



**MINISTRY OF ROADS AND TRANSPORT**

**STATE DEPARTMENT FOR TRANSPORT**

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## **HORN OF AFRICA GATEWAY DEVELOPMENT PROJECT (HoAGDP)**

**PROJECT ID: P161305**

### **CONSULTANCY SERVICES FOR REVIEW OF THE TRAFFIC ACT (CAP 403)**

**KE-SDOT-424778-CS-QCBS**

## **TERMS OF REFERENCE**

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### 1. BACKGROUND

The Government of the Republic of Kenya (GoK) has received a credit from the International Development Association (IDA) towards the cost of the Horn of Africa Gateway Development Project (HoAGDP).

The GoK intends to use a portion of the proceeds of the credit for consultancy services to facilitate review of the Traffic Act (Cap 403) of the laws of Kenya.

The Ministry of Roads and Transport is mandated to administer the Traffic Act as stipulated in Executive Order No 1 of 2023 on the Organization of the Government of the Republic of Kenya. The Government of Kenya (GOK), through the State Department for Transport (“SDOT”, the “Client”), which is a state department in the Ministry of Roads and Transport, now invites proposals to provide the required consultancy services as described elsewhere in these Terms of Reference.

#### 1.1 Rationale for the Project

The Traffic Act, Cap 403 of the Laws of Kenya (“Traffic Act”), an Act of Parliament to consolidate the law relating to traffic on the roads, was first enacted in 1953, receiving assent on 11<sup>th</sup> November 1953 and commencing on 1<sup>st</sup> January 1954.

The Traffic Act has been amended on multiple occasions between 1953 and 2024, with the amendments being evolutionary and incremental in nature. The amendments addressed various aspects including: vehicle registration, road transport operator registration, vehicle fitness testing, driver training and testing, as well as licencing.

Despite these previous amendments, the legal framework relating to traffic on roads has not evolved fast enough to keep up with the changing operational environment. This regulatory gap is evident in various aspects including but not limited to:

- a) **Road Safety:** To address the persistent road safety challenges, Kenya has formulated and commenced implementation of the National Road Safety Action Plan (2024-2028) which anticipates the full adoption of the Safe Systems approach, a globally recognised set of best practices in road safety management that seeks to ensure safe road users, safe vehicles, safe road system and effective post-crash response. The Safe Systems approach requires to be supported by appropriate legislation, with various interlinked and interconnected regulatory elements being consistent with each other. The legal operationalisation of the Safe Systems approach is ongoing.
- b) **Behavioural Risk Factors in Road Safety:** further to the road safety considerations described in (a) above, the National Transport and Safety Authority (NTSA), an agency of the Ministry of Roads and Transport operating under the State Department of Transport, is in the process of reviewing behavioral risk factors in road safety with a view to identifying additional

strategies for improving road safety performance and outcomes. The findings of the study would be addressed through updates to the Traffic Act.

- c) **Technological Change in Vehicles:** The physical and performance characteristics, digital features and other aspects of new vehicles in 2025 are significantly different from those of vehicles from earlier decades. In addition, new energy sources such as LPG, hybrid electric and battery electric have established themselves as sources of motive power.
- d) **Change in the National Vehicle Fleet:** The last decade has witnessed the rapid rise in the proportion of two and three wheelers in the national vehicle fleet. In addition, the rapid increase in the overall size of the national vehicle fleet has made enforcement of certain traffic regulations through manual interventions more challenging due the number of enforcement personnel that would be required.
- e) **Availability of Cost-effective Modern Technologies:** drastic improvements in the availability of modern technologies suitable for enhanced traffic, driver and road management combined with the lowering in the costs of these technologies by orders of magnitude offers significant opportunities to improve safety and compliance. However, the current Traffic Act has not been updated to take advantage of these technology opportunities.
- f) **Sustainable Development Goals:** Legislation offers one avenue to promote the achievement of SDGs which relate to road transport. However, the current Traffic Act has not been configured with such an objective in mind.
- g) **Regional Road Transport Regulations:** various supra-national regional bodies, including EAC, SADC and COMESA, have devised standards and protocols to facilitate seamless traffic movement and enhance trade and socio-economic development. The current Traffic Act is in need of review to effect aspects of these agreements.
- h) **Climate Change, GHG and Pollution:** Kenya is a signatory to several international agreements which bind it to take various climate actions in the transport sector. Legislation is a potential avenue towards attaining compliance.
- i) **Electric Mobility:** As at April 2025, Kenya has obtained executive approval to make the National Electric Mobility Policy operational. The current Traffic Act requires to be updated to accommodate certain aspects of the National Electric Mobility Policy.

All these issues, and others not listed above, have necessitated the review of the Traffic Act.

## 2. OBJECTIVES OF THE CONSULTING ASSIGNMENT

The main objectives of the consultancy services are to:

- a) Undertake a holistic review of the legal and regulatory framework to fully operationalize the Safe Systems approach to road traffic and safety management;

- b) Formulate the legal and regulatory changes required to leverage new and emerging ICT-based technologies in road transport to achieve superior outcomes in road safety in the country (the management of traffic, drivers and roads etc.);
- c) Formulate the legal and regulatory changes required to reflect the contemporary operating environment and accommodate best practices in road traffic management; and
- d) Formulate the legal and regulatory changes required to support international and regional road transport protocols, climate action commitments and Sustainable Development Goals.

### **3. SCOPE OF WORK**

The Consultant (the “firm”) shall perform all services necessary as called for in these Terms of Reference including all studies, data collection and related services. In providing the services, the Consultant shall consult with the concerned Ministries, Departments and Agencies (MDAs) of the GoK, in particular the Ministry of Roads and Transport and including its State Departments and Agencies, the Ministry of Interior and National Government, and the institutions under it, and the Council of Governors, amongst others.

The Consultant shall provide the necessary support services related to and necessary for the completion of the assignment. The services shall cover but not be limited to the aspects outlined in these Terms of Reference.

The Consultant shall perform all legal, institutional, engineering, economic, financial, social and environmental analyses and related work as described herein to attain the objectives of the study.

SDOT will provide the Consultant with the data and services outlined herein. The Consultant shall be responsible, however for the analysis and interpretation of all data received, and the conclusions and recommendations in his reports.

The Consultant shall maintain close liaison with the Client and shall submit for approval from time to time, according to the work programme, draft proposals for various reports.

#### **3.1 DETAILED SCOPE OF WORK**

##### **PART 1: REVIEW OF THE EXISTING TRAFFIC ACT**

The Consultant shall review the Traffic Act with a view to identifying gaps and emerging needs.

##### **3.1.1. Review of Existing Legislation**

The Consultant shall review the existing Traffic Act and all related legislation with a view to identifying gaps including but not limited to inconsistencies, challenges with

institutional arrangements, overlaps, omissions, obsolescence, inadequacies and performance shortfalls.

The review should specifically encompass key safety related legislation including institutional setup, behavioural aspects with safety performance indicators, speed limits, road safety management responsibilities, motorcycle and commercial motorcyclist safety, motor vehicle safety and other important topics relevant to safety in Kenya.

In conducting this review, the Consultant shall conduct outreach and consultations with key stakeholders.

### **3.1.2. Review of Related Regional and International Traffic Laws**

Among other regional and international legislations, the Consultant will review the proposed COMESA-EAC-SADC Multilateral Cross Border Road Transport Agreement and the Vehicle Load Management Agreement. In particular, among the model laws and regulations to be reviewed by the consultant shall include:

- a) Tripartite Cross-Border Road Transport Model Law and Model Regulations;
  - i) Tripartite Vehicle Load Management Model Law and Model Regulations;
  - ii) Tripartite Road Traffic and Transport Transgressions Model Law and Model Regulations;
  - iii) Tripartite Road Traffic Model Law and Model Regulations; and
  - iv) Tripartite Transportation of Dangerous Goods by Road Model Law and Model Regulations.

### **3.1.3. Review of Road Safety Legislation in other Jurisdictions**

The Consultant shall review example road-safety related bills and acts from other jurisdictions, preferably from low- and middle-income countries including but not limited to India. The Client prefers that legislation from other jurisdictions which is identified to inform the current assignment should have been enacted within the last 5-8 years.

The Client requires the Consultant to look at Traffic Acts from other countries which are well aligned to World Health Organisation (WHO) best practice on road safety.

### **3.1.4. Review of Opportunities for Technological Advancement**

The Consultant shall review the technological landscape and use of technology by other jurisdictions with a view to identifying possibilities for potential use of the technologies to improve safety and performance in the road traffic subsector.

### **3.1.5. Benchmarking on other Jurisdictions**

The Consultant will identify four potential destinations eligible for the Clients benchmarking visits and document the rationale for these choices in a Benchmarking Identification Report. Of these four potential destinations, two should be from Africa region. The Consultant should ensure the countries considered for travel have similarities in driving i.e. right-hand driving like Kenya.

The Client will identify two of the four potential destinations to host the benchmarking and the Consultant will work in liaison with the Client to formulate an itinerary for the benchmarking exercise.

The Consultant will accompany the Client during the two benchmarking visits and will maintain a record of the same, which will be submitted to the Client as a study Report. This report will form part of the reference material during review of the Traffic Act.

### **3.1.6. Outreach to Key Stakeholders**

In reviewing the Traffic Act, the Consultant will be expected to undertake stakeholder mapping with a view to reaching out to key stakeholders and institutions concerned with the Traffic Act, in a manner that is cost and time efficient.

The Consultant will also be required to organize at least six stakeholders'/public participation consultative meetings in various parts of the country. Each stakeholder forum will be organized by the Consultant at a three-star hotel to be agreed with the Client. Legislative practice in Kenya requires public participation coverage of the entire country and a minimum of at least 6 public participation events in various parts of the country. Public participation is a constitutional requirement.

At the stakeholder consultation meetings, the Consultant will present power point presentations to enable the participants to understand and comment on the assignment. The Consultant will subsequently prepare a brief report of the proceedings and will avail five copies to the client in hard copy along with two copies on flash drive PDF and MS Word.

The costs of the stakeholder meetings (venue, writing material, water, tea and lunch only) shall be refundable to the Consultant.

## **PART 2: AMENDMENTS TO THE TRAFFIC ACT, CAP 403**

Based on the comprehensive review of the Traffic Act conducted in the preceding sections as well as a thorough review of the National Transport and Safety Authority Act, the Consultant will prepare proposals for amendment or replacement of the Traffic Act and other consequential amendments.

The Client anticipates that given the wide scope of amendments required to the current Traffic Act, this Act may need to be re-enacted afresh. However, the Consultant will recommend, with reasons, whether the Traffic Act should be amended through

changes to individual sections or whether it should be repealed in its entirety and replaced.

### **PART 3: INSTITUTIONAL COLLABORATION**

Based on the comprehensive review conducted in the preceding section and the proposed amendments, the Consultant will document the respective roles of various institutions mentioned in the Traffic Act with a view to identifying and resolving any overlap, omission or conflict in roles.

#### **4. DURATION AND LOCATION**

The assignment shall be completed within 12 months after commencement and, except for international benchmarking, will take place in the Republic of Kenya. The Consultant should be prepared to attend meetings with the Client to discuss the assignment at any stage during the review period.

#### **5. REPORTING AND TIMELINES FOR DELIVERABLES**

The Consultant shall prepare and submit to the Client the following reports. All reports shall be in English and prepared on A4 metric size paper. All reports will be submitted in five (5) hard copies and two (2) soft copies in flash disk format as Microsoft Word files for text and as Microsoft Excel files for spread sheets and/or structured data and as a single pdf containing all sections of a given report. In order to facilitate speedy review by the Client of Consultant's work, the Consultant is encouraged to organize parts of the main reports into working papers for prior discussion with the Client before compilation into deliverables.

##### **5.1. REPORTS**

###### **5.1.1. Inception Report**

This shall summarize initial findings and give proposals covering methodologies and the detailed work plan for the conduct of the assignment.

This report will be delivered to the Client 14 days after commencement.

###### **5.1.2. Quarterly Progress Reports**

These shall be submitted quarterly and shall detail all work performed during the reporting period and utilization of the study personnel.

The report shall also identify actual and anticipated difficulties and delays in the work, their causes and the remedies proposed to solve them. Each report shall be submitted within 14 calendar days after the end of the reporting period.

### 5.1.3. Gap Analysis Reports on the Existing Traffic Act

**Draft Gap Analysis Report:** This report shall summarize the findings, analyses, results and recommendations of the review of the existing Traffic Act

**Key Stakeholder Workshop Report:** This report will summarise the proceedings of the key stakeholder workshop held to discuss the Draft Gap Analysis Report

**Gap Analysis Report:** This report shall incorporate all revisions deemed necessary arising from comments received from the Client and from the Key Stakeholder Workshop, following discussions and agreement from the Client and the Consultant

### 5.1.4. Benchmarking

**Proposed Benchmark Eligible Destinations Report:** This report will review potential destinations for benchmarking visits for consideration by the Client.

**Benchmark Study Report:** this report will summarise the proceedings, findings and recommendations of the benchmarking visits.

### 5.1.5. Proposals for Amendment of the Traffic Act

**Draft Proposals for revision of the Traffic Act including consequential amendments:** This report shall summarize the findings, analyses, results and recommendations of the study as pertains to proposed revision of the Traffic Act

**Key Stakeholders Workshop Report:** This report will summarise the proceedings of the key stakeholder workshop held to discuss the Draft Proposals for Amendment of the Traffic Act.

**Draft Bill to revise the Traffic Act:** This report will provide the Draft Bill to revise the Traffic Act, including the memorandum of objects and reasons.

**Public Participation:** This report will summarise the proceedings, findings and recommendations of the benchmarking visits.

**Final Traffic Bill:** This report shall incorporate all revisions deemed necessary

arising from comments received from the Client, during the Key Stakeholder Workshop, during the public participation and following discussions and agreement from the Client and the Consultant.

#### 5.1.6. Completion

##### Completion Report (12 months)

In this report the Consultant will detail the conduct of the assignment, the reports and deliverables and demonstrate compliance with the objectives of the assignment.

#### 5.2. Schedule of Deliverables

The schedule is as follows:

| Category                                     | Report Number and Title                                                                                                        | Date of Delivery to Client (Months after commencement) |
|----------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------|
| 1. Inception                                 | 1.1: Inception Report                                                                                                          | 0.5                                                    |
| 2. Quarterly Progress                        | 2.1: Progress Report No 1                                                                                                      | 3                                                      |
|                                              | 2.2: Progress Report No 2                                                                                                      | 6                                                      |
|                                              | 2.3: Progress Report No 3                                                                                                      | 9                                                      |
|                                              | 2.4: Progress Report No 4                                                                                                      | 12                                                     |
| 3. Gap Analysis                              | 3.1: Draft Gap Analysis Report                                                                                                 | 3                                                      |
|                                              | 3.2: Key Stakeholders Workshop Report (1 No)                                                                                   | 4                                                      |
|                                              | 3.3: Final Gap Analysis Report                                                                                                 | 5                                                      |
| 4. Benchmarking                              | 4.1: Benchmarking Eligible Destinations Report<br>(3 countries India, UAE and South Africa. A fourth to be an African country) | 5                                                      |
|                                              | 4.2: Benchmarking Report                                                                                                       | 8                                                      |
| 5. Proposals for revision of the Traffic Act | 5.1: Draft Proposals for revision of the Traffic Act                                                                           | 8                                                      |
|                                              | 5.2: Key Stakeholders Workshop Report (2 no)<br>• Government agencies                                                          | 9                                                      |

|               |                                                                    |     |
|---------------|--------------------------------------------------------------------|-----|
|               | <ul style="list-style-type: none"> <li>All stakeholders</li> </ul> |     |
|               | 5.3: Draft Bill for a new version of the Traffic Act               | 9.5 |
|               | 5.4: Public Participation Report                                   | 10  |
|               | 5.5: Final Bill for a new version of the Traffic Act               | 11  |
| 6. Completion | 6.1: Completion Report                                             | 12  |

## 6. PAYMENT SCHEDULE

The payment schedule will be as follows:

| Deliverable Name                                    | Deliverable Description                                                                             | Percent Lumpsum Payable of |
|-----------------------------------------------------|-----------------------------------------------------------------------------------------------------|----------------------------|
| Inception                                           | Upon delivery and acceptance of the Inception Report                                                | 10%                        |
| Final Gap Analysis                                  | Upon delivery and acceptance of the Final Gap Analysis Report                                       | 10%                        |
| Benchmarking                                        | Upon delivery and acceptance of the Benchmarking Report                                             | 15%                        |
| Report on Proposals for revision of the Traffic Act | Upon delivery and acceptance of the Proposals for revision to the Traffic Act                       | 25%                        |
| Draft Traffic Bill                                  | Upon delivery and acceptance of the Draft Traffic Bill                                              | 10%                        |
| Final Traffic Bill                                  | Upon delivery and acceptance of the Final Traffic Bill (with its memorandum of objects and reasons) | 25%                        |
| Completion                                          | Upon delivery and acceptance of the Final Completion Report                                         | 5%                         |

## 7. MINIMUM REQUIREMENTS FOR CONSULTANT'S QUALIFICATIONS AND EXPERIENCE

The firm will have at least Fifteen (15) years' experience in the Road Transport sector and demonstrate road safety experience in the last 10 years.

8. **TEAM COMPOSITION, QUALIFICATION AND EXPERIENCE REQUIREMENTS FOR THE EXPERTS**

The Consultants shall at a minimum, provide the key staff described below. Curriculum Vitae not exceeding four pages per person shall be provided in respect of each key staff.

- a) **Team Leader/ Road Transport Safety Expert:** The Team Leader shall have a recognized masters' degree in transportation planning/economics, experience in road transport safety and a minimum of 15 years professional experience. The Team Leader should be registered/accredited by any official body in any country in a field relevant to roads or road safety such that the Kenya equivalent of the accrediting institution will be able, upon application, to confirm the accreditation. The Team Leader should have served in a similar role on long-term basis in a previous successfully completed consultancy assignment or should have served in a senior management role in a sector relevant to roads or road safety. Prior working experience in Africa is mandatory. Fluency in both written and spoken English is essential.
- b) **Legal Specialist:** The Legal Specialist shall have a recognized university degree in law and fifteen years' experience and should have reasonable prior knowledge of the Traffic laws and other legislation in the road transport sub-sector, as well as familiarity with the institutional framework for the road transport sector. Prior working experience in Africa is mandatory. Fluency in both written and spoken English is essential.
- c) **Mechanical Engineer (Motor vehicles specialist);** The Mechanical Engineer shall have a recognized degree in mechanical engineering and at least 15 years post-graduate experience, including experience with motor vehicle-related technical activities. The Mechanical Engineer shall be duly registered and licensed by the official accreditation body in his/her country of accreditation and the qualifications shall be of a form acceptable to the Engineers Board of Kenya. Experience in working in Africa is essential. Fluency in both written and spoken English is essential.
- d) **Traffic Law Enforcement Specialist:** The Traffic Law Enforcement Specialist shall have at least 15 years' experience in traffic law enforcement with uniformed forces, including at senior management levels with national responsibilities or responsibilities for an urban area the size of Nairobi. Experience in working in Africa is essential. Fluency in both written and spoken English is essential.
- e) **Highways Engineer (Road Design, Safety Audits, Non Motorized Transport Design);** The Highways Engineer shall have at least 15 years post-graduate experience including with highway design, traffic engineering, road safety audits and NMT design. The Highways Engineer shall be duly registered and licensed by the official accreditation body in his/her country of accreditation and the qualifications shall be of a form acceptable to the

Engineers Board of Kenya. Experience in working in Africa is essential. Fluency in both written and spoken English is essential.

- f) **Support/ Non-key Staff:** The Consultant shall provide the necessary support staff needed in order to carry out their tasks and fulfil their responsibilities effectively. The support staff shall include the following experts (mandatory minimum), which must have at least 5 years' experience related to road transport design and safety
- i. Transport Economist (transport policy and economic studies);
  - ii. Public Health Policy Specialist
  - iii. Social and Environmental Safeguards Specialist (road transport studies).

**9. ESTIMATED TIME-INPUTS FOR KEY EXPERTS**

The key experts will be required to provide continuous input for the contract period of 12 calendar months

**10. MANAGEMENT AND ACCOUNTABILITY/ INSTITUTIONAL AND ORGANIZATION ARRANGEMENTS OF THE ASSIGNMENT**

The Client for the assignment will be the Principal Secretary, State Department for Transport. The Client's Representative will be the Director, Road and Rail Transport Department.

**11. CAPACITY BUILDING/TRAINING/TRANSFER OF TECHNOLOGY PROGRAM**

The Consultant shall provide a training plan for any counterpart personnel as approved by the Client and stakeholder capacity building workshops.

**12. DATA, SERVICES, PERSONNEL, AND FACILITIES TO BE PROVIDED BY THE CLIENT/OBLIGATIONS OF THE CLIENT**

The Client will:

- a) Avail relevant documents including the following among others:
- i) Traffic Act Cap 403
  - ii) COMESA-EAC-SADC proposed Multilateral Cross Border Road Transport Agreement ("MCBRTA") the Vehicle Load Management Agreement (VLMA) and the model laws pertaining to the same
  - iii) National Transport and Safety Authority Act, Cap 404
  - iv) Kenya Roads Act, Cap 408
  - v) Insurance (Motor Vehicle Third Party Risks) Act, Cap 405

- b) Provide the Consultant with any assistance that will enable the consultant to have access to relevant stakeholders
- c) Provide the Consultant with any other documents, data and other information pertaining to the study that are available with the Government;
- d) Provide four counterpart personnel for on-the-job training with the consultant
- e) The Client representative shall provide liaison with other Ministries and Departments in order to introduce the Consultant to them.
- f) The Client shall ensure that correspondence exchange in respect of the implementation of the study is treated promptly General

### **13. OBLIGATIONS OF THE CONSULTANT**

The Consultant shall be fully responsible for:

- a) Collecting data and information from these agencies, including paying official fees for it where necessary
- b) All information, data and reports obtained from the Client in the execution of the services, which shall be properly reviewed and analyzed by the Consultant. Correctness of using such data shall rest with the Consultant. All such information, data, and reports shall be treated as confidential and returned to the Client upon completion of the assignment
- c) Analysis, interpretation, and conclusion made from the data and information provided by the client.
- d) Arranging for all necessary office and living accommodation, transportation, communication, equipment and supplies, data collection and secretarial services related to the performance of the works.
- e) Printing of all reports, drawings, maps, etc.
- f) Providing to the Client the originals of all documents both in hard and soft copies in acceptable electronic format.

**NOTE:** After delivery of all final documentation, the originals of all paper documents and soft copies of any data are to be deposited with and become the property of the Client