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REPUBLIC OF KENYA

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NATIONAL ASSEMBLY BILLS, 2018

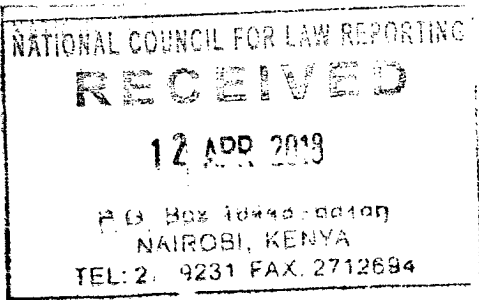
NAIROBI, 10th April, 2018

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THE GOVERNMENT CONTRACT BILL, 2018

A Bill for

AN ACT of Parliament to repeal and re-enact the Government Contracts Act and to provide for the powers of the Government to enter into contracts and for connected purposes

ENACTED by Parliament of Kenya, as follows—

PART I—PRELIMINARY PROVISIONS

1. This Act may be cited as the Government Contracts Act, 2018. Short title.

2. In this Act, unless the context otherwise requires— Interpretation.
 “accounting officer” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012; No. 18 of 2012.

“advance payment” means a payment made by or on behalf of the national or county government under the terms of a contract before the performance of that part of the contract;

“contract security” means—

(a) a payment bond or a performance bond given on behalf of a person to the Government to make good on any default by that person under the contract by—

(i) compensating the Government thereof; or

(ii) completing the performance of the contract to the extent required by the terms and conditions of the payment bond or performance bond;

(b) a security deposit given by the person to the Government to ensure the performance of the contract to the extent required by the terms and conditions of the contract;

“contracting authority” means—

(a) the Cabinet Secretary responsible for matters relating to finance on behalf of the national government;

(b) a national and county government department and

agency that has the legal authority to enter into a contract on behalf of national or county government;

- (c) any individual who is duly authorized by or under an Act of Parliament to enter into a contract; or
- (d) any individual who is duly authorized by the accounting officer of the national government or a county government as prescribed under this Act;

“Government” means the national government or the county government;

“government contract” includes any agreement, contract, lease, licence, permit or other concession or authority issued by a public entity or agreement entered into by a public entity for any works or for the supply of any works, goods or services;

“public entity” has the meaning assigned to it under section 2 of the Public Procurement and Asset Disposal Act, 2015;

“public officer” has the meaning assigned to it under Article 260 of the Constitution; and

“security deposit” means—

- (a) a bill of exchange that is payable to the National Treasury and that is certified by an approved financial institution on itself;
- (b) a Government guarantee bond; or
- (c) such other security as may be deemed appropriate by the contracting authority and approved by the National Treasury.

3. The object of this Act is to empower a contracting authority to enter into government contracts for acquisition of works, goods and services in a manner that enhances access, competition and results in best value or, if appropriate the optimal balance of overall benefits to the government and the public.

Object of the Act.

4. This Act shall apply to all contracts that are entered into by a contracting authority and that provide for the payment of any money by the Government, except a contract whose purpose is, for operational reasons, to fulfil

Application.

an interim requirement for defence supplies or services or to ensure defence logistical capabilities on an interim basis, and any related contract.

5. This Act shall prevail in case of any inconsistency between this Act and any other legislation or government notices or circulars in matters relating to government contracts except the Public Finance Management Act, 2012, the Public Procurement and Asset Disposal Act, 2015 and the Public Private Partnership Act, 2013.

Conflict with other Acts.

No. 18 of 2012.

No. 33 of 2015.

No. 15 of 2013.

PART II—CONDITIONS OF CONTRACT ENTRY

6. (1) All contracts made for or on behalf of the national government shall be in writing and signed by an accounting officer or by any public officer duly authorised in writing by the accounting officer, either specifically in any particular case, or generally for all contracts below a certain value in his or her contracting entity or agency or otherwise as may be specified in such authorisation.

Contracts on behalf of national government.

(2) Where national government contracts are entered into outside Kenya for or on behalf of the national government by a person either generally or specially authorised in writing in that behalf by the accounting officer shall, so far as they come within the jurisdiction of the courts in Kenya, be deemed to be contracts made on behalf of the national government.

(3) Subject to the pecuniary threshold provided for under section 134 of the Public Procurement and Asset Disposal Act, 2015 an accounting officer of a procuring entity shall ensure that all contracts are cleared by the Attorney-General before they are signed.

7. (1) All contracts made for or on behalf of a county government shall be in writing and shall be signed by the accounting officer, or by any public officer duly authorized in writing by the accounting officer, either specially in any particular case, or generally for all contracts below a certain value in his or her department, agency or otherwise as may be specified in the authorisation.

Contracts on behalf of county governments.

(2) Where county government contracts are entered into outside Kenya for or on behalf of a county government by a person either generally or specially authorised in writing in that behalf by the accounting officer shall, so far