



PUBLIC PROCUREMENT OVERSIGHT AUTHORITY

Transforming Procurement

Code of Ethics for Suppliers in Public Procurement and Disposal

**Issued pursuant to Section 139 of the Public Procurement & Disposal
Act, 2005**

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PREAMBLE

Public procurement in Kenya is governed by Article 227 of the Constitution of Kenya, 2010, the Public Procurement and Disposal Act, 2005 (the Act), its attendant Regulations (the Regulations), and instructions issued by the Public Procurement Oversight Authority (PPOA). Suppliers shall comply with all provisions of the Act and the Regulations. PPOA is responsible for ensuring that the procurement procedures established under the Act are complied with.

This Code of Ethics has been issued by PPOA pursuant to Section 27 (4) and 139 of the Act which provides that "*All procurement and disposal shall be carried out in accordance with the codes of ethics that may from time to time be specified by the Authority.*" Breach of the Code of Ethics may not only provide grounds for debarment of a person from participating in procurement proceedings as per Section 115 (1) of the Act, read together with Regulation 90 of the Public Procurement and Disposal Regulations, 2006 but also provide grounds establishing the commission of an offence under Section 135 & 136 of the Act.

This Code of Ethics complements the Act and the Regulations. It does not replace any part of the Act or the Regulations.

PART I – PRELIMINARIES

Title

This code may be cited as the Code of Ethics for Suppliers in Public Procurement & Disposal

1. Interpretation

In this codes, unless the context otherwise requires-

“The Act” MEANS The Public Procurement and Disposal Act, 2005 or any amendment or modification thereof

“Candidate” means a person who has obtained the tender documents from a public entity pursuant to an invitation notice by a procuring entity

“Code of Ethics” means a statement encompassing the set of rules based on values and the standards of conduct to which suppliers are expected to conform

“Consultant” is a person who provides services of predominantly intellectual, technical or advisory nature

“Contractor” means a person who enters into a procurement contract with a procuring entity to supply goods, works or services, and includes the main contractor

“Ethics” means values, customs, rules or principles, which govern right conduct

“Gift” has meaning assigned to it in the Leadership and Integrity Regulations, 2015

“Integrity” means the quality of being honest and having strong moral and ethical principles

“Persons” has meaning assigned to it in Article 260 of the Constitution and includes sole proprietorship

“Procuring Entity” means a public entity making a procurement to which the Public Procurement and Disposal Act, 2005 or any amendment or modification thereof applies

“Public Officer” has the meaning assigned to it in Article 260 of the Constitution

“Regulations” means regulations made under the Public Procurement and Disposal Act, 2005 or any amendment or modification thereof

“State Officer” has the meaning assigned to it in Article 260 of the Constitution

“Supplier” means a candidate, bidder, and tenderer, Contractor, service provider or a consultant.

“Tenderer” means a person who submitted a tender pursuant to an invitation by a public entity

For purposes of this Code, all terms used, unless expressly defined herein, have the meaning assigned to them in the Act.

2. Application of the Code

- a) This Code of Ethics is applicable to suppliers participating in public procurement or disposal of public assets.
- b) The objective of the Code is to set minimum standards of ethical behaviour for Suppliers to ensure compliance with the Act and the Regulations and the adoption of good business practices.

PART II – REQUIREMENTS/OBLIGATIONS OF THE SUPPLIERS

3. Laws and Regulations

- a) All public procurement & disposal shall be undertaken in accordance with the values and principles of the Constitution of Kenya, 2010 (Article 10)
- b) All Suppliers shall comply with the rule of Law.
- c) Suppliers shall observe other laws, regulations, rules and practices relating to taxation, labour, health and safety standards as well as environmental protection.

4. Professionalism

- a) Suppliers are required to comply with professional standards of their industry or of any professional body of which they are members. Where a supplier is a member of a professional body, the Supplier shall uphold the code of ethics of the respective profession and be of good standing.
- b) Suppliers shall maintain the highest standards of integrity and professionalism in their operations.
- c) Suppliers in public procurement shall accord mutual respect and courtesy to the public officer(s) and other suppliers without compromising their independent and distinct roles.
- d) Public procurement & disposal activities shall be undertaken with the objective of meeting the closest public scrutiny.

5. Impartiality

A supplier shall not engage in acts aimed at encouraging patronage, tribalism, cronyism and nepotism.

6. Gifts, Favors and Corrupt practices

- a) A supplier shall not offer or give gifts of any kind to public entities and/or the employees.
- b) No supplier shall contact, unduly influence or exert pressure on any member of a committee or any other employee of a procuring entity to take a particular action which favours or tends to favour them.
- c) A supplier shall not engage in fraudulent, collusive, or corrupt practices, or inappropriate influences.
- d) A supplier shall not act inappropriately by attempting to interfere with the procurement process

7. Conflict of Interest

- a) A supplier shall not accept contracts which would constitute a conflict of interest with any prior or current contract. Suppliers shall disclose to all concerned parties those conflicts of interest that cannot be reasonably avoided.
- b) A supplier shall not enter into a contract with a procuring entity if the supplier is:
 - (i) An employee of the procuring entity or a member of a board or committee of the procuring entity;
 - (ii) A State Officer, public Officer or a member of a board or committee of the Government or any department of the Government or a person appointed to any position by the President or a Cabinet Secretary;
 - (iii) A person, including a corporation, who is related to a person described in paragraph (a) or (b). A relative has meaning assigned to it in section 33(2) of the Public Procurement and Disposal Act, 2005 or any amendment or modification thereof applies
 - (iv) Debarred from participating in procurement proceedings.

8. Performance of Duties

- 1) A supplier shall:
 - a. Duly sign this code of ethics and include it in a tender, proposal or quotation submitted.
 - b. Obtain and submit bid documents in the manner prescribed in the tender notice and tender documents
 - c. Supply the right quantity and quality of the contracted item and deliver at the stipulated time(s) and shall not abandon the work that they have been contracted to do.
 - d. Perform the obligations of the contracts efficiently and effectively
- 2) Suppliers shall not participate in procurement proceedings without invitation to tender and understanding the instructions to tenderers.

- 3) While responding to tenders, quotations or request for proposals, bidders should not include unfair, discriminatory or unreasonable conditions in their bids.
- 4) Suppliers should
 - a. Ensure that their deliverables provide value for money in terms of cost, quality, quantity and timeliness of the delivered works, goods or services.
 - b. Ensure that competent persons carry out the contractual obligations of the supplier.
 - c. Accept full responsibility for all works, services or supplies provided
- 5) A supplier shall not
 - a. Obstruct or hinder an officer of the Authority or any other authorized person from carrying out a duty or function or exercising a power relating to procurement and disposal.
 - b. Knowingly or in collusion with others lie to or mislead a person carrying out a duty or function or exercising a power relating to procurement and disposal.

9. Communication and Accuracy of Information

A supplier shall:

- 1) Observe strict communication limitations during the bidding process and as provided for in the Act
- 2) Respond promptly and courteously to all proper requests for information, clarifications, complaints or enquiries from procuring entities, the Authority or any law enforcement agency.
- 3) Ensure that all information provided to procuring entities is given in writing by Authorized Officers.
- 4) Ensure that certified copies of all mandatory certificates are availed
- 5) Ensure that information given while participating in public procurement or disposal is true, accurate and fair, and not designed to mislead.

10. Confidentiality

Information obtained in the course of performance of a procurement contract in shall not be disclosed to unauthorized persons and shall not be used for the Supplier's advantage or material gain or for furtherance of private interest. The obligation to preserve the confidential information continues even after the business/contractual relationship with the Procuring Entity ends.

11. Duty to report impropriety/corruption

A supplier shall reject and report to the PPOA and/or the relevant agency any procurement practice which might be deemed improper.

PART III - OVERSIGHT BY THE PPOA

12. PPOA shall assist in undertaking continuous training of the suppliers to eliminate malpractices which might arise due to ignorance of the public procurement system.
13. PPOA will exercise oversight in the enforcement of this Code of Ethics, including taking remedial measures where the Code of Ethics is breached
14. PPOA shall revise the code of ethics as appropriate in consultation with the relevant stakeholders

PART IV - COMPLIANCE & MONITORING

15. A Procuring Entity may conduct due diligence, on-site evaluations and inspections of suppliers' facilities and/or project site, including those of their subcontractors and Joint Venture partners to review their compliance to this Code during execution of the Contract.
16. PPOA shall, on its own motion or upon receipt of a complaint, inquire into the allegation of the violation of the Code of Ethics and institute debarment proceedings in line with Regulation 90 of the Public Procurement And Disposal Regulations, 2006
17. PPOA shall establish a complaints management system for reporting and receipt of complaints on alleged violations of the Code of Ethics
18. PPOA may collaborate and partner with other agencies, organizations and professional bodies in enforcement of this Code of Ethics.
19. All Procuring Entities shall submit a report to PPOA, annually or upon request, of any breaches by suppliers, and any action taken against the breach, in such format as is provided by PPOA.

PART V - ENFORCEMENT OF THE CODE

20. Any person may lodge a complaint alleging a breach of this code by a supplier to the Authority or a Procuring entity.
21. Upon receipt of the complaint, the Authority or the Procuring entity shall register and carry out investigations into the complaint, and may take action against the supplier in accordance with the Act and any Regulations
22. A breach of this Code shall be subject to a debarment process as stipulated in the Act which may attract a debarment for a period not less than five years. The breach may further be subjected to a Court process that may lead to the imposition of other penalties as stipulated in the Act and other Laws.
23. A Procuring Entity may disqualify a supplier from further participation in a procurement or disposal proceeding or terminate a contract if it establishes a breach of this Code
24. A breach of this Code shall lead to termination of registration of a supplier
25. A supplier who violate the law or engage in unethical business dealings may be subject to disciplinary proceedings.

COMMITMENT TO THE CODE OF ETHICS (to be submitted as part of any quotation or tender)

I (Supplier) Confirm that I have read and fully understood the contents of the Public Procurement & Disposal Act, 2005 and the Code of Ethics for Suppliers and my responsibilities under the Code.

I also certify that I am duly authorized to sign this Code on my own behalf and on behalf of my organization, and agree to comply with the Code of Ethics.

Name..... Sign.....

Position.....

Office address.....

Telephone.....

E-mail.....

Name of the Firm.....

(Company Seal/ Rubber Stamp where applicable)

Sworn at }

By the said }
.....
Deponent

this.....day of.....20..... }

Before Me }

Commissioner for Oaths/Magistrate }