

REPUBLIC OF RWANDA



**MINISTRY OF FINANCE AND
ECONOMIC PLANNING**

**MINISTERIAL INSTRUCTION N° 001/11/10/TC OF 24/01/2011
ESTABLISHING THE PROFESSIONAL CODE OF ETHICS
GOVERNING PUBLIC AGENTS INVOLVED IN PUBLIC
PROCUREMENT**

MINISTERIAL INSTRUCTION N^o. 001/11/10/TC OF 24/01/2011... ESTABLISHING THE PROFESSIONAL CODE OF ETHICS GOVERNING PUBLIC AGENTS INVOLVED IN PUBLIC PROCUREMENT

TABLE OF CONTENTS

CHAPTER ONE: GENERAL PROVISIONS

Article One: Purpose of this instruction

Article 2: Definitions

Article 2: Application of the Code

CHAPTER II: PRINCIPLES, VALUES AND CONDUCT

Article 3: Guiding Principles

Article 4: Ethical Values

CHAPTER III: INCOMPATIBILITIES, PROHIBITIONS AND CONFLICT OF INTEREST

Article 5: Prohibitions

Article 6: Improper inducement

Article 7: Entertainment and Hospitality

Article 8: Fraudulent Practices

Article 9: Conflict of interest

Article 10: Impartiality

Article 11: Gifts

Article 12: Professional Secrecy

Article 13: Procurement Information

Article 14: Fairness in tender process

Article 15: Obligations of public agent

Article 16: Obligations of bidder

CHAPTER IV: SANCTIONS FOR VIOLATIONS

Article 17: Sanctions to Public agents

Article 18: Sanctions to Bidders

Article 19: Right to defence

Article 20: Categories of sanctions

Article 21: Disciplinary process

Article 22: Administrative Appeal

Article 23: Institution of criminal proceedings,

Article 24: Confidential Reporting

Article 25: Commencement

MINISTERIAL INSTRUCTION N° 001/11/10/TC OF 24/01/2011 ESTABLISHING THE PROFESSIONAL CODE OF ETHICS GOVERNING PUBLIC AGENTS INVOLVED IN PUBLIC PROCUREMENT

The Minister of Finance and Economic Planning;

Pursuant to the Organic Law N° 61/2008 of 10/09/2008 on the Leadership Code of Conduct especially in its articles 2;

Pursuant to the Organic Law N° 37/2006 of 12th September 2006 on State finances and property especially in its articles 3 and 4;

Pursuant to the Law N° 12/2007 of 29/03/2007 on Public Procurement especially in its articles 15, 16, 17, 18, 176, 177 and 178;

Pursuant to the Law N° 63/2007 of 30/12/2007 establishing and determining the organization, functioning and responsibilities of Rwanda Public Procurement Authority (RPPA) especially in its articles 4, 9 and 14;

Pursuant to the Law N° 23/2003 of 7 August 2003, relating to prevention, repression and punishment of corruption and related offences especially in its articles 4, 7, 10-18;

Pursuant to the Law N° 22/2002 of 09/07/2002 on General Statutes for Rwanda Public Service, especially in its Articles 81- 86;

On proposal by the Rwanda Public Procurement Authority;

In order to maintain the values and ethics of public service and enhance the integrity of people involved in the Public procurement;

INSTRUCTS:

CHAPTER ONE: GENERAL PROVISIONS

Article One: Purpose of this instruction

The purpose of this instruction is to establish the professional code of ethics governing public agents involved in public procurement process.

Article 2: Definitions

Without prejudices to definitions provided for in laws and regulations, these terms are defined in this instruction as follows:

- 1° **Bidder** means any potential participant or participant in public procurement proceedings. It can be an individual person(s) or legal entity ;
- 2° **Bribe** means money or something of value pursuant to or promised in order to influence the decision or conduct of staff in the procurement process or contract execution;
- 3° **Client** means the Central Government, Local Government, public institution, commission, Government project, parastatal, agency, or any specialized public institution with which selected bidder or consultant signs procurement contract;
- 4° **Coercion** means the practice of compelling a person or manipulating them to behave in an involuntary way (whether through action or inaction) by use of threats, intimidation or some other form of pressure or force in order to influence their participation in the procurement process, or affect the execution of a contract;
- 5° **Collusion** is an agreement, usually secretive, which occurs between two or more persons to deceive, mislead, or defraud others of their legal rights, or to obtain an objective forbidden by law typically involving fraud or gaining an unfair advantage or to establish prices at artificial, noncompetitive levels;

- 6° **Confidentiality** means the requirement to keep secret and not to disclose or divulge information obtained during the performance of official duties until there is a legal requirement to disclose;
- 7° **Conflict of interest** is a real, obvious or potential situation in which a public agent is in a position to exploit a professional or official capacity in some way for his or her personal benefit and compromise his or her independence and impartiality necessary for the assumption of a public agent duties; it also refers to the occasion whereby a public agent is involved in multiple interests, one of which could possibly corrupt the motivation for an act in the other during the procurement process;
- 8° **Corruption** means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the procurement process or in contract execution;
- 9° **Entertainment** means providing any kind of enjoyment but not limited to food, drink, games or convenience such as transport, accommodation;
- 10° **Ethical behavior** encompasses the concepts of honesty, integrity, diligence, fairness, trust and respect;
- 11° **Ethics** means moral principals or values which guide a person's behavior especially in all aspects of his/her work;
- 12° **Fraud** means the intentional, false representation or concealment of a material fact for the purpose of inducing or influencing another to act up on it to his/her detriment;
- 13° **Gift** means anything that has monetary value, received without the need for compensation;
- 14° **Hospitality** means the friendly and generous treatment of guests or strangers;

- 15° **Integrity** means the use of funds, resources, assets, and authority, according to the intended official purposes, to be used in line with public interest. In principle, integrity imposes an obligation to be straightforward and honest in professional and business relationships including fair dealing and truthfulness;
- 16° **Laundering** refers to the fact of facilitating by whatever means, the justification of the source of property and revenue as well as profit obtained by the author of an offence provided for by laws. Equally constituting "laundering" is the fact of lending support by safe guarding, concealing or converting by direct or indirect means, a product that is a result of an offence provided for by this code;
- 17° **Professional Secrecy** refers to a confidentiality obligation of becoming the depositary of a secret or facts of which someone has personal knowledge or which came to his/her knowledge by virtue of his/her duties;
- 18° **Procuring Entity** means Central Government authority, Local Government authority, public institution, commission, Government project, parastatal, agency, or any specialized institution engaged in procurement process and entering in contract with the successful bidder.
- 19° **Public Agent** is a person who is authorized to act on behalf of the procuring entity in procurement process;
- 20° **Public Procurement** refers to the acquisition of supplies or goods, works, consultant services and other services by a procuring entity;
- 21° **Supplier**, means any physical or legal person under bidding process or procurement contract with a procuring entity.

Article 2: Application of the Code

The code applies to public agents and all other participants involved in public procurement process for the procurement of goods, works, consultant services

and other (non-consultant) services in accordance with Rwandan public procurement law.

CHAPTER II: PRINCIPLES, VALUES AND CONDUCT

Article 3: Guiding Principles

In the exercise of his/her duties, the public agent involved in procurement process shall respect the principles listed below, among others:

- 1° Respect of laws and State institutions ;
- 2° Respect of public property;
- 3° Prevent and fight against corruption and injustice in public service;
- 4° Respect of every one (of all) in public service;
- 5° Transparency in making decision and accountability in public resources management;
- 6° Honesty;
- 7° Diligence and uprightness in the exercise of his/her duties;
- 8° Acceptance of the responsibility to act in public interest
- 9° Putting public interest before personal interest;
- 10° Confidentiality in service.

Article 4: Ethical Values

The ethical values include among others:

- 1° Acting at all times in a way to uphold the public trust;
- 2° Public agents shall perform their duties and arrange their private affairs so that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced;
- 3° Public agents shall act at all times in a manner that will bear the closest public scrutiny;
- 4° Public agents, in fulfilling their official duties and responsibilities, shall make decisions in the public interest;
- 5° Look for help and seek for advice from qualified persons before making decisions if necessary;

CHAPTER III: INCOMPATIBILITIES, PROHIBITIONS AND CONFLICT OF INTEREST

Article 5: Prohibitions

The public agent involved in public procurement process shall avoid all situations that can compromise his /her honour or shatter the trust of the public towards Public service.

Article 6: Improper inducement

In performing their duties, public agents must abstain from any action which could be interpreted as bribery or act of corruption.

Without prejudice to other laws and regulations, procuring entities and bidders shall take measures reasonably within their power to ensure that any commission or remuneration paid to any public agent, consultant or other intermediary represents no more than appropriate compensation for legitimate services, and that no part of any such payment is passed on by a public agent, consultant or other intermediary as an improper inducement in contravention of these instructions.

Article 7: Entertainment and Hospitality

Bidders shall not offer entertainment or hospitality directly or indirectly, to public agents of a procuring entity that might be viewed by others as having an influence on the entity's procurement decisions. Public Agents shall always report such acts of offers of entertainment or hospitality to their superiors regardless of the level of their significance.

Article 8: Fraudulent Practices

Public agents and/or Bidders shall not-

- (a) collude with other businesses and organizations with the intention of depriving a procuring entity of the benefits of free and open competition;
- (b) enter into business arrangements that might prevent the effective operation of fair competition;
- (c) engage in deceptive financial practices, such as bribery, double billing or other improper financial practices;
- (d) misrepresent facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring Entity.

Article 9: Conflict of interest

In carrying out their official duties, public agents involved in procurement process should arrange their private affairs in a manner that will prevent real, apparent or potential conflicts of interest from arising. Actual or potential conflict of interest occurs when the public agent is in a position to influence a decision that may result in a personal gain or gain for a relative or friend.

Agents involved in procurement process also have the following specific duties:

- 1° They should not step out of their official roles to assist private entities or persons in their dealings with the government where this would result in preferential treatment to those entities or persons.
- 2° They should not knowingly take advantage of, or benefit from, information that is obtained in the course of their official duties and that is not generally available to the public.
- 3° They should not directly or indirectly use, or allow the use of government property of any kind, including property leased to the government, for anything other than officially approved activities.

These prohibitions also cover the financial interests of working with:

- (a) an organization in which the public agent serves as an employee, officer, director, member of board of Directors, or partner; and

(b) a person with whom public agent is seeking or has an arrangement for future employment.

A member of Tender Committee shall not participate in tender process or carry out an auction in favour of an outside enterprise or organization in which he has direct or indirect interests.

The Public agent shall avoid being in conflict situation between his/her own interests and work interests.

The public agent is requested to give information in writing on a conflict of interest situation, when he notices that his interests are conflicting with public interests.

Article 10: Impartiality

Even though public agent may not have a financial interest that can be affected by a procurement activity or contract, circumstances might arise that could call his/her impartiality into question.

The impartiality that could be questioned include among others:

- 1° Public agent's duties require him/her to work on a procurement involving Public agent's former employer or clients, his/her spouse's employer or clients, close relatives, or others with whom he/she has some kind of business relationship.
- 2° The public agent is assigned to a contract involving a person he/she is dating.
- 3° The public agent is required to evaluate bids, one of which was submitted by a friend.

If the public agent encounters any situation where he/she thinks his/her impartiality would reasonably be questioned, he/she should stop working on that matter, and contact his/her supervisor.

Article 11: Gifts

A Public Agent must not solicit or accept gifts from suppliers, prospective supplier, or through their employees, or any other person. Even though the

Public agent might work closely with suppliers' employees on a daily basis, remember that both agency suppliers and their employees are considered "prohibited sources" of gifts to the Public agent.

During a bidding process, the employees involved must reject, without any exception, any kind of gift or other benefit from a participating supplier and must take all necessary steps to prevent leakage of any information which might give an advantage to a potential supplier participating in the bidding.

Article 12: Professional Secrecy

Any Public agent shall keep professional secrets and confidentiality of information on his/ her job or organization, even when he/she is no longer in service, except when the disclosure is required for the public interests.

In addition to the rules on disclosure of specific procurement information, rules of conduct prohibit any Public agent from disclosing any nonpublic information to further his/her private interests, or those of another person, such as a supplier or supplier employee. Nonpublic information includes information about a contract or procurement that the Public agent gain through his/her job and that the Public agent reasonably should know has not been made available to the public.

If there is doubt about whether information is protected information, or whether the Public agent is permitted to disclose such information, the Public agent should get advice from his/her superior before disclosing or otherwise using the information.

Article 13: Procurement Information

It is not allowed to obtain or disclose supplier's bid, information related to proposal or, selection before the award of the contract, other than as permitted by law.

Information relating to the examination, clarification, evaluation and comparison of tenders and recommendations for the award of a contract shall not be disclosed to suppliers, service providers, or to any other person not

involved officially in the examination, evaluation or comparison of tenders or in the decision on which tender should be accepted.

Any attempt by a bidder to influence the procuring entity or approving authority with a view to processing of tenders or award decisions may result in the rejection of his/her tender.

Article 14: Fairness in tender process

The Tender committee in public service cannot make a bid in a way that is contrary to the Law in force.

Tender documents sent to potential suppliers must be identical and all suppliers should be granted the same time to prepare their bids. Any additional information or clarification must be sent to all potential suppliers simultaneously.

Technical specifications of a product or service should exactly match needs of the entity (no more no less), should be explicit and detailed and should not describe, directly or indirectly, the product of a specific supplier.

No person shall:

- 1° open an envelope or any other container of a tender, other than in the due and proper execution of his duties under these instructions;
- 2° burn, tear or otherwise destroy any tender; or
- 3° erase or do any other act which falsifies or renders incomplete or misleading any tender.

For the purposes of this code, “tender” includes documents or things submitted together with the tender and which are relevant to the tender and which are in the possession of a tender board, tender evaluation committee, procuring entity or any person.

All bids are opened during the same opening session and are signed by the members of the relevant authorized committee before being evaluated.

Article 15: Obligations of public agent

Without prejudice to other sections of this code, every public agent shall:

- 1° respect the timeframe to respond to his/her attributions;
- 2° not go beyond three working days without responding to letters except when the cause of delay doesn't depend on him or her or where the cause depends on the nature of the work to be done;
- 3° provide accurate, clear and precise information on services delivered and how to proceed, on demand of his/her superior.
- 4° strive for genuine, fair and transparent competition.
- 5° respect the confidentiality of information acquired as a result of professional and business relationships and should not disclose any such information to third parties without proper and specific authority unless there is a legal or professional right or duty to disclose
- 6° maintain the highest standard of integrity in all business relations.
- 7° reject any practice which might be reasonably deemed improper.
- 8° remain objective and not compromise his/her professional or business judgment because of bias, conflict of interest or the undue influence of others.
- 9° not remove, conceal, alter, falsify, destroy or mutilate any document, paper or record within their control.
- 10° at all times safeguard the interests of the employers, colleagues and clients provided that they shall not knowingly be party to any illegal or unethical activity
- 11° exercise integrity, honesty, diligence and due care in carrying out their duties and responsibilities.
- 12° refuse to follow wrongful instruction(s) which may seriously hinder fair performance of his duties after stating the reason to his superior. The wrongful instruction(s) include instructions which are Pursuant to pursue the superior's interests or unjust interests of any third party e.g. bidders, politicians etc.
- 13° not allow him/her or any other persons to use the title of his/her agency or position for an unjust profit.
- 14° disclose any situation of actual or potential conflict of interest

15° not discriminate against any person or bidder based on race, colour, religion, sex, marital status, nepotism, political affiliation etc. unless if prescribed by the law.

Article 16: Obligations of bidder

Without prejudice to other sections of this code, every bidder shall:

- 1° disclose any situation of actual or potential conflict of interest
- 2° make all clarifications to the procuring entity in writing and within the prescribed time
- 3° conduct itself with integrity and transparency in all transactions and relations with the procuring entity
- 4° desist from engaging in any corrupt, fraudulent, collusive or coercive practices
- 5° present accurate information at all times
- 6° desist from misrepresenting facts
- 7° respond within prescribed time to requests for clarification from the procuring entity
- 8° cooperate with any investigation instituted by the procuring entity

CHAPTER IV: SANCTIONS FOR VIOLATIONS

Article 17: Sanctions to Public agents

Without prejudice to criminal provisions and other relevant laws in force in Rwanda, a public agent who is reproached for not meeting ethical principles and values, is subjected to disciplinary sanctions provided for in article 20 of this instruction.

Article 18: Sanctions to Bidders

Bidder's submission of false or misleading information may lead to the disqualification of the bidder or the termination of its Contract.

Bidder's failure to disclose conflict of interest situation may lead to the disqualification of the bidder or the termination of its Contract.

If bidder has directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices in competing for a contract it shall lead to the disqualification of the bidder or the termination of its Contract.

Any criminal act will result in the bidder being subject to criminal prosecution as well as debarment by RPPA in accordance with the Rwandan law.

Article 19: Right to defence

No disciplinary sanction can be pronounced without the concerned person having had the possibility to be heard or present in writing his/her means of defense. No sanction can be effective for the period prior to its pronouncement.

Article 20: Categories of sanctions

Disciplinary sanctions are divided into two categories: first degree sanctions and those of the second degree. First degree sanctions deal with less serious breaches or violations while those of the second degree are related to the most serious breaches or violations.

First degree sanctions are a formal warning, official blaming, and deduction of a quarter of the salary for a period of one month maximum. The first degree sanction is applicable in case of:

- 1° Service provided with delay without permission or valid reason;
- 2° Leave service early without permission or valid reason;
- 3° Unauthorized absence from the work place during working hours;
- 4° Violating legal or regulatory provisions which do not generate serious consequences;
- 5° A threatening or aggressive behaviour towards his/her superior or bidders.

The list of misconducts enumerated above is not exhaustive but gives indication of such misconducts, which can be applied for the first degree sanctions.

Second degree sanctions are suspension for a period of three months maximum, delay in promotion and expulsion. A second degree disciplinary sanction must be notified in draft first to the concerned person who will provide additional explanations if need be. The Second degree sanction is applicable in case of:

- 1° Theft;
- 2° Embezzlement of an asset;
- 3° Being guilty of fraud or corruption;
- 4° Being drunk or in intoxication state during service hours;
- 5° Fighting or making obstruction or attack a person;
- 6° Damaging an asset deliberately;
- 7° An act of omission at work, which exposes people or the procuring entity to danger;
- 8° Revealing professional confidentialities;
- 9° Being guilty of criminal acts at or outside the service.

The list of misconduct enumerated above is not exhaustive but gives an indication of such misconducts, which can be applied for the second degree sanctions.

First degree sanctions are imposed by the competent authority. Second degree sanctions are imposed by the competent authority after taking into account views from the Commission.

Article 21: Disciplinary process

Any disciplinary sanction taken by procuring entities will be brought in accordance with the procedures set forth in this code, by taking into account the principles of natural justice and all other provisions of the Rwandan legislation regarding labour.

Article 22: Administrative Appeal

Any public agent, who considers himself/her prejudiced, has the right to introduce an administrative appeal.

An administrative appeal is introduced at first level to the superior hierarchical authority and at the second level, to the Commission of Public Service, within a period which does not exceed thirty (30) days from the date decision was notified to the concerned person. The hierarchical authority or the Commission referred to must give a ruling within thirty (30) days from receipt of the request; beyond which the queried decision is null and void.

Article 23: Institution of criminal proceedings,

The measures provided by this code shall not preclude the institution of criminal proceedings pursuant to the Penal Code, Law relating to prevention, repression and punishment of corruption and related offences or any other written Law against any person discharging functions or exercising powers under this code.

Article 24: Confidential Reporting

The public agent is expected, through agreed procedures and without fear of recrimination, to bring to the attention of his/her immediate superior any impropriety or breach of procedure. If, for any reason, the public agent does not feel it appropriate to express his/her concerns to his/her immediate superior, he/she should inform any responsible person in his/her organization or institutions in charge of fighting against corruption.

Article 25: Commencement

The present Instruction comes into force on the day of its signature.

Kigali, on. 24.../.../2011

John RWANGOMBWA
Minister

