

REPUBLIC OF KENYA



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

**Kenya Devolution Support Programme for
Results (KDSP-R)**

**REQUEST FOR PROPOSALS FOR INDIVIDUAL
CONSULTANCY SERVICES**

For

**Development of Intergovernmental Alternative
Disputes Resolution Framework**

TENDER NO. MODP/SDD/KDSP/RFP/04/2016-2017

NOVEMBER, 2016

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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 TENDER NOTICE



REPUBLIC OF KENYA
MINISTRY OF DEVOLUTION AND PLANNING
STATE DEPARTMENT OF DEVOLUTION
TENDER NOTICE

TENDER INVITATION FOR INDIVIDUAL CONSULTANCY SERVICES
TENDER NO. MODP/SDD/KDSP/RFP/04/2016-2017
Kenya Devolution Support Programme for Results (KDSP-R)

The Government of Kenya through Ministry of Devolution and Planning (State Department of Devolution) has received financing from the World Bank through the Kenya Devolution support Programme for Results and intends to apply part of the financing for the KDSP-R to procure the following individual consultancy services; **Development of Intergovernmental Alternative Disputes Resolution Framework.**

The Ministry of Devolution and Planning (State Department of Devolution) now invites eligible individual consultants (expert) to respond to the Request for Proposal (RFP) for providing the above services as contained in the tender documents and Terms of Reference TOR available from the Ministry's website www.devolutionplanning.go.ke. The consultancy service is expected to take a maximum of three months (3months).

Interested consultants may download the tender document for the RFP from the Ministry's website and /or obtain further information at **Intergovernmental Relations Division, Ministry of Devolution and Planning (State Department of Devolution), 6th Floor, Teleposta Towers, Kenyatta Avenue, Nairobi, Kenya during office hours (8 am to 5 pm).**

Applications in clearly marked envelopes as per section 2.5 of the tender document (information to consultants) and indicating the tender number should be addressed to:

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

and be deposited in the **Tender Box** located at **Teleposta Towers, 1stFloor, Wing C, Kenyatta Avenue, Nairobi** between 0800hrs and 1700hrs (East Africa Time), **on or before 22ndNovember, 2016 at 11.00 a.m. (East Africa 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, Teleposta Towers, Nairobi**

NB: i. Applications through email shall not be accepted.
ii. Late submissions will not be accepted.

PRINCIPAL SECRETARY
STATE DEPARTMENT OF DEVOLUTION

SECTION II - INFORMATION TO CONSULTANTS

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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 amend 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 90 days 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 **22nd November 2016 at 11.00 a.m.**”
- 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) Experience related 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:

$$Sf = 100 \times fm/f \text{ where}$$

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 before commencement of 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.

Appendix to information to consultants

Note on the Appendix to Information to Consultants

1. The Appendix to information to consultant 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 should specify in the appendix information 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 should be 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.

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 and to consultants and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the information to consultants.

Clause Reference

2.1 The name of the client is: State Department of Devolution

2.1.1 The method of selection is: Quality and Cost Based Selection

2.1.2 Technical and Financial Proposals are requested: Yes.

The name, objectives, and description of the assignment are:
Development of Intergovernmental Alternative Disputes Resolution Framework

2.1.3 A pre-proposal conference will be held: No.

The name(s), address (es) and telephone numbers of the State Department of Devolution's official(s) are:

Principal Secretary,
Ministry of Devolution and Planning,
State Department of Devolution
P.o Box 30004-00100
NAIROBI.
+254-202217475
+254-202215245

2.1.4 Additional information in the Technical Proposal includes:

As outlined in the Terms of Reference.

2.1.7 Taxes: The Financial proposal should include all Government liable taxes e.g. VAT e.t.c. the tender document can be downloaded from the ministry's website by the consultants. It will not be sold.

2.5.2 Consultants must submit an original and two additional copies of each proposal.

The proposal submission address is:

Principal Secretary,
Ministry of Devolution and Planning, State Department of
Devolution
P.o. Box 30004-00100
NAIROBI.

Information on the outer envelope should also include: Description of the Consultancy Services.

2.5.3 Proposals must be submitted no later than the following date and time: **22nd November, 2016 at 11.00 a.m.**

2.6.1 The address to send information to the State Department of Devolution is:

Principal Secretary,
Ministry of Devolution and Planning, State Department of
Devolution
P.o Box 30004-00100
NAIROBI.

2.7.1 Consultant Selection Criteria

The following schedule shows the criteria and scores to be used in technical evaluation.

Criteria	Components	Points	Score
1. Qualifications		20%	20
2. Experience		30%	30
3. Proposal		40%	40
4. Competences		10%	10

2.7.3 The minimum technical score required to pass is **70 points.**

Alternative formulae for determining the financial scores is the following: No alternative formulae

The weights given to the Technical and Financial Proposals are:

3 T=0.80
P= 0.20

2.9.2 The assignment is expected to commence immediately after signing the contract.

SECTION III - TERMS OF REFERENCE (TOR)

Notes on the preparation of 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 and
- (g) Terms of payment

TERMS OF REFERENCE FOR CONSULTANT TO DEVELOP INTERGOVERNMENTAL ALTERNATIVE DISPUTE RESOLUTION FRAMEWORK UNDER SECTION 38 OF THE INTERGOVERNMENTAL RELATIONS ACT

1. Legal background

The Constitution in Article 159 (2) entrenches the principle of reconciliation, mediation, arbitration and traditional dispute resolution mechanisms as means of dispute resolution herein after referred to as ADR. To further deepen, enhance, and widen the scope of its application, the Constitution in Article 189 (3) declares that “in any dispute between Governments, the Governments shall make every reasonable effort to settle the dispute including by means of procedures provided under national legislation. Article 189 (4) demands that **“National Legislation shall provide procedures for settling Intergovernmental disputes by alternative dispute resolution mechanisms, including negotiations, mediation and arbitration”**.

The foregoing constitutional provisions are further fortified by the Intergovernmental Relations Act 2012, which dedicates the entire part IV to dispute resolution mechanisms. In particular Sections 32, 33, 35 and 36 deal broadly with the manner in which intergovernmental disputes are to be handled. Both the Constitution and the Statute referred to above contemplated that disputes between the two levels of Government would be settled amicably and only in exceptional circumstances would such disputes be subject of judicial interventions.

Jurisprudence for ADR

In a ruling delivered in Constitutional and Human Rights Division Petition Case Number 370 of 2015 between *Isiolo County Assembly Service Board and Another vs The Ministry of Devolution and Another*, Justice Onguto upheld both the spirit and the letter of the Constitution by holding that unless and until all alternative dispute resolution mechanisms provided in both the Constitution and the Statutes are fully applied and declared to have failed, any matter brought before court for determination would be in contravention of the Law. He therefore directed that parties pursue resolution of the dispute as by law provided. This ruling will hold and apply to all disputes unless vacated by a court of higher jurisdiction.

2. Justification

However, notwithstanding the foregoing legal framework, intergovernmental disputes continue to find their way in courts even before the mechanisms as by law established are exhausted. This has led to strained relations between the National and County Governments and unnecessary huge financial costs incurred as legal fees paid to prosecuting and defending advocates.

While the Law has in broad terms set forth the principal of alternative dispute resolution, it is observed that specific legal structures and procedures on how to actualize and manage the process have not been provided for. It is for this reason that the intergovernmental relations Act in section 38 gives the Cabinet Secretary Powers in consultation with the Summit to make regulations and procedures for dispute resolution mechanisms. Under the provisions of the forgoing section the department of devolution intends to come up with an institutional and legal framework by enacting regulations that will guide the conduct of ADR process.

Once in place and implemented; the regulations will form the National Framework for Alternative Dispute Resolution. The establishment of this framework will yield significant reduction in litigation resulting from intergovernmental conflicts and enhance cooperation and consultation in the discharge of functions between the two levels of government.

It is in this regard that the State Department of Devolution seeks to establish a process to oversee the development of the ADR mechanism. It is proposed that an expert consultant together with a technical team will make draft proposals that will thereafter be subjected to due process before the ADR mechanism can be operationalized.

3. Objectives

In enacting and operationalizing the regulations, the following objectives will be achieved:

- (i) Give effect to the Constitutional dictates and principles set out in Article 159(2), 189(3) and (4) for promoting mediation, arbitration and traditional dispute resolution as a means of dispute settlement.

- (ii) Actualize Sections 32, 33, 35, 36 and 38 of the Intergovernmental Relations Act by establishing a legal framework (structure) for processing and determining intergovernmental disputes.
- (iii) Promote intergovernmental relationships by embracing ADR as opposed to adversarial system of Dispute Settlement.
- (iv) Ensure speedy and cost effective determination of disputes for accelerated growth.

4. Scope of Work

The consultant will be expected to:

1. Review existing national legal framework for Alternative Dispute Resolutions.
2. Carry out a comparative best practice analyses of dispute resolution mechanisms in jurisdictions with similar political systems.
3. Carry out a review of the past intergovernmental conflicts to determine causes, nature and scope.
4. Plan, prepare and conduct consultative meetings with relevant stakeholders with a view to obtaining information that will lead to the determination of the composition of an entity/entities that will hear and determine disputes that are intergovernmental in nature.
5. Develop proposed legislative instrument to provide for:
 - a. Institutional framework for dispute resolution mechanism
 - b. Description of the qualifications, appointment criteria and procedures of persons to serve in the entity/entities
 - c. Outline of the powers and functions of the entity/entities created under paragraph 2 above
 - d. Funding, management and operational structures of the entity/entities

- e. Hearing, determination and enforcement of arbitral/ awards and judgments
 - f. Any other necessary provision, procedure, and or mechanism for effective dispute resolution
 - g. Propose procedures for referring the dispute to court in a failed dispute resolution process
6. Make recommendation, with appropriate justification and supporting memoranda, on whether the deliverables of (1) and (2) above would be developed as regulations of the Intergovernmental Relations Act 2012 or as separate legislation.

5. Deliverables

- a) **Inception Report:** This report will be used to assess 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. This output will be due two (2) weeks after signing of the contract
- b) **Baseline Report on the status of intergovernmental relations:** This report will, as a minimum document review past and existing disputes that are intergovernmental in nature, including a diagnosis of causes and sources specific to the conflicts identified; an overview of the key successes in out of court resolutions to some of the conflicts, including existing formal and informal mechanisms if any; a comparative best practice approach in ADR from jurisdictions with similar political systems, lessons learned from the experience in the three years of implementing devolution; as well as fact-based possible approaches or models of intergovernmental conflict mechanisms. This output will be due four (4) weeks after commencement.

- c) **Proposed draft ADR framework:** Based on the draft Baseline Report, a draft legislative instrument should be proposed. The draft legal instrument should be designed to conform to the outline provided under item 3 in these TOR. This output will be due eight (8) weeks after commencement.
- d) **Consultative Workshops:** These workshops will be targeted at participants drawn from institutions critical to the success of devolution (e.g. national government departments and independent commissions; the judiciary, parliament county governments, regulators; parastatals, etc). The workshop will be for both consultation and capacity-building. As such, the outputs described in (b) and (c) above are to be discussed at these workshops. The Ministry will cater for conferencing logistics for these workshops. This output will be due ten (10) weeks after commencement of the consultancy.
- e) **Final draft legislative instrument for Alternative Dispute Resolution Mechanisms.** This will incorporate outcomes of the Consultative Workshop and memoranda in support of the draft regulations. The form in which this final deliverable will be made will be in conformity with accepted legal drafting standards in the country. This output will be due fourteen (14) weeks after commencement.

6. Timelines and Payment Schedules

The project is expected to take a maximum of fourteen (14) weeks. The payment schedule is as indicated herein.

MILESTONE	DELIVERABLES	TIMELINE	% PAYMENT
Inception	Inception report	2 weeks	20%
ADR Mechanism framework	Draft ADR regulations	8 weeks	30%
Finalization of the Draft ADR Mechanism Instrument	Final draft of legal instrument on ADR	14 weeks	50%

7. Consultant Qualifications and Experience

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

- a) A degree in law from a University Recognized in Kenya.
- b) Be a member of the Law Society of Kenya with a current practicing certificate
- c) Experience in legislative drafting;
- d) Minimum 10 years' practical experience in Law;
- e) Experience in county and national legal frameworks, constitutional law and intergovernmental relations;
- f) Experience in stakeholder management;
- g) Excellent written and communication skills;
- h) Ability to work and deliver within strict deadlines.

8. Consultant Selection Criteria

Criteria	Points	Score
1. Qualifications	10%	20
2. Experience	30%	30
3. Proposal	40%	40
5. Competences	20%	10

The Technical Evaluation Committee appointed shall use the following matrix developed from the above criteria for evaluating the bids submitted

NO.	Technical Proposal Scoring Criteria	Max. Points	Remarks
1.	Qualification of the Consultant (20 marks)		
	a) Degree in Law, public policy, public administration or governance from a University Recognized in Kenya.	10	
	b) Qualification in Legislative Drafting	5	
	c) Holder of Current Practicing Certificate	5	
2.	Experience (30 marks)		
	a) Minimum 10 years' practical experience in Law;	10	
	b) Experience in county and national legal frameworks, constitutional law and intergovernmental relations;	5	
	c) Experience in stakeholder management;	5	
	d) Experience in public policy formulation; <ul style="list-style-type: none"> • 10 years and above • 6-9 years • 1-5 years 	10 10 6 4	
3.	Proposal (40 marks)		
3.1	Approach to Methodology: Clear methodology indicating various stages on how the consultant intends to achieve TOR objectives. The evaluation will consider the following;		
	a) The consultants understanding and interpretation of TOR and the assignment	10	

	b) Breakdown of activities leading up to deliverable which should include data collection, analysis and report writing etc	5	
3.2	Work Plan: Clear work plan indicating the various activities and when the deliverable are expected. Work plan/ Gantt chart to be provided indicating timelines for each of identified activities	15	
3.3	Organization Will consider the manner in which the consultant has structured resources to ensure successful and timely completion of the tasks. The consultant should disclose whether he/she will be a single consultant or will work with assistants. Where it's a team, consultant must disclose the number and qualifications of the assistants	10	
4.	Competence (10 marks)		
	a) Evidence of participation in drafting of legislation	5	
	b) Evidence of Presentations of legal journals or professional papers	2	
	c) Evidence of Training in Public policy, Public administration or governance	3	

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 including Curriculum vitae (CV)
- (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
- (f) Consultancy services activities time schedule.

(To be prepared by the consultant as appropriate)

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) Breakdown of fees per activity
- (d) Breakdown of reimbursable costs/expenses per activity
- (e) Miscellaneous expenses

(To be prepared by the consultant as appropriate)

SECTION VI - STANDARD CONTRACT FORM

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

SECTION VI - STANDARD CONTRACT FORM

1. STANDARD CONTRACT FORM

**INDIVIDUAL PROFESSIONAL CONSULTANTS
(Lump-sum payments)**

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.

4. **Project Administration**

 - A. **Coordinator**
The Client designates _____
[insert name] as Client's Coordinator; the Coordinator will be responsible for the Coordination of activities under this Contract, for acceptance and approval of the reports and of other deliverables, by the Client and for receiving and approving invoices for payment.
 - B. **Reports**
The reports listed in Appendix C, "Consultant's Reporting Obligations," shall be submitted in the Course of the assignment and will constitute the basis for the payments to be made under paragraph 3.
5. **Performance Standards**
The Consultant undertakes to perform the Services with the highest standards of professional and ethical competence and integrity. The Consultant shall promptly replace any employees assigned under this Contract that the Client considers unsatisfactory.
6. **Confidentiality**
The Consultant shall not, during the term of this Contract and within two years after its expiration Disclose any proprietary or confidential Information relating to the Services, this Contract Or the Client's business or operations without the Prior written consent of the Client.
7. **Ownership of Material**
Any studies, reports or other material, graphic, software or otherwise prepared by the Consultant for the Client under the Contract shall belong to and remain the property of the Client. The Consultant may retain a copy of such documents and software.

8. **Consultant Not to be Engaged in certain Activities** The Consultant agrees that during the term of this Contract and after its termination the Consultant and any entity affiliated with the Consultant shall 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 _____

2.
FORM RB 1

REQUEST FOR REVIEW FORM

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