



CONSULTANCY FOR DEVELOPMENT OF LEGAL ADVISORY SERVICES ON THE RULING ON COUNTY MOVEMENT TAXATION

1.0 Introduction

The Kenya Association of Manufacturers (KAM) was established in 1959 as a private sector body and has evolved into a dynamic, vibrant, credible and respected business membership association that unites industrialists and offers a common voice for businesses. The Kenya Association of Manufacturers (KAM) is the leading Business Member Organization in East Africa and is the representative organization for manufacturing value-add industries in Kenya. KAM plays a key advocacy role on behalf of manufacturers in Kenya by providing an essential link for co-operation, dialogue and understanding with the Government and related agencies. KAM has over 1000 members and represents over 40% of Kenya's manufacturing value add industries.

KAM supports its membership on advocacy areas at the County level to ensure a conducive and competitive trade environment. The Organisations efforts are geared towards realizing **provisions of Article 209 (5) of the Constitution, 2010 which require that County Governments should not exercise the said mandate in a way that prejudices national economic policies, economic activities across county boundaries or the national mobility of goods, services, capital or labour.**

Over the years, manufacturers have raised concerns on the ease and cost of doing businesses in and across County Governments. The key concerns have been, the ever increasing need for sourcing of own revenue by Counties, which have led to impeding trade in Counties. The concerns on such taxes includes, lack of adequate public consultations in developing the taxes, lack of legislation to introduce the taxes, excessive increase rates annually without proper impact assessments, among other concerns. Some of the movement taxes include, branding fees, cess fees, business permits fees requirements, loading and off-loading fees, among others.

The Government has acknowledged the said concerns in its National Policy known as the **"Enhancement of County Governments' Own-Source Revenue"**, which outlines the challenges faced by the County Governments. The County Governments' Revenue Raising Process Bill seeks to actualize the said Policy.

KAM was enjoined as an interested party in a **Constitutional Petition (Kisumu No.7 of 2018, United Millers Company Limited Versus 14 County Governments and 12 County Assemblies)**

filed by its member to challenge such concerns arising from movement taxes on the premise of Article 209 of the Constitution. The Ruling in the matter was made on the 15th April 2020 (Copy enclosed). KAM therefore wishes to seek a Legal Opinion on the Ruling made in the matter to inform its next steps on the issue both from a litigation perspective and advocacy perspective.

2.0 Objective of the Consultancy

KAM seeks to engage a Legal Consultant (Firm/Individual) to provide legal advisory services to develop a Legal Opinion on the Ruling made on **Constitutional Petition (Kisumu No.7 of 2018, United Millers Company Limited Vs. 14 County Governments and 12 County Assemblies)** to determine;

- (i) Whether the matter is appealable and what would be the grounds for the same;
- (ii) Whether filing a fresh matter is justifiable based on the Ruling; and
- (iii) What would be the grounds for challenging a successful matter to realize provisions on Article 209 of the Constitution which require that County Governments should not exercise the said mandate in a way that prejudices national economic policies, economic activities across county boundaries or the national mobility of goods, services, capital or labour.

The Legal consultant or Firm will be expected to consider (but not limited to) the following principles in development of the Legal Opinion;

- Requirement for meaningful public participation, fair administrative action
- Requirement under Article 209 and 210 of the Constitution on County Government's revenue-raising powers.
- Legitimate expectation and fair administration of action in the annual percentage increases of taxes by Governments

3.0 Scope of work

The scope of the consultancy is to;

- 1) Develop a Legal Opinion.
- 2) Present the findings to KAM Legal Technical Team and Legal and Regulatory Committee of the KAM Board of Directors.

4.0 Expected outputs

The following are the expected outputs;

1. Legal Opinion based on the conditions set out in this Terms of Reference

In the course of providing the services, the legal expert is required to:

1. Report to and provide regular updates to KAM legal team;
2. Consult internally with KAM on technical legal issues affecting the county movement concerns;

3. Provide advice, where the laws or amendments may conflict with existing legislation;
4. provide legislative drafting assistance in line with national, technical and procedural requirements;
5. Make presentations to KAM secretariat, and Legal and Regulatory Committee of the KAM Board of Directors on legislative issues arising from the Opinion.

5.0 Timeframe and Implementation Schedule

The consultant will work under the overall supervision of the Kenya Association of Manufacturers, Legal Team as well and the Quarry sub sector.

The consultancy is to be performed over 10 days, starting in the month of July 2020. The proposed timeline excludes the time gap in between relevant meetings between the consultant and KAM members; as well as time that may be required for KAM to review the output for approval purposes.

Task	No of days	Deliverables	Timeline
Submit an Technical and Financial Proposal based on KAM Terms of Reference	2	Technical and Financial Proposal	By end of June or first week of July 2020
Hold an initial briefing meeting with KAM technical internal legal team	1	Briefing meeting	By first week of March 2020
Submit the Legal Opinion.	5	First drafts of the Legal Opinion	By Second week of July 2020
Participate in 1 feedback and presentation meetings: <ul style="list-style-type: none"> • 1 meetings with KAM technical internal legal team and Legal Committee of Board of Directors; 	1	2 nd Draft of Legal opinion with incorporated feedback from the meetings.	By second week of July 2020
Submit a final Legal Opinion.	1	Final Legal Opinion	By third week of July 2020.
Total number of days	10 days		

6.0 Qualifications of the Consultant

The successful consultant (Individual or Firm) must have extensive experience in legislative research and drafting. In addition, the consultant should:

Educational Qualifications of Individual/ Lead consultant (s) in the case of a Firm

1. A law degree from a recognised and reputable institution.
2. Be a holder of a Masters qualifications in law. A PhD would be an added advantage.
3. A postgraduate degree in legislative drafting would be an advantage.

Professional Experience of Individual/ Lead consultant (s) in the case of a Firm

1. Minimum of 10 years' legislative drafting experience.
2. Experience working within a Legal Firm, Government legal agency or similar organisation.
3. Demonstrable experience in working with the various arms of Governments related to the subject matter.
4. Experience producing high quality related policies, research and legislation (including trade and tax -related legislation)
5. Ability to engage with a cross-section of stakeholders in the public and private sectors.
6. Experience working with the national and County Governments.
7. In-depth knowledge and understanding of Kenyan laws (Constitutions, statutes, subsidiary laws)
8. Experience in drafting legislation will be an advantage
9. Have excellent writing and research skills.
10. Excellent communication skills as well as the ability to communicate fluently in English (spoken and written);
11. Ability to engage with gender mainstreaming issues
12. Proven ability to work under pressure and meet deadlines.

7.0 Application for consultancy

Interested consultants are requested to submit both physically and electronically the following documents to procurement@kam.co.ke by **10th July 2020** stating "KAM Legal Advisory – County";

1. Technical proposal

- i. Description of the firm and the firm's qualifications;
- ii. Copy of Company Certificate of incorporation
- iii. Tax Compliance Certificate (Valid)
- iv. Statutory KRA PIN and VAT certificate copies
- v. Brief description of Understanding of the requirements for services, including assumptions;
- vi. Proposed approach and methodology;
- vii. Proposed team structure;
- viii. Proposed project team members;
- ix. Executive brief of relevant similar projects undertaken in the past 2 years.

2. Financial proposal

- i. A summary of the price;
- ii. The period of its validity;

3. Curriculum Vitae and two recommendations (For a firm should contain CVs for all Consultants involved in the Consultancy)

Physical address: KAM Procurement
 Kenya Association of Manufacturers
 KAM House

Mwanzi Road, Opposite Westgate Mall
P.O Box 30225 -00100
Nairobi

8.0 Payment terms (provisions)

Kenya Association of Manufactures policy is to pay for contractual services based on performance of contractual services rendered.

9.0 Evaluation of proposals

A two stage procedure will be utilized in evaluating the proposals, with evaluation of the Technical component being completed prior to any price component. Scores will be awarded for the technical proposal.

The price component proposal will be opened only for those firms/ institutions whose technical component meets the requirements for the assignment, as indicated by a score of more than 70%.

Marginalized groups such as youth, women and persons with disability are encouraged to apply.