



**Project Name: SECOND KENYA DEVOLUTION SUPPORT PROGRAM (KDSP II)**

**Project ID: P180935**

**Contract No.: KE-DD-438548-C-CQ**

**Terms of Reference for a Consultancy to Audit Policies, Laws, and Regulations for Devolution**

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**A. BACKGROUND**

The Government of Kenya has received an International Development Association (IDA) Credit in the amount of EUR.140.7 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 7<sup>th</sup>, 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 toward enhancing financing 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, that is, the county SPMU. 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 toward 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 on county HR and skills audits, model organization structures for customization by counties, and performance management. DLIs 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 credibility of the payroll. The relevant DLIs 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.** This KRA supports 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 DLI under this KRA is on Participating counties that have established public investment management dashboards with citizen feedback mechanisms.

## **B. STATEMENT OF THE PROBLEM**

Kenya promulgated a new Constitution in the year 2010, introducing the devolved system of governments; the National Government and forty-seven (47) County Governments. The Fourth Schedule of the Constitution outlines functions for each level of government; thirty-five (35) for the national and fourteen (14) for the county level. There is demonstrated improvement in service delivery at the decentralized units for the last ten (10) years of implementing the system of devolved governance. Despite the progress in devolution there are emerging challenges and weakness in the policy and legal framework. Many of the policies and laws were established prior and immediately following promulgation of the Constitution. There is the need to review, amend and adapt some of the laws to address current needs within the system of devolved governance for improved delivery of devolved services. There are significant challenges in the extent of conformity with principles of devolution envisaged in the Constitution and overall compliance with the policy and legal frameworks governing performance of the fourteen functions and subsequent delivery of better devolved services.

### **C. OBJECTIVE OF THE ASSIGNMENT**

The objective of the consultancy is to undertake audit of policies, laws, and regulations on devolution with respect to:

- (i) Evaluate national and county governments legislations, policies, and regulations to identify provisions that are inconsistent with the devolved system of government;
- (ii) Examine county-specific laws, policies, and regulatory frameworks to pinpoint inconsistencies with the national level laws, regulations and policies that obstruct the efficient functioning of devolved governance and service delivery;
- (iii) Identify impediments to devolution by analyzing how national and county-level legal and policy frameworks interact, highlighting specific barriers—such as overlaps, ambiguities, or misalignments that impede the operationalization of Kenya’s devolved system.
- (iv) Review findings, recommendations, and implementation status of prior studies, such as the IGRTC legislative gap analysis of 94 pieces of legislation, to inform and enhance strategies for implementing the planned audit recommendations
- (v) Recommend actionable amendments or strategies to address identified impediments, ensuring that national and county laws and policies enhance intergovernmental coordination, institutional performance, and the overall effectiveness of devolution.

### **D. SCOPE OF THE WORK**

The work will involve an analysis of national and county level policy and legal frameworks that facilitate the devolved system of government. These laws include the County Governments Act CAP 265, the Intergovernmental Relations Act CAP 265F among others relating to service delivery, intergovernmental coordination, institutional performance, and human resource management. The Consultant will identify gaps, contradictions, or ambiguities in the existing frameworks that hinder effective implementation of devolution in terms of misalignment to the Constitution and overarching national policies and legal frameworks. The Consultant will work closely with a multi-agency technical committee to ensure involvement of key stakeholders, including national and county governments, and other relevant bodies, to gather insights and validate findings.

### **E. DURATION OF THE ASSIGNMENT**

The initial assignment is envisaged to take a total of two months from July to September being two months from the contract commencement date.

The consultant shall provide in the financial proposal the total price for all the activities. For each activity the consultant shall list all costs associated with the assignment, including (a) remuneration for Key Experts and Non-Key Experts and (b) reimbursable expenses. During the contract period for the assignment, the consultant shall maintain its original financial proposal without any change, including the proposed rates, costs for each cycle and the total price. The key experts required for each cycle in terms of expertise/field and numbers are provided and shall be maintained for the entire duration of the assignment.

The assessment of the consultant’s performance will depend on factors including, but not limited to, meeting the timelines specified in the contract, submission of accurate reports and meeting

the contractual obligations stipulated in the signed contract. The assessment process is expected to be non-discriminatory, transparent, reliable and feasible against which the consultant's performance will be measured.

**F. SPECIFIC TASKS AND DELIVERABLES**

Specific tasks to be undertaken under the consulting services contract are included below.

- i. Identify national and county governments legislations, policies, and regulations that are inconsistent with the devolved system of government as enshrined in the Constitution of Kenya;
- ii. Identify county-specific laws, policies, and regulatory frameworks that are inconsistent with the national level laws, regulations and policies;
- iii. Identify national and county-level policy and legal frameworks bottlenecks in terms of specific barriers such as overlaps, ambiguities, or misalignments that impede the operationalization of Kenya's devolved system.
- iv. Recommend actionable amendments or strategies to address identified impediments, ensuring that national and county laws and policies enhance intergovernmental coordination, institutional performance, and the overall effectiveness of devolution.
- v. Undertake stakeholder engagement on the key recommendations in consultation with the Multi-Agency Technical Committee

**Deliverables:**

- 1. Inception Report containing methodology for carrying out the assignment.
- 2. Draft report
- 3. Revised Draft Audit Report
- 4. Stakeholder engagement Report
- 5. Final report

<b>Deliverable</b>	<b>Timeline</b>	<b>Frequency</b>
Inception report	15 <sup>th</sup> July, 2025	Once
Draft report	15 <sup>th</sup> August, 2025	Once
Presentation of Draft Report to Technical Committee	18 <sup>th</sup> to 23 <sup>rd</sup> August	Once
Stakeholder engagement Report	10 <sup>th</sup> September, 2025	Once
Final report	30 <sup>th</sup> September, 2025	Once

**G. Minimum requirements for Consultant's qualification and experience.**

- a) **Core business and years in business.** The firm shall be registered/incorporated as a consulting firm for a period of a minimum of 5 years.
- b) **Relevant experience.** The firm must have the following general and specific experience:
  - The firm shall have a minimum of 5 years of experience in conducting research, evaluations or assessments;
  - Having successfully undertaken evaluation of at least two (2) programs or projects; and
  - Experience in evaluating, drafting or assessing devolution related laws or policies

- c) shall demonstrate having the requisite technical and managerial capacity to undertake the assignment in the submitted company profile. **Key Experts will not be evaluated at the shortlisting stage.**

**Team composition and qualification and experience requirements for the key experts.**

The team should be made up of the following skills – an overall team leader and the following team members. A team member can have more than one skill.

<b>Position</b>	<b>Academic Qualifications</b>	<b>Experience required</b>
<b>Team Leader</b>	A minimum of Master's Degree in Law, Public Policy, Economics or Related Disciplines	A minimum of 18 years' work experience in the legal profession including legal research, practice and administration, public policy implementation. At least five years of the experience should be in the implementation of devolution and constitutionalism.
<b>Devolution and Intergovernmental relations Expert</b>	A minimum of Master's degree in relevant social sciences field from a recognized university	A minimum of 10 years' work /consulting experience in constitutionalism, devolution, intergovernmental relations, and citizen engagement activities.
<b>Performance Monitoring and Evaluation Expert</b>	Minimum Bachelor's degree in relevant social sciences with bias on project management and /or monitoring and evaluation	A minimum of 10 years work/ consulting experience in the field of performance assessment, monitoring and evaluation preferably in the devolved governance.
<b>Public Policy &amp; Civic Engagement specialist</b>	A minimum of Master's degree in Arts with specialization in social studies, public policy or public administration preferably in public finance.	A minimum of 10 years' work experience in public policy, social accountability management and/or public finance. At least five years should be in working with devolved system of governance.
<b>Environmental management Expert</b>	Master's degree in environmental sciences, environmental engineering, natural sciences, natural resources management, or any other related course from a recognized university	At least 7 years' work experience in environmental safeguards management in collaboration with agencies of both levels of government.

## **H. ANNEXES TO THIS TERMS OF REFERENCE:**

- Program Operations Manual (POM) / Program ESSA Report  
<http://documents1.worldbank.org/curated/en/099100623111533349/pdf/p1809350017c76020843f0467d17c880f5.pdf>
- KDSP II Labour Management Procedures (LMP)  
<https://www.devolution.go.ke/sites/default/files/2024-03/P176698-%20Labour%20Management%20Procedures%20for%20KDSP%20II.pdf>
- The State Department for Devolution Program Performance Review (PPR) 2021/22 to 2023/2024  
<https://www.devolution.go.ke/sites/default/files/2024-10/PROGRAMME%20PERFORMANCE%20REVIEW.pdf>

## **I. RESPONSIBILITIES OF THE CONSULTANCY FIRM**

The consultancy firm 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, and 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. RESPONSIBILITIES OF THE CLIENT**

The Client will avail all relevant documents to the consultants and will facilitate coordination with the counties. The client will provide any other material considered relevant during the procurement and implementation process. The client will also provide quality control during implementation.

The client will also provide office space whenever needed for the consultant to undertake the exercise.

## **K. MANAGEMENT, ACCOUNTABILITY OF THE ASSIGNMENT and QUALITY ASSURANCE**

The SDD is the client for the consultancy services. In terms of performance and deliverables, the consultancy firm will carry out the assignment under the direction of, and report to the Director, Partnership and Intergovernmental Relations. The firm shall work closely with the Policy and Research Department to ensure timely delivery of the outputs.

**Communication of Audit Schedule:** The consultant will prepare the audit schedule for the participating counties in consultation with SDD, COG and IGRTC.

**Code of Ethics for the Consultant:** It is critical to emphasize that there is the need to be objective and maintain integrity throughout the process. A code of conduct/ ethics for the consultant will be signed by all members before undertaking the assignment. The content of

code of ethics will mainly focus on adhering to the procedures, integrity and anti-corruption issues. Harsh disciplinary action/ punitive measures will be imposed against non-compliant assessment and quality control for members as well as the involved Counties.

**Orientation of the Consultant’s team members:** The consultant team members will have an orientation workshop (one-two days) just before the assignment for purposes of ensuring standardized interpretation of both indicators and processes. The content of orientation should include but not be limited to indicators, information sources, analysis and reporting guidelines as well as the code of ethics. The consultant will prepare workshop materials with inputs from SDD and relevant stakeholders.

**L. PAYMENT SCHEDULE**

S/NO.	Deliverables	Timelines after Contract Commencement	Percentage of the contract Amount	
	<b>Inception report</b>	10 days	10%	
	Draft report	40 days	30%	
	Revised Audit Report	45 days	10%	
	Stakeholder engagement Report	50 days	20%	
	Final report	60 days	30%	
	Total		100%	

**Collection and collation of documentation evidence:** The consultant will collect and submit to SDD all documentary evidence to substantiate the APA results in a format to be agreed with the client.

**M. PROPRIETY RIGHTS, CONFIDENTIALITY AND DATA OWNERSHIP:** The consultancy firm shall adhere to the World Bank Data Privacy and Protection regulations and all the relevant confidentiality and data ownership laws and regulations of Kenya through the consultancy period and will protect the confidentiality of participating counties. All data is confidential and is the property of the SDD. No data or other information from this consulting services contract will be released to third parties without the written prior approval of the Ministry. The consultant team 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 to any entity without express written prior approval from the Client.