

## PUBLIC NOTICE

### FOREIGN CONTRACTORS' PROVISIONS

The National Construction Authority is a state corporation established by the National Construction Authority Act No. 41 of 2011 ("NCA Act") with a mandate to oversee the construction industry and coordinate its development.

Pursuant to Regulation 2 of the National Construction Authority Regulations 2014, a foreign contractor is defined as (a) a firm incorporated outside Kenya; or (b) a firm incorporated in Kenya in which 51% of the shares are held by a non-Kenyan

Further, Section 18(1-5) of the National Construction Authority Act of 2011 provides for the following with regard to foreign contractor registration:

- (1) The Board may accredit a firm incorporated outside Kenya to carry out construction works in Kenya for a prescribed period where the firm meets the conditions prescribed by the Board and satisfies the Board that the firm;
  - (a) Intends to be present in Kenya only for the purpose of carrying out the specific works for which it has been contracted, for which, the sum payable is not less than the sum prescribed by the Board for the class of works in respect of which registration is sought,
  - (b) Has a certificate of compliance from the Registrar of Companies showing that it is, or immediately prior to entering Kenya, was, trading as a contractor in the capacity which satisfies the Board with respect to its suitability to serve the public as a qualified contractor; and
  - (c) Has lodged an affidavit with the Board to the effect that, once the contracted works are completed and the period of defects liability or maintenance has elapsed, it shall wind up business and shall not engage itself in the construction -business within Kenya.
- (2) The Board may require an applicant under this section to appear before it and produce documentary evidence of its competence in executing construction works immediately prior to its entry in Kenya.
- (3) Registration of a firm under this section shall entitle it to undertake work only for the period of time prescribed by the Board in subsection (1), and on the expiry of that period that firm shall cease to be so registered, and shall return the registration certificate to the Board.

Regulation 12 of the National Construction Authority Regulations 2014 further provides that the foreign firm(s) to grant an undertaking in writing that the foreign person or firm:

- (i) Shall subcontract or enter into a joint venture with a local person or local firm for not less than thirty percent of the value of the contract work for which temporary registration is sought. The subcontracts or joint ventures should be with NCA registered contractors who meet the threshold for the contract works awarded to them.
- (ii) Shall transfer technical skills not available locally to a local person or firm in such manner as the Authority may determine from time to time.

From the foregoing, foreign contractors are required to seek registration with the National Construction Authority after issuance of an award letter and before signing the contract with the procuring entity and should only undertake construction works or projects with a value limit of category NCA 1. The registration certificate and practicing license issued is specific to the contract being undertaken.

Value of works awarded to foreign contractors should be equal to or over the set value limits for category NCA1, as per the schedule on the right.

**Eng. Maurice Akech**

**EXECUTIVE DIRECTOR / REGISTRAR OF CONTRACTORS**

#### 1. Contractors (Building Works )

Category	Value limit (Kshs)
1. NCA1	Unlimited
2. NCA 2	Upto 500,000,000.00
3. NCA 3	Upto 300,000,000.00
4. NCA 4	Upto 200,000,000.00
5. NCA 5	Upto 100,000,000.00
6. NCA 6	Upto 50,000,000.00
7. NCA 7	Upto 20,000,000.00
8. NCA8	Upto 10,000,000.00

#### 2. Electrical/Mechanical Engineering Services

Category	Value limit (Kshs)
1. NCA1	Unlimited
2. NCA 2	Upto 250,000,000.00
3. NCA 3	Upto 150,000,000.00
4. NCA 4	Upto 100,000,000.00
5. NCA 5	Upto 50,000,000.00
6. NCA 6	Upto 20,000,000.00
7. NCA 7	Upto 10,000,000.00
8. NCA8	Upto 5,000,000.00

#### 3. Roads ,Water and other Civil Works

Category	Value limit (Kshs)
1. NCA1	Unlimited
2. NCA 2	Upto 750,000,000.00
3. NCA 3	Upto 500,000,000.00
4. NCA 4	Upto 300,000,000.00
5. NCA 5	Upto 200,000,000.00
6. NCA 6	Upto 100,000,000.00
7. NCA 7	Upto 50,000,000.00
8. NCA8	Upto 20,000,000.00

Foreign contractors should ensure they have the following statutory/ mandatory requirements before submitting NCA applications;

#### FIRM INCORPORATED OUTSIDE KENYA

1. Certificate of Compliance (From Registrar of Companies)
2. Provide List of Directors/Shareholders
3. KRA Tax Compliance Certificate
4. Asset ownership documents
5. 3 years audited accounts
6. Current Business Licence
7. Valid work permits to directors and staff who are foreign nationals
8. Proof of contract award

#### FIRM INCORPORATED IN KENYA

1. Certificate of Incorporation (From Registrar of Companies)
2. CR12
3. KRA Tax Compliance Certificate
4. Asset ownership documents
5. 3 years audited accounts
6. Current Business Licence
7. Valid work permits to directors and staff who are foreign nationals
8. Proof of contract award