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TWELFTH PARLIAMENT-SECOND SESSION

COMMITTEE ON DELEGATED LEGISLATION

REPORT ON NATIONAL CONSTRUCTION AUTHORITY
(AMENDMENT) REGULATIONS, 2017

MARCH, 2018

Directorate of Committee Services

The National Assembly,

Parliament Buildings, Continental House, Room 402

NAIROBI

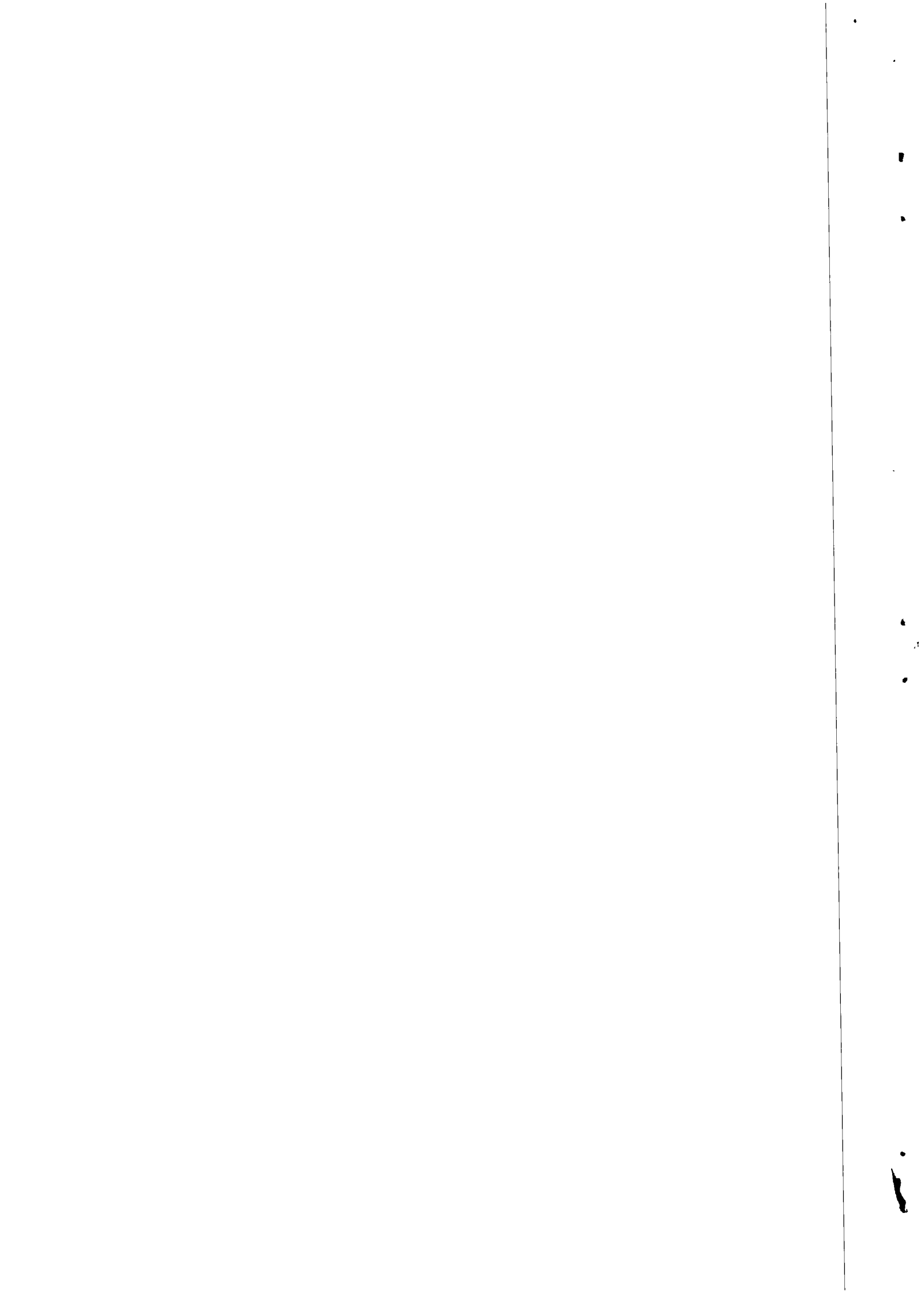
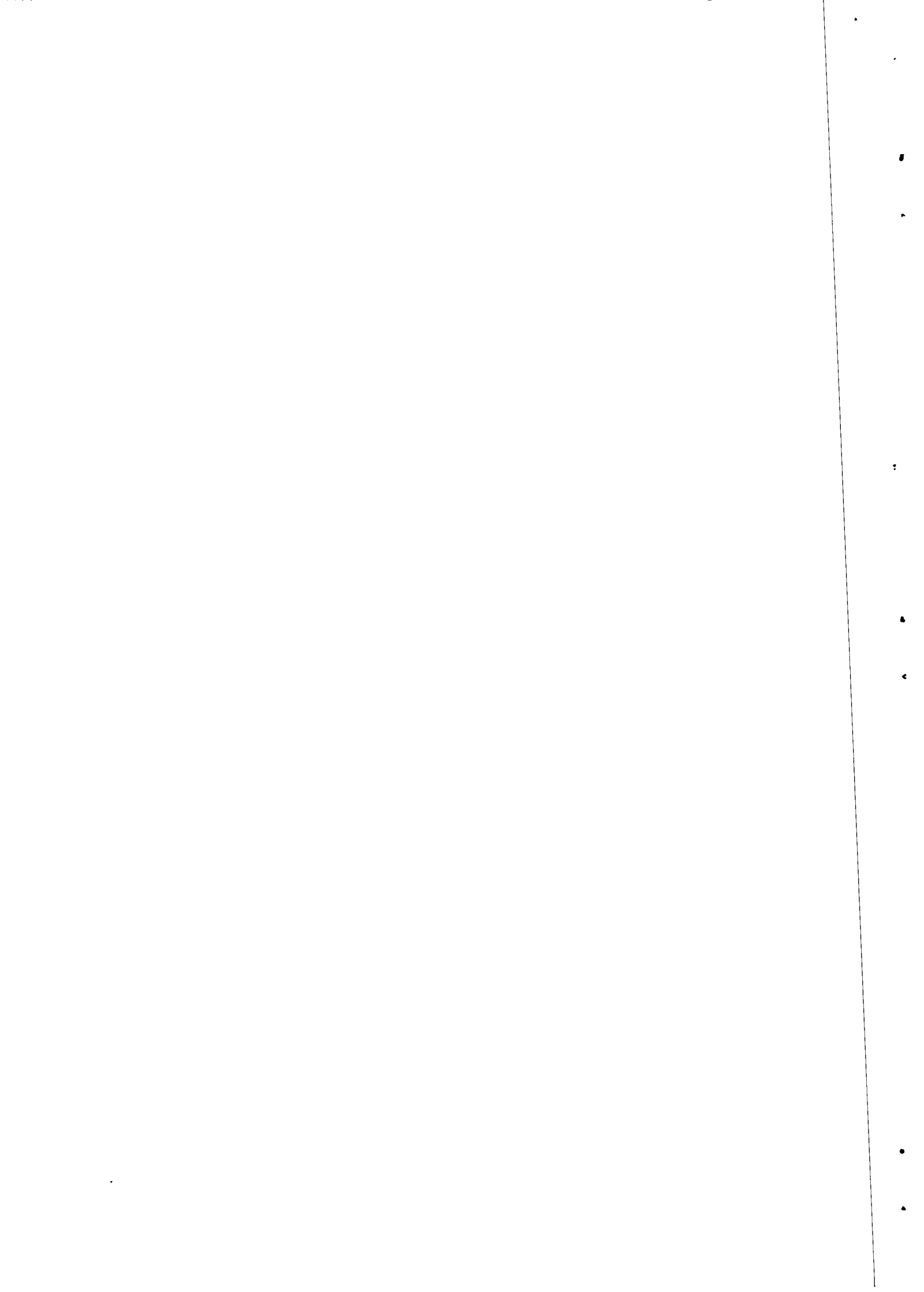


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CHAIRPERSON'S FOREWORD

In exercise of powers conferred by sections 5(2) and 42 of the National Construction Authority Act No. 41 of 2011, the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development published the National Construction Authority (Amendment) Regulations, 2017 on 20th November, 2017 vide LN No. 274/2017.

Following publication, the Regulations were tabled in the House on 13th February, 2018 and immediately committed to the Select Committee on Delegated Legislation for review and scrutiny in line with section 12 of the Statutory Instruments Act, 2013 and Standing Order 210 of the National Assembly Standing Orders.

The Committee considered the Regulations in its sitting held on Thursday, 1st March, 2018 and made the decision to annul the Regulations for reasons advanced herein.

The Committee wishes to express its gratitude to the Speaker for the support accorded to the Committee in the discharge of its mandate. The Committee also wishes to record its appreciation to the Office of the Clerk of the National Assembly and the supporting Directorates for providing technical support which was vital in the consideration of this instrument.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 210 (4), it is my pleasure and duty to present to the House the Committee's Report on the National Construction Authority (Amendment) Regulations, 2017.

Signed.......... Date..13/3/2018.....

for **HON. GLADYS BOSS SHOLLEI, CBS, MP**
CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION

EXECUTIVE SUMMARY

The National Construction Authority (Amendment) Regulations, 2017 was tabled in the House on 13th February, 2018 and immediately committed to the Select Committee on Delegated Legislation for review and scrutiny in line with section 12 of the Statutory Instruments Act, 2013 and Standing Order 210 of the National Assembly Standing Orders.

Having considered the Regulations, the Committee observed that they were published on 20th November, 2017 and submitted to the National Assembly on 11th of January, 2018. This was considered to be outside the statutory timeline contemplated under section 11(1) of the Statutory Instruments Act.

The Committee also observed that the regulatory impact assessment was not prepared for the Regulations pursuant to section 6 of the Statutory Instruments Act.

In view of the foregoing, the Committee recommends that the National Construction Authority (Amendment) Regulation, 2017 be annulled in entirety and re-published.

1.0 PREFACE

The Select Committee on Delegated Legislation is established pursuant to *Standing Order No. 210* and is mandated to consider statutory instruments submitted to Parliament for consideration. The Committee is expected to consider in respect of any statutory instrument, whether it is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws.

1.1 Mandate of the Committee

The Committee is mandated to consider in respect of any statutory instrument, whether it: -

- (i) is in accordance with the provision of the Constitution, the Act pursuant to which it is made or other relevant written laws;
- (ii) infringes on fundamental rights and freedoms of the public;
- (iii) contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament;
- (iv) contains imposition of taxation;
- (v) directly or indirectly bars the jurisdiction of the court;
- (vi) gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;

The Committee is equally tasked with the responsibility of scrutinizing statutory instruments, whether: -

- (i) it involves expenditure from the consolidated fund or other public revenues;
- (ii) is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
- (iii) appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;
- (iv) appears to have had unjustifiable delay in its publication or laying before Parliament;
- (v) makes rights, liberties or obligations unduly dependent upon non-renewable decisions;
- (vi) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
- (vii) inappropriately delegates legislative powers;

- (viii) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
- (ix) appears for any reason to infringe on the rule of law;
- (x) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and,
- (xi) accords to any other reason that the Committee considers fit to examine.

1.2 Committee Membership

The Committee on Delegated Legislation as constituted by the House in December 2017 comprises of the following Members: -

- 1) **Hon. Gladys Boss Shollei, MP - Chairperson**
- 2) **Hon. Fatuma Gedi, MP - Vice- Chairperson**
- 3) Hon. Alice Wahome, MP
- 4) Hon. Robert Mbui, MP
- 5) Hon. Daniel Maanzo, MP
- 6) Hon. Muriuki Njagagua, M.P
- 7) Hon. Isaac Waihenya Ndirangu, MP
- 8) Hon. Alfred Bernard Wekesa Sambu, MP
- 9) Hon. William Kamket Kassait, MP
- 10) Hon. Ronald Kiprotich Tonui, MP
- 11) Hon. Munene Wambugu, MP
- 12) Hon. Charles Gimose, MP
- 13) Hon. Abdi Koropu Tepo, MP
- 14) Hon. George Gitonga Murugara, MP
- 15) Hon. Jennifer Shamalla, MP
- 16) Hon. Muturi Kigano, MP
- 17) Hon. Martha Wangari, MP
- 18) Hon. Patrick Kariuki Mariru, MP
- 19) Hon. Timothy Wanyonyi, MP
- 20) Hon. William Kamoti, MP
- 21) Hon. Wilberforce Oundo, MP
- 22) Hon. Sammy Seroney, MP

1.3 Committee Secretariat

The secretariat comprises of the following members of staff;

- | | |
|-----------------------|--|
| 1) Mr. Susan Maritim | Clerk Assistant I (Team Leader) |
| 2) Mr. Jimale Mohamed | Clerk Assistant |
| 3) Mr. Wilson Dima | Senior Legal Counsel |
| 4) Ms. Mugure Gituto | Legal Counsel |
| 5) Ms. Anne N. Kigoro | Research & Policy Analyst |
| 6) Mr. Stanley Lagat | Serjeant-at-Arms |

2.0 CONSIDERATION OF THE INSTRUMENTS

2.1 Introduction and Background Information

The National Construction Authority is established by the National Construction Authority Act No. 41 of 2011 to oversee the construction industry and coordinate its development. On 20th November, 2017 vide LN No. 274/2017, the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development gazetted the National Construction Authority Regulations, 2017 in exercise of the power to make Regulations vide section 42.

The Regulations provide for the registration of contractors including the application and evaluation, certification, exemption, renewal of registration and registration of foreign contractors. The Regulations further provide for registration of all construction works, contracts or projects in the public or private sector with the Authority, the certification and accreditation of skilled construction workers and the collection and payment of construction levy.

2.2 Making of the Rules and Committal to the Committee on Delegated Legislation

In exercise of powers conferred by Section 42 of the National Construction Authority Act, No. 41 of 2011, the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development published the National Construction Authority (Amendment) Regulation, 2017. The amendment Regulations were tabled in the House on 13th February, 2018 and immediately committed to the Select Committee on Delegated Legislation for review and scrutiny in line with section 12 of the Statutory Instruments Act, 2013 and Standing Order 210 of the National Assembly Standing Orders.

Section 42 of the National Construction Authority Act, No. 41 of 2011 empowers the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development may in consultation with the Board, make regulations generally for the better carrying out of the purposes of this Act.

The Cabinet Secretary thereof gazetted the National Construction Authority (Amendment) Regulations, 2017 to amend provisions of the National Construction Authority Regulation, 2014 that seek to delete the first, second and third schedule and provide for a stakeholder driven contractor evaluation criteria that reflects best practises in the construction industry. The revised evaluation criteria will assist the Authority to validate the technical competencies of applicants;

fragments construction works according to their technical differentiations and a comprehensive outline of the industry.

2.3 Consideration of the Instruments

The Committee considered the Regulations in its sitting held on Thursday, 1st March, 2018 in which the regulatory making authority, the National Construction Authority, was in attendance pursuant to section 16 of the Statutory Instruments Act on conferment before tabling the Report.

3.0 COMMITTEE OBSERVATIONS

Having considered the said Regulations, the Committee observed –

- (i) THAT, the National Construction Authority (Amendment) Regulations, 2017 seek to amend existing Regulations that were made pursuant to sections 5(2) and 42 of the National Construction Authority Act No. 41 of 2011 which is the section that empowers the Cabinet Secretary to make Regulations;**
- (ii) THAT, the Regulations were published on 20th November, 2017 and were submitted to the National Assembly on 11th of January, 2018. This was outside the statutory timeline contemplated under section 11(1) of the Statutory Instruments Act;**
- (iii) THAT, the regulatory impact assessment was not prepared for this Regulations pursuant to section 6 of the Statutory Instruments Act;**
- (iv) THAT, annexed to the Regulations was an explanatory memorandum which specifies the agencies and institutions consulted in four counties namely Kakamega, Nairobi, Nakuru and Mombasa counties; and**

Outside the Regulations, the Committee observed with concern that the National Construction Authority continues to charge building contractors, inspection fees yet the same were scrapped in the Budget Speech of FY 2016/2017.

4.0 RECOMMENDATION

The Committee recommends the National Construction Authority (Amendment) Regulations, 2017 be annulled to allow for re-publishing of the same to conform with the provisions of the Statutory Instruments Act.

ANNEXURES

- (i) Minutes of Committee sittings
- (ii) Adoption List
- (iii) Copy of the National Construction Authority (Amendment) Regulations, 2017

MINUTES OF THE 11TH SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON THURSDAY, 1ST MARCH, 2018, AT 8. 00 A.M. IN THE SMALL DINING ROOM, NEW WING, MAIN PARLIAMENT BUILDINGS

PRESENT

1. **Hon. Gladys Boss Shollei, CBS, M.P.** - **Chairperson**
2. **Hon. Fatuma Gedi, M.P.** - **Vice Chairperson**
3. Hon. Daniel Maanzo, MP
4. Hon. Timothy Wanyonyi, MP
5. Hon. George Gitonga Murugara, M.P.
6. Hon. Alice Wahome, M.P.
7. Hon. Jennifer Shamalla, M.P.
8. Hon. William Kamoti, MP
9. Hon. Martha Wangari, M.P.
10. Hon. William Kamket Kassait, M.P.
11. Hon. Charles Gimose, M.P.
12. Hon. Isaac Waihenya Ndirangu, M.P.
13. Hon. Munene Wambugu, M.P.
14. Hon. Ronald Kiprotich Tonui, M.P.
15. Hon. Sammy Seroney, M.P.

ABSENT WITH APOLOGY

1. Hon. Robert Mbui, MP
2. Hon. Alfred Sambu, M.P.
3. Hon. Muriuki Njagagua, M.P.
4. Hon. Patrick Kariuki Mariru, M.P.
5. Hon. (Dr.) Wilberforce Oundo, MP
6. Hon. Abdi Koropu Tepo, M.P.
7. Hon. Muturi Kigano, M.P.

IN-ATTENDANCE

National Assembly Secretariat

- Mr. Jimale Mohamed - Third Clerk Assistant
Mr. Dima Wilson - Senior Legal Counsel
Mr. Charles Ayari - Audio Officer

Capital Market Authority (CMA)

- | | | |
|---------------------------|---|---|
| 1. Mr. Justus Agoti | - | Senior Market Development Officer (CMA) |
| 2. Mr. Wycliffe Shadrack | - | Director Marketing Operations |
| 3. Ms. Mary Njuguna | - | Manager, Corporate Approvals |
| 4. Ms. Josephine Kangonga | - | Assistant Manager, Regulatory Framework |
| 5. Mr. Jairus Muaka | - | Assistant Manager Strategy & Policy |
| 6. Mr. Paul Muthaura | - | Chief Executive, CMA |
| 7. Mr. Nelson Gaichtuie | - | Chief Administrative Secretary, National Treasury |
| 8. Mr. Geoffrey Mwau | - | DG. Budget Fiscal & Economical Affairs, |

Competition Authority of Kenya

- | | | |
|-------------------------|---|---|
| 1. Mr. Geoffrey Mwau | - | DG, Budget Fiscal & Economical Affairs, |
| 2. Mr. Nelson Gachie | - | Chief Administrative Secretary NT & Planning |
| 3. Mr. Majken P. Anitta | - | Member Competition Tribunal |
| 4. Mr. Wongombe Karangi | - | DG-Competition Authority |
| 5. Mr. Stephen Kitkenda | - | Chairman. Competition Tribunal |
| 6. Mr. Wanja Wambugu | - | Member, Competition Tribunal |
| 7. Mr. Boniface Makango | - | Manager. Legal Competition Authority of Kenya |
| 8. Mr. John Nderitu | - | Competition Tribunal |

National Construction Authority

- | | | |
|-------------------------------|---|------------------------------------|
| 1. Mr. M. A. Nyakiongora, OGW | - | Secretary National Building |
| 2. Arch. Daniel Mandugu | - | CEO, NCA |
| 3. Mr. Ibrahim Hussein | - | Director of Administration, SDH&UD |
| 4. Mr. Samson Lukoba | - | Corp Secretary & Head of Legal NCA |
| 5. Arch. Stephen Mwilu | - | Manager Regional Offices |
| 6. Eng. Achini Isaoah | - | Assistant Manager, Registration |
| 7. Ms. Cindy Ogola | - | Legal Assistant-NCA |
| 8. Ms. Carol Korir | - | Legal Officer. NCA |

AGENDA

1. Prayers & Preliminaries Consideration of: -
 - a) *Meeting with The National Treasury to consider Capital Market Authority Regulations, 2017 and Competition Tribunal (procedure) Rules, 2017 at 8 00 a.m.*
 - b) *Ministry of Transport, Infrastructure, Housing and Urban Development to consider National Construction Authority (Amendment) Regulations, 2017 at 12.00 noon*
2. Any Other Business
3. Adjournment

MIN.NO. CDL/070/2018:

PRELIMINARIES

The meeting was called to order at 8.25 a.m. followed by prayers.

The chair further informed the meeting that the Committee was scheduled to meet with the following Regulatory Making Authority on the consideration of the Capital Market Authority (Securities, Lending, Borrowing and Short-Selling) Regulations, 2017, Capital Market Authority (Online Foreign Exchange Trading) Regulations, 2017 and Competition Tribunal (Procedure) Rules, 2017. The Chairperson further noted that the Ministry of Transport, Infrastructure, Housing and Urban Development will appear before the Committee at 12 noon same day to consider National Construction Authority (Amendment) Regulations, 2017.

MIN.NO. CDL/071/2018:

CONFIRMATION OF MINUTES FROM PRESVIOUS SITINGS

Minutes of the 1st 2nd 3rd 4th, 5th, 6th and 7th sittings were read and confirmed as true record of the proceedings.

Minutes of the 1st siting proposed by Hon. Isaac Waihenya Ndirangu, M.P and seconded by Hon. Sammy Seroney, M.P as the true re as true record of the proceedings.

Minutes of the 2nd siting proposed by Hon. Sammy Seroney, M.P and seconded by Hon. Timothy Wanyonyi, MP as the true re as true record of the proceedings.

Minutes of the 3rd siting proposed by Hon. Munene Wambugu, M.P and seconded by Hon. Ronald Kiprotich Tonui, M.P, as the true re as true record of the proceedings.

Minutes of the 4th siting proposed by Hon. George Gitonga Murugara, M.P and seconded by Hon. William Kamket Kassait, M.P, as the true re as true record of the proceedings.

Minutes of the 5th siting proposed by Hon. Alice Wahome, M.P. and seconded by Hon. Isaac Waihenya Ndirangu, M.P, as the true re as true record of the proceedings.

Minutes of the 6th siting proposed by Hon. Ronald Kiprotich Tonui, M.P and seconded by Hon. Daniel Maanzo, MP as the true re as true record of the proceedings.

Minutes of the 7th siting proposed by Hon. Jennifer Shamalla, M.P and seconded by Hon. Isaac Waihenya Ndirangu, M.P as the true re as true record of the proceedings.

MIN.NO. CDL/072/2018:

MATTERS ARISING.

No matters arose

MIN.NO. CDL/073/2018: ADOPTION OF THE PROGRAMME/AGENDA

The Committee unanimously adopted the agenda for the meeting without amendments.

**MIN.NO. CDL/074/2018: MEETING WITH THE CAPITAL MARKET
AUTHORITY ON THE REGULATIONS**

The Chairperson welcomed Members and officials from The National Treasury led by Chief of Administration Services and the Capital Market Authority led by the Chief Executive Officer, Mr. Paul Muthaura. Thereafter a round of introductions was done.

The chairperson notified the Members that the meeting was to deliberate on the Capital Market Authority Regulations submitted by the National Treasury to the National Assembly. The Regulations were Capital Market Authority (Securities, Lending, Borrowing and Short-Selling) Regulations, 2017 and Capital Market Authority (Online Foreign Exchange Trading) Regulations, 2017.

The CEO for the Capital Market Authority thanked the Committee for having accorded them the opportunity to appear before them. He thereafter, took members through the regulations and informed as follows:-

1. The Capital Markets (Securities Lending, Borrowing and Short-Selling) Regulations, 2017 (the Regulations) provides for the criteria for identifying securities to be lent and borrowed, the persons who can undertake securities lending and borrowing and the content of the securities lending agreement.
2. The Regulations were forwarded to parliament the Capital Markets (Securities Lending, Borrowing and Short-selling) Regulations, 2017 pursuant to section 11 in the Statutory Instrument. Act (No. 23 of 2013).
3. There was no regulatory environment that was to regulating capital market when it comes to Securities Lending, Borrowing and short selling.
4. Lending agent - means a third party who is not a party to a securities lending agreement but provides support services to securities lenders including the monitoring of loans, the negotiation of lending fees or rebate rates, and the management of collateral.
5. The National Treasury, Office of the Attorney General have seen the necessity of coming up with regulations by virtue of the actual currency and made some benchmarking in countries that have succeeded in implementing these regulations framework.
6. Securities Lending and Borrowing transaction shall be carried out in accordance with the regulations if approved.
7. Extensive stakeholder consultations and engagement were conducted on October and November 2016 as required by section 5 of the Statutory Instruments before the regulations are published. This was to ensure that the final product has the input of industry stakeholders

8. The aim of the Capital Market Authority was the protection of investors' interest.
9. On the issue of the impact statements, the private sector was catered for as the Authority has the knowledge on the nature of business as well as the right of the investors.
10. Capital Market Authority as a regulatory body has considered and prepared impact statement about the instrument before it was published.
11. On the issue of the regulations regarding online Foreign Exchange Trading seek to establish a regulatory framework for licensing requirements for online foreign exchange brokers and money managers,
12. "Online Foreign Exchange Trading" means an internet – based trading of foreign exchange and includes trading in contracts for difference based on a foreign underlying asset, "online Foreign Exchange Trading platform "as an internet based trading of foreign exchange through which foreign exchange trading is conducted.
13. The Regulations also seek to regulate the conduct of online foreign exchange business; the modalities for conducting inspections; and does creates offences and penalties to be imposed on persons in contravention of the provisions of the Regulations.
14. The Authority issues License to online foreign exchange brokers and money managers. It also sets out the conditions, requirements and procedures of application for online Foreign Exchange Trading, the eligibility criteria in considering the applications and sets the fee to be paid for such applications as specified in the schedule.
15. It also gives appeal mechanisms against the revocation or suspension of online foreign exchange licenses.

Committee observations

- 1) The Committee inquired about the scope of stakeholder consultation and engagement undertaken and whether counties were involved and how many participants from counties and in response the CEO for the Capital Market Authority stated that the stakeholder's forum covered participants from Counties.
- 2) Members further observed that the annexure of explanatory memorandum to the Regulations demonstrates the extent to which the consultation was undertaken regarding the making of these Regulations.
- 3) With regard to investor protection, Members observed about the role played by CMA in facilitating market development in relation to the introduction of new products, it was also observed the sufferings investors were undergoing when rolling-out of new products and services in capital markets.
- 4) It was also observed that 32 counties were covered during feasibility study for the introduction of new products, however, Members were concerned about lack of evidence like the names of participants etc., in response the CEO highlighted that the they will amend the explanatory memorandum and resubmit to the Committee an addendum to the previous one and.

- 5) The Committee further observed that the largest group that beneficiaries from the enactment of the regulation were youth, women and disadvantaged groups. CMA also sensitizes youth against market intermediaries and concerns raised by youth were adequately addressed.

MIN.NO. CDL/075/2018:

**MEETING WITH THE COMPETITION
AUTHORITY OF KENYA**

The Chairperson welcomed Members and officials from The National Treasury led by Chief of Administration Services and the Competition Authority of Kenya led by the Director General, Mr. Francis Kariuki. Thereafter a round of introductions was done.

~~The chairperson notified the Members that the meeting was to deliberate on the Competition Tribunal (Procedure) Rules, 2017 submitted by the National Treasury to the National Assembly.~~

The Director General, Competition Authority of Kenya Market Authority thanked the Committee for having accorded them the opportunity to appear before them. Thereafter he took members through the explanatory memorandum to the Competition Tribunal (Procedure) Rules, 2017 and stated as follows:-

Purpose of the Instrument (Competition Tribunal (Procedure) Rules, 2017)

The purpose of the Instrument was to facilitate the just and timely resolution of complaints files with the tribunal. The Tribunal may confirm, modify or reverse the order appealed against from the decision of the Competition Authority.

The rules provide for:-

1. The governing Principles of the Tribunal and case management once matters are filed.
2. The jurisdiction, decision and orders conferred to the Tribunal
3. The parties who can appeal to the Tribunal and their representation
4. The proceedings roadmap once an appeal is filed the rules take into accounts the jurisdiction of the Tribunal under section 48 of the Competition Act, CAP 504 Laws and how a review of mergers and acquisition can be carried out;
5. The service and how it will be effected;
6. The hearings process before the Tribunal. The hearing process sets the criteria for case management conference, fast track procedure, matters under certificate of urgency and how they shall be dispensed before Tribunal, Ex- parte hearings, Confidentiality Ring on how sensitive commercial information can be presented before the Tribunal without passing the information to competitors and entire conduct of hearings.
7. The Role of the Tribunal Secretariat and Registry.

The Legislative Context

1. **The** process of developing the Competition Tribunal (Procedure) Rules, 2017 started 2015 after gazettment of the Tribunal members and official launch of the Tribunal.
2. The tribunal could not function without rules of procedure and a well-functioning Registry to support and compliment the decision making process of the Tribunal.
3. The Tribunal will be handling appeals of major commercial interest. Data and evidences analysis in all economic sectors in the country will be critical for the Tribunal to make informed ruling and decisions. It is therefore essential that Tribunal rules be approved by the National Assembly.

The Director General further elaborated about Consultation Outcome as follows:-

- a) The Tribunal reached widely in regard to how other competition Tribunals dispense their mandate, these includes the Canadian Competition Tribunal, South Africa Appellate Competition Tribunal, India Competition Tribunal and the UK Competition Tribunal. Locally, key Tribunals benchmarked includes: - The Political Parties Appeals Tribunal, the Sports Tribunal under the Judiciary, the Public Partnership Petition Committee and the Standard Tribunal.
- b) The coming up of the Draft Procedure Rules, key stakeholders and rules experts were involved in the deliberations.
- c) There were six key workshop held to come up with the Rules of Procedure. The three involved the Tribunal and the Key stakeholders including the Attorney General Office, the Kenya Law Reporting and the Judiciary, Other stakeholders who gave their input were, Law Society of Kenya, Kenya Private Sector Alliance, Competition Authority of Kenya, Kenya Bureau of Standard, Kenya Association of Manufacturers, National Treasury, National Council of Law Reporting and Law Firms.
- d) The validation workshop was held on 2nd Feb 2017, at Hilton Hotel where all stakeholders attended and adopted the final draft. The final draft was then passed by the Attorney General for further guidance and endorsement.

Regarding Regulatory Impact Assessment, the DG informed the meeting that;

- a. In accordance with section 9 of the Statutory Instrument Act, 2013, the National Treasury and the Tribunal is satisfied that the Competition Tribunal (Procedure) Rules, 2017 is operationalising the provisions of Section 71(6) of the Competition Act.
- b. The Instrument does not disadvantage any person and infringes the right of any person. The tribunal will hear appeals that otherwise would have been appealed in the courts. This will reduce the backlog of cases which affects courts in the Judiciary.

- c. Justices will be fast tracked by the Tribunal but has financial constraints due to budgetary implications.

Committee observations

Members observed the following:-

- 1) The Committee observed that the Tribunal was established in 2013 and has not been fully funded to execute its mandate; however, it was noted that the Tribunal depends on the Judiciary for Budget allocation.
- 2) The Committee also noted that stakeholder consultation and engagement undertaken by the Competition Authority in coming up with the Procedure Rules shall have also been extended to counties.
- 3) Members further observed that the annexure of explanatory memorandum to the Regulations demonstrates the extent to which the consultation was undertaken regarding the making of this procedure rules.
- 4) Members raised concern over the role of the Tribunal Secretariat and Registry, inadequate personnel to handle cases referred to the Tribunal particularly when considering hearings and determination of cases referred to it;
- 5) The Committee advised the Authority to make an addendum to the memorandum and resubmit it to National assembly.

Committee Resolutions

The Committee acceded to the Regulations as published. The Committee further directed pursuant to Standing Order 210 (4) of the National Assembly that Clerk of the National Assembly conveys the approval of the following Statutory Instrument by the Committee.

- i) The Capital Markets Authority (Online Foreign Exchange) Regulations, 2017;
- ii) Capital Markets Authority (Securities Lending, Borrowing and Short-Selling) Regulations, 2017; and
- iii) The Competition Tribunal (Procedure) Rules, 2017.

The Committee had satisfied itself that the instruments were in accord with the Constitution of Kenya, the Statutory Instruments Act, and the respective Acts pursuant to which they were made or other written law.

The Chairperson welcomed Members and officials from the National Construction Authority led by the Chief Executive Officer, Arch. Daniel Mandugu. Thereafter a round of introductions was done.

The chairperson notified the Members that the meeting was to deliberate on the National Construction Authority Regulations submitted by the Ministry of Transport, Infrastructure, Housing and Urban Development to the National Assembly. The Regulations were National Construction Authority (Amendment) Regulations, 2017.

The CEO for the National Construction Authority thanked the Committee for having accorded them the opportunity to appear before them. Thereafter, the CEO for NCA took members through the regulations and informed as follows:-

1. The National Construction Authority is established by the National Construction Authority Act No. 41 of 2011 to oversee the construction industry and coordinate its development.
2. On 6th June, 2014, the Cabinet Secretary for Lands, Housing and Urban Development gazetted the National Construction Authority Regulation, 2014 in exercise of the power to make Regulations vide section 42.
3. The Regulations provide for the registration of contractors including the application and evaluation, certification, exemption, renewal of registration and registration of foreign contractors.
4. The Regulations further provide for registration of all construction works, contracts or projects in the public or private sector with the Authority, the certification and accreditation of skilled construction workers and the collection and payment of construction levy.
5. On 20th November, 2017, the Cabinet Secretary for Lands, Housing and Urban Development gazetted the National Construction Authority (Amendment) Regulation, 2017 to amend provisions of the National Construction Authority Regulation, 2014 to delete the first, second and third schedule and provide for a stakeholder driven contractor evaluation criteria that reflects best practises in the construction industry.
6. The revised evaluation criteria will assist the Authority to validate the technical competencies of applicants; fragments construction works according to their technical differentiations and a comprehensive outline of the industry.

Committee Observations

Having considered the said Regulations, the Committee observed –

- (i) the National Construction Authority (Amendment) Regulations, 2017 seek to amend existing Regulations that were made pursuant to sections 5(2) and 42 of the National Construction Authority Act No. 41 of 2011 which is the section that empowers the Cabinet Secretary to make Regulations;
- (ii) the Regulations were published on 20th November, 2017 and were submitted to the National Assembly on 11th of January, 2018. This was outside the statutory timeline contemplated under section 11(1) of the Statutory Instruments Act;
- (iii) the regulatory impact assessment was not prepared for this Regulations pursuant to section 6 of the Statutory Instruments Act;
- (iv) annexed to the Regulations was an explanatory memorandum which specifies the agencies and institutions consulted in four counties namely Kakamega, Nairobi, Nakuru and Mombasa counties; and
- (v) following a Cabinet resolution, all levies for the contractors were scrapped by the National Construction Authority from January 2017. The CEO further highlighted that the National Construction Authority has scrapped all levies for the contractors from 2017 January.
- (vi) The Committee also observed that the NCA Regulations conform to all the requirements set out in section 13 of the Statutory Instruments Act. However, they raised concern over the delay in submission to parliament within seven (7) sitting days after the publication of a statutory instrument, for tabling before Parliament. In response the CEO noted that delay was caused by long channel of administration to submit it to parliament in the specified timeline.
- (vii) The Committee also inquired about the cases of collapsed buildings in the Country that resulted loss of lives and injuring hundreds of innocent people, in response the CEO stated that the conduct of construction has be regulated now and all construction companies had been registered hence reduce case of collapse buildings.
- (viii) The Committee further observed that youth, women and disadvantaged groups were catered for where NCA category 7 and 8 were specifically for special groups. On that note Members noted that NCA to sensitize women and disadvantage groups to join construction industry.

RECOMMENDATION

The Committee recommends the National Construction Authority (Amendment) Regulations, 2017 be annulled to allow for re-publishing of the same to conform to the provisions of the Statutory Instruments Act. The Committee advised the Authority to make an addendum to the NCA explanatory memorandum and republish and submit it to National assembly as well inform the public on the same.

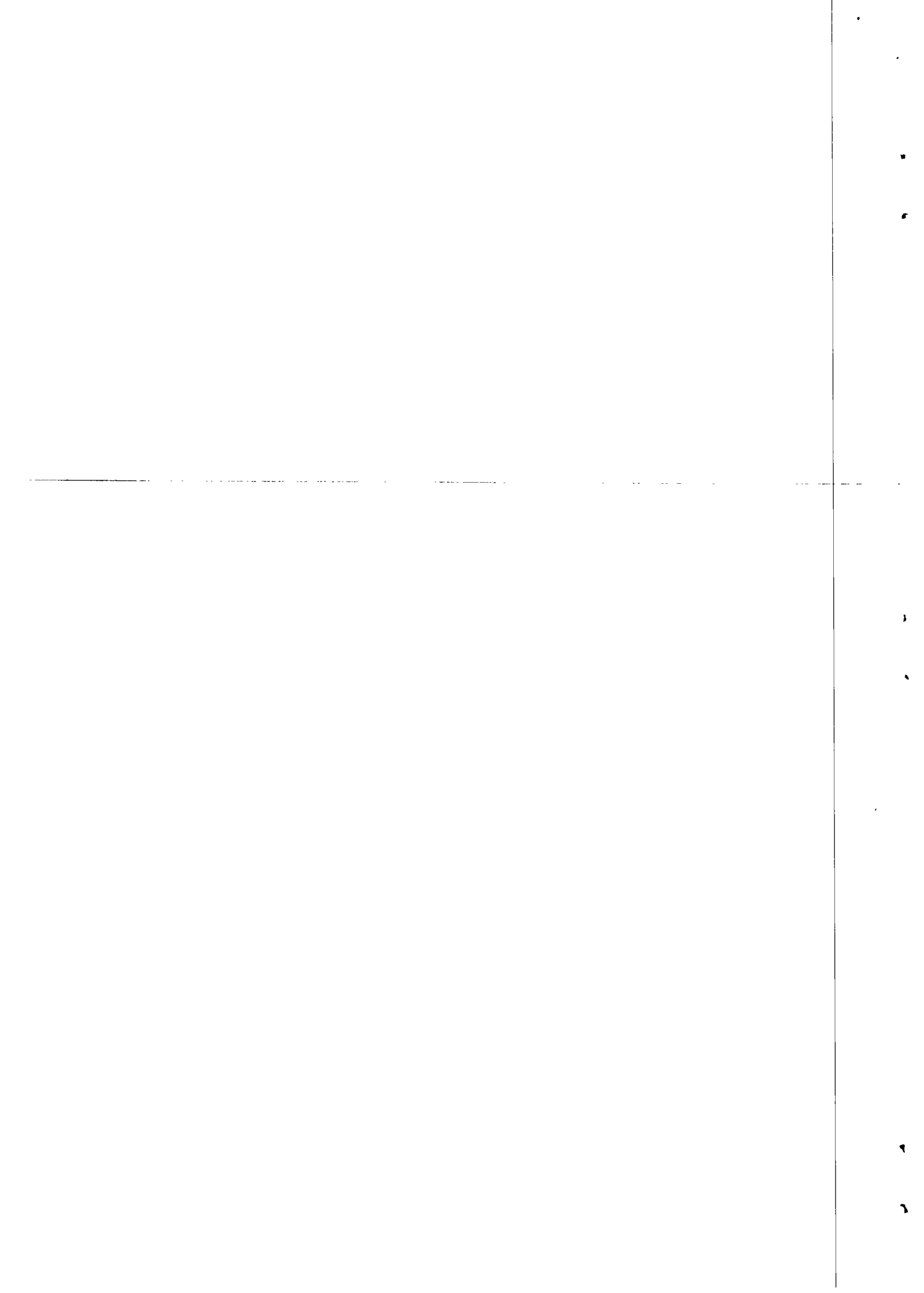
MIN.NO. CDL /076/2018: ADJOURNMENT

The meeting was adjourned at 01.35 pm.

Signed:.....

Date: 13/3/2018.....

For HON. GLADYS BOSS-SHOLLEI, CBS, M.P.
(CHAIRPERSON)




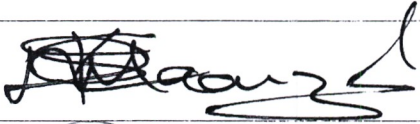

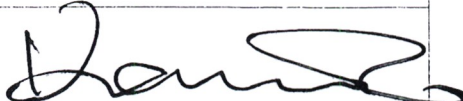
COMMITTEE ON DELEGATED LEGISLATION

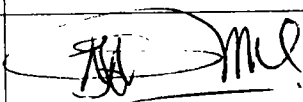
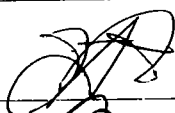
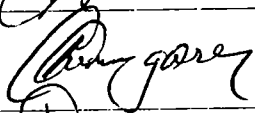
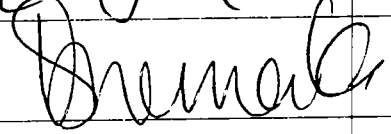

ADOPTION LIST

REPORT ON NATIONAL CONSTRUCTION AUTHORITY
(AMENDMENT) REGULATIONS, 2017

We, the undersigned, hereby affix our signatures to this Report to affirm our approval:

DATE: 13/02/2018

	HON. MEMBER	SIGNATURE
1.	Hon. Gladys Boss-Shollei, MP (Chairperson)	
2.	Hon. Fatuma Ali Gedi, MP (Vice Chairperson)	
3.	Hon. Alfred Satabu, MP	
4.	Hon. Isaac Waihenya Ndirangu, MP	
5.	Hon. Robert Mbui, MP	
6.	Hon. Alice Wahome, MP	
7.	Hon. Daniel Maanzo, MP	
8.	Hon. Muriuki Njagagua, MP	
9.	Hon. Martha Wangari, MP	
10.	Hon. Timothy Wanyonyi, MP	
11.	Hon. William Kamoti, MP	

	HON. MEMBER	SIGNATURE
12.	Hon. Patrick Kariuki Mariru, MP	
13.	Hon. Ronald Kiprotich Tonui, MP	
14.	Hon. William Kamket Kassait, MP	
15.	Hon. Munene Wambugu, MP	
16.	Hon. Charles Gimose, MP	
17.	Hon. Abdi Tepo, MP	
18.	Hon. George Gitonga Murugara, MP	
19.	Hon. Jennifer Shamalla, MP	
20.	Hon. Muturi Kigano, MP	
21.	Hon. (Dr.) Wilberforce Oundo, MP	
22.	Hon. Sammy Seroney, MP	

(Legislative Supplement No. 83)

LEGAL NOTICE No. 274

THE NATIONAL CONSTRUCTION AUTHORITY ACT

(No. 41 of 2011)

IN EXERCISE of the powers conferred by section 42 of the National Construction Authority Act, 2011, the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development, in consultation with the Board, makes the following Regulations—

THE NATIONAL CONSTRUCTION AUTHORITY
(AMENDMENT) REGULATIONS, 2017

1. These Regulations may be cited as the National Construction Authority (Amendment) Regulations, 2017. Citation.
2. The National Construction Authority Regulations, 2014 in these Regulations referred to as “the principal Regulations” are amended in regulation 4— LN. No 74/2014.
 - (a) in paragraph (1), by deleting the words “ Parts I, II and III of Form I set out in the First Schedule” and substituting therefor the word “Schedule”;
 - (b) in paragraph (2) by—
 - (i) deleting the word “Second”;
 - (ii) deleting the word “Third”;
 - (c) in paragraph (3), by deleting the words “paragraph (2)” and substituting therefor the words, m n“ the Schedule”.
3. Regulation 9 of the principal Regulations is amended—
 - (a) in paragraph (1), by inserting the words “as specified in the Schedule” immediately after the expression “NCA-1”;
 - (b) in paragraph (2), by deleting the word “Third” .
4. Regulation 12 of the principal Regulations is amended in paragraph (2) by inserting the words “specified in the Schedule” immediately after the expression “NCA 1”.
5. The principal Regulations are amended by deleting the First, Second and Third Schedules and substituting therefor the following new Schedule —

SCHEDULE

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

	<i>Mandatory requirements</i>	<i>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	
(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 1: 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

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

Table 3: Other Directors Mark sheet

Other director's professional qualification (1)	Marks to be awarded		Exp. In years (4)	% of total marks (5)
	Basic Professional Qualification (2)	Industry Experience (3)		
			>10	100
			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 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—

- (a) 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;
- (b) 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;
- (c) 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);

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

Table 4: Evaluation of Technical Staff

Technical staff professional qualifications (1) (in related field of study)	Marks to be awarded		Experience in years (4)	% of total marks (8)
	Basic professional Qualification (2)	Experience in construction (3)		
Bachelor's Degree.	0.75	1.0	>10	100
Higher Diploma/Diploma.	0.5	0.75	8 - 10	80
Certificate/ trade test	0.25	0.25	5 - 7	60
			< 5	40

NB:
Registration by relevant professional body will give technical staff 0.25 marks

Table 5: Evaluation of Other Staff

Other Staff	Marks
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

Plant & Equipment	No.	Marks
<i>Earth Moving</i>		
Bull Dozers (Min. capacity 280HP)	6	2.5
Graders (Min. capacity 186 HP)	1	
Loaders (Min. capacity 200 HP)	1	
Backhoes (Min. capacity 100 HP)	2	
Excavator (30T above 230 HP)	1	
	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, wheel barrows 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) (1)</i>	<i>Marks for Volume of Works over last five years (2)</i>	<i>Notes (3)</i>
500,000,000+	16	Step 1: Total Project Values over last 5 years (single project) Step 2: Find range in Column (1) that figure falls in Step 3: Award corresponding mark
400,000,000 – 500,000,000	14	
300,000,000 – 400,000,000	12	
200,000,000 – 300,000,000	10	
100,000,000 – 200,000,000	8	
50,000,000 – 100,000,000	6	
20,000,000 – 50,000,000	4	
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

	<i>Marks awarded</i>
workshop and yard	up to 3
office space	up to 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

<i>Annual Turn Over (Kshs)</i>	<i>Marks</i>	<i>Cash Flow/ Working Capital</i>	<i>Marks</i>
375,000,000 – 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 – 1,00,000	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	UNLIMITED
		NCA 2	1,500,000,000.00
		NCA 3	750,000,000.00
		NCA 4	500,000,000.00
		NCA 5	200,000,000.00
		NCA 6	100,000,000.00
		NCA 7	50,000,000.00
		NCA 8	10,000,000.00

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 ROAD WORKS CONTRACTORS

1. 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 1: Mandatory requirements

	<i>Mandatory requirements</i>	<i>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	
(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 mark ;
 (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

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

Table 3: Other Directors Mark sheet

Other director's professional qualification (1)	Marks to be awarded		Exp. In years (4)	% of total marks (5)
	Basic Professional Qualification (2)	Industry Experience (3)		
			>10	100
			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		
<i>NB:</i>				
<i>Registration by relevant professional body will give director 0.25 marks</i>				

(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—

- (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 two staff members at this level.
- (c) 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).

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

Table 4: Evaluation of technical staff

Technical staff professional qualifications (1) (in related field of study)	Marks to be awarded		Experience in years (4)	% of total marks (8)
	Basic professional Qualification (2)	Experience in construction (3)		
Bachelor's Degree.	0.75	1.0	>10	100
Higher Diploma/Diploma.	0.5	0.75	8 – 10	80
Certificate/ trade test	0.25	0.25	5 – 7	60
			< 5	40

NB:
Registration by relevant professional body will give technical staff 0.25 marks

Table 5: Evaluation of other staff

Other Staff	Marks
Accounts & 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

<i>Plant & Equipment</i>	<i>No.</i>	<i>Roads</i>
<i>Earth Moving</i>	20	5
Bull Dozers (Min. capacity 280 HP)	3	
Excavator (30T and above 230 HP)	5	
Graders (Min. capacity 186 HP)	6	
Loaders (Min. capacity 200 HP)	4	
Backhoe (Min capacity 100HP)	2	
<i>Hauling & Transportation</i>	30	3
Tippers (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	
<i>Asphalt & Crusher Plant</i>	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 dust collection 80/100T, installed power 600KVA	1	
<i>Concreting Equipment</i>	10	1.5
Concrete Mixers (Min. 750lts)	6	
Compressors (Min. 136 Cfm) & vibrators	4	
Concrete batch plant weigh scale capacity min. 30cumt/hr	1	
<i>Pavement construction (Road Making Equipment)</i>	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	
<i>Surveying Equipment</i>	3	0.5
Leveling Instrument (e.g. Dumpy level)	2	
Theodolite/Total Station	1	
<i>Water Equipment & Generators</i>	15	1
Water Bowsers (Min. 3000lts)	6	
Water Pumps (Min. 4" suction)	6	

Generator Set (Min. 250 KVA)	3	
<i>Miscellaneous</i>		2
Assortment of Hand Tools (set of shovels, pans, 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:

<i>Projects Description and Value range (Kshs.)</i>	<i>Marks/Score</i>	<i>Notes</i>
Bituminous Works above Kshs. 2.5 Billion	25	Step 1: total of project values over last 5yrs (single roads project) Step 2; find range in column 1 that figures falls in Step 3; award points corresponding to column
Bituminous Works between Kshs. 1.5 – 2.5 Billion	22	
Bituminous Works between Kshs. 1.0 – 1.5 Billion	20	
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

- (a) workshop and yard, marks awarded up to three. Items to be looked at include size and complexity;
- (b) 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
750,000,000–1,125,000,000	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	10.0	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

	Class	Category	Value Of Works
B	Road Works	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	50,000,000.00
		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.

PART III

EVALUATION CRITERIA FOR REGISTRATION OF WATER WORKS CONTRACTORS

1. 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 1: Mandatory requirements

	<i>Mandatory requirements</i>	<i>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

<i>For Water Works contractors, the following qualifications are mandatory</i>		
<i>Contractor</i>	<i>Minimum requirement</i>	<i>For Official Use</i>
(a) water supply, sewerage and irrigation works	<ul style="list-style-type: none"> • Ministry of Water license 	
(b) dams and pans	<ul style="list-style-type: none"> • 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 Professional Qualification (2)	Industry Experience (3)		
Bachelor's Degree.	1.0	1.75	>10	100
Higher Diploma	0.75	1.25	8 – 10	80
Diploma.	0.5	1.0	5 – 7	60
Certificate.	0.25	0.75	< 5	40
Trade test	0.25	0.5		

NB: Registration by relevant professional body will give director 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 Professional Qualification (2)	Industry Experience (3)		
Bachelor's Degree.	0.25	0.75	>10	100
Higher Diploma	0.2	0.5	8 – 10	80
Diploma.	0.15	0.3	5 – 7	60
Certificate.	0.1	0.2	< 5	40
Trade test	0.05	0.1		

NB: Registration by relevant professional body will give director 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		Experience in years (4)	% of total marks (8)
	Basic professional Qualification (2)	Experience in construction (3)		
Bachelor's Degree.	0.5	1.0	>10	100
Higher Diploma/Diploma.	0.5	0.5	8 - 10	80
Certificate/ trade test	0.25	0.25	5 - 7	60
			< 5	40
NB: Registration by relevant professional body will give technical staff 0.25 marks				

Table 6: Evaluation of Other Staff

Other Staff	Marks
Accounts & 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	<i>Earth Moving</i>	20	5
	Bull Dozers (Min. capacity 280 HP)	3	
	Excavator (30T and above 230 HP)	5	
	Graders (Min. capacity 186 HP)	2	
	Loaders (Min. capacity 200 HP)	8	
	Backhoe (Min capacity 100HP)	2	
2	<i>Hauling & Transportation</i>	30	3
	Tippers (15cumt or 25T payload)	20	
	Agricultural Tractor 4x4, 120HP complete with trailers	2	
	40T Low Loaders + Prime Mover 100HP	4	

	Non-tipping Truck (Min. 7T)	4	
3	<i>Crusher Plant</i>	1	2
	Stone Crusher 3 stages (P/S/T), installed power 750KVA	1	
4	<i>Concreting Equipment</i>	10	1.5
	Concrete Mixers (Min. 750lts)	6	
	Compressors (Min. 136 Cfm) & vibrators	4	
	Concrete batch plant weigh scale capacity min. 30cumt/hr	1	
5	<i>Compaction Equipment</i>	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	<i>Cranes, hoisting and lifting equipment</i>	1	1
	Mobile crane (Min. 25T)	1	
6	<i>Surveying Equipment</i>	4	0.5
	Leveling Instrument (e.g. Dumpy level)	2	
	Theodolite/Total Station	2	
7	<i>Water Equipment & Generators</i>	15	1
	Water Bowsers (Min. 3000lts)	6	
	Water Pumps (Min. 4" suction)	6	
	Generator Set (Min. 250 KVA)	3	
8	<i>Miscellaneous</i>		2
	Assortment of Hand Tools (set of shovels, pans, pick axes, hoes, wheel barrows etc.)		
	Light Duty Vehicles (Pick-ups)		
	Welding Set (Min. 300Amps)		
	<i>TOTAL</i>		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

<i>Projects Description and Value range (Kshs.)</i>	<i>Marks/Score</i>	<i>Notes</i>
Kshs. 1.25 Billion and above	25	The given value ranges are per single water project
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	

(e) *Office facilities: 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

	<i>Marks awarded</i>
Workshop and yard	up to 3
Office space	up to 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 10: Financial Evaluation Scheme

<i>Annual Turn Over (Kshs)</i>	<i>Marks</i>	<i>Cash Flow/ Working Capital</i>	<i>Marks</i>
WATER WORKS			
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	12.5	20,000,000 – 30,000,000	5.0
150,000,000 – 300,000,000	10.0	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.

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 form	
(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;
- (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 T1	
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 Kenya Information and Communications Act CAP 411A, 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

Technical director's professional qualification (1)	Marks to be awarded		Experience In years (4)	% of total marks (5)
	Basic Professional Qualification (2)	Industry Experience (3)		
			>10	100
			8 – 10	80
Bachelor's Degree.	1.0	1.75	5 – 7	60
Higher Diploma	0.75	1.25	< 5	40
Diploma.	0.5	1.0		
Certificate.	0.25	0.75		
Trade test	0.25	0.5		
NB: Registration by relevant professional body will give director 1 mark				

Table 4: Other Directors

Other director's professional qualification (1)	Marks to be awarded		Experience In years (4)	% of total marks (5)
	Basic Professional Qualification (2)	Industry Experience (3)		
			>10	100
Bachelor's Degree.	0.25	0.75	8 – 10	80
Higher Diploma	0.2	0.5	5 – 7	60
Diploma.	0.15	0.3	< 5	40
Certificate.	0.1	0.2		
Trade test	0.05	0.1		
NB: Registration by relevant professional body will give director 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;

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)

<i>Technical staff professional qualifications (1) (in related field of study)</i>	<i>Marks to be awarded</i>		<i>Experience in years (4)</i>	<i>% of total marks (8)</i>
	<i>Basic professional Qualification (2)</i>	<i>Experience in construction (3)</i>		
Bachelor's Degree.	0.5	1.0	>10	100
Higher Diploma/Diploma.	0.5	0.5	8 – 10	80
Certificate/ trade test	0.25	0.25	5 – 7	60
			< 5	40
<i>NB:</i>				
<i>Registration by relevant professional body will give technical staff 0.5 marks</i>				

Table 6: Evaluation of other staff

<i>Other Staff</i>	<i>Marks</i>
Accounts & 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

<i>Plant & Equipment</i>	<i>No.</i>	<i>Marks</i>
<i>Equipment for Electrical Installation</i>	<i>10</i>	<i>5</i>
Portable drilling machines	6	
Cable lagging Machine	4	
<i>Testing Equipment</i>	<i>26</i>	<i>5</i>
Multimeter	6	
Earth loop Impedance tester	2	
Earth Resistance Tester	2	
Insulation Tester	2	
Tong Tester	6	
Phase Sequence meter	2	
Phase Tester	6	
<i>Hauling & Transportation</i>	<i>4</i>	<i>4</i>
Pick-ups	4	
<i>Miscellaneous</i>	<i>2</i>	<i>1</i>
Circuit Analyzer	1	
Assorted hand tools (Vices, Levels, Hand tools set, snips, pliers, screw drivers, spanners, etc.)	11	
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, Lifts & Escalator Installation</i>	<i>9</i>	<i>2</i>
Portable drilling machines	3	
Cable lagging Machine	4	
Chain Block & tackle (min. 1 ton)	2	
<i>Testing Equipment</i>	<i>14</i>	<i>8</i>
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>	<i>5</i>	<i>3</i>
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 Installation</i>	7	4
Solar design software	1	
Portable drilling machines	6	
<i>Testing Equipment</i>	12	7
Multimeter	6	
Earth loop Impedance	2	
Earth Resistance Tester	2	
Insulation Tester	2	
<i>Hauling & Transportation</i>	4	2
Pick-ups (minimum 1ton)	4	
Miscellaneous	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)

<i>Plant & Equipment</i>	<i>No.</i>	<i>Marks</i>
<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	
Miscellaneous	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

<i>Plant & Equipment</i>	<i>No.</i>	<i>Marks</i>
<i>Equipment for Electronic, Communication, security and Access Systems Installation</i>	4	2
Portable drilling machines	4	
<i>Testing Equipment</i>	22	8
Multimeter	6	
Earth Resistance Tester	2	
Computers	3	
Phase Tester	6	
Cable Tester	2	
Krone tool	3	
<i>Hauling & Transportation</i>	4	3
Pick-ups	2	
Light truck	2	
<i>Miscellaneous</i>	11	2
Assorted hand tools (Vices, Levels, Hand tools set, snips, pliers, screw drivers, spanners, etc.)	11	
<i>TOTAL</i>		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 Kshs)</i>	<i>Marks for Volume of Works over last five years (2)</i>	<i>Notes (3)</i>
(1)		
250,000,000+	10	Step 1: Check for the value of the largest single project done in the
200,000,000 – 250,000,000	9	
150,000,000 – 200,000,000	8	

100,000,000 – 150,000,000	7	last 5 years
50,000,000 – 100,000,000	6	
25,000,000 – 50,000,000	5	Step 2: Find range in Column (1) where that figure falls in.
10,000,000 – 25,000,000	4	
Below 10,000,000	3	Step 3: Award corresponding mark

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

<i>Class of ERC Licence</i>	<i>Complexity of Electrical Works</i>	<i>Marks (Max 10marks)</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
C2	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 Kshs)</i> <i>(1)</i>	<i>Marks for Volume of Works over last five years</i> <i>(2)</i>	<i>Notes</i> <i>(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	
100,000,000 – 150,000,000	14	
50,000,000 – 100,000,000	12	• Step 2: Find range in Column

25,000,000 – 50,000,000	8	(1) where that figure falls in. • Step 3: Award corresponding mark
10,000,000 – 25,000,000	5	
Below 10,000,000	2	

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

<i>Projects Value (in millions Kshs)</i> (1)	<i>Marks for Volume of Works over last five years</i> (2)	<i>Notes</i> (3)
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	Step 2: Find range in Column (1) where that figure falls in.
5,000,000 – 10,000,000	8	
Below 5,000,000	5	Step 3: Award corresponding mark

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

<i>Projects Value (in millions Kshs)</i> (1)	<i>Marks for Volume of Works over last five years</i> (2)	<i>Notes</i> (3)
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	Step 2: Find range in Column (1) where that figure falls in.
150,000,000 – 200,000,000	12	
100,000,000 – 150,000,000	10	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

	<i>Marks awarded</i>
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;
- (b) cash flow and working capital.

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

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

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

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

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

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

	<i>Mandatory requirements</i>	<i>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	
(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.
- (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

<i>For Mechanical Contractors, the following qualifications are mandatory</i>		
<i>Contractor</i>	<i>Minimum requirement</i>	<i>For Official Use</i>
(a) Plumbing and Drainage.	<ul style="list-style-type: none"> • Drain layers license 	
(b) Boilers, Incinerators and Pressure Vessels.	<ul style="list-style-type: none"> • Plumbers license 	
(c) Bore Hole Drilling	<ul style="list-style-type: none"> • Boilers Inspectors' License by DOSH 	
(d) Solar Water Installation	<ul style="list-style-type: none"> • Bore hole drilling License by Ministry of Water • 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 professional qualification (1)	Marks to be awarded		Exp. In years (4)	% of total marks (5)
	Basic Professional Qualification (2)	Industry Experience (3)		
Bachelor's Degree.	1.5	2.0	>10	100
Higher Diploma	1.25	1.5	8 – 10	80
Diploma.	1.0	1.25	5 – 7	60
Certificate.	0.75	1.0	< 5	40
Trade test	0.5	0.75		

NB:
Registration by relevant professional body will give director 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 Professional Qualification (2)	Industry Experience (3)		
Bachelor's Degree.	0.5	0.75	>10	100
Higher Diploma	0.4	0.5	8 – 10	80
Diploma.	0.3	0.3	5 – 7	60
Certificate.	0.2	0.2	< 5	40
Trade test	0.1	0.1		

NB:
Registration by relevant professional body will give director 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—

- (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 marks 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 six staff members in this level.
Columns (4) and (5) provide for awarding industry experience marks as a percentage of columns (3).
- (d) 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		Experience in years (4)	% of total marks (8)
	Basic professional Qualification (2)	Experience in construction (3)		
Bachelor's Degree.	0.75	1.0	>10	100
Higher Diploma/Diploma.	0.5	0.5	8 – 10	80
Certificate/ trade test	0.25	0.25	5 – 7	60
			< 5	40

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 machines	4			
Pipe jointing formation equipment (fusion welder)	4			
Generator (minimum 2HP)	4			
Welding machines (min. 225 Amp-AC)	4			
Threading machine	4			
Pressure testing pump (max. 30bar)	2			
Sheet metal workshop	4			
Pipe chains 14" to 24"	2			
<i>Hauling & Transportation</i>	6	4	4	0
Pick-ups (minimum 1ton)	4			
Light trucks (minimum 3ton)	2			
<i>Miscellaneous</i>	2	2	2	1
Assorted tools (Vices, Levels, Hand tools set, wrench, pliers etc.)	1			
Assorted electrical tools (Testers etc.)	1			
TOTAL		15	10	4

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

<i>Refrigeration, cold-rooms & Ac/ventilation</i>	No.	Marks
<i>Installation Equipment</i>	8	5
Gas filling equipment	4	
Copper tube handling equipment set (flaring tool, brazing tools etc.)	4	
TOTAL		5

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

<i>Boilers, Incinerators and pressure vessels</i>	No.	Marks
<i>Installation Equipment</i>	12	5
Hoisting equipment (min. 250kg)	1	
Telescopic inspection camera	2	
1000V rated electrical screwdriver set	2	
pressure vessel inspection kit	1	
Differential thermometer	4	
Electronic leak detector	2	
TOTAL		5

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

<i>Bore hole drilling & equipping works</i>	<i>No.</i>	<i>Marks</i>
<i>Drilling Rigs</i>	5	5
Rig capable of drilling over 500m	1	
Rig capable of drilling up to 500m	1	
Rig capable of drilling up to 300m	1	
Rig capable of drilling up to 150m	1	
Rig capable of drilling up to 100m	1	
Compressor	2	1
Capacity (Over 500) PSI	1	
Capacity (175 – 500) PSI	1	
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	
<i>Hauling & Transportation</i>	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:

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

<i>Projects Description and Value range (Kshs.)</i>	<i>Marks/ Score</i>	<i>Notes</i>
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	
25,000,000 up to 50,000,000	14	Step 2; find range in column 1 that figures falls in
10,000,000 up to 25,000,000	12	
5,000,000 up to 10,000,000	8	
2,500,000 up to 5,000,000	5	Step 3; award points corresponding to column
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 —

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

Table 9: Office facilities

	<i>Marks awarded</i>
workshop and yard	up to 3
office space	up to 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 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: Financial Evaluation Scheme

<i>Annual Turn Over (Kshs)</i>	<i>Marks</i>	<i>Cash Flow/ Working Capital</i>	<i>Marks</i>
<i>Mechanical Works</i>			
200,000,000 – Above	20.0	75,000,000 – Above	10.0
150,000,000–200,000,000	17.5	50,000,000 – 75,000,000	8.5
100,000,000 – 150,000,000	15.0	30,000,000 – 50,000,000	6.5
75,000,000 –100,000,000	12.5	20,000,000 – 30,000,000	5.0
50,000,000 – 75,000,000	10.0	5,000,000 – 20,000,000	3.0
25,000,000 –50,000,000	7.5	2,500,000 – 5,000,000	3.0
10,000,000 – 25,000,000	5.0	1,250,000 – 2,500,000	2.0
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

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

1,000,000 – 2,500,000	5.0	750,000 – 1,750,000	2.0
Below 1,000,000	2.5	Below 500,000	2.0

(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)

<i>Category</i>	<i>Marks Awarded</i>	<i>For Official Use</i>
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)

<i>Category</i>	<i>Marks Awarded</i>	<i>For Official Use</i>
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</i>	NCA 2	250,000,000.00
<i>reticulation, pump installation, sanitary fitting</i>	NCA 3	150,000,000.00
<i>installation, domestic water storage systems,</i>	NCA 4	100,000,000.00
<i>domestic biodigesters and laboratory</i>	NCA 5	50,000,000.00
<i>installations</i>	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
	NCA 4	20,000,000.00
Water Tanks, Treatment Plant and Pumping plant	NCA 1	UNLIMITED
<i>plumbing & drainage works, water</i>	NCA 2	250,000,000.00
<i>reticulation, pump installation, bulk water</i>	NCA 3	150,000,000.00
<i>storage tanks installation and heavy duty pump</i>	NCA 4	100,000,000.00
<i>installations</i>	NCA 5	50,000,000.00
	NCA 6	20,000,000.00
Compressed Air, Hydraulic, LP and Medical Gas Installation;	NCA 1	UNLIMITED
<i>gas pipe handling, gas/air reticulation,</i>	NCA 2	250,000,000.00
<i>medical gas equipment installation, hydraulic</i>	NCA 3	150,000,000.00
<i>systems installation and LP gas installations</i>	NCA 4	100,000,000.00
	NCA 5	50,000,000.00
	NCA 6	20,000,000.00
Cranes and Hoists installation services	NCA 1	UNLIMITED
<i>gantry cranes and hoists installation/</i>	NCA 2	250,000,000.00
<i>maintenance, hydraulic systems installation and</i>	NCA 3	150,000,000.00
<i>window cleaning system installations</i>	NCA 4	100,000,000.00
	NCA 5	50,000,000.00
	NCA 6	20,000,000.00

Fire Engineering Services	NCA 1	UNLIMITED
<i>Fire protection equipment installation/ maintenace, automatic fire suppression systems installation and fire engineering sensitization services</i>	NCA 2	100,000,000.00
	NCA 3	50,000,000.00
	NCA 4	20,000,000.00
	NCA 1	UNLIMITED
Health club facilities	NCA 2	50,000,000.00
	NCA 3	20,000,000.00
	NCA 4	5,000,000.00
Mobile shelving.	NCA 1	UNLIMITED
	NCA 2	50,000,000.00
	NCA 3	20,000,000.00
	NCA 4	5,000,000.00
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 gas/petrol station works, oil/gas reticulation, oil/gas storage tanks</i>	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
	NCA 1	UNLIMITED
Bore drilling and 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
<i>assorted fluids (eg water and air) heating using solar energy</i>	NCA 2	100,000,000.00
	NCA 3	50,000,000.00
	NCA 4	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.

Dated the 28th February, 2017.

JAMES MACHARIA,
Cabinet Secretary for Transport, Infrastructure,
Housing and Urban Development.