



REPUBLIC OF KENYA

THE NATIONAL TREASURY AND PLANNING

FINANCING LOCALLY - LED CLIMATE ACTION (FLLoCA) PROGRAM

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PROGRAM IMPLEMENTATION UNIT (PIU)

TERMS OF REFERENCE

**ANNUAL PERFORMANCE ASSESSMENTS (APAs) OF
47 COUNTIES FOR THE FINANCING LOCALLY-LED
CLIMATE ACTION (FLLoCA) PROGRAM**

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1. INTRODUCTION

Kenya's economy is highly dependent on its natural base. This makes the country highly vulnerable to the impacts of climate change. Climate change, if left unattended will impede the Vision 2030 goal of creating a globally competitive and prosperous nation with a high quality of life.

Internationally, Kenya is a party to the United Nation Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol (KP) and Paris Agreement (PA). The Paris Agreement aims to strengthen the global response to the threat of climate change in the context of sustainable development. The UNFCCC Agreement sets out a goal of increasing the ambition to mobilize sustainable and predictable climate finance, annually and up to 2050, to support transition to low carbon green economies to realize a net zero carbon development path through enhanced resilience, adaptation and mitigation in developing countries.

In 2016, the Government of Kenya enacted the Climate Change Act (2016), which was followed by the adoption of the National Climate Finance Policy in 2018 (as Sessional Paper No. 3 of 2017), as well as the Public Finance Management (Climate Change Fund) Regulations (2016) under the Public Finance Management Act (2012), in recognition of the fact that all the forty-seven (47) counties in Kenya are highly exposed to the potential negative impacts of climate change. The climate change impacts have grave implications for poverty reduction efforts, water availability, food security, and health among other challenges. Extreme weather events are already having serious impacts on poor communities and the Country's development agenda.

Under the devolved system of government, following the Constitution (2010) that became effective in 2013, most of climate change and adaptation related activities in Kenya are now the mandate and responsibility of county governments. In view of this, several county assemblies have already enacted County Climate Change Acts thus setting the stage for the establishment of County Climate Change Funds (CCCFs). The CCCFs can be capitalized from various sources, such as *county development budgets, national climate funds or in-country bilateral and multilateral development partners funding support.*

It is against this background that the Government of Kenya has requested IDA and other development partners for financial support to strengthen national and notably county government capacities to cope with the climate shocks and hazards, in addition to building resilience at the community level through implementation of climate change resilience and adaptation actions identified through participatory processes. This Government Initiative is called the Financing Locally-Led Climate Action (FLLoCA) Program which is part of the wider Government FLLoCA encompassing all Climate Finance in Kenya.

2. THE FINANCING LOCALLY-LED CLIMATE ACTION (FLLoCA) PROGRAM

The program development objective of FLLoCA is to *deliver locally-led climate resilience actions and strengthen county and national governments' capacity to manage climate risks.* The program focuses on capitalizing the County Climate Change Funds; building county level capacity for planning, budgeting, monitoring, reporting and implementation of local climate actions in partnership with communities; and strengthening of national and county levels

institutional capacity for coordination, monitoring, verification and reporting on climate action, notably action for climate change adaptation. The program will be implemented by County Governments in partnership with local communities at ward levels, with armlengths support from the National Government.

The program is to be implemented as a hybrid Program, with an investment project financing (IPF) component for the activities at or funded by the national level agencies and a performance-for-results (PforR) component that represents 90% of the FLLoCA budget.

The IPF component provides an opportunity to strengthen the national government's capacity to support County Governments' actions, enhance the collaboration between national entities on climate change, and facilitate national oversight of the Program.

The PforR component of the FLLoCA Program consists of two conditional grants for county governments (CGs), namely (i) the County Climate Institutional Support (CCIS) Grant, and (ii) the County Climate Resilience Investment (CCRI) Grant.

The CCIS Grant is to kick-start CGs for the project, by putting in place institutional arrangements in order to be able to visualize county budgets and expenditure for climate action and prepare, in a participatory manner and guided by climate risk assessments, county climate action plans (CCAPs). On the other hand, the much larger CCRI Grant is to allow CGs to implement, equally in a participatory manner, the CCAPs, whilst incentivizing them to increasingly put additional county resources into the CCCF and mainstream climate action into the regular operations of the county departments.

For CGs to access these grants, they have to meet a set of Minimum Access criteria, which are named Minimum Access conditions (MACs) for the CCIS grant¹ and Minimum Performance Conditions (MPCs) for the CCRI grant.² Whereas the CCIS grant is allocated as a flat amount (equal amount for all CGs), the CCIS is allocated on the basis of a formula that reflects relative expenditure needs for Climate Adaptation and on the other hand CG performance with regards to Climate Change Adaptation and community level involvement for the same.

Because CGs should meet the Minimum Conditions, whilst the size of the allocation is partly determined by performance, the two FLLoCA grants are called conditional Performance Based Climate Resilient Grants (PBCRGs).

In order to assess the CG performance, an annual performance assessment (APA) for Climate Change Adaptation is embeded in the program design, to be carried out by a qualified consulting firm recruited for this purpose each year for the grant allocations in the next FY,

¹ As per the FLLoCA grant manual the MACs are, for the first year: (i) the county has opted into the Program by signing a FLLoCA Participation Agreement; (ii) the county has opened a special purpose project account (to receive the CCIS and CCRI Grants); (iii) a governor-designated CECM in charge of climate change has been appointed; (iv) county cabinet approved work plan and budget for use of the CCIS Grant are available. In the second and third grant cycles, counties must meet two additional MACs, being that they (v) used properly the grant funds earlier received; and (vi) timely reported on activities and use of funds. See FLLoCA grant manual for more details.

² The MPCs for a first cycle are that the county: (i) shall have put in place a CCU that is adequately staffed; (ii) carried out a participatory climate change risk assessment (exposure to hazards and social vulnerability); (iii) prepared a CCAP; and (iv) allocated, on top of the CCRI, some 1.5 percent of its development budget to the CCCF. For the second and third grant cycles, counties must meet several additional MPCs such as (v) timely financial and implementation reporting, showing (vi) absorption capacity; (vii) use of the funds for eligible investments; (viii) compliance with environmental rules and regulation; and (ix) dissemination of information on the investments to communities. See FLLoCA grant manual for more details.

as the results of the MACs, MPCs and PMs will be used to identify counties that can get access to the grants and to determine the size of these grants.

Subsequently, the APA results also serve to inform the two Disbursement-Linked Indicators (DLIs) under the IDA PforR mechanisms, as releases from the IDA grant to GoK are based on the number of CGs meeting the Minimum Access Conditions (MACs) and the Minimum Performance Conditions (MPCs) for the CCIS and the CCRI grant respectively.

The MACs, MPCs and PMs are meant to provide incentives to CGs to enhance their performance and increase their effort in addressing the Climate Change Adaptation under the national policy agenda for the same. In the same vein, the APA will help to identify capacity gaps and will help to guide national capacity support to be provided under FLLoCA's IPF component. APAs are hence a crucial part of the FLLoCA design.

It is in this context that The National Treasury is seeking proposals from interested and qualified parties with high levels of integrity for a consultancy to conduct the Annual FLLoCA Performance Assessment among the program participating counties.

3. THE ANNUAL PERFORMANCE ASSESSMENT (APA)

The Financing Locally - Led Climate Action Program will undertake annual assessments of the performance of the counties in Climate Change adaptation and resilience building. The first full APA is scheduled to take place in Quarter 2 of FY 2022/23 (October-November, 2022) be finalised in December 2022 to inform the grants for FY 22/23.

The FLLoCA/PIU has developed APA manual that guides the implementation of the APA. The APA exercises will be contracted out to a neutral and professional consultant of high integrity to ensure effectiveness, timeliness and objectivity in the annual results, which should be ready prior to the counties' finalising their annual planning and budgeting process. The consultant will ensure that all counties are assessed in due time following the time-plan and guidelines as provided in the FLLoCA Grant Manual, developed by the National Treasury/PIU.

4. OBJECTIVES OF THE ANNUAL PERFORMANCE ASSESSMENT

The overall objective of the APA is to assess the performance of the counties determine grant access and allocations, guide capacity development in counties in the use of the CCIS and CCRI Grants, and inform capacity building programs to national Ministries, Departments and Agencies (MDAs) to allow them to support counties in identified cross-cutting gaps under the IPF component.

The objective of the assignment is to provide highly professional, objective and credible assessment results of counties' performance. The assessment will be conducted on a number of indicators (minimum access conditions, minimum performance conditions and performance measures, and Result Framework indicators) that are identified and communicated to counties in advance of the assessment. The indicators relate to a number of core minimum access conditions (for access to the grants) and performance measures, which are more qualitative measures for the counties' performance. The FLLoCA APA Manual

provides a full overview of the conditions and measures and the protocols how to measure and score.

Specifically, the annual performance assessment (APA) is to assess, as per the specifications in the FLLoCA Grant Manual:

1. The **Minimum Access Conditions** for the County Climate Institutional Support Grant (CCIS grant) ;
2. The **Minimum Performance Conditions** for the County Climate Resilience Investment Grant (the CCRI grant);
3. The **Performance Measures**, to establish a performance score for the CCRI grant allocation.
4. The **Program Results indicators** as specified in the Results Framework

5. DETAILED SCOPE OF WORK

The performance assessment will cover the counties' compliance with a set of minimum access conditions (MACs) for access to CCIS grants, a set of minimum performance conditions (MPCs) and set of defined performance measures (PMs), which are outlined in the Grant Manual, which has been shared with the counties and which is the guiding document for the APA consultant.

The consultant will strictly follow the protocols and scoring guides as provided in the FLLoCA grant manual, including use of indicators, scoring and reporting formats.

The APA should involve minimal "judgment" on the part of the consultant, and the results will be based on clear professional, objective review of facts compared with the stated benchmarks and requirements. It should, as much as possible, be "evidence" based – i.e., performance achieved is assessed on the basis of identifiable (documentary) evidence. The Consultant should collect and be able to provide evidence that conclusively and indisputably supports the assessment results. This is important because the APA is an input to the process of deciding on allocation of funds, which has a fixed time-plan, see the time-table below. The assignment will be conducted between February-March of each year for the grant allocations in the next FY.

A detailed work-plan will be developed by the consultant to be approved by the client during the inception meeting, which should include details on:

- dates of field visit,
- dates for introductory briefing and presentation of the performance assessment to country representatives,
- date for delivery of draft reports,
- draft final reports and final reports.

The client will inform the Counties on the in terms of the actual execution of the APA.

The firm will, together with any other necessary actions, review the documents mentioned in the appendices to the Grant Manual. The contracted consultant will upfront collect relevant data at the central level (e.g. from CoG, OAG, TNT&P and MoDA) prior to collecting data at the county level, through field work in each of the counties to be assessed.

An assessment team (minimum 3 assessors for a team of which one is the team Leader) is estimated to spend 2-3 days in each county.

As part of the assessment process, the consultant will meet relevant county officials; secure documents as evidence of performance achieved; carry out inspections and investigations through visits to a sample of sub-project sites to verify the authenticity of the performance as necessary; request and document reasons or justification for specific under/over performance; meet together internally as a team to check/integrate results and coordinate activities; and prepare a preliminary APA report for the county.

At the end of the assessment in each county, the consultant team will **debrief** the county executive on the preliminary findings and issues derived from the assessment. At this stage, however, the consultant should not share the final results with the counties.

The consultant will produce draft county assessment reports as well as a synthesis report (which is an overview of the performance of all counties, according to formats as provided in the appendices of the Grant manual including simulations of allocations against the scores). The consultant will present to ITAC scores in a format provided in the Grant Manual. The PIU through ITAC will calculate the amounts of funds to each county using the results from the scores as well as the allocation formula applied for the grant (to be provided by TNT/PIU prior to the assignment), which will be submitted to the client: TNT&P³.

Based on comments received to the draft final reports the consultant will then produce a final assessment report encompassing the country assessments and the synthesis report (with an overview of the findings and comparison of performance across the counties) following standards and formats in the APA Manual, and submit this to TNT/PIU and the World Bank. The consultant may also be called to meetings with TNT/PIU and the other agencies to explain and present results from the assessment.

6. TIMING OF THE ASSIGNMENT

The first full APA is scheduled for the second semester of 2022. For the two years after, the Consultant should be ready to carry out the annual assessment in February and March of each year, with the process completed before the end of April.

In principle, under this ToRs the consultant will be hired for three APAs (2022, 2023 and 2024) on the basis of a contract to be renewed twice for another cycle, subject to satisfactory performance.

7. INPUT AND DEGREE OF EXPERTISE AND EXPERIENCES

Firms invited to submit proposals should propose their own team structure, composition and staffing levels, based on their own evaluation of the TOR's requirements and assessment, however with the minimum requirement in place.

³ At the same time a copy of these draft report will be submitted to the World Bank for review.

In order to be able to complete the assessment within 2 months, it is estimated that the consultant shall mobilize around 6 assessment teams that work in parallel to cover all 47 counties. If each team would have 3 assessors, a total of at least 18 assessors will be required.

During the first week of the assignment, a time-plan will be agreed with on how to divide the counties, but a proposal on this should be included in the Technical Proposal.

It is suggested that each assessment team will include 3 experts/assessors as follows:

- Expert number one: Expertise in Environmental Science or other related areas
- Expert number two: Public financial management, including procurement
- Expert number three: Expertise in Governance and bottom up participatory planning

One of the team members should be identified as the team leader for each team. Additionally, an overall coordinator for the assignment should be identified. This may be one of the team members, or a dedicated coordinator.

The team members will be experienced experts (minimum 7-10 years of experience).

All team members provided should have a solid professional background in the areas to be addressed in the performance assessment, which apart from the specific expertise described in the previous paragraph, would include performance assessment and evaluation, and program/project management.

The team leader shall have very strong interpersonal, analytic, writing and communication skills. In addition, the team member should have substantial expertise in data collection, application and presentation.

Table 2: Skill Requirements for the APA Team

Position	Educational Requirements	Experience required
Team Member-1 : Expertise in Environmental Science, Climate change Adaptation, M&E and impact assessments	A minimum of a Master Degree and relevant professional certification / accreditation or similar in Environmental Science, Economics or related relevant areas.	A minimum of 10 years work experience out of which 7 years on issues related to environment/ project management, or governance,
Team member-2: Public financial management, including procurement	A minimum of Master Degree or Bachelor degree and relevant professional certification / accreditation or similar in Economics, Public Administration, PFM, accounting, etc.	A minimum of 5 years work experience out of which 3 years in subjects related to local government. Expertise in PFM
Team member -3 : Expertise in Governance/ participatory planning and consultative processes at sub national and local levels	A minimum of Master Degree or Bachelor degree and relevant professional certification / accreditation or relevant areas.	A minimum of 5 years work experience out of which 3 years in subjects related to sub-national government.

Level of Input (man-days)

It is expected that the teams will use 2-3 days in each county, including travel, initial reporting and debriefing on average, including a provision for consolidation and final reporting.

The total number of working days is expected to be maximum 500.

The consultant should also budget for follow-up and administration particularly for the 6 team leaders and the assessment coordinator as well as some days for review of the submission of annual financial statements and overview of the audit reports (timeliness of production of final audit reports), attending meetings with the TNT&P PIU and responding to issues raised by the TNT&P PIU, TNT&P I-TAC or by counties (during the complaints / grace period).

Other inputs

In addition to the man-power, the consultant is expected to organize all transport and logistic for the assessment. All assessors are expected to have their own (portable) computer.

8. OUTPUTS AND DELIVERABLES

The consultant will submit the following reports for the annual performance assessment:

- i. A short Inception Report, within one (1) week of commencing the assignment giving a brief outline of the methodology, detailed work plan and activity schedule, team composition, reporting schedule and any other key issues regarding the execution of the assignment;
- ii. A detailed draft Assessment Report for each county assessed following the time-plan mentioned above and the formats and standards in the Grant Manual;
- iii. Draft 1 Report to the TNT&P PIU and the World Bank by the end of the first week of April each year, immediately following completion of field-visits;
- iv. Draft Final reports of the county assessments and the synthesis report with incorporation of the findings.
- v. Final Assessment Report with incorporation of the final comments to the draft final reports by end of April.

The consultant shall submit a soft copy and a hard copy of each report.

9. INSTITUTIONAL SET-UP OF THE ASSIGNMENT

The Consultant shall undertake the assignment under the overall supervision of the TNT&P PIU and the I-TAC. The PIU will review all results from the consultant and check that the APA Manual has been applied and that the assignment is completed.

The consultants will on a day-to-day basis report to the Program Coordinator in the PIU of the TNT&P. The work of the consultant will be technically overseen and guided by the PIU and the ITAC. All results and outputs will be reviewed by these groups as well as by the World Bank review function.

10. PROPOSED PAYMENT SCHEDULE

The budget of the consultancy company will be divided in three parts (each year should be budgeted separately) and for each year, the payment will be as follows:

1. Ten (10) per cent of the Contract Price shall be paid on signing the Contract against an equivalent performance guarantee from a Bank.
2. Forty-Five (45) per cent of the Contract Price shall be paid upon submission and presentation to PIU and ITAC of satisfactory draft assessment reports and draft synthesis reports with county scores.
3. Forty-five (45) per cent of the Contract Price upon submission of detailed final Assessment Reports for each of the assessed counties and the final synthesis report acceptable to the Client

11. SUPPORT PROVIDED BY THE CLIENT

The client will organize the training/internalization of the performance assessment manual of the assessment team members prior to the annual performance assessment. The client will also support the team in organizing the first introductory meetings with the state and county representatives through submission of prior notice and accompanying letters. The client will also support the consultant, where possible, in getting access to core documents at the national government such as budget progress reports, audit reports, guidelines and regulations.

12. REFERENCES AND DOCUMENTS

- Constitution of Kenya, 2010
- County Governments Act, 2012
- Public Financial Management Act, 2012
- Procurement and Disposal Act, 2015(Revised in 2016) and Public Procurement and Disposal Regulations, 2020.
- County Financial Accounting and Reporting Manual, March 2015
- FLLoCA Program Operational Manual
- FLLoCA Program Appraisal Document (PAD)
- FLLoCA Grants Manual
- FLLoCA APA Manual