



REPUBLIC OF KENYA

**MINISTRY OF DEVOLUTION AND PLANNING
STATE DEPARTMENT OF DEVOLUTION**

Kenya Devolution Support Programme (KDSP)

**TENDER NO. MODP/SDD/KDSP/RFP/05/2016-2017
IFMIS NO. 396292**

**CONSULTANCY SERVICE TO REVIEW THE COUNTY
GOVERNMENTS ACT, 2012**

CLOSING/OPENING DATE: 30th JANUARY, 2017

TABLE OF CONTENTS

	Page
INTRODUCTION	3
SECTION I - TENDER NOTICE.....	4
SECTION II - INFORMATION TO CONSULTANTS.....	5
SECTION III - TERMS OF REFERENCE.....	14
SECTION IV - TECHNICAL PROPOSAL.....	15
SECTION V - FINANCIAL PROPOSAL.....	16
SECTION VI - STANDARD CONTRACT FORM.....	17

INTRODUCTION

1. This standard Request for Proposals for selection of individual professional consultants has been prepared for use by public entities in Kenya. It has been found necessary for selection of individual consultants who are also regulated by their professional institutions or associations as opposed to selection of consultants who could be either individuals or body corporate.
2. This Request for proposals will be used for open tendering, restricted tendering or request for proposals.
3. The general conditions of contract in the Standard contract Form should not be modified and instead the special conditions of the contract may where necessary be modified by the procuring entity, for use, to reflect the unique circumstances of the particular assignment.

SECTION I



REPUBLIC OF KENYA

MINISTRY OF DEVOLUTION AND PLANNING

STATE DEPARTMENT OF DEVOLUTION

Kenya Devolution Support Programme (KDSP)

TENDER NOTICE

The Ministry of Devolution and Planning, State Department of Devolution (SDD) invites tenders from interested, eligible and competent individual consultant to tender for the following consultancy services: -

Tender Number	Tender Description	Eligible Category	Closing Date and Time
MODP/SDD/KDSP/RFP/05/2016-2017 IFMIS NO. 396292	Consultancy Services to Review the County Governments Act, 2012	Open to ALL bidders	30 th January 2017 at 12.00 noon.

Interested bidders may access and download detailed tender documents and their corresponding Terms of Reference from the:

- i. IFMIS Supplier Portal: <http://supplier.treasury.go.ke> by citing the unique IFMIS Tender numbers for each of the tenders
- ii. The Ministry's Website www.devolutionplanning.go.ke.
- iii. Tender portal: <http://supplier.treasury.go.ke>, and click on "link to tenders"

Tenders **MUST** be submitted through IFMIS SUPPLIER PORTAL: supplier.treasury.go.ke. Bidders who may experience challenges in accessing and uploading their tender in the IFMIS Tender Portal should contact the IFMIS Department, Treasury Building on 5th Floor or Supply Chain Management Office on 1st floor, Telposta towers, Wing C, Kenyatta Avenue, for assistance.

Duly completed tender documents (Hard Copy of exact replica of the one submitted in the IFMIS Portal) should be enclosed in a plain sealed envelope clearly marked with the tender name and tender number should be deposited in the tender box on 1st floor of Telposta Towers, Wing C, Kenyatta Avenue, Nairobi, Kenya during office hours (Weekdays 8.00 am to 5.00 pm) or be addressed to:

**Principal Secretary,
Ministry of Devolution and Planning,
State Department of Devolution,
P. O. Box 30004 – 00100.
NAIROBI, KENYA**

All tenders to be received on or before **30th January, 2017 at 12.00 noon** (East African Time). Bids will be opened immediately thereafter in the presence of the bidders or their representatives who choose to attend at the 6th floor boardroom, Telposta Towers, Kenyatta Avenue, Nairobi.

Prices quoted should be net inclusive of all Government taxes and other expenses must remain valid for **150 days** from the closing/opening date of the tender.

Consultants should attach copies of the tax compliance certificates, Identity card or passport.

The Government of the Republic of Kenya reserves the right to accept, terminate or reject any tender without assigning reasons for its decision thereof.

Principal Secretary
State Department of Devolution

SECTION II - INFORMATION TO CONSULTANTS

Table of Contents

	Page
2.1 Introduction.....	6
2.2 Clarification and amendments to the RFP documents.....	7
2.3 Preparation of proposals.....	7
2.4 Financial proposal.....	8
2.5 Submission receipt and opening of proposals	9
2.6 Evaluation of proposals (General).....	10
2.7 Evaluation of Technical proposals.....	10
2.8 Opening and evaluation of Financial proposals.....	11
2.9 Negotiations.....	12
2.10 Award of Contract.....	12
2.11 Confidentiality.....	12
2.12 Appendix to Information to Consultants.....	13

SECTION II - INFORMATION TO CONSULTANTS

2.1 Introduction

- 2.1.1 The State Department of Devolution will select an individual consultant among those invited to submit proposals or those who respond to the invitation for proposals in accordance with the method of selection detailed under this section and consistent with the regulations.
- 2.1.2 The consultants are invited to submit a technical proposal and a financial proposal for consulting services required for the assignment stated in the letter of invitation (Section I)
- 2.1.3 In the assignment where the procuring entity intends to apply standard conditions of engagement and scales of fees for professional services, which scale of fees will have been approved by a relevant authority, a technical proposal only may be invited and submitted by the consultants. In such a case the highest ranked individual consultant in the technical proposals shall be invited to negotiate a contract on the basis of the set scale of fees. The technical proposals will be the basis for contract negotiations and ultimately for a signed contract with the selected individual consultant.
- 2.1.4 The consultants must familiarize themselves with local conditions as regards the assignment and take them into account in preparing their proposals. To obtain adequate information on the assignment and on the local conditions, consultants are encouraged to liaise with the procuring entity regarding any information that they may require before submitting a proposal.
- 2.1.5 The client will provide the inputs and services specified in the special conditions of contract needed to assist the individual consultant to carry out the assignment.
- 2.1.6 The cost of preparing the proposal and negotiating the contract including any visit to the procuring entity are not reimbursable as a direct cost of the assignment. The procuring entity is not bound to accept any of the proposals submitted.
- 2.1.7 The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.

2.2 Clarification and amendment to the RFP documents

- 2.2.1 Individual consultant may request clarification of any of the RFP documents not later than Seven (7) days before the deadline for the submission of the proposals. Any request for clarification must be sent in writing by post, fax or email to the procuring entity's address indicated in the special conditions of contract. The procuring entity will respond by post, fax or email to such requests and will send written copies of the response (including an explanation of the query but without identifying the source of inquiry) to all individual consultants invited to submit proposals.
- 2.2.2 At any time before the deadline for submission of the proposals, the procuring entity may for any reason; either at its own initiative or in response to a clarification requested by an intended individual consultant amends the RFP. Any amendment shall be issued in writing, fax or email to all invited individual consultants and will be binding on them. The procuring entity may at its discretion extend the deadline for the submission of the proposals.
- 2.2.3 Clarification of tenders shall be requested by the tenderer to be received by the procuring entity not later than 7 days prior to the deadline for submission of tenders.
- 2.2.4 The procuring entity shall reply to and clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender.

2.3 Preparation of proposals

- 2.3.1 The individual consultant's proposal shall be written in English language.
- 2.3.2 In preparing the Technical proposal, the individual consultants are expected to examine the documents consisting the RFP in detail. Material deficiencies in providing the information requested may result in rejection of a proposal.
- 2.3.3 While preparing the Technical proposal, the individual consultant must give particulars attention to the following:
- (a) If an individual consultant considers that he/she does not have all the expertise required for the assignment he/she may suggest in the proposals other individual(s) who will assist in the assignment but they will not be party to the contract for the purpose of the performance of the assignment. An individual consultant will not propose other individual consultants invited to submit proposals for the assignment. Any individual consultant in contravention of this requirement shall automatically be disqualified.

- (b) For all the staff who will be involved in the exercise of the proposals to consultant must indicate their responsibility in the assignment and also the staff time as necessary.
- (c) The curriculum vitae (CV) of the staff proposed must be submitted with the proposal.

2.3.4 The Technical proposal shall provide the following information;

- (a) The individual consultants CV and a brief of any recent experience of assignment of a similar nature. For each assignment the brief should indicate the profiles of staff involved, contract amount and the individual consultant's involvement.
- (b) Any comments or suggestions on the Terms of Reference and a list of service and facilities requested to be provided by the procuring entity.
- (c) A description of the methodology and work plan for performing the proposed assignment.
- (d) Any additional information requested in the special conditions of contract.

2.3.5 The Technical proposal shall be separate from the financial proposal and shall not include any financial information.

2.4 **Financial proposal**

2.4.1 In preparing the financial proposal, the individual consultants are expected to take into account the time required in completing the assignment as outlined in the RFP documents. The financial proposal will therefore be quoted in fees per day or month. The financial proposal may also include other costs as necessary, which will be considered as reimbursables.

2.4.2 The Financial proposal should include the payable taxes.

2.4.3 The fees shall be expressed in Kenya Shillings.

2.4.4 The Financial proposal must remain valid for 150days after the submission date. During this period, the individual consultant is expected to keep available at his own cost any staff proposed for the assignment. The procuring entity will make best efforts to complete negotiations within this period. If the procuring entity wishes to extend the validity period of the proposals, the consultants who do not agree, have the right not to extend the validity of their proposals.

2.4.5 The financial proposal must comply with the law governing the profession of the consultant.

2.5 Submission, Receipt and opening of proposals

- 2.5.1 The technical proposal and the financial proposal (if required) shall be prepared in indelible ink. It shall contain no interlineations or overwriting, except as necessary to correct errors made by the individual consultants. The individual consultant must initial any such corrections.
- 2.5.2 For each proposal the individual consultants shall prepare the proposals in the number of copies indicated in the special conditions of contract. Each Technical proposal and financial proposal shall be marked “ORIGINAL” or “COPY” as appropriate. If there are any discrepancies between the original and the copies of the proposal, the original shall govern.
- 2.5.3 The original and all copies of the Technical proposal shall be placed in a sealed envelope clearly marked “TECHNICAL PROPOSAL”, and the original and all copies of the financial proposal in a sealed envelope duly marked “FINANCIAL PROPOSAL”. Both envelopes shall be placed in an outer envelope and sealed. This outer envelope shall bear the procuring entities address and other information indicated in the appendix to the instructions to consultants and clearly marked “DO NOT OPEN” before **(as indicated in Appendix to Information to consultants)**.
- 2.5.4 The completed Technical and Financial proposals must be delivered at the submission address on or before the time and date of the submission of the proposals indicated in the appendix to the instructions to consultants. Any proposals received later than the closing date for submission of proposals shall be rejected and returned to the individual consultant unopened. For this purpose the inner envelope containing the technical and financial proposals will bear the address of the individual consultant submitting the proposals.
- 2.5.5 After the deadline for submission of proposals the outer envelope and the technical proposals shall be opened immediately by the opening committee. The financial proposals shall be marked with the individual consultants number allocated at the time of opening the outer envelope and the technical proposals but shall remain sealed and in the custody of a responsible officer of the procuring entity up to the time set for opening them.

2.6 Evaluation of the Proposal (General)

- 2.6.1 From the time the proposals are opened to the time of the contract award, if any individual consultant wishes to contact the procuring entity on any matter relating to his/her proposal, he/ she should do so in writing at the address indicated in the appendix to the instructions to consultants. Any effort by an individual consultant to influence the procuring entity’s staff in the evaluation of proposals companion proposals or awards of contract may result in the rejection of the individual consultant proposal.

2.6.2 The proposal evaluation committee shall have no access to the Financial Proposal, which in any case will remain sealed, until the technical evaluation is concluded or finalized.

2.7 Evaluation of Technical Proposals

2.7.1 The evaluation committee appointed by the procuring entity to evaluate the proposals shall carry out the evaluation of technical proposals following the criteria set out in the terms of reference based on the following points criteria

	<u>CRITERIA</u>	<u>POINTS</u>
(i)	Qualifications of the consultant	20
(ii)	Experiencerelated to the assignment	30
(iii)	Methodology in response to the TOR	40
(iv)	Skills and competence	<u>10</u>
	Total points	100

2.7.2 Any proposal which will be examined and found not to comply with all the requirements for submission of the proposals will be declared non responsive. All the proposals found to have complied with all the requirements for submission of proposal shall be declared responsive by the evaluation committee.

2.7.3 Each responsive proposal will be given a technical score (ST). Any technical proposal which fails to achieve the total minimum score indicated in the appendix to the information to tenderers shall be rejected at this stage and will not proceed to the next stage of evaluation. The respective financial proposal will be returned to the individual consultant unopened.

2.8 Opening and Evaluation of Financial Proposals

2.8.1 After completion of the evaluation of Technical proposals the procuring entity shall notify the individual consultants whose proposal did not meet the minimum technical score or were declared non responsive to the RFP and terms of reference. The notification will indicate that their financial proposals shall not be opened and will be returned to them unopened after the completion of the selection process and contract award. At the same time, the procuring entity shall simultaneously notify the consultants who have secured the minimum technical score that they have passed the technical qualifications and inform them the date and time set by the procuring entity for opening their financial proposal. They will also be invited to attend the opening ceremony if they wish to do so.

2.8.2 The financial proposals shall be opened by the procuring entity in the presence of the individual consultants who choose to attend the opening. The name of the individual consultant, the technical score and the proposed fees shall be read out aloud and recorded. The evaluation committee shall prepare minutes of the opening of the financial proposals.

2.8.3 The formulae for determining the financial score (SF) unless an alternative formula is indicated in the appendix to the information to tenderers shall be as follows:

$Sf = 100 \times fm/f$ where
Sf is the financial score
Fm is the lowest fees quoted and
F is the fees of the proposal under consideration.

The lowest fees quoted will be allocated the maximum score of 100

2.8.4 The individual consultants proposals will be ranked according to their combined technical score (st) and financial score (sf) using the weights indicated in the appendix to the instructions to consultants. Unless otherwise stated in the appendix to the instructions to consultants the formulae for the combined scores shall be as follows;

$$S = ST \times T\% + SF \times P\%$$

Where

S, is the total combined scores of technical and financial scores

St is the technical score

Sf is the financial score

T is the weight given to the technical proposal and

P is the weight given to the financial proposal

Note P + T will be equal to 100%

The individual consultant achieving the highest combined technical and financial score will be invited for negotiations.

2.9 Negotiations

2.9.1 Negotiations will be held at the same address indicated in the appendix to the information to consultants. The purpose of the negotiations is for the procuring entity and the individual consultant to reach agreements on all points regarding the assignment and sign a contract.

2.9.2 The negotiations will include a discussion on the technical proposals, the proposed methodology and work plan, staff and any suggestions made by the individual consultant to improve the Terms of reference. The agreed work plan and Terms of reference will be incorporated in the description of the service or assignment and form part of the contract.

2.9.3 The negotiations will be concluded with a review of the draft contract. If negotiations fail, the procuring entity will invite the individual consultant whose proposal achieved the second highest score to negotiate a contract.

2.10 Award of Contract

2.10.1 The contract will be awarded after successful negotiations. After negotiations are completed, the procuring entity will promptly notify the other individual consultants that they were unsuccessful and return the financial proposals of the individual consultants who did not pass technical evaluation.

2.10.2 The selected individual consultant is expected to commence the assignment on the date indicated in the appendix to the information to consultants or any other date agreed with the procuring entity.

2.11 Confidentiality

2.11.1 Information relating to evaluation of proposals and recommendations of contract award shall not be disclosed to the individual consultants who submitted the proposal or to other persons not officially concerned with the process, until the winning individual consultant has been notified that he/she has been awarded the contract.

2.12 Appendix to information to consultants

Note on the Appendix to Information to Consultants

1. The Appendix to information to consultants is intended to assist the State Department of Devolution in providing specific information in relation to corresponding claims in the information to consultants included in Section II and the appendix has to be prepared for each specific consultancy.
2. The State Department of Devolution specify in the Appendix to information to consultant and requirements specific to the circumstances of the State Department of Devolution, the assignment of the consultancy and the proposals evaluation criteria that will apply to the RFP Consultancy.
3. In preparing the appendix, the following aspects have been taken into consideration.
 - (a) The information that specifies or complements provisions of Section II to be incorporated.
 - (b) Amendments of Section II as necessitated by the circumstances of the specific consultancy to be also incorporated
 - (c) Section II should remain unchanged and any changes or amendments should be introduced through the appendix.

2.12.1 Appendix to Information to Consultants

The following information for procurement of consultancy services and selection of consultants shall complement or amend the provisions of the information to consultants, wherever there is a conflict between the provisions of the information to consultants and the provisions of the Appendix to Information to consultants, provisions of the Appendix herein shall prevail over those of the information to consultants.

Information To Consultants	Appendix to Information to consultants
2.1 Introduction	<ul style="list-style-type: none"> (i). Request for proposal is open to interested local qualified individual consultant (ii). Consultants are encouraged to familiarize themselves with the detailed term of reference to respond appropriately. (iii). No tender security is required (iv). The Request for proposal closing/opening date is on 30th JANUARY, 2017 at 12.00 noon (East African Time). (v). No Performance security is required (vi). The Government of the Republic of Kenya reserves the right to accept or reject the tender in whole or part without assigning reasons for its decision thereof.
2.2 Clarification and amendment	<ul style="list-style-type: none"> (i). Tenders MUST be submitted through IFMIS SUPPLIER PORTAL: supplier.treasury.go.ke. (ii). Request for proposal MUST be addressed to, <ul style="list-style-type: none"> Principal Secretary, Ministry of Devolution and Planning, State Department of Devolution, P.O. Box 30004 - 00100, NAIROBI. Telephone +254-202217475 +254-202215245 (iii). All communication between the consultant and the procuring entity shall be in writing (iv). State Department of Devolution (SDD) may conduct verification/inspection exercise (Due diligence) to verify/ascertain authenticity of the information and documents submitted by the consultant. (v). Interested consultant/firm may obtain further information and clarification at the Head of Supply Chain Management Services office, State Department of Devolution (SDD) at Telposta Towers 1st floor, Wing C, Kenyatta Avenue, Nairobi
2.3 Preparation of	<ul style="list-style-type: none"> (i). Consultant MUST not modify, substitute, alter/change

Proposals	<p>the STANDARD TENDER DOCUMENT for Request for proposal. Consultants are only required to attach the necessary documents to the standard tender document.</p> <p>Any modifications, substitution, alterations/change of the STANDARD TENDER DOCUMENT will lead to disqualifications of the bid.</p> <p>(ii). Consultant <u>MUST</u> submit detailed CV with detailed work experience, referees among others and relevant copies of the certificates of the <u>ALL</u> the key and support staff to be involved in the consultancy.</p> <p>(iii). Consultant <u>MUST</u> indicate the responsibilities of the staff to be involved in the assignment.</p> <p>(iv). The Consultant <u>MUST</u> meet <u>ALL</u> the mandatory requirements to qualify for technical evaluation.</p> <p>(v). The Consultant <u>MUST</u> submit the necessary and relevant information required as per Terms of Reference (ToR)</p> <p>(vi). The Consultant <u>MUST</u> completely fill, sign and stamp the relevant documents.</p> <p>(vii). The Consultant <u>MUST</u> ensure they comply with <u>ALL</u> the mandatory requirements.</p>
2.4 Financial Proposal	<p>(i). Financial proposal <u>MUST</u> be in Kenya Shillings.</p> <p>(ii). The Request for Proposal <u>MUST</u> be valid for 150 days from closing/opening date and time</p> <p>(iii). The financial proposal <u>MUST</u> include government taxes and all other expenses.</p> <p>(iv). The Consultant <u>MUST</u> submit a detailed schedule of financial proposal indicating the deliverables.</p> <p>(v). The consultant with the highest combined score (technical and financial) will be invited for negotiations.</p>
2.5 Submission, Receipt and Opening of proposals	<p>(vii). The submission of the Request for Proposal bid document <u>MUST</u> be in TWO separate envelopes, TECHNICAL and FINANCIAL Proposals.</p> <p>viii). The TECHNICAL proposal <u>MUST</u> be in Original and Copy. The ‘ORIGINAL’ and ‘COPY’ must be marked clearly on the bid documents and must be placed in a sealed envelope clearly marked TECHNICAL PROPOSAL.</p> <p>NB. The STANDARD TENDER DOCUMENT for Request for Proposal must be part of TECHNICAL PROPOSAL.</p> <p>(ix). The FINANCIAL proposal <u>MUST</u> be in Original and Copy. The ‘ORIGINAL’ and ‘COPY’ must be marked clearly on the bid documents and must be placed in a sealed envelope clearly marked FINANCIAL</p>

	<p style="text-align: center;">PROPOSAL.</p> <p>(x). Both envelopes of the TECHNICAL AND FINANCIAL PROPOSALS shall be placed in an outer envelope and sealed and the envelope shall bear the tender number and name.</p> <p>(xi). The outer envelope bearing TECHNICAL and FINANCIAL PROPOSAL shall be deposited in the State Department of Devolution Tender Box located at Telposta Towers, 1st Floor, Wing C, along Kenyatta Avenue, outside Supply Chain Management offices, during normal working hours (8am to 5pm, East African Time), on or before 30TH JANUARY, 2017 at 12.00 Noon. (East African Time).</p> <p>(xii). Request for proposal bid documents submitted after the deadline shall NOT be accepted.</p> <p>(xiii). Bidders/representatives are free to attend the Request for Proposal bid opening exercise at the State Department of Devolution Board Room No.660 situated at 6th floor, Telposta Towers, along Kenyatta Avenue, Nairobi on the closing/opening date and time.</p> <p>(xiv). Only the TECHNICAL PROPOSAL will be opened on the closing/opening date and time.</p> <p>(xv). Only financial proposals of the consultants who pass technical evaluation shall be opened.</p> <p>(xvi). Those bidders who will not qualify at the technical evaluation level will have their financial bids returned un-opened.</p> <p>(xvii). Bulky Request for proposal bid documents that will not fit in the tender box shall be received at the Head of Supply Chain Management Office at the State Department of Devolution 1st Floor, Wing C, along Kenyatta Avenue, Nairobi during normal working hours (8am to 1pm and 2pm to 5pm East African Time).</p>
<p>2.6 Evaluation of the Proposal (General)</p>	<p>(i). The evaluation shall be carried out as per the detailed Evaluation Criteria set in the Request for Proposal tender documents.</p> <p>(ii). The evaluation will be carried out in three stage evaluation process;</p> <p>(a) Preliminary stage: - Proposal must meet all the mandatory requirements stage to proceed to the next stage.</p> <p>(b) Technical Stage: - Proposal must attain a minimum of 70% score to proceed to the next stage.</p> <p>(c) The formula in the ITC shall be used together with the weights allocated for the financial proposal. The firm</p>

	with the highest combined score shall be awarded the tender
2.7 Evaluation of Technical Proposals	<ul style="list-style-type: none"> (i) Evaluation shall be carried out in strict adherence to the Terms of Reference (ii) Evaluation shall be carried out in line with the detailed evaluation criteria set out in the Request for Proposal documents. (iii) Technical Proposal that attain a minimum of 70% score shall be considered responsive and shall proceed to the next stage (financial evaluation).
2.8 Opening and evaluation of financial Proposals	<ul style="list-style-type: none"> (i) Only Technical Proposal that attained a minimum of 70% score at technical evaluation shall be considered at this stage and their financial proposals will be opened. (ii) Invited Bidders/representative will be free to attend the financial proposal opening exercise. (iii) The weight allocated to the technical score is 0.7 and 0.3 for the financial score,. The firm with the highest combined score shall be awarded the tender
2.9 Negotiations	The consultant with the highest combined score (technical and financial) will be invited for negotiations.
2.10 Award of Contract	The consultant will commence the obligation of the contract immediately after negotiations or as may be agreed upon at contract signing.
2.11 Confidentiality	The clients and consultant shall ensure confidentiality during contract period.

2.12.2 MANDATORY REQUIREMENTS

S/No.	REQUIREMENTS
1.	Submission of Request for Proposal document in the right format (Original and Copy format)
2.	Consultant <u>MUST</u> not modify, substitute, alter/change the STANDARD TENDER DOCUMENT for Request for proposal.
3.	The consultant <u>MUST</u> submit copies of the identification documents (Identity Card or copy of Passport)
4.	Consultant <u>MUST</u> submit copy of Valid Tax compliance certificate
5.	The Consultant <u>MUST</u> duly fill completely, sign and stamp Anti-corruption declaration commitment/Pledge
6.	Submitted a detailed CV dully signed accompanied with copies of certificates
7.	All pages in the document submitted should be numbered

NB: - Tenderers MUST meet ALL the mandatory requirements to qualify for Detailed Technical Evaluation.

SPECIAL CONDITIONS OF THE CONTRACT

1. The Price quoted **MUST** remain **FIXED** during the contract period
2. The Accounting officer may at any time terminate the procurement proceedings without entering into the contract.
3. The procuring entity will provide office space

SECTION III- TERMS OF REFERENCE (TOR)

Notes on the preparation of the Terms of Reference

The terms of reference are the initial statement to the consultants, of the services to be performed and should therefore be clear and precise and should contain the following sections;

- (a) Background information
- (b) Objectives of the assignment
- (c) Scope of work or services of the assignment
- (d) Training requirements (where applicable)
- (e) Reporting systems and time schedules
- (f) Personnel, facilities and other requirements to be provided by the procuring entity
- (g) Terms of payment

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

SECTION IV - TECHNICAL PROPOSAL (TP)

Notes on the Preparation of Technical Proposal

The technical proposal shall be prepared and submitted by the consultants.

It shall contain the following:-

- (a) Submission letter
- (b) Particulars of the consultant and ALL support staff including Detailed Curriculum vitae (CV) and copies of the certificates
- (c) Comments and suggestions of the consultant on the terms of reference, personnel, facility, and other requirements to be provided by the procuring entity.
- (d) Description of the methodology and work plan for performing the assignment
- (e) Any proposed staff to assist in the assignment and their experience
- (f) Consultancy services activities time schedule.

SECTION V - FINANCIAL PROPOSAL (FP)

Notes on the Preparation of Financial Proposal

The financial proposal shall be prepared and submitted by the consultants. It shall contain the following.

- (a) Submission letter indicating total fees
- (b) Summary of costs
- (c) Detailed payment schedules and expected completion.
- (d) Breakdown of fees per activity
- (e) Breakdown of reimbursable costs/expenses per activity
- (f) Miscellaneous expenses
- (g) Form of Tender

SECTION VI - STANDARD CONTRACT FORMS

6.1 Form of Tender

To: Date.
.....
.....
Name and address of procuring entity Tender
No.....

Tender Name.....
.....
.....

Gentlemen and/or Ladies:-

1. Having examined the Tender documents including Addenda No. (Insert numbers) the receipt of which is hereby duly acknowledged, we the undersigned, offer consultancy services to review the County Governments Act, 2012 under this tender in conformity with the said Tender document for the sum of

KShs.....

.....
.....
.....**[Total Tender amount in words and figures]**

or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.

2. We undertake, if our Tender is accepted, to provide the Insurance Cover Services in accordance with the conditions of the tender.

3. We agree to abide by this Tender for a period of[number] days from the date fixed for Tender opening of the Instructions to Tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

4. This Tender, together with your written acceptance thereof and your notification of award, shall constitute a Contract between us subject to the signing of the contract by both parties.

5. We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this _____ day of _____ 20_____

[Signature]

[In the capacity of]

Duly authorized to sign tender for and on behalf of _____

6.2 CONFIDENTIAL BUSINESS QUESTIONNAIRE

You are requested to give the particular indicated in Part 1 and either Part 2(a), 2(b), or 2(c) Whichever applies to your type of business

You are advised that it is a serious offence to give false information on this Form.

Part _____ General:

Business Name

Location of business premises

Plot No. Street/Road

Postal Address Tel. No.Fax Email

Nature of business

Registration Certificate No.

Maximum value of business which you can handle at any one time Kshs...

Name of your bankers Branch

Part 2(a) – Sole Proprietor:

Your name in full Age

Nationality Country of origin

Citizenship details.....

Party 2(b) – Partnership

Give details of partners as follows

	Name	Nationality	Citizenship Details	Shares
1.....				
2.....				
3.....				
4.....				
5.....				

Part 2(c) – Registered Company:

Private or public

State the nominal and issued capital of the company –

Nominal Kshs.

Issued Kshs.....

Give details of all directors as follows

	Name	Nationality	Citizenship Details	Shares
1.....				
2.....				
3.....				
4.....				
5.....				

Date.....Signature of Tenderer

If a citizen, indicate under “Citizenship Details” whether by Birth, Naturalization or Registration

6.3 ANTI-CORRUPTION DECLARATION COMITMENT/ PLEDGE

(Sections 62 of the PPAD Act, 2015)

I/We/Messrs.....

of Street, Building, P O Box.....

.....

Contact

Phone

E mail.....

Declare that Public Procurement is based on a free and fair competitive Tendering process which should not be open to abuse.

I/We

declare that I/We will not offer or facilitate, directly or indirectly, any inducement or reward to any public officer, their relations or business associates, in connection with

Tender/Tender No

for or in the subsequent performance of the contract if I/We am/are successful and I/We am/are not debarred from participating in procurement proceedings.

Authorized Signature.....

Name.....

Title of Signatory.....

6.4 INDIVIDUAL PROFESSIONAL CONSULTANTS

(Lump-sum payment)

The contract form shall be completed by the procuring entity after the award of the contract and negotiation of the contract. It will be signed by both parties pursuant to the information to consultants clause 2.10.2

This Agreement, [hereinafter called “the Contract”) is entered into this _____
_____ [insert starting date of assignment], by and between.

_____ [Insert Client’s name] of [or whose
registered office is situated at] _____ [insert Client’s
address] (hereinafter called “the Client”) of the one part AND

_____ [Insert Consultant’s name] of [or
whose registered office is situated at] _____
_____ [insert Consultants address] (hereinafter called “the Consultant”) of the
other part.

WHEREAS the Client wishes to have the Consultant perform the services [hereinafter referred to as “the Services”, and

WHEREAS the Consultant is willing to perform the said Services,

NOW THEREFORE THE PARTIES hereby agree as follows:-

1. **Services**
 - (i) The Consultant shall perform the Services Specified in Appendix A, “Terms of Reference and Scope of Service, “which is made an integral part of this Contract.
 - (ii) The Consultant shall provide the personnel listed Appendix B, “Consultant’s Personnel,” to perform the Services.
 - (iii) The Consultant shall submit to the Client the reports in the form and within the time periods specified in Appendix C, “ Consultant’s Reporting Obligations.”

(Appendices A, B, and C to be prepared as appropriate)

2. **Term** The Consultant shall perform the Services during the period commencing on _____ [insert starting date] and through to _____ [insert completion date], or any other period(s) as may be subsequently agreed by the parties in writing.

3. **Payment** A. **Ceiling**
For Services rendered pursuant to Appendix A, the Client shall pay the Consultant an amount not to Exceed _____ [insert amount]. This amount has been established based on the understanding that it includes all the Consultant's costs and profits as well as any tax obligation that may be imposed on the Consultant.

B. **Schedule of Payments**
The schedule of payments is specified below (Modify in order to reflect the output required as described in Appendix C.)

Kshs. _____ upon the Client's receipt of the Draft report, acceptable to the Client; and

Kshs. _____ upon the Client's receipt of the Final report, acceptable to the Client.

Kshs. _____ Total

C. **Payment Conditions**
Payment shall be made in Kenya Shillings unless otherwise specified not later than thirty (30) days following submission by the Consultant of invoices in duplicate to the Coordinator designated in Clause 4 here below. If the Client has delayed payments beyond thirty (30) days after the due date hereof, simple interest shall be paid to the Consultant for each day of delay at a rate three Percentage points above the prevailing Central Bank of Kenya's average rate for base lending.

- Activities** be disqualified from providing goods, works or services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services.
9. **Insurance** The Consultant will be responsible for taking out any appropriate insurance coverage.
10. **Assignment** The Consultant shall not assign this Contract or sub-contract any portion of it without the Client's prior written consent.
11. **Law Governing Contract and Language** The Contract shall be governed by the laws of Kenya and the language of the Contract shall be English language
12. **Dispute Resolution** Any dispute arising out of the Contract which cannot be amicably settled between the parties shall be referred by either party to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the chairman of the Chartered Institute of Arbitrators, Kenya branch, On the request of the applying party.

For the Client

For the Consultant

Full name _____

Full name _____

Title _____

Title _____

Signature _____

Signature _____

Date _____

Date _____

6.5 REQUEST FOR REVIEW FORM

FORM RB 1

**REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

APPLICATION NO.....OF.....20.....

BETWEEN

.....APPLICANT

AND

.....RESPONDENT (*Procuring Entity*)

Request for review of the decision of the..... (*Name of the Procuring Entity*) of
.....dated the...day of20.....in the matter of Tender No.....of
.....20...

REQUEST FOR REVIEW

I/We.....,the above named Applicant(s), of address: Physical
address.....Fax No.....Tel. No.....Email, hereby request the Public
Procurement Administrative Review Board to review the whole/part of the above mentioned
decision on the following grounds , namely:-

- 1.
- 2.
- etc.

By this memorandum, the Applicant requests the Board for an order/orders that: -

- 1.
- 2.
- etc

SIGNED(Applicant)

Dated on.....day of/...20...

FOR OFFICIAL USE ONLY

Lodged with the Secretary Public Procurement Administrative Review Board on day of
.....20.....

SIGNED
Board Secretary