



Kenya National Highways Authority

Quality Highways, Better Connections

**POLICY ON LISTING OF NON-PERFORMING
CONTRACTORS/ CONSULTANTS/SUPPLIERS**

MAY 2017

**PROCUREMENT MANAGER
KENYA NATIONAL HIGHWAYS
AUTHORITY
P.O BOX 49712-00100
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**DIRECTOR GENERAL
KENYA NATIONAL HIGHWAYS
AUTHORITY
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NAIROBI**

Our Mandate

Manage, develop, rehabilitate and maintain national trunk roads

Our Vision

To be a leading Highways Authority committed to quality, safe and adequate national trunk roads

Our Mission

To construct and manage national trunk roads that enhances socio-economic growth and prosperity

Our Core Values

Quality service

Integrity

Team Work

Innovation

Leadership

Equity and impartiality

Environmental stewardship

Our Functions

Enhancement of institutional framework and internal capacity

Enhancement of road network capacity and quality

Management and protection of national road reserves and assets

Environmental sustainability and promotion of social interests

Promotion of the use of local resources in road construction and maintenance

Improvement in road safety and security

Mainstreaming cross-cutting issues

Engagement of stakeholders in the implementation of projects and programs

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PREAMBLE

Article 227 of the Constitution of Kenya 2010 gives requirements for procurement of public goods and services and states that when a State organ contracts for goods and services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost effective. It requires any Act of Parliament to prescribe a framework within which policies relating to procurement and asset disposal shall be implemented including

- 1) Sanctions against contractors that have not performed according to professionally regulated procedures, contractual agreements or legislation; and
- 2) Sanctions against persons who have defaulted in their tax obligations, or have been found guilty of corrupt practices or serious violations of fair employment laws and practices.

The Public Procurement and Asset Disposal Act, 2015 provides that the Public Procurement Administrative Review Board may debar a person from participating in procurement or asset disposal proceedings and stipulates conditions under which this shall happen under Section 41 of the Act.

1. POLICY STATEMENT

The Kenya National Highways Authority (KeNHA) in its efforts to deliver on its mandate of provision of quality, safe and adequate National Trunk Roads, engages the services of Contractors, Consultants and Suppliers herein after referred as Providers. However, there have been cases of unethical practices or underperformance by some Providers.

It has also been observed that some providers do not meet their contractual obligations despite administrative interventions, thereby occasioning delays in projects completion and/ or major financial implications. The Authority has therefore found it necessary to institute a mechanism for listing such Providers.

2. THE PURPOSE

The Purpose of this Policy is to provide guidelines on the procedure for listing non-performing Providers.

3. REFERENCES

This Policy has been developed with reference to the following:-

- i) Quality Manual – KeNHA/QM/002
- ii) The Constitution of Kenya, 2010
- iii) Public Procurement & Asset Disposal Act, 2015
- iv) Public Procurement & Disposal Regulations, 2006
- v) Kenya Roads Act, 2007
- vi) National Construction Act, 2011
- vii) Engineers Act, 2011
- viii) Standard Specifications for Roads and Bridges, 1986
- ix) FIDIC Conditions of Contract for Roads Construction
- x) Any other Relevant Policies

4. POLICY OBJECTIVES

This policy seeks to achieve the following objectives: -

- i) To ensure that Providers who have a record for non- performance are not engaged in future contracts with the Authority
- ii) To guide procurement of works, goods and services
- iii) To set procedures for recommendation of blacklisting/ debarment of non performing Providers by the legally authorised bodies or institutions
- iv) To enhance the Authority's service delivery to our customers

5. TERMS AND DEFINITIONS

Definitions

The following definitions are consistent with the definitions contained in the reference materials referred to in section 3 above.

5.1. Consultant Design

These are professionals, typically, appointed by the client to perform expert tasks on a project such as providing advice on setting up and defining the project, developing and coordinating the design, preparing production information and tender documentation, contract administration and where applicable inspecting the works of contractors.

5.2. Consultant Supervision

Means a person who enters into a procurement contract with a procuring entity to supply services of predominantly of intellectual, technical or advisory nature and includes services offered by all professionals.

5.3. Contractor

Means a person who enters into a procurement contract with a procuring entity to execute works.

5.4. Debarment

This is the state of being excluded from enjoying certain possessions, rights, privileges, or practices and the act of prevention by legal means.

5.5. Evaluation of bids

This is the process of comparing and assessing bids to ensure compliance so as to identify the bid with the best overall value for money.

5.6. Listing of suppliers' contractors /consultants

Means the process whereby, on the basis of pre-established grounds, a company or an individual is prevented from engaging in further contracts for a specified period of time.

5.7. List

A list of persons or corporate entities who have contravened provisions of contract or have engaged in fraudulent activities when providing works, goods or services to the Authority.

5.8. Management

Refers to the Director General, General Managers, Heads of Section, Regional Managers and any persons appointed to act in these positions.

5.9. Non- performances

This is failure by a Contractor/Consultant/Supplier to perform the obligations of a contract.

5.10. Officers and Staff

Refers to all other employees of the Authority not included in 6.6 above including those on contract on secondment and those deployed to the Authority.

5.11. Poor performance

This is where a Contractor/Consultant/Supplier performance does not meet the set requirements of the employer.

5.12. Procurement

Means the acquisition by purchase, rental, lease, hire purchase, license, tenancy, franchise or by any other contractual means of any type of works, assets, services or goods or any combination and includes advisory, planning and processing in the supply chain system.

5.13. Provider

For purpose of this Policy includes the Contractor, Supplier and Consultant

5.14. Service Delivery

is a set of principles, standards, policies and constraints to be used to guide the designs, development, deployment, operation and retirement of services delivered by a service provider with a view to offering quality and consistent service experience to a specific user community.

5.15. Supplier

Means a person who enters into a procurement contract with a procuring entity to supply goods and services

5.16. The Board

Refers to the members appointed under Section 5 (2) of the Kenya Roads Act, 2007 and the Director General appointed under Section 13 of the same Act.

6. POLICY IMPLEMENTATION

By implementing this policy as detailed in the strategies below, the Authority aims to improve service delivery.

7.1 TENDER DOCUMENTATION AND PREPARATION

The user department shall:-

- 7.1.1 Set clear, objective and quantifiable evaluation criteria in every bid document including checking on debarment status from PPRA Records
- 7.1.2 Develop bid documents and ensure the evaluation criteria is comprehensive and guards against past known non- performers as stated in Section 7.3 below.
- 7.1.3 Prepare, update and report to Procurement on a quarterly basis details of non-performing Providers stating reasons for blacklisting and recommendation for debarment
- 7.1.4 Include debarment information from the relevant bodies as part of the preliminary evaluation.
- 7.1.5 Inform/Draw the attention of bidders to this requirement.

7.2 CONTRACT IMPLEMENTATION STAGE

The user department shall:-

- 7.2.1 Ensure that the works, goods or service being delivered is of an acceptable quality.
- 7.2.2 Enforce the contract including penalties as stipulated in the contract.
- 7.2.3 Determine whether there has been consistent below standard performance and institute measures to terminate contract.
- 7.2.4 The appraisal forms shall be used to measure/gauge the performance of specific contracts (Refer to annexes attached I-Contractor's Supervision Check List, II – Supplier Appraisal Form and III-Consultancy Service Appraisal Form).

7.3 COMPLIANCE WITH APPLICABLE PROVISIONS FOR LISTING

The Authority shall comply with the relevant provisions of PPADA as follows when dealing with Contractors, Suppliers and Consultants:-

- 7.3.1 Committed an offence under the Public Procurement and Asset Disposal Act, 2015
- 7.3.2 Committed an offence relating to procurement under any other Act or Law of Kenya or any other jurisdiction
- 7.3.3 Breached a contract for a procurement by a public entity including poor performance
- 7.3.4 Given false information about his or qualifications in procurement or asset disposal proceedings,
- 7.3.5 Refused to enter into a written contract as required under the Public Procurement and Asset Disposal Act, 2015
- 7.3.6 Breached a code of ethics issued by the Public Procurement Regulatory Authority (PPRA)
- 7.3.7 Defaulted on his or her tax obligations.
- 7.3.8 Been found guilty of corruption or fraudulent practices
- 7.3.9 Been found guilty of serious violation of fair employment laws and practices
- 7.3.10 Breached the requirements of the tender securing declaration form in the tender documents
- 7.3.11 Not performed according to professionally regulated procedures
- 7.3.12 Been recommended for debarment by a law enforcement organ with investigative mandate or as prescribed by the PPRA

Appendix 1- Contractors' Supervision Check List

Supervision Check List

Project Name: _____

1. This check list is for Resident Engineer to check contractor's work execution process.
2. Fill in date of checking as (day/month), mark as indicated in Filling Example, and state remarks.
3. Put this check list in the Monthly Progress Report.

The Engineer's Representative (Project Engineer)	Date	Signatures
Resident Engineer		

Item	Check Point	before	During execution									after	Remarks Reason for unsatisfactory performance (Site diary No.) Corrective order by authority (Date) Excellent point to be specified		
		Date /	Date /	Date /	Date /	Date /	Date /	Date /	Date /	Date /	Date /				
1	Execution system in general	1-1	Works Execution Programme (including its revised version if any) is submitted before the date specified in contract document	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
		1-2	Works Execution Programme properly reflects the given specifications and site conditions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
		1-3	Execution procedures are in accordance with Works Execution Programme	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
2	Equipment holding	2-1	All equipment used are properly mobilized in accordance with Works Execution Programme	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
		2-2	All equipment used is well maintained during the execution of works	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
3	Contractor's	3-1	Qualified technical staff of	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

	in-house staff		contractor are properly assigned as specified in Works Execution Programme		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
		3-2	Contractor's in-house key staff understand work process and schedule properly		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
		3-3	Contractor's in-house staff give technical guidance and direction to workers and operators properly and timely		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
		3-4	Communications with authority in writing is properly and timely		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
4	Personel employment	4-1	Workers and operators are deployed in accordance with Works Execution Programme		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
		4-2	Wage payment is properly made on time		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
5	Site base facilities	5-1	Office and stockyard are prepared in accordance with Works Execution Programme		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
		5-2	Site is well maintained during the work execution and cleared on completion		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
		5-3	Material stored on site is properly managed during the work execution		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
6	Quality and quantity management	6-1	Material testing, structural examination, and measurements are properly		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

			and routinely conducted based on specifications and Works Execution Programme										
		6-2	Results of material testing, structural examination and measurements are within the specifications.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
		6-3	Results of material testing, structural examination, and measurements are properly compiled as reports for confirmation		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
7	Work scheduling	7-1	Understanding of critical path and its reflection on scheduling is proper		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
		7-2	Actual proceedings are periodically compared to the planned schedule described in Works Execution Programme		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
		7-3	Changes caused by site conditions are properly handled to keep things on schedule		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
		7-4	All works are completed within the contract term or within the extended term as allowed									<input type="checkbox"/>	
8	Work safety management	8-1	No accident occurs to workers, operators, or third-parties.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
		8-2	Safety of workers and operators is considered		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
		8-3	Accident prevention efforts for third-parties are proper		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

		8-4	Traffic and site safety devices are properly installed and managed	■	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	■		
		8-5	Temporary facilities (e.g. scaffolding) are constantly checked	■	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	■		
9	Environmental and social management	9-1	Environmental and social mitigation efforts (e.g. against noise, vibration, emission, and dust) are conducted	■	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	■		
		9-2	Waste material from site is properly disposed	■	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	■	
		9-3	Damage to existing roads, works and services is avoided or are repaired when it occurs	■	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	■	
		9-4	No overloading for work-related vehicles is reported	■	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	■	

Filling Example : ✓ Check point is satisfactory ■ Check point is unsatisfactory N/A Not applicable

Appendix II- Supplier Appraisal Form



FORM NO.....

SUPPLIER APPRAISAL FORM

Name of the Supplier :

Contract/LPO/LSO No :

Contract/LPO/LSO Amount:

Description of the Goods/Services :

Date of the Contract/LPO/LSO :

Inspection & Acceptance Date:

Contract/LPO/LSO Expiry Date:

ITEM		Deliverables	Weight	
1.		Quality	40	
	i.	Comply specifications/ number	20	
	ii.	Documentation, instructions, technical manuals availed	10	
	iii.	Packaged properly	10	
		Total Marks Scored		
2.		Delivery Timelines	30	
	i.	Delivered on time	20	
	ii.	Provides accurate documentations and information	10	
		Total Marks Scored		
3.		Services	30	
	i.	Complies with LPO/LSO/ contract terms and conditions	10	
	ii.	Provides advice on usage to the Employer	10	
	iii.	Supplier provides effective sales support	10	
		Total Marks Scored	30	
		TOTAL- Maximum	100 marks	
		Pass mark	70 marks	

Remarks on Employers Obligations

		Remarks
1	Documents review Period	
2	Payments processing time	

Note.

This Supplier Appraisal Form is to accompany copy of each Contract / LPO/LSO for supply and delivery of any goods or services from one Unit to another and comments to be made immediately on receipt of goods/ Inspection & Acceptance.

The timelines provided in the Authority's Procurement Procedures and Work Instructions Manual should be taken into consideration when filling this supplier Appraisal Tool.

Appendix III- Consultancy Service Appraisal Form



Kenya National Highways Authority

Quality Highways, Better Connections

FORM NO.....

CONSULTANCY SERVICE APPRAISAL FORM

Name of the Consultant:	
Contract No:	
Contract Amount:	
Service Description	
Service Duration:	
Commencement Date:	
Inspection & Acceptance Date:	
Completion Date:	

ITEM		Description	Weight	Rating
1.		Key Staff	25	
	i.	Notification of Mobilization as per Proposal	10	
	ii.	Replacement as per ToR	5	
	iii.	Deployed Key Staff as per Proposal	10	
		Total Marks Scored	25	
2.		Activity Schedule	15	
	i.	Items as per Proposal	5	
	ii.	Timelines as per Proposal	5	
	iii.	Sequence as per proposal	5	
		Total Marks Scored	15	
3.		Reporting	25	
	i.	Accordance to schedule	5	
	ii.	Format and No. of Copies	5	
	iii.	Comply with ToR	10	
	iv.	Proof of Review meetings	5	
		Total Marks scored	25	
4.		Deliverables Per Contract	35	
	i.	Inception Report within Time Frame	10	
	ii.	Training and Management Review within Time frame provide for in the contract	10	
	iii.	Final Report, Risk Matrix and Implementation Schedule	15	
		Total Marks Scored	35	
		TOTAL- Maximum 5	100 marks	
		Pass Mark	70 marks	

Remarks on Employers Obligations		
		Remarks
1	Reports review Period	
2	Payments processing time	

NB: Pass mark is 70%

Appendix IV – Schedule of Relevant Bodies in Reporting Non-Performance



Kenya National Highways Authority

Quality Highways, Better Connections

Blue Shield Towers, Hospital Road, Upper Hill, P. O. Box 49712-00100, Nairobi.

Tel: 020-8013842 Email: dg@kenha.co.ke Website: www.kenha.co.ke

Relevant Bodies

S/No	Body
1	Ministry of Transport, Infrastructure, Housing and Urban Planning
2	Kenya Urban Roads Authority
3	Kenya Rural Roads Authority
4	Kenya Roads Board
5	Public Procurement Regulatory Authority
6	Association of Consulting Engineers of Kenya
7	Institute of Engineers of Kenya
8	Engineers Board of Registration
9	Roads and Civil Engineering Contractors Association
10	Institute of Surveyors of Kenya
11	National Construction Authority
12	Institute of Surveyors of Kenya
13	World Bank
14	Africa Development Bank
15	Japan International Co-operation Agency

Appendix V – Feedback Form



Kenya National Highways Authority

Quality Highways, Better Connections

Blue Shield Towers, Hospital Road, Upper Hill, P. O. Box 49712-00100, Nairobi.

Tel: 020-8013842 **Email:** dg@kenha.co.ke **Website:** www.kenha.co.ke

FEEDBACK FORM

LISTING OF NON-PERFORMING CONTRACTORS, SUPPLIERS AND CONSULTANTS

S/No	Reference in the Draft Policy	Remarks/Comments
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		