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**SENATE BILLS, 2021**

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**THE PUBLIC PROCUREMENT AND ASSET  
DISPOSAL (AMENDMENT) BILL, 2021**

**A Bill for**

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

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

**1.** This Act may be cited as the Public Procurement and Asset Disposal (Amendment) Act, 2021.

Short title.

**2.** Section 2 of the Public Procurement and Asset Disposal Act (hereinafter referred to as the “principal Act”) is amended—

Amendment of section 2 of No. 33 of 2015.

(a) in the definition of “procurement profession”, by deleting the words “established under the Supplies Practitioners Management Act, 2007” and substituting therefor the words “or any other supply chain professional body”;

(b) by inserting the following new definition in its proper alphabetical sequence—

“local contractor” means a person or a firm registered in Kenya under the Companies Act, 2015 or any other written law and whose operation is based in Kenya;

No. 17 of 2015.

**3.** Section 7 of the “principal Act” is amended in subsection (2) by inserting the following new paragraphs immediately after paragraph (k) —

Amendment of section 7 of No. 33 of 2015.

(ka) develop, promote and support the training and capacity development for procurement and supply chain management services cadre at the national and county level;

(kb) develop and manage the state portal on procurement and asset disposal and ensure that it is available and easily accessible;

**4.** Section 9 of the “principal Act” is amended in subsection (1) —

Amendment of section 9 of No. 33 of 2015.

(a) by deleting paragraph (k); and

(b) by inserting the following new paragraph immediately after paragraph (r) —

“(ra) develop, promote and support the training

and capacity development of persons involved in procurement and asset disposal;”

5. Section 26 of the “principal Act” is amended in subsection (6) by deleting the word “draft” and substituting therefor the word “annual”. Amendment of section 26 of No. 33 of 2015.

6. Section 39 of the “principal Act” is amended by deleting the word “Board” and substituting therefor the words “Director-General”. Amendment of section 39 of No. 33 of 2015.

7. Section 40 of the “principal Act” is amended in subsection (2) by deleting the word “Board” and substituting therefor the words “Director-General”. Amendment of section 40 of No. 33 of 2015.

8. Section 41 of the “principal Act” is amended in subsection (1) by adding the following new paragraph immediately after paragraph (i)— Amendment of section 41 of No. 33 of 2015.

“(j) is determined by the Review Board to have filed a request that is frivolous or vexatious or was made solely for the purpose of delaying the procurement proceeding or a performance of a contract”.

9. The “principal Act” is amended by inserting the following new section immediately after section 43— Insertion of a new section 43A.

Authority to enter premises.

**43A.** (1) When conducting investigations, inspections, assessments and reviews relating to contracts, procurement and asset disposal proceedings, anyone authorized by the Authority may enter any premises of a procuring entity, at a reasonable time and inspect the premises to make any inquiries that may be necessary for the collection of information.

(2) Where an authorized person is refused entry or is prevented from entering premises, a magistrate may, on application by the Authority, issue a warrant authorizing the Police to enter the premises, using such force as may be reasonably necessary and to conduct the search and obtain the required information.

10. Section 44 of the “principal Act” is amended by Amendment of section 44

adding the following new subsection immediately after subsection (4)— of No. 33 of 2015.

“(5) Where a public entity lacks capacity to comply with this Act, an accounting officer shall seek assistance from the National Treasury”.

**11.** Section 46 of the “principal Act” is amended—

Amendment of section 46 of No. 33 of 2015.

(a) in subsection (4), by deleting paragraph (c) and substituting the following paragraph—

“(c) have as its secretary, the person in charge of the procurement function or an officer from the procurement function appointed, in writing, by the head of procurement function”.

(b) by deleting subsection (6).

**12.** Section 48 of the “principal Act” is amended in subsection (2) by deleting the words “procuring unit” and substituting therefor the words “head of procurement function”.

Amendment of section 48 of No. 33 of 2015.

**13.** Section 51 of the “principal Act” is amended in subsection (2) paragraph (b) by deleting the words “procurement and disposal unit” and substituting therefor the words “procurement function”.

Amendment of section 51 of No. 33 of 2015.

**14.** Section 53 of the “principal Act” is amended by adding the following new subsections immediately after subsection (11)—

Amendment of section 53 of No. 33 of 2015.

(12) Upon submission of the procurement plans to the National Treasury pursuant to section 44(2)(c) of this Act, the accounting officer of a procuring entity shall publish and publicize its approved procurement plan as invitation to treat on its website.

(13) On receipt of the procurement plans submitted by the procuring entities, the National Treasury shall publish and publicize the procurement plans as invitation to treat on the state tender portal.

**15.** Section 54 of the “principal Act” is amended by inserting the following new subsection immediately after subsection (2)—

Amendment of section 54 of No. 33 of 2015.

“(2A) The head of procurement function shall

carry out market survey(s) to inform the placing of orders or decision making on a procurement by the relevant awarding Authority”.

**16.** Section 67 of the “principal Act” is amended—

Amendment of  
section 67  
of No. 33 of 2015.

- (a) in subsection (4), by deleting the expression “section 67(2)(d)(iii)” and substituting therefor the expression “section 68(2)(d)(iii)”; and
- (b) in subsection (5), by deleting the expression “section 177(1)(f)” and substituting therefor the expression “section 176(1)(f)”.

**17.** Section 69 of the “principal Act” is amended by adding the words “and delegation of responsibility” immediately after the words “procurement approvals” appearing in the marginal notes.

Amendment of  
section 69  
of No. 33 of 2015.

**18.** Section 71 of the “principal Act” is amended in subsection (3) by deleting the word “tenderer” and substituting therefor the words “procuring entity”.

Amendment of  
section 71  
of No. 33 of 2015.

**19.** Section 80 of the “principal Act” is amended—

Amendment of  
section 80  
of No. 33 of 2015.

- (a) in subsection (1), by deleting the expression “under section 82(3)”; and
- (b) in subsection (6), by deleting the words “thirty days” and substituting therefor the words “seven days”; and
- (c) by adding the following new subsection immediately after subsection (7) —

“(8) Where a tender is complex or has attracted high number of tenderers, the accounting officer may extend the tender evaluation period once for a further period not exceeding seven days”.

**20.** Section 89 of the “principal Act” is amended in paragraph (b), by deleting the expression “section 118(2)” and substituting therefor the expression “section 118(1)”.

Amendment of  
section 89  
of No. 33 of 2015.

**21.** Section 92 of the “principal Act” is amended—

Amendment of  
section 92  
of No. 33 of 2015.

- (a) by re-numbering section 92 as section 92(1); and
- (b) by adding the following new subsection

immediately after section 92—

“(2) The procedure for Competitive Negotiations set out in sections 131, 132 and 133 of this Act shall, apply *mutatis mutandis* to procurements of goods, works and non-consultancy services”.

**22.** Section 94 of the “principal Act” is amended in subsection (4) by deleting the words “fourteen days” and substituting therefor the words “seven days”.

Amendment of section 94 of No. 33 of 2015.

**23.** Section 96 of the “principal Act” is amended—

Amendment of section 96 of No. 33 of 2015.

(a) in subsection (2), by adding the following words at the end of the sentence—

“or a notice in at least two free to air television stations and two radio stations of national reach”.

(b) in subsection (4), by adding the following words at the end of the sentence—

“or a notice in at least two free to air television stations and two radio stations of national reach”.

**24.** Section 98 of the “principal Act” is amended in subsection (1) by deleting the word “and” appearing immediately after the word “documents”.

Amendment of section 98 of No. 33 of 2015.

**25.** Section 114 of the “principal Act” is amended in subsection (6) by deleting the words “procurement management unit” and substituting therefor the words “procurement function”.

Amendment of section 114 of No. 33 of 2015.

**26.** Section 117 of the “principal Act” is amended—

Amendment of section 117 of No. 33 of 2015.

(a) in paragraph (a), by deleting the expression “section 74” and substituting therefor the expression “section 73”; and

(b) by deleting the marginal note and substituting therefor the words “initiation of procurement”.

**27.** Section 119 of the “principal Act” is amended in subsection (1) by deleting the word “may” and substituting therefor the word “shall”.

Amendment of section 119 of No. 33 of 2015.

**28.** Section 121 of the “principal Act” is amended—

Amendment of section 121 of No. 33 of 2015.

(a) in subsection (1), by deleting the words “accounting officer of a procuring entity” and substituting therefor the words “evaluation committee”.

(b) by adding the following new subsection immediately after subsection (4)—

“(5) Notwithstanding provisions of subsection (3), where a repeat process fails to yield the requisite numbers of qualified candidates, the procuring entity shall proceed with the subject procurement and make a report to the Authority”.

**29.** Section 124 of the “principal Act” is amended—

Amendment of  
section 124  
of No. 33 of 2015.

(a) by deleting subsection (14);

(b) in subsection (15), by deleting the words “for approval” and substituting therefor the words “within fourteen days”; and

(c) by adding the following new subsection immediately after subsection (15)—

“(16) The Authority shall issue written directions and guidelines governing the reporting requirements for use of alternative selection methods by the accounting officers of procuring entities”.

**30.** Section 126 of the “principal Act” is amended—

Amendment of  
section 126  
of No. 33 of 2015.

(a) in subsection (3), by deleting the words “twenty-one days” and substituting therefor the words “seven days”.

(b) by inserting the following new subsection immediately after subsection (3) —

“(3A) Where subject procurement is complex or has attracted a high number of tenderers, the accounting officer may extend the tender evaluation period once for a further period not exceeding seven days”.

**31.** Section 135 of the “principal Act” is amended—

Amendment of  
section 135  
of No. 33 of 2015.

- (a) in subsection (3), by deleting the words “fourteen days” and substituting therefor the words “seven days”; and
- (b) by deleting subsection (4).

**32.** Section 138 of the “principal Act” is amended by deleting subsection (5) and substituting therefor the following subsection—

Amendment of section 138 of No. 33 of 2015.

“(5) This section shall not apply to procurement contracts awarded by the national security organs through classified procurement methods and procedures provided for under Part VIII”.

**33.** Section 139 of the “principal Act” is amended in subsection (4) by deleting the words “after twelve months from the date of signing the contract and shall only be considered”.

Amendment of section 139 of No. 33 of 2015.

**34.** Section 167 of the “principal Act” is amended—

Amendment of section 167 of No. 33 of 2015.

- (a) in subsection (1), by deleting the words “fourteen days” and substituting therefor the words “seven days”;
- (b) by inserting the following proviso immediately after subsection (2) —

“Provided that this shall not apply to tenders reserved for women, youth, persons with disabilities and other disadvantaged groups”.
- (c) in subsection (4) paragraph (b), by deleting the expression “section 62” and substituting therefor the expression “section 63”.

**35.** Section 169 of the “principal Act” is amended—

Amendment of section 169 of No. 33 of 2015.

- (a) by re-numbering section 169 as section 169(1); and
- (b) by adding the following new subsection immediately after section 169—

“(2) Notwithstanding the provisions of subsection (1), filing fees for review by candidates under reserved procurements for women, youth, persons with disabilities and other



disadvantaged groups may be waived by the secretary or where required fees shall be as prescribed”.

**36.** Section 172 of the “principal Act” is amended by adding the words “and be debarred by the Authority” at the end of the sentence.

Amendment of  
section 172  
of No. 33 of 2015.

**37.** Section 173 of the “principal Act” is amended by deleting paragraph (c).

Amendment of  
section 173  
of No. 33 of 2015.

**38.** Section 176 of the “principal Act” is amended—

Amendment of  
section 176  
of No. 33 of 2015.

- (a) in subsection (1)(e), by deleting the expression “section 76(6)” and substituting therefor the expression “section 77(6)”;
- (b) in subsection (1)(f), by deleting the expression “section 66” and substituting therefor the expression “section 67”; and
- (c) in subsection (1)(h), by deleting the expression “section 60” and substituting therefor the expression “section 54”.

**39.** The First Schedule is amended by deleting paragraph 3.

Amendment of  
the First Schedule  
of No. 33 of 2015.

**40.** The Second Schedule is amended by deleting paragraph 3.

Amendment of  
the Second  
Schedule  
of No. 33 of 2015.

**41.** The Third Schedule is amended—

Amendment of  
the Third  
Schedule  
of No. 33 of 2015.

- (a) in paragraph 2, by deleting the expression “section 66” and substituting therefor the expression “section 67”;
- (b) in paragraph 3(1), by deleting the expression “section 67” and substituting therefor the expression “section 68(2)”;
- (c) in paragraph 3(2), by deleting the expression “section 51(2)” and substituting therefor the expression “section 68(2)”;
- (d) in paragraph 4, by deleting the expression “section 67” and substituting therefor the expression “section 138”.

## **MEMORANDUM OF OBJECTS AND REASONS**

### **Statement of Objects and Reasons**

The purpose of the Bill is to amend the Public Procurement and Asset Disposal Act.

**Clause 1** of the Bill sets out the short title of the proposed Act.

**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, 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 that are registered in Kenya.

**Clause 3** of the Bill proposes to amend section 7 of the Act to address the training and capacity development for professionals involved the supply chain management services cadre at national level.

**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.

**Clause 5** of the Bill proposes to amend section 26 of the Act to clarify that it is the final report and not draft report to be published and publicized.

**Clause 6** of the Bill proposes to amend section 39 of the Act by deleting the word the "Board" and substituting therefor the words "Director-General" 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 Director-General and not the Board.

**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.

**Clause 8** of the Bill contains proposals to amend section 41 of the Act by adding a new paragraph to provide for the provisions to reduce chances of delayed contracts by tenderers.

**Clause 9** of the Bill 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.

**Clause 10** of the Bill 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 capacity to comply with the Act.

**Clause 11** of the Bill proposes to amend section 46 of the Act to allow the head of procurement to delegate the secretarial function. The proposed amendment intends enhance efficiency in delivery of public services and reduce procurement lead time as procuring entities will be able to run multiple procurements/tenders concurrently.

**Clause 12** of the Bill 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.

**Clause 13** of the Bill contains provisions to amend section 51 of the Act to further ensure consistency with the definition of the procurement function.

**Clause 14** of the Bill seeks to amend section 53 of the Act by adding new subsections to enhance transparency in procurement and also to provide potential bidders with information necessary to plan and organize to respond to procurement opportunities. Further to this, 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 which Kenya ascribe to.

**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 a procurement by the relevant awarding authority. The object of this provision is to guard against purchasing standards items at inflated prices.

**Clause 16** of the Bill proposes to amend section 67 of the Act for proper cross-referencing.

**Clause 17** of the Bill proposes to amend the marginal note to section 69 to align with the text.

**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.

**Clause 19** of the Bill seeks to amend section 80 to ensure proper cross-referencing and to 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.

**Clause 20** of the Bill seeks to amend section 89 of the Act for right cross-referencing.

**Clause 21** of the Bill proposes to amend section 92 of the Act by placing Competitive Negotiations solely under Part X of the Act.

**Clause 22** 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-qualifications.

**Clause 23** 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 would wish to participate in tendering process.

**Clause 24** of the Bill seeks to amend section 98 of the Act for clarity.

**Clause 25** of the Bill seeks to amend section 114 of the Act to ensure consistency with the definition of procurement function.

**Clause 26** of the Bill proposes to amend section 117 of the Act to address an incorrect cross-referencing and to harmonize the marginal note with the text.

**Clause 27** of the Bill proposes to amend section 119 of the Act to provide for the preparation of a notice inviting expressions of interest mandatory.

**Clause 28** 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 to this, the proposed new subsection (5) is intended to unlock procurement process that might stall due to failure to elicit requisite number of qualified candidates/ proposals.

**Clause 29** 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 requirement before initiating a procurement process. The Bill also seeks to amend the section by adding a new subsection (16) to uphold the principle

of independence where the regulator, the Authority, should not involve itself in procuring entities' operational matters.

**Clause 30** of the Bill seeks to amend section 126 of the Act to reduce the number of days for evaluation of proposals from 21 days to 7 days. The Bill also introduces a new subsection (3A) to provide for the extension of the tender evaluation period by the accounting officer where subject procurement is complex or has attracted a high number of tenderers.

**Clause 31** 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).

**Clause 32** 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.

**Clause 33** 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.

**Clause 34** 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).

**Clause 35** 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.

**Clause 36** of the Bill contains the proposal to amend section 172 of the Act to introduce further grounds for debarment.

**Clause 37** 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.

**Clause 38** of the Bill seeks to amend section 176 of the Act for proper referencing.

**Clause 39** of the Bill seeks to amend the First Schedule by deleting paragraph 3 which contradicts provisions of section 10(1)(a) of the Act providing that the chairperson of the Board is nominated by the Cabinet Secretary and appointed by the President.

**Clause 40** of the Bill seeks to amend the Second Schedule by deleting paragraph 3 which contradicts provisions of section 29 of the Act.

**Clause 41** of the Bill seeks to amend the Third Schedule for proper cross-referencing.

**Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

**Statement of how the Bill concerns county governments**

The Bill proposes to amend various provisions of the Public Procurement and Disposal Act to clarify the process of procurement and asset disposal in the public sector. In this respect, the Bill *inter alia* provides for the training of procurement officials, clarifies various terms used in the procurement process, includes provisions to proscribe delays by contractors, provides for the waiver of certain fees for disadvantaged groups and a reduction in the period of evaluation of proposals.

The proposed new provisions will affect the processes both at the national and county level of government by enhancing the efficiency with which procurement processes are undertaken by the respective governments. In effect therefore the provisions of the Bill will have a direct impact on the delivery of services and the discharge of county government functions set out in Part 2 of the Fourth Schedule to the Constitution.

**Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution**

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 13th April, 2021.

SAMUEL POGHISIO,  
*Senate Majority Leader.*

*Section 2 of No. 33 of 2015, which it is proposed to amend—*

“Procurement professional” means a person who has professional qualifications in procurement or supply chain management from a recognised institution and is a member of the Kenya Institute of Supplies Management established under the Supplies Practitioners Management Act, 2007 (No. 20 of 2007);

*Section 9(1)(k) of No. 33 of 2015, which it is proposed to amend—*

**9(1)** The functions of the Authority shall be to—

(k) develop and manage the State portal on procurement and asset disposal and ensure that it is available and easily accessible;

*Section 26(6) of No. 33 of 2015, which it is proposed to amend—*

**26(6)** The Board shall publish and publicize the draft report within two weeks after the expiry of seven (7) days upon submission to the Cabinet Secretary.

*Section 39 of No. 33 of 2015, which it is proposed to amend—*

**39.** The procuring entity and any other person who was entitled to be given an opportunity to make representations under section 38(2) may request for Judicial Review against an order of the Board to the High Court within fourteen days after the order is made.

*Section 40(2) of No. 33 of 2015, which it is proposed to amend—*

**40(2).** Subsection (1) ceases to apply if, after the Review Board has completed its review, information comes to the attention of the Board that was not brought before the Review Board in the course of its review.

*Section 46 of No. 33 of 2015, which it is proposed to delete—*

**46 (4).** An evaluation committee established under subsection (1), shall—

(c) have as its secretary, the person in charge of the procurement function;

(6) Where a public entity lacks capacity to comply with this Act an accounting officer shall seek assistance from the National Treasury.

*Section 48(2) of No. 33 of 2015, which it is proposed to amend—*

**48(2)** The inspection and acceptance committee shall be composed of a chairman and at least two other members appointed by the accounting officer or the head of the procuring entity on the recommendation of the procuring unit.

*Section 51(2)(b) of No. 33 of 2015, which it is proposed to amend—*

**51(2)** A procuring entity may not appoint a procuring or asset disposal agent unless that procuring entity —

- (b) provides evidence of inability to establish a procurement and disposal unit; or

*Section 67 of No. 33 of 2015, which it is proposed to amend—*

**67(4)** Notwithstanding the provisions of subsection (3), the disclosure to an applicant seeking a review under Part XV shall constitute only the summary referred to in section 67 (2)(d)(iii).

**(5)** Any person who contravenes the provisions of this section commits an offence as stipulated in section 176(1)(f) and shall be debarred and prohibited to work for a government entity or where the government holds shares, for a period of ten years.

*Section 70(6)(j) of No. 33 of 2015, which it is proposed to amend—*

**70(6)** The tender documents shall set out the following —

- (j) a statement that the accounting officer of a procuring entity may, at any time terminate the procurement proceedings without entering into a contract in accordance with section 63 of the Act;

*Section 71 (3) of No. 33 of 2015, which it is proposed to amend—*

**71(3)** A tenderer may seek clarification from the candidate or relevant government agency on eligibility but not on capability.

*Section 80 of No. 33 of 2015, which it is proposed to amend—*

**80(1)** The evaluation committee appointed by the accounting officer pursuant to section 46 of this Act, shall evaluate and compare the responsive tenders other than tenders rejected under section 82(3).

**(6)** The evaluation shall be carried out within a maximum period of thirty days.

*Section 89 of No. 33 of 2015, which it is proposed to amend—*

If there will not be effective competition for a procurement unless foreign tenderers participate, the following shall apply—

- (b) if the procuring entity is required to advertise the invitation to tender under sections 96(2) and 118(2), the procuring entity shall also advertise the invitation to tender in Kenya's dedicated tenders portal or one or more English-language newspapers or other publications that, together, have sufficient circulation outside Kenya to allow effective competition for the procurement;



*Section 94 (4) of No. 33 of 2015, which it is proposed to amend—*

**94** (4) The accounting officer of a procuring entity shall allow the candidates at least fourteen days to prepare and submit their applications to be pre-qualified.

*Section 96 (2) and (4) of No. 33 of 2015, which it is proposed to amend—*

(2) Despite the provisions of subsection (1), if the estimated value of the goods, works or services being procured is equal to, or more than the prescribed threshold for county, national and international advertising, the procuring entity shall advertise in the dedicated Government tenders' portals or in its own website, or a notice in at least two daily newspapers of nationwide circulation.

(4) In regard to county-specific procurements pursuant to section 33, the procuring entity shall advertise the notice inviting expressions of interest in the dedicated Government tenders portal; in its own website, or in at least one daily newspaper of county-wide circulation.

*Section 98 (1) of No. 33 of 2015, which it is proposed to amend—*

**98**(1) Upon advertisement, the accounting officer of a procuring entity shall immediately provide copies of the tender documents and in accordance with the invitation to tender and the accounting officer shall upload the tender document on the website.

*Section 114 (6) of No. 33 of 2015, which it is proposed to amend—*

**114**(6) A procurement management unit shall prepare and submit to the accounting officer with a copy to the internal auditor quarterly reports detailing an analysis of items procured through framework agreements and these reports shall include, an analysis of pattern of usage, procurement costs in relation to the prevailing market rates and any recommendations.

*Section 117 of No. 33 of 2015, which it is proposed to amend—*

**117.** Initiation of the procurement shall—

(a) be subject to section 74 of the Act.

*Section 119 (1) of No. 33 of 2015, which it is proposed to amend—*

**119**(1) An accounting officer of a procuring entity may prepare a notice inviting interested persons to submit expressions of interest as prescribed.

*Section 124 of No. 33 of 2015, which it is proposed to amend—*

**124**(14) Single Source Selection shall require a placement of advertisement of the intention to single source and invite anyone who

wishes to bid and, in the event, that there is a response to the advert then all interested suppliers shall be invited to submit proposals.

(15) Where alternative methods are selected a report shall be prepared and submitted to the Authority for approval.

*Section 126 (3) of No. 33 of 2015, which it is proposed to delete—*

**126(3)** The evaluation shall be carried out within a maximum of twenty-one days, but shorter periods may be prescribed in the Regulations for particular types of procurement.

*Section 135 of No. 33 of 2015, which it is proposed to amend—*

**135(3)** The written contract shall be entered into within the period specified in the notification but not before fourteen days have elapsed following the giving of that notification provided that a contract shall be signed within the tender validity period.

(4) No contract is formed between the person submitting the successful tender and the accounting officer of a procuring entity until the written contract is signed by the parties.

*Section 138(5) of No. 33 of 2015, which it is proposed to delete—*

**138(5)** This section shall not apply to procurement contracts awarded by the national security organs.

*Section 139(4) of No. 33 of 2015, which it is proposed to amend—*

**139(4)** For the purposes of this section, any variation of a contract shall only be considered after twelve months from the date of signing the contract and shall only be considered if the following are satisfied—

*Section 167 of No. 33 of 2015, which it is proposed to amend—*

**167 (1)** Subject to the provisions of this Part, a candidate or a tenderer, who claims to have suffered or to risk suffering, loss or damage due to the breach of a duty imposed on a procuring entity by this Act or the Regulations, may seek administrative review within fourteen days of notification of award or date of occurrence of the alleged breach at any stage of the procurement process, or disposal process as in such manner as may be prescribed.

(4) The following matters shall not be subject to the review of procurement proceedings under subsection (1)—

- (b) a termination of a procurement or asset disposal proceedings in accordance with section 62 of this Act; and

*Section 173(c) of No. 33 of 2015, which it is proposed to delete—*

**173** Upon completing a review, the Review Board may do any one or more of the following—

- (c) substitute the decision of the Review Board for any decision of the accounting officer of a procuring entity in the procurement or disposal proceedings;

*Section 176 (1) of No. 33 of 2015, which it is proposed to amend—*

**176 (1)** A person shall not—

- (f) divulge confidential information under section 66;
- (h) split procurements contrary to section 60 of the Act;

*The First Schedule, paragraph 3 of No. 33 of 2015, which it is proposed to delete—*

### **3. Chairperson and Vice Chairperson**

(1) The Board shall elect one of its nominated members to be the Chairperson of the Board and another of its nominated members to be its Vice-chairperson.

(2) Subject to an earlier resignation or termination, the Chairperson and Vice- chairperson shall each hold office until their current term as a member of the Board expires.

*The Second Schedule, paragraph 3 of No. 33 of 2015, which it is proposed to delete—*

(1) The Review Board shall elect one of its nominated members to be the Chairperson of the Review Board and another of its nominated members to be its Vice-chairperson.

(2) Subject to an earlier resignation or termination, the Chairperson and Vice- chairperson shall each hold office until their current term as a member of the Review Board expires

*The Third Schedule of No. 33 of 2015, which it is proposed to amend—*

### **2. Confidentiality in relation to past proceedings**

Section 66 of this Act shall apply with respect to procurement proceedings completed before the commencement date of this Act.

### **3. Records of past procurements**

- (1) Section 67 of this Act shall apply with respect to—

(2) Section 51(2) of the Act, as it applies under subparagraph (1), does not require the record of a procurement to include anything that was not required before the commencement date of this Act.

**4. Publication of existing contracts**

Section 67 of this Act shall apply with respect to a contract formed before the commencement date of this Act comes.

**5. Amendments to existing contracts**

Section 139 of this Act shall apply with respect to a contract formed before the commencement date of this Act but not to an amendment to such a contract made before the commencement date of this Act.

