SPECIAL ISSUE

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CONTENT

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THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL, 2020

A Bill for

AN ACT of Parliament to amend the Public Procurement and Asset Disposal Act, 2015 and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

Short title.

1. This Act may be cited as the Public Procurement and Asset Disposal (Amendment) Act, 2020.

Amendment of section 155 of No.33 of 2015.

2. Section 155 of the Public Procurement and Asset Disposal Act (hereinafter referred to as the "principal Act"), is amended in subsection (5) by—

(a) inserting the following new paragraph immediately after paragraph (b)—

"(c) the procuring entity shall, require successful bidders to give preference to registered Kenyan brokerage firms where brokerage services are required."

(b) inserting the following new subsection immediately after subsection (5)—

"(6) Where a procuring entity seeks to procure specialized services that are not wholly or partly available in Kenya, the accounting officer shall—

(a) ensure that the specialized skills are procured only for a defined period; and

(b) require successful bidders to cause transfer of the specialized skills to the relevant persons.

Amendment of section 157 of No.33 of 2015.

3. Section 157 of the principal Act is amended in subsection (9) by deleting the words "at least forty percent of their" and substituting therefor the words "all their locally available".

MEMORANDUM OF OBJECTS AND REASONS

Statement of Objects and Reasons for the Bill

The principal object of the Bill is to amend the Public Procurement and Asset Disposal Act, No. 33 of 2015 to provide that all foreign tenderers participating in international tenders shall source all their locally available supplies from citizen contractors.

The proposed amendment seeks to promote the growth of local industries and contractors by requiring foreign tenderers participating in Kenyan international tenders to source all their locally available supplies from citizen contractors.

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

This Bill does not delegate legislative powers neither does it limit fundamental rights and freedoms.

Statement on how the Bill affects county governments

This Bill concerns county governments in terms of Article 110 (1) of the Constitution as is affects the functions and powers of county governments as set out in the Fourth Schedule to the Constitution.

Statement as to whether the Bill is a money Bill, within the meaning of Article 114 of the Constitution

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

Dated the 13th October, 2020.

RICHARD TONGI,
Member of Parliament.

Section 155 of No. 33 of 2015 which it is proposed to amend—

Requirement for preferences and reservations.

155. (1) Pursuant to Article 227(2) of the Constitution and despite any other provision of this Act or any other legislation, all procuring entities shall comply with the provisions of this Part.

(2) Subject to availability and realisation of the applicable international or local standards, only such manufactured articles, materials or supplies wholly mined and produced in Kenya shall be subject to preferential procurement.

(3) Despite the provisions of subsection (1), preference shall be given to—

(a) manufactured articles, materials and supplies partially mined or produced in Kenya or where applicable have been assembled in Kenya; or

(b) firms where Kenyans are shareholders.

(4) The threshold for the provision under subsection (3)(b) shall be above fifty-one percent of Kenyan shareholders.

(5) Where a procuring entity seeks to procure items not wholly or partially manufactured in Kenya—

(a) the accounting officer shall cause a report to be prepared detailing evidence of inability to procure manufactured articles, materials and supplies wholly mined or produced in Kenya; and

(b) the procuring entity shall require successful bidders to cause technological transfer or create employment opportunities as shall be prescribed in the Regulations.

Section 157 of No. 33 of 2015 which it is proposed to amend—

Participation of candidates in preference and reservations.

157. (9) For the purpose of ensuring sustainable promotion of local industry, a procuring entity shall have in its tender documents a mandatory requirement as preliminary evaluation criteria for all foreign tenderers participating in international tenders to source at least forty percent of their supplies from citizen contractors prior to submitting a tender.