



MINISTRY OF WATER, SANITATION AND IRRIGATION

STATE DEPARTMENT FOR IRRIGATION

KENYA WATER SECURITY AND CLIMATE RESILIENCE PROJECT

TERMS OF REFERENCE

FOR

CONSULTANCY ON DEVELOPING NISIP LEGAL AND INSTITUTIONAL FRAMEWORK

1. Introduction/Background

The State Department for Irrigation was established vide Executive Order No.1 of 2023 under the Ministry of Water, Sanitation and Irrigation and bestowed with the following functions: National Irrigation Policy and Management; Water Harvesting and Storage for Irrigation; Management of Irrigation Schemes; Water Storage and Flood Control Management; Mapping, Designating and Developing Areas ideal for Irrigation Schemes; Development of irrigation infrastructure; and Land Reclamation. These functions generally bestow the State Department with the overall responsibility of development and management of irrigation and drainage in the country. In execution of her mandate, the State Department is guided by key strategic goals which include: improved water harvesting and storage capacity for irrigation; Optimal and sustainable exploitation and development of irrigation potential; improved productivity of irrigation schemes; and achievement of land degradation neutrality.

Public investment towards irrigation infrastructure development has averaged at KES. 5 billion over the period between 2010 and 2015, and has increased gradually to the current investment level of KES.23 billion in the 2023-2024 financial year. This level of investment is low given the target of the National Irrigation Policy 2017 of 40,000 ha (100,000 acres) per year. To attain the envisaged annual target of new irrigation area, the sector will require an estimated investment of KES. 65 billion annually including the cost of developing water resources for irrigation.

The State Department of Irrigation has therefore embarked on developing a National Irrigation Sector Investment Plan to act as a resource mobilization tool with the main goal of establishing a robust, coordinated and sustainable financing and investment framework for promotion of socio-economic development in the country. The Plan will thus look into the current legal and institutional arrangements within the sector, propose the necessary business lines to focus on with their respective institutional and coordination arrangements and finally prescribe the Monitoring,

Evaluation and reporting framework to ensure successful implementation of the Plan. The SDI is thus desirous to procure consultancy services of an Expert to carry out the legal and institutional arrangements assessment necessary to enhance mobilization of resources for the realization of the SDI goals and objectives.

2. Objectives of the consultancy

The general objective of this consultancy is to strengthen the existing legal and institutional framework governing irrigation financing in Kenya. Specifically, the consultant will be required to: evaluate the existing policy, legal, governance and institutional framework governing irrigation development and management in Kenya by assessing their relevance and adequacy to irrigation financing at the national and county levels; examine the existing gaps; and make necessary recommendations

3. Scope

The consultant will be expected to undertake the following tasks:

a) Policy and Regulatory Framework

- (i) Review of existing irrigation policies and regulatory framework as pertains to irrigation financing and assess their compliance.
- (ii) Assessment of alignment with national, regional and international development goals and obligations
- (iii) Analysis of policy coherence across different government departments
- (iv) Make recommendations for policy and regulatory reforms or introduction of new policies or regulations to enhance financing.

b) Institutional and organizational assessment

- (i) Examination of the organizational structure of irrigation agencies within the GOK
- (ii) Determine the decision-making processes within the irrigation institutions in terms of resource mobilization and allocation.
- (iii) Undertake analysis of capacity for personnel in public (public and strategic projects), community-managed irrigation schemes (Group and individual managed) on financial management
- (iv) Assessment of internal communication and coordination mechanisms
- (v) Identification of institutional barriers to efficient project implementation

(vi) Provide recommendations for strengthening institutional and organizational capacities

c) Governance and accountability

(i) Assess governance framework within irrigation organizations

(ii) Examine accountability mechanisms for resource mobilization and allocation

(iii) Examine transparency in decision-making and financial management

(iv) Identify corruption risks and mitigation measures

(v) Make recommendations for strengthening governance and accountability

d) Partnerships and stakeholder engagement

(i) Examine partnerships with donors, NGOS, and other stakeholders

(ii) Assess stakeholder participation in project planning and execution

(iii) Examine public-private partnerships in irrigation investments

(iv) Analyze communication and collaboration with local communities

(v) Make recommendations for enhancing partnerships and stakeholder engagement

4. Deliverables

The expected deliverables for this consultancy will include:

a. Inception Report

i. Methodology and proposed approach.

ii. Data collection tools and sources.

iii. Initial findings (Situation analysis) and work plan

b. Interim Report

i. Progress of the work done

ii. What work remains to be done

iii. Changes, challenges or unexpected issues to be addressed

iv. When and how the remaining work will be done

c. Draft Report

- i. Legal framework analysis with proposed amendments.
- ii. Policy analysis with recommended adjustments.
- iii. Institutional framework assessment with capacity-building recommendations.
- iv. Comparative analysis of international best practices.

d. Final Report

- i. Comprehensive review of legal, policy and institutional frameworks.
- ii. Recommendations for enhancing irrigation financing mechanisms.
- iii. Executive summary, including key findings and actionable recommendations.

5. TIMELINES OF ASSIGNMENT AND REPORTING

Schedule of the assignment and reporting

Table 1: Schedule of the assignment

Activity	Date of submission CD+Wks	Number of hard copies
Inception report	2	1+ 2 Soft copies
Interim Report	4	1 + 2 soft copies
Draft Final Study Report	6	1+ 2 Soft copies
Final Report	8	2+2 Soft copies

6. Organization and Management Arrangement

The assignment will be coordinated by the State Department for Irrigation (SDI) through a NISIP Taskforce appointed for the purpose. The Taskforce will be responsible for liaison between SDI and the Consultant/Expert and will also provide any assistance required by the Consultant under the contract.

7. Qualifications and experience

The consultant must have:

1. A Bachelor's Degree in Law and a Master's Degree in other equivalent and relevant field from an accredited institution.
2. Demonstrated expertise in irrigation financing, legal frameworks, and policy analysis.
3. Proven experience in conducting similar reviews or assessments.
4. Familiarity with the irrigation context in Kenya and relevant international standards.
5. A minimum of 10 years of experience, three (3) of which must be in legal analysis and research and legal drafting in related areas.
6. Knowledge in action planning, including development and implementation of results framework.
7. Registration with a relevant professional body.

The consultant shall be considered as an independent legal person in performance of their duties and any person employed to do any work by the consultant shall be considered to be an employee or servant of the consultant.

8. OBLIGATION (BOTH PARTIES)

Obligations of the client

In order to facilitate the smooth and effective implementation of the project, the SDI, on behalf of the Government of Kenya, and through the Taskforce will undertake to carry out the following:

- i. Seek proposals and engage appropriate Consultant/Expert to provide services for the above named study based on existing procurement procedures of the Government of Kenya.
- ii. Provide available information and data necessary to carry out the assignment
- iii. Appoint and Facilitate efficient operation of the Taskforce.
- iv. Provide logistic support where necessary especially on farmer mobilization and sensitization
- v. Provide 4×4 vehicle in good working condition to facilitate field work.vehicle reverts back to the consultant at the end of the assignment
- vi. Provide assistance for entry into areas required for the proper execution of the assignment.

- vii. Liaise with relevant government departments to ensure adequate security to the consulting team while traveling and/or conducting investigations while undertaking the assignment..

OBLIGATIONS OF THE CONSULTANT

- (i) The Consultant shall carry out the assignment as specified in this TOR in a professional manner, in keeping with internationally accepted standards, using qualified and appropriate staff. In the course of the assignment, the consultant may engage additional experts he/she may deem necessary to successfully undertake the assignment, but at no extra cost to the Client. The Consultant and his team shall be ready and willing to work with counterpart staff assigned by the Client.
- (ii) The Consultant shall endeavor to provide the required services with diligence and within the time agreed upon in the contract.
- (ii) At the end of the contract, all items procured for the study and included in the cost schedule proposal, or for which reimbursement was claimed and received shall be handed over to the Client. The Consultant shall also keep complete records of all work done under the assignment and hand over to the Client all documents, working papers, calculations and computer data produced during the assignment. All these shall be properly organized in the English language.