

NO. 41 OF 2011

THE NATIONAL CONSTRUCTION AUTHORITY ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

	<i>Page</i>
1. The National Construction Authority Regulations.....	3
2. The National Construction Authority (Defects Liability) Regulations.....	57
3. The National Construction Appeals Board Rules.....	61

THE NATIONAL CONSTRUCTION AUTHORITY REGULATIONS

ARRANGEMENT OF REGULATIONS

PART I – PRELIMINARY

Regulation

1. Citation
2. Interpretation

PART II – REGISTRATION OF CONTRACTORS

3. Application for registration as contractor
4. Evaluation of application
5. Certificate of Registration
6. Exemption from registration for local contractors
7. Renewal of registration
8. Petition for review
9. Restriction
10. Application for upgrading
11. Transfer of records
12. Registration of foreign Contractors
13. Application for renewal
14. Continuous Professional Development

PART III – JOINT VENTURES

15. Registration of Joint ventures
16. Ration of ownership of joint ventures

PART IV – IDENTIFICATION AND REPORTING OF CONSTRUCTION WORKS CONTRACTS OR PROJECTS BY OWNER

17. Registration of construction works
18. Representative of the Owner

PART V – CERTIFICATION AND ACCREDITATION OF SKILLED CONSTRUCTION WORKERS AND CONSTRUCTION SITE SUPERVISORS

19. Accreditation
20. Classes of skilled construction workers
21. Classes of construction site supervisors
22. Eligibility for accreditation
23. Validity of accreditation
24. Rejection of application

PART VI – COLLECTION AND PAYMENT OF CONSTRUCTION LEVY

25. *[Deleted by L.N 24/2017.]*
26. *[Deleted by L.N 24/2017.]*

PART VII – ENFORCEMENT

27. Fees
28. Investigation of complaint or suspicion
29. Removal from register

SCHEDULES

THE NATIONAL CONSTRUCTION AUTHORITY REGULATIONS

[Legal Notice 74 of 2014, Legal Notice 24 of 2017, Legal Notice 274 of 2017]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as National Construction Authority Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"authorized officer" means an employee of the Authority authorized by the Board to carry out its functions under the Act;

"Appeals Board" means the Appeals Board established under section 27 of the Act,

"certificate of registration" means a certificate of registration issued under regulation 5(1);

"code of conduct" means the code of conduct developed and published in accordance with section 5(2)(m) of the Act;

"construction procurement" means procurement in the construction industry, including the invitation, award and management of contracts;

"construction worker" means a natural person who is qualified to carry out any of the works described in the Third Schedule to the Act;

"contract sum" means the tender value, tendered price, contract value or project value as agreed and signed between the contractor and the owner;

"foreign contractor" means—

- (a) a firm incorporated outside Kenya; or
- (b) a firm incorporated in Kenya in which 51% of the shares are held by a non-Kenyan;

"owner" means a person, body of persons or organ of state who enters into a main contract with a contractor for the provision of construction works;

"investigating committee" means a committee of the Board mandated to investigate matters of misconduct or otherwise under the Act;

"investigating officer" means a person appointed as such under section 23 of the Act;

"joint venture" means a grouping of two or more contractors or financial institutions with contractors who jointly undertake to perform construction works;

"net asset value" means the sum of a person's equity, retained income and shareholders or members loans;

"practical completion certificate" means a certificate issued in respect of building works contract by the owner, signifying that the work as tendered is ready for occupation or use for the purposes intended;

"taking-over certificate" means a certificate issued in respect of a construction works by the owner, signifying that the scope of works as tendered are ready for occupation or use for the purposes intended;

"main contract" means a contract of construction works that do not form part of the scope of work of another contract;

"main contractor" means a person registered under section 15 of the Act to whom construction work is tendered under the Act;

[Subsidiary]

"sub-contractor" means a contractor whose contract works form part of a main contractor's works;

"principal" means a natural person who is a partner in partnership, a sole proprietor or a director in a company;

"programme" means a series of activities aimed collectively at a predefined outcome;

"skills assessment" means an assessment conducted by or on behalf of the Authority of the skills in the class of works of a skilled construction worker or a construction site supervisor who applies for accreditation;

"test" means a test conducted by or on behalf of the Authority to test the skills of a construction supervisor or a construction worker.

PART II – REGISTRATION OF CONTRACTORS

3. Application for registration as contractor

(1) An application for registration as a contractor shall be made in the prescribed form and shall be accompanied by—

- (a) certified copies of certificates and other relevant documents as are necessary to prove qualification for registration;
- (b) certified copies of the shareholders' certificates of the company;
- (c) in the case of a trust, a copy of trust deed; and
- (d) financial statements of the person or firm for the period immediately preceding the application, or proof of existence of a bank account in the name of the construction company.

(2) The Board may call for further particulars of the person or firm, including but not limited to—

- (a) certified copies of the identity documents of the principal or principals of the firm;
- (b) where there are more than twenty principals, certified copies of the identity documents of twenty principals of the firm;
- (c) in the case of a foreign contractor—
 - (i) proof of current registration status from their country of domicile or origin, in addition to complying with section 18 of the Act; and
 - (ii) sufficient proof of financial capability of the contractor;
- (d) proof of registration with an association of contractors;
- (e) proof of employment of qualified persons by the contractor; and
- (f) in the case of an application relating to specialized works, a certified copy of the current licence issued by the relevant statutory regulatory or Authority or organization.

(3) If an application in relation to this regulation is made electronically, the supporting documents referred to in subregulation (2) shall be submitted to the Authority by registered mail or by hand delivery.

(4) An application shall not be considered duly completed for purposes of this regulation, unless all documents are received by the Authority.

(5) The Authority shall make a decision on an application by a person or firm within thirty days of receiving such application including rejection if such person does not fully comply with requirements set by the Authority, and shall inform the applicant accordingly giving reasons for such rejection.

(6) An application for registration may be made in English or Kiswahili.

(7) A register of registered contractors shall be kept in accordance with section 19 of the Act.

4. Evaluation of application

(1) The Authority shall assess every application received for the mandatory requirements set out in the Schedule.

(2) In making its evaluation under paragraph (1) the Authority shall award points to the applicant in accordance with the particulars set out in the Schedule and shall classify the applicant in accordance with the classes set out in the Schedule which shall depend on the scope and costs of the work involved.

(3) The scope and cost of works referred to in the Schedule shall be as specified by the Authority from time to time.

[L.N. 274/2017, r. 2.]

5. Certificate of Registration

(1) A person who qualifies for registration shall be issued with a Certificate of Registration by the Authority.

(2) Notwithstanding any other provision of these Regulations, the Board may where it deems it appropriate register an applicant for a category of works other than that applied for.

6. Exemption from registration for local contractors

Any skilled construction worker or construction site supervisor carrying out construction works specified in the proviso to section 16(1) of the Act shall be exempted from registration as a contractor.

7. Renewal of registration

A person or firm shall submit an annual application for renewal of the certificate of registration to the Authority in the prescribed form accompanied by the prescribed fee, and the Authority shall process the application in accordance with the provisions of regulation 4.

8. Petition for review

(1) A person who is aggrieved by the decision of the Board in relation to the category of registration under regulation 4(2) may submit a written petition indicating the reasons of such grievance, sufficient to justify review or the assessment by Authority.

(2) The Authority shall within thirty days of receiving a petition under paragraph (1) notify the person of the Board's decision on both applications.

(3) A person aggrieved by the decision of the Board may apply to the Appeals Board within thirty days from the date of notification of the Board's decision, provided that any person aggrieved by the decision of the Appeals Board may prefer a further appeal to the High Court within thirty days of the date of the decision by the Appeals Board.

9. Restriction

(1) Registration of contractors under NCA-1 as specified in the Schedule category shall be open to both local and foreign contractors.

(2) Any registrations that fall between NCA-2 to NCA-8 as set out in the Schedule of the Regulations shall be restricted to local contractors only.

[L.N. 274/2017, r. 3.]

10. Application for upgrading

(1) A contractor may make an application for upgrading to the Authority in a form to be prescribed by the Authority accompanied by the prescribed fee, and the Authority shall process the application in accordance with the provisions of regulation 3.

(2) An application under paragraph (1) shall be submitted together with proof of the construction work on the basis of which it is made.

[Subsidiary]

11. Transfer of records

(1) The Authority may transfer the records in its custody in respect of one contractor to another contractor and treat them as if they were the same entity for the purpose of assessment in the event where—

- (a) the first contractor, being a sole proprietor, partnership or trust, establishes a company as under the Companies Act (Cap. 486);
- (b) the name of the contractor is changed in accordance with the relevant law;
- (c) the company is re-organized; or
- (d) companies are amalgamated or taken over.

(2) The previous records of a contractor shall be reflected in any future application made by such contractor for the purpose of determining the category of registration of the contractor.

12. Registration of foreign Contractors

(1) Subject to section 18 of the Act, a foreign person or firm shall be eligible for registration as a contractor on application to the Authority and payment of the prescribed fees.

(2) Where a foreign firm applies under this regulation to undertake construction works or project under category NCA-1 specified in the Schedule, such firm shall demonstrate to the Authority its capacity for such works.

(3) The application under paragraph (1) shall be accompanied by—

- (a) the applicant's financial statements as at the date of the application;
- (b) detailed information on the value of construction works or projects done and completed locally in other jurisdictions;
- (c) proof of plant, equipment and machines holding;
- (d) an undertaking in writing that the foreign person or firm—
 - (i) shall subcontract or enter into a joint venture with a local person or local firm for not less than thirty percent of the value of the contract work for which temporary registration is sought;
 - (ii) shall transfer technical skills not available locally to a local person or firm in such manner as the Authority may determine from time to time;
- (e) any other requirement that the Board may determine from time to time.

(4) A registration under this regulation shall—

- (a) be valid for the period of the construction works contract or project in question;
- (b) where applicable be renewable every calendar year, failure to which the registration shall stand cancelled by the Board.

[L.N. 274/2017, r. 4.]

13. Application for renewal

Application for renewal of the licence shall be submitted to the Authority in writing at least thirty days before the expiry of such licence.

14. Continuous Professional Development

In each year during which a contractor holds a licence, the contractor or, in the case of a firm or company, the partner or director who possesses technical qualifications, skills or experience shall attend at least one Continuous Professional Development event recognized by the Authority and the Authority shall consider the attendances while determining an application to renew or upgrade the Contractor.

PART III – JOINT VENTURES

15. Registration of Joint ventures

(1) The Authority may register joint ventures on application made in writing by the persons intending to enter into joint venture agreements.

(2) Applications under this regulation shall be made to the Authority in the prescribed form and on payment of the prescribed fee and shall indicate—

- (a) the sum of the annual turnover of all the members to the joint venture;
- (b) the sum of the available capital of all the members to the joint venture;
- (c) the total number of equivalent full-time qualified employees;
- (d) the category in which the joint venture wishes to be registered; and
- (e) the Plan, equipment and machine holding of the joint ventures.

16. Ration of ownership of joint ventures

(1) The ratio of ownership of a joint venture for construction works between a local firm and a foreign firm shall be at least thirty percent for the local firm.

(2) The profits of the construction works shall be shared in line with the arrangements set out in paragraph (1).

(3) The employees of the joint venture to which this regulation applies shall be competitively recruited from the local labour market, and recruitment or employment of foreign technical or skilled workers on such contract shall only be done with the approval of the Authority where such skills are not available locally.

(4) The Authority may give such exemption on this regulation as the Board may deem appropriate.

PART IV – IDENTIFICATION AND REPORTING OF CONSTRUCTION
WORKS CONTRACTS OR PROJECTS BY OWNER**17. Registration of construction works**

(1) All construction works, contracts or projects either in the public or private sector shall be registered with the Authority in accordance with the Act.

(2) An owner shall make an application for registration of a project to the Authority in writing within thirty days from the date on which a tender for construction works, contract or project is awarded to a contractor registered under this Act.

(3) The application under this regulation shall be in the prescribed form and shall be made before the commencement of the construction works contract or project together with such fee as the Board may prescribe.

(4) An application under paragraph (2), shall indicate—

- (a) whether the project being registered relates to a project that consists of a series of contracts, to a joint venture;
- (b) the nature of funding, whether by Government, or donors co-founded by the Government and donors or other persons;
- (c) the programme, if any, to which the project relates;
- (d) whether the project relates to a public-private partnership; and
- (e) that the applicant acts on behalf of a client.

(5) An owner shall ensure that the tender for construction works, contract or projects is awarded to a person, firm or contractor registered under this Act.

(6) The Authority shall, within thirty days from receipt of the duly completed application form in terms of paragraphs 10(2) and (3) register the construction works contract or project and issue a compliance certificate.

[Subsidiary]

(7) The owner shall in relation to construction works registered in accordance with this regulation submit to the Authority in a prescribed form, within thirty days of such registration, information relating to—

- (a) the issuance of a completion certificate;
- (b) whether the contract is renewed or the contract period extended;
- (c) whether the contract is cancelled or terminated; and
- (d) whether all payments owing to the contractor have been settled.

(8) An owner shall notify the Authority of any arbitration entered into or litigation proceedings initiated in relation to construction works registered under this Act within thirty days from the date of commencement of the proceedings.

[L.N. 24/2017, r. 2.]

18. Representative of the Owner

(1) The owner shall submit information to the Authority identifying the person of the owner's choice to act as a contact person to liaise with the Authority on the construction works.

(2) Where a person identified under paragraph (1) ceases to act for the owner, the owner shall notify the Authority accordingly in writing within thirty days from such cessation.

[L.N. 24/2017, r. 2.]

PART V – CERTIFICATION AND ACCREDITATION OF SKILLED CONSTRUCTION WORKERS AND CONSTRUCTION SITE SUPERVISORS

19. Accreditation

The Authority shall accredit and certify all construction workers and construction site supervisors in accordance with the Act.

20. Classes of skilled construction workers

(1) The Authority shall register skilled construction workers under one or more of the classes or works provided in the Third Schedule to the Act.

(2) A construction worker referred to in paragraph (1) shall be registered to carry out, or undertake to carry out construction works for or on behalf of another person, for a fixed sum, percentage, value, consideration, wages or other reward.

21. Classes of construction site supervisors

A construction site supervisor shall be accredited in accordance with the Act in one or more of the classes of works provided in the Third Schedule thereof to undertake supervision and co-ordination of construction workers or other persons undertaking the same class of work for or on behalf of another person for a fixed sum, percentage, or valuable consideration, wages or other reward.

22. Eligibility for accreditation

- (1) The Authority shall accredit a person under this Part if the person—
 - (a) possesses the qualifications set by the Authority for the class of contract works set out in the Third Schedule to the Act, in respect of which the application is made; or
 - (b) possesses such other qualifications as, in the opinion of the Authority, are equivalent to the qualifications specified in paragraph (a), and has the practical experience to the satisfaction of the Board, whether in Kenya or elsewhere, to complement such qualifications; or
 - (c) has otherwise satisfied the Authority that he possesses such practical experience, so as to render him competent to be accredited as a construction worker or site supervisor at the discretion of the Authority; or

- (d) has successfully undergone such skills assessment as the Authority may conduct for this purpose.
- (2) A person shall be eligible for accreditation or renewal of accreditation as a construction site work if the person—
- (a) has successfully completed such bridging course as may be conducted by or on behalf of the Authority;
 - (b) possesses such experience whether in Kenya or elsewhere as, in the opinion of the Authority, complements the required qualifications; or
 - (c) has otherwise satisfied the Authority that he possesses such other qualifications or experience, knowledge and skills as, in the opinion of the Authority are equivalent to those prescribed in respect of the class applied for.
- (3) The Authority shall consider the conduct of an applicant while making a decision on the accreditation of the applicant and may make inquiries and conduct investigations which are reasonable and appropriate in the circumstances of each case so as to be satisfied of the knowledge, skills and experience of such applicant.
- (4) The Authority may conduct skills assessments and referee checks while making decision to accredit or renew the accreditation of an applicant.
- (5) A person accredited as a construction site supervisor in respect of any of the classes of construction works shall be deemed to have been accredited as a construction worker for the same class.

23. Validity of accreditation

Every accreditation of a construction worker or construction site supervisor under these Regulations shall be valid for a period of three years and may be renewed for a similar period.

24. Rejection of application

- (1) The Authority may reject an application under these Regulations if the applicant—
- (a) presents false documents for accreditation;
 - (b) knowingly makes use of any document of accreditation that is false; or
 - (c) impersonates any other person named in any certificate of accreditation.
- (2) A person who presents false documents under the paragraph (1) commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings or imprisonment for two months or to both.
- (3) Subject to paragraph (1), the Authority may suspend or, cancel or refuse to accredit any construction worker or site supervisor if—
- (a) the applicant has knowingly allowed details of such accreditation to be included in the manpower programme for more than one construction works contract or projects carried out at the same time;
 - (b) such applicant is convicted of any offence under this Act;
 - (c) it is in the public interest or national security to do so; or
 - (d) for other reason the Board may determine from time to time.
- (4) The Board shall not exercise its powers under sub-regulation (3) unless an opportunity of being heard has been given to such applicant against whom the Authority intends to exercise such powers.
- (5) An applicant whose accreditation as a construction worker or construction site supervisor is suspended or cancelled under this regulation shall, within fourteen days after notification by the Authority of such cancellation, surrender to an authorized officer certificate of accreditation, failing which the applicant shall be guilty of an offence under the Act.
- (6) The Authority shall cancel the accreditation of every deceased construction worker or construction site supervisor upon notification to the Authority or on the Authority's own volition.

[Subsidiary]

PART VI – COLLECTION AND PAYMENT OF CONSTRUCTION LEVY

25.

[Deleted by L.N 24/2017.]

26.

[Deleted by L.N 24/2017.]

PART VII – ENFORCEMENT

27. Fees

(1) There shall be payable to the Authority such fees for its services as the Authority may, with the approval of the Cabinet Secretary, determine from time to time.

(2) The fees determined under paragraph (1) above shall be published in the *Gazette*.

28. Investigation of complaint or suspicion

(1) The Authority may upon receipt of a complaint from any person who is aggrieved by an action taken under the terms of the code of conduct or an omission take such action, or where it has reasonable grounds to determine that a person has acted contrary to, or has omitted to act in terms of the code of conduct, the Authority shall appoint an investigating sub-committee carry out an investigation into such complaint or suspicion.

(2) Where the complaint or the suspicion implicates a person who is employed by a state organ or a body established under any written law other than the Authority, the Authority shall refer that complaint or suspicion to the accounting officer or accounting authority or any other supervisory person or body having control over that person for the purpose of dealing with the complaint according to the applicable disciplinary procedure, and submit a copy of the referral to the Audit Committee of the organ of state concerned and the Auditor-General.

(3) The investigating subcommittee shall conduct the investigation within the time stipulated by the Authority and submit its report and recommendation including recommendation for sanctions where appropriate.

(4) A person subject to investigation under this regulation shall be entitled to appear before the subcommittee in person or through an advocate.

(5) The registration of a contractor shall be suspended after investigations into his conduct have been concluded and it is established that the contractor has engaged in misconduct.

(6) An investigation committee may make recommendation with respect to the contractor, including revocation of the registration, caution or censure.

(7) Any contractor whose licence is suspended shall not enter into any new contract until the suspension has been lifted.

(8) The Authority shall inform the owner of works of any suspension of a contractor working with him.

(9) The Authority may stop the execution of any contract works where it is in the public interest to do so.

29. Removal from register

(1) The Authority may remove the name of a contractor from the register of contractors if the contractor—

- (a) has been debarred from participating in a procurement process under any legislation;
- (b) has been found guilty of non-compliance with the Code of Conduct published under the Act;
- (c) fails to comply with the provisions of regulation 27 with regard to the payment of the fees;
- (d) is declared bankrupt; or

(e) is a company which ceases to exist as a legal entity.

(2) The Authority shall conduct an inquiry in to the conduct of the contractor in accordance with section 22 of the Act before removing the name of the contractor from the register.

(3) Upon conclusion of the Inquiry, the Authority shall publish the name of any contractor who has been de-registered and shall direct that all construction contracts being executed by that contractor be terminated immediately.

(4) Any person aggrieved by the action of the Authority under this Regulation may appeal to the Appeals Board and the provisions of regulation 8(3) shall apply in respect of such an appeal.

SCHEDULE

[L.N. 274/2017, Reg. 5.]

PART I – EVALUATION CRITERIA FOR REGISTRATION OF BUILDING WORKS CONTRACTORS

1. ABOUT THE CRITERIA

This document contains the evaluation criteria for contractors' registration. The evaluation will be carried out in three stages—

1. Physical evaluation of mandatory requirements.
2. Technical evaluation (70 marks).
3. Financial evaluation (30 marks).

Stage 1 - 'physical evaluation of mandatory requirements' - will assess the documents showing proof of existence and tax compliance of the company.

Stage 2 - technical evaluation - will assess the technical aspects of the firm i.e. the directors, the staff, plant and equipment, firm's experience and office and work space. The relevant professional bodies shall include but not limited to—

- (a) Engineers Board of Kenya or Institution of Engineers Kenya;
- (b) Board of Registration of Architects and Quantity Surveyors;
- (c) National Construction Authority skilled workers accreditation scheme;
- (d) Institute of certified accountants of Kenya;
- (e) Institute of construction project Managers;
- (f) Institution of Engineering Technicians and Technologists; and
- (g) Law Society of Kenya, among others.

Stage 3 - financial evaluation - will assess the annual turnover and cash flow or working capital for the firm. This will be based on audited accounts of the company.

The evaluation can only proceed to stage 2 and 3 upon complete presentation of all the mandatory requirements outlined in stage 1.

2. PHYSICAL EVALUATION OF MANDATORY REQUIREMENTS

Mandatory requirements

For Official use

- (a) Receipt of the payment of application form
- (b) Society name/ Company name, Address and Contacts
- (c) Certificate of registration with societies /

[Subsidiary]

- | | |
|-----|--|
| | Certificate of Incorporation and memorandum of association |
| (d) | Valid Business Permit |
| (e) | CR 12 |
| (f) | Valid work permit for foreign staff |
| (g) | Application form duly completed including all annexes |
| (h) | Declaration signed, witnessed and stamped |
| (i) | Tax compliance certificate |
| (j) | Referees - Should be defined |

Fulfillment of stage 1 requirements, as outlined in the application form, should allow a contractor to be considered for registration. Attachments are specified in the application form.

Table I: Mandatory requirements

Referees:

These should be fully defined—

- (a) recommendation letters from clients and consultants for completed works;
- (b) recommendation letters from former employers in related field;
- (c) letters and certification from professional bodies including but not limited to Engineers Board of Kenya and Institution of Engineers Kenya for engineers, Board of Registration of Architects and Quantity Surveyors for architects and quantity surveyors, among others.

3. TECHNICAL EVALUATION (70 Marks) - specific for building works

This stage will evaluate the technical strength of the company. The following will be evaluated—

- (a) directors - 12 marks;
 - (b) staff - technical and support staff - 22 marks;
 - (c) plant and equipment owned - 15 marks;
 - (d) firms experience - 16 marks;
 - (e) office and workshop facilities - 5 marks.
- (a) *Directors : 12 marks*

The authority will assess the managing director and technical director as indicated in Annex 1.1 (directors' details - to be revised). The technical director will be graded according to the professional qualifications and relevant experience of not less than three years IN THE CONSTRUCTION INDUSTRY.

Table 3 below highlights the marks awarded in respect of one technical director. Columns (4) and (5) provide for awarding industry experience marks as a percentage of columns (3). Marks will be allowed for up to two highest ranked technical directors for each firm, giving a maximum possible of nine marks.

Table 4 highlights the marks to be awarded to any other non-technical director(s) submitted for consideration by the firm. Marks will be awarded for up to two non-technical directors. These directors will be evaluated per relevant business or managerial experience.

The firms score will be the total score for the two technical directors and the other two non-technical directors.

Table 2: Directors mark sheet

<i>Technical director's professional qualification (1)</i>	Marks to be awarded		Exp. Inyears (4)	**% of total marks(5)**
	Basic	Industry	>10	100
	Professional	Experience	8-10	80
	Qualification (2) (3)		5-7	60
Bachelor's Degree.	1.5	2.0	<5	40
Higher Diploma	1.25	1.5		
Diploma	1.0	1.25		
Certificate.	0.75	1.0		
Trade test	0.5	0.75		

NB:

Registration by relevant professional body will give director 1 mark

Table 3: Other Directors Mark sheet

<i>//Other director's professional qualification (1)//</i>	Marks to be awarded		//Exp. In years (4)//	//% of total marks (5)//
	Basic	//Industry Experience	>10	100
	Professional	Experience	8 - 10	80
	Qualification (2) (3)//		5 - 7	60
Bachelor's Degree.	0.5	0.75	<5	40
Higher Diploma.	0.4	0.5		
Diploma	0.3	0.3		
Certificate.	0.2	0.2		
Trade test	0.1	0.1		

NB:

Registration by relevant professional body will give director 0.25 marks

(b) *Staff- technical and support staff: 22 marks*

Marks will be awarded as indicated in table 3 below for the academic qualifications and experience in the construction. Depending on the composition of staff submitted in Annex 1.2 (staff details), the breakdown is as follows—

- Degree holders - maximum of 2.0 marks each. If all staff provided have minimum of Bachelor's degree, evaluate up to three staff members at this level;
- Higher Diploma or Diploma holders - maximum of 1.5 mark each. If all staff provided have minimum of Higher Diploma or Diploma, evaluate up to four staff members at this level;
- Certificate and trade test holders - maximum of 0.75 marks each. If all staff provided have minimum of certificate or trade test, evaluate for up to eight staff members in this level, columns (4) and (5) provide for awarding industry experience marks as a percentage of columns (3)
- marks will only be awarded for staff whose academic certificates and detailed curriculum vitae have been attached.

Table 4: Evaluation of Technical Staff

<i>Technical staff professional</i>	Marks to be awarded	Experiencein years (4)	% of total marks (8)
-------------------------------------	----------------------------	-------------------------------	-----------------------------

National Construction Authority

[Subsidiary]

<i>qualifications (1) in related field of study</i>	<i>Basic Professional Qualification (2) (3)</i>	<i>Experience in construction</i>	<i>>10 8-10 5-7 <5</i>	<i>100 80 60 40</i>
Bachelor's Degree.	0.75	1.0	<5	40
Higher Diploma/0.5 Diploma	0.25	0.75		
Certificate/trade test	0.25	0.25		

NB:

Registration by relevant professional body will give technical staff 0.25 marks

Table 5: Evaluation of Other Staff

<i>Other Staff</i>	<i>Marks</i>
Accounts and Finance Department	1
Human Resource Department	1
Administration	1
Occupational Health and Safety Officer	1

(c) *Plant and equipment owned: 15 marks*

Awarding of marks for all equipment depends on availing all information as in Annex 1.5 (Plant & Equipment). The maximum number of equipment in each category to be considered is listed in the 'No' column and a firm with that number will be awarded the maximum marks. Marks will then be awarded as a portion of that total number.

Marks will only be awarded for plant and equipment with attached proof of ownership, which includes; registration documents (logbooks), certificate of importation and certificate of sale where appropriate.

No provision for hired plant and equipment.

Plant and equipment mark sheet

Table 6: Building Works

<i>Plant & Equipment</i>	<i>No.</i>	<i>Marks</i>
Earth Moving	6	2.5
Bull Dozers (Min. capacity 280HP)	1	
Graders (Min. capacity 186 HP)	1	
Loaders (Min. capacity 200 HP)	2	
Backhoes (Min. capacity 100 HP)	1	
Excavator (30T above 230 HP)	1	
<i>Hauling & Transportation</i>	15	2.5
Tippers (15cumt or 25T payload)	5	
Agricultural Tractor 4x4, 120HP complete with trailers	1	
Non-tipping Truck (Min. capacity 7T)	5	
Site dumpers (Min. capacity 3T)	4	
<i>Concreting Equipment</i>	10	2.5
Concrete Mixers (Min. 750lts)	5	
Compressors (136 Cfm) & vibrators	3	
Concrete pump (10m ³ /hr at 25m high)	2	
<i>Facilities & Workshops</i>	3	2
Metal works	1	
Carpentry & joinery	1	
Precast concrete elements	1	
<i>Surveying Equipment</i>	3	0.5
Leveling Instrument (e.g. Dumpy level)	2	

Theodolite/Total Station	1	
<i>Cranes, hoisting and lifting equipment</i>	4	2
Tower crane (Min 25T)	2	
Passenger hoists	1	
Mobile crane (Min. 25T)	1	
<i>Water Equipment & Generators</i>	15	1
Water Bowsers (Min. 3000lts)	6	
Water Pumps (Min. 4" suction)	6	
Generator Set (Min. 250KVA)	3	
<i>Miscellaneous</i>		2
Assortment of hand tools (set of shovels, pans, pick axes, hoes, wheelbarrows, etc.		
Scaffolding		
Light Duty Vehicles (Pick-ups)		
Welding Set		
Safety gear		
TOTAL		15

(d) This will consider the volume of projects done in the last five years, as indicated in table 7 below. The Firm experience - 16 marks

total value of projects done in the last five years will be divided by three, and the figure matched according to the ranges in column (1) and the corresponding marks in column (2).

The list of projects, ongoing and completed, should be clearly provided in Annex 1.6 (firm's experience). Projects will only be considered if accompanied with documentary support; for ongoing projects, and completed projects (Practical Completion Certificate, Certificate of Taking Over and Final Acceptance Certificate).

Table 7: Firms experience - building projects

<i>Projects Value (in millions Kshs)</i>	<i>Marks for</i>	<i>Notes (3)</i>
<i>(1)</i>	<i>Volume of</i>	
	<i>Works over last</i>	
	<i>five years (2)</i>	
500,000,000 +	16	Step 1: Total Project Values
400,000,000 - 500,000,000	14	over
300,000,000 - 400,000,000	12	last 5 years (single project)
200,000,000 - 300,000,000	10	Step 2: Find range in Column
100,000,000 - 200,000,000	8	(1) that figure falls in
50,000,000 - 100,000,000	6	Step 3: Award corresponding
20,000,000 - 50,000,000	4	mark
Below 20,000,000	3	

(e) Head office facilities: 5 marks

The office and service facilities indicated in Annex 1.4 will be graded according to—

- (a) workshop and yard; marks awarded up to three. Items to be looked at include size, complexity.
- (b) office space; include branches; marks awarded up to two.

Table 8: Office Facilities

	Marks awarded
Workshop and yard	up to 3
Office space	up to 2

4. FINANCIAL EVALUATION (30 marks)

National Construction Authority

[Subsidiary]

The following are items to be assessed in the financial evaluation of a contractor—

- (a) turnover - 20 marks;
- (b) cash flow or working capital - 10 marks.

Table 9: Financial Evaluation Scheme

Annual Turn Over (Kshs)	Marks	Cash Flow/ Working Capital	Marks
315,000,000 - Above	20.0	50,000,000 - Above	10.0
225,000,000-375,000,000	17.5	30,000,000 - 50,000,000	8.5
150,000,000 - 225,000,000	15.0	20,000,000 - 30,000,000	6.5
75,000,000 - 150,000,000	12.5	10,000,000 - 20,000,000	5.0
37,500,000 - 75,000,000	10.0	5,000,000 - 10,000,000	3.0
15,000,000 - 37,500,000	7.5	1,000,000 - 5,000,000	3.0
7,500,000 - 15,000,000	5.0	500,000 - 100,000	2.0
Below 7,500,000	2.5	Below 500,000	2.0

5. AGGREGATE SCORE

B+C = aggregate score

B - Technical evaluation score

C - Financial evaluation score

Table 10: Aggregate scores per category

Category	Marks Awarded	For Official Use
NCA 1	81 - 100	
NCA 2	66 - 80	
NCA 3	56 - 65	
NCA 4	46 - 55	
NCA 5	36 - 45	
NCA 6	21 - 35	
NCA 7	10 - 20	
NCA 8	to meet all the Mandatory requirements	

6. VALUE LIMITS

Class	Category	Value of Works
A	Building Works	NCA 1
		NCA 2
		NCA 3
		NCA 4
		NCA 5
		NCA 6
		NCA 7
		NCA 8

Foreign firms

- (a) the registration fee for foreign firms to be enhanced to 20,000 USD per class of works; and
- (b) renewal fee for foreign firms to be to 10,000 USD per class of works.

PART II – EVALUATION CRITERIA FOR
REGISTRATION OF ROAD WORKS CONTRACTORS

I. ABOUT THE DRAFT CRITERIA

This document contains the evaluation criteria for contractors' registration. The evaluation will be carried out in three stages—

1. Physical evaluation of mandatory requirements.
2. Technical evaluation (70 marks).
3. Financial evaluation (30 marks).

Stage 1 - 'physical evaluation of mandatory requirements' - will assess the documents showing proof of existence and tax compliance of the company.

Stage 2 - technical evaluation - will assess the technical aspects of the firm i.e. the directors, the staff, plant and equipment, firm's experience and office and work space. The relevant professional bodies shall include but not limited to—

- (a) Engineers Board of Kenya or Institution of Engineers Kenya;
- (b) Board of Registration of Architects and Quantity Surveyors;
- (c) National Construction Authority skilled workers accreditation scheme;
- (d) Institute of Certified Accountants of Kenya;
- (e) Institute of construction project Managers;
- (f) Institution of Engineering Technicians and Technologists; and
- (g) Law society of Kenya, among others.

Stage 3 - financial evaluation - will assess the annual turnover and cash flow or working capital for the firm. This will be based on audited accounts of the company.

The evaluation can only proceed to stage 2 and 3 upon complete presentation of all the mandatory requirements outlined in stage 1.

2. PHYSICAL EVALUATION OF MANDATORY REQUIREMENTS

Fulfillment of stage 1 requirements, as outlined in the application form, should allow a contractor to be considered for registration. Attachments are specified in the application form.

Table I: Mandatory requirements

	<i>Minimum requirements For Official Use</i>
(a)	Receipt of the payment of application form
(b)	Society name/ Company name, Address and Contacts
(c)	Certificate of registration with societies / Certificate of Incorporation and memorandum of association
(d)	Valid Business Permit
(e)	CR 12
(f)	Valid work permit for foreign staff

[Subsidiary]

- (g) Application form duly completed including all annexes
- (h) Declaration signed, witnessed and stamped
- (i) Tax compliance certificate
- (j) Referees - Should be defined

Referees:

These should be fully defined—

- (a) recommendation letters from clients and consultants for completed works;
- (b) recommendation letters from former employers in related field; and
- (c) letters and certification from professional bodies including but not limited to; Engineers Board of Kenya and Institution of Engineers Kenya, for engineers, Board of Registration of Architects and Quantity Surveyors for Architects and Quantity Surveyors among others.

3. TECHNICAL EVALUATION (70 MARKS) - specific for road works

This stage will evaluate the technical strength of the company. The following will be evaluated—

- (a) directors - 10 marks;
- (b) staff - technical and support staff - 10 marks;
- (c) plant and equipment owned - 20 marks;
- (d) firms experience - 25 marks;
- (e) office and workshop facilities - 5 marks.

(a) Directors : 10 marks

The authority will assess the managing director and technical director as indicated in Annex 1.1 (directors' details - to be revised)). The technical director will be graded according to the professional qualifications and relevant experience of not less than three years IN THE CONSTRUCTION INDUSTRY.

Table 2 below highlights the marks awarded in respect of 1 technical director. Columns (4) and (5) provide for awarding industry experience marks as a percentage of columns (3). Marks will be allowed for up to two highest ranked technical directors for each firm, giving a maximum possible of 7.5 marks.

Table 4 highlights the marks to be awarded to any other non-technical director(s) submitted for consideration by the firm. Marks will be awarded for up to two non-technical directors. These directors will be evaluated per relevant business or managerial experience. For each firm, giving a maximum possible of 2.5 marks.

The firms score will be the total score for the two technical directors and the other two non-technical directors.

Table 2: Directors Mark sheet

<i>Technical director's professional qualification (1)</i>	<i>Marks to be awarded</i>		<i>Exp. In years (4)</i>	<i>% of total marks (5)</i>
	Basic	Industry Experience (3)	>10	100
	Professional Qualification (2)		8-10	80
			5-7	60
Bachelor's Degree.	1.0	1.75	<5	40
Higher Diploma	0.75	1.25		

Diploma	0.5	1.0
Certificate	0.25	0.75
Trade test	0.25	0.5

NB:

Registration by relevant professional body will give technical staff 1 mark

Table 3: Other Directors Mark sheet

<i>Other director's Marks to be awarded professional qualification (1)</i>			<i>Exp. In years (4)</i>	<i>% of total marks (5)</i>
Basic	Industry		>10	100
Professional	Experience(3)		8-10	80
Qualification (2)			5-7	60
Bachelor's Degree.			<5	40
Higher Diploma		0.5		
Diploma		0.3		
Certificate		0.2		
Trade test		0.1		

NB:

Registration by relevant professional body will give technical staff 0.25 marks

(b) Staff- technical and support staff: 10 marks

Marks will be awarded as indicated in Table 3 below for the academic qualifications and experience in the construction. Depending on the composition of staff submitted in Annex 1.2 (staff details), the breakdown is as follows—

- Degree holders - maximum of 2.0 marks each. If all staff provided have minimum of Bachelor's degree, evaluate up to two staff members at this level;
- Higher Diploma/ Diploma holders - maximum of 1.5 mark each. If all staff provided have minimum of Higher Diploma/ Diploma, evaluate up to two staff members at this level.
- Certificate and trade test holders - maximum of 0.75 marks each. If all staff provided have minimum of certificate/trade test, evaluate for up to four staff members in this level.

Columns (4) and (5) provide for awarding industry experience marks as a percentage of columns (3).

- marks will only be awarded for staff whose academic certificates and detailed Curriculum Vitae have been attached.

Table 4: Evaluation of technical staff

<i>Technical staff Marks to be awarded professional qualifications (1) (in related field of study)</i>			<i>Experience in years (4)</i>	<i>% of total marks (5)</i>
Basic	Experience in		>10	100
Professional	construction (3)		8-10	80
Qualification (2)			5-7	60
Bachelor's Degree.			<5	40
Higher Diploma/0.5		0.75		
Diploma				
Certificate/trade test		0.25		

NB:

Registration by relevant professional body will give technical staff 0.25 marks

[Subsidiary]

Table 5: Evaluation of other staff

Other Staff	Marks
Accounts and Finance Department	0.5
Human Resource Department	0.5
Administration	0.5
Occupational Health and Safety Officer	0.5

(c) *Plant and equipment owned: 20 marks*

Awarding of marks for all equipment depends on availing all information as in Annex 1.5 (plant and equipment). The maximum number of equipment in each category to be considered is listed in the 'No' column and a firm with that number will be awarded the maximum marks. Marks will then be awarded as a portion of that total number.

Marks will only be awarded for plant and equipment with attached proof of ownership, which includes; registration documents (logbooks), certificate of importation and certificate of sale where appropriate.

In addition, for NCA1, NCA2 and NCA3, the minimum score for plant and equipment is 16/20, 12/20 and 8/20 marks respectively.

No provision for hired plant and equipment.

Plant and equipment mark sheet

Table 6: Road Works

Plant & Equipment	No.	Roads
Earth Moving	20	5
Bull Dozers (Min. capacity 3 280 HP)		
Excavator (30T and above 5 230 HP)		
Graders (Min. capacity 6 186 HP)	6	
Loaders (Min. capacity 4 200 HP)	4	
Backhoe (Min capacity 2 100HP)	2	
Hauling & Transportation	30	3
Tipplers (15cumt or 25T payload)	20	
Agricultural Tractor 4x4, 120HP complete with trailers	2	
40T Low Loaders + Prime Mover 300HP	4	
Non-tipping Truck (Min. 7T)	4	
Asphalt & Crusher Plant	2	2
Stone Crusher 3 stages (P/S/T), installed power 750KVA	1	
Asphalt Plants with 4/5 cold bins, separate dryer and mixer, bag filter for	1	

dust collection 80/100T, installed power 600KVA		
Concreting Equipment	10	1.5
Concrete Mixers (Min. 7501ts)	6	
Compressors (Min. 136 Cfm) & vibrators	4	
Concrete batch plant weigh scale capacity min. 30cumt/hr	1	
Pavement construction (Road Making Equipment)	30	5
Vibrating Rollers (Min. capacity 12T)	6	
Tandem Rollers (Min. capacity 10T)	4	
Pneumatic Tyre Rollers (Min 10T, 10 wheels)	4	
Pedestrian Rollers/Plate Compactors	4	
Hand Compressors	2	
Asphalt Paver with hydraulic extended tamper table, automatic level controls, heaters for tamping table	2	
Chip Spreader (Self-propelled for 3.5m wide carriage way)	2	
Bitumen Distributor or Sprayer (Min. 8T for spraying 3.5m wide carriage way)	2	
Mechanical Broom	2	
Stabilization equipment	2	
Surveying Equipment	3	0.5
Leveling Instrument (e.g. Dumpy level)	2	
Theodolite/Total Station	1	
Water Equipment & Generators	15	1
Water Bowsers (Min. 30001ts)	6	
Water Pumps (Min. 4" suction)	6	
Generator Set (Min. 250 KVA)	3	
Miscellaneous	2	
Assortment of Hand Tools (set of shovels, pans,		

[Subsidiary]

pick axes, hoes, wheel-
barrows, etc.

Light Duty Vehicles (Pick-
ups)

Welding Set (Min.
300Amps)

TOTAL 20

(d) Firm experience - 20 marks

This will consider the scope of works done of similar nature for the last five years, as indicated in Table 7 below.

The list of projects; ongoing and completed, should be clearly provided in Annex 1.6 (firm's experience). Projects will only be considered if accompanied with documentary support; for ongoing projects, and completed projects (Practical Completion Certificate, Certificate of Taking Over, and Final Acceptance Certificate).

Table 7: Firm's Experience - Roads Projects:

Projects Description and Value range (Kshs.)	Marks Score	Notes
Bituminous Works above Kshs. 2.5 Billion	25	Step 1: Total Project Values over last 5 years (single project) Step 2: Find range in Column (1) that figure falls in
Bituminous Works between Kshs. 1.5 - 2.5 Billion	22	
Bituminous Works between Kshs. 1.0 - 1.5 Billion	20	Step 3: Award corresponding to column
Bituminous/Gravel Works between Kshs. 0.5 - 1.0 Billion	15	
Bituminous/Gravel Works between Kshs. 250 - 500 Million	10	
Bituminous Works between Kshs. 100 - 250 Million	8	
Bituminous/Gravel Works between Kshs. 20 - 100 Million	5	
Bituminous/Gravel Works between less than Kshs. 20 Million	3	

Note:

For NCA1, NCA2 and NCA3, the minimum score for firm's experience is 22/25, 16/25 and 11/25 marks respectively.

(e) Office facilities: 5 marks

The office and service facilities indicated in Annex 1.4 will be graded according to the–

- workshop and yard, marks awarded up to three. Items to be looked at include size and complexity;
- office space, include branches, marks awarded up to two.

Table 8: Office facilities

	Marks awarded
workshop and yard	3
office space	2

4. FINANCIAL EVALUATION (30 MARKS)

The following are items to be assessed in the financial evaluation of a contractor—

- (a) turnover - 20 marks;
- (b) cash flow or working capital - 10 marks.

Table 9: Financial Evaluation Scheme

Annual Turn Over (Kshs)	Marks	Cash Flow / Working Capital	Marks
1,125,000,000 - Above	20.0	75,000,000 - Above	10.0
750,000,000 - 1,000,000,000	17.5	50,000,000 - 75,000,000	8.5
450,000,000 - 750,000,000	15.0	30,000,000 - 50,000,000	6.5
300,000,000 - 450,000,000	12.5	20,000,000 - 30,000,000	5.0
150,000,000 - 300,000,000	10	5,000,000 - 20,000,000	3.0
75,000,000 - 150,000,000	7.5	2,500,000 - 5,000,000	3.0
37,500,000 - 75,000,000	5.0	1,250,000 - 2,500,000	2.0
Below 37,500,000	2.5	Below 1,250,000	2.0

5. AGGREGATE SCORE

B+C = aggregate score;

B - Technical evaluation score;

C - Financial evaluation score.

Table 10: Aggregate scores per category

Category	Marks Awarded	For Official Use
NCA 1	81 -100	
NCA 2	66 -80	
NCA 3	56 -65	
NCA 4	46-55	
NCA 5	36-45	
NCA 6	21-35	
NCA 7	10-20	
NCA 8	to meet all the mandatory requirements	

6. VALUE LIMITS

B	Road Works	NCA	Value Limits
		NCA 1	UNLIMITED
		NCA 2	2,500,000,000.00
		NCA 3	1,250,000,000.00
		NCA 4	750,000,000.00
		NCA 5	500,000,000.00
		NCA 6	200,000,000.00
		NCA 7	30,000,000.00
		NCA 8	10,000,000.00

Foreign firms:

The registration fee for foreign firms to be enhanced to 20,000 USD per class of works.

[Subsidiary]

PART III

EVALUATION CRITERIA FOR REGISTRATION OF WATER WORKS CONTRACTORS

I. ABOUT THE DRAFT CRITERIA

This document contains the draft evaluation criteria for contractors' registration. The evaluation will be carried out in 3 stages—

1. Physical evaluation of mandatory requirements.
2. Technical evaluation.
3. Financial evaluation.

Stage 1 - 'physical evaluation of mandatory requirements' - will assess the documents showing proof of existence and tax compliance of the company.

Stage 2 - technical evaluation - will assess the technical aspects of the firm i.e. the directors, the staff, plant and equipment, firm's experience and office and work space.

In this stage, membership in professional regulatory bodies shall earn the directors and staff extra points. The relevant professional bodies shall include but not limited to—

- (a) Engineers Board of Kenya;
- (b) Board of Registration of Architects and Quantity Surveyors;
- (c) National Construction Authority skilled workers accreditation scheme;
- (d) Institute of Certified Accountants of Kenya;
- (e) Institute of construction project Managers;
- (f) Institution of Engineering Technologists and Technicians; and
- (g) Law society of Kenya, among others.

Stage 3 - financial evaluation - will assess the annual turnover and cash flow/working capital for the firm. This will be based on audited accounts of the company.

The evaluation can only proceed to stage 2 and 3 upon complete presentation of all the mandatory requirements outlined in stage 1.

2. PHYSICAL EVALUATION OF MANDATORY REQUIREMENTS

Fulfillment of stage 1 requirements, as outlined in the application form, should allow a contractor to be considered for registration. Attachments are specified in the application form.

Table I: Mandatory requirements

	<i>Minimum requirements For Official Use</i>
(a)	Receipt of the payment of application form
(b)	Society name/ Company name, Address and Contacts
(c)	Certificate of registration with societies / Certificate of Incorporation and memorandum of association
(d)	Valid Business Permit
(e)	Valid work permit for foreign staff
(f)	CR 12 Form

- (g) Application form duly completed including all annexes
- (h) Declaration signed, witnessed and stamped
- (i) Tax compliance certificate
- (j) Referees

Note on Referees:

- (a) recommendation letters from clients and consultants for completed works;
- (b) letters and certification from professional bodies including but not limited to Engineers Board of Kenya and Institute of Engineers Kenya for engineers, Board of Registration of Architects and Quantity Surveyors for Architects & Quantity Surveyors among others.

Table 2: Additional requirements for Water Works Contractors

For Water Works contractors, the following qualifications are mandatory

Contractor	Minimum requirement	For Official Use
a) water supply, sewerage and irrigation works	Ministry of Water license	
b) dams and pans	Ministry of Water license	

3. TECHNICAL EVALUATION (70 MARKS)

This stage will evaluate the technical strength of the company. The following will be evaluated—

- (a) directors - 10 marks;
- (b) staff - technical and support staff - 10 marks;
- (c) plant and equipment owned - 20 marks;
- (d) firms experience - 25 marks;
- (e) office and workshop facilities - 5 marks.

(a) Directors: 10 marks

The authority will assess two technical directors as indicated in Annex 1.1 (Directors' Details). The Technical director will be graded according to the professional qualifications and relevant experience of not less than three years IN THE CONSTRUCTION INDUSTRY.

Table 3 below highlights the marks awarded in respect of 1 Technical Director. Columns (4) and (5) provide for awarding industry experience marks as a percentage of column (3). Marks will be allowed for up to two of the highest ranked technical Directors for each firm, giving a maximum possible of 7.5 marks.

Table 4 highlights the marks to be awarded to any other non-technical director(s) submitted for consideration by the firm. Marks will be awarded for up to a maximum of 2.5 marks for 2 non-technical directors. These directors will be evaluated per relevant business or managerial experience.

The firms score will be the total score for the two technical directors and the other two non-technical directors.

Table 3: Directors mark sheet

Technical director's professional qualification (1)	Marks to be awarded		Exp. In years (4)	% of total marks (5)
	Basic	Industry	>10	100
	Professional	Experience (3)	8-10	80
	Qualification (2)		5-7	60
			<5	40

National Construction Authority

[Subsidiary]

Bachelor's Degree.	1.0	1.75
Higher Diploma	0.75	1.25
Diploma	0.5	1.0
Certificate	0.25	0.75
Trade test	0.25	0.5

NB:

Registration by relevant professional body will give technical staff 1 mark

Table 4: Other Directors mark sheet

Other director's professional qualification (1)	Marks to be awarded		Exp. in years (4)	% of total marks (5)
Basic	Industry	Experience(3)	>10	100
Professional Qualification (2)			8-10	80
Bachelor's Degree.	0.25	0.75	5-7	60
Higher Diploma	0.2	0.5	<5	40
Diploma	0.15	0.3		
Certificate	0.1	0.2		
Trade test	0.05	0.1		

NB:

Registration by relevant professional body will give technical staff 0.25 marks

(b) Staff- technical and support staff: 10 marks

Marks will be awarded as indicated in table 5 below for the academic qualifications and experience in the construction. Depending on the composition of staff submitted in Annex 1.2 (staff details), the breakdown is as follows—

- Degree holders - maximum of 1.75 marks each. If all staff provided have minimum of Bachelor's degree, evaluate up to 2 staff members at this level.
- Higher Diploma/ Diploma holders - maximum of 1.25 mark each. If all staff provided have minimum of Higher Diploma/ Diploma, evaluate up to two staff members at this level.
- Certificate and trade test holders - maximum of 0.75 marks each. If all staff provided have minimum of certificate/trade test, evaluate for up to four staff members in this level.

Columns (4) and (5) provide for awarding industry experience marks as a percentage of column (3).

- marks will only be awarded for staff whose academic certificates and detailed curriculum vitae have been attached.

Table 5: Evaluation of Technical Staff

Technical staff professional qualifications (1) (in related field of study)	Marks to be awarded		Exp. In years (4)	% of total marks (5)
Basic	Experience in	construction (3)	>10	100
Professional Qualification (2)			8-10	80
Bachelor's Degree.	0.5	1.0	5-7	60
Higher Diploma/ Diploma	0.5	0.5	<5	40
Certificate/trade test	0.25	0.25		

NB:

Registration by relevant professional body will give technical staff 0.25 marks

Table 6: Evaluation of other Staff

Other Staff	Marks
Accounts and Finance Department	0.25
Human Resource Department	0.25
Administration	0.25
Occupational Health and Safety Officer	0.25

(c) Plant and equipment owned: 20 marks

Awarding of marks for all equipment depends on availing all information as in Annex 1.5 (plant and equipment). The maximum number of equipment in each category to be considered is listed in the 'No' column, and a firm with that number will be awarded the maximum marks. Marks will then be awarded as a portion of that total number.

Marks will only be awarded for plant and equipment with attached proof of ownership, which includes; registration documents (logbooks), certificate of importation and certificate of sale where appropriate.

No provision for hired plant and equipment.

Plant and Equipment Mark sheet

Table 7: Water Works

	Plant & Equipment No.	Roads
1.	Earth Moving 20 Bull Dozers (Min. 3 capacity 280 HP) Excavator (30T and 5 above 230 HP) Graders (Min. 2 capacity 186 HP) loaders (Min. 8 capacity 200 HP) Backhoe (Min 2 capacity 100HP)	5
2.	Hauling & Transportation Tippers (15cumt or 20 25T payload) Agricultural Tractor 2 4x4, 120HP complete with trailers 40T Low Loaders 4 + Prime Mover 100HP Non-tipping Truck 4 (Min. 7T)	3
3	Crusher Plant 1 Stone Crusher 3 1 stages (P/S/T), installed power 750KVA	2

National Construction Authority

[Subsidiary]

4	Concreting Equipment	10	1.5
	Concrete Mixers (Min. 750lts)	6	
	Compressors (Min . 136 Cfm) & vibrators	4	
	Concrete batch plant weigh scale capacity min. 30cumt/hr	11	
5	Compaction Equipment	20	4
	Vibrating Rollers (Min. capacity 12T)	6	
	Tandem Rollers (Min. capacity 10T)	4	
	Pneumatic Tyre Rollers (Min 10T, 10 wheels)	2	
	Pedestrian Rollers/ Plate Compactors	4	
	Hand Compressors	4	
6	Cranes, hoisting and lifting equipment	1	1
	Mobile crane (Min. 25T)	1	
6	Surveying Equipment	4	0.5
	Leveling Instrument (e.g. Dumpy level)	2	
	Theodolite/Total Station	2	
7	Water Equipment & Generators	15	1
	Water Bowsers (Min. 3000lts)	6	
	Water Pumps (Min. 4" suction)	6	
	Generator Set (Min. 250 KVA)	3	
8	Miscellaneous	2	
	Assortment of Hand Tools (set of shovels, pans, pick axes, hoes, wheel barrows, etc.		
	Lieht Duty Vehicles (Pick-ups)		

Welding Set (Min. 300Amps)	
TOTAL	20

(d) Firm experience - 25 marks

This will consider the scope of works done of similar nature for the last three years, as indicated in Table 8 below.

The list of projects; ongoing and completed, should be clearly provided in Annex 1.6 (firm's experience). Projects will only be considered if accompanied with documentary support; for ongoing projects, and completed projects (Practical Completion Certificate, Certificate of Taking Over, and Final Acceptance Certificate).

Table 8: Firm's experience

Projects Description and Marks/Score Value range (Kshs.)	Notes
Kshs. 1.25 Billion and above	25
Kshs. 1.0 - 1.25 Billion	20
Kshs. 0.5 - 1.0 Billion	15
Kshs. 100 - 500 Million	10
Kshs. 20 - 100 Million	5
Kshs. 20 Million and below	3

The given value ranges are per single water project

(e) Office facilities: 5 marks

The office and service facilities indicated in Annex 1.4 will be graded according to the—

- workshop and yard – marks awarded up to three. Items to be looked at include size, complexity;
- office space (include branches) – marks awarded up to two.

Table 9: Office Facilities

	Marks Awarded
Workshop and yard	upto 3
Office space	upto 2

4. FINANCIAL EVALUATION (30 MARKS)

The following are items to be assessed in the financial evaluation of a contractor—

- turnover - 20 marks;
- cash flow or working capital - 10 marks.

Table 10: Financial Evaluation Scheme

Annual Turn Over (Kshs)	Marks	Cash Flow / Working Capital	Marks
1,000,000,000 - Above	20.0	75,000,000 - Above	10.0
750,000,000 - 1,000,000,000	17.5	50,000,000 - 75,000,000	8.5
450,000,000 - 750,000,000	15.0	30,000,000 - 50,000,000	6.5
300,000,000 - 450,000,000	14	20,000,000 - 30,000,000	5.0
150,000,000 - 300,000,000	12	5,000,000 - 20,000,000	3.0
75,000,000 - 150,000,000	10	2,500,000 - 5,000,000	3.0

National Construction Authority

[Subsidiary]

37,500,000 -	8	1,250,000 -	2.0
75,000,000		2,500,000	
Below 37,500,000	5	Below 1,250,000	2.0

5. AGGREGATE SCORE

B + C = aggregate score;

B - Technical evaluation score;

C - Financial evaluation score;

The total score shall then be matched as per table 11 below to obtain the category of the evaluated applicant.

Table 11: Aggregate scores per category

Category	Marks Awarded	For Official Use
NCA 1	81 -100	
NCA 2	66 -80	
NCA 3	56 -65	
NCA 4	46-55	
NCA 5	36-45	
NCA 6	21-35	
NCA 7	10-20	
NCA 8	to meet all the mandatory requirements	

*Other Proposals**Foreign firms:*

- (a) the registration fee for foreign firms to be enhanced to 20,000 USD per class of works;
- (b) renewal fee for foreign firms to be to 10,000 USD per class of works.

6. VALUE LIMITS

The proposed value limits are as per Table 12 here below—

Table 12: Value limits for categories of works

Water supply, Sewerage & Irrigation	NCA 1	UNLIMITED
	NCA 2	1,000,000,000.00
	NCA 3	500,000,000.00
	NCA 4	300,000,000.00
	NCA 5	200,000,000.00
	NCA 6	100,000,000.00
	NCA 7	30,000,000.00
	NCA 8	10,000,000.00

PART IV

EVALUATION CRITERIA FOR REGISTRATION OF CONTRACTORS FOR ELECTRICAL, ELECTRONIC AND COMMUNICATION ENGINEERING WORKS

1. ABOUT THE DRAFT CRITERIA

This document contains the draft evaluation criteria for contractors' registration. The evaluation will be carried out in three stages—

1. Physical evaluation of mandatory requirements.
2. Technical Evaluation (70 marks).
3. Financial Evaluation (30 marks).

Stage 1 - 'physical evaluation of mandatory requirements' - will assess the documents showing proof of existence and tax compliance of the company. This stage shall also assess compliance with other mandatory statutory requirements.

Stage 2 - technical evaluation - will assess the technical aspects of the firm i.e. the directors, the staff, plant and equipment, firm's experience and office and work space.

In this stage, membership in professional regulatory bodies shall earn the directors and staff extra points. The relevant professional bodies shall include but not limited to—

- (a) Engineers Board of Kenya;
- (b) Board of Registration of Architects and Quantity Surveyors;
- (c) National Construction Authority skilled workers accreditation scheme;
- (d) Institute of Certified Public Accountants of Kenya;
- (e) Institute of construction project Managers;
- (f) Institution of Engineering Technologists and Technicians; and
- (g) Law society of Kenya, among others.

Stage 3 - financial evaluation - will assess the annual turnover, largest contract, and available cash for the firm.

The evaluation can only proceed to stage two and three upon complete presentation of all the mandatory requirements outlined in stage one.

2. PHYSICAL EVALUATION OF MANDATORY REQUIREMENTS

Fulfillment of stage 1 requirements, as outlined in the application form, should allow a contractor to be considered for registration. Attachments are specified in the application form.

Table 1: Mandatory requirements

	<i>Mandatory requirements</i>
(a)	Receipt of the payment of application form
(b)	Society name/ Company name, Address and Contacts
(c)	Certificate of registration with societies /Certificate of Incorporation and memorandum of association
(d)	Valid Business Permit/ Licence
(e)	Valid work permit for foreign staff
(f)	CR 12
(g)	Application form duly completed including all annexes
(h)	Declaration signed, witnessed and stamped
(i)	Tax compliance certificate
(j)	Referees

Referees should be from among the following—

- (a) letters from clients and consultants of completed projects;

National Construction Authority

[Subsidiary]

- (b) letters and certifications from recognized professional bodies or institutions from which the applicant is a member; and
- (c) letters from previous employers.

Table 2A: Additional Mandatory Statutory Requirements for Electrical Engineering Contractors

<i>Class/Sub-Class</i>	<i>Mandatory Requirements</i>	<i>Minimum Requirements</i>	<i>For Official Use</i>
Electrical Installation	Energy Regulatory Commission (ERC) License *	Licence C2	
Generator Installation	Energy Regulatory Commission (ERC) License	Licence A2	
Lifts & Escalators, Travellator Installation	Energy Regulatory Commission (ERC) License	Licence A2	
Solar PV Installation	Energy Regulatory Commission (ERC) License	Licence TI	
Construction of Power Lines	Energy Regulatory Commission (ERC) License	Licence C2	

* Licence issued under the Energy Act, Cap. 314 Laws of Kenya

Table 2B: Additional Mandatory Requirements for Communications Engineering Contractors

<i>Class/Sub-Class</i>	<i>Mandatory Requirements</i>	<i>Minimum Requirements</i>	<i>For Official Use</i>
Wireless Communication Systems	Communications Authority of Kenya (CAK) License**	Telecommunications Contractor Licence	
Structured Cabling and IP telephony Installation	Communications Authority of Kenya (CAK) License	Telecommunications Contractor Licence	

* Licence issued under the Energy Act, Cap. 314 Laws of Kenya

3. TECHNICAL EVALUATION (70 MARKS)

This stage will evaluate the technical strength of the company. The following will be evaluated—

- (a) directors - technical and other directors - 10 marks;
- (b) staff - technical and support staff - 20 marks;
- (c) plant and equipment owned - 15 marks;
- (d) firms experience - 20 marks;
- (e) workshop and office facilities - 5 marks.

(a) *Directors - technical and Others : 10 marks*

The authority will assess a maximum of two technical directors as indicated in Annex 1.1 (Directors' Details). The Technical director will be graded according to the professional qualifications and relevant experience of not less than three years IN THE CONSTRUCTION INDUSTRY.

Table 3 below highlights the marks awarded in respect of one technical Director. Columns (4) and (5) provide for awarding industry experience marks as a percentage of columns (3). Marks will be allowed for up to two highest ranked Technical Directors for each firm, giving a maximum possible of 7.5 marks.

Table 4 highlights the marks to be awarded to any other non-technical director(s) submitted for consideration by the firm. Marks will be awarded for up to a maximum of 2.5 marks for two non-technical directors. These directors will be evaluated per relevant business or managerial experience.

The firms score will be the total score for the 2 technical directors and the other 2 non-technical directors.

Table 3: Technical Directors Mark sheet

<i>Technical director's professional qualification (1)</i>	<i>Marks to be awarded</i>		<i>Exp. In years (4)</i>	<i>% of total marks (5)</i>
	Basic	Industry Experience (3)	>10	100
	Professional Qualification (2)		8-10	80
			5-7	60
Bachelor's Degree.	1.0	1.75	<5	40
Higher Diploma	0.75	1.25		
Diploma	0.5	1.0		
Certificate	0.25	0.75		
Trade test	0.25	0.5		

NB:

Registration by relevant professional body will give technical staff 1 mark

Table 4: Other Directors

<i>Other director's professional qualification (1)</i>	<i>Marks to be awarded</i>		<i>Exp. In years (4)</i>	<i>% of total marks (5)</i>
	Basic	Industry Experience (3)	>10	100
	Professional Qualification (2)		8-10	80
			5-7	60
Bachelor's Degree.	0.25	0.75	<5	40
Higher Diploma	0.2	0.5		
Diploma	0.15	0.3		
Certificate	0.1	0.2		
Trade test	0.05	0.1		

NB:

Registration by relevant professional body will give technical staff 0.25 marks

(b) Staff- technical and support staff: 20 marks

Marks will be awarded as indicated in table five below for the academic qualifications and experience in the construction industry. Depending on the composition of staff submitted in Annex 1.2 (staff details), the breakdown shall be as follows—

- (a) Degree holders - maximum of 2.0 marks each. If all staff provided have minimum of Bachelor's degree, evaluate up to two staff members at this level;
- (b) Higher Diploma/ Diploma holders - maximum of 1.5 mark each. If all staff provided have minimum of Higher Diploma/ Diploma, evaluate up to four staff members at this level;
- (c) Certificate and trade test holders - maximum of 1.0 marks each. If all staff provided have minimum of certificate/trade test, evaluate for up to eight staff members in this level;

National Construction Authority

[Subsidiary]

Columns (4) and (5) provide for awarding industry experience marks as a percentage of column (3). The marks for the technical staff will be the total for the above categories, with a maximum of eighteen;

- (d) two marks will be awarded for the non-technical support/other management staff as indicated in table six below;
- (e) marks will only be awarded for staff whose certified academic certificates and other professional certificates have been attached.

Table 5: Evaluation of Technical Staff (Electrical Installation)

Technical staff Marks to be awarded			Exp. In years	% of total
professional			(4)	marks (5)
qualifications	Basic	Experience in	>10	100
(1) (in related	Professional	construction	8-10	80
field of study)	Qualification (2) (3)		5-7	60
Bachelor's	0.5	1.0	<5	40
Degree.				
Higher Diploma/0.5		0.5		
Diploma				
Certificate/trade	0.25	0.25		
test				

NB:

Registration by relevant professional body will give technical staff 0.5 marks

Table 6: Evaluation of other staff

Other Staff	Marks
Accounts and Finance Department	0.5
Human Resource Department	0.5
Administration	0.5
Occupational Health and Safety Officer	0.5

(c) Plant and equipment owned: 15 marks

Awarding of marks for all equipment depends on applicant providing all information as requested in Annex 1.5 (plant and equipment) of the application form. The maximum number of equipment in each category to be considered is listed in the 'No' column and a firm with that number will be awarded the maximum marks. Marks will then be awarded as a portion of that total number.

Marks will only be awarded for plant and equipment with attached proof of ownership, which includes; registration documents (logbooks), certificate of importation and certificate of sale where appropriate.

No provision is made for hired plant and equipment.

Plant and Equipment Mark sheet

Table 7A: Electrical Installation

Plant & Equipment	No.	Marks
Equipment for Electrical Installation	10	5
Portable drilling machines	6	
Cable lagging Machine	4	
Testing Equipment	26	5
Multimeter	6	
Earth loop Impedance tester	2	
Earth Resistance Tester	2	

Insulation Tester	2	
Tong Tester	6	
Phase Sequence meter	2	
Phase Tester	6	
Hauling & Transportation	4	4
Pick-ups	4	
Miscellaneous	2	1
Circuit Analyzer	1	
Assorted hand tools	11	
(Vices, Levels, Hand tools set, snips, pliers, screw drivers, spanners, etc.)		
TOTAL		15

NB:

NCA 5 & above MUST have Earth loop Impedance and Phase Sequence meter else downgraded to NCA 6.

Table 7B: Generators and Lifts

<i>Plant & Equipment</i>	<i>No.</i>	<i>Marks</i>
<i>Equipment for Generator,</i>	9	2
<i>Lifts & Escalator Installation</i>		
Portable drilling machines	3	
Cable lagging Machine	4	
Chain Block & tackle (min. 1 ton)	2	
<i>Testing Equipment</i>	14	8
Multimeter	3	
Earth loop Impedance tester	2	
Earth Resistance Tester	2	
Insulation Tester	2	
Tong Tester	3	
Phase Sequence meter	2	
<i>Hauling & Transportation</i>	5	3
Pick-ups	2	
Light trucks (minimum 3ton)	2	
Truck mounted crane	1	
Miscellaneous	11	2
Assorted hand tools (Vices, Levels, Hand tools set, snips, pliers, screw drivers, spanners, etc.)	11	
TOTAL		15

Table 7C: Solar PV Installation

<i>Plant & Equipment</i>	<i>No.</i>	<i>Marks</i>
<i>Equipment for Solar PV</i>	7	4
<i>Installation</i>		
Solar design software	1	
Portable drilling machines	6	
<i>Testing Equipment</i>	12	7

National Construction Authority

[Subsidiary]

Multimeter	6	
Earth loop Impedance	2	
Earth Resistance Tester	2	
Insulation Tester	2	
<i>Hauling & Transportation</i>	4	2
Pick-ups (minimum 1 ton)	4	
<i>Miscellaneous</i>	13	2
Circuit Analyzer	1	
Assorted hand tools (Vices, Levels, Hand tools set, snips, pliers, screw drivers, spanners, etc.)	11	
Irradiation Meter	1	
TOTAL		15

Table 7D: Power Line Construction (Distribution & Transmission)

Plant & Equipment	No.	Marks
<i>Equipment for Power line construction</i>	14	4
Portable drilling machines	4	
Chain Block & tackle (min. 1 ton)	4	
Pull lift	4	
Come-a-long cable power puller (minimum 3/16" cables)	2	
<i>Testing Equipment</i>	22	4
Multimeter	6	
Earth Resistance Tester	2	
Insulation Tester	2	
Tong Tester	6	
Line Tester	6	
<i>Hauling & Transportation</i>	6	6
Light truck	2	
Non-tipping trucks	2	
Truck mounted cranes	2	
<i>Miscellaneous</i>	11	1
Assorted hand tools (Vices, Levels, Hand tools set, snips, pliers, screw drivers, spanners, etc.)	11	
TOTAL		15

Table 7E: Electronic, Communication, Security and Access Systems

Plant & Equipment	No.	Marks
<i>Equipment for Electronic, Communication, security and Access Systems Installation</i>	4	2
Portable drilling machines	4	
Testing Equipment	22	8
Multimeter	6	

Earth Resistance Tester	2	
Computers	3	
Phase Tester	6	
Cable Tester	2	
Krone tool	3	
Hauling & Transportation	4	3
Pick-ups	2	
Light truck	2	
Miscellaneous	11	2
Assorted hand tools (Vices, Levels, Hand tools set, snips, pliers, screw drivers, spanners, etc.)	11	
TOTAL		15

*(d) Firm's experience - 20 marks**(i) Firm's experience - Electrical Installation Works*

The firm's experience in electrical installation work shall be evaluated using table 8A and table 8B.

The volume of projects done in the last five years shall be considered as indicated in table 8A below. A maximum of 10 marks shall be awarded for volume of work done.

The value of the largest single projects done in the last five years will be matched according to the ranges in Column (1) and the corresponding marks in Column (2).

The list of projects, ongoing and completed, should be clearly provided in Annex 1.6 (firm's experience).

Projects will only be considered if accompanied with documentary support; for ongoing projects, and completed projects (Practical Completion Certificate, Certificate of Taking Over, and Final Acceptance Certificate).

Table 8B is used to evaluate the firms' experience based on the complexity of the projects handled. The firm with the highest class of the Energy Regulatory Commission licence for electrical installation works shall score a maximum of 10 marks.

The total score on the firm's experience in electrical installation work shall be a combination of the volume of work done and the complexity of work done based on the class of the Energy Regulatory Commission licence of the firm.

Table 8A: Firm's experience – Volume of Work (Electrical Installation Works):

<i>Projects Value (in millions Ksh (1)</i>	<i>Marks for, Volume of Works over last five years (2)</i>	<i>Notes (3)</i>
250,000,000 +	10	Step 1: Check for the value of the largest single project done in the last 5 years
200,000,000 - 250,000,000	9	
150,000,000 - 200,000,000	8	
100,000,000 - 150,000,000	7	Step 2: Find range in Column (1) where that figure falls in.
50,000,000 - 100,000,000	6	Step 3: Award corresponding mark
25,000,000 - 50,000,000	5	
10,000,000 - 25,000,000	4	
Below 10,000,000	3	

Table 8B: Firms Experience - Complexity of Works (Electrical Installation Works)

National Construction Authority

[Subsidiary]

<i>Class of ERC Licence</i>	<i>Complexity of Electrical Works</i>	<i>Marks (Max 10 marks)</i>
A1	All kinds of electrical installation work	10
B	All kinds of electrical installation work for connection to supply metered at voltages not exceeding medium (i.e. less than 33,000V)	8
C1	Limited to installation works for connection to three phase supply at low voltage (i.e. less than 1,000V), up to four (4) storey buildings not used as factories or places of public entertainment;	5
C1	Limited to installation works for connection to single phase supply at low voltage (i.e. less than 1,000V) up to two (2) storey buildings not used as factories or places of public entertainment;	3

- (ii) Firm's Experience - (Construction of Power Lines, Wireless Communications, Structured Cabling, and Security & Access Control, Generators, Lifts, Solar, Audio Visual, and Instrumentation & PLCs)

The volume of projects done in the last five years shall be considered as indicated in Table 8C and Table 8D below. A maximum of 20 marks shall be awarded for volume of work done.

The total value of projects done in the last five years will be divided by 3, and the figure matched according to the ranges in Column (1) and the corresponding marks in Column (2).

The List of projects, ongoing and completed, should be clearly provided in Annex 1.6 (Firm's Experience).

Projects will only be considered if accompanied with documentary support; for ongoing projects, and completed projects (Practical Completion Certificate, Certificate of Taking Over, and Final Acceptance Certificate).

Table 8C: Firm's experience – Volume of Work (Construction of Power Lines, Wireless Communications, Structured Cabling, and Security & Access Control):

<i>Projects Value (in millions Ksh (1))</i>	<i>Marks for Volume of Works over last five years (2)</i>	<i>Notes (3)</i>
250,000,000 +	20	Step 1: Check for the value of the largest single project done in the last 5 years
200,000,000 - 250,000,000	18	
150,000,000 - 200,000,000	16	
110,000,000 - 150,000,000	14	
150,000,000		

50,000,000 - 100,000,000	12	Step 2: Find range in
25,000,000 - 50,000,000	8	Column (1) where that
10,000,000 - 25,000,000	5	figure falls in.
Below 10,000,000	2	Step 3: Award corresponding mark

Table 8D: Firm's experience – Volume of Work (Generators, Lifts, Solar, Audio Visual, and Instrumentation & PLCs):

<i>Projects Value (in millions Ksh (1))</i>	<i>Marks for Volume of Works over last five years (2)</i>	<i>Notes (3)</i>
50,000,000 +	20	Step 1: Check for the value of the largest single project done in the last 5 years
30,000,000 - 50,000,000	17	
20,000,000 -30,000,000	14	
10,000,000 - 20,000,000	11	
5,000,000 - 10,000,000	8	
Below 5,000,000	5	Step 2: Find range in Column (1) where that figure falls in. Step 3: Award corresponding mark

Table 8E: Firm's experience – Volume of Work (Construction of Power Lines):

<i>Projects Value (in millions Ksh (1))</i>	<i>Marks for Volume of Works over last five years (2)</i>	<i>Notes (3)</i>
1,000,000,000 +	20	Step 1: Check for the value of the largest single project done in the last 5 years
500,000,000 - 1,000,000,000	18	
250,000,000 -500,000,000	16	
200,000,000 - 250,000,000	14	
150,000,000 - 200,000,000	12	
1 00,000,000 - 150,000,000	10	Step 2: Find range in Column (1) where that figure falls in. Step 3: Award corresponding mark
50,000,000 - 100,000,000	8	
25,000,000 - 50,000,000	5	
Below 25,000,000	3	

(e) Head office facilities and workshop: 5 marks

The office and service facilities indicated in Annex 1.4 will be graded according to the—

(a) workshop and yard – marks awarded up to three. Items to be looked at include size, complexity;

(b) office space, include branches– marks awarded up to two.

Table 9: Office Facilities and Workshop

	Marks Awarded
Workshop and yard	3
Office space	2

4. FINANCIAL EVALUATION (30 MARKS)

The following are items to be assessed in the financial evaluation of a contractor—

(a) turnover

[Subsidiary]

(b) cash flow and working capital

Table 10A: Financial Evaluation Scheme (Electrical, Construction of Power Lines, Wireless Communications, Structured Cabling, Security & Access Control Systems):

Best Annual Turn Over (Kshs) in 3yrs (20 marks)	Marks (A)	Cash Flow / Working Capital (10 marks)	Marks (B)
187,500,000 +	20.0	25,000,000 +	10.0
112,500,000-	18	15,000,000 -	9
187,500,000		25,000,000	
75,000,000 -	16	10,000,000	8
112,500,000		15,000,000	
37,500,000 -	14	5,000,000 -	7
75,000,000		10,000,000	
15,00,000 -	12	1,000,000 -	6
37,500,000		5,000,000	
7,500,000 -	10	500,000 - 1,000,000	5
15,00,000			
3,750,000	8	250,000 - 500,000	4
-7,500,000			
Below 3,750,000	5	Below 250,000	3

Table 10B: Financial Evaluation Scheme (Generators, Lifts & Escalators, Solar PV, Audio Visual, Instrumentation & PLCs):

Best Annual Turn Over (Kshs) in 3yrs (20 marks)	Marks (A)	Cash Flow / Working Capital (10 marks)	Marks (B)
100,000,000 +	20	17,500,000 +	10
75,000,000 -	18	12,500,000 -	9
100,000,000		17,500,000	
50,000,000 -	16	10,000,000 -	8
75,000,000		12,500,000	
37,500,000 -	14	5,000,000 -	7
50,000,000		10,000,000	
15,000,000 -	12	1,000,000 -	6
37,500,000		5,000,000	
7,500,000 -	10	500,000 - 1,000,000	5
15,000,000			
3,750,000 -	8	250,000 - 500,000	4
7,500,000			
Below 3,750,000	5	Below 250,000	3

Other Comments:

The marks awarded to the construction firm for experience will be reduced by a maximum of 30 percent of total marks awarded if there is proof of any of the following—

- (a) delays to works;
- (b) poor construction standards;
- (c) other malpractices that may compromise the quality and safety of works.

5. AGGREGATE SCORE

B + C = aggregate score, where—

B - technical evaluation score

C - financial evaluation score

The total score shall then be matched as per table 11A or table 11B below to obtain the category of the evaluated applicant.

Table 11A shall apply to the following sub-classes—

- (a) electrical installation works;
- (b) construction of power lines;
- (c) wireless communication systems;
- (d) structured cabling and IP telephony; and
- (e) security and access control systems.

Table 11A: Evaluation Scores (for 6 possible categories)

Category	Marks Awarded	For Official Use
NCA 1	80 -100	
NCA 2	70 -79	
NCA 3	60 -69	
NCA 4	50 -59	
NCA 5	40 -49	
NCA 6	to meet all the mandatory requirements	

Table 11B shall apply to the following sub-classes—

- (a) generator installation;
- (b) lifts and escalators, and traveller installation;
- (c) solar PV Installation;
- (d) audio visual systems; and
- (e) instrumentation and PLC systems.

Table 11B: Evaluation Scores (for 4 possible categories)

Category	Marks Awarded	For Official Use
NCA 1	80 -100	
NCA 2	60 -79	
NCA 3	40 -59	
NCA 4	to meet all the mandatory requirements	

ANNEXURES.

Table 12: Sub-Classes and Value Limits for Electrical, Electronic and Communications Engineering Works

CATEGORIZATION OF MECHANICAL WORKS

Class/ Subclass	Scope	Category	Limit (Kshs)	For Official Use
Electrical Installation	Electrical	NCA 1	UNLIMITED	
	Wiring, Installation of Fittings & Equipment, and Maintenance	NCA 2	250,000,000.00	
		NCA 3	100,000,000.00	
		NCA 4	50,000,000.00	
		NCA 5	20,000,000.00	
		NCA 6	5,000,000.00	
Generator Installation	Installation & Maintenance of	NCA 1	UNLIMITED	
		NCA 2	50,000,000.00	
		NCA 3	20,000,000.00	

National Construction Authority

[Subsidiary]

	Standby Power Generators	NCA 4	5,000,000.00
Lifts & Escalators and Travellator Installation	Installation and Maintenance of Lifts and Elevators	NCA 1 NCA 2 NCA 3 NCA 4	UNLIMITED 50,000,000.00 20,000,000.00 5,000,000.00
Solar PV Installation	Installation of Solar Power Systems	NCA 1 NCA 2 NCA 3 NCA 4	UNLIMITED 50,000,000.00 20,000,000.00 5,000,000.00
Construction of Power Lines	Power Distribution, Power Transmission, Sub-Station Construction	NCA 1 NCA 2 NCA 3 NCA 4 NCA 5 NCA 6	UNLIMITED 250,000,000.00 100,000,000.00 50,000,000.00 20,000,000.00 5,000,000.00
Wireless Communication Systems	Installation of GSM, TDMA & CDMA Telecommunications Systems, Radio Communications, Broadcast Equipment,	NCA 1 NCA 2 NCA 3 NCA 4 NCA 5 NCA 6	UNLIMITED 250,000,000.00 100,000,000.00 50,000,000.00 20,000,000.00 5,000,000.00
Structured Cabling and IP Telephony Installation	Data/Voice Cabling, Network Equipment, IP Telephony, Fibre Optic Installations, Building Management Systems (BMS)	NCA 1 NCA 2 NCA 3 NCA 4 NCA 5 NCA 6	UNLIMITED 250,000,000.00 100,000,000.00 50,000,000.00 20,000,000.00 5,000,000.00
Audio Visual Systems	Conference Systems, Public Address, Video Conference Systems	NCA 1 NCA 2 NCA 3 NCA 4	UNLIMITED 50,000,000.00 20,000,000.00 5,000,000.00
Instrumentation and Programmable Logic Control (PLC) Systems	Electronic Control Systems, Digital Display System	NCA 1 NCA 2 NCA 3 NCA 4	UNLIMITED 50,000,000.00 20,000,000.00 5,000,000.00
Security & Access Control Systems	CCTV Surveillance System, Access Control, Alarm Systems, Parking	NCA 1 NCA 2 NCA 3 NCA 4 NCA 5 NCA 6	UNLIMITED 250,000,000.00 100,000,000.00 50,000,000.00 20,000,000.00 5,000,000.00

Management
System

PART V

EVALUATION CRITERIA FOR REGISTRATION OF MECHANICAL WORKS
CONTRACTORS

1. ABOUT THE CRITERIA

This document contains the evaluation criteria for contractors' registration. The evaluation will be carried out in three stages—

1. Physical evaluation of mandatory requirements.
2. Technical Evaluation (70 marks).
3. Financial Evaluation (30 marks).

Stage 1- 'physical evaluation of mandatory requirements' - will assess the documents showing proof of existence and tax compliance of the company.

Stage 2 - technical evaluation - will assess the technical aspects of the firm i.e. the directors, the staff, plant and equipment, firm's experience and office and work space.

The relevant professional bodies shall include but not limited to—

- (a) Engineers Board of Kenya or Institution of Engineers Kenya;
- (b) Board of Registration of Architects and Quantity Surveyors;
- (c) National Construction Authority skilled workers accreditation scheme;
- (d) Institute of certified accountants of Kenya;
- (e) Institute of construction project Managers;
- (f) Institution of Engineering Technicians and Technologists; and
- (g) Law society of Kenya, among others.

Stage 3 – financial evaluation - will assess the annual turnover and cash flow or working capital for the firm. This will be based on audited accounts of the company.

The evaluation can only proceed to stage 2 and 3 upon complete presentation of all the mandatory requirements outlined in stage 1.

2. PHYSICAL EVALUATION OF MANDATORY REQUIREMENTS

Fulfillment of stage 1 requirements, as outlined in the application form, should allow a contractor to be considered for registration. Attachments are specified in the application form.

Table 1: Mandatory requirements

	Mandatory requirements	For Official Use
(a)	Receipt of the payment of application form	
(b)	Society name/ Company name, Address and Contacts	
(c)	Certificate of registration with societies / Certificate of Incorporation and memorandum of association	
(d)	Valid Business Permit	
(e)	CR 12	
(f)	Valid work permit for foreign staff	
(g)	Application form duly completed including all annexes	
(h)	Declaration signed, witnessed and stamped	

[Subsidiary]

- (i) Tax compliance certificate
- (j) Referees - Should be defined

Referees

These should be fully defined—

- (a) recommendation letters from clients and consultants for completed works;
- (b) recommendation letters from former employers in related field.
- (c) letters and certification from professional bodies including but not limited to Engineers Board of Kenya and Institution of Engineers Kenya for engineers, Board of Registration of Architects and Quantity Surveyors for architects and quantity surveyors among others.

Table 2: Additional mandatory requirements for mechanical contractors

For Mechanical Contractors, the following qualifications are mandatory

Contractor	Minimum requirement	For Official Use
(a)Plumbing and Drainage.(b)Boilers, Incinerators and Pressure Vessels.	o Drain layers licenseo Plumbers	
(c)Bore Hole Drilling(d)Solar Water Installation	licenseo Boilers Inspectors' License by DOSHo Bore hole drilling License by Ministry of Watero ERC license for solar heating	

3. TECHNICAL EVALUATION (70 MARKS) – Specific for mechanical works

This stage will evaluate the technical strength of the company. The following will be evaluated—

- (a) directors - 12 marks
- (b) staff - technical and support staff - 18 marks
- (c) plant and equipment owned - 15 marks
- (d) firms experience - 20 marks
- (e) office and workshop facilities - 5 marks

(a) Directors: 12 marks

The authority will assess the managing director and technical director as indicated in Annex 1.1 (directors 'details - to be revised). The technical director will be graded according to the professional qualifications and relevant experience of not less than three years IN THE CONSTRUCTION INDUSTRY.

Table 3 below highlights the marks awarded in respect of one technical director. Columns (4) and (5) provide for awarding industry experience marks as a percentage of columns (3). Marks will be allowed for up to two highest ranked technical directors for each firm, giving a maximum possible of nine marks.

Table 4 highlights the marks to be awarded to any other non-technical director(s) submitted for consideration by the firm. Marks will be awarded for up to two non-technical directors. These directors will be evaluated per relevant business or managerial experience.

The firms score will be the total score for the two technical directors and the other two non-technical directors.

Table 3: Directors Mark sheet

Technical director's	Marks to be awarded	Exp. In years (4)	% of total marks (5)
-----------------------------	----------------------------	--------------------------	-----------------------------

professional qualification (1)	Basic	Industry	>100	100	
	Professional Qualification (2)	Experience(3)	8-10	80	
			5-7	60	
	Bachelor's Degree.	1.5	2.0	<5	40
	Higher Diploma	1.25	1.5		
Diploma	1.0	1.25			
Certificate	0.75	1.0			
Trade test	0.5	0.75			

NB:

Registration by relevant professional body will give technical staff 1 mark

Table 4: Other Directors Mark sheet

Other director's professional qualification (1)	Marks to be awarded		Exp. In years (4)	% of total marks (5)	
professional qualification (1)	Basic	Industry	>100	100	
	Professional Qualification (2)	Experience(3)	8-10	80	
			5-7	60	
	Bachelor's Degree.	0.5	0.75	<5	40
	Higher Diploma	0.4	0.5		
Diploma	0.3	0.3			
Certificate	0.2	0.2			
Trade test	0.1	0.1			

NB:

Registration by relevant professional body will give technical staff 0.25 marks

(b) Staff – technical and support staff: 18 marks

Marks will be awarded as indicated in table 5 below for the academic qualifications and experience in the construction. Depending on the composition of staff submitted in Annex 1.2 (staff details), the breakdown is as follows—

- Degree holders - maximum of 2.0 marks each. If all staff provided have minimum of Bachelor's degree, evaluate up to two staff members at this level.
- Higher Diploma/Diploma holders - maximum of 1.5 marks each. If all staff provided have minimum of Higher Diploma/Diploma, evaluate up to four staff members at this level.
- Certificate and trade test holders - maximum of 1.0 marks each. If all staff provided have minimum of certificate/trade test, evaluate for up to six staff members in this level.

Columns (4) and (5) provide for awarding industry experience marks as a percentage of columns (3).

- marks will only be awarded for staff whose academic certificates and detailed curriculum vitae have been attached.

Table 5: Evaluation of Technical Staff

Technical staff professional qualifications (1) (in related field of study)	Marks to be awarded		Exp. In years (4)	% of total marks (5)	
professional qualifications (1) (in related field of study)	Basic	Experience in	>100	100	
	Professional Qualification (2)	construction (3)	8-10	80	
			5-7	60	
	Bachelor's Degree.	0.75	1.0	<5	40
	Higher Diploma	0.4	0.5		
Diploma	0.3	0.3			
Certificate	0.2	0.2			
Trade test	0.1	0.1			

[Subsidiary]

Higher Diploma/0.5 Diploma	0.5
Certificate/trade 0.25 test	0.25

NB:

Registration by relevant professional body will give technical staff 0.25 marks

Table 6: Evaluation of Other Staff

Other Staff	Marks
Accounts and Finance Department	0.5
Human Resource Department	0.5
Administration	0.5
Occupational Health and Safety Officer	0.5

(c) *Plant and equipment owned: 15 marks*

Awarding of marks for all equipment depends on availing all information as in Annex 1.5 (plant and equipment). The maximum number of equipment in each category to be considered is listed in the 'No' column and a firm with that number will be awarded the maximum marks. Marks will then be awarded as a portion of that total number.

Marks will only be awarded for plant and equipment with attached proof of ownership, which includes; registration documents (logbooks), certificate of importation and certificate of sale where appropriate.

In addition, for NCA 1 and NCA 2, the minimum score for plant and equipment is 12 marks

No provision for hired plant and equipment.

Plant and Equipment Mark sheet

Table 7a: General Equipment for Mechanical works

	No.	Marks for, contractor without specialized equipment	Marks for, contractor with specialized equipment	Marks for bore hole contractor (only)
<i>Installation Equipment</i>	18	9	4	3
Portable drilling 4 machines				
Pipe jointing 4 formation equipment (fusion welder)	4			
Generator 4 (minimum 2HP)	4			
Welding 4 machines (min. 225 AmP-AC)	4			
Threading 4 machine	4			
Pressure 2 testing pumP (@	2			

Sheet metal workshop	4			
Pipe chains 14" to 24"	2			
Hauling, & Transportation	6	4	4	0
Pick-ups (minimum 1ton)	4			
Light trucks (minimum 3ton)	2			
Miscellaneous Assorted tools (Vices, Levels, Hand tools set, wrench, Pliers etc.)	2	2	2	1
Assorted electrical tools (Testers etc.)	1			
TOTAL		15	10	4

Table 7b: Additional equipment for Refrigeration, cold-rooms & AC/ventilation works

Refrigeration, cold-rooms & AC/ventilation installation Equipment	No.	Marks
Gas filling equipment	8	5
Copper handling equipment set (flaring tool, brazing tools etc.)	4	
TOTAL		5

Table 7c: Additional equipment for Boilers, Incinerators and pressure vessels works

Boilers, Incinerators and pressure vessels Installation Equipment	No.	Marks
Hoisting equipment (min. 25QC)	12	5
Telescopic inspection camera	1	
1000V rated electrical screwdriver set	2	
pressure vessel inspection kit	2	
Differential thermometer	1	
Electronic leak detector	4	
TOTAL		5

Table 7d: Additional equipment for Bore hole drilling & equipping works

Bore hole drilling & equipping works	No.	Marks
Drilling Rigs	5	5
Rig capable of drilling over 500m	1	
Rig capable of drilling up to 500m	1	
Rig capable of drillline up to 300m	1	
Rig capable of drillline up to 150m	1	
Rig capable of drilling up to 100m	1	
Compressor Capacity (Over 500) PSI	2	1
capacity (175 - 500) PSI	1	

National Construction Authority

[Subsidiary]

Mud pump	1	1
Mud Pump	1	
Cementing Pump	1	
Test Pumping Unit	6	1.5
Over 25m ³ /hr.	1	
(11 - 25) m ³ /hr.	1	
(0-10)m ³ /hr.	4	
Hauling & Transportation	22	2.5
Truck mounted cranes (min. 250kg)	4	
Pick-ups (minimum 1ton)	10	
Light trucks (minimum 3ton)	4	
Non-tipping trucks (10 tons, 4x4)	4	
TOTAL		11

(d) Firm experience - 20 marks

This will consider the scope of works done of similar nature for the last three years, as indicated in table 8 below.

The list of projects, ongoing and completed, should be clearly provided in Annex 1.6 (firm's experience). Projects will only be considered if accompanied with documentary support, for ongoing projects, and completed projects (Practical Completion Certificate, Certificate of Taking Over, Final Acceptance Certificate).

Table 8a below shall apply for—

- (a) plumbing, drainage and sanitary fittings;
- (b) refrigeration, cold rooms, air conditioning and mechanical ventilation;
- (c) water tanks, treatment plants and pump plants;
- (d) compressed air, hydraulic, LP and medical gas installation;
- (e) cranes and hoist installation;
- (f) mechanical plant and equipment installation;
- (g) oil/gas storage, distribution and pumping;
- (h) bore hole drilling and equipping; and
- (i) solar water heating systems.

Table 8a: Firm's Experience – Projects in relevant trade:

Projects Description and Value range (Kshs.)	Value range	Marks/ Score	Notes
100,000,000 +		20	Step 1: total of project values over last 5yrs Step 2; find range in column 1 that figures falls in Step 3; award points corresponding to column
200,000,000 up to 250,000,000		18	
150,000,000 up to 200,000,000		16	
100,000,000 up to 150,000,000		14	
50,000,000 up to 100,000,000		12	
25,000,000 up to 50,000,000		8	
10,000,000 up to 25,000,000		5	
Below 10,000,000		2	

Table 8b below shall apply for—

- (a) fire engineering services and installation works;
- (b) swimming pool construction and installation;
- (c) boilers, incinerators and pressure vessels installation.

Table 8b: Firm's Experience – Projects in relevant trade:

Projects Description and Value range (Kshs.)	Marks/ Score	Notes
100,000,000 +	20	Step 1: total of project values over last 5yrs
75,000,000 up to 100,000,000	18	
50,000,000 up to 75,000,000	16	Step 2; find range in column 1 that figures falls in
25,000,000 up to 50,000,000	14	
10,000,000 up to 25,000,000	12	Step 3; award points corresponding to column
5,000,000 up to 10,000,000	8	
2,500,000 up to 5,000,000	5	
Below 2,500,000	2	

Note:

For NCA1 and NCA2, the minimum score for firm's experience is 16/20 and 14/20 marks respectively.

(e) Office facilities: 5 marks

The office and service facilities indicated in Annex 1.4 will be graded according to the—

- workshop and yard – marks awarded up to three. Items to be looked at include size and complexity;
- office space, include branches; marks awarded up to two.

Table 9: Office Facilities

	Marks awarded
workshop and yard	upto 3
office space	upto 2

4. FINANCIAL EVALUATION (30 MARKS)

The following are items to be assessed in the financial evaluation of a contractor—

- turnover - 20 marks;
- cash flow or working capital - 10 marks.

Table 10a below shall apply for—

- plumbing, drainage and sanitary fittings;
- refrigeration, cold rooms, air conditioning and mechanical ventilation;
- water tanks, treatment plants and pump plants;
- compressed air, hydraulic, LP and medical gas installation;
- cranes and hoist installation;
- mechanical plant and equipment installation;
- oil/gas storage, distribution and pumping;
- bore hole drilling and equipping; and
- solar water heating systems.

Table 10a: Financial Evaluation Scheme

Annual Turn Over (Kshs)	Marks	Cash Flow/ Workins Capital	Marks
Mechanical Works 200,000,000 -	20.0	75,000,000 - Above	10.0
Above 150,000,000-200,000,000	16.0	50,000,000 - 75,000,000	8.5

National Construction Authority

[Subsidiary]

100,000,000 -	15.0	30,000,000 -	6.5
150,000,000		50,000,000	
75,000,000 - I	12.5	20,000,000 -	5.0
00,000,000		30,000,000	
50,000,000 - 7	10.0	5,000,000 -	3.0
5,000,000		20,000,000	
25,000,000	7.5	2,500,000 -	3.0
-50,000,000 '		5,000,000	
10,000,000 -	5.0	1,250,000 -	2.0
25,000,000		2,500,000	
Below 10,000,000	2.5	Below 1,250,000	2.0

Table 10b below shall apply for—

- (a) fire engineering services and installation works;
- (b) swimming pool construction and installation; and
- (c) boilers, incinerators and pressure vessels installation.

Table 10: Financial Evaluation Scheme

Annual Turn Over (Kshs)	Marks	Cash Flow/ Workins Capital	Marks
75,000,000 - Above	20.0	50,000,000 - Above	10.0
50,000,000-	17.5	30,000,000 -	8.5
75,000,000		50,000,000	
25,000,000 -	15.0	15,000,000 -	6.5
50,000,000		30,000,000	
10,000,000	12.5	7,500,000 -	5.0
-25,000,000		15,000,000	
5,000,000 -	10.0	2,500,000 -	3.0
10,000,000		7,500,000	
2,500,000	7.5	1,750,000 -	3.0
-5,000,000		2,500,000	

(c) AGGREGATE SCORE:

B + C = Aggregate Score

B - Technical evaluation score

C - Financial evaluation score

The total score shall then be matched as per table 10 (a) or table 10 (b).

Table 10a below shall apply for—

- (a) plumbing, drainage and sanitary fittings;
- (b) refrigeration, cold rooms, air conditioning and mechanical ventilation;
- (c) water tanks, treatment plants and pump plants;
- (d) compressed air, hydraulic, LP and medical gas installation;
- (e) cranes and hoist installation;
- (f) mechanical plant and equipment installation;
- (g) oil/gas storage, distribution and pumping;
- (h) bore hole drilling and equipping; and
- (i) solar water heating systems.

Table 10a: aggregate scoring plan (6 category scheme)

Category	Marks Awarded	For Official Use
-----------------	----------------------	-------------------------

NCA 1	80 -100
NCA 2	70 -79
NCA 3	60 -69
NCA 4	50 -59
NCA 5	40 -49
NCA 6	to meet all the mandatory requirements

Table 10b below shall apply for—

- (a) fire engineering services and installation works;
- (b) swimming pool construction and installation; and
- (c) boilers, incinerators and pressure vessels installation.

Table 10a: aggregate scoring plan (4 category scheme)

Category	Marks Awarded	For Official Use
NCA 1	80 -100	
NCA 2	60 -79	
NCA 3	40 -59	
NCA 4	to meet all the mandatory requirements	

Foreign firms

- (a) the registration fee for foreign firms to be enhanced to 20,000 USD per class of works; and
- (b) renewal fee for foreign firms to be to 10,000 USD per class of works.

CATEGORIZATION OF MECHANICAL WORKS

Subclass	Category	Value of Works
Plumbing, Drainage and Sanitary Fittings;	NCA 1	UNLIMITED
<i>plumbing & drainage works, water reticulation,</i>	NCA 2	250,000,000.00
<i>pump installation,</i>	NCA 3	150,000,000.00
<i>sanitary fitting installation,</i>	NCA 4	100,000,000.00
<i>domestic water storage systems, domestic biodigesters and laboratory installations</i>	NCA 5	50,000,000.00
	NCA 6	20,000,000.00
Refrigeration, cold rooms, Air-Conditioning and Ventilation	NCA 1	UNLIMITED
<i>AC works, natural & mechanical ventilation,</i>	NCA 2	250,000,000.00
<i>fume cupboard installations, refuse disposals</i>	NCA 3	150,000,000.00
	NCA 4	100,000,000.00
	NCA 5	50,000,000.00
	NCA 6	20,000,000.00
Kitchen and Laundry Equipment	NCA 1	UNLIMITED
	NCA 2	100,000,000.00
	NCA 3	50,000,000.00
	NCA 4	20,000,000.00
Boilers, Incinerators and Pressure Vessels	NCA 1	UNLIMITED
	NCA 2	100,000,000.00
	NCA 3	50,000,000.00

National Construction Authority

[Subsidiary]

	NCA 4	20,000,000.00
Boilers, Water Tanks, Treatment Plant and Pumping plant	NCA 1	UNLIMITED
<i>plumbing & drainage</i>	NCA 2	250,000,000.00
<i>works, water reticulation,</i>	NCA 3	150,000,000.00
<i>pump installation, bulk</i>	NCA 4	100,000,000.00
<i>water storage tanks</i>	NCA 5	50,000,000.00
<i>installation and heavy duty</i>	NCA 6	20,000,000.00
<i>pump installations</i>		
Compressed Air,	NCA 1	UNLIMITED
Hydraulic, LP and Medical Gas Installation;		
<i>gas pipe handling, gas/</i>	NCA 2	250,000,000.00
<i>air reticulation, medical</i>	NCA 3	150,000,000.00
<i>gas equipment installation,</i>	NCA 4	100,000,000.00
<i>hydraulic systems</i>	NCA 5	50,000,000.00
<i>installation and LP gas</i>	NCA 6	20,000,000.00
<i>installations</i>		
Cranes and Hoists installation services	NCA 1	UNLIMITED
<i>gantry cranes and</i>	NCA 2	250,000,000.00
<i>hoists installation/</i>	NCA 3	150,000,000.00
<i>maintenance, hydraulic</i>	NCA 4	100,000,000.00
<i>systems installation and</i>	NCA 5	50,000,000.00
<i>window cleaning system</i>	NCA 6	20,000,000.00
<i>installations</i>		
Fire Engineering Services	NCA 1	UNLIMITED
<i>Fire protection equipment</i>	NCA 2	100,000,000.00
<i>installation/maintenance,</i>	NCA 3	50,000,000.00
<i>automatic fire suppression</i>	NCA 4	20,000,000.00
<i>systems installation</i>		
<i>and fire engineering</i>		
<i>sensitization services</i>		
Health club facilities	NCA 1	UNLIMITED
	NCA 2	100,000,000.00
	NCA 3	50,000,000.00
	NCA 4	20,000,000.00
Mobile shelving.	NCA 1	UNLIMITED
	NCA 2	100,000,000.00
	NCA 3	50,000,000.00
	NCA 4	20,000,000.00
Swimming pool construction & installation	NCA 1	UNLIMITED
	NCA 2	100,000,000.00
	NCA 3	50,000,000.00
	NCA 4	20,000,000.00
Oil & Gas storage, supply & pumping Reticulation	NCA 1	UNLIMITED
<i>Installation and testing of</i>	NCA 2	250,000,000.00
<i>gas/petrol station works,</i>	NCA 3	150,000,000.00
	NCA 4	100,000,000.00

National Construction Authority

[Subsidiary]

<i>oil/gas reticulation, oil/gas</i>	NCA 5	50,000,000.00
<i>storage tanks</i>	NCA 6	20,000,000.00
Bore drilling and	NCA 1	UNLIMITED
Equipping	NCA 2	100,000,000.00
	NCA 3	50,000,000.00
	NCA 4	20,000,000.00
Solar heating systems	NCA 1	UNLIMITED
assorted fluids (eg water	NCA 2	100,000,000.00
and air) heating using	NCA 2	50,000,000.00
solar energy	NCA 3	20,000,000.00
Hospital Equipment	NCA 1	UNLIMITED
	NCA 2	250,000,000.00
	NCA 3	150,000,000.00
	NCA 4	100,000,000.00
	NCA 5	50,000,000.00
	NCA 6	20,000,000.00

NB: All NCA 1 contractors MUST be unlimited by capacity and complexity.

**THE NATIONAL CONSTRUCTION AUTHORITY
(DEFECTS LIABILITY) REGULATIONS**

ARRANGEMENT OF REGULATIONS

PART I – PRELIMINARY

Regulation

1. Citation
2. Interpretation

PART II – DEFECTS LIABILITY

3. Patent defects liability period
 4. Obligations of parties during the patent defects liability period
 5. Latent defects liability period
 6. Insurance cover for latent defects
 7. Insurance by owner
-

**THE NATIONAL CONSTRUCTION AUTHORITY
(DEFECTS LIABILITY) REGULATIONS**

[Legal Notice 64 of 2020]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the National Construction Authority (Defects Liability) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"commercial building" means premises occupied wholly or partially for the purposes of trade or business or for the purposes of rendering services for money or money's worth;

"contractor" means a person registered under section 15 of the Act;

"defects liability period" means a period after the construction of a commercial building has been completed, from practical completion to hand-over of the commercial building during which a contractor may return to the commercial building to remedy any patent defects;

"latent defect" means a concealed structural flaw in a commercial building or fixed installation that exists but is not apparent or readily detectable during the latent defects liability period;

"owner" means a person who enters into a contract with a contractor for the construction of a commercial building;

"patent defect" means a defect which is detectable upon reasonable inspection during the construction period and can be notified to the contractor either before practical completion or during the defects liability period;

"practical completion" means the completion of a commercial building upon which the relevant county government issues a certificate of occupation;

"relevant professional" means a person who is registered—

- (a) as an engineer under the Engineers Act (Cap. 530); or
- (b) as an architect or quantity surveyor under the Architects and Quantity Surveyors Act (Cap. 525); and

"sub-contractor" means a person who is not named in the main contract as a sub-contractor, but is appointed by an owner as a sub-contractor for the construction of the commercial building that is the subject of the main contract.

PART II – DEFECTS LIABILITY

3. Patent defects liability period

(1) Every contract for the construction of a commercial building shall prescribe a patent defects liability period.

(2) The patent defects liability period under paragraph (1) shall be a minimum period of twelve months after practical completion.

(3) A contractor shall be liable for the rectification of patent defects that become apparent during the patent defects liability period.

(4) A relevant professional shall be liable for the rectification of patent defects that become apparent during the patent defects liability period.

(5) A sub-contractor shall be liable for the rectification of patent defects that become apparent during the patent defects liability period.

[Subsidiary]

4. Obligations of parties during the patent defects liability period

(1) During the patent defects liability period, the owner and the contractor, relevant professional or sub-contractor, shall jointly prepare a schedule specifying the patent defects identified.

(2) The contractor, relevant professional or sub-contractor, shall rectify the respective defects specified in the schedule made under paragraph (1) after which the owner shall certify that the contractor, relevant professional or sub-contractor, has made good the defects identified.

5. Latent defects liability period

(1) Every contract for the construction of a commercial building shall prescribe a latent defects liability period.

(2) The latent defects liability period under paragraph (1) shall be a minimum period of six years from completion of the patent defects liability period.

(3) A contractor shall be liable for the rectification of patent defects that become apparent during the latent defects liability period.

(4) A relevant professional shall be liable for the rectification of patent defects that become apparent during the latent defects liability period.

(5) A sub-contractor shall be liable for the rectification of patent defects that become apparent during the latent defects liability period.

6. Insurance cover for latent defects

(1) A contractor shall obtain insurance cover for latent defects that may become apparent during the latent defects liability period.

(2) A relevant professional shall obtain a professional indemnity cover for latent defects that may become apparent during the latent defects liability period.

(3) A sub-contractor shall obtain insurance cover for latent defects that may become apparent during the latent defects liability period.

7. Insurance by owner

Every owner of a commercial building shall at all times insure the commercial building against structural damage attributable to the owner.

THE NATIONAL CONSTRUCTION APPEALS BOARD RULES

ARRANGEMENT OF REGULATIONS

PART I – PRELIMINARIES

Regulation

1. Citation
2. Interpretation
3. Overriding objective of these Rules
4. Jurisdiction of the Appeals Board

PART II – CHAIRPERSON AND REGISTRAR OF THE APPEALS BOARD

5. Role of the chairperson
6. Role of the Registrar
7. Particulars to be recorded in the Register

PART III – PROCEEDINGS OF THE APPEALS BOARD

8. Representation of parties
9. Languages of the Appeals Board
10. Statement of Appeal
11. Responses to a Statement of Appeal
12. Dismissal of appeals and applications
13. Additional documents and additional witnesses
14. Amendment of pleadings
15. Joinder of parties
16. Consolidation of appeals
17. Withdrawal of an appeal
18. Case management conference
19. Quorum of the Appeals Board
20. Conducting a hearing
21. Alternative dispute resolution mechanisms
22. Record of proceedings and decisions
23. Applications generally

PART IV – DECISIONS OF THE APPEALS BOARD

24. Determination of an appeal by consent
25. Decisions of the Appeals Board
26. Interim decisions of the Appeals Board
27. Costs
28. Further appeals

SCHEDULES

SCHEDULE —

FORMS

THE NATIONAL CONSTRUCTION APPEALS BOARD RULES

[Legal Notice 7 of 2021]

PART I – PRELIMINARIES

1. Citation

These Rules may be cited as the National Construction Appeals Board Rules.

2. Interpretation

In these Rules, unless the context otherwise requires—

"appeal" means a suit filed with the Appeals Board;

"Appeals Board" means the National Construction Appeals Board established under section 27 of the Act;

"application" means a notice of motion that is filed with the Appeals Board in accordance with these Rules;

"appellant" means a person who has filed an appeal or a cross appeal;

"applicant" means a person who has filed an application;

"chairperson" means the chairperson of the Appeals Board appointed under section 27(2)(a) of the Act;

"decision of the Appeals Board" includes an award, direction, interim relief, judgement, order, and a ruling, made by the Appeals Board;

"hearing" means a stage in the proceedings of an appeal or application, where the Appeals Board —

- (a) records evidence;
- (b) hears submissions;
- (c) delivers a decision of the Appeals Board; or
- (d) does anything that is lawfully required of it,

in the presence of the parties, to enable a decision of the Appeals Board to be made;

"interested party" means a county government, government agency, state organ, or any other entity, who is directly involved or affected, by an appeal or an application;

"party" means an appellant, applicant, respondent or an interested party;

"pleading" includes a statement of appeal, a statement of response, a cross appeal, a preliminary objection, grounds of opposition, a notice of motion and a replying affidavit;

"Register" means the Register of the Appeals Board, maintained in accordance with rule 7;

"Registrar" means the Registrar of the Appeals Board, appointed in accordance with rule 6;

"respondent" means a person who is required to file a response to an appeal or an application, and includes the Board;

"return of service" means a document indicating that service of a pleading, or any other document required to be served, was duly conducted by its maker, in accordance with these Rules; and

"summons" means a notice requesting a party or a witness to appear for a hearing.

[Subsidiary]

3. Overriding objective of these Rules

(1) The overriding objective of these Rules shall be to facilitate the just, expeditious, proportionate and affordable resolution of appeals and applications.

(2) A party shall assist the Appeals Board to achieve the overriding objective in subrule (1) and to comply with the decisions of the Appeals Board.

4. Jurisdiction of the Appeals Board

(1) The Appeals Board shall determine an appeal against a decision of the Board to—

- (a) refuse to register a contractor;
- (b) delete a contractor's name from the register; or
- (c) suspend a contractor.

(2) An appeal referred to in subrule (1) shall be filed within thirty days from the date of the decision of the Board that is being appealed against.

(3) The Appeals Board may make such decisions as may be necessary for the ends of justice or to prevent abuse of the process.

(4) Notwithstanding subrule (3), the Appeals Board may —

- (a) suspend, in whole or part, any decision of the Board that is the subject matter of an appeal; or
- (b) grant any remedy which the Appeals Board would have granted in the final determination of an appeal.

PART II – CHAIRPERSON AND REGISTRAR OF THE APPEALS BOARD

5. Role of the chairperson

(1) The chairperson shall preside over every hearing.

(2) The chairperson may assign a role of another member of the Appeals Board under these Rules, to another member of the Appeals Board.

6. Role of the Registrar

(1) There shall be a Registrar of the Appeals Board who shall be appointed by the Appeals Board, for the proper and efficient discharge of the functions of the Appeals Board, on such terms and conditions of service as it may determine.

(2) The role of the Registrar shall be to —

- (a) maintain the Register;
- (b) receive and keep custody of pleadings in accordance with these Rules;
- (c) certify a decision of the Appeals Board;
- (d) keep a record of the proceedings of the Appeals Board and such other records of the Appeals Board;
- (e) assess the costs awarded by the Appeals Board; and
- (f) undertake any other duties assigned to him by the Appeals Board.

(3) The Registrar may, with the approval of the Appeals Board, dispose of a procedural or administrative matter of the Appeals Board in accordance to these Rules.

7. Particulars to be recorded in the Register

(1) The Registrar shall keep a register of the Appeals Board.

(2) The Register shall contain the following particulars —

- (a) the identity of the parties;
- (b) the serial number of the appeal or application;
- (c) the date of an appeal or application;
- (d) the relief sought by an appellant or applicant;
- (e) the nature of an appeal or an application;

- (f) the decisions of the Appeals Board.

PART III – PROCEEDINGS OF THE APPEALS BOARD

8. Representation of parties

(1) A party may file an appeal or an application, and appear at the hearing thereof, in person.

(2) A party may appoint an advocate to represent that person, in the filing of an appeal or an application, and appear at the hearing thereof.

(3) An appointment under subrule (2) shall be made by filing a notice of appointment in Form NCAB 1 set out in the Schedule.

(4) A party may substitute the person appointed under subrule (2), to another person, or opt to proceed with an appeal or application in person.

(5) A substitution of an appointment under subrule (4) shall be made by filing a notice of substitution of appointment in Form NCAB 1 set out in the Schedule.

(6) The party who files a notice, shall ensure that there are sufficient copies of the notice to be served on every party of that appeal or application.

(7) The party referred to in subrule (6), shall within three days of service of the notice, file a return a service in Form NCAB 2 set out in the Schedule.

(8) In this rule, "notice" means a notice of appointment filed in accordance with subrule (2) or a notice of substitution of appointment filed in accordance with subrule (4).

9. Languages of the Appeals Board

(1) The languages of the Appeals Board shall be English and Kiswahili.

(2) Despite subrule (1), a party may make an application for an order allowing it to make a representation in a hearing in another language, in accordance with rule 23.

(3) An application made under subrule (2) shall be filed at least seven days before the hearing.

(4) The Appeals Board may, on its own motion, or on an application made under subrule (2), avail an interpreter, during the hearing.

10. Statement of Appeal

(1) A person shall institute an appeal by filing a Statement of Appeal that is signed by the appellant or the appellant's advocate, in Form NCAB 3 set out in the Schedule.

(2) The Statement of Appeal filed in accordance with subrule (1) shall contain—

- (a) the names and addresses of the parties;
- (b) the name and address of the appellant's advocates, if any;
- (c) the facts and grounds on which the appellant relies, specifying the issues which are alleged to have been wrongly decided and the nature of the decision appealed against;
- (d) the reliefs sought;
- (e) a list of all the documents that the appellant intends to rely on at the hearing (if any);
- (f) any principle of policy, law or construction registration procedure that is relied on in the appeal; and
- (g) a list of witnesses the appellant intends to rely on at the hearing (if any).

(3) An appellant shall annex to a Statement of Appeal—

- (a) a copy of the decision being appealed, against, if any;
- (b) the documents specified in the list referred to in subrule (2)(e);
- (c) witness statements of the witnesses specified in the list referred to in subrule (2)(g);

[Subsidiary]

- (d) a case summary;
 - (e) an affidavit by the appellant verifying the facts contained in the Statement of Appeal; and
 - (f) the minutes of meetings, reports or proceedings, if any, which arrived at the decision being appealed against.
- (4) An appellant shall ensure that there are sufficient copies of the Statement of Appeal to be served on every party when filing it.
- (5) On receipt of the Statement of Appeal, the Registrar shall—
- (a) acknowledge receipt by stamping on the face of the Statement of Appeal the date of receipt, which date must be the date of filing;
 - (b) record the particulars of the appeal in the register of appeals;
 - (c) assign a case number to the appeal and inform the parties of the case number of the appeal; and
 - (d) advise the appellant of any other matter which the Registrar deems fit.
- (6) An appellant shall, within seven days of filing a Statement of Appeal, serve the Statement of Appeal and the annexed documents on all the respondents.
- (7) An appellant shall, within three days of service of the Statement of Appeal and its annexures, file a return a service in Form NCAB 2 set out in the Schedule.

11. Responses to a Statement of Appeal

- (1) A person may respond to an appeal by filing—
- (a) a Statement of Response in Form NCAB 4 set out in the Schedule;
 - (b) a Statement of Cross-Appeal in Form NCAB 3 set out in the Schedule;
 - (c) grounds of opposition; or
 - (d) a notice of preliminary objections.
- (2) The person shall file the pleadings referred to in subrule (1) within fourteen days from the date of service of a Statement of Appeal.
- (3) The pleadings referred to in subrule (1), shall contain —
- (a) the names and addresses of the parties;
 - (b) the name and address of the respondent's advocate, if any;
 - (c) a summary of the arguments of fact and law on which the respondent intends to rely;
 - (d) a list of all the documents the respondent intends to rely on at the hearing (if any);
 - (e) a list of witnesses the respondent intends to rely on at the hearing (if any);
 - (f) the reliefs sought.
- (4) A respondent shall ensure that there are sufficient copies of the pleadings referred to in subrule (1) to be served on every party when filing it.
- (5) A respondent shall annex to the pleadings referred to in subrule (1)—
- (a) the documents specified in the list referred to in subrule (3)(d);
 - (b) witness statements of the witnesses specified in the list referred to in subrule (3)(e);
 - (c) a case summary; and
 - (d) an affidavit by the respondent verifying the facts contained in the pleading.
- (6) On receipt of a pleading referred to in subrule (1), the Registrar shall—
- (a) acknowledge receipt by stamping on the face of the pleading the date of receipt, which date must be the date of filing;
 - (b) record the particulars of the pleading in the register of appeals; and

(c) advise the respondent of any other matter which the Registrar deems fit.

(7) A respondent shall, within seven days of filing a pleading referred to in subrule (1), serve the pleading and the annexures thereto on all the parties of the appeal.

(8) A respondent shall ensure that, within three days of service of a pleading referred to in subrule (1) and the annexures thereto, file a return a service in Form NCAB 2 set out in the Schedule.

(9) Where a respondent does not file any of the pleadings referred to in subrule (1) in accordance with this rule, the Appeals Board may set a date for the hearing of the appeal or issue such orders or directions as it may deem appropriate in the circumstances.

12. Dismissal of appeals and applications

(1) The Appeals Board may dismiss an application or an appeal if the Appeals Board determines that—

- (a) the subject matter for determination is not within its jurisdiction;
- (b) the appeal or application is an abuse of the process of the Appeals Board; or
- (c) the appeal or application was made in bad faith.

(2) The Appeals Board may make a decision under subrule (1) on an application made in accordance with rule 23, or on its own motion.

(3) Where the Appeals Board dismisses an appeal or an application on its own motion, the Appeals Board shall notify the parties in writing and state the reasons for its decision, within seven days of its decision.

(4) If an appellant does not set the appeal down for a case management conference within a period of thirty days being served with the pleadings in response to an appeal, the respondent may—

- (a) apply for the appeal to be dismissed for want of prosecution; or
- (b) set the appeal down for a case management conference.

13. Additional documents and additional witnesses

(1) The Appeals Board may grant leave to a party to rely on documents or call up witness that were not specified in the party's pleadings.

(2) A party who intends to obtain leave under subrule (1) may make an application in accordance with rule 23.

14. Amendment of pleadings

(1) A party who intends to rely on grounds not stated in their pleadings that were not stated in the pleadings because the information was not within the knowledge of the party at the time of lodging their pleadings may make an application for leave to amend their pleadings in accordance with rule 23.

(2) A party who intends to obtain leave under subrule (1) may make an application, in Form NCAB 3 set out in the Schedule.

(3) The Appeals Board may, if it is satisfied, grant leave to a party to amend their pleadings.

15. Joinder of parties

(1) Where it appears to the Appeals Board that it is necessary that a person becomes a party to an appeal or an application, the Appeals Board may order that person to be enjoined as a party and may give directions for the delivery and service of the pleadings to the person.

(2) The Appeals Board may make a decision under subrule (1), on an application for leave to be enjoined as a party made in accordance with rule 23, or on its own motion.

(3) An application made under subrule (2) shall be—

- (a) by a person who has interest in the outcome of an appeal or application; and
- (b) made prior to the commencing of the hearing thereof.

[Subsidiary]

16. Consolidation of appeals

(1) Where it appears to the Appeals Board that it is necessary, the Appeals Board may consolidate two or more appeals or applications.

(2) The Appeals Board may make a decision under subrule (1), on an application for consolidation made in accordance with rule 23, or on its own motion.

(3) The Appeals Board may make a decision under subrule (1) where—

- (a) the appeals involve the same or similar issues of fact or law; or
- (b) the Appeals Board considers it practical and appropriate to proceed with the issues raised in the appeals or applications simultaneously.

17. Withdrawal of an appeal

(1) Where no pleadings in response to an appeal has been filed, an appellant may, at any time before the determination of an appeal, give an oral or written notice to the Appeals Board of their intention to withdraw an appeal.

(2) An appeal against which a response has been filed shall not be withdrawn except by consent of both parties and an order made by the Appeals Board.

18. Case management conference

(1) The Appeals Board shall set an appeal down for a case management conference within thirty days after all the parties have filed their pleadings.

(2) The Appeals Board shall issue a notice to all the parties of the date sets for the case management conference in accordance with subrule (1).

(3) While conducting a case management conference, the Appeals Board may—

- (a) enquire from the parties on the contents of their pleadings;
- (b) direct that the parties make written or oral submissions on certain aspects of the appeal;
- (c) direct that documents be availed to a party who requires them;
- (d) give directions on the hearing of an application;
- (e) give directions on the hearing of a preliminary objection;
- (f) give directions on the hearing of the appeal;
- (g) give directions on whether the appeal can be heard on a priority basis;
- (h) issue summons to a party or a party's advocate to appear before the Appeals Board; or
- (i) give any other direction which the Appeals Board deems necessary.

19. Quorum of the Appeals Board

(1) The quorum of the Appeals Board at a hearing shall be the three members of the Appeals Board.

(2) The chairperson shall preside at every hearing.

20. Conducting a hearing

(1) The testimony of a party's witness may be adduced at a hearing of an appeal orally or by adopting the witness' statement.

(2) The opposing party may cross examine the testimony adduced in accordance with subrule (1).

(3) If a witness, for no justifiable reason, a witness does not avail himself to adduce his testimony in accordance with subrule (1), a party may make an application to the Appeals Board to issue summons that witness in accordance with rule 23.

(4) A party who intends to rely on an expert shall make an application to the Appeals Board to issue summons that expert in accordance with rule 23.

(5) The summons issued by the Appeals Board pursuant to the application made under subrule (4) may require the expert to personally attend or to produce a document or exhibit at a hearing.

(6) Unless the Appeals Board determines otherwise, an applicant under subrule (4) shall pay the witness fees, travel and subsistence allowances, to a person summoned at a reasonable rate determined by the Appeals Board.

(7) The Appeals Board, on an application made pursuant to subrule (3) or (4), or on its own motion, may issue a summons in Form NCAB 5 set out in the Schedule.

(8) The summons issued under subrule (7) shall be signed by the chairperson and shall

- (a) require the person named therein to appear before the Appeals Board;
- (b) state the date and time when the person named therein shall appear; and
- (c) sufficiently identify any document or exhibit that is required to be produced by the person named therein.

(9) The Appeals Board shall administer an oath, or accept an affirmation, from a person adducing oral testimony before it.

(10) The Appeals Board may conduct a hearing presence of all the parties unless a party has notified the Appeals Board, with justifiable reasons, that the party would not be available to attend the hearing.

(11) The Appeals Board may conduct a hearing in the absence of a party or a person who was served with summons under this rule, if —

- (a) the party fails to appear for the hearing without providing any reasons; or
- (b) the Appeals Board is satisfied that, the reasons stated in accordance with subrule (8) do not constitute a justifiable reason that prevents the attendance of the party.

(12) Where an item is produced at a hearing as evidence, it shall be marked for identification and shall remain in the custody of the Appeals Board until the determination of the appeal.

(13) Upon the conclusion of a hearing of an appeal, the Appeals Board may direct that the parties file written submissions.

(14) A party who files written submissions in accordance with subrule (13), shall ensure that there are sufficient copies of the written submissions to serve all the parties of the appeal.

(15) A party who serves summons or written submissions in accordance with subrule (12), shall file a return of service in Form NCAB 2 set out in the Schedule within three days of serving the written submissions.

21. Alternative dispute resolution mechanisms

(1) At any time before the determination of an appeal, the parties may opt to engage in alternative dispute resolution mechanisms to determine an appeal or application.

(2) Where the parties exercise their rights under subrule (1), either of the parties shall file the decision made pursuant to the mechanism, with the Appeals Board within seven days after the decision is made.

(3) The decision filed in accordance with subrule (2), shall be adopted as the decision of the Appeals Board.

(4) Where the Appeals Board makes a decision under this rule, it shall issue an Order in Form NCAB 7 set out in the Schedule.

22. Record of proceedings and decisions

(1) The Registrar shall keep a record of proceedings and decisions of the Appeals Board in all appeals and applications.

[Subsidiary]

(2) A party to an appeal or an application may make an application to the Registrar for a copy of the record of proceedings or a decision of the Appeals Board in accordance with rule 23.

23. Applications generally

(1) All applications made under these rules shall be in in Form NCAB 6 set out in the Schedule.

(2) An application shall contain—

- (a) the names of the parties to which that application relates;
- (b) the grounds the applicant relies on;
- (c) a list of every document on which the applicant intends to rely on at the hearing; and
- (d) the reliefs sought.

(3) An applicant shall annex a supporting affidavit attesting to the grounds on which the orders in the application are sought.

(4) An applicant shall annex a certified copy of each of the documents referred to in subrule (2)(c) to the supporting affidavit.

(5) An applicant under subrule (2) shall, within seven days from the date of filing, serve a copy of the application on every party to which that application relates.

(6) A party who serves an application shall file a return of service in Form NCAB 2 set out in the Schedule, within three days of serving the application.

(7) A party who has been served with an application may, within three days of service of the application, file —

- (a) a replying affidavit;
- (b) grounds of opposition; or
- (c) a notice of preliminary objections.

(8) The pleadings referred to in subrule (7), shall contain—

- (a) the names of the parties to which that application relates;
- (b) the grounds the party relies on;
- (c) a list of every document on which the party intends to rely on at the hearing; and
- (d) the reliefs sought.

(9) A party shall annex a certified copy of each of the documents referred to in subrule (8)(c) to the pleading referred to in subrule (7), filed by the party.

(10) A party who has filed any of the pleadings referred to in subrule (7), shall, within seven days from the date of filing the pleading, serve a copy of the pleading on every party to which that application relates.

(11) A party who serves any of the pleadings referred to in subrule (7), shall file a return of service in Form NCAB 2 set out in the Schedule, within three days of serving the pleading.

(12) The Appeals Board may consider the representations of a party to an application who has not filed any of the pleadings referred to in subrule (7) if the Appeals Board deems it just.

(13) An application shall be heard by all members of the Appeals Board.

(14) Despite subrule (13), where the Appeals Board considers it necessary, it may conduct a hearing of an application in the absence of another party to which the application relates.

(15) Where the Appeals Board conducts a hearing in accordance with subrule (14), the quorum shall be at least two members of the Appeals Board.

(16) The Appeals Board may direct that the parties file written submissions of their arguments and serve a copy thereof on the other parties to the application.

(17) A party shall ensure that, within three days of service of the pleadings or written submissions under subrule (16), shall file a return a service in Form NCAB 2 set out in the Schedule.

(18) An order made by the Appeals Board pursuant to an application shall be in Form NCAB 7 set out in the Schedule.

PART IV – DECISIONS OF THE APPEALS BOARD

24. Determination of an appeal by consent

(1) Where the parties of an appeal agree to settle an appeal or application, out of court, either wholly or in part, a party make an application for adoption of consent orders to the Appeals Board in accordance with rule 23.

(2) A party who makes an application under subrule (1) shall annex to the application—

- (a) a draft consent order; and
- (b) a statement that is signed by all the parties to the appeal containing the agreement that was reached by all the parties to the Appeal.

(3) The Appeals Board may, after ensuring that the consent is within the law, adopt the consent order as a decision of the Appeals Board.

(4) The Appeals Board shall issue an order made under subrule (3) be in Form NCAB 7 set out in the Schedule.

25. Decisions of the Appeals Board

(1) A decision of the Appeals Board shall be by a majority of the votes of its members.

(2) The Appeals Board may make the following determinations in an appeal —

- (a) affirm the decision of the Board;
- (b) direct the Board to undertake an action or decision with regard to the appeal or an application; or
- (c) quash the decision of the Board.

(3) A decision of the Appeals Board shall contain a statement of reasons for the decision and shall be signed and dated by the Chairperson.

(4) A decision of the Appeals Board may be delivered orally to the parties.

(5) Where the Appeals Board makes a decision under this rule, it shall issue an Order in Form NCAB 7 set out in the Schedule.

26. Interim decisions of the Appeals Board

(1) Where the Appeals Board considers it necessary, on its own motion or pursuant to an application, and before the determination of an appeal, it shall order or direct, as it considers appropriate to —

- (a) prevent substantial loss or irreparable damage to a person;
- (b) prevent an abuse of process of the Appeals Board;
- (c) in the interests of justice; or
- (d) protect the public interest.

(2) When making a decision under subrule (1), the Appeals Board shall consider all the relevant circumstances, including—

- (a) the urgency of the matter;
- (b) the possible effect on the applicant if the relief sought is not granted; and
- (c) the possible effect on any other person if the relief is granted.

(3) A decision of the Appeals Board made in accordance with subrule (1) may be made against a person who is not a party.

(4) A decision of the Appeals Board made in accordance with subrule (3), that decision shall specify that the person be enjoined as an interested party.

[Subsidiary]

(5) A decision of the Appeals Board made in accordance with subrule (3) that is made in the absence of a respondent shall be for a period not exceeding fourteen days.

(6) Despite subrule (4), the Appeals Board may —

- (a) extend the period;
- (b) give directions as to costs, security for costs or an undertaking on the applicant, to and; and
- (c) grant such further orders and directions as it deems just.

(7) An Order made by the Appeals Board under this rule shall be in Form NCAB 7 set out in the Schedule.

27. Costs

(1) The Appeals Board may, at any stage of the hearing of an appeal or an application, make an order for the payment of security for costs.

(2) The Appeals Board may, in the determination of an appeal or an application, make an order for the payment of costs.

(3) The Appeals Board may, in the order made under subrule (1) or (2), direct that the sum be paid as a lump sum or in such portions as it deems just.

(4) The Registrar shall assess the costs awarded under this rule.

(5) An Order made by the Appeals Board under this rule shall be in Form NCAB 7 set out in the Schedule.

28. Further appeals

A party who is aggrieved by a decision of the Appeals Board may appeal to the High Court within thirty days from the date of that decision.

SCHEDULE

FORMS

(r. 8(5))

Form NCAB 1

(Heading)

REPUBLIC OF KENYA

IN THE NATIONAL CONSTRUCTION APPEALS BOARD

APPEAL/APPLICATION* No. OF 20

..... APPELLANT/APPLICANT

— VERSUS —

..... RESPONDENT

AND *(where applicable)*

..... INTERESTED PARTY

APPOINTMENT/SUBSTITUTION* OF APPOINTMENT OF AN ADVOCATE

I being the Appellant/Applicant/

Respondent/Interested Party* authorise as my Advocate in

the above Appeal/Application. I authorise that service of all pleadings shall be

effected upon me/my advocate*.

SIGNED

.....

ON THIS DAY OF 20

.....

APPELLANT/APPLICANT/RESPONDENT/INTERESTED PARTY*

.....

ADVOCATE'S NAME AND ADDRESS

TO BE SERVED UPON:

Insert the names and address of the other parties to the Appeal/Application.

Note

*Delete whichever is not applicable.

Form NCAB 2

(r. 8(7), 10(7), 11(8), 15(6), 20(15), 23
(6), (11), (17), 26(18))

RETURN OF SERVICE

I (*insert name of person who served*) of P.O.
Box being an Appellant/Applicant/Respondent/Interested
Party/Advocate/Process Server* make oath and state as follows:

1. THAT (*insert name of party being served*) was known to me/identified* for me by (*insert name of person who identified the party*) and admitted that he/she/they* were the (*insert the party being served*).
2. THAT on the day of 20 at (*insert time of service*) I served the (*insert the name of the pleading/summons/written submissions being served**) by tendering a copy of the same to (*insert name of party being served*) and required an acknowledgment of receipt from the (*insert the party being served*) on the original of the (*insert the name of the pleading/summons/written submissions being served**).
3. THAT (*insert name of party being served*) acknowledged/denied* receipt of the (*insert the name of the pleading/summons/written submissions being served**) by stamping/signing* on the face of the original copy thereof and annexed herewith is a copy of the stamped/signed (*insert the name of the pleading/summons/written submissions being served**).
4. THAT not being able to find the (*insert name of party being served*), on day of 20 at (*insert time of attempted service*), I served the (*insert the name of the pleading/summons/written submissions being served**) on (*insert name of the served person*) being an adult family member residing with/authorised officer/employee* of the (*insert the party being served*) who acknowledged/denied* receipt of the (*insert the name of the pleading/summons/written submissions being served**) by stamping/signing* on the face of the original copy thereof and annexed herewith is a copy of the stamped/signed (*insert the name of the pleading/summons/written submissions being served**).
(Insert this paragraph if necessary)
5. THAT not being able to find the (*insert name of party being served*), on

National Construction Authority

[Subsidiary]

day of 20 at
(insert time of attempted service), or an adult family member residing with/authorised officer/employee* of the (insert the party being served), I affixed a copy of the (insert the name of the pleading/summons/written submissions being served*) to the outer door/conspicuous place* of (insert name of party being served) being the house on which the (insert the party being served) ordinarily resides/carries on business/works for gain and which was identified to me by (insert name of person who identified the party). (Insert this paragraph if necessary)

6. THAT the averments in this Affidavit are true.

Sworn by

.....
(insert name of the person who served)

.....
(insert signature of the person who served)

On this day of 20

In the presence of

.....
Commissioner for Oaths

Note

*Delete whichever is not applicable.

Form NCAB 3

(r. 10(1),11(1)(b))

(Insert heading as in Form NCAB 1)

STATEMENT OF APPEAL/CROSS-APPEAL*

IN THE MATTER OF AN APPEAL UNDER SECTION OF THE NATIONAL CONSTRUCTION AUTHORITY ACT

- 1. TAKE NOTICE that the Appellant/Respondent/Interested Party appeals against the decision of the Board of the National Construction Authority made on the day of 20
2. The Appeal/Cross-Appeal* relates to:
3. The decision appealed against is:
4. The Appeal/Cross-Appeal* is based on the following grounds: (set out each ground concisely):
a.
b.
c.
5. The principle of policy, law or construction registration procedure that is relied on in the appeal:
a.
b.
c.

- 6. The documents the Appellant/Respondent* intends to rely on in the Appeal:
 - a.
 - b.
 - c.
- 7. The witnesses the Appellant/Respondent intends to call up at the hearing of the Appeal:
 - a.
 - b.
 - c.
- 8. The reliefs sought in this Appeal/Cross-Appeal* are as follows: (set out each relief concisely)
 - a.
 - b.
 - c.

SIGNED
 ON THIS DAY OF 20

APPELLANT/APPLICANT/RESPONDENT/INTERESTED PARTY*

ADVOCATE'S NAME AND ADDRESS

TO BE SERVED UPON:

Insert the names and address of the other parties to the Appeal/Application.

Note

*Delete whichever is not applicable.

Form NCAB 4

(r. 11(1)(a))

(Insert heading as in Form NCAB 1)

STATEMENT OF RESPONSE

IN THE MATTER OF AN APPEAL UNDER SECTION OF THE NATIONAL CONSTRUCTION AUTHORITY ACT

- 1. TAKE NOTICE that the Respondent opposes the appeal against the decision of the Board of the National Construction Authority made on the day of 20
- 2. A summary of the arguments of fact and law on which the Respondent intends to rely on:
 - a.
 - b.
 - c.
- 3. The documents the Respondent intends to rely on in the Appeal:
 - a.
 - b.
 - c.
- 4. The witnesses the Respondent intends to call up at the hearing of the Appeal:
 - a.
 - b.
 - c.

National Construction Authority

[Subsidiary]

- 5. The reliefs sought in this Appeal are as follows: (set out each relief concisely)
 - a.
 - b.
 - c.

SIGNED
 ON THIS DAY OF 20

RESPONDENT

ADVOCATE'S NAME AND ADDRESS
 TO BE SERVED UPON:

Insert the names and address of the other parties to the Appeal/Application.

Form NCAB 5 (r. 20(7))

(Insert heading as in Form NCAB 1)

SUMMONS

TO:

(Insert the Name and Address of the person being served)

YOU ARE SUMMONED to appear in person before the National Construction Appeals Board at on day of for the hearing of the appeal/application* and thereafter to remain in attendance until excused by the Appeals Board regarding all matters within your knowledge relating to the appeal/application*.

YOU ARE REQUIRED to bring and produce to the Appeals Board the following;

(Insert the document to be produced)

- a.
- b.
- c.
- d.

TAKE NOTE that if you do not comply with this Summons the National Construction Appeals Board you will be subject to Contempt of National Construction Appeals Board proceedings.

THIS DAY OF 20

REGISTRAR,
 NATIONAL CONSTRUCTION
 APPEALS BOARD.

CHAIRPERSON,
 NATIONAL CONSTRUCTION
 APPEALS BOARD.

Note

*Delete whichever is not applicable.

Form NCAB 6 (r. 23 (1))

(Insert heading as in Form NCAB 1)

NOTICE OF MOTION

(.....)

(Insert rule(s) relied on to make the application)

TAKE NOTICE that on the day of 20 at in the morning/afternoon*, the Applicant intends to move the National Construction Appeals Board for the following Orders:

- a.
- b.
- c.

THIS APPLICATION is based on the following grounds:

- a.
- b.
- c.

THIS APPLICATION is supported by the affidavit of sworn on the day of 20

SIGNED ON THIS DAY OF 20

APPELLANT/APPLICANT/RESPONDENT/INTERESTED PARTY*

ADVOCATE'S NAME AND ADDRESS TO BE SERVED UPON:

Insert the names and address of the other parties to the Appeal/Application.

Note

*Delete whichever is not applicable.

Form NCAB 7 (r. 21(4), 23(18), 24(4), 25(5), 26(7), 27(5))

(Insert heading as in Form NCAB 1)

ORDER

In the Appeal/Application/on its Own Motion*, The National Construction Appeals Board, on hearing the appeal/application* on the (insert final date of hearing) and determined by the Appeals Board on the (insert the date of the decision of the Appeals Board).

It is ORDERED that:

- 1.
- 2.
- 3.

Made this day of 20

REGISTRAR, NATIONAL CONSTRUCTION APPEALS BOARD.

CHAIRPERSON, NATIONAL CONSTRUCTION APPEALS

Note

*Delete whichever is not applicable.