



NATIONAL CONSTRUCTION
AUTHORITY
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CODE OF CONDUCT FOR THE CONSTRUCTION INDUSTRY



2nd Edition

FOREWORD

The construction industry is an important sector in Kenya's economy and an equally key contributor to the Country's Gross Domestic Product (GDP). The success of other sectors in the Nation is heavily reliant on its input contribution towards the development of necessary infrastructure as well as other built environment structures relevant to the different industries.

Kenya's Vision 2030 Development Blueprint recognizes construction as a significant enabler, which will drive the country to global competitiveness by the year 2030. A well-developed Construction industry is expected to strongly influence the quality of life of the residents, as well as avail a plethora of choices in construction and related services.

Article 10 of the Constitution of Kenya highlights the national values and principles of governance, which must be observed by all persons in Kenya. Informed by this, it is prudent for the construction industry to have a Code of Conduct indicating the minimum acceptable standards for the players in the industry. The National Construction Authority (hereinafter "the Authority") is statutorily obligated to develop this Code. In view of the above, the Authority published its First Edition of the Code on 15th April 2016. This Second Edition was developed in collaboration with key stakeholders, taking into account the dynamics and emerging issues in the industry.

The Authority appreciates that various government regulatory bodies and professional associations in the industry have developed Codes of Conduct governing the undertakings of their Stakeholders. This Second Edition of the Code will complement those codes in promoting high standards of acceptable conduct among various players in the industry; for improved performance, sustainable development and growth .

The successful enforcement of this Code of Conduct will greatly rely on the cooperation of all the players . We call upon all stakeholders to strictly abide by the principles and dutifully apply it in their day-to-day professional undertakings.

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



Prof. Godrick Bulitia
VICE-CHAIRPERSON, NCA BOARD OF DIRECTORS

PREFACE

The National Construction Authority (NCA) is a state corporation, established under the National Construction Authority Act No. 41 of 2011, with the mandate to oversee the construction industry in Kenya and coordinate its development. In furtherance of its functions as enshrined in the Act, the Authority regulates the industry through; the registration of contractors and construction projects, accreditation of construction workers and performance of regular project quality assurance exercises, all geared towards the improvement and expansion of the industry. NCA also undertakes research on various topics as well as provide training for contractors and construction workers.

Section 5(2) (m) of the NCA Act 2011, mandates the Authority to develop and publish a Code of Conduct for the construction industry. In fulfilment of this NCA published its First Edition of the Code in April 2016. Several progressive developments and emerging issues witnessed in the industry since then, as well as the Codes in-built mechanism on amendment have necessitated this review.

The Authority appointed a Special Committee to spearhead the task. The process involved an audit of the existing Code to ascertain its practicality and relevance in light of the progressive developments in the industry. Stakeholder engagements and public participation were conducted in all regions of the country.

This Code of Conduct embraces all players in the Construction Industry, such as; regulators, construction consultants, contractors, sub-contractors, employers, procuring agents, employees, skilled construction workers, site supervisors, tenderers and suppliers. Its purpose is to guide and regulate the conduct of parties engaged in construction-related activities and to establish the standards against which this can be measured and monitored.

In this second edition, the Code the role of each party in the construction industry value chain, in ensuring adherence to the minimum acceptable and professional conduct as laid down herein. It further sets out what generally amounts to unacceptable conduct in the industry and provides practical and enforceable recourse in the event of breach. This Code has made provision for mechanisms of monitoring, evaluation and review, which are vital in ensuring its successful enforcement.

The development of this Edition was conducted in a transparent, consultative, and participatory manner, in line with the constitutional requirement for public participation and stakeholder engagement, bringing together various professionals and other stakeholders in the industry.

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



Eng. Maurice O. Akech
EXECUTIVE DIRECTOR/REGISTRAR OF CONTRACTORS

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PREAMBLE

A well-coordinated and developed construction industry is one in which exists mechanisms by which factors hindering its optimal performance are identified, analysed and addressed. In cognizance of this and the continual efforts by NCA in promoting the improvement, development and expansion of the construction industry, this second edition of the Code of Conduct has been developed.

This code shall be cited as the Code of Conduct for the Construction Industry.

This Code has been developed in line with the principles of good corporate governance namely; accountability, efficiency, effectiveness, integrity, responsibility, transparency and inclusiveness of all stakeholders. All players in the construction value chain are obligated to adhere to these principles to ensure efficiency and productivity in their dealings.

The development of the construction industry will be enhanced when its stakeholders adhere to the following:

- a) Have clearly stated and enacted corporate values such as efficiency, responsibility, accountability, transparency and integrity;
- b) Recognize the legitimacy of interests of defined stakeholders and treat them in a reputable manner;
- c) Adopt agreed codes to tackle corruption and persist the enforcement thereof;
- d) Give due recognition to the respect for human rights;
- e) Respect the well-being of employees by treating them fairly and with cultural and gender sensitivity;
- f) Practice and encourage greater environmental and social responsibility;
- g) Avoid the use of harmful products and processes;
- h) Promote collaborative partnerships with communities;
- i) Work to build capacity and recognize need for profitability in the private sector to ensure a vibrant and sustainable industry;
- j) Guard against abuse of power by the stronger party in contractual relationships;
- k) Recognize the inherent risks associated with the industry and give priority to occupational health and the safety of all employees and the public;
- l) Engage with industry players and share best practices; and
- m) Encourage innovation.

1.0 LEGAL FRAMEWORK

There are various legislation and regulations that govern the conduct of various players in the construction industry. This Code will apply in tandem with the existing legislations, including:

1. Constitution of Kenya, 2010
2. National Construction Authority Act, 2011
3. Anti-Corruption and Economic Crimes Act, 2003
4. Architects & Quantity Surveyors Act, Cap. 525
5. Employment Act, 2007
6. Energy Act, 2006
7. Engineering Technology Act, 2016
8. Engineers Act, 2011
9. Environmental Management and Coordination Act, 1999
10. Fair Administrative Action Act, 2015
11. Kenya Roads Act, 2007
12. Kenya Roads Board Act, 1999
13. Occupational Safety and Health Act, 2007
14. Physical Planning Act, 1996
15. Proceeds of Crime and Anti-Money Laundering Act, 2009
16. Public Procurement and Asset Disposal Act, 2015
17. Public Health Act, Cap. 242
18. National Museums and Heritage Act, 2006
19. Standards Act, Cap. 496
20. State Corporations Act, Cap 446
21. Survey Act, Cap. 299
22. Building Surveyors Act, 2018
23. Water Act, 2016
24. Witness Protection Act, 2006
25. Work Injury Benefits Act, 2007
26. Leadership and Integrity Act, 2012
27. Ethics and Anti-Corruption Commission Act, 2016
28. Public Officers Ethics Act, 2003
29. Public Finance Management Act, 2012

2.0 PRINCIPLES GOVERNING THE CODE OF CONDUCT

This Code is established on the following guiding principles:

2.0.1 NATIONAL VALUES AND PRINCIPLES

The values and principles under this Code are as enshrined in Article 10(2) of the Constitution of Kenya which states the national values and principles of governance as follows;

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

2.0.2 COMPLIANCE PRINCIPLES

In order to have a healthy industry that guarantees value to the society, the players in both the public and private construction value chain should in their dealings with each other:

- a) Behave equitably, honestly and transparently;
- b) Discharge duties and obligations in a timely manner;
- c) Avoid conflicts of interest;
- d) Avoid malicious or reckless injury to the reputation of other parties;
- e) Understand and comply with all applicable legislation and associated regulations;
- f) Keep abreast with local and international best practises in the Industry;
- g) Advocate for the principles of quality construction practices;
- h) Take economic, social and environmental responsibilities associated with the construction processes;
- i) Respect and promote a multi-disciplinary, collaborative approach towards construction;
- j) Satisfy the requirements of the contract; and
- k) 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 unacceptable conduct of parties involved in the construction value chain. The development of best practice throughout the Industry is the responsibility of all sector players who include; regulator(s), construction consultant(s), contractor(s), sub-contractor(s), employer(s), agent(s), employee(s), skilled construction worker(s), site supervisor(s), tenderer(s) and supplier(s).

This Code of Conduct serves to establish the broad framework within which a default by any party in the construction value chain may be determined.

3.1 DEFINITION OF PARTIES

3.1.1 REGULATOR

Government agency or department with statutory mandate to exercise authority over construction related activities in a regulatory and/or enforcement capacity.

3.1.2 CONSTRUCTION CONSULTANT

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

3.1.3 CONTRACTOR

A person or entity carrying on business, who for reward or other valuable consideration undertakes the construction, installation or erection of any structure situated below, on or above the ground, or other work connected therewith; or the execution of any alteration or otherwise to any structure or other work connected therewith, and undertakes to supply materials and/or labour necessary for the work.

3.1.4 SUB-CONTRACTOR

A contractor whose contract works form part of a main contractor's works.

3.1.5 EMPLOYER

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

3.1.6 EMPLOYEE

A person or entity in the employment of a construction consultant, agent, contractor, employer, sub-contractor or tenderer, for gain; and who acts on their behalf. An employee also includes an official in a public office.

3.1.7 CONSTRUCTION SITE SUPERVISOR

A person who is qualified and assigned to a construction site by a contractor to supervise construction works.

3.1.8 SKILLED CONSTRUCTION WORKER

A person who is qualified and engaged to carry out construction works.

3.1.9 AGENT

A person or entity who acts on behalf of another party in the construction value chain.

3.1.10 TENDERER

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

3.1.11 SUPPLIER

A person or entity that is contracted by either the employer or his agent, or the contractor or his agent to provide goods and associated services.

3.2 ACCEPTABLE CONDUCT BY PARTIES

The following are the minimum standards expected of parties in the construction value chain;

3.2.1 REGULATOR

The regulator should:

- a) Protect the interest of all parties while implementing and enforcing relevant laws;
- b) Exercise their decision making independently and without bias;
- c) Perform functions as per their statutory obligations;
- d) Observe due process taking into account the legitimate and reasonable rights of all the parties;
- e) Ensure that obligations are thoroughly met on time;

- f) Foster coordinated consultative relationships between itself and the parties they oversee; and
- g) Refrain from engaging in unfair or unethical practices.

3.2.2 CONSTRUCTION CONSULTANT

The consultant should:

- a) Strictly adhere to the code of conduct laid down by the body governing the profession or trade;
- b) Act in a fair and equitable manner towards all other parties in the construction value chain;
- c) Discourage undue delays by any of the parties in the construction value chain;
- d) Observe due process in all dealings taking into account the legitimate and reasonable rights of all the parties;
- e) Refrain from gaining unjustified or unwarranted benefits from any contracting party in the construction value chain;
- f) Disclose any circumstances which may be construed as constituting a conflict of interest while discharging ones duty and disqualify oneself from deliberation on such matters; and
- g) Provide a level playing ground for all parties in the construction value chain.

3.2.3 CONTRACTOR

The contractor should:

- a) Act professionally as per the requirements of their regulating body;
- b) Satisfy the requirements of the contract and accept written instructions as per the contract without inducements of any sort;
- c) Fully meet all statutory and contractual obligations in a timely manner in relation to employment conditions, occupational health and safety, training, fiscal matters, environmental stewardship among others;
- d) Undertake continuous professional development (CPD) programs organized/accredited by their regulating bodies;
- e) Employ sub-contractors only on the basis of fair, unbiased and written contracts;
- f) Engage in fair or ethical practices in dealings with sub-contractors;
- g) Where applicable, make genuine claims for additional payment or time extensions to the contract;

- h) Seek clarification in a timely manner on any matter for which such clarification may be required to avoid unnecessary delays and cost overruns;
- i) Support the development objectives of the employer as per the contract;
- j) Abide by the scope and specifications of the contract;
- k) Avoid giving false information for purposes of securing contracts; and
- l) Always be in good standing as per the requirements of the accrediting body.

3.2.4 SUB-CONTRACTOR

The subcontractor should:

- a) Not undermine the position of any contractor in relation to a particular contract;
- b) Support the development objectives of the contractor and or employer as per the contract;
- c) Act professionally as per the requirements of one's regulating body;
- d) Satisfy the requirements of the contract and accept written instructions as per the contract without inducements of any sort;
- e) Fully meet all statutory and contractual obligations in a timely manner in relation to employment conditions, occupational health and safety, training, fiscal matters, environmental stewardship, among others;
- f) Undertake Continuous Professional Development (CPD) programs organized/accredited by one's regulating bodies;
- g) Where applicable, make genuine claims for additional payment or time extensions to the contract;
- h) Seek clarification in a timely manner on any matter for which such clarification may be required to avoid unnecessary delays and cost overruns;
- i) Support the development objectives of the employer as per the contract;
- j) Abide by the scope and specifications of the contract;
- k) Avoid giving false information for purposes of securing contracts; and
- l) Always be in good standing as per the requirements of the accrediting body.

3.2.5 EMPLOYER

The employer, his employees, or agent should:

- a) Invite tenders with a firm intention to proceed with the construction procurement;
- b) 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;
- c) Respond promptly to all requests for information and clarifications in relation to the tender;
- d) Engage parties only on the basis of fair and equitable written contracts;
- e) Ensure that all documents relevant in any stage of the construction value chain are clear and comprehensive, and set out the rights and obligations of all parties;
- f) Maintain confidentiality of information particularly on intellectual property, provided by tenderers in support of their tender submissions;
- g) Engage in fair and ethical practices while dealing with all the parties in the construction value chain;
- h) Ensure that transparency is maintained in the tendering process in accordance to prevailing construction procurement laws;
- i) Ensure that obligations in terms of contracts with all parties are scrupulously met in a timely manner;
- j) Ensure that legal requirements and principles are upheld in all stages of the construction process; and
- k) Ensure that payments are made regularly and within the agreed time schedule.

3.2.6 EMPLOYEE

The employee should;

- a) Perform duties in an unbiased and reliable manner, bearing in mind the legitimate interest of all parties in the construction value chain;
- b) Adhere to employer's code of conduct and his or her employment contract;
- c) Reject any gifts, favours or other considerations from any party that might influence the construction procurement and construction process; and
- d) Disclose any circumstances which may be construed as constituting a conflict of interest and disqualify oneself from such matters.

3.2.7 SKILLED CONSTRUCTION WORKER AND SITE SUPERVISOR

Skilled construction workers and site supervisors should:

- a) Act professionally as per the requirements of the accrediting body;
- b) Satisfy the requirements of their employment contract;
- c) Fully meet all statutory and contractual obligations in a timely manner in relation to employment conditions, occupational health and safety, training, fiscal matters, environmental stewardship among others;
- d) Undertake accredited Continuous Technical Development (CTD) programs;
- e) Seek clarification on any matter for which such clarification may be required in regard to project execution; and
- f) Always be in good standing as per the requirements of the accrediting body.

3.2.8 PROCURING AGENT

Procuring agents should:

- a) Strictly observe the relevant codes of conduct laid down by the respective employers and the provisions of all legislation and regulations governing the construction value chain;
- b) Perform their duties in an unbiased and reliable manner, bearing in mind the legitimate interest of all parties to the construction value chain and the public;
- c) Avoid being influenced in the execution of duties by any consideration other than the legitimate and reasonable interests of the respective employers;
- d) When acting on behalf of an employer, administer contracts in a fair manner; and
- e) Disclose any circumstance which may be construed as constituting a conflict of interest and disqualify oneself from deliberations in such matters.

3.2.9 TENDERER

The tenderer should:

- a) Avoid collusion in the tendering process;
- b) Provide factual and accurate information relating to the tender;
- c) Disclose any potential and or actual conflict of interest in the tendering process;

d) Refrain from exchange information regarding tenders with any other tenderer prior to the closing time and date for tenders;

- e) Seek clarification in a timely manner on any matter for which such clarification may be necessary to avoid errors or oversights in the tender documents which may give the tenderer an unfair advantage;
- f) Avoid influencing the tender evaluation process; and
- g) Strictly adhere to the tender requirements.

3.2.10 SUPPLIER

The supplier should:

- a) Be acquainted with all applicable laws and regulations on construction goods, associated services and works, and abide by them;
- b) Comply with all product bans and mandatory standards and specifications; and
- c) Make full disclosure on product specifications and their intended use.

3.3 GENERAL UNACCEPTABLE CONDUCT

Any action, or default, in contravention of this code, is unacceptable and includes the following; a) Failure to secure practicing licenses;

- b) Failure to adhere to acceptable labour relation practices;
- c) Failure to comply with the applicable codes;
- d) Failure to remit taxes, duties, levies and fines;
- e) Undertaking construction in prohibited areas;
- f) Failure to comply with the applicable occupational, health and safety legislation and regulations;
- g) Abuse of power in contractual relationships;
- h) Falsifying documents and impersonation of officers; and
- i) Accepting gifts, favours or other considerations, of anything more than token value from any party to the procurement value chain.

4.0 ENFORCEMENT OF THE CODE OF CONDUCT

This Code of Conduct encourages self-regulation by actors within the construction industry value chain. All players in the industry are therefore expected to adhere to the provisions of this Code by demonstrating commitment through attestation to Form “A”. All stakeholders shall assist in the implementation of this Code.

4.0.1 HANDLING OF COMPLAINTS

Power to report:

- a) Any person may report a violation of this code to the National Construction Authority.
- b) Where breach of this Code involves a state or public officer, the breach shall be reported to the Ethics and Anti-Corruption Commission or other relevant law enforcement agency in accordance with the Leadership and Integrity Act, 2012 and the Regulations made thereunder.
- c) A report under this paragraph shall be in the format provided for under the Second Schedule to this Code and shall include the following particulars:
 - i) Name and contact of the complainant (optional),
 - ii) Name of the person, company or agent involved in the alleged breach,
 - iii) Name of the procuring entity where breach has occurred or officer alleged to have committed the breach,
 - iv) Nature of the alleged breach, and
 - v) Date and location of alleged breach.

Investigation of the complaint:

- a) Upon receipt of the report, NCA shall register, carry out investigation into the complaint, and take appropriate action including referring the matter to the relevant authorities or report to the relevant professional body for action where appropriate.
- b) The Authority shall communicate its preliminary findings to the complainant within 60 days of filing of the complaint where complaints are provided.
- c) Upon conclusion of the investigations the authority shall communicate the feedback to the complainant where contacts are provided.

Confidentiality of the report:

- a) The report to the authority shall be handled with utmost confidentiality.
- b) A person who lodges a complaint with the authority or other relevant body shall not be victimized, subjected to harassment or any other form of unfair treatment.

Quarterly publication:

The Authority shall at the end of each quarter publish a list of persons who have been sanctioned for violation of this Code.

In enforcing this Code, the Authority shall:

- a) Exercise oversight in it, including taking remedial measures in case of breach.
- b) On its own motion or upon receipt of a complaint, inquire into the allegation of the violation of the Code of Conduct and take appropriate action as provided in section 22 and 23 of the NCA Act.
- c) Establish a complaint management system for reporting and receiving of complaints on alleged violation of this Code.

A person shall not:

- a) Obstruct or hinder an officer of the Authority or any other authorized person from carrying out a duty or function or exercising a power relating to this Code.
- b) Knowingly or in collusion with others lie to or mislead a person carrying out a duty or function or exercising a power relating to violation of this Code.

4.0.2 DISCIPLINARY MEASURES

1. The Board shall handle disputes/complaints within the purview of the Authority, in accordance with Section 22 and 23 of the National Construction Authority Act, 2011. Section 27 of the Act establishes the National Construction Appeals Board where a person aggrieved by aforementioned Board's decision can seek redress.

In addition, a person aggrieved by the decision of the Appeals Board can seek redress in the High Court within 30 days;

2. Disputes/complaints beyond the mandate of the Authority shall be referred to a statutory body with jurisdiction over the matter;

3. Non-compliance with the Code will lead to sanctions such as:

- a) A formal warning or reprimand;
- b) Referral of the breach to the appropriate professional association for action consistent with the relevant association's code of conduct;
- c) Issuance of fine(s) and or penalty;
- d) Disqualification from the particular procurement process;
- e) Suspension of practising licence(s);
- f) Suspension of registration;
- g) Publication of details of the breach and the identification of the party committing the breach;
- h) Deregistration of the party;
- i) Preclusion of the party from participating in all construction related procurement processes;
- j) Subjection to internal disciplinary procedures of respective employers; and
- k) Reporting of the matter to the National Police Service.

4.0.3 WHISTLE-BLOWING

Industry players and members of the public are encouraged to report incidences of suspected breach of this Code to the Authority to protect values and principles as provided in it. All such information received will be treated with utmost confidentiality.

5.0 MONITORING AND EVALUATION

Monitoring and evaluation is a strategic tool used to ensure consistency and responsiveness to existing realities. Given that the construction industry is dynamic, there is need to ensure that the Code is consistently in tandem with the ever-changing construction environment. The Authority shall therefore put in place internal mechanisms for the monitoring and evaluation of this Code. Reports generated from these activities shall form the basis for annual evaluation on the implementation of this Code. This will ensure quality control and help identify necessary amendments for purposes of review.

6.0 REVIEW OF THE CODE OF CONDUCT

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

7.0 FIRST SCHEDULE

DECLARATION AND COMMITMENT TO THE CODE OF CONDUCT

(to be submitted as part of any quotation or tender or proposal).

I(person) on behalf of (Name of the business/company/firm).....declare that I have read and fully understood the contents of the Code of Conduct for the Construction Industry and understood my responsibilities therein.

I do thereby commit to abide by the provisions of the Code of Conduct for the Construction Industry.

Name of authorized signatory:

Sign:

Position:

Postal address:.....

Telephone:.....

E-mail:.....

Name of the firm/Company:.....

Date:.....

(Company seal/ rubber stamp where applicable)

Witness name:.....

Sign :.....

Date:.....

8.0 SECOND SCHEDULE

COMPLAINT FORM

Part I: Details of complainant (optional)

Name of complainant:.....

Contact details:

Postal address:.....

Telephone/ cellphone no:.....

Part II: Institution where complaint is lodged

Name of Authority/ agency where the report has been lodged:.....

Part III: Details of Violator of the Code/ procurement laws

Name of the person involved in alleged breach:.....

Name of the public entity involved:.....

Part IV: Nature of allegations

State concisely the allegations, date, time, place of the alleged breach, persons involved and

malpractices/ violations committed or omitted:.....

I declare that the information given herein is true to the best of my knowledge.

Signature:.....

Date:.....

(Enclose supporting documentary evidence/ attachments)



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