THE PUBLIC PROCUREMENT AND DISPOSAL
(AMENDMENT) BILL, 2012

A Bill for

AN ACT of Parliament to amend the Public Procurement and Disposal Act and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Public Procurement and Disposal (Amendment) Act, 2012.

2. The Public Procurement and Disposal Act is amended in section 95 by—

(a) numbering the existing provision as subsection (1);

(b) inserting the following new subsections immediately after the renumbered subsection (1)—

(2) The Review Board shall, upon making an order dismissing a request for review under subsection (1), order the person making the request to pay for the costs of the request.

(3) A person in whose favour an order for costs is made under subsection (2) may apply to the High Court for taxation of the costs and such costs shall be taxed in accordance with the rules and the scale set out in the Sixth Schedule to the Advocates (Remuneration) Order.

(4) The decision of the High Court on an application under subsection (3) shall be subject to the rules on review and appeal set out in the Advocates Act.
MEMORANDUM OF OBJECTS AND REASONS

The main object of this Bill is to promote the expeditious conduct of public procurement and disposal processes, which processes have been blamed for inefficiencies in the delivery of public services, by discouraging the lodging of frivolous or vexatious requests for administrative review by unsuccessful candidates. At present, a candidate who lodges a frivolous and vexatious request for administrative review, or who makes such a request for the sole purpose of delaying the procurement proceedings or the procurement, is able to achieve his or her purposes and therefore benefit from his or her misconduct, because there are no consequences upon the dismissal of such a request.

This Bill proposes to amend the law in order to require the Public Procurement Administrative Review Board, if it arrives at a decision to dismiss a request for administrative review on the basis that the request is frivolous and vexatious, or is made for the sole purpose of delaying the procurement proceedings or the procurement, to make an additional order requiring the person who made the request to pay costs. It is further proposed that such costs are to be taxed in the High Court in accordance with the Advocates (Remuneration) Order and that the decision thereon be subject to the rules on review and appeal provided for in the Advocates Act.

The enactment of this Bill shall not entail additional expenditure of public funds.

Dated the 25th July, 2012.

JOHN OLAGO ALUOCH,
Member of Parliament.