



REPUBLIC OF KENYA

MINISTRY OF DEVOLUTION AND PLANNING

STATE DEPARTMENT OF DEVOLUTION

TERMS OF REFERENCE

CONSULTANCY SERVICES TO REVIEW THE COUNTY GOVERNMENTS ACT, 2012

1. Background

The County Governments Act, 2012 came into effect immediately after 2013 General Elections. The Act operationalizes Chapter Eleven of the Constitution of Kenya by providing for powers, functions and responsibilities of County Governments in the implementation of devolution. It provides the legal framework for various institutions within the framework of devolved governance and donates powers, functions and responsibilities for better service delivery. Such institutions include the County Assembly, County Executive, County Assembly Service Board, County Public Service and Board among others created in the establishment of County Governments.

The devolved system of government has been implemented since March 2013 during which period considerable achievements have been registered. Setbacks and challenges have also been identified particularly with regard to provisions in the County Governments Act (CGA), 2012. Some of these challenges include, but are not limited to, function overlaps; lack of clarity in the designation of functions for some offices; conflicting roles between the County Executive and County Assembly that cause conflict in the discharge of duties; and conflict between the Executive and County Assemblies in exercise of oversight functions of County Assemblies.

The success of devolution is dependent on the strength of the institutions as well as the synergies generated by the separate functions. These gaps and challenges experienced while operationalizing the CGA should be addressed

through a consultative process aimed at introducing necessary legislative interventions.

In this regard the Department is spearheading a process to review the CGA. This process aims at identifying gaps in the law that require legislative intervention and provisions that require amendment in order to strengthen the institutional framework for implementation of Devolution as contemplated in the Constitution.

It is for this purpose that the Department now seeks to engage the services of a Consultant to support the Inter-agency Technical Committee in the process of reviewing the Act and drafting proposed amendments.

2. Objectives

The following are the objectives of the review:

1. Harmonize the County Governments Act, 2012 with the Constitution and all other statutes relating to devolution.
2. Review the CGA 2012 to identify and address gaps, inconsistencies, overlaps and duplicity of institutional functions of all offices created under the Act.
3. Apply lessons learned by the pioneer implementers of the Act for better management of devolution.

3. Scope of work

The Consultant will be expected to:

- a) Review the CGA 2012 together with other laws related to devolution and the Constitution against the experience of implementing devolution since 2013 to identify areas deserving of intervention.
- b) Plan, prepare and conduct consultative meetings with relevant stakeholders with a view to obtaining information that will lead to identifying areas of concern.
- c) Review judicial pronouncements with relevance to operationalization of the Act.
- d) Propose appropriate legislative interventions to address identified gaps, conflicts and inconsistencies.

- e) Draft County Government Amendment Bill for submission to Senate for legislation.
- f) Present the Draft appropriate County Governments Amendment Bill to a stakeholder validation workshop.

4. Deliverables

The Consultant will be required to submit the following deliverables

- a) **Inception Report:** This report will provide the Consultant's interpretation of the task, the approach to be used, and definition of the key stakeholders and implementation plan. The report will incorporate the minutes of the Inception Meeting.
- b) **Proposed legislative interventions:** Based on an analysis of the submissions from stakeholders and review of the Act, the Consultant will develop a report with proposals on appropriate legislative interventions required to address the gaps, conflicts and inconsistencies identified.
- c) **A draft County Government amendment Bill:** From the proposals on appropriate legislative interventions, a draft County Amendment Bill will be developed.
- d) **Stakeholder Validation:** Following submission of the draft County Governments Amendment Bill, the Consultant will be required to subject the draft bill to validation by various stakeholders critical to the success of devolution (e.g. national government departments and independent commissions; the judiciary, parliament county governments, regulators; County Assemblies etc).
- e) **Final draft County Governments' Amendment Bill.** This will incorporate outcomes of the Consultative Workshop and memoranda in support of the draft County Governments Amendment Bill. Upon approval of the proposals contained in the report on proposed legislative amendments, the Consultant shall submit the draft County Governments Amendment Bill.

f) Timelines and Payment Schedules

The project is expected to take a maximum of sixty (60) days. The payment schedule is as indicated herein.

MILESTONE	DELIVERABLES	TIMELINE	% PAYMENT
Inception	Inception report	7 days	10%
Analysis of stakeholder submissions and review of the Act	Report on proposed legislative interventions	15days	
A draft County Government amendment Bill	Draft County Government amendment Bill	15 days	30%
Stakeholder consultation	Consultative Workshops	5 days	-
Stakeholder Validation	Stakeholder Validation Report	10 days	
Finalization of the draft County Government Amendment Bill	Final draft County Government Amendment Bill	8 days	60%

5. Consultant Qualifications and Experience

The following are the minimum qualifications and experience expected of the Consultant:

- a) A degree in law is mandatory;
- b) A post graduate degree in public policy, public administration or governance will be an advantage;
- c) Be a member of the Law Society of Kenya;
- d) Possession of a current practicing certificate or exemption will be an added advantage
- e) Professional qualifications and experience in legislative drafting;
- f) Experience in stakeholder management;
- g) Experience in devolution matters will be an added advantage
- h) Excellent written and communication skills;
- i) Ability to work and deliver within strict deadlines.

6. Consultant Selection Criteria (Technical Evaluation)

ITEM	Weight	Maximum Points
1. Qualification <ul style="list-style-type: none"> • A degree in law • Professional qualifications in legislative drafting • Masters • PhD 	25%	15 5 3 2
2. Relevant Experience <ul style="list-style-type: none"> a) Experience in Devolution Matters b) Proven Experience in Stakeholder Management c) Experience in Legislative drafting d) Experience in Public Sector 	30%	8 5 15 2
3. Proposal <ul style="list-style-type: none"> a) Understanding of the Terms of Reference b) Proposed Methodology 	35%	10 25
4. Competencies: <ul style="list-style-type: none"> a) Analytical skills b) Written English c) Interpersonal skills 	10%	5 3 2
Total		100

ONLY Technical Proposals that attain a minimum of 70% score shall be considered responsive and shall proceed to the next stage (financial evaluation)

Application Process

Applicants are required to submit a detailed CV and copies of certificates, and other relevant testimonials