TERMS OF REFERENCE

Reference Number: TIK/PLIF/009/2020

Description: A consultancy to develop a Chapter 6 Vetting tool for persons seeking elective positions in Kenya

Posting Date: 21st April 2020

Deadline for Submission: 5th May 2020

ORGANIZATIONAL PROFILE

Transparency International Kenya (TI-Kenya) is a not-for-profit organization founded in 1999 in Kenya with the aim of developing a transparent and corruption-free society through good governance and social justice initiatives. TI-Kenya is one of the autonomous chapters of the global Transparency International movement that are all bound by a common vision of a corruption-free world. TI-Kenya’s vision is “A transparent, accountable and corruption-free Kenya.

Project Background

TI-Kenya through its Policy, Legal and Institutional Frameworks program is implementing a project on “Democracy, Governance and Human Rights” which aims to improve access to justice through effective key institutions within the justice sector that respect human rights and the rule of law. The project’s overall objective is to contribute to increased respect for human rights, gender equality and strengthened democratic governance at the national and local levels. One of the key outcomes of the projects relates to having improved consensus and legitimacy in electoral processes. TI-Kenya intends to do this through strengthening processes used to vet individuals for elective and appointed offices.

The Constitution of Kenya promulgated in August 2010 established a new threshold and value system upon which a covenant between state and public officers and citizens in the country must be based. The Constitution sought to dramatically change the country’s governance structure to one anchored on among others, values of transparency, accountability and responsible citizenship.

Being the first under the new constitution, the March 2013 general elections also ushered in the devolved system of government. This meant that key constitutional promises touching on governance, integrity and accountability in the management of public affairs would not only be confined to the seat of the national government in Nairobi, but would find life and expression
at the level of the 47 counties across the republic. It was expected that this value system and national covenant would be upheld in all the three arms of government namely the Judiciary, the Legislature and the Executive.

One of the strongest counter-arguments against barring electoral aspirants and/or appointees into public offices has been anchored around Article 50 (2a) of the constitution that provides for the presumption of innocence until proven guilty. Given the average duration it takes to prosecute and complete corruption-related cases in Kenya, this alone is enough to ensure no meaningful isolation of aspirants with integrity issues can take place. Additionally, the IEBC is on record clearing aspirants for elections because the aspirants, including convicted criminals, had pending appeals against their conviction.

Anchored on the knowledge that ethical standards seek to reward, not necessarily punish individuals in society, the presumption therefore becomes that anyone not cleared (of any, and all serious allegation and violations) is not ethically fit to run for public office. Subsequently, by stopping individuals with ethical issues from getting on the ballot, we can create a favourable environment for the emergence of credible leadership at all levels of society.

In the 2017 elections the Attorney General established a Chapter 6 Working Group to support the vetting of candidates seeking elective positions, unfortunately the group made very little headway something that could be partly attributable lack of a comprehensive tool to use for vetting among other challenges. Persons seeking elective office have to be cleared by the Ethics and Anti Corruption Commission, the Independent Electoral and Boundaries Commission, the Directorate of Criminal Investigations and now, the Office of Director of Public Prosecutions. Without a proper vetting tool underpinned by a sound legal framework, the exercise remains a generic exercise that does not meet the aspirations of the people as espoused in the constitution.

**Scope of work and deliverables**

The consultant will work closely with TI Kenya contact person in reviewing the policy, legal and jurisprudence on the implementation of Chapter 6 in Kenya and consequently develop a comprehensive tool effective for vetting those seeking elective positions in Kenya.
Specific deliverables

1. A paper on the overview of the vetting process in Kenya especially with regard to the Chapter 6 Working Group, EACC, DCI, IEBC and ODPP
2. Gaps and opportunities in the framework for vetting persons seeking elective posts in Kenya
3. A draft vetting tool to be used by the vetting institutions/agencies

Duration
The consultant will be expected to carry out the assignment within 30 working days. The work is expected to start as soon as a contract is awarded.

Qualifications and attributes required
Individuals interested in this assignment must meet the following minimum requirements:

▪ Master’s Degree in Law, public administration or equivalent experience
▪ At least 10 years of experience in policy and legislative work especially around legal research.
▪ Experience in providing professional advice concerning constitutional implementation, litigation and generally governance issues.
▪ Ability to establish priorities, and to plan, coordinate and monitor own work.
▪ Good inter-personal skills, ability to work in a consultative and collaborative manner.
▪ Ability to establish and maintain effective partnerships and working relationships in a political environment

Application process
Qualified candidates are requested to submit one document of not more than 10 pages as an attachment (combining the application letter, CV, technical proposal including the methodology for the assignment, and financial proposal). Do not attach your testimonials or certificates. Only shortlisted candidate/s will be contacted.
Submission of Bids
The deadline for submission of expressions of interest is 5th May 2020. Applications should be sent by email to procurement@tikenya.org. Please indicate TIK/PLIF/009/2020- Chapter 6 Vetting tool in the subject line of your email application.

Complaints Process
This call for Expression of Interest does not constitute a solicitation and TI-Kenya reserves the right to change or cancel the requirement at any time during the EOI process. TI-Kenya also reserves the right to require compliance with additional conditions as and when issuing the final solicitation documents. Submitting a reply to a call for EOI does not automatically guarantee receipt of the solicitation documents when issued. Invitations to bid or requests for proposals will be issued in accordance with TI-Kenya rules and procedures. Any grievances and or complaints arising from the evaluation process and final tender award can be addressed, in writing, to the Executive Director and the TI-Kenya Tender Complaints Committee.

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