

# Terms of reference (ToRs) for the procurement of services below the EU threshold

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**Support to development of Local Level Legislation  
(By-Laws Drafting)**

**Project number/  
cost centre:**  
18.2194.1-004.00

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<b>0. List of abbreviations .....</b>	<b>2</b>
<b>1. Context.....</b>	<b>3</b>
<b>2. Tasks to be performed by the contractor .....</b>	<b>5</b>
<b>3. Expected outputs and Concept.....</b>	<b>6</b>
<b>4. Personnel concept .....</b>	<b>7</b>
<b>5. Costing requirements .....</b>	<b>8</b>
<b>6. Inputs of GIZ or other actors .....</b>	<b>8</b>
<b>7. Requirements on the format of the bid.....</b>	<b>9</b>
<b>8. Annexes .....</b>	<b>9</b>

## **0. List of abbreviations**

AVB	General Terms and Conditions of Contract for supplying services and work 2018 (AVB 2018)
BMZ	German Federal Ministry for Economic Cooperation and Development
CC	Community Council
EU	Europea Union
ICM	Integrated Catchment Management
ICU	Integrated Catchment Management Unit
IWRM	Integrated Water Resources Management
MoLGC	Ministry of Local Government and Chieftainship
SADC	Southern Africa Development Community
ToRs	Terms of reference
TWM	Transboundary Water Management

## **1. Context**

These terms of reference (ToR) are for the appointment of a service provider by the GIZ Support to Integrated Catchment Management in Lesotho (hereafter referred to as 'ICM') to support the Ministry of Local Government and Chieftainship by contributing to an assignment on the drafting of by-laws. Particularly, the regional expert is expected to contribute to the development of a guideline and a training programme to guide and institutionalize the drafting exercise. The regional expert will be working with a national legal expert and will be responsible for contributing international / regional best practices in local government regulation (by-law drafting) for sustainable natural resource management and development of guidelines. The support is provided in alignment with the objectives of ICM and in close cooperation with Ministry of Local Government & Chieftainship.

### **Background to the Kingdom of Lesotho context**

Lesotho is a landlocked country completely surrounded by the Republic of South Africa. The land area of Lesotho covers 30,352 square kilometres dominated by rugged topography of the Maloti and Drakensberg mountain ranges. The population of Lesotho is estimated at 2 million people (1996 census) a majority of which earns their livelihoods from agriculture. The population growth rate is 2.3 percent per annum. An estimated 85 percent of the population in Lesotho resides in rural areas. Almost half of the population, about (50%), lives below the poverty line (source: IMF). Across a greater interior from the mountain region to the Senqu River valley communities live under chronic poverty with survivalist livelihoods.

Lesotho is considered the water tower of Southern Africa. It supplies 40 percent of the annual run-off of the Orange-Senqu river despite occupying only three percent of the basin's territory. Lesotho supplies water for agriculture, industry and households across the basin area, which is one of Africa's most important economic centres. Domestically, aquatic ecosystems in Lesotho are directly responsible for 22% of GDP and 30% of employment. However, Lesotho's river catchments are facing severe land degradation, it is estimated that Lesotho loses about two percent of its topsoil to erosion annually, putting rural agricultural livelihoods at risk and impacting on water and food security. The health of many important wetlands that provide essential ecosystem services to rural communities by mitigating the effects of floods and droughts have also been compromised. Climate Change presents an aggravating factor to the socio-economic challenges facing the catchment areas in Lesotho. Most communities are more vulnerable to climate change since they do not have enough capacities to outlive the consequences of climate change and variability.

This represents an existential threat to water security for Lesotho and the Orange-Senqu basin, and to the livelihoods of the rural population in the catchments of Lesotho. Healthy catchment and wetland ecosystems are required to absorb rainfall and release water gradually into rivers and streams. Degraded catchments, in turn, worsen flood and drought events, soil erosion and siltation.

### **Background to the Integrated Catchment Management Programme**

To combat these challenges, the Kingdom of Lesotho has embarked on an ambitious national programme on integrated catchment management under the name ReNOKA ('we are a river'). ReNOKA aims to introduce and institutionalise integrated planning approaches at the catchment scale developed through a risk-informed science based and multi-stakeholder approach (across different ministries, together with communities and private sector).

To deliver its objectives, ReNOKA works across six different and interrelated change areas:

- Catchment Management: coordinating physical measures and planning approaches for catchment rehabilitation
- Policy and governance: establishing a solid legal basis for the ICM approach and its coordinating/ planning institutions
- Finance & investment: establishing financing mechanism & exploring revenue generation and financing sources for the long-term sustainability of ICM institutions and catchment rehabilitation measures
- Skills & knowledge: providing capacity building to key stakeholders
- Awareness & behaviour change: promoting change through targeted communication approaches
- Data & monitoring: providing scientific evidence to inform evidence-based decision making

The programme works at a national and at sub-national / catchment level. At the national level the focus is on the development of ICM institutional arrangements for the coordination and the development of integrated catchment planning. Whereas at the sub-national / catchment level the programme is anchored through its regional offices where catchment level coordinating and planning institutions support integrated and inclusive catchment planning efforts in Lesotho's main Catchment Management Areas and selected priority sub catchments. The learning from the first pilots will be scaled so that regional institutions can support the planning at the level of each of the six water catchments in Lesotho.

The national ICM programme receives financial support from the European Union (EU) and the German Federal Ministry for Economic Cooperation and Development (BMZ) through a technical cooperation project that is implemented by the German Development Cooperation (GIZ).

### **Background to support to by-laws drafting**

Integrated catchment management relies on national and decentralized governance structures to perform key functions like the coherent planning, implementation, monitoring and reporting at national, river basin and local community levels. For ICM to implement catchment rehabilitation measures and for catchment degradation to be reduced, local level institutions, particularly Community Councils (CCs) need to be capacitated to deliver on their mandates by means of local level regulation. Through its action the ICM programme supports the government objectives in terms of decentralization, fostering the objectives of the decentralization policy.

The power to draft bylaws is inscribed in the Local Government Act (2004), as well as in the Local Government Regulation (2005). Through the current decentralization efforts implemented by the Government of Lesotho and led by the Ministry of Local Government, key ministries have been identified as pilots to devolve competences to the local level. A number

of ministries have thus transferred competencies to Local Authorities (see Lesotho Government Gazette vol. 60 n 71) whereas others are still in the process of transferring functions. Despite the provision enabling CCs to pass by-laws and the transfer of competencies to the local level, to date no by-laws has been drafted. The drafting of by-laws is even more important in view of the new Local Government Bill that further emphasizes the importance of local level authorities in terms of planning and implementation and makes provision for increased autonomy and resources to be transferred to the local level. It is within this context that ICM supports the Ministry of Local Government and Chieftainship in developing By-laws that are relevant to the implementation of ICM. Solid by-laws developed through consultative processes will provide the CCs with tools to regulate and enforce relevant issues currently contributing to land degradation and water security.

Although the by-laws drafting exercise will be piloted in 6 community councils for by-Laws with relevance to ICM, the process will be recorded in a guideline that will be institutionalized. Furthermore trainings on the guideline will be provided to the 12 legal officers.

## **2. Tasks to be performed by the contractor**

The objective of this assignment is to support the Ministry of Local Government and Chieftainship in fostering its decentralization agenda in alignment with ICM principles by means of:

- Supporting selected pilot Community Councils in drafting By-laws.
- Develop and institutionalize the process of By-law drafting and enacting in a guideline
- Support development of training 12 legal officers and other relevant stakeholders on by-law drafting according to their respective responsibilities

The assignment is conceptualised to be delivered jointly by a national expert from Lesotho (to be contracted separately by GIZ) and an international or regional expert under this assignment. The two service providers are contracted independently and are expected to coordinate and work closely together to deliver on this assignment. The national and the international/regional expert will work together to support and lead the delivery of the services highlighted below. All tasks described are to be developed collaboratively to benefit from the full potential of national expertise and understanding of the local context together with international best practices and experiences from other countries.

The contractor is responsible for providing the following services:

- Review the legal framework for By-law drafting (Local Government Policies, Acts & regulations) – *Support role*
- Provide an updated list of all competencies that have been identified and decentralized (in the aftermath of the 2015 gazette) and prepare an input on those that are relevant to ICM implementation – *Support role*

- Support buy in and stakeholder engagement of line ministry on selected shortlist of decentralized competences to keep them informed and onboard every step of the way by providing presentation material- *support role*
- Develop a technical guideline for the drafting and enactment of by-laws the guideline should provide clear guidance on processes, timelines, roles and responsibilities. Additionally, it should provide templates as well as flowcharts. – *Leading role*
- Perform iterative collaborative drafting exercises on by-laws in 6 priority sub-catchments piloting the methodology provided by the guideline until the draft By-laws are ready to be submitted for enactment – *Support role*
- Prepare training material and perform training on guidelines – *Support role*
- Organise and provide content for x 2 stakeholder meetings to introduce the pilot exercise and the guideline (/beginning of the assignment) & provide feedback, share the learning and receive input on the guideline (after the drafting exercise) – *Support role*
- Finalise the Guideline based on experiential learning from the pilot and make recommendation on institutionalization of the guideline within the MoLG and provide recommendation on scalability for further pilots – *Joint task*

Period of assignment: From **1 July 2022** until **30 June 2023**.

### 3. Expected outputs and Concept

According to the above-mentioned tasks, the following deliverables are expected:

- (1) Revision of brief report on, current legal base for By-Laws drafting and list of decentralized competencies including relevance to ICM.
- (2) Guideline on By-law Drafting
- (3) By-laws ready for enactment in up to 6 CCs (support and advisory service role)
- (4) Revision of training material and support with preparation of training material to train legal officers
- (5) Revision of training material and training for stakeholders identified in the gap analysis process if and when required
- (6) Support preparation of stakeholder consultations to involve stakeholders and validate/disseminate results

All documents are to be produced in English. Draft versions should be sent to GIZ ICM and key findings presented to core stakeholders for validation and feedback to guide revision.

#	Deliverable	Until	Days
1.	Preparation of assignment and submit of inception report and schedule	1 July	1 day
2.	Brief Report on, current legal base for By-Laws and best practices in drafting by-laws based on other countries experiences	20 July	4 days

	list of decentralized competencies including relevance to ICM.		
3.	Guideline on By-law Drafting	1 September	10 days
4.	By-laws ready for enactment in up to 4 CCs	1 March 2023.	4 days
5.	Training material and training with 12 legal drafters	15 March 2023	3 days (Lesotho)
6.	Prepare x 2 stakeholder consultation to involve stakeholders and validate/disseminate results	30 June 1 April 2023	2 days (Lesotho)
7.	Finale Guideline and closure report on the assignment	30 April 2023	1 day
	<b>Total : 24</b>		<b>24 days</b>

### Technical-methodological concept

**Strategy (1.1 grid):** The bidder is required to consider the tasks to be performed with reference to the objectives of the services put out to tender (see Chapter 1 & 2). Following this, the bidder presents and justifies the strategy with which it intends to provide the services for which it is responsible (see Chapter 3).

The bidder is required to describe the key **processes (1.4 grid)** for the services for which it is responsible and create a schedule that describes how the services according to Chapter 2 & 3 are to be provided. In particular, the bidder is required to describe the necessary work steps and, if applicable, take account of the milestones and contributions of other actors in accordance with Chapter 2 & 3.

Strategy for establishing **cooperation (1.2)** with relevant actors should also be described

The bidder is required to describe its contribution to knowledge management for the partner and GIZ and promote scaling-up effects (**learning and innovation, 1.5**).

The bidder is required to explain its approach for coordination with the GIZ project (1.6)

#### **4. Personnel concept**

This consultancy requires the following expertise:

- University degree in Law (2.2.1).
- At least 10 years of proven experience in conducting legal drafting and development of local level regulation (2.2.3)
- Proven working experience in the development of legal guidelines on legal drafting and training material as well as conducting trainings (2.2.4)
- Proven working experience in decentralisation processes (2.2.4)
- Understanding of the Lesotho legal system is an advantage (2.2.3)
- Strong team player and coordination skills (2.2.5)
- Fluent English proficiency in both speaking and writing (2.2.2)

#### **5. Costing requirements**

##### **Assignment of personnel**

Assignment is up to 24 expert days including 19 days at home base and up to 5 days in Lesotho

##### **Travel**

The bidder is required to calculate up to one trip to The Kingdom of Lesotho and list the expenses separately by daily allowance, accommodation expenses, local travel (airport transfers) and international flight (economy).

All travel expenses are supposed to be reimbursed on lumpsum basis

#### **6. Input from GIZ and other Actors**

The service provider will report to a designated project manager from the GIZ 'Support to ICM in Lesotho' project.

All deliverables will be developed in cooperation with the National ICM Coordination Unit (ICU), representing the leading governmental institution for the ICM programme in Lesotho.

GIZ ICM will support the fulfilment of tasks by the consultant as follows:

- overall coordination with the ICU and other stakeholders,
- logistical support for trainings/workshops,
- provision of relevant documents and further information (written or oral) to the consultant,
- review and timely feedback to the materials provided by the consultant
- organization and cost coverage of local transport to pilot sites if indicated.

Regular calls and a lean steering structure will be agreed in the course of the inception phase of the assignment.



The contractor shall submit timesheets and original invoices for all payments. Payment will be affected following performance of services, submission of deliverables and acceptance of services performed

## 7. Requirements on the format of the bid

The structure of the bid must correspond to the structure of the ToRs. In particular, the detailed structure of the concept (Chapter 3) is to be organised in accordance with the positively weighted criteria in the assessment grid (not with zero). It must be legible (font size 11 or larger) and clearly formulated. The bid is drawn up in English (language).

The complete bid shall not exceed 10 pages (excluding CV).

The CV, in accordance with Chapter 0 of the ToRs, must be submitted using the format specified in the terms and conditions for application (AVB 2018). The CV shall not exceed 4 pages. The CV must clearly show the position and job the proposed person held in the reference project and for how long. The CV must be submitted in English (language).

If the maximum page number is exceeded, the content appearing after the cut-off point will not be included in the assessment.

Please calculate your price bid based exactly on the aforementioned costing requirements. In the contract the contractor has no claim to fully exhaust the days/travel/workshops/ budgets. The number of days/travel/workshops and the budget amount shall be agreed in the contract as 'up to' amounts. The specifications for pricing are defined in the price schedule.

The technical offer should not show any price details. The technical and the price offer should be submitted in two separated documents.

## 8. Other Requirements

- Please submit your proposal (technical and price proposal) in separate files/folder to [ZA\\_Quotation@giz.de](mailto:ZA_Quotation@giz.de) no later than **20.06.2022**, all documents must be in PDF.
- Please do not mention any price for this measure on your cover letter/Technical proposal.
- Please submit your tax clearance certificate with the bidding documents.
- Please submit your price proposal in **EUR**.
- Our General Terms of Conditions (attached) shall not be changed/amended should you be the winner of this tender. These General Terms and Conditions will form part of the contract should you be awarded this contract. By submitting your proposal we will conclude that you have read and accepted these terms and conditions.
- Bidders are not allowed to communicate directly with any other person regarding this bid other than the procurement official/s. Failure to comply with this requirement may lead to your bid being disqualified.

- **This Bid is for Individual Consultants/ Appraisers only (no companies).**
- Bidders must strictly avoid conflicts with other assignments or their own interests. Bidders found to have a conflict of interest shall be disqualified. Without limitation on the generality of the above, Bidders, and any of their affiliates, shall be considered to have a conflict of interest with one or more parties in this EOI and tender process, if they:
  - a) are or have been associated in the past, with a firm or any of its affiliates which have been engaged by GIZ or the Interim Supply Chain Management Council to provide services for the preparation of the design, specifications, Terms of Reference, cost analysis/estimation, and other documents to be used for the procurement of the services in this selection process;
  - b) were involved in the preparation and/or design of the programme/project related to the services requested under this EOI and tender;
  - c) are serving or have been serving in the past three months in the structures of the Interim Supply Chain Management; or
  - d) are found to be in conflict for any other reason, as may be established by, or at the discretion of GIZ.
- In the event of any uncertainty in the interpretation of a potential conflict of interest, Bidders must disclose to GIZ, and seek GIZ's confirmation on whether or not such a conflict exists.
- Similarly, the Bidders must disclose in their proposal their knowledge of the following:
  - a) if the owners, part-owners, officers, directors, controlling shareholders, of the bidding entity or key personnel are family members of GIZ staff involved in the procurement functions and/or the Interim SCM Council or any Implementing partner receiving services under this EOI or tender; and
  - b) all other circumstances that could potentially lead to actual or perceived conflict of interest, collusion or unfair competition practices.
- **Failure to disclose such an information may result in the rejection of the proposal or proposals affected by the non-disclosure.**
- **Questions & Answers will be placed on the link provided.**
- **Bids sent via Dropbox and WeTransfer will not be accepted.**

## **9. Annexes**

Particip WS 4 study  
Gazette 2015