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**CODE OF CONDUCT FOR THE
CONSTRUCTION INDUSTRY**

(February 2019)

FOREWORD

The Constitution of Kenya sets the basis for National Values and Principles of Governance. In line with this, the various Government Regulatory Bodies and Professional Associations in the Construction Industry have developed Codes of Conduct to govern the performance and conduct of their members in their professional undertaking.

The National Construction Authority Act 2011 section 5 (2) (m) mandates the Authority, to develop and publish a Code of Conduct for the Construction Industry. This Code regulates the conduct of players as well as acting as the anchor Code for the various professionals within the industry.

The First Edition of the Code of Conduct for the Construction Industry was published on 15th April, 2016. With the progressive developments witnessed in the Industry over the past three years and further due to the regulatory requirement for the review of the Code every three (3) years, the Authority has published this second edition.

In this Edition, the Code of Conduct reiterates the role of each party, in the Construction Industry value chain, adhering with the acceptable and professional conduct as laid down herein. Further, the Code seeks to simplify the general principles governing the players as well as availing practical and enforceable recourse in the event of breach by a party to the Code.

The successful enforcement of this Code of Conduct will greatly rely on the goodwill of all the players in the Industry. We encourage all the stakeholders to strictly abide by its principles and dutifully abide by it in their day to day professional undertakings.

The Authority appreciates the unrelenting support by its various stakeholders and remains committed to jointly working towards achieving a sustainable socio-economic environment in the industry.

Chairperson,

National Construction Authority Board of Directors

PREFACE

The Construction Industry is an important sector in Kenya's economy and a key driver contributing greatly to the country's Gross Domestic Product (GDP). A well-developed Construction Industry is one that seeks to promote high standards of conduct among various parties in the industry as an essential for growth, development and sustainability.

The Authority under Section 5(2) (m) of National Construction Authority Act No. 41 of 2011 is mandated to develop and publish a Code of Conduct for the Construction Industry. In line with the First Edition of the Code, the Authority in collaboration with its key stakeholders is mandated to review the Code of from time to time as deemed necessary. In cognizance of the aforementioned, the Authority appointed a Special Committee to spearhead the review of the Code. This process involved public participation and eventual publication in the Kenya Gazette.

This Code of Conduct embraces players in the entire value chain of the Construction Industry but not limited to construction professionals, contractors, employers, procuring agents, employees, clients, tenderers and suppliers. The Code is necessary to guide and regulate the behaviour of parties engaged in construction-related procurement and to establish the standards of behaviour that participants may expect from each other and against which their behaviour can be monitored. The Code shall therefore serve as a guide to the parties in the execution of their obligations.

The Code addresses several aspects; acceptable and unacceptable conduct of parties, measures for enforcement, ways of Monitoring and Evaluation and review.

I laud the efforts and commitment of our stakeholders, the Special Committee and Secretariat in the review. I wish to also thank the Board of Directors of the National Construction Authority for their astute leadership and support they gave to the Management towards this realization of this reviewed code.

Eng. Maurice Akech,
Executive Director

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PREAMBLE

The Authority (NCA) is a state corporation established by the National Construction Authority Act No. 41 of 2011 (The Act). The principal purpose of the Authority is to oversee the Construction Industry and coordinate its development. Further, section 5(2)(m) of the Act mandates the Authority to develop and publish a Code of Conduct for the construction industry. This code shall be cited as the Code of Conduct for the Construction Industry.

This Code is established on the principles of good Corporate Governance. Good corporate governance should be appreciated by all stakeholders who should be under obligation to adhere to its provisions. The development of the Construction Industry will be enhanced when all stakeholders:

1. Have clearly stated and enacted corporate values such as efficiency, responsibility, accountability, transparency and integrity;
2. Recognize the legitimacy of interest of defined stakeholders and treat them in reputable manner;
3. Adopt agreed codes to tackle corruption and persist the enforcement thereof;
4. Give due recognition to the respect for human rights;
5. Respect the well-being of employees by treating them fairly and with cultural and gender sensitivity;
6. Practice and encourage greater environmental and social responsibility;
7. Avoid the use of harmful products and processes;
8. Promote collaborative partnerships with communities;
9. Work to build capacity and recognize need for profitability in the private sector to ensure a vibrant and sustainable industry;
10. Guard against abuse of power by the stronger party in contractual relationships;
11. Recognize the inherently dangerous nature of the industry and give priority to occupational health and the safety of all employees and the public; and
12. Engage with Industry Players and share best practice.

1.0 LEGAL FRAMEWORK

There are various legislations and regulations that govern the conduct of the parties in the construction industry. These include but not limited to:

1. The Constitution of Kenya 2010
2. The National Construction Authority Act No. 41 of 2011
3. The National Construction Regulations 2014
4. Architects & Quantity Surveyors Act, Cap 525
5. Engineering Technology Act, 2016,
6. Engineers Act No. 43 of 2011
7. Environmental Management and Coordination Act (EMCA) 1999 and all relevant regulations
8. Physical Planning Act No. 6 of 1996
9. Water Act, 2002
10. Physical Planning Act CAP 286 (1996)
11. Public Procurement and Asset Disposal Act, (No. 33) 2015
12. Kenya Roads Act
13. Occupational Safety and Health Act, 2007
14. Employment Act, (No. 11) 2007
15. Energy Act, (No. 12) 2006
16. Kenya Roads Act
17. Work Injury Benefits Act, 2007
18. State Corporations Act CAP 446
19. Survey Act (CAP 299)
20. Anti-corruption and Economic Crimes Act, 2003 (2016)

2.0 PRINCIPLES GOVERNING THE CODE OF CONDUCT

This Code is established on the following National Values and Compliance Principles:

2.1 NATIONAL VALUES AND PRINCIPLES

The national values and principles of this Code are as anchored in Article 10 of the Constitution of Kenya on National Values and Principles of Governance. These include:

1. Patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;
2. Human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized;
3. Good governance, integrity, transparency and accountability; and
4. Sustainable development.

2.2 COMPLIANCE PRINCIPLES

For a healthy industry that delivers value to clients and society, the parties either in public or private construction contract procurement and execution process should in their dealings with each other act in the best interests of the contract and particularly:-

1. Behave equitably, honestly and transparently;
2. Discharge duties and obligations in a timely manner;
3. Avoid conflicts of interest;
4. Avoid malicious or reckless injury to the reputation of other parties;
5. Understand and comply with all applicable legislation and associated regulations;
6. Keep abreast with local and international best practises in the Industry;
7. Be an advocate for the principles of quality construction practices;
8. Take economic, social and environmental responsibilities associated with working on construction projects;
9. Carry out high quality construction works in accordance with scope of works and contract;
10. Respect and promote a multi-disciplinary, collaborative approach towards construction;
11. Act in compliance with this Code and encourage dissemination of its principles amongst players in the industry.

3.0 APPLICATION OF THE CODE OF CONDUCT:

This section highlights the acceptable and non-acceptable conduct of parties' involved in the procurement value chain of the Construction Industry. The achievement of best practice throughout the Industry is the responsibility of all sector players who include: construction professionals, contractors, employers, procuring agents, employees, clients, tenderers and suppliers.

The Code of Conduct serves to establish the broad framework within which an action, or default, by any party to the procurement value chain may be judged.

3.1 DEFINITION OF PARTIES

3.1.1 CONSTRUCTION PROFESSIONALS/CONSULTANTS

A person or entity possessing specialized knowledge in the construction industry and offering customized, knowledge -based services to clients

3.1.2 TENDERER

A person or entity who submits a tender offer, an expression of interest or a request for proposal to perform a contract in response to an invitation to bid

3.1.3 CONTRACTOR

A Contractor is person or an entity that tenders to carry out the works, and has been accepted by the Employer

3.1.4 EMPLOYER

A person or entity entering into contract with a contractor, supplier, agent, consultant and any other player in the construction industry for the provision of supplies, services or construction works

3.1.5 PROCURING AGENTS

A person or entity in the employ of an employer who acts on their behalf to coordinate the activity of procurement of goods and services

3.1.6 EMPLOYEE

A person or entity in the employ of an agent, contractor, employer, subcontractor or tenderer, and who acts on their behalf. An employee also includes an official in an organ of state

3.1.7 CLIENT/EMPLOYER'S REPRESENTATIVE:

A person who represents the client/employer on a site and acting on their behalf either as an employee or an agent

3.1.8 SUPPLIER

A person or entity that is contracted by either the employer or his agent, or the contractor or his agent to provide certain services or products

3.2 ACCEPTABLE CONDUCT BY PARTIES

The following examples serve to highlight acceptable actions that are more commonly encountered by the parties below actors:

3.2.1 CONSTRUCTION PROFESSIONALS

The Professional should:

1. Strictly observe the code of conduct laid down by the body governing his profession or trade;
2. Act in a fair and equitable manner towards all other parties in the procurement;

3. Reject gifts, favours or other considerations of anything more than of token value;
4. Discourage delays by any of the parties in the procurement value chain;
5. Observe due process taking account of the legitimate and reasonable rights of all the parties;
6. Gain duly from any party to the procurement value chain;
7. Disclose any circumstance which may possibly be construed as constituting a conflict of interest while discharging their duty and excuse oneself from deliberation on such matters;
8. Provide a level playing ground for all parties in the procurement value chain.

3.2.2 CONTRACTOR

The contractor should:

1. Act professionally as per requirements of regulating body;
2. Satisfy the requirements of the contract;
3. Fully meet or aim to meet all statutory and contractual obligations fully and timeously in regard to conditions of employment, occupational health and safety, training, fiscal matters and any other;
4. Accept the judgement or actions of agents, employees, or representatives without inducements of any sort;
5. Employ subcontractors only on the basis of fair, unbiased, written subcontracts;
6. Engage in fair or ethical practices in dealings with subcontractors.
7. Make genuine claims for additional payment or time extensions to the contract;
8. Seek clarification on any matter for which such clarification may be sought;
9. Support the development objectives of the employer as per the Contract;
10. Abide by the scope and specifications of the Contract.

3.2.3 EMPLOYER

The employer, his employees, or agent should:

1. Not invite tenders without having a firm intention to proceed with the procurement;
2. Ensure that the basis on which tenders will be evaluated is clearly set out in the tender documents and that tenders are evaluated and awarded accordingly;

3. Employ contractors only on the basis of fair and equitable written contracts
4. Not accept gifts, favours or other considerations, of anything more than token value from any other party to the procurement value chain;
5. Ensure that all documents relevant to any stage of the procurement value chain are clear and comprehensive and set out the rights and obligations of all parties.
6. Not breach the confidentiality of information, particularly intellectual property, provided by tenderers in support of their tender submissions;
7. Not engage in unfair or unethical practices in dealings with subcontractors including the practice of trading one subcontractor off against another in an attempt to obtain lower prices;
8. Ensure that all tenderers are fairly treated and that tender offers are evaluated without bias;
9. Ensure that transparency is maintained in the tendering process in accordance to prevailing procurement laws;
10. Ensure that his obligations in terms of contracts with contractors and agents are scrupulously and timeously met, particularly in regard to making decisions;
11. Ensure that legal requirements and principles are upheld in relation to safety, health, the environment and sustainable delivery management;
12. Ensure that payments are made regularly and within the agreed time schedule.

3.2.4 PROCURING AGENTS

Procuring agents should:

1. Conduct themselves in a manner befitting the role which they are to perform in procurement;
2. Strictly observe any code of conduct laid down by their respective employers and the provisions of all legislation and regulations governing procurement;
3. Perform their duties in an unbiased and conscientious manner, bearing in mind the legitimate interest of all parties to the procurement process and where relevant, the public;
4. Not allow themselves to be influenced in the execution of their duties by any consideration other than the legitimate and reasonable interests of the respective employers;
5. Not accept any gifts, favours or other considerations, of anything more than token value from any other party to the procurement value chain;
6. Where they act on behalf of an employer, administer contracts in an even-handed manner;

7. Disclose any circumstance which may possibly be construed as constituting a conflict of interest and excuse themselves from deliberations in such matters.

3.2.5 EMPLOYEES

The employee should:

1. Perform his duties in an unbiased and conscientious manner, bearing in mind the legitimate interest of all parties to the procurement value chain and the public;
2. Strictly adhere to his/her employers code of conduct or employment contract;
3. Not allow himself to be unduly influenced by, or accept any gifts, favours or other considerations from any party which might have an interest in the procurement value chain;
4. Disclose any circumstance which may possibly be construed as constituting a conflict of interest and excuse oneself from deliberations in such matters.

3.2.6 SUBCONTRACTORS

The subcontractor should:

1. In so far as is relevant, act in the same way as the contractor is expected to act and behave in a circumspect manner;
2. Not undermine the position of any contractor that has provided a price in relation to a particular tender.

3.2.7 TENDERER

The tenderer should:

1. Not become involved in collusion with other tenderers or potential tenderers, except for the purpose of joint venture formation or collective action to deal with unfair conditions or other faults in documentation;
2. Not exchange information regarding tenders with any other tenderer prior to the closing time and date for tenders;
3. Not knowingly price his tender in such a way as to gain an unfair advantage from an obvious error or oversight, in the tender documents;
4. Not attempt to influence the tender evaluation process;
5. Not approach any procuring agent, representative or employee directly in connection with a tender.

3.2.8 SUPPLIER

The supplier should;

1. Be informed of all product regulations and abide by them;

2. Comply with all product bans and mandatory standards;
3. Market products according to their design and intended use;
4. Be aware of product liability laws and regulations.

3.3 UNACCEPTABLE CONDUCT

Any action, or default, which conflicts with the code, is unacceptable and includes not limited to the following:

1. Failure to secure practicing licenses;
2. Failure to adhere to acceptable labour relation practices;
3. Failure to comply with the applicable Code;
4. Failure to remit taxes, duties, levies and fines;
5. Undertaking construction in prohibited areas;
6. Failure to comply with the applicable occupational, health and safety legislation and regulations;
7. Abuse of power by the stronger party in contractual relationships;
8. Falsifying documents and impersonation of officers;
9. Use of non-enforceable contracts.

4.0 ENFORCEMENT OF THE CODE OF CONDUCT

This Code of Conduct encourages self-regulation by actors within the Construction Industry procurement value chain. Parties are therefore encouraged to be members of a professional body or association. In the event of non-compliance to this Code, a Party may either by himself or on behalf of another, report the alleged unacceptable conduct to the National Construction Authority.

4.1 REPORTING STRUCTURE FOR BREACH OF CODE

1. The complaint shall be reported to the Board of the National Construction Authority in writing through the office of the Executive ;
2. Upon receipt of a complaint, the same shall be investigated to determine whether the complaint is indeed a breach and as to whether it is within the mandate of the Authority;
3. On disputes/complaints within the purview of the Authority, the Board shall deal with the same in accordance with Section 22 and 23 of the National Construction Authority Act, 2011. Non-compliance to the Code will lead to sanctions such as;
 - i. A formal warning;
 - ii. Issue a fine;

- iii. Reporting the matter to the Kenya Police;
- iv. Suspending registration or deregistration of the Contractor;
- v. Publication of details of the breach and the identification of the party committing the breach;
- vi. Referral of the breach to the appropriate industry association for action consistent with the Code of Conduct;
- vii. Preclusion of the party from undertaking Government contracts.

Section 27 of the NCA Act establishes the National Construction Appeals Board. A person aggrieved by the above sanctions can seek redress in the appeals Board. Further, person aggrieved by the decision of the appeals Board can seek redress in the High Court.

4. Disputes beyond the mandate of the Authority shall be referred to a statutory body with jurisdiction over the matter.

4.2 WHISTLE-BLOWING

The aim of reporting parties suspected of misconduct under the Code of Conduct for the Construction Industry is encouraged to protect and values and principles as outlined under the Code. Parties ought to follow the existing whistle blowing reporting structures.

5.0 MONITORING AND EVALUATION

The development of this Code of Conduct followed a strategic approach to ensure consistency and responsiveness to industry issues. However, the industry is dynamic and is therefore necessary to monitor consistently to ensure that the Code is in tandem with developments within the industry.

The Authority through the Monitoring and Evaluation committee will develop and implement a Monitoring and Evaluation Framework to assess Code implementation success levels (**APPENDIX 1**). This will ensure quality control and help identify necessary amendments that would then be proposed for review. This shall be as follows:

- 1) Formation of an M&E committee on the Code of Conduct shall be done through the office of the Executive Director, National Construction Authority (NCA).
- 2) Monitoring of the code of conduct shall be undertaken on a quarterly basis;
- 3) Monitoring tools shall be developed to include key indicators and allocate responsibility in measuring performance;
- 4) The criteria/indicators will be developed from the principles of governance as detailed in Section 2.0 of the Code of Conduct;

- 5) Reports generated from monitoring activities shall form the basis of an annual evaluation on the implementation of the Code;

6.0 REVIEW OF THE CODE OF CONDUCT

The National Construction Authority in collaboration with its' stakeholders shall make amendments to this Code from time to time to be in line with changes in applicable laws and regulations, or changes to other relevant factors, but in any case **no 5** years shall lapse before review.

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APPENDIX 1: Sample Monitoring and Evaluation Framework

Principle	Party	Activity	Risk	Time frame	Output	Responsibility	Remarks
Behave equitably, honestly and transparently.	Contractor	Construction of projects	Biased recruitment of construction workers	Quarterly	Register of construction workers	ED	
			Inadequate accounts statements	Annually	Approved statement of accounts		
			Improper materials records	Quarterly	Catalogue for materials used		
	Employer	Contracts contractors build					
	Consultants						
	Suppliers						
Discharge duties and obligations in a timely manner and with integrity.	Contractor						
	Employer						
	Consultants						
	Suppliers						
	Construction workers						