



COUNTRY: KENYA
PROJECT: KENYA DIGITAL ECONOMY ACCELERATION PROJECT (KDEAP)
IMPLEMENTING AGENCY: Information and Communications Technology Authority (ICTA)
PROJECT ID: P170941; Credit Numbers 7289-KE and 7290-KE

TERMS OF REFERENCE FOR:

Study on Over-The-Top Services (OTTs) and Online Streaming Services in Kenya (Consulting Firm)

Contract No: KE-ICTA-393199-CS-QCBS

Transmission Date: 6th March 2024

Closing Date: 27th March 2024

Time: 10:00AM EAT

Client:

The Chief Executive Officer,
ICT Authority
Telposta Towers 12th Floor, Kenyatta Ave
PO Box 27150 - 00100 Nairobi Kenya
Tel: +254 20 2089061/ 2211960 Fax: +254 20 2211960
Email: procurement@ict.go.ke , info@icta.go.ke
Website: www.icta.go.ke

Study on Over-The-Top Services (OTTs) and Online Streaming Services in Kenya (Consultancy Firm)

1. Background

The Government of the Republic of Kenya (GoK) has received credit financing in the amount equivalent to US\$390 Million from the World Bank towards the cost of the first phase of the Kenya Digital Economy Acceleration Project (thereafter “Project”) and intends to apply part of the proceeds to pay for goods, works, non-consulting services and consulting services to be procured under the Project.

The project includes the following components.

Component 1: Digital Infrastructure and Access. The aim of this component is to increase access to high-speed internet for individuals, industry, and government—the ‘foundation of the foundations’ of a digital economy—and strengthen Kenya’s role as regional digital leader, while leveraging investments from the private sector.

Component 2. Digital Government and Services. This component will invest in the foundational digital services, platforms, architectures, and policies needed to transform the way the Government communicates and conducts its internal operations.

Component 3. Digital Skills and Markets. This component aims to equip young Kenyans with digital skills and strengthen their abilities to access and compete in domestic and regional markets, to study mechanisms to improve access to affordable devices and through enhancing the enabling environment for e-commerce to support Kenya’s role as a regional digital hub.

Component 4. Project Management. This component will support project implementation, coordination, and capacity building for the Project Implementation Unit (PIU) within the Information and Communications Technology Authority (ICTA).

Component 5: Contingent Emergency Response Component. This component will be activated in the event of an emergency.

The GoK intends to apply a portion of the proceeds of the Credit to cover activities under subcomponent 1.4 (Strengthening the Digital Enabling Environment) to develop a regulatory framework to cater for new emerging services with a focus on over the top (OTT) and online streaming services. For the purpose of this study, OTT is defined, according to the International Telecommunication Union (ITU), as “*an application accessed and delivered over the public internet that may be a direct technical/functional substitute for traditional international telecommunication services*” and that may substitute or supplement traditional telecommunications services (ITU 2019)”. Online Streaming services are defined as “*the technology of transmitting audio and video files in a continuous flow over a wired or wireless internet connection*”.

2. Objective of the Assignment

The overall objective of this project is for the Communications Authority (CA) to understand the emerging areas of OTTs and online streaming services, and to consider whether regulatory approach might be adopted in Kenya. The report shall:

- a) Present an overview of the current status and level of adoption of OTTs and online streaming services in Kenya, including growth trends and forecasts;

- b) Examine the impact of OTTs and online streaming services on existing licensed players in Kenya, especially in terms of impact on revenues and market share;
- c) Assess the contribution of OTTs and online streaming services to the economy of Kenya, (including content monetization, content creation, employment, advertising revenues and taxation of services offered). The study shall propose indicators for the same as well as a mechanism for acquiring, or estimating, the necessary data.
- d) Provide a comprehensive comparative analysis of the recent developments or initiatives to regulate or promote OTTs and online streaming services in Kenya vis-à-vis international best practices;
- e) Examine the adequacy of the CA's regulatory framework in regard to OTTs and online streaming services in the country, and recommend a suitable regulatory framework, including the option of light-touch regulation.

3. Scope of Services

3.1 General

The scope of services covers the whole country which comprises of 47 counties of the Republic of Kenya.

The consultant is expected to undertake activities that will ensure outputs are consistent with professional and legal requirements. In addition, it is expected that outputs will be generated through a consultative process that guarantees authenticity and ownership.

3.2 Specific tasks

The consultant will undertake the following activities:

- 1) Analyze the nature of OTT and online streaming services as they relate to voice, media and messaging, determine the level of adoption of these services in Kenya, and benchmark it against adoption levels in peer and aspirational countries;
- 2) Analyze the impact of OTTs and online streaming services in the industry (including but not limited to telecommunications, postal/courier/e-commerce and broadcast sectors), on areas such as content creation, content monetization, content regulation, copyright, regulatory imbalance, revenue loss on the national economy, security, access to emergency services, universal access, privacy, quality of service (QoS), lack of directory services, and affordability, among others;
- 3) Assess the contribution of OTTs and online streaming services to the economy of Kenya, (including content monetization, content creation, employment, advertising revenues and taxation of services offered);
- 4) Provide a comprehensive comparative analysis of the recent developments or initiatives to regulate new emerging areas, including OTTs and online streaming services, in Kenya vis-à-vis international best practices;
- 5) Examine the current legislative framework with regards to regulation of OTTs and online streaming services, and determine its applicability and gaps;

- 6) Establish the extent to which consumers are substituting for, or complementing, the use of traditional services with OTTs and online streaming services;
- 7) Propose indicators, templates, and mechanisms for acquiring information from OTTs and online streaming services providers on their contribution to the economy of Kenya;
- 8) Establish emerging challenges that regulators may face in regulating OTTs and online streaming services, as well as jurisdictional issues for services domiciled outside Kenya, and propose mitigation measures to be undertaken to address the challenges;
- 9) Make appropriate recommendations based on the study findings, on the possible regulatory approaches, including their pros and cons, as well as possible mitigation measures; and
- 10) Recommend a regulatory framework for the regulation of OTTs and online streaming services, including the option of light-touch regulation.

4. Duration and Location of Assignment

The assignment shall be for 13 calendar months from the contract commencement date. The scope of the services is in 47 counties of Kenya.

5. Reporting requirements and timelines for deliverables

The consultant shall submit the following reports as shown in Table 1

Table 1: Reporting requirements and timelines for deliverables/reports

No.	Outputs /Deliverables	Description of outputs/deliverables	Timelines for submission of deliverable after commencement date	Number and format of reports presentation
1)	Inception Report and slide deck	Detailed plan with approach for carrying out the tasks outlined, including work-plan, milestones, and workshops. Review of the legal, regulatory and policy environment, institutional set up.	1 month	6 Hard copies and 2 digital copies.
2)	First Progress Report	The consultant will apprise the Authority on the progress of the study including the status of every milestone as per work plan and contract.	4 months	6 Hard copies and 2 digital copies.
3)	Second Progress Report	The consultant will apprise the Authority on the progress of the study including the status of every	7 months	6 Hard copies and 2 digital copies.

No.	Outputs /Deliverables	Description of outputs/deliverables	Timelines for submission of deliverable after commencement date	Number and format of reports presentation
		milestone as per work plan and contract.		
4)	Interim report	<p>This will be a draft final report on the level of adoption of OTTs and online streaming services in Kenya, proposed possible regulatory mechanisms that can be employed to cater for over the top (OTTs) and online streaming services and generally new emerging technologies, and proposed approaches that the CA can take to address the OTTs and other emerging areas.</p> <p>This report will present both qualitative and quantitative findings of the study in adherence with set Terms of Reference (TOR) as outlined by the CA.</p> <p>The consultant(s) shall be expected to present this report in the validation workshop attended by stakeholders</p>	10 months	6 Hard copies and 2 digital copies.
5)	Final report and a slide deck	<p>Report and slide deck summarizing diagnostic study, key recommendations validated through stakeholder consultations</p> <p>(i) The final report will be developed as per the TORs and will have addressed any comments emanating from the Authority and other stakeholders.</p> <p>(ii) The final report should include a proposed regulatory framework for OTTs and online streaming services on the basis of the findings of the study.</p>	13 months	6 Hard Copies and 2 digital copies.

All draft and final reports (1 original hard copy and 1 hard copy and a digital copy) shall be submitted

in the prescribed format to:

The Chief Executive Officer,
ICT Authority
Telposta Towers 12th Floor, Kenyatta Ave
PO Box 27150 – 00100
Nairobi Kenya
Tel: +254 20 2089061/ 2211960 Fax: +254 20 2211960
Email: procurement@ict.go.ke , info@icta.go.ke
Website: www.icta.go.ke

Attention:
The Project Coordinator
KDEAP

And additional four (4) hard copies and a digital copy of each required deliverable to the address below:

Director General

Communications Authority of Kenya
CA Centre, along Waiyaki Way
P. O. Box 14448
Nairobi 00800, Kenya
Email: dg@ca.go.ke
Tel: 0703 042 000

Upon submission of every report, the consultant is expected to make a presentation of the submitted report to the Client in a scheduled meeting. The acceptance of the report shall be recorded in the minutes of the meeting.

6.0 Payment Schedule

The proposed payment schedules based on satisfactory performance of the contract which will be negotiated with the successful consultant will be as presented in Table 2 below.

Table 2: Proposed payment schedule

S/No.	Deliverables	Timelines after contract commencement	Percentage of the contract amount
1.	Submission and Acceptance of Inception report & slide deck	1 month	10%
2.	Submission of First Progress Report	4 Months	5%
3.	Submission of Second Progress Report	7 Months	5%

4.	Submission of Interim Report	10 months	30%
5.	Submission & Acceptance of Final Report and a Slide Deck	13 months	50%

Upon submission of every report, the consultant is expected to make a presentation of the submitted report to the Client and the Communications Authority of Kenya in a scheduled meeting. The acceptance of the report shall be recorded in the minutes of the meeting.

7.0 Minimum requirements for consultant's qualifications and experience

The shortlisting criteria for the Consulting Firm will involve the following:

- a) **Core business and years in business:** The firm shall be registered/incorporated as a consulting firm with core business in providing consulting services in telecoms, digital access advisory and research or related services for a period of at least Seven (7) years.
- b) **Relevant experience:** The firm shall demonstrate as having successfully executed and completed at least two (2) assignments in reviewing and advising on laws, regulations and policy environments concerning the ICT sector in the last Seven (7) years. Details of the assignments (name and address of the client, scope, value, and period) should be provided. Attach copies of completion certificate/Recommendation Letter and an LPO/Contract for each assignment.
- c) **Technical and managerial capability of the firm:** The firm shall demonstrate having the requisite technical and managerial capacity to undertake the assignment (attach company profile).

8.0 Team composition and minimum qualification and experience requirements for the key experts

The Consultants shall demonstrate well qualified and experienced professionals as required and appropriate for execution of the assignment. The Consultants will be required to have a multi-disciplinary team including legal, policy and regulatory experts and economists. They should possess necessary resources to undertake services of such nature including equipment and software required to execute the assignment. The key professionals/expert shall personally carry out (with assistance of other non-key experts and staff deemed appropriate) the services as described in this TOR. The key experts to be provided by the Consultants for this assignment are as follows: -

Table 3: Team composition and minimum qualification and experience requirements for key experts

No.	Consultant Team/Team Lead
1.	<p>Lead Consultant:</p> <ul style="list-style-type: none"> i. A minimum of Master’s Degree in any of the following fields: Telecommunications Engineering, ICT, Economics, Law and Regulations, Policy Development and Management, Cybersecurity, and Finance from institutions recognized in Kenya. ; ii. A Minimum ten (10) years of demonstrated experience providing advisory / consultancy services on telecom policy, regulations and telecommunications engineering. Attach duly signed Curriculum Vitae iii. Specific experience of at least three (3) prior assignments in leading projects focused on ICT sector development in emerging and frontier markets, and at least two (2) prior assignments working directly with government entities.
2.	<p>Key Experts</p> <p>2.1 Economics Expert</p> <ul style="list-style-type: none"> a) A minimum of bachelor’s degree in in economics, geography or related degree from a recognized: b) A minimum of eight (8) years general experience providing advisory/consultancy services on Telecoms, Digital Access Advisory and Research projects. c) Specific experience of at least two (2) prior assignments in projects focused on ICT sector development in emerging and frontier markets, and at least one (1) prior assignment working directly with government entities. <p>2.2 ICT Technical Expert (s) (2 No.)</p> <ul style="list-style-type: none"> a) A minimum of a Bachelor’s degree in Telecoms/Electrical engineering or related field from university recognized in Kenya. b) A minimum of eight (8) years of general experience of ICT regulation in emerging and frontier markets, experience in regulation around disruptive technologies, with at least two prior assignments in Sub-Saharan Africa. c) Specific experience of at least two (2) prior assignments in projects focused on ICT sector development in emerging and frontier markets, and at least one (1) prior assignment working directly with government entities. <p>2.3 Legal, Policy and Regulatory Expert(s)</p> <ul style="list-style-type: none"> a) A minimum of Bachelor’s Law degree from a University recognized in Kenya. b) A minimum of eight (8) years of general experience providing advisory/consultancy services on Telecoms, Digital Access Advisory and Research projects. c) Specific experience of at least two (2) prior assignments in projects focused on ICT sector development in emerging and frontier markets, and at least one (1) prior assignment working directly with government entities.

9.0 Estimated time inputs for key experts

The number of key experts and the estimated time input for each key expert for the assignment are presented in Table 3.

Table 3: Estimated Time Inputs for Key Experts

S/No	Key and support Staff	No	Estimated Time Input (staff-months)
1.	Team leader/Principal consultant	1	13
2.	ICT expert	2	13
3.	Economist	1	13
4.	Legal expert	1	13
Total		5	65

10. Responsibilities of the client

The consultant shall be contracted by the ICTA on behalf of the CA. The consultant must ensure that the tasks identified above are performed in a result-oriented manner with the sole objective of achieving outputs and outcomes expected from the assignment as has been described in the details above. The consultancy is encouraged to utilize local expertise as appropriate.

CA shall provide the following to the best of its ability:

- 1) Available Data, studies and literature considered relevant for accomplishing identified tasks;
- 2) Access to key officials within the relevant Ministries and other relevant official entities, including operators, regulators and/or any others as applicable;
- 3) Help convene key stakeholders and support cooperation with the Government of Kenya and other organizations whose activities and programs may be considered relevant to this project, to enable the consultants to have access to the information necessary to carry out their work program;
- 4) Provide timely feedback on deliverables.

11.0. Responsibilities of the Consultant

The consultancy must ensure that the tasks identified above are performed in a result-oriented manner with the sole objective of achieving outputs and outcomes expected from the assignment as has been described in the details above. The consultancy is encouraged to utilize local expertise where appropriate.

Further, the Consultant shall be responsible for the provision of all the necessary resources to carry out the services such as international travel, project transportation for visits to counties, subsistence allowances, accommodation, information technology, means for communications, reporting materials, insurance, and any other required resources. The consultant is expected to undertake activities that will ensure that outputs are consistent with the professional and legal requirements. All outputs will be presented using modern techniques/technology. It is also required that the data is generated through a consultative process that guarantees authenticity and ownership.