



**DIGITAL MALAWI PROGRAM PHASE I: DIGITAL FOUNDATIONS
PROJECT**

PROJECT NUMBER : P160533

**TERMS OF REFERENCE FOR LEGAL CONSULTANCY SERVICES TO PRODUCE
DRAFT REGULATIONS FOR E-GOVERNMENT PROCUREMENT
ACT FOR THE GOVERNMENT OF MALAWI**

1. BACKGROUND

Information and Communication Technology (ICT) is now globally recognized as an essential tool for promoting competitiveness, job creation, sustainable development, and overall poverty reduction. A combination of widespread access to broadband and a robust ICT services ecosystem can offer a powerful platform for reducing poverty, improving human development and increasing government transparency and efficiency. ICTs have the potential to transform business and government - driving entrepreneurship, innovation and economic growth and breaking down barriers of distance and cost in the delivery of services. It is in recognition of this that the Government of Malawi is implementing a new project in the realm of ICT – the Digital Malawi Project.

2. DIGITAL MALAWI

The overall aim of the Digital Malawi project is to extend and improve access to critical ICT infrastructure for the public and private sectors; improve ICT governance; improve access to government services; and facilitate the provision of e-services thereby enhancing public service delivery.

The proposed project has been divided into four components, namely; digital ecosystems, digital connectivity (infrastructure), digital platforms and services (e-Government) and project management. The digital platforms component will address creating of shared digital platforms across MDAs. Under this component, the Malawi Government in addition to the creation of shared platforms, it is also strengthening its Information & Communication Technologies (ICTs) legal and regulatory framework, through the development of various ICT related laws and supporting regulatory instruments including regulations. It is under this component that the current activity falls.

3. PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS (PPD) ACT

The Public Procurement and Disposal of Assets Authority (PPDA) was established as a result of the enactment of the Public Procurement and Disposal of Public Assets (PPD) Act number 7 of 2017. The mandate of the Authority is to regulate, monitor and oversee public procurement and disposal of public assets. The principles of the Act include, among others, transparency, accountability and value for money. The PPD Act of 2017 provides for the use of modern information communications technology in order to ensure efficiency in public procurement in Malawi. However, it does not go into details on the modalities of using such ICTs in public procurement.

Vital to the efficiency and effectiveness of the implementation of the above legislation is the development of relevant regulations to provide regulatory certainty to those governed by the laws.

Through Component 3 of Digital Malawi Project, the Government of Malawi seeks to implement an e-Government Procurement (e-GP) platform through the PPDA, which will entail all activities of the procurement cycle being done online. With the implementation of the e-GP system, there is need for the development of Regulations to establish processes of monitoring and enforcing the legislation to govern the use of the ICT in public procurement.

In light of the above, the PPDA seeks to procure consultancy services to draft subsidiary legislation (regulations, rules and guidelines), in relation to the use of ICT in Public Procurement, to give more effect to the Act.

4. OBJECTIVES FOR THE ASSIGNMENT

The objective of this assignment is to develop Regulations for the use of ICT in Public Procurement under Public Procurement and Disposal of Public Assets (PPD) Act.

5. SCOPE OF WORK

The Consultant is required to provide an overview of the Public Procurement and Disposal of Public Assets (PPD) Act of 2017 as it pertains to Malawi ICT laws. The Consultant will then proceed to draft Regulations for the use of ICT in Public Procurement for PPDA. The Regulations will reflect international good practice and will be cognisant of the socio-economic and operating conditions in Malawi. The measure of high-quality deliverables includes the observance of established Malawian drafting standards and norms.

The consultant will be required, without limitation, to:

- (a) Carry Out a Legal Review. The review, without limitation, will include the Constitution of the Republic of Malawi, Malawi Business Laws and Regulations, Electronic Transactions and Cyber Security Act, National Registration Act, Access to Information Act, Public Finance Management Act, and other Malawian Laws and International Standards. The review will provide guidance in relation to eProcurement and direction on the drafting of the proposed draft regulations. The review will also provide an outline of e-Government Procurement and e-Government Marketplace stakeholders and propose a brief plan on how best to interface and manage them.
- (b) Carry out an International e-Government Procurement regulations Best Practice Review. The review will include legislation, regulations, guidelines, and directives from Southern and other African countries, recommendations from international multi-lateral institutions; and lessons learnt from jurisdictions with an established history of e-Government Procurement administration. The purpose of the review, which will form part of the Legal Review, is to recommend options from various types of legislation, Regulations and implementation arrangements.
- (c) Carry out a digital government policy review comprising the National ICT Policy, the National ICT Master Plan, the Public Sector ICT Guidelines and Policy, the Digital

Government Strategy, the National Cybersecurity Strategy and other Government ICT policy papers in relation to e-Procurement and e-Marketplace.

- (d) Prepare a Guidance Note to the e-GP implementation agency explaining the legal compliance requirements, by studying the following:
 - The AS-IS and TO BE Process Reports
 - Relevant Functional Requirements Specifications & Technical Requirements for the selection of the e-GP implementation agency
 - The PPD Act (2017) and its Regulations
- (e) Prepare a draft of the Terms and Conditions, which a user (i.e. Government user or supplier) is required to agree with while registering in the system.
- (f) Prepare an e-GP version of the Standard Bidding Documents (SBD), wherein the proposed modifications to the SBD are detailed in a separate report prepared individually for all the SBDs. The Consultant will need to revise a total of all currently available SBDs (around 18 SBDs).
- (g) Prepare a Compliance Statement, wherein the consumption status of all requirements (i.e. sections/clauses) in the existing Regulations is explained and mapped with the proposed draft e-Government Procurement Regulations. Where applicable, the compliance statement should explicitly clarify that certain requirements in the existing Regulation do not have an electronic equivalent
- (h) Review of the Public Procurement and Disposal of Public Assets (PPD) Act in order to identify the provisions requiring specific Regulations
- (i) Hold one day Stakeholder Sensitization Workshop. The workshop will offer the consultants an initial opportunity to interact with both public and private sector stakeholders to sensitize them to the need of a new regulations. The workshop is also an opportunity for the consultant to collect data.
- (j) Draft eGovernment Procurement Regulations. The consultant shall propose piece(s) of regulations to meet Malawi's objectives. The proposed draft regulations shall meet applicable local drafting standards and shall include any amendments required to the existing laws.
- (k) Hold Dissemination and Validation Workshops. The consultant shall hold a maximum of three dissemination workshops in Mzuzu, Lilongwe and Blantyre each lasting for a day for the purposes of disseminating and obtaining buy-in on the proposed Regulations. The workshops shall be used to validate the findings and obtain feedback from participants in order to finalize the draft regulations.
- (l) Prepare documentation for submission of the draft Regulations to responsible Minister;
- (m) Final Regulation Report. The final report will detail major decisions made during the study, lessons learnt for subsequent legal consultancy studies and recommendations needed for Government to implement the proposed regulations. The recommendations will include timelines. A revised proposed Regulations incorporating changes proposed by stakeholders including participants to the validation workshop will be appended to the report.

6. DELIVERABLES

The PPPC requires the deliverables to be completed within a maximum period of five (5) months. The definition for the following deliverables is as set in paragraph 5 above.

Consultancy reports shall be submitted in the official Standard English Language. The reports shall be submitted as follows:

6.1 Expected Deliverables and Timelines

	Deliverable	Time Frame	Form of Reports
A1	Inception Report	2 weeks after contract signing	Microsoft Word, PDF and two Hard Copy
A2	Guidance Note to the e-GP implementation agency explaining the key compliance requirements	4 weeks after contract signing	Microsoft Word, PDF and two Hard Copy
A3	Submission of review report of existing literature and regulations including international best practice and final scope (number of regulations) of the study	5 weeks after contract signing	Microsoft Word, PDF and two Hard Copy
A4	Stakeholder Sensitisation Workshop	6 weeks after contract signing	Microsoft Word, PDF and one Hard Copy
A5	Terms and Conditions to be complied by the users registering on the e-GP platform	7 weeks after contract signing	Microsoft Word, PDF and one Hard Copy
A6	Submission of 1 st Draft Regulations	14 weeks after contract signing	Microsoft Word, PDF and two Hard Copy
A7	Stakeholder Workshop to Validate Draft Regulations	17 weeks after contract signing	Microsoft Word, PDF and one Hard Copy
A8	Submission of Revised Regulations	20 weeks after contract signing	Microsoft Word, PDF and one Hard Copy

7. LEVEL OF EFFORT AND CONTRACT DURATION

The level of effort required will be 40 effort days over a five-month period.

8. TEAM COMPOSITION

The successful Consultant, a firm or an association of firms, shall propose a team comprising a team leader and a number of experts in various relevant specializations. Where a consultant is proposed for two positions, the client will evaluate each position independently. As a matter of requirement, the minimum positions are as follows:

- (a) **The Team Leader (40 effort days);** shall be qualified to at least a Bachelor's Degree in Law. A Master's Degree in ICT Law or a related field shall be an added advantage. He or she shall demonstrate proficiency in Electronic Transactions legislation drafting, administration, litigation et cetera. Or alternatively, the team leader shall demonstrate

proficiency in drafting high quality Malawi laws. In each case, he or she shall demonstrate at least 10 years' experience in their respective area of expertise, that is, either Electronic Transactions or drafting. In addition, demonstrable, relevant experience in law reforms and Procurement shall be an added advantage.

- (b) **Legal Expert – Electronic Transactions (40 effort days);** Qualified to at least a Bachelor's Degree in Law from a recognized University with at least seven years' experience in the legal profession practicing in the area of Electronic Transactions. Drafting Electronic Transactions legislation or regulations in developing nations would be an added advantage. Knowledge of Electronic Transactions developments and practices in both developing and developed nations is desired.
- (c) **Legal Drafting Expert (50 effort days);** Qualified to at least a Bachelor's Degree in Law from a recognized University with at least seven years' experience drafting successful high quality legislation in Malawi. Knowledge of the acceptable practices, norms and standards in drafting Malawi legislation is a must.
- (d) **e- Government Solutions Expert (15 effort days);** Qualified at least to a Bachelor's Degree in Information Technology, Computer Science or related field. Minimum of 5 years of experience in public financial management, including extensive knowledge of system requirements assessments, business processes requirements and enterprise solutions on eProcurement technologies to government agencies, private sector, et cetera.
- (e) **Procurement Expert (15 effort days);** Qualified to at least a Bachelor's Degree in Procurement or Supply Chain Management from a recognized University with at least seven years' experience in public procurement in Malawi. Should have knowledge of the acceptable practices, norms and standards in Malawi public procurement legislation.

9. CONSULTANCY QUALIFICATIONS

To be qualified, interested firms need to demonstrate the following minimum requirements:

- (a) Experience in providing various Electronic Transactions law services to clients in the public sector or private sector or both. The consultant must demonstrate at least 10 years' experience providing Electronic Procurement legal services to jurisdictions where such law is well established. The consultant shall demonstrate deep familiarity, knowledge and understanding of eGovernment Procurement law and regulations.
- (b) The consultant shall demonstrate relevant experience in law reform processes in developing nations.
- (c) The Consultant shall demonstrate the availability of qualified and experienced staff in the keys areas identified for this study.
- (d) The Consultant shall show proficiency in drafting legislation and regulations in the Malawi legal environment. The consultant will demonstrate a track record of drafting at least six pieces of legislation over the past five (5) years.

- (e) Excellent writing and communication skills in English language.

In cases where consultants associate, the lead consultant may not submit more than one application. However, the sub-consultant may associate with more than one lead consultant as long as the sub-consultant is not a lead consultant in any of the submissions.

10. SELECTION METHOD

The consultant shall be selected in accordance with **Quality and Cost Based Selection** procedures as set out in the World Bank (WB) Procurement Regulations.

11. REPORTING

The Consultant will be reporting to the Director General, PPDA. The PPPC shall be the contract holder.

12. REPORTS

Consultancy reports shall be submitted in the official Standard English Language. The reports shall be submitted in Microsoft Word, PDF, hard copy and all reports shall be reviewed by a Steering Committee specifically constituted for this assignment.

13. CLIENT RESPONSIBILITIES

The Client shall have responsibility for providing necessary support to the consultant by:

- a) Providing the Consultant with a list of relevant stakeholders.
- b) Preparing/extending invitations and follow up with stakeholders for participating in workshops, task force and validation meetings etc.
- c) Coordinating and providing location/venue for workshops and other meetings.
- d) Following up with stakeholders on collecting information before during and after workshops and meetings.
- e) Where possible providing office accommodation, telephone and internet facilities.
- f) Required local literature such as legislation and reports.

13. CONSULTANT'S RESPONSIBILITY

All information, data and information obtained from the client shall be properly reviewed and analyzed by the consultant. All such information, data and reports shall be treated as confidential. The consultant shall make their own arrangements for document reproduction, printing and reproduction of all reports during the assignment.