



REPUBLIC OF KENYA

MINISTRY OF DEVOLUTION AND PLANNING

STATE DEPARTMENT OF DEVOLUTION

TERMS OF REFERENCE

CONSULTANCY FOR REVIEW OF INTERGOVERNMENTAL RELATIONS ACT, 2012

1. Background

An intergovernmental relations system consists of facilitative systems and relationships that enable the units of government to participate effectively and carry out mandates so that governmental goals are achieved. These facilitative mechanisms include executive and coordinating mechanisms, cooperative agreements, judicial and legislative mechanisms. Intergovernmental relations can thus be defined as the “glue” that holds the two levels of government together. It seeks to achieve common goals through mutual relationships between and across vertical and horizontal governmental arrangements and to align all spheres of government. The ultimate aspiration of intergovernmental relations is the enablement of governmental activities (primarily service delivery) through synergy, efficiency and effectiveness in delivering services in order to sustain democracy and strengthen the capacity of delivering goals across all spheres of government for the common good.

This was the spirit behind enactment of the Intergovernmental Relations Act, 2012 (IGRA 2012). Indeed the preamble of the IGRA 2012 is ***‘to establish a framework for consultation and cooperation between the national and county governments and amongst county governments, establish a mechanism for resolution of intergovernmental disputes pursuant to Article 6 and 189 of the Constitution and for connected purposes’***.

An analysis of legislative provisions and existing structures of intergovernmental relations, from a coordinating point of view, suggests that much more still needs

to be done. In certain instances, the existence of some structures, especially ad hoc structures that have been constituted by government to iron out delivery issues, have been misconstrued as a ploy to witch-hunt and these structures have therefore been resisted because they seem to warrant suspicion on the part of one institution involved in a particular activity.

Further, notwithstanding the legal framework provided by the constitution and IGRA 2012, intergovernmental relations between the National and County Governments and other institutions implementing devolution remains strained.

The implication has been that consultative mechanisms set out to address intergovernmental issues lack the force of law; legal provisions for settlement of disputes of intergovernmental are deliberately ignored; the provision for the communication, implementation, monitoring and reporting of Summit decisions is ineffective and prone to conflicting interpretations.

It is against this background that the State Department of Devolution is spearheading a process to review the IGRA 2012. 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:

1. Harmonize the IGRA 2012 with the Constitution and all other statutes
2. Review the IGRA 2012 to identify and address gaps, ambiguities, inconsistencies, overlaps and duplicity of functions of institutions created under the Act
3. Apply lessons learned by the pioneer implementers of devolution to enhance and harmonize intergovernmental relations

3. Scope of Work

The consultant will be expected to:

- a) Review the IGRA 2012 together with other laws relating 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 Intergovernmental Relations Amendment Bill for submission to Senate for legislation.
- f) Present the Draft appropriate Intergovernmental Relations 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) **Final draft Intergovernmental Relations Amendment Bill.** Upon approval of the proposals contained in the report described in (b) above, the consultant shall submit an Intergovernmental Relations Amendment Bill.
- d) **Stakeholder Validation:** Following the submission of the draft Intergovernmental Relations 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; etc).

5. Timelines and Payment Schedules

The project is expected to take a maximum of 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 Intergovernmental Relations Amendment Bill	Draft Intergovernmental Relations Amendment Bill	15 days	30%
Stakeholder consultation	Consultative Workshops	5 days	-
Stakeholder Validation	Stakeholder Validation Report	10 days	
Finalization of draft Intergovernmental Relations Amendment Bill	Final draft Intergovernmental Relations Amendment Bill	8 days	60%

6. 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.

7. 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.