agreed to

Clause 58 - amendment proposed –

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

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Further amendment proposed –

THAT, clause 58 be further amended in sub-clause 1(a) by –

(a) inserting the words “of that State organ or public entity” immediately after the words “or Board”

(b) by deleting the word “a” appearing immediately after the words “officer of” and substituting therefor the word “that”

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the further amendment proposed;

Debate arising;

Question of the further amendment put and agreed to;

Question of amendment as further amended put and agreed to;

Clause 58 - as amended agreed to

Clause 59 - amendment proposed –

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);

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Proposed amendment in part (a) withdrawn by the Mover;

Question put and agreed to;

Clause 59 - as amended agreed to

Clause 60 - amendment proposed –

THAT, clause 60 of the Bill be amended —

(a) by deleting sub clause (3) (b);

(b) in sub clause (4), by deleting the word "shall" and substituting therefor the word "may";

(c) in sub clause (5), by inserting the words "women, youth, persons with disabilities and other" immediately after the words "owned by".

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to

Further amendment proposed –

THAT, clause 60 of the Bill be amended in sub clause 2 by inserting the following new paragraph immediately after paragraph (c)—

(d) where applicable, the relevant laws governing tendering practices of the country hosting the Kenyan diplomatic mission;

(Hon. Ndungu Gethenji)

Proposed amendment dropped in the absence of the Mover;

Clause 60 - as amended agreed to

Clause 61 - amendment proposed –

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

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 61 - as amended agreed to

Clause 62 - amendment proposed –

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.”

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 62 - as amended agreed to

Clause 63 - agreed to

Clause 64 - amendment proposed –

THAT, clause 64 of the Bill be 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”.

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 64 - as amended agreed to

Clause 65 - amendment proposed –

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”.

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 65 - as amended agreed to

Clause 66 - agreed to

Clause 67 - amendment proposed –

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”.

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 67 - as amended agreed to

Clause 68 - amendment proposed –

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

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 68 - as amended agreed to

Clause 69 - amendment proposed –

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”.

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 69 - as amended agreed to

Clause 70 - amendment proposed –

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

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 70 - as amended agreed to

Clauses 71 & 72 - agreed to

Clause 73 - amendment proposed –

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 sub clause (1)-
- "(2) All tender documents shall be sent out to eligible bidders by recorded delivery".

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 73 - as amended agreed to

Clause 74 - amendment proposed –

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".

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 74 - as amended agreed to

Clauses 75 & 76 - agreed to

Clause 77 - amendment proposed –

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).

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 77 - as amended agreed to

Clause 78 - agreed to

Clause 79 - amendment proposed –

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”.

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 79 - as amended agreed to

Clause 80 - agreed to

Clause 81 - amendment proposed –

THAT, the 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.

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 81 - as amended agreed to

Clause 82 - amendment proposed –

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"

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 82 - as amended agreed to

Clauses 83 & 84 - agreed to

Clause 85 - amendment proposed -

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."

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 85 - as amended agreed to

Clause 86 - agreed to

Clause 87 - amendment proposed –

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.”

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 87 - as amended agreed to

Clause 88 - amendment proposed –

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

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Further amendment proposed –

THAT, clause 88 of the Bill be amended in paragraph (a) by inserting the words “and in the case of a Kenyan diplomatic mission, where applicable, the official language of the host country” immediately after the word “English”;

(Hon. Ndungu Gethenji)

Proposed amendment dropped in the absence of the Mover;

Clause 88 - as amended agreed to

Clause 89 - amendment proposed –

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;”

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Further amendment proposed –

THAT, clause 89 be amended by deleting sub clause (7).

(Hon. Aden Duale - Leader of the Majority Party)

Question of the further amendment proposed;

Debate arising;

Question put and agreed to;

Clause 89 - as amended agreed to

Clause 90 - amendment proposed –

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”.

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 90 - as amended agreed to

Clause 91 - amendment proposed –

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".

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 91 - as amended agreed to

Clause 92 - amendment proposed –

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"

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 92 - as amended agreed to

Clause 93 - agreed to

Clause 94 - amendment proposed –

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.

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 94 - as amended agreed to

Clause 95 - amendment proposed –

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

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 95 - as amended agreed to

Clauses 96, 97 & 98 - agreed to

Clause 99 - amendment proposed –

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

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 99 - as amended agreed to

Clause 100 - amendment proposed –

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.

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 100 - as amended agreed to

Clause 101 - agreed to

Clause 102 - amendment proposed –

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"

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 102 - as amended agreed to

Clause 103 - amendment proposed –

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

(Chairperson, Departmental Committee on Finance, Planning & Trade)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 103 - as amended agreed to

Progress Report

Motion made and Question proposed -

THAT, the Committee of the whole House do report progress and seeks leave to sit again

(Vice Chairperson, Departmental Committee on Finance, Planning and Trade)

Question put and agreed to.

8. **HOUSE RESUMED** - Fourth Chairperson of Committees in the Chair

Progress reported –

THAT, the Committee of the whole House has considered the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014), with amendments, and seeks leave to sit again

(Majority Party Whip)

Question put and agreed to.

And the time being thirty minutes past Six O'clock, the Fourth Chairperson of Committees interrupted the proceedings and adjourned the House without Question put pursuant to the Standing Orders.

9. **HOUSE ROSE** - at thirty minutes past Six O'clock.

M E M O R A N D U M

The Speaker will take the Chair on
Wednesday, April 29, 2015 at 9.30 a.m.

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