



KENYA ELECTRICITY TRANSMISSION CO. LTD.

SUPPLY CHAIN MANAGEMENT OFFICE

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Clarification No. 1

30th October 2023

Ref: KETRACO/PT/032/2023

RE: TENDER FOR LEGAL AUDIT

The following clarifications are hereby made to the above referenced tender. By the terms of this Clarification, the Principal Tender Document shall continue to be in full force and effect.

Find herein **Clarification No. 1** into the copy of the Tender Documents. These documents should therefore be returned along with the completed tender documents attached alongside the Confidential Business Questionnaire.

Peter Njehia
SENIOR MANAGER, SUPPLY CHAIN



TERMS OF REFERENCE FOR PERFORMANCE OF LEGAL AUDIT

1. INTRODUCTION & BACKGROUND

Kenya Electricity Transmission Company Limited (KETRACO) herein after referred to as “KETRACO” is a State Corporation established under the Companies Act, Cap 486 pursuant to Sessional Paper No. 4 of 2004 on Energy. KETRACO is a 100% Government owned State Corporation, regulated under the State Corporations Act, Cap 446. Its mandate is to plan, design, construct, own, operate and maintain high voltage electricity transmission grid and regional power interconnectors.

KETRACO’s vision is to transform lives through a stable power grid. The Mission of KETRACO is to provide a stable electricity grid and facilitate power trade for sustainable socio-economic development.

KETRACO is seeking consultancy services to undertake an independent legal audit to establish the level of compliance with relevant Kenyan Laws, legislation, policies, pertinent legal risks and propose solutions to remedy and minimize them. This will help in identifying the gaps and areas that require review in order to enhance compliance and reduce the number of law suits and or cases of inefficiency arising as a result of non-compliance or gaps within KETRACO’s operations.

2. JUSTIFICATION

Conformity with legal parameters as set out in the Constitution, applicable laws and best practices is a requirement under the *Mwongozo* Code of Governance of State Corporations which sets out modalities of compliance on governance matters within State Corporations.

The *Mwongozo* Code of Corporate Governance for State Corporations provides under clause 8.4 that, The Board should ensure;

- i) That a legal compliance audit is carried out at least annually, with the objective of establishing the level of adherence to applicable laws, rules, regulations and standards.
- ii) That the recommendations in the Legal Compliance audit report are implemented.

- iii) That a comprehensive and independent legal audit is carried out at least once every two years.
- iv) The Board shall file compliance reports on all statutory obligations in each quarter to the responsible Cabinet Secretary and State Corporations Advisory Committee.

An independent Legal Audit is necessary for KETRACO to ensure a comprehensive and impartial audit process. The exercise will enable KETRACO minimize risks, as well as ensure it conducts its operations in accordance with all relevant laws and best regulatory practices anchored in principles of good governance, accountability and transparency.

3. OVERALL OBJECTIVES

The consultant is to carry out a legal and compliance audit in order to assess the level of compliance with the Constitution of Kenya 2010, existing applicable laws, regulations, government circulars, administrative guidelines, judicial decisions, KETRACO's policies and industry best practices as required under the Code of Governance for State Corporations.

4. SPECIFIC OBJECTIVES

The consultant will be guided by the specific objectives set out below in carrying out the assignment;

- i) Identify and report on the key constitutional, statutory obligations, regulations, government policies and circulars, directives, internal policies, procedures and contracts that impact KETRACO as a State Corporation.
- ii) Identify gaps in compliance with the laws, policies and guidelines and processes and propose mechanisms of enhancing compliance in order to address the identified compliance gaps.
- iii) Review the extent of KETRACO's compliance with the constitutional and statutory obligations.
- iv) Evaluate the extent to which KETRACO has delivered on its statutory functions.
- v) Review KETRACO's compliance with its policies and procedures and industry best practice.
- vi) Review KETRACO's compliance with judicial decisions.
- vii) Develop a compliance check matrix and implementation framework that will ensure all regulatory and reporting requirements are met and that is in line with best practice and in agreement with KETRACO's strategic plan and overall mandate.
- viii) Generate a legal audit report of the compliance findings and recommendations.

5. SCOPE OF WORK

The consultant shall carry out a legal audit on the operations of KETRACO and provide an assessment of KETRACO's compliance with all relevant legislation, pertinent legal risks and propose solutions of the risks and recommend best practice. In addition, there is the Government Performance Contracting Framework and Government directives carried in various circulars that have compliance requirements. The Consultant will be expected to thoroughly be familiar with and understand the regulatory framework governing KETRACO's operations including an assessment of the extent of adherence to internal policies as approved by the Company's Board of Directors and performed by the Board. The output of the exercise should enable KETRACO to identify and adhere to relevant laws, identify specific deficiencies or areas of weaknesses in the internal and external compliance and assess its position on Governance that comprise potential legal risk and liability as well as ensure it conducts its operations in accordance with all relevant laws and best regulatory practices anchored in accepted principles of good governance, accountability and transparency.

The consultant will undertake the following activities;

- i) Prepare the methodology and work plan for the consultancy.
- ii) Conduct a preliminary baseline survey to identify the required information, documents and policies for the audit and preparation of audit plan.
- iii) Undertaking a litigation audit for the company's portfolio of cases against best practices and proposing areas of improvement.
- iv) Identifying, examine, reviewing and analyzing laws, good governance practices, ethical procedures, established standards, regulations, directives, government circulars and policies governing company operations, evaluating KETRACO's level of compliance with the same.
- v) Develop appropriate instrument(s) for data collection and information gathering.
- vi) Evaluate KETRACO's existing structure, operations of all functional areas and review their existing internal policies, controls and procedure manuals against generally accepted best standards in line with laws governing their application with an aim of ascertaining their adequacy in meeting the current and future development needs and objectives in the sector and assessing the company's adherence to the said documents.
- vii) Conduct interviews and discussion with the relevant head of department and staff.

- viii) Visit selected KETRACO's substations for a fair appreciation of the unique operations of the Company, conduct interviews of relevant functional heads and selected personnel to assess the attendant risks.
- ix) Prepare and present to the management a draft report on the findings of the legal audit to the Company, highlighting specific gaps, areas of non-compliance, causes of non-compliance, propose opportunities for improvement as well as corrective action and measures to be put in place to ensure compliance.
- x) Present and discuss with Senior Management pertinent issues emerging from the legal audit exercise and obtain comments and feedback on audit findings.
- xi) Conduct a training for KETRACO's advocates and compliance team on best practices in legal compliance and legal risk management matters.
- xii) Revise and submit the final report including the relevant indices, strategies and recommendations to the Company for approval.

6. DELIVERABLES

The consultant will be expected to produce and deliver the following during and at the end of the audit:

- i) Inception report and audit plan outlining the consultant's understanding of the tasks, methodology of execution of the tasks and timetable of how they intend to undertake the assignment.
- ii) Interim legal audit report detailing the audit findings and recommendations.
- iii) Final legal audit report of the audit findings and recommendations in hard and soft copies.
- iv) A compliance enhancement proposal comprising of additional policies and procedure to strengthen the existing compliance measures.
- v) Legal compliance matrix on the identified obligations to facilitate future self-evaluations.

7. TERMS OF PAYMENT

The payment milestones are as follows:

Deliverable	Percentage of payment
Inception Report and Audit Plan	20%
Interim Report	30%

Final Report, compliance enhancement proposal and legal compliance matrix.	50%
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8. DURATION OF THE CONSULTANCY

It is estimated that the services shall be conducted within a period of three (3) months from the date of execution of the contract by both parties.

9. CONDUCT OF CONSULTANCY

- i) The consultant shall agree with KETRACO on the work plan, scope and the professional inputs for each of the reports and the reporting period. A detailed reporting schedule and timelines will be discussed prior to the signing of the consultancy contract.
- ii) The consultant shall be required to submit a priced plan indicating deliverables in line with the scope of work.
- iii) All reports, documents and outputs prepared by the consultant for the services shall become the property of KETRACO and the consultant shall have an obligation to deliver such documents accompanied by their inventory upon expiration of the consultancy period.
- iv) For proper coordination of this assignment the Consultant shall report to the Company Secretary and General Manager Legal Services during the entire duration of the Consultancy or an authorized representative.

10. EXPERTISE AND QUALIFICATIONS

The Consultant(s) must meet the following requirements:-

1. The Team Leader responsible for signing the report must demonstrate that he/she holds a Master's degree and a minimum of five (5) years' experience in undertaking similar consultancies with a demonstrable level of acceptance of the results, a bachelor's degree in law from a recognized university and a Postgraduate diploma from the Kenya School of Law.
2. Other key personnel shall be required to demonstrate that they individually hold a minimum of bachelors in law, finance/accounting, business administration or any related field.

3. The Consultant shall be required to demonstrate legal knowledge, analytical skills, expertise, competence and prior experience in undertaking a consultancy of similar nature by providing evidence of similar projects undertaken in the public sector in the last three (3) years. Reference letters must be attached.
4. The Curriculum Vitae (CV) of the Consultant responsible for signing the report together with the CVs of the key personnel proposed as part of the Legal Audit Team shall be provided to KETRACO. CVs should include details on audits carried out by the applicable staff, including ongoing assignment indicating capability and capacity to undertake the audit and experience in carrying out Legal Audit services.

11. IMPROVEMENT OF TERMS OF REFERENCE (ToR)

Whereas an attempt has been made to provide a comprehensive description, any error or omission resulting should be exempted. The Consultant may offer suggestions and improvements in the Terms of Reference, which he/she considers would result in enhancement of the audit. Such proposals, if accepted, will form part of the Terms of Reference of the proposal submitted by the Consultant.

12. CONFIDENTIALITY AND DATA PROTECTION

In tendering for the assignment, and also in undertaking the audit, due regard must be had to confidentiality of the process and information exchanged and also data protection laws as are applicable to the bidders, including and not limited to the Data Protection Act, Kenya and Regulation thereunder.