

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

	Project number/ cost centre:
Policy Harmonisation for Integrated Catchment Management (ICM) in Lesotho: Revision of key legislation (primarily Water Act and subsidiary regulation) and drafting local level legislation (by-laws)	2018.2194.1-004.00

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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 Councils
EU	European Union
ICM	Integrated Catchment Management
ICU	Integrated Catchment Management Unit
IWRM	Integrated Water Resources Management
MoLGCA	Minister of Local Government and Chieftainship Affairs
ToRs	Terms of reference

1. Context

These terms of reference (ToR) are for the appointment of a service provider by the Integrated Catchment Management Programme (hereafter referred to as 'ICM') to support the Government of Lesotho in the revision of key legislation for the implementation of ICM (primarily Water Act and subsidiary regulation) and the drafting local level legislation (by-laws). The support is provided in alignment with the objectives of ICM and in close cooperation with Ministry of Local Government & Chieftainship. Additionally, the legal expert is requested to support ongoing efforts of legal drafting of key Acts relevant to the institutionalization of ICM institutions and programme implementation.

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 sufficient capacities to outlive the consequences of climate change and variability.

This represent 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. The programme 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 the programme 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 'Support to Integrated Catchment Management in Lesotho that is implemented by *Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH*.

Background to Change Area policy and governance

Many analyses regard the root cause of environmental degradation in Lesotho points towards ineffective governance of land and water resources. More effective policies and governance are needed for the sustainable implementation of integrated catchment management. This includes the regulation of land and water use, and the coordinated implementation of catchment management interventions across departments and sectors. Strong local government institutions are required to set the right priorities for local watersheds, in consultation with land and water user associations. Lesotho's administrative and river catchment boundaries do not overlap, so each catchment includes several districts and community councils. Coordinating institutions are therefore required to develop catchment management plans with rehabilitation measures that consider the implications of upstream and downstream activities, as well as catchments' geophysical characteristics. ReNOKA aims to improve the governance of natural resources in Lesotho's catchment areas. Harmonisation of laws and policies, development of effective institutions for catchment management, and the establishment of common guidelines and standards, will enable the development of an integrated planning approach at catchment level. A revision of Lesotho's water and environmental legislation will provide a mandate for integrated catchment management,

harmonise existing policies and support relevant ministries with the development of regulations, standards and permitting systems. The process will consolidate the fragmented mandates and responsibilities of line ministries and authorities. It will enable the effective enforcement of regulations for use of land and water resources, and ensure water and land management plans are aligned with catchment boundaries.

Lesotho's long-term water and sanitation strategy describes the six major river catchments and institutions mandated for integrated catchment management. This is an important starting point for the further institutionalisation of integrated catchment management in Lesotho.

Several legislative review processes are ongoing, providing opportunities to base catchment management principles in law and policy. The introduction of a new Local Government Bill will empower local government institutions. Under the framework to establish integrated catchment management in Lesotho, a number of core institutions have been established, including the National Integrated Catchment Management Committee, the National ICM Coordination Unit, the National Technical Secretariat, Catchment Planning Units and Catchment Management Joint Committee. At community level, Community Watershed Teams have been formed out of existing associations of land and water users. A technical working group has reviewed the Draft Catchment Planning Guidelines for Lesotho and the Compendium of Soil and Water Conservation Measures, which offers quality standards and guidance on the implementation of catchment management. To further advance integrated catchment management in Lesotho, the legal status of institutions and their mandates must be confirmed, and agreement reached to review critical legislation regulating land and water resources. A first step towards codification and establishing a legal basis for ICM is the revision of relevant Water Legislation (i.e revision of Water Act 2008 to include ICM principles, mandates and objectives; Update of Long-Term Water and Sanitation Strategy 2014 to operationalise ICM). Additionally, harmonised codification of ICM principles, mandates and objectives as well as practical implementation guidance in other sectoral policies should be considered.

Background to support to by-laws drafting

Integrated catchment management builds on national and decentralized governance structure that can sustain 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, 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 (passing of Local government Bill 2017) key ministries have been identified as pilots to devolve competences to the local level. A number of ministries have 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 the making of by-laws and the transfer of competencies 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 emphasized 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 issues currently contributing to land degradation and water security.

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

2. Tasks to be performed by the contractor

The contractor has two main tasks:

1. Support process of legal and policy revision in relevant fields for ICM as process manager

It is recognized that the revision of key national legislation requires expertise on process and an in-depth knowledge of the Lesotho context and its stakeholders. The expert will be working in cooperation with technical content experts to:

- Highlight clear procedures for legal revision (Acts, Policy & Strategies) in the context of Lesotho
- Highlight clear procedures for enactment of legislation and policy in the context of Lesotho
- Highlight clear procedure for mainstreaming of ICM processes in ongoing legal revision processes

Support with revision of key Acts and Policy by:

- Build consensus on the policy/legal review processes through stakeholder engagement
- Support the development of issues papers highlighting the content of revision for the legal instrument/policy
- Validate the content of the issue paper through stakeholder engagement and high level buy in
- Support legal drafting and provide recommendation on Lesotho's legal standards

2. To support the Ministry of Local Government and Chieftanship Affairs in fostering its decentralization agenda in alignment with ICM principles by means of:

- **Supporting selected pilot Community Councils in drafting Bylaws.**

- **Develop and institutionalize the process of By-law drafting and enacting in a guideline**
- **Training 12 legal officers and other relevant stakeholders on by-law drafting according to their respective responsibilities**

The contractor is responsible for providing the following services:

- Investigate past effort in by-law drafting and provide a short lessons learnt analysis including potential capacity gaps in local administrations
- Review the legal framework for By-law drafting (Local Government Policies, Acts & regulations)
- 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
- Obtain buy-in through stakeholder engagement of line ministry on selected shortlist of decentralized competences to keep them informed and onboard every step of the way
- Develop a technical guideline for the drafting and enactment of by-laws the guideline should provide clear guidance on processes, timelines, roles and responsibilities. The guidance should include practical working aids, such as templates and flowcharts.
- Perform collaborative drafting exercises on by-laws in 6 Community Councils piloting the methodology provided by the guideline until the draft By-laws are ready to be submitted for enactment
- Prepare training material and perform training for legal officers on the guideline.
- Organise and provide content for 2 stakeholder meetings: One meeting to introduce the pilot exercise and the guideline (beginning of the assignment) & one meeting provide feedback, share the learning and receive input on the guideline (after the drafting exercise)
- Attend community councils sitting to take notes and ensure all information are available to CCs to select By-laws and provide inputs
- Finalise the Guideline based on experiential learning from the pilot and make recommendation on institutionalization of the guideline within the MoLGCA

Period of assignment: From **8 August 2022** until **30 November 2023** .

3. Expected outputs and Concept

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

1. Work Package 1 - Support to process of legal and policy revision in relevant fields for ICM as process manager

Procedural support:

- Procedures brief and strategy document for legal revision in the context of Lesotho for Legislation identified as crucial to ICM institutionalization and implementation
- Procedures brief and strategy document for enactment of selected legislation and policy in the context of Lesotho

- Procedures brief and strategy document for mainstreaming of ICM processes in ongoing legal revision processes (including lists of strategic ongoing processes)

Support with revision of key Acts and Policy:

- Bilateral and multilateral engagements/workshop with key stakeholders to build consensus on the policy/legal review processes demonstrated through documentation of meetings and workshop
- Issue papers highlighting the content of revision for the legal instruments/policy
- Validation meetings for the issue paper demonstrated through comprehensive documentation
- Legal drafting support through review and comments of revised versions is provided to technical and legal experts in line with Lesotho legal standards

Please note that specific Acts and Policy support will be further refined during the inception phase

Work Package 2-support the Ministry of Local Government and Chieftanship Affairs in fostering its decentralization agenda in alignment with ICM principles

- Brief report on past effort and learning on By-Laws drafting, current legal base for By-Laws drafting and list of decentralized competencies including relevance to ICM.
- Guideline on By-law Drafting
- By-laws zero draft agreed and approved
- By-law ready for enactment in 6 CCs including stakeholder engagement
- Training material and training with 12 legal drafters
- Training material and training for stakeholders identified in the gap analysis process if and when required
- Prepare x 2 stakeholder consultations to involve stakeholders and validate/disseminate results
- Briefing notes for MoLGCA

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
Work Package 1			
1.	Preparation of assignment and submit of inception report and schedule including Inception meeting with relevant ministry	1 week after contract start	3 days

2.	Procedures brief and strategy document for legal revision in the context of Lesotho for Legislation identified as crucial to ICM institutionalization and implementation	1 month after contract start	5 days
3.	Procedures brief and strategy document for enactment of selected legislation and policy in the context of Lesotho		5 days
4.	Procedures brief and strategy document for mainstreaming of ICM processes in ongoing legal revision processes (including lists of strategic ongoing processes)		5 days
5.	Bilateral and multilateral engagements/workshop with key stakeholders to build consensus on the policy/legal review processes demonstrated through documentation of meetings and workshop	2 months after contract starts	5 days
6.	Issue papers highlighting the content of revision for the legal instruments/policy	6 months after contract starts	30 days
7.	Validation meetings for the issue paper demonstrated through comprehensive documentation	8 months after contract starts	15 days
8.	3 briefing notes for Ministry of Water and other ICM stakeholders	4,8,12 months after contract starts	5 days

9.	Legal drafting support through review and comments of revised versions is provided to technical and legal experts in line with Lesotho legal standards	11 months after contracts starts	30 days
Work Package 2			
10	Brief Report on past effort and learning on By-Laws drafting, current legal base for By-Laws drafting, list of decentralized competencies including relevance to ICM and consultation/buy in from key Ministry	3 weeks after contract starts	7 days
11	Guideline on By-law Drafting and validation with 12 legal drafters	6 weeks after contract starts	12 days
12	Agreed zero draft of By-laws Including attendance to CCs consultation selection of by-laws, finalization of zero draft of By-laws	6 months after contract starts	30 days
13	By-laws ready for enactment in 6 CCs Including presentation of drafts 1 and 2 of bylaws and consultations with key stakeholders	8 months after contract starts	30 days
14	Training material and training with 12 legal drafters	9 Months after contract starts	6 days
15	Training material and training for stakeholders identified in the gap analysis process if and when required	10 months after contract starts	4 days
16	Prepare x 2 stakeholder consultation to involve stakeholders and validate/disseminate results	3 months after contract starts 11 Months after contract starts	3 days

17	3 Briefing notes for MoLGCA & other Ministry	5, 9, 11 Months after contract starts	3 days
18	Finale Guideline and closure report on the assignment	10 Months after contract starts	2 days
19	Translation of Bylaws to English from Sesotho & Guideline from English to Sesotho	11 months after contract starts	10 days
	Total: 210		210

Technical-methodological concept

Strategy (1.1 grid): The bidder is required to consider the tasks to be performed with reference to the objectives (1.1.1) 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 & 1.1.2 evaluation grid).

The bidder is required to describe the key **processes (1.4 .1 evaluation 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 (1.2.2) for establishing cooperation 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**).

The bidder is required to explain its approach for project management and coordination with the GIZ project (1.6.1)

4. Personnel concept

This consultancy requires the following expertise:

- University degree in Law (2.2.1).
- 15 years of proven and recent experience in conducting legal drafting and development of local level regulation (2.2.3)

- Proven working experience in the development of legal guidelines (2.2.4)
- Proven experience in development of training material as well as conducting trainings (2.2.4)
- Proven working experience in decentralisation processes (2.2.4)
- Proven experience in Legal drafting and revision of at least 3 main acts (2.2.4)
- Understanding of the Lesotho legal system (2.2.3)
- Fluent English proficiency in both speaking and writing (2.2.2)
- Fluency in Sesotho (2.2.2)
- Consultant must be based in Lesotho

5. Costing requirements

Assignment of personnel

Assignment is up to 210 expert days in Lesotho

Flexible Remuneration Item

Please calculate 10% of the contract sum as flexible remuneration item.

Travel

The bidder will be based in Lesotho and no international travel is required.

Visit to the Community Councils are required for the fulfilment of the assignment. The is required to calculate trips and lump sum allowances for the required fieldtrips and list the expenses separately by daily allowance, accommodation expenses and local travel

All travel expenses are supposed to be reimbursed on lumpsum basis except for travel by car which is reimbursed based on odometer proofs.

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 deliverable will be developed in cooperation with Integrated Catchment Unit, representing the leading governmental institution for the ICM programme in Lesotho. Other development partners are working in the field of financing mechanism and coordination among initiatives is expected.

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

- overall coordination with the ICU and other stakeholders,
- support in coordination of the training/workshop,
- 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 for all team members 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 CVs).

The CVs of the personnel proposed 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 CVs shall not exceed 4 pages. The CVs must clearly show the position and job the proposed person held in the reference project and for how long. The CVs can also be submitted in English (language).

If one of the maximum page lengths 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 no later than **07.07.2022**, 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 LSL.
- 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.
- 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

8. Annexes

Annex 1: Compiled deliverable Policy Harmonisation assignment: Synthesis report, Reports on National Policy Harmonisation, Gender Human rights-based approach and Climate Change, Decentralisation, Financing options

Annex 2: Gazette 2015

Annex 3: Presentation of policy priorities by ICU

Annex 4: Concept note on catchment planning