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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FIFTH SESSION – 2021
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPORT ON THE CONSIDERATION OF THE PUBLIC PROCUREMENT AND ASSET
DISPOSAL (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 32 OF 2021)

CLERKS CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

NOVEMBER, 2021

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 23 NOV 2021	
DAY: Tuesday	
TABLED BY:	Chair, Finance Hon. Gladys Wanga
CLERK-AT THE-TABLE:	Gr Chebet

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CHAIRPERSON'S FOREWORD

This report contains the proceedings of the Departmental Committee on Finance and National Planning on its consideration of the Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 32 of 2021) published on 11th June 2021.

The Bill went through the First Reading on 10th August 2021 and was thereafter committed to the Departmental Committee on Finance and National Planning pursuant to Standing Order 127.

Following placement of adverts in the print media on 7th September 2021 requesting for comments on the Bill from members of the public and relevant stakeholders pursuant to Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee received two written memoranda. The stakeholders proposed amendments to the Bill which are contained in Part III of the Report. All the stakeholders' comments were put into consideration while preparing the proposed Committee's amendments and some of the proposals were adopted forming part of the proposed Committee's amendments.

The Bill has forty-four (44) clauses and seeks to amend the Public Procurement and Asset Disposal Act to address the challenges faced by procuring entities in implementing the Act, including the multiple awards of contracts in the wake of sections 82 and 86 of the Act.

The Bill further seeks to amend section 2 of the principal Act by amending the definition of "procurement profession" to recognize other institutions who offer membership and professional qualification in procurement and supply chain management. Further to this, the Bill proposes to introduce the definition of "local contractor" into the Act to pave the way for the inclusion of sole proprietorships, partnerships, cooperative societies, individual consultants, associations, and groups registered in Kenya. From the comments received from the Kenya Institute of Supplies Management, the Committee was in agreement on the need to allow the procurement professional to be regulated within the realm of the Kenya Institute of Supplies Management established under the Supplies Practitioners Management Act 2007.

The Bill has also proposed a reduction in various timelines, including the tender evaluation period. On this, the Committee disagreed with reducing the period as doing so may compromise the quality of the procurement period. In addition, seven (7) is too short a period to carry out the technical and financial evaluation adequately.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Public Procurement and Asset Disposal (Amendment) (No. 2) Bill of 2021. The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support during its sittings. The Committee wishes to thank Gerivia Advocates LLP and the Kenya Institute of Supplies Management for submitting memoranda on the Bill. Finally, I want to express my appreciation to the Honorable Members of the Committee and the Committee Secretariat, who made valuable contributions towards the preparation and production of this report.

It is my pleasure to report that the Committee has considered the Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 32 of 2021) and have the honour to report back to the National Assembly with the recommendation that the Bill be **approved with amendments** as contained in the report.

Hon. Gladys Wanga, CBS, MP

Chairperson, Departmental Committee on Finance and National Planning

PART I

1 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Finance & National Planning is one of the fifteen Departmental Committees of the National Assembly established under ***Standing Order 216*** whose mandates pursuant to the ***Standing Order 216 (5)*** are as follows:

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

1.2 MANDATE OF THE COMMITTEE

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

1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Finance and National Planning was constituted by the House in July, 2020 and comprises of the following Members:

Chairperson

Hon. Gladys Wanga, CBS, MP
Homabay County

ODM Party

Vice-Chairperson

Hon. Isaac W. Ndirangu, MP
Roysambu Constituency

Jubilee Party

Members

Hon. Jimmy O. Angwenyi, MP
Kitutu Chache North Constituency

Jubilee Party

Hon. Christopher Omulele, MP
Luanda Constituency

ODM Party

Hon. Shakeel Shabbir Ahmed, MP
Kisumu East Constituency

Independent Member

Hon. Daniel Nanok, MP
Turkana West Constituency

Jubilee Party

Hon. (Dr.) Christine Ombaka, MP
Siaya County

ODM Party

Hon. Andrew Okuome, MP
Karachuonyo Constituency

ODM Party

Hon. David Mboni, MP
Kitui Rural Constituency

CCU Party

Hon. Francis K. Kimani, MP
Molo Constituency

Jubilee Party

Hon. Joseph Oyula, MP
Butula Constituency

ODM Party

Hon. Joshua Kandie, MP
Baringo Central Constituency

MCC Party

Hon. Stanley Muthama, MP
Lamu West Constituency

MCC Party

Hon. Edith Nyenze, MP
Kitui West Constituency

WDM-K

Hon. Catherine Waruguru, MP
Laikipia County

Jubilee Party

Hon. James Mwangi, MP
Tetu Constituency

Jubilee Party

Hon. (Prof.) Mohamud Muhamed, MP
Wajir South Constituency

Jubilee Party

Hon. Peter Lochakapong, MP
Sigor Constituency

Jubilee Party

Hon. Qalicha Gufu Wario, MP
Moyale Constituency

Jubilee Party

1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following Secretariat:

Ms. Leah W. Mwaura
Senior Clerk Assistant/Head of Secretariat

Ms. Jennifer Ndeto
Principal Legal Counsel I

Ms. Laureen Wesonga
Clerk Assistant II

Mr. Josephat Motonu
Senior Fiscal Analyst

Mr. Chelang'a Maiyo
Research Officer II

Mr. Luka Mutua
Serjeant-At-Arms

Mr. John Njoro
Serjeant-At-Arms

Ms. Christine Maeri
Audio Officer

Ms. Hannah Mwangi
Intern

PART II

2 OVERVIEW OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 32 OF 2021)

2.1 INTRODUCTION

6. The Bill's main objective is to amend the Public Procurement and Asset Disposal Act, 2015, to address the challenges faced by procuring entities in implementing the Act, including the multiple awards of contracts in the wake of sections 82 and 86 of the Act.
7. The Bill further seeks to amend section 2 of the principal Act by amending the definition of "procurement profession" to recognize other institutions who offer membership and professional qualification in procurement and supply chain management. Further to this, the Bill proposes introducing the definition of "local contractor" into the Act to pave way for the inclusion of sole proprietorships, partnerships, cooperative societies, individual consultants, associations, and groups registered in Kenya.

2.2 ANALYSIS OF THE BILL

The Bill seeks to amend the Public Procurement and Asset Disposal Act, 2015 and has 44 clauses. It proposes the following amendments:

8. **Clause 1** of the Bill sets out the short title of the proposed Act.
9. **Clause 2** of the Bill proposes to amend section 2 of the Act by amending the definition of "procurement profession" to recognize other institutions who offer membership and professional qualification in procurement and supply chain management. Further to this, the Bill proposes to introduce the definition of "local contractor" into the Act to pave way for the inclusion of sole proprietorships, partnerships, cooperative societies, individual consultants, associations, and groups registered in Kenya.
10. **Clause 3** of the Bill further proposes to amend section 7 of the Act to address the training and capacity development for professionals involved in the supply chain management services cadre at the national level.
11. **Clause 4** of the Bill contains proposals to amend section 9 of the Act, among others, to address the training lacuna for non-procurement professionals involved in procurement, such as user departments, disposal and contract implementation teams, suppliers, etc.
12. **Clause 5** of the Bill further proposes to amend section 26 of the Act to clarify that it is the final report and not a draft report to be published and publicized.
13. **Clause 6** of the Bill also proposes to amend section 39 of the Act by deleting the word the "Board" and substituting therefore the words "DirectorGeneral" to align with section 38(2) which relates to the making of the order, in case of a breach of the provisions of the Act, by the DirectorGeneral and not the Board.

14. **Clause 7** of the Bill contains proposals to amend section 40 of the Act to assign the Director-General the responsibility to institute investigations pursuant to section 35 of the Act.
15. **Clause 8** of the Bill further contains proposals to amend section 41 of the Act by adding a new paragraph to provide the provisions to reduce the chances of delayed contracts by tenderers.
16. **Clause 9** of the Bill further proposes to amend the Act by introducing a new section 43A to give the Authority the power, when conducting investigations, inspections, assessments and reviews relating to contracts, procurement and asset disposal proceedings, to enter premises of a procuring entity to make any inquiries that may be necessary for the collection of information.
17. **Clause 10** of the Bill further contains proposals to amend section 44 of the Act by adding a new subsection to enable the accounting officer of a procuring entity to seek assistance from the National Treasury where that procuring entity lacks the capacity to comply with the Act.
18. **Clause 11** of the Bill further proposes to amend section 46 of the Act to allow the head of procurement to delegate the secretarial function. The proposed amendment intends to enhance efficiency in the delivery of public services and reduce procurement lead time as procuring entities will be able to run multiple procurements/tenders concurrently.
19. **Clause 12** of the Bill also proposes to amend section 48 of the Act by deleting the words "procuring unit" and substituting therefor the words "head of procurement function". This is meant to ensure consistency with the definition and role of the procurement function.
20. **Clause 13** of the Bill further contains provisions to amend section 51 of the Act to ensure consistency with the definition of the procurement function.
21. **Clause 14** of the Bill seeks to amend section 53 of the Act by adding new subsections to enhance transparency in procurement and provide potential bidders with information necessary to plan and organize to respond to procurement opportunities. Further, the publication of procurement plans is one of the sub-indicators (under transparency and access to public information) that is checked during PEFA and UNCAC Assessments to which Kenya ascribe.
22. **Clause 15** of the Bill seeks to amend section 53 of the Act by empowering the head of procurement function to carry out market survey(s) to inform the placing of orders or decision making on procurement by the relevant awarding authority. The object of this provision is to guard against purchasing standards items at inflated prices.
23. **Clause 16** of the Bill proposes to amend section 67 of the Act for proper cross-referencing.
24. **Clause 17** of the Bill proposes to amend the marginal note to section 69 to align with the text.
25. **Clause 18** of the Bill seeks to amend section 71 of the Act to correct the notion that a tenderer may seek clarification from the candidate, which is not feasible as it is the procuring entity that is evaluating the candidates to determine their eligibility.
26. **Clause 19** of the Bill seeks to amend section 80 to ensure proper cross-referencing and reduce the tender evaluation period from thirty days to seven days to hasten the procurement process. The

proposal also introduces a new subsection (8) giving powers to the accounting officer to extend the tender evaluation period once for a further period not exceeding seven days where a tender is complex or has attracted high number of tenderers.

27. **Clause 20** of the Bill proposes to amend section 82 for clarification.
28. **Clause 21** of the Bill seeks to exempt section 141 from the application of the provisions of section 86(1).
29. **Clause 22** of the Bill seeks to amend section 89 of the Act for right crossreferencing.
30. **Clause 23** of the Bill proposes to amend section 92 of the Act by placing Competitive Negotiations solely under Part X of the Act.
31. **Clause 24** of the Bill seeks to amend section 94 of the Act to reduce the timeframe allowed for the candidates to prepare and submit their applications for pre-qualification.
32. **Clause 25** of the Bill seeks to amend section 96(2) and (4) of the Act to enable those Kenyans who have no access to newspapers and who wish to participate in the tendering process. Clause 26 of the Bill seeks to amend section 98 of the Act for clarity.
33. **Clause 27** of the Bill seeks to amend section 114 of the Act to ensure consistency with the definition of procurement function.
34. **Clause 28** of the Bill proposes to amend section 117 of the Act to address incorrect cross-referencing and to harmonize the marginal note with the text.
35. **Clause 29** of the Bill proposes to amend section 119 of the Act to provide for the preparation of a notice inviting expressions of interest mandatory.
36. **Clause 30** of the Bill provides proposals to amend section 121 of the Act to clarify that it is the role of the evaluation committee to carry out evaluation; and to align the provision to section 121(4). Further, the proposed new subsection (5) is intended to unlock the procurement process that might stall due to failure to elicit a requisite number of qualified candidates/ proposals.
37. **Clause 31** of the Bill proposes to amend section 124 of the Act by deleting subsection (14), which contradicts the conditions of single sourcing provided under subsection (12). Further to this, the Bill seeks to amend subsection (15) to enhance efficiency by eliminating the approval.
38. **Clause 32** further seeks to amend section 135 (3) of the Act which relates to the creation of procurement contracts to provide that a written contract shall be entered into not later than seven days. Previously the Act provided fourteen days and so the amendment seeks to reduce the timelines.
39. **Clause 33** of the Bill seeks to amend section 135 of the Act to reduce the duration of the procurement process from 14 days to 7 days. The Bill also proposes to delete subsection (4), which contradicts the provisions of subsection (1).

40. **Clause 34** of the Bill proposes to amend section 138 of the Act by deleting subsection (5) and substituting therefor a new subsection (5). This will ensure that the security organs report contracts processed through the open list maintained under section 90(4) for accountability while protecting national security interest.
41. **Clause 35** of the Bill seeks to amend section 139 of the Act to allow variations in terms of quantity which might be occasioned due to unforeseen circumstances within a period less than twelve months provided the subject variations are within outlined limits/thresholds.
42. **Clause 36** of the Bill seeks to amend section 141 of the Act to facilitate multiple award of contracts.
43. **Clause 37** of the Bill seeks to amend section 167 of the Act to reduce the duration for procurement process from 14 days to 7 days. It also proposes to amend subsection (2) by inserting a proviso to exempt the disadvantaged groups from the application of subsection (2).
44. **Clause 38** of the Bill proposes to amend section 169 of the Act adding a new subsection (2) to waiver filing fees for reviews for disadvantaged groups.
45. **Clause 39** of the Bill contains the proposal to amend section 172 of the Act to introduce further grounds for debarment.
46. **Clause 40** of the Bill contains the proposal to amend section 173 of the Act by deleting paragraph (c) to cure the anomaly of procurement decision making being a function of a procuring entity.
47. **Clause 41** of the Bill seeks to amend section 176 of the Act for proper referencing.
48. The Bill does not delegate legislative power or limit any fundamental rights or freedoms.
49. The Bill does not affect the functions of county governments within the meaning of Article 110 of the Constitution and is therefore a Bill concerning counties for purposes of the Standing Orders.
50. Enactment of this Bill shall not occasion additional expenditure of public funds.

PART III

3 PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION

51. Following the call for memoranda from the public through the placement of adverts in the print media on 7th September 2021, the Committee received memoranda from the following stakeholders:
- i. Kenya Institute of Supplies Management (KISM); and
 - ii. Gerivia Advocates LLP

The stakeholders submitted as follows:

3.1 KENYA INSTITUTE OF SUPPLIES MANAGEMENT (KISM)

In their memorandum, Ref: KISM.2021/2394 dated 20th September 2021, KISM proposed the following amendments to the Bill THAT—

52. The proposed amendment to Section 2 be deleted since it alters the definition of “*procurement professional*” to include other supply chain professionals who are not members of the Institute. This amendment poses several challenges because there is a likelihood of ending up with supply chain management practitioners in Kenya who are not answerable to anyone. This means that practitioners who are not registered by any professional body shall not be obligated to undertake any examinations or engage in continuous professional development and are not subject to any disciplinary regime, currently set out at Sections 15, 16 and 17 of the Act. Further, this parallel regime will create a grave challenge to employers, who are presently required in Sections 29 and 32 of the Act, to only employ persons licensed by the Institute and contravention whereof attracts criminal sanction.

Committee’s Comment

The Committee agreed with the comments made by KISM. The Committee therefore proposed deletion of the definition of the term procurement professional to ensure that the procurement professionals are regulated by one body to ensure standards are maintained.

53. The Institute has been established on two fundamental predications, first that it is a membership organization for supply chain management professionals in Kenya, and second, that all supply chain management professionals shall submit, without exception, to the regulatory regime set out in the Act in terms of registration, examination, licensing and discipline. The proposed amendment has the net effect of establishing parallel regulatory frameworks for supply chain management professionals in Kenya. Like the legal practitioners regulated by the Law Society of Kenya Act, the procurement professionals must also be subject to the one regulatory regime. Similarly, the accountants are under the single regulatory regime pursuant to the Accountants Act, 2008.

Committee’s comment

The Committee agreed with the observations made by the stakeholder and therefore the proposed amendment was deleted. The proposed amendment will negate the functions of the KISM as provided for in the Supplies Practitioners Management Act, 2007.

54. Clause 3 of the Bill seeking to amend Section 7 of the PPADA, 2015 be deleted since the mandate of training and standards and quality control regime is vested in the Institute as per Section 5 of the Act. As such, the proposed amendment will establish double training and standard and quality control regimes for supply chain management professionals. Equally, the Public Procurement Regulatory Authority is also obligated to ensure compliance and enforcement with the procurement procedures. In this case, the National Treasury has no role in training procurement professionals. There is therefore the need to adequately resource the Kenya Institute of Supplies Management to ensure they effectively discharge their mandate of capacity building, training and standards and quality control.

Committee's comment

The Committee agreed with the observations made by the stakeholder and therefore the proposed amendment was deleted.

55. The proposed sub-clause 7 (kb) be deleted because the role of establishing and maintaining the public procurement and asset disposal portal ought to vest in the Public Procurement Regulatory Authority. This is because the Authority is the statutory body mandated to oversee public procurement in the country and is therefore in possession of the requisite data for the portal.

Committee's Comment

The Committee agrees with the comments by KISM and as such proposes to delete the proposal to give additional functions to the National Treasury.

56. Clause 8 seeking to amend Section 41 of the PPADA, 2015 so as to discourage "frivolous claims" be deleted. This is because the issue of frivolous claims is well addressed in Sections 169, 172 and 173 of the PPADA, 2015.
57. Clause 39 seeking to amend Section 172 of the PPADA, 2015 be deleted as it introduces a further ground for debarment of a tenderer who presents a frivolous appeal to the Review Board. The proposed Clause is punitive and may discourage parties from presenting requests for review to the Review Board. In addition, PPADA, 2015 already sets out an elaborate mechanism to deal with frivolous claims, including forfeiture of deposit pegged on the tender sum, a considerable sanction, in or view.

Committees' Comment

The Committee rejected the proposal in paragraphs 57 and 58 above seeking to delete the debarment provision for bidders who file frivolous review requests. There has been a growing number of review requests that are frivolous meant to frustrate the entire procurement process. The amendment is intended to ensure merited review requests are filed for review.

3.2 GERIVIA ADVOCATES LLP

In a memorandum, Ref: GA/GEN/63/JK/2021 dated 21st September 2021, Gerivia Advocates proposed the following amendments to the Bill THAT—

58. Clause 8 of the Bill be deleted since the proposed amendment is likely to scare potential litigants from challenging procurement proceedings. The current powers of the Board under Section 172 of the Act to order forfeiture of the deposit and in Section 173 (d) to order payment of costs are a sufficient remedy. Debarment opens the door for further litigation because a bidder who is debarred under this proposed section would still have a right to appeal this decision to the High Court.

Committees' Comment

The Committee rejected the proposal to delete the debarment provision for bidders who file frivolous review requests. There has been a growing number of review requests that are frivolous meant to frustrate the entire procurement process. The amendment is intended to ensure merited review requests are filed for review.

59. Clause 15 be deleted because PPRA is mandated in Section 9 (m) to create a database of market prices of goods, services and works, benchmarked prices and price comparisons, and Section 54 of the parent Act to issue a quarterly market price index. The PPRA does this in practice and the index is available on its website. Section 9 (m) and 54 of the Act provides for the role of the PPRA and as such the proposed amendment will bring duplicity. The idea of PPRA doing this is also to avoid subjectivity in pricing when multiple entities do the index. There is therefore the need to consider taking the approach of procuring entities utilizing the available information from PPRA or liaising with PPRA to ensure the creation of a comprehensive database in the event that products in their line of work are not covered in PPRA's survey.

Committee's comment

The proposal was rejected as the proposed amendment is intended to ensure the head of procurement function are responsible for carrying out market survey before a decision on any procurement is made.

60. Clause 19 be deleted so as to leave the timelines as provided for in the principal Act. This is because shortening the evaluation period by fixing unrealistic shorter timelines may result in non-compliance with the law. In addition, some tenders are bulky and tender review is a time consuming and labour-intensive exercise.

Committee's comment

Committee agreed to the proposal to retain the timelines as provided for in the principal Act. The reduction in the timelines is likely to compromise procurement processes. Seven (7) days may not be sufficient to carry out the evaluation especially on complex tenders. Inasmuch as the Bill seeks to exempt complex tenders to allow accounting officers to extend the timelines for complex tenders, there is no justification for why the period for tender evaluation should be shortened from thirty (30) to seven (7) days.

61. Clause 24 amending Section 94 (4) of the parent Act (timelines for compilation of bids) be deleted. This is the fourteen (14) days provided for in the Act is a reasonable timeline as it allows bidders sufficient time to submit quality and responsive bids. The fourteen (14) days are also useful in complex tenders where bidders need to form joint ventures or other teaming arrangements that may take time to set up. The law provides for emergency procedures where procurement needs to be undertaken more speedily.

Committee's comment

Committee agreed to the proposed to retain the timelines as provided for in the principal Act. The reduction in the timelines is likely to compromise procurement processes.

62. Clause 32 of the Bill be deleted since the twenty-one (21) days provided for in the Act is an upper limit and as such nothing stops a procuring entity from reviewing the document within seven (7) days if it is able to do so. In addition, there is no justification in creating unrealistic timelines then have to include provisos (126 (3A)) which add extra procedural tasks such as extending deadlines. Also Clause 33 of the Bill in amending Section 135 of the Act be deleted so as to leave the timelines as provided for in the Act.

Committee's comment

Committee agreed with the above comments to retain the timelines as provided for in the principal Act. The reduction in the timelines on the evaluation period is likely to compromise procurement processes. Seven days may be insufficient, resulting in a hurried evaluation process that may compromise the process.

63. Clause 35 be amended further as the proposed amendment presupposes that a procurement contract can be varied anytime. The justification issued for this is that it is meant to cover a variation in terms of quantity which might be occasioned due to unforeseen circumstances. The clause, can be amended in such a way that the one-year cap is only waived where quantity is to be varied. Otherwise, prices should only be varied after one year of signing the contract.

Committee's comment

Committee agreed with the proposal.

64. Clause 39 be deleted as use of debarment to punish bidders who file requests for review which the Review Board deems as frivolous and vexatious, is a disproportionate punishment, especially noting the subjective element in deciding what is frivolous. The current powers of the Board under Section 172 of the Act to order forfeiture of the deposit (once the deposit issue is operationalized) and in Section 173 (d) to order payment of costs are a sufficient remedy.

Committee's comment

Committee rejected the proposal to delete the debarment provision on bidders who file review requests that are frivolous.

PART IV

4 COMMITTEE OBSERVATIONS

In considering the Bill, the Committee observed as follows—

65. The proposed Bill seeks to include other persons that are not regulated under the Kenya Institute of Supplies Management (KISM) which is a statutory body established by the Supplies Practitioners Management Act, No.17 of 2007 to be referred to as procurement professionals. The mandate to regulate the practice of procurement and supply chain management in Kenya is vested with KISM. The Supplies Practitioners Management Act, No.17 of 2007 provides for training, registration, discipline and licensing of procurement and supply chain management professionals and regulation of their practice.
66. The proposal to reduce the timelines in various stages may affect the quality of procurement processes.
67. The proposal to debar entities that file frivolous review requests at the Review Board is welcome as it will provide a consequence for numerous review requests that are not merited and in effect, speed up procurement processes.
68. The Bill introduces a provision for instances where a procuring entity lacks the capacity to comply with any provision of the Act, the National Treasury is mandated to ensure it offers assistance. This amendment is welcome especially in the case of county governments that may not have the capacity and systems to implement the Act.
69. The Bill seeks to obligate the head of procurement function to carry out market surveys before making a procurement decision will guard against inflation of prices.

PART V

5 COMMITTEE RECOMMENDATION

The Committee having considered the Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 32 of 2021) recommends that the House **approves the Bill with amendments** as proposed in the schedule in Part IV.

PART VI

6 SCHEDULE OF PROPOSED AMENDMENTS

The Committee proposed the following amendments to be considered by the House in the Committee Stage:

CLAUSE 2

70. **THAT**, the Bill be amended in clause 2 by deleting paragraph (a).

Justification

The amendment is to ensure that only persons regulated under the Kenya Institute of Supplies Management established under the Supplies Practitioners Management Act, 2007 are referred to as procurement professionals to ensure that the Institute is given powers to regulate its members. The legal practitioners are regulated under the Law Society of Kenya and the Accountants under the Institute of Certified Public Accountants of Kenya.

CLAUSE 3

71. **THAT**, the Bill be amended by deleting clause 3.

Justification

The role of developing, promoting capacity development of the procurement professional should vest in the Authority and not with the National Treasury. In addition, the function of managing the state portal on procurement and asset disposal should be done by the Public Procurement Regulatory Authority and not National Treasury.

CLAUSE 4

72. **THAT**, the bill be amended in clause 4 by deleting paragraph (a).

Justification

The amendment is a consequential amendment as a result of the deletion of clause 3. The amendment is intended to retain the function of developing and managing the state portal on procurement and asset disposal with the Public Procurement Regulatory Authority

CLAUSE 19

73. **THAT**, the Bill be amended in clause 19 by deleting paragraph (b) and (c).

Justification

Retain the evaluation period as provided in the principal Act at within a maximum of thirty days.

CLAUSE 24

74. **THAT**, the Bill be amended by deleting clause 24.

Justification

The amendment is intended to retain the pre-qualification period as provided in the principal Act of at least fourteen (14) days for candidates to prepare and submit applications to be pre-qualified. Seven days is insufficient.

CLAUSE 32

75. **THAT**, the Bill be amended by deleting clause 32.

Justification

Retain the timelines as in the principal Act. The reduction of the timelines within which evaluation shall be carried out from twenty-one to seven days will affect the procurement as seven days is too short to carry out a proper evaluation.

CLAUSE 33

76. **THAT**, the Bill be amended by deleting clause 33.

Justification

Retain the timelines as in the principal Act. The amendment relates to the timeline within which a written contract shall be entered into.

CLAUSE 35

77. **THAT**, the Bill be amended by deleting clause 35 and substituting therefor the following new clause 35-

35. Section 139 of the principal Act is amended in subsection (4) by deleting the words "any variation of a contract shall only be considered after twelve month from the date of signing the contract" and substituting therefor the words "a variation of a contract shall be considered at any time, in the case of a quantity variation or shall only be considered after twelve months from the date of signing of the contract, in the case of a price variation".

Justification

Retain the timelines as in the principal Act

CLAUSE 37

78. **THAT**, the Bill be amended in clause 37 by deleting paragraph (a).

Justification

Retain the timelines as in the principal Act

CLAUSE 40

79. **THAT**, the Bill be amended by deleting clause 40.

Justification: The Bill sought to introduce an amendment that if the Court delays in making a determination on any decision of the Public Procurement Review Board, the decision of the Board will take effect. This amendment may not be necessary since there is already a timeline provided within which the Court should make a determination.

SIGNED..... DATE 23/11/2021

HON. GLADYS WANGA, CBS, MP
CHAIRPERSON

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 32 OF 2021)

The report on the consideration of the Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 32 of 2021) was adopted by the Committee on Monday, 22nd November 2021 having been proposed and seconded by Hon. Catherine Waruguru, M.P. and Hon. Daniel Nanok, M.P. respectively. The following Members acceded to the recommendations proposed in the report to be considered during the Committee Stage having been present in the meeting:

- | | | |
|---|---|-------------------------|
| 1. Hon. Gladys Wanga, CBS, M.P. | - | Chairperson |
| 2. Hon. Isaac Waihenya Ndirangu, M.P. | - | Vice-Chairperson |
| 3. Hon. Jimmy Angwenyi, MGH, M.P. | | |
| 4. Hon. Christopher Omulele, CBS, M.P. | | |
| 5. Hon. Shakeel Shabbir Ahmed, CBS, M.P. | | |
| 6. Hon. Daniel Nanok, M.P. | | |
| 7. Hon. (Dr.) Christine Ombaka, M.P. | | |
| 8. Hon. Andrew Okuome, M.P. | | |
| 9. Hon. Francis Kimani, M.P. | | |
| 10. Hon. Joseph Oyula, M.P. | | |
| 11. Hon. Joshua Kandie, M.P. | | |
| 12. Hon. Catherine Waruguru, M.P. | | |
| 13. Hon. James Gichuhi Mwangi, M.P. | | |
| 14. Hon. (Prof.) Mohamud Sheikh Mohamed, M.P. | | |

**MINUTES OF THE 85TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE AND NATIONAL PLANNING HELD IN VIRTUALLY ON MONDAY, 22ND
NOVEMBER 2021 AT 10:00 A.M.**

PRESENT

- | | | |
|---|---|-------------------------|
| 1. Hon. Gladys Wanga, CBS, MP | - | Chairperson |
| 2. Hon. Isaac W. Ndirangu, MP | - | Vice Chairperson |
| 3. Hon. Jimmy O. Angwenyi, MGH, MP | | |
| 4. Hon. Christopher Omulele, CBS, MP | | |
| 5. Hon. Shakeel Shabbir Ahmed, CBS, MP | | |
| 6. Hon. Daniel E. Nanok, MP | | |
| 7. Hon. (Dr.) Christine Ombaka, MP | | |
| 8. Hon. Andrew A. Okuome, MP | | |
| 9. Hon. Francis K. Kimani, MP | | |
| 10. Hon. Joseph M. Oyula, MP | | |
| 11. Hon. Catherine Waruguru, MP | | |
| 12. Hon. James Gichuhi Mwangi, MP | | |
| 13. Hon. (Prof.) Mohamud Sheikh Mohamed, MP | | |
| 14. Hon. Joshua C. Kandie, MP | | |

ABSENT WITH APOLOGY

1. Hon. David M. Mboni, MP
2. Hon. Stanley M. Muthama, MP
3. Hon. Edith Nyenze, MP
4. Hon. Peter Lochakapong, MP
5. Hon. Qalicha Gufu Wario, MP

IN ATTENDANCE

SECRETARIAT

- | | | |
|------------------------|---|--|
| 1. Ms. Leah Mwaura | - | Senior Clerk Assistant/Head of Secretariat |
| 2. Ms. Jennifer Ndeto | - | Principal Legal Counsel I |
| 3. Ms. Laureen Wesonga | - | Clerk Assistant II |
| 4. Mr. Josephat Motonu | - | Senior Fiscal Analyst |
| 5. Mr. Mark Mbuthia | - | Audio Officer |
| 6. Ms. Hannah Mwangi | - | Intern |

AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes from the previous sitting(s) and Matters Arising
4. **Clause by clause consideration and adoption of reports of the following Bills:**
 - i. **Senate Amendments to the Public Private Partnerships Bill, 2021;**
 - ii. **The Asian Widows' and Orphans' Pensions (Repeal) Bill, 2021;**
 - iii. **The Provident Fund (Repeal) Bill, 2021;**
 - iv. **The Public Procurement and Asset Disposal (Amendment) Bill, 2021; and**
 - v. **The Public Procurement and Asset Disposal (Amendment) (No. 2) Bill, 2021**
5. Any Other Business
6. Adjournment/Date of Next Meeting

MIN.NO.NA/F&NP/2021/398: COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 10:27 a.m. and a prayer was said. The Chairperson welcomed the meeting to deliberate on the day's agenda.

MIN.NO.NA/F&NP/2021/399: CONFIRMATION OF MINUTES
Agenda deferred

MIN.NO.NA/F&NP/2021/400: CLAUSE BY CLAUSE CONSIDERATION AND ADOPTION OF THE REPORT OF THE SENATE AMENDMENTS TO THE PUBLIC PRIVATE PARTNERSHIPS BILL, 2021

Members observed that Senate amendments to the Public Private Partnerships Bill, 2021 added value to the amendments passed by the National Assembly. The Committee therefore resolved as follows on the Senate amendments:

1. **Clause 6:** Agreed to
2. **Clause 33:** Agreed to
3. **Clause 75:** Agreed to
4. **New Clauses:** Agreed to

The Committee adopted the report on the consideration of the Public Private Partnerships Bill, 2021 having been proposed by Hon. Joseph Oyula, MP and seconded by Hon. (Dr.) Christine Ombaka, MP.

MIN.NO.NA/F&NP/2021/401: CLAUSE BY CLAUSE CONSIDERATION AND ADOPTION OF THE REPORT OF THE ASIAN WIDOWS' AND ORPHANS PENSIONS (REPEAL) BILL, 2021

The Committee deliberated on the amendments proposed in the Bill and resolved as follows:

1. **Clause 1:** Agreed to
2. **Clause 2:** Agreed to
3. **Clause 3:** Agreed to
4. **Clause 4**

Amend by inserting a new paragraph (f) providing for the final auditing of the accounts.

The Committee adopted the report on the consideration of the Asian Widows' and Orphans' Pensions (Repeal) Bill, 2021 having been proposed by Hon. Shakeel Shabbir, CBS, MP and seconded by Hon. Joseph Oyula, MP.

MIN.NO.NA/F&NP/2021/402: CLAUSE BY CLAUSE CONSIDERATION AND ADOPTION OF THE REPORT OF THE PROVIDENT FUND (REPEAL) BILL, 2021

The Committee deliberated on the amendments proposed in the Bill and resolved as follows:

1. **Clause 1:** Agreed to
2. **Clause 2:** Agreed to
3. **Clause 3:** Agreed to
4. **Clause 4**

Amend by inserting a new paragraph (f) providing for the final auditing of the accounts.

The Committee adopted the report on the consideration of the Provident Fund (Repeal) Bill, 2021 having been proposed by Hon. (Dr.) Christine Ombaka, MP and seconded by Hon. Joshua Kandie, MP.

CLAUSE BY CLAUSE CONSIDERATION
AND ADOPTION OF THE REPORT OF THE
PUBLIC PROCUREMENT AND ASSET
DISPOSAL (AMENDMENT) BILL (N.A. BILL
NO. 32 OF 2021)

The Committee deliberated on the amendments proposed in the Bill and resolved as follows:

1. **Clause 1:** Agreed to
2. **Clause 2:** Delete paragraph (a)
3. **Clause 3:** Delete
4. **Clause 4:** Delete
5. **Clause 5:** Agreed to
6. **Clause 6:** Agreed to
7. **Clause 7:** Agreed to
8. **Clause 8:** Agreed to
9. **Clause 9:** Agreed to
10. **Clause 10:** Agreed to
11. **Clause 11:** Agreed to
12. **Clause 12:** Agreed to
13. **Clause 13:** Agreed to
14. **Clause 14:** Agreed to
15. **Clause 15:** Agreed to
16. **Clause 16:** Agreed to
17. **Clause 17:** Agreed to
18. **Clause 18:** Agreed to
19. **Clause 19:** Delete paragraphs (b) and (c)
20. **Clause 20:** Agreed to
21. **Clause 21:** Agreed to
22. **Clause 22:** Agreed to
23. **Clause 23:** Agreed to
24. **Clause 24:** Delete
25. **Clause 25:** Agreed to
26. **Clause 26:** Agreed to
27. **Clause 27:** Agreed to
28. **Clause 28:** Agreed to
29. **Clause 29:** Agreed to
30. **Clause 30:** Agreed to
31. **Clause 31:** Agreed to
32. **Clause 32:** Delete
33. **Clause 33:** Delete
34. **Clause 34:** Agreed to
35. **Clause 35:** Delete and substitute with the following paragraph; *"Section 139 of the principal Act is amended in subsection (4) by deleting the words "any variation of a contract shall only be considered after twelve month from the date of signing the contract" and substituting therefor the words "a variation of a contract shall be considered at any time, in the case of a quantity variation or shall only be considered after twelve months from the date of signing of the contract, in the case of a price variation".*
36. **Clause 36:** Agreed to
37. **Clause 37:** Delete paragraph (a)
38. **Clause 38:** Agreed to

- 39. **Clause 39:** Agreed to
- 40. **Clause 40:** Delete
- 41. **Clause 41:** Agreed to
- 42. **Clause 42:** Agreed to
- 43. **Clause 43:** Agreed to
- 44. **Clause 44:** Agreed to

The Committee adopted the report on the consideration of the Public Procurement and Asset Disposal (Amendment) Bill (N.A. Bill No. 32 of 2021) having been proposed by Hon. Catherine Waruguru, MP and seconded by Hon. Daniel Nanok, MP.

MIN.NO.NA/F&NP/2021/404:

**CLAUSE BY CLAUSE CONSIDERATION
AND ADOPTION OF THE REPORT OF THE
PUBLIC PROCUREMENT AND ASSET
DISPOSAL (AMENDMENT) (NO. 2) BILL
(N.A. BILL NO. 36 OF 2021)**

The Committee deliberated on the amendments proposed in the Bill and resolved as follows:

- 1. **Clause 1:** Agreed to
- 2. **Clause 2:** Delete
- 3. **Clause 3:** Agreed to
- 4. **Clause 4:** Delete
- 5. **Clause 5:** Agreed to
- 6. **Clause 6:** Agreed to
- 7. **Clause 7:** Agreed to
- 8. **Clause 8**
 - a. Amend paragraph (1) by deleting the word "*business*".
 - b. Amend paragraph 2(a) by deleting the words "*twenty-four*" and substituting with the words "*forty-eight*".
- 9. **Clause 9:** Delete

The Committee adopted the report on the consideration of the Public Procurement and Asset Disposal (Amendment) (No. 2) Bill (N.A. Bill No. 36 of 2021) having been proposed by Hon. Joseph Oyula MP and seconded Hon. (Dr.) Christine Ombaka, MP.

MIN.NO.NA/F&NP/2021/405:

**ADJOURNMENT/DATE OF NEXT
MEETING**

There being no other business to deliberate on, the meeting adjourned at 1.06 p.m. The next meeting will be on Tuesday, 23rd November 2021 at 10.00a.m.

HON. GLADYS WANGA, CBS, MP
(CHAIRPERSON)

SIGNED.....

DATE.....

23/11/2021



**THE STANDARD SACCO
SOCIETY LIMITED**
Umoja ni Nguvu

EXPRESSION OF INTEREST

SUPPLY, DELIVERY, TRAINING, IMPLEMENTATION AND COMMISSIONING OF SACCO MANAGEMENT SYSTEM

The Standard Sacco Society Limited, a duly registered Sacco, with its head office at The Standard Group Centre along Mombasa Road with over 700 members intends to invite expression of interest for the Supply, Delivery, Training, Implementation and Commissioning of a SACCO Financial Management System from suitably qualified interested bidders.

1. Objective

To have a reliable SACCO Management System that will maintain the members register, monitor and keep records of members' savings, loans, withdrawals, deposits and reporting.

2. Scope of Work

The successful bidder will be expected to provide technical and system support of the system, but not limited to:

- Effective access and security controls over records with an unalterable history/audit trail.
- Working closely with the sacco secretariat in the development, testing and deployment of the application software and subsequent maintenance of the system.
- Deployment of qualified and experienced personnel for the above tasks.
- Deployment of qualified staff to train office SACCO personnel.
- Compliance with SASRA regulations on NDT Saccos

3. Mandatory Requirement

- Company profile, registration, regulatory and compliance certificates.
- Evidence of capability to successful implementation of sacco financial management system by providing CVs of key personnel.
- Provide a technical approach and work plan to support the implementation of the system.
- EOIs will be assessed against the Vendor's capability of meeting the above outlined objectives and the information documents set out under Clauses 1 and 2 above.
- Evidence of implementation of a sacco financial system of similar scope in the past three years (certified references will be an added advantage)
- Copies of certified audited accounts for the last three years

Application process

Physical applications can be hand delivered to the Sacco offices at The Standard Group Centre, along Mombasa Road or emailed to ssacco@standardmedia.co.ke.

The applications to be addressed as 'The Standard Sacco Financial Management System 2021' to

The Sacco Accountant
The Standard Sacco Society Limited
P.O. Box 30080-00100
NAIROBI

The Sacco reserves the right to accept or reject the expression of interest without reasons.

Deadline for submission is 5.00 pm on Tuesday, 21st September 2021.

Acquire Verified bulk produce hassle free!

Introducing **VUUNA**, the wholesale marketplace for fresh produce, a joint project by **Standard Group's FarmKenya and AGIN** for wholesale buyers looking for stable bulk supply of agricultural commodities!

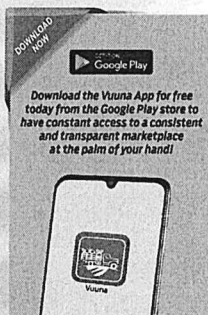


Vuuna Market connects wholesale buyers to a network of reliable bulking centers countrywide, with benefits including:

- ✓ Better prices
- ✓ Guaranteed quality for agricultural commodities bought.
- ✓ Ability to stabilize market prices of sold commodities.
- ✓ Provision of information (prices listed on www.vuuna.co.ke)
- ✓ Standardized weights and measures for produce.

If you are a farmer looking to supply your produce at competitive prices, you can get in touch with the closest bulking center near you by emailing us on farmkenya@standardmedia.co.ke

FarmKenya. Working to secure your growth.



#FarmKenya

STANDARD GROUP

farmkenya

AGIN



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY TWELFTH PARLIAMENT - FIFTH SESSION

In the Matter of Article 118(1) (b) of the Constitution
and
In the Matter of Consideration by National Assembly of:-

1. The Sustainable Waste Management Bill, 2021 (National Assembly Bill No. 22 of 2021)
2. The National Disaster Risk Management Bill, 2021 (National Assembly Bill No. 28 of 2021)
3. The Public Procurement and Asset Disposal (Amendment) Bill 2021 (National Assembly Bill No. 32 of 2021)
4. The Universities (Amendment) Bill, 2021 (National Assembly Bill No. 35 of 2021)
5. The Public Procurement and Asset Disposal (Amendment) Bill, 2021 (National Assembly Bill No. 36 of 2021)

PUBLIC PARTICIPATION (SUBMISSION OF MEMORANDA)

Pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3) of the National Assembly Standing Orders, the Clerk of the National Assembly hereby invites members of the public and relevant stakeholders to submit memoranda on the Bills.

The Sustainable Waste Management Bill, (National Assembly Bill No. 22 of 2021) Sponsored by the Hon. (Dr) Amos Kimunya, E.G.H, M.P. Leader of the Majority Party seeks to establish the legal and institutional framework for the sustainable management of waste; ensure the realization of the constitutional provision on the right to a clean and health environment and for connected purposes.

The National Disaster Risk Management Bill (National Assembly Bill No. 28 of 2021) Sponsored by the Hon. (Dr) Amos Kimunya, E.G.H, M.P. Leader of the Majority Party seeks to establish the National Disaster Risk Management Authority and County Disaster Management Committees, to provide a legal framework for the coordination of disaster risk management activities and for connected purposes.

The Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 32 of 2021) Sponsored by the Hon. (Dr) Amos Kimunya, E.G.H, M.P. Leader of the Majority Party seeks to amend the Public Procurement and Asset Disposal Act to address the challenges faced by procuring entities in implementing the Act including the multiple awards of contracts in the wake of sections 82 and 86 of the Act.

The Universities (Amendment) Bill (National Assembly Bill No. 35 of 2021) Sponsored by the Hon. (Dr) Amos Kimunya, E.G.H, M.P. Leader of the Majority Party seeks to amend the Universities Act in the provisions relating to the appointment of the members of University Councils, and the governance of universities and also to make new provisions with respect to the Universities Fund.

The Public Procurement and Asset Disposal (Amendment), Bill (No.2)(National Assembly Bill No. 36 of 2021) sponsored by Hon. Gladys Wanga, CBS, M.P. Chairperson, Departmental Committee on Finance & National Planning seeks to amend the Public Procurement and Asset Disposal Act, 2015 to subject the open tender method of procurement to a two-envelope bid process.

The Bill further seeks to amend the maximum prescribed period for evaluation of open tender from the current thirty (30) days to thirty business days, and to waive requirements on bidders to provide evidence of compliance with tender criteria to reduce the current reliance on technicalities to disqualify bidders during tender evaluation.

The Bills were Read a First Time on 1st September 2021 and Pursuant to Standing Order 127(1) of the National Assembly Standing Orders, committed to Departmental Committees of the National Assembly as set out in the schedule hereunder:

SCHEDULE

No.	Bill	Committee
1.	The Sustainable Waste Management Bill, 2021 (National Assembly Bill No.22 of 2021)	Environment and Natural Resources
2.	The National Disaster Risk Management Bill, 2021 (National Assembly Bill No. 28 of 2021)	Administration and National Security
3.	The Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 32 Of 2021)	Finance and National Planning
4.	The Universities (Amendment) Bill, 2021 (National Assembly Bill No. 35 of 2021)	Education and Research
5.	The Public Procurement and Disposal (Amendment) Bill No.2 (National Assembly Bill No.36 of 2021)	Finance and National Planning

Copies of the Bills are available at the National Assembly Table Office, or on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda may be addressed to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Tuesday 21st September, 2021 at 5.00 p.m.

**MICHAEL R. SIALAI, CBS
CLERK OF THE NATIONAL ASSEMBLY
6th September 2021**

