

REPUBLIC OF KENYA



OFFICE OF THE DEPUTY PRESIDENT

STATE DEPARTMENT FOR DEVOLUTION

Second Kenya Devolution Support Program (KDSP II)

Credit No : IDA-7447-KE

Project ID No : P180935

TERMS OF REFERENCE FOR AN INDIVIDUAL CONSULTANT TO CONDUCT AN AN INDEPENDENT VERIFICATION OF THE ACHIEVEMENT OF MINIMUM ACCESS CONDITIONS BY COUNTIES

A. Background

The Government of Kenya has received an International Development Association (IDA) Credit in the amount of EUR140.7 million (US\$150 million equivalent) from the World Bank for implementing the Second Kenya Devolution Support Program (KDSP II) (Credit Number IDA-7447-KE) over a four-year period, starting December 7th, 2023. KDSP II is supporting a sub-set of reforms envisaged under the Government's Devolution Sector Plan.

The Program, whose development objective (DO) is to “strengthen county performance in the financing, management, coordination, and accountability for resources”, supports a series of key interventions (at the input and output levels) that contribute to intermediate outcomes and, in turn, contribute to outcomes. To achieve the DO, the Program is expected to significantly improve outcomes in the participating counties under three key result areas (KRAs) outlined below:

- **KRA 1: Sustainable Financing and Expenditure Management.** This KRA supports efforts towards enhancing financing to, and expenditure management by counties. In this KRA, the national-level activities, supported through investment project financing (IPF) entail the development of frameworks and guidelines for county revenue mobilization, policy to support financing for service delivery units, and structures and tools to support counties' institutionalization of shared project management functions. The expected outcomes will include an improved revenue mobilization agenda (for example, increased revenue collection, enhanced accuracy of fiscal forecasting, and expansion of revenue base), timely communication on releases of conditional grants, automation of the county exchequer requests, and implementation of pending bills action plans. The relevant disbursement linked indicators (DLIs) under this KRA are on (i) the average number of days it takes for the National Treasury, Office of the Controller of Budget, and the Central Bank of Kenya to process a county exchequer requisition once submitted; (ii) participating counties that have increased their own source revenue by at least 5 percent annually, over and above

the rate of inflation; and (iii) participating counties that have prepared and are implementing action plans to reduce their stock of pending bills and maintain it at minimal levels.

- **KRA 2: Intergovernmental Coordination, Institutional Performance, and Human Resource Management.** This KRA supports national and county government initiatives towards strengthening intergovernmental coordination, institutional performance, and Human Resource Management (HRM). The national-level activities, financed through the IPF, will support the development of policy and administrative procedures for the operationalization of intergovernmental, intercity, and inter-municipality forums. The IPF will also support the development of guidelines, including county HR and skills audits, model organization structures for customization by counties, and performance management. DLs under this KRA will target counties implementing recommendations of HR, skills, and payroll audits, aligning county staffing with departmental functions in select sectors, and improving the credibility of the payroll. The relevant DLs under this KRA are on (i) participating counties that have integrated their HR records, authorized staff establishment and payroll, and uploaded cleaned payrolls in the human resource management information system; and (ii) participating counties that are enhancing accountability for results through an integrated performance management framework.
- **KRA 3: Oversight, Participation, and Accountability.** KRA 3 will support improvements in oversight, participation, and accountability. The IPF component will support the development of guidelines on project stocktaking, community-led project management committees, and climate change risk screening and preparedness (including assessment of the climate resilience of existing infrastructure assets). It will also support the rollout of the county (public Investment Management (PIM) framework. The expected outcomes include the establishment of project management committees, county compliance with the PIM framework, and developing and operationalizing a county investment dashboard with a citizen feedback interface (which is used to improve public investments). Additionally, it is expected that county assemblies will establish a fiscal bureau to strengthen the role of the legislatures in budget scrutiny and oversight. The relevant DL under this KRA is on Participating counties that have established public investment management dashboards with citizen feedback mechanisms.

B. KDSP II GRANT MECHANISMS

The DLs under KDSP II are linked to two types of conditional grants:

The DLs under KDSP II are linked to two types of conditional grants: the **Institutional Support Grant (ISG) also referred to as level I grants;** and the **Governance and Service Delivery Grant (GSDG) also referred to as level II grants.** The objective of the ISG is to support county governments in the implementation of key reform steps that will facilitate the achievement of disbursement-linked results. This includes the implementation of policies and legislation, strengthening governance systems, and technical assistance, institutional strengthening, and capacity building. The ISG will also support program coordination and program-related technical consultations. The objective of the GSDG is to provide county governments with fiscal space and incentives to finance investments to support service delivery.).

The incentives for participating County governments are provided through **Minimum Conditions (MCs)** and **Performance Measures (PMs)**, which are sets of indicators that can be scored and reflect the achievement of results and, consequently, the Program objectives. For the first financial year (FY 23/24), an individual consultant will be hired to conduct an independent verification on whether counties have met the Minimum Access Conditions (MACs).

Since the Level 1 Grants are structured to incentivize and support county governments to undertake core institutional reforms through institutional capacity development activities, the expected outcomes are related to the strengthened capability to access the Level 2 Grants. The list of eligible and ineligible expenditures for this grant can be found in the Program Operations Manual (POM). The Level 1 Grant is tied to DLI 2 and will be accessed once a county achieves the DLI 2 results, which are as follows.

In the first year of the Program (*read MACs that need to be assessed for the financial year 2023/2024 and need to be met for the level 1 grants to be disbursed in financial 2024/2025*)

- i) Establish the institutional arrangements for the implementation of KDSP II, specifically:
 - a) To establish the County Program Steering Committee (CPSC) with composition and terms of reference as provided for in the POM.
 - b) To establish the County Program Technical Committee (CPTC) with composition and terms of reference as provided for in the POM.
 - c) Establishing the County Program Implementation Unit (CPIU) within the appropriate County Government department with the composition outlined in the POM and formal appointment of the CPIU personnel.
- ii) Sign a participation agreement providing for, among others, publishing the budget and expenditure data.
- iii) Prepare and approve work plans, cash plans, and budgets consistent with the agreed methodology and standards.

The verification exercise to inform release of the Level 1 Grant will be conducted as an integral part of the overall Annual Performance Assessment. The fulfillment of the DLI 2 results is a binary (yes/no) question, and subsequently, in order to achieve the result, the score for all the applicable results must be a 'yes.' Failing one (that means scoring a 'no') means that the DLI is not met; thus, the county will not receive Level 1 funding for the designated financial year.

Subject to the achievement of the results for DLI 2, each of the eligible counties will access a flat rate of US\$250,000 per year for the first 3 years of the Program. County governments are required to plan and budget for the use of the Level 1 Grant.

C. The Annual Performance Assessment (APA) Guidelines and the Verification Protocol

The APA whose cycle is provided in Table 1, will be undertaken to verify the achievement of the minimum access conditions for DLI2, as outlined above. The results of the APA will determine the disbursement of Program funds. The achievement of DLI 2, which is linked to the Institutional Strengthening Grant, will be assessed on a binary basis. Formal entry and exit meetings will be held between the independent verification agent (IVA), the National Program Coordination Unit (NPCU), and County Program Implementation Unit (CPIU) to discuss the

scope of the assessment and the verification process, including required documentation and timelines. The exit meeting will discuss the findings of the verification exercise. The latest official full set of APA Guidelines and DLI Verification Protocols, which apply to all the counties are provided in the POM. Formal revisions to the APA Guidelines and DLI Verification Protocols can be proposed by the IVA (consultant) and NPCU, submitted to the World Bank through the prescribed procedure in the POM for review and no objection, and disseminated immediately to all the counties before the start of the exercise.

The Performance and Assessment Cycle

Program Evaluation and Disbursements	FY 2023/24
Performance period being assessed/year under assessment.	Dec 23-Jun 2024
Interim Performance Assessment period for the IVA	April/May/June 2024
Verification report submitted by the consultant to NPCU	May/June 2024
Verification report submitted to World Bank	June 2024
Publish results of IVA by SDD on their website	June 2024

a. The DLI Verification Protocol;

As detailed in the POM, the verification protocol for each DLI comprises of:

- i) The detailed definition/description of the DLI 2, including definitions of key terms.
- ii) The data source to be used by the IVA to assess the achievement of DLI 2 conditions.
- iii) The procedure that the IVA consultant will use to assess whether the county has achieved (passed) or not achieved (failed) DLI 2.

In interpreting the Verification Protocols, it is important to note the following:

- i) The detailed definition/description of the DLI in the verification protocol is meant to be limited in terms of what a law contains or how a system should function, it describes the minimum content/ expected to achieve DLI 2.
- ii) This protocol does not exhaustively record the IVA's data source and data requirements. In consultation with the NPCU, the consultant may request for any additional data sources that may be required for confirmation of achievement of results.
- iii) This protocol does not exhaustively record the procedures the consultant will use to assess counties' achievement of the DLI 2. In consultation with the NPCU the consultant may undertake additional procedures or amend the procedures to confirm the achievement of results
- iv) These adjustments/changes implied in II and III above must be done and communicated to the counties before the commencement of the assessment.

D. The Overall Objective

The overall objective of the consultancy is to independently verify the achievement of conditions under DLI 2 using the verification protocol outlined in the POM. The consultant is expected to undertake the exercise between **April and June, 2024.**

E. Scope of Work of the IVA

The State Department for Devolution (SDD) will engage the consultant, who will report to the KDSP II NPCU Coordinator on a day-to-day basis. The results will be as per the proposed timing outlined in the table below.

Assessment and Verification Schedule:

Activities	Timelines
<ul style="list-style-type: none">▪ Preparatory activities including agreement with consultant▪ Entry Meeting▪ Meeting to discuss inception report including data collection and reporting tools	30 th April – 20 th May 2024
<ul style="list-style-type: none">▪ Assessment exercise,▪ Discussion on the preliminary report.	22 nd May 2024 – 3 rd June 2024
Appeals & resolutions	4 th – 10 th June 2024
Synthesis of the 47 counties reports to produce the draft consolidated Report	12 th - 17 th June 2024
Revision of report and submission of the final report	24 th June 2024

F. Deliverables

- 1. An inception report:** outlining the consultants' understanding of the assignment, the purpose and scope of the assessment as set out in the Terms of Reference, the methodology, and timelines.
- 2. County Assessment Reports:** For each county, the report will contain the following information.
 - i) Description of the work done by the consultant for DLI 2
 - ii) A binary assessment for the minimum conditions (yes or no)
- 3. Consolidated Verification Report:** This will be a compilation report containing the County Assessment Reports of the participating counties.

In addition to these reports, the consultant will retain documentary evidence to confirm that all the checks in the verification protocol have been carried out.

G. Qualifications of Consultant

Specific qualifications

Educational Requirements	Experience required
<ul style="list-style-type: none"> ▪ A minimum of a post-graduate degree in Governance, Leadership, Public Administration, Public Policy, Management Science, Human Resource, Education, Business Administration, Project Management, Statistics or any other Related Social Science Disciplines from a recognized university 	<ul style="list-style-type: none"> ▪ A minimum of 10 years' work relevant experience with the public sector in a context of devolved system of governance. ▪ Demonstrated experience of having undertaken at least 2 similar assignments in the Public Sector in the last 5 years ▪ At least 3 other assignments with government and/or development partners in multiple sectors & disciplines in the last 10 years. ▪ Experience in the devolved system of governance; have worked with both National and County levels of the government. ▪ Proven research and analytical skills ▪ Excellent oral and written communication skills ▪ Registered member of a relevant professional body where applicable

H. Responsibilities of the client

The Client will avail all relevant documents to the consultants and will facilitate coordination with the counties. Documents to be provided by the client will include:

- i. Program Appraisal Document (PAD)
- ii. Program Operation Manual (POM)
- iii. Any other material considered relevant during the procurement process.
- iv. To provide quality control during implementation

I. Responsibilities of the Consultant

The Consultant shall be responsible for the provision of all the necessary resources to carry out the services such as project transportation for visits in counties, subsistence allowances, accommodation, information technology, means for communications, reporting materials, insurance and any other required resources.

The Consultant is expected to undertake activities that will ensure that outputs are consistent with the professional and legal requirements.

J. Payment schedule

The total duration of the assignment will be not more than 40 working days. The proposed payment schedules are based on satisfactory performance which will be negotiated with the successful consultant as presented in the following table

S/No.	Deliverables	Timelines after contract commencement	Percentage of the contract amount
1.	An inception report: outlining the consultants' understanding of the assignment, the purpose and scope of the assessment as set out in the Terms of Reference, the methodology, and timelines.	1 week	10%
2.	Draft Verification report for each County (with compendium of documentary evidence and quantitative data), The report will contain the following information. <ul style="list-style-type: none"> I. Description of the work done by the consultant for DLI 2 II. A binary assessment for the minimum conditions (yes or no) III. Documentary evidence to substantiate the APA results 	3 weeks	40%
3.	Consolidated Verification Report: This will be a compilation report containing the Verification Reports of the participating counties, and the consolidated documentary evidence.	4 weeks	50%

K. Management and accountability of the assignment

SDD is the client for the consultancy services. In terms of performance and deliverables, the consultant will carry out the assignment under the direction of, and report to the Program Coordinator in the NPCU. The consultant shall work closely with NPCU to ensure timely delivery of the outputs.

L. Code of Ethics for the Consultant

A code of conduct/ ethics for the consultant will be signed prior to undertaking the assignment. The content of code of ethics will mainly focus on adhering to the procedures, integrity and anti-corruption issues.

(i) Collection and Collation of Documentary Evidence

The Consultant will collect and submit to the SDD all documentary evidence to substantiate the APA results in a format to be agreed with the client.

M. Confidentiality and Data Ownership

The consultant shall adhere to the World Bank Data Privacy and Protection regulations and all the relevant confidentiality and data ownership laws and regulations of Kenya throughout the consultancy period and will protect the confidentiality of participating counties at all stages. All data is confidential and is the property of the State Department for Devolution. No data or other information from this consulting services contract will be released to third parties without the written prior approval of SDD. The consultant will provide all reports and deliverables in English. All documents are proprietary to and shall be collected and stored at the SDD for future reference. The consultant may not distribute any data collected under the APA process to any entity without express written prior approval from the Client.