



INDIVIDUAL NATIONAL CONSULTANT PROCUREMENT NOTICE

Date: 03rd Sept 2021

Country: Botswana

Title of Consultancy: Individual Consultancy to review the legal and regulatory framework for implementation of the Decentralisation Policy of the Government of Botswana

Description of the assignment: Consultancy to review the legal and regulatory framework for implementation of the Decentralisation Policy of the Government of Botswana

Project Name: Economic Diversification and Inclusive Growth

Period of assignment/ services: over a period of 4 months

Submission Requirements: Proposals should be submitted at the following address no later than **24th September 2021 at 1200hrs** (Botswana Time) to:

The Resident Representative
United Nations Development Programme
P.O. Box 54
Gaborone

or by email to: procurement.bw@undp.org

Any request for clarification must be sent in writing, or by standard electronic communication to the address or e-mailed to enquiries.bw@undp.org. UNDP Botswana will respond in writing or by standard electronic mail and will send written copies of the response, including an explanation of the query without identifying the source of the inquiry to all prospective facilitators.

NOTE: *Consultancy firms/companies interested in applying for this assignment are free to do so provided they submit a CV of only one qualified consultant and present its bid in a manner that would allow for evaluation of the bid in accordance with the evaluation criteria specified in these solicitation documents. That is, the experience required is that of the individual whose CV would have been submitted by the company rather than that of the company. Further, if the submitted bid wins, the ensuing contract will be between the UNDP and the company/firm, not the individual.*

1. BACKGROUND

Decentralisation and local governance have been integral and key components of Botswana's democratisation and economic transformation process right from the start. It should be recalled that independent Botswana was formed from tribal territories that were self-governing prior to the formation of the British Protectorate (initially named Bechuanaland). These units retained some level of self-administration through colonial and post-independence periods although under the Central Government. Botswana has one of the oldest continuous local government systems in Africa in which local councils were established in 1966; District Administration in 1965; Land Boards in 1970; and Tribal Administration - an adaptation of the traditional chieftainship system that predates the colonial era. Tribal administration, the oldest local government institution in Botswana, has progressively been reformed by transferring some of its responsibilities to democratically elected councils and specialized state agencies like Land Boards.

Development planning at local government level is performed and coordinated at two levels, that is village/town or city as well as at district level. At the village level, it is coordinated by the Village Development Committees (VDCs); and at district, and urban settlements level by District/Urban Development Committees (DDCs/UDCs) respectively. The crucial function of land administration is managed by the land boards which report to both central government and respective local governments. Both Tribal administration and Land Boards play crucial roles in local development and service delivery but there are gaps in the way those roles are performed. In spite of the concerted efforts to enhance institutional and coordination frameworks at local level, challenges with regard to the efficient and effective service delivery remain.

1.1. Rationale for Decentralisation in Botswana

The Government's decision to formulate the Decentralisation Policy is underpinned and motivated by the persistent desire to address the challenges in Botswana's quest for participatory democratic governance as well as inclusive diversified and equitable economic development. It has always been the priority of the Government to empower citizens, not only to elect their local leaders but also to hold them accountable for the quality of services delivered. Despite the long experience with local government and several initiatives at decentralising decision-making responsibilities and resources to councils and other sub-national structures, there remain challenges in local governance and service delivery. Hence the National Decentralisation Policy seeks to address these challenges, key of which are highlighted hereunder:

- Piecemeal decentralisation reforms
- Unempowered local government
- Weak coordination framework at local level
- Large country with sparse population
- Ineffective local planning frameworks
- Ineffective and inefficient fiscal and public financial management regime
- Positioning of Bogosi (or chieftainship) (the oldest Local Government institution, and a symbol of social and cultural identity of Botswana): There are concerns that Bogosi is not well placed to effectively function in a democratising and culturally

The National Decentralisation Policy is a long-term overarching governance policy that will as such be implemented in a phased approach. There is a five-year implementation plan which will be a roadmap for rolling out this Policy. It is worth noting that the implementation of the Implementation Plan of the Decentralisation Policy forms part of the MLGRD's revised Strategy and Transformation Plan covering the period 2021 to 2025. In this strategy, there are six strategic objectives of which the **second strategic objective** is to implement **PHASE ONE** of decentralization Policy successfully. The phase 1 of the decentralisation process can best be characterised as a preparatory phase during which the necessary coordinating and implementing structures are established, necessary legal changes are considered and implemented as well as generating the required buy in from various important line ministries and for raising awareness, support and the understanding of the local councils and the public on the changes that are about to happen.

1.2. Objectives of the Decentralisation Policy

- To empower local governments as the key drivers of good governance, sustainable and responsive service delivery, and local socio-economic development.
- Improve the administrative and human resource capacities of line ministries, other national institutions, local governments, and other actors to ensure quality, efficient, effective, and affordable service delivery as well as sustainable and inclusive local development.
- Enhance the sectoral decentralisation structures and systems in order to ensure the efficient and effective coordination of sectoral planning, implementation, and monitoring of service delivery at local level.
- Define the status, roles, and relationships of different levels of government and actors in local governance, service delivery and local development.
- Improve the administrative and human resource capacities of line ministries, other national institutions, local governments, and other actors to ensure quality, efficient, effective, and affordable service delivery as well as sustainable and inclusive local development.
- Reform, reposition and capacitate Bogosi to play a meaningful role in local governance, and ensuring the preservation of the rich diverse cultures and values that make Botswana unique, peaceful, and prosperous.
- Support the mobilization, predictable flow, and efficient, equitable and cost-effective use of resources by decentralising national institutions and line ministries, local governments, and other institutions at national and local levels in performing their assigned functions.
- Enhance effectiveness, efficiency and accountability in the planning, financing, and implementation of decentralised service delivery activities, by creating a conducive environment and opportunities for all stakeholders to productively participate in the development process.
- Strengthen accountability and transparency of national and local leaders and institutions, including non-state actors to the communities that they serve.

- Mainstream environmental sustainability and climate change resilience building in all decentralisation and local development activities and build local institutional capacities in all decentralised entities.
- Ensure a coordinated and effective communication framework to foster transparency, information dissemination, promote participation in, and ownership of, the decentralisation process by all stakeholders.
- To link human resources management and development with organisational objectives and strategies in the framework of decentralisation. The Framework will contain diverse yet interrelated elements that make up human resources management in local government and take into consideration the separation of roles and responsibilities between central and local government entities.
- To establish an enabling legal framework for effective decentralisation and local government framework that is effective and is based on the rule of law.
- Ensure successful and sustainable implementation of the Decentralisation Policy to ensure good governance, transparency, and accountability in the implementation process, ensuring the timely and efficient achievement of milestones.

1.3. Guiding Principles for Decentralisation

Botswana's decentralisation policy is anchored on a set of principles that are informed by the unique circumstances and aspirations of the country and its people for "a modern, democratic, equitable, wealthy nation with a healthy, economically productive and politically active population". Key among these principles are:

- **Unitary state:** Recognition of Botswana as a unitary state and the need to deepen and sustain its indivisibility and promote equitable development across the country.
- **Participation:** Decentralisation has evolved to bring decision-making power to levels closest to the citizens. This enables them to participate actively and contribute to or otherwise influence the public decisions that affect their lives.
- **Subsidiarity:** The principle of subsidiarity holds that a central authority should perform only those tasks that cannot be performed effectively at a more immediate or local level that is as close to the citizen as possible. The subsidiarity principle therefore seeks to promote efficient, effective, accountable, quality and equitable local development and service delivery.
- **Separation of powers:** Efficiency and accountability in governance, local development and service delivery require clear separation of powers, functions and responsibilities between political, administrative and technical entities, and between national and local entities. This must be reflected in the structures and functional linkages, and in the tools, behaviour and practices of actors.
- **Local autonomy:** Power and authority can only be effectively exercised as intended if the new power holders (Local Governments) are given sufficient autonomy to make decisions. Local autonomy is also at the core of Local

Government accountability. This autonomy must, however, be exercised in a manner consistent with overall national policies and values that the Central Government is responsible for preserving/upholding.

Constitution, laws and regulations codify the formal rules of the game by which a decentralized system is supposed to function. Structurally, the desirable architecture of these rules is quite straightforward:

- the constitutions should be used to enshrine the broad principles on which decentralization is to operate, including the rights and responsibilities of all levels of government; the description and role of key institutions at central and local levels; and the basis on which detailed rules may be established or changed.
- one or more laws should define the specific parameters of the intergovernmental fiscal system and the institutional details of the local government structure, including, key structures, procedures, accountabilities, and remedies.
- a series of regulations associated with each law should interpret and describe in detail the practices and measures by which the related law will operate.

When reviewing the legal framework for decentralization, it is not sufficient to examine decentralization specific laws -- other laws which mandate aspects of service delivery, civil service, budgeting and so one must also be considered to ensure a consistent approach. It is in this regard that, MLGRD with the support of United Nations Development Programme (UNDP) requires the services of Legal Consultant to assess and propose for a comprehensive review of the legal framework relating to local governance and decentralised service delivery in order to operationalize the Decentralisation Policy.

2. PURPOSE OF THE ASSIGNMENT

The main purpose of the assignment is to review the legal and regulatory framework for implementation of the Decentralisation Policy and provide detailed recommendations of possible reforms.

Note: MLGRD is also undertaking consultancies on Administrative Decentralization and Fiscal Decentralization that could influence this study. It is important that the consultant coordinate to ensure maximum synergies.

3. SCOPE OF WORKS

The Consultant is expected to undertake the following:

A. Desktop Review –Decentralisation Policy, the Constitution, laws, and regulations

- i. Read and Become familiar with the draft Decentralisation Policy.
- ii. Review the current constitutional and local government legal framework.
- iii. Assess other laws which mandate aspects such as service delivery, civil service, budgeting etc.

- iv. Conduct case studies of selected countries that have successfully decentralised service delivery to Local Authorities.
- v. Identify international best practices related to legal and regulatory frameworks governing and managing decentralisation.

B. Based on (A) above, assess the coherence and alignment between the Decentralisation Policy and the current legal and regulatory framework. The consultant must assess, but not limited to, the following issues:

- i. Operating powers, including terms of office
- ii. Organizational structures, separation of roles, functions, and powers between the Central and Local Government entities.
- iii. Human Resources management, development, and capacities at LAs
- iv. Place and Function of Bogosi
- v. Fiscal Decentralisation – covering taxing, borrowing authority and capacities of local authorities, budgeting, and expenditure management
- vi. Divestment and Local Economic Development
- vii. Mechanisms for community empowerment and civic/citizen participation
- viii. Integrated development planning
- ix. Spatial Planning
- x. Mechanisms for mainstreaming environmental sustainability and climate change Resilience Building
- xi. Communication and stakeholder engagement
- xii. Procedures and limitations of the political leadership, distinct from the civil service
- xiii. Degree of autonomy of personnel policies and administration of local governments
- xiv. Accounting, auditing, and reporting requirements
- xv. Service provision and delivery authority

C. Based on findings of (B) above, make detailed recommendations and propose changes to the legal and regulatory framework that will ensure coherence and alignment between the Decentralisation Policy and the legal and regulatory framework.

4. METHODOLOGY

The consultant shall collect and make use of all available information and apply sound technical practices and methods in carrying out the assignment. The methodology selected must appropriately respond to the scope of work to produce the intended deliverables. It is highly recommended that these methods comprise both quantitative and qualitative approaches.

The Consultant is expected to carry out extensive desk top review of various strategic documents such as the National Development Plan 11, District Development Plan 8, the Decentralisation policy, Implementation Plan for Decentralisation, LED Framework,

revised MLGRD Strategy, the constitution, Local Government Act, and other related legislation.

Guidance will be provided to the consultant throughout the process to ensure that dialogue is promoted among key stakeholders. Stakeholders must include, but not limited to relevant government sector ministries, Attorney General, local government authorities, departments and agencies, House of Chiefs, academic and research institutions, civil society, media, private sector, and relevant development partners.

Note: There will be a number of consultancies running concurrently with this assignment that could influence this study such as the Administrative decentralization and the Fiscal decentralization, therefore, would be important that consultants coordinate to ensure maximum synergies.

5. KEY DELIVERABLES

The following are the articulated deliverables for the consultancy:

No.	Deliverables	Explanation/ Requirement(s)	Provisional Timeliness for delivery
1	Inception Report	The document should detail the understanding of the tasks, show how each action in the scope of work will be addressed. It should also include the work plan for the entire duration of the assignment.	3 weeks after signing the contract.
2	Draft Report	Following review and analysis of existing documents and stakeholder consultations, the consultant will use the findings to produce a comprehensive Draft Report demonstrating appreciation of the current situation and recommendations.	8 weeks after approval of the inception report.
3	Final Report	The consultant will incorporate feedback from various stakeholders to produce the Final Report.	3 weeks after approval of the draft report.

6. PLANNING

The assignment is expected to be finalized by December 2021. Bidder must propose own schedule of work that would adequately result in the expected deliverables outlined in these ToR. Any extension beyond the agreed period will not be allowed to go beyond five months unless this is based on the reasons beyond the control of all parties involved with this assignment.

7. REQUIRED QUALIFICATIONS AND EXPERIENCE

The consultant is expected to possess the following combination of qualifications, experience, and competencies:

- *Qualification:* A Master's degree in Law.
- *Work experience:* At least 10 years of relevant experience and demonstrate understanding of local governance and related legal frameworks, preferably in different countries.
- Demonstrated experience in the assessment and functioning of government in general and the workings of the Government of Botswana, particularly in relation to the management of central-local relations.

Competencies

- Demonstrate practical knowledge and experience of local governments, positive attitude to community empowerment and participatory methodologies
- Innovation, result orientation, planning, and implementation management structures
- Political sensitivity in managing interactions with stakeholders within the public, private and political domains
- Demonstrated ability to interrogate lessons from international, regional, national, and local practices and processes and adapt them to the realities of Botswana
- Good stakeholder mapping, engagement, and facilitation
- Strong analytical skills, and excellent teamwork
- Good written and oral communication in English

8. IMPLEMENTATION ARRANGEMENTS

The Department of Local Governance and Development Planning (DLGDP) in the Ministry of Local Government and Rural Development is the lead on all processes in terms of managing the day-to-day affairs of the assignment. The assignment will also include working with the Corporate Services Department and the Legal Unit as well as the procurement and Finance Department. Through the DLGDP, the consultant will report directly to the Deputy Permanent Secretary Governance. However, the overall guidance and Supervision will be provided by the Permanent Secretary MLGRD and approved by the Inter-Ministerial Coordinating Committee (IMCC).

The UNDP Country Office will play an overall technical, facilitative, and quality assurance role throughout the process of this assignment. They will be supported by the multi-sectorial Technical Reference Group (TRG) that will be established to provide technical support and quality assurance in country to the assignment in consultation with DLGDP.

On a daily base, the Consultant will work closely with the staff of DLGDP as the Secretariat for the assignment. The Department in collaboration with the UNDP CO will arrange regular consultations and stakeholder engagements for appreciating the progress and review of documents that will be produced. The Consultant will be required to make presentations of various drafts and other key deliverables at different Technical

Reference Group meetings and stakeholder engagements that will be arranged by the Secretariat in collaboration with the UNDP CO.

9. DOCUMENTS TO BE INCLUDED WHEN SUBMITTING THE PROPOSALS

The consultant must submit the following documents/information to demonstrate his/her qualifications:

- Technical Proposal: The technical proposal should include the following:
 - CV of the consultant
 - At least three (3) references for ease of background checks.
 - Demonstration of experience in providing similar services, indicating names of clients, nature, and scope of work.
 - Comments or suggestions on the TORs and appreciation of the assignment, if necessary.
 - Demonstration of adequate understanding of the specified requirements.
 - Detailed explanation of the approach/methodology of the Assignment.
 - An implementation matrix/work plan with activities and timelines for carrying out the assignment.
 - A certificate of good health
- Financial proposal:
 - Indicate the Lump-sum consultancy fee.
 - The lump sum should be broken down to clearly indicate travel, per diems, and actual consultancy fees (daily fee).
 - An indication of whether this rate is flexible or not.
 - A confirmation of the all-inclusive, daily consultancy fee.

10. TRAVEL

Travel and payment of travel costs including tickets, lodging and terminal expenses will be agreed upon, between UNDP and Consultants, prior to travel and will be reimbursed.

11. EVALUATION PROCESS

The procedure for evaluation of the bids shall consist of three stages.

STAGE -1 – Preliminary Evaluation

Preliminary evaluation of the proposals will be a compliance check based on the aspects below;

- a. CV
- b. Qualifications
- c. Completeness of Bid (Technical Proposal and Financial Proposal)

The evaluation is based on a yes/no response. If the response is “no” for any of the criteria, the bidder will be disqualified for further evaluation.

STAGE-2 -Technical Evaluation

Technical evaluation shall be made to determine capability to deliver the required deliverables of the consultancy. It will be based on a scale of 0-100 points wherein the qualifying mark is 70%. Therefore, if the bidder fails to score 70% and above under stage 2, they shall be disqualified from further evaluation. The quality criteria and maximum score in respect of each of the criteria are as follows:

Criteria	Max Points
1. Context, Knowledge and Technical Competence <ul style="list-style-type: none"> • Adequate knowledge of the subject matter – Decentralization, Local governance and related laws and regulations • Understanding the functioning of government in general and the workings of the Government of Botswana, particularly in relation to the management of central-local relations. • Data collection and analysis • Writing skills 	30
2. Relevant Professional /Work Experience <ul style="list-style-type: none"> • Relevant experience and demonstrate understanding of local governance and related legal frameworks, preferably in different countries • Demonstrate past performance in providing similar services 	30
3. Methodology/Approach <ul style="list-style-type: none"> • Understanding of each element of the scope of works • Its Appropriateness to the Condition and Timeliness of the Implementation Plan • Methodology/approach must comprise both qualitative and quantitative analyses and clearly defined 	40

STAGE 3 – Financial / Cost evaluation

Consultant must obtain a minimum of 70% of the obtainable points of 100 points in the technical evaluation to be considered for the financial evaluation. Cost Evaluation shall be conducted by reviewing financial proposal to correct any arithmetic errors and assessing reasonability of the cost.

12.AWARD

The award of the contract will be made to the Consultant after the offer has been evaluated and determined as:

- Responsive/compliant and/or acceptable for the assignment and;
- Having scored 70% and above on technical evaluation
- Reasonable cost

Lastly, UNDP retains the right to contact references directly.

13.PAYMENT SCHEDULE

Payment shall be made against deliverables in three installments following the suggested schedule defined below:

- a) **First payment - Inception Report:** Ten percent (10%) upon delivery and acceptance of the inception report.
- b) **Second payment - Draft Report:** Sixty percent (60%) upon approval of the report after presentation at the Inter-Ministerial Coordinating Committee.
- c) **The third payment - Final Report:** Thirty percent (30%) upon successful completion of this assignment and approval of the final report.