



REPUBLIC OF KENYA

THE NATIONAL TREASURY AND ECONOMIC PLANNING

FINANCING LOCALLY –LED CLIMATE ACTION (FLLoCA) PROGRAM

**CREDIT NO: IDA 6980; TF B 6810 – KE (P173065)
BMZ-No.2016 65 108/2018 65 138**

NT-PROGRAM IMPLEMENTATION UNIT (NTPIU)

TERMS OF REFERENCE

**FOR INDIVIDUAL CONSULTING SERVICES FOR REVIEW OF THE COUNTY
CLIMATE CHANGE LEGISLATIONS**

March, 2024

Client:
The Principal Secretary
The National Treasury
P.O. Box 30007-00100
Nairobi
Treasury Building- Harambee Avenue, Nairobi
Email: pstnt@treasury.go.ke; pstreasury01@gmail.com

1. INTRODUCTION

The Government of Kenya received financial support from the World Bank, DANIDA and SIDA towards the Financing Locally-Led Climate Action (FLLoCA) Program. In December 2022, the Government of Kenya signed a Financing Agreement for an additional co-financing of 16 counties within the FLLoCA Program from the Germany Government under KfW for the Program.

The Program development objective is to deliver locally led climate resilience actions and strengthen county and national governments' capacity to manage climate risks. The total funding level is USD. 297.0 Million Over a period of 5 years with effect from February 1, 2022. The funding so far mobilized supports in strengthening local resilience to the impact of climate change, natural hazards, and other shocks/stressors by building local capacity to plan, budget, implement and monitor resilience investments in a way that promotes collaborative partnerships between communities, national and county governments.

The program focuses on capitalizing the National and County Climate Change Funds; building county level capacity for planning, budgeting, reporting and implementation of local climate actions in partnership with communities; and strengthening of national level capacity for coordination, monitoring and reporting. The program is implemented by the National Government in collaboration with County Governments.

1.1 Background and Scope and Application of the Climate Finance and Green Economy- Locally –Led Action

Kenya's economy is highly dependent on its natural base. This makes our country highly vulnerable to climate change. Climate change if left unattended will impede Vision 2030 goal of creating a globally competitive and prosperous nation with a high quality of life. Globally, Kenya is a party to the United Nation Framework Convention on Climate Change, the Kyoto Protocol and Paris Agreement. The Paris Agreement aims to strengthen the global response to the threat of climate change, in the context of sustainable development. The Agreement also set out a global goal of mobilizing USD 100 billion per year to support mitigation measures and adaptation actions in developing countries.

In 2016 the Government of Kenya put in place the Climate Change Act, (2016) and 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 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 events are already having serious impacts on poor communities and the Country's development.

As a result of the devolved system of government, most of climate change related development activities in Kenya are now being implemented at county level. In view of this, several assemblies have enacted County Climate Change Acts thus setting stage for establishment of County Climate Change Funds (CCCF). The CCCF can be capitalized from various sources, such as county development budgets, national climate funds or in-country bilateral and multilateral development partners.

2. BACKGROUND

The Government of Kenya recognizes the threats posed by climate change and has been actively implementing and erecting responsive measures to address these challenges. Coupled with the development of the various development plans and strategies such as the National Climate Change Action Plan, National Adaptation Plan and the Climate Change Response Strategy, the Government is implementing the Financing Locally-Led Climate Action Program (FLLoCA) as a measure to address the climate change challenge across the County.

In emphasis, the Financing Locally-Led Climate Action Program (FLLoCA) core objective is to strengthen local resilience to the impact of climate change, natural hazards, and other shocks/stressors by building local capacity to plan, budget, implement and monitor resilience investments in a way that promotes collaborative partnerships between communities, the National Government and County Governments.

The program is centered on capitalizing the National and County Climate Change Funds; building county level capacity for planning, budgeting, reporting and implementation of local climate actions in partnership with communities; and strengthening of national level capacity for coordination, monitoring and reporting. It is funded through a hybrid of the Investment Project Financing (IPF) and Program for Results (PforR) instruments. The program funds are provided through Disbursement Linked Indicators (DLIs) aligned with the expenditure areas as per the program components. The IPF instrument supports the financing, governance, national and local coordination and capacity building aspects of the national program. The PforR instrument supports the Counties through two distinct grants, defined as conditional intergovernmental fiscal transfers, being: The County Climate Institutional Support (CCIS) Grant and the County Climate Resilience Investment (CCRI) Grant.

The Minimum Conditions, which are called 'Minimum Access Conditions' (MACs) for the CCIS Grant, and 'Minimum Performance Conditions' (MPCs) for the CCRI Grant, are two

sets of binary conditions ('met' or 'not met') that the CG should meet prior to the start of a financial year to actually have the grant released during that financial year. During the 1st year of Program implementation, Counties were required under the CCIS to (i) have signed a FLLoCA Participation Agreement ;(ii) have published the county climate change legislation; (iii) have opened a Special Purpose Account to receive funds from both the CCIS and the CCRI Grants; (iii) the County Governor has appointed a CECM in Charge of Climate Change and; (iv) County Governor avail approved work plan and budget for use of the CCIS Grant for the next FY. The enactment of the County Climate Change Act (CCC), a core condition precedent, was fast-tracked by most of the County Governments due to the timeframes provided, presenting a drafting risk that attached resulting to evident gaps and inconsistencies. Whereas the Counties have met the MAC's post publication of the CCC Act, it is apparent that gaps and inconsistencies on substance exist in reference to the National Climate Change Act and hence the need to review and cause responsive legislative amendments.

County Climate Change Acts serve as the legal framework to strengthen the Climate resilience building at the local level and institutional capacity of the counties to manage and implement the FLLoCA Program.

3. OBJECTIVE OF THE ASSIGNMENT

The objective of the assignment is to review the County Climate Change Legislations enacted by all the 47 Counties with an aim of identifying gaps and inconsistencies in line with the National legislation, proposing amendments in conformity with United Nations Framework Convention on Climate Change (UNFCCC), Paris Agreement, The National Climate Change Framework Policy, 2018, MTPIV (2023-28), and National Climate Change Action Plan (2023-27).

4. SCOPE OF THE ASSIGNMENT

The assignment will cover an in-depth review of the County Climate Change Legislation in line with the National legislation with an aim to identify the gaps and inconsistencies within.

The review shall propose amendments to ensure that the County Climate legislation conforms and is consistent to the provisions of the Climate Change Act, 2016 and comply to the UNFCCC, Paris Agreement, The National Climate Change Framework Policy, 2018, MTPIV (2023-28) and National the Climate Change (Amendment) Act,2023 and Climate Change Adaptation Plan (2023-2027) on the backdrop of readiness to the new social order.

The assignment will focus on reviewing the 47 County Climate Change Acts that were drafted individually in order to identify individual key financial management requirements,

transparency and accountability measures provided. It shall focus on substantive provisions of the 47 County Government Climate Change legislation in reference to the National Climate Change Act 2016. Furthermore, the assignment will review the County Climate Change legislations with regard to their focus on mainstreaming issues of Gender, Youth and Special Groups in Climate Change Actions.

The amendments will be incorporated into the County Climate Policy and County Climate Change Act.

5. TASKS

The Consultant shall:

- i. Review all Climate Change Acts of the 47 and identify gaps in the respective Legislations as assessed against National Legislations and International Best Practice;
- ii. Review all Climate Change Acts of the 47 county governments to create legal framework that provide basis for youth engagement, either through a body or an independent desk empowered to consider, coordinate, monitor and supervise youth engagement in climate action;
- iii. Review all Climate Change Acts of the 47 county governments to embed the development of green skills among the youth as part of the legal framework;
- iv. Undertake a comparative analysis of National and County climate finance policy, climate change funds and climate change policies with recommendations on how to harmonise them;
- v. Develop a matrix of key proposed amendments for each of 47 County Climate Policies with explanatory notes for each proposal showing how it enhances existing legislation;
- vi. Develop a report detailing the engagements with the Counties.

6. TIMING

The review is planned from 1st June to 30th November, 2024.

7. DURATION

The duration of the assignment is six (6) months from the date of contract commencement.

8. DELIVERABLES

The key deliverables for this assignment will be:

- i. Consistent and clear 47 County Climate Change legislations including policy and draft County Climate Change (Amended)Acts;
 - ii. A Report detailing at least three (3) documented consultative engagements with each of the County Governments;
- Final recommended Policies and proposed amended County Climate Change Acts.

9. REPORTING REQUIREMENTS AND TIMELINES

The reporting requirements and timelines for deliverables are as shown in Table 1 below. The reports shall be submitted to the address below on or before the scheduled dates:

The Principal Secretary

The National Treasury
P.O. Box 30007-00100
Nairobi
Attn: Program Coordinator, FLLoCA Program
Email : programcoordinator.piu@gmail.com

Physical Address:

Program Implementation Unit
Financing Locally-led Climate Action (FLLoCA)Program
The National Treasury
Reinsurance Plaza, 7th Floor
Building No. 4 Aga Khan Walk / Taifa Road Nairobi, Kenya

Table 1

No.	Deliverables/ outputs	Timelines after contract effectiveness	Output	Format of Output submission
1.	Inception report	2 nd week	Inception Report	Two (2) hard copy together with one (1) soft copy
2.	Desk Review	6 th week	Preliminary Report for each County Reviewed	Two (2) hard copy together with one (1) soft copy

3.	Stakeholder Engagement workshop and Report Submission	10 th week	Report	Two (2) hard together with (1) Soft Copy
4.	Draft report on the Review of the County Climate Change legislations (Policies and Acts)	16 th week	Draft Policies & Acts	Two (2) hard copy together with one (1) soft copy
5.	Stakeholder Validation workshop	20 th week	Report	Two (2) hard together with (1) Soft Copy
6.	Final report	24 th week	Final Recommended Policies & Proposed Amendments to Acts for each County	Two (2) hard copy together with one (1) soft copy

10. PAYMENT SCHEDULE/REMUNERATION

The proposed payment schedules based on satisfactory performance of the contract which will be negotiated with the successful consultant will be as presented in Table 2 below.

Table 2:

Deliverable	Percentage of contract sum
Inception report	20% of contract sum
Stakeholder Engagement Report	10% of the contract sum
Draft report on the Review of the County Climate Change legislations	40% of contract sum
Stakeholder Validation Report	10% of contract sum
Final report	20% contract sum

11. CLIENT SUPPORT

Client will facilitate access to Counties through linkages with the Council of Governors (CoG) and Introduction of the consultant to Counties where necessary. In addition, the client will cover costs related to stakeholder workshops as shall be determined by the parties.

The client will make efforts for the draft polices and Acts to be submitted to County Assemblies for approval.

12. OBLIGATION OF THE CONSULTANT

The Consultant shall be responsible for the provision of all the necessary resources to carry out the services such as transport, accommodation, insurance, airtime and any other required costs. The Consultant is expected to undertake activities that will ensure that outputs are consistent with the professional and legal requirements.

The Consultant shall visit all the 47 Counties and conduct the review on County Climate Change Acts and Policies.

The Consultant will be required to submit both professional and reimbursable costs for the assignment.

13. MINIMUM CONSULTANT'S QUALIFICATIONS AND EXPERIENCE REQUIREMENTS

The shortlisting criteria are:

(a) Qualifications

- Master's Degree in governance, law, policy or related field from a university recognized in Kenya.

(b) Experience

- i. Fifteen (15) years demonstrated professional experience in climate change law and policy making.
- ii. Eight (8) years working experience in areas of design and drafting of legislation, legal and policy frameworks in adaptation and mitigation at subnational or devolved government levels, devolved level climate change institutional design, leading processes for review and implementation of legal frameworks including consultations with key stakeholders, providing guidance for, and development of subsidiary legislation, including mobilizing and organizing required stakeholder consultations and

managing inclusion of feedback into the subsidiary legislation, Climate change legal and policy governance environment, and the devolved government framework in context of the Constitution of Kenya.

14. PROPRIETY RIGHTS OF CLIENT IN REPORTS AND RECORDS.

All reports and relevant data and information such as maps, diagrams, plans, databases, other documents and software, supporting records or material compiled or prepared by the Consultant for the Client in the course of the assignment shall be confidential and become and remain the absolute property of the Client.