



**REPUBLIC OF KENYA**

**MINISTRY OF MINING, BLUE ECONOMIC AND MARITIME AFFAIRS**

**TERMS OF REFERENCE**

**FOR**

**EXPRESSION OF INTEREST (EOI) FOR CONSULTANCY SERVICES TO  
DEVELOP MINE HEALTH, SAFETY AND ENVIRONMENT REGULATION**

**TENDER NO. MMBE & MA/SDM/010/2023-2024**

## 1.0 Background

Mining is one of the most hazardous employment sectors, despite the considerable efforts in many countries to implement and maintain occupational safety and health. The toll of death, injury and disease remains high amongst the world's mine workers. Unless effective occupational health and safety measures are in place, the mining industry often bears a disproportionate burden in terms of numbers of accidents, fatalities and incidence of diseases.

The need for enhancement of mining workplace health and safety arises from the recognition that mining remains risky and that vigilance in addressing the hazards can never be relaxed. Miner health and safety are major concerns for mine management and governments. This concern has manifested itself in control mechanisms that includes:

- (a) regulatory control through the passage of laws and regulations;
- (b) legal and social control through compensation laws for occupation-related health and environmental deterioration; and
- (c) engineering control through the design and operation of mines according to the best recommended practices.

An important aspect of all these approaches is the search for new tools and techniques that will further enhance hazard control and ultimately create safe mining environments.

Mining activities in Kenya have been practised for decades. This includes mining of minerals like soda ash, gold, fluorspar, gemstones and quarrying. As an occupation with varied risks, regulations have been used to ensure the health, safety and welfare of workers as well as environmental protection. There have been various regulations governing some aspects of mining including health and safety. The Mining Act of 2016 replaced Mining Act CAP 306 where artisanal mining has been recognised as a legal activity. However, there are no specific regulations on the health and safety provisions for exploration and mining operations. Therefore, as Kenya develops its mining industry a key focus for policy makers is to ensure effective and efficient regulation for mining health safety and environment protection.

Section 178(2) of the Mining Act, 2016 provides for the Cabinet Secretary responsible for mining to develop Regulations for safety and health of persons employed in mines, and the carrying on of prospecting or mining operations in safe, proper, sanitary and effectual manner. Section 180(2) provides that the Cabinet Secretary may prescribe Regulations for site rehabilitation and mine-closure obligations. The Mining Act further provides for execution of environmental protection bond sufficient to cover the costs associated with the implementation of the environmental and rehabilitation obligations of the holder.

In order for the government to effectively implement the above provision of the law, there is a need to develop a comprehensive Mine Health Safety and Environment Regulation.

## **2.0. Objective of the Consulting Assignment**

The objective of this assignment is to formulate a comprehensive and effective Mine Health Safety and Environment Regulation.

## **3.0. Scope of Work**

The scope of the consultancy is as follows:

### **3.1 Literature review;**

#### **3.1.1 Mine safety legal framework; Jurisdictions Comparative study**

- (a) Australia
- (b) South Africa
- (c) Tanzania
- (d) Ghana
- (e) India
- (f) Any other jurisdiction compatible with the Kenyan legal system.

#### **3.1.2 Outcome: Recommendations on the most appropriate provisions applicable to Kenya.**

### **3.2 Mine safety legal framework; Sectoral Comparative study**

- (a) Occupational Safety and Health Act (OSHA, 2007)
- (b) Environment Management and Coordination Act
- (c) Public Health Act Cap 242

- (d) Water Act 2016 (Revised)
- (e) Safety rules under the Explosives Act Cap 115
- (f) Any other Act of parliament with health, safety and environmental aspects

#### 3.2.1 Outcome:

- (a) Appraisal of existing provisions touching on mine safety, environment and health that need not be duplicated but referenced to in the mine safety regulations
- (b) Gaps and weaknesses in existing legislations touching on mine safety, environment and health that need to be addressed/reinforced in the mine safety regulations
- (c) Important aspects of safety, environment and health that ought to be captured in the existing legislations but are not provided for to be included in the mine safety regulations

### **3.3 Mining Act, Cap 306**

Review mine safety and health regulations under Cap 306

3.3.1 Outcome: Review of strengths, weaknesses and gaps in the legislation and recommendations on the ideal legal framework within the provisions of the Mining Act, 2016.

### **4.0 Specific Factors of Mine Safety and Environment Regulations Framework;**

In order to guide the development of Safety, Environment & Health Regulations (Mine Safety and Environment Regulations) as provided for in Section 178 (2) of the Mining Act. The following but not limited to are some of the factors to consider;

#### **4.1 Safety of Surface Excavations:**

- a) Geotechnical considerations: slope stability, waste rock piles stability, berms, vibrations.
- b) Mine infrastructure: road ways, traffic, storm water drainage, power supply
- c) Personnel: Human and technical capacity for emergency preparedness and mine rescue, mine risks assessment and mitigation, mine safety records management.

#### **4.2 Safety of Underground Excavations:**

- a) Geotechnical considerations: Competence of the host rocks and rock stress assessment and mitigation, mine depth and risk assessment, excavation methods, ground water,
- b) Mine infrastructure: Mine ventilation, road ways, traffic, storm water inrush, conveyancing services, power supply, mine gases, lighting and services
- c) Personnel: Human and technical capacity for emergency preparedness and mine rescue, mine risk assessment and mitigation, mine safety records management.

#### **4.3 Tailings Storage Facility:**

Design factors (construction methods, mass balance, monitoring and maintenance), siting considerations (topography, hydrology), geotechnical (faults, groundwater, rock/soil formation), tailings characteristics, seepage, drainage, downstream risk mapping and considerations,

#### **4.4 Personnel Safety, Health and Mine Rescue:**

Training, PPE, equipment, conveniences, health management and monitoring

#### **4.5 Safety of Mine infrastructure**

Ventilation, transport, power, water and sanitation, pipelines

#### **4.6 Environmental**

Mine water, waste rock and tailings physical and chemical characteristics, emissions to air, discharges to water, monitoring of mine induced ground deformations, mine decommissioning, post mining land utilization.

#### **4.7 Mine Health and Safety for Artisanal Mining**

Mine stability, drainage, dust and noise pollutions control, use of hazardous chemicals, risk of exposure to workplace hazards, use of PPEs, risk assessment of potential hazards at the ASM sites. Enforcement of all the safety requirements, risk assessments and ranking requirements in the ASM sector, accident reporting and investigations procedures.

#### **4.8 Management and disposal of hazardous chemicals**

Waste treatment, storage, and disposal of liquid, airborne, and solid effluents from the mining operations

#### **4.9 Management of Hazardous and Radioactive Waste**

Waste treatment, storage, and disposal of liquid, airborne, and solid effluents from the nuclear industry's operations

#### **4.10 Acid mine drainage (AMD) management**

Primary prevention of the acid-generating process; secondary control, acid drainage migration prevention measures; and the collection and treatment of effluent.

#### **4.11 Administration of Mine Safety and Environment Regulations**

A clear organization structure detailing roles and staff responsible for various aspects of safety and environment both at Directorate of Mines and with the mining right holder.

### **5.0 Reporting Obligations and Key Deliverables**

Throughout this assignment, the consultant will work closely with the Principal Secretary; State Department for Mining. The following are the core deliverables for this assignment:

- (a) Inception report
  - Work plan
  - Initial literature review
  - Outline of the draft regulation
- (b) Draft Regulations
- (c) Stakeholder engagement/consultation workshops (Kisumu, Embu, Mombasa)
- (d) Validation Workshop (Nairobi)
- (e) Final Draft Regulations with a list of references and citations including management codes of best practice in the industry; Mining (Mine Health, Safety and Environment) Regulation.

All workshops will be organized jointly by the State Department for Mining in consultation with the Consultant upon receipt of draft regulations. All reports must be submitted in one electronic and hardbound copies (3 No) to the State Department for Mining.

## **6.0 Timeframe for the Assignment**

The assignment will be undertaken in 3 months. A work plan including the estimated man-hours for personnel involved will be expected from the Consultant prior to commencing of the assignment.

## **7.0 Client Support**

### **7.1 Implementation arrangements**

The Consultant shall make own arrangements for undertaking the assignment, including reproduction of documents, printing and reproduction of all reports, and organizing meetings with other relevant organizations.

The State Department for Mining will provide existing documentation regarding the project and meetings will be set up whenever needed. The Consultant will however be responsible for obtaining all the necessary public information required to perform the tasks included in this ToR.

### **7.2 Consulting Service Requirements**

The key members of the Consultant's team shall not change throughout the duration of the contract with the State Department for Mining. Any staff changes will require the State Departments' approval. It is expected that the work would be conducted both in the consultant's office and in the office of the State Department for Mining.

## **8.0 Expected Consultant Experience**

The consulting company shortlisting criteria include;

- (a) Significant international experience in legal and regulatory formulation in mining or extractives.
- (b) Demonstrable record of accomplishment of success in formulation of mining regulations and in delivering competent person's report, preferably in similar country

environment like Kenya.

- (c) Provide evidence of relevant projects successfully completed, clearly indicating the year undertaken, the country, and the name of the client. Evidence of acceptance of past works by the client is mandatory.

### 8.1 Required Qualifications

The members of the team will have the skills and experience necessary to undertake the range of tasks set out in this Terms of Reference. Each individual on the team must be personally available to do the work as and when required. The Consultant will be held accountable for ensuring project deliverables and for the professional conduct and integrity of the team. The consulting firm may propose the best team combination to achieve the overall goal. To be considered for the assignment, proposed team members should submit their respective CV's.

The consulting firm to include:

<b>Experts</b>	<b>Minimum Expertise Required</b>	<b>Estimated Man Months</b>
<b>Team leaders</b>	A Masters Degree in any of the following: Public Policy, Law, Mining, Natural Resources or related field with 10 years' experience in mining regulatory framework formulation internationally. Provide evidence of recent relevant projects delivered.	3
<b>Mining expert</b>	A Masters Degree in Mining, Mineral Processing, Natural Resources or related field with at least 5 years' experience in extractive sector. Provide evidence of recent relevant projects delivered.	2
<b>Health, Safety Expert</b>	A Masters Degree in the related field with at least 5 years' experience in the extractive sector. Provide evidence of recent relevant projects delivered.	2
<b>Environment Expert</b>	A Masters Degree in the related field with at least 5 years' experience in the extractive sector. Provide evidence of recent relevant projects delivered.	2



## **9.0 Conflict of Interest Statement**

The Consultant is required to disclose any potential conflicts of interest arising out of other assignments. Where the Consultant currently represents any party or potential stakeholders that would create conflict of interest or to the extent any conflict of interest would arise in the future, the Consultant shall provide a copy of its policy or procedures with respect to conflicts management (mere reference to such policy or procedure will not suffice).

In addition to the Consultant's conflict of interest and confidentiality policy, the Consultant shall detail any measures that may be required to avoid conflicts of interest and ensure the confidentiality of information received in connection with the implementation of this assignment.

### **EOI SUBMISSION:**

Eligible firms are to submit their clearly labelled “**EXPRESSION OF INTEREST (EOI) FOR CONSULTANCY SERVICES TO DEVELOP MINE HEALTH, SAFETY AND ENVIRONMENT REGULATION - TENDER NO. MMBE & MA/SDM/010/2023-2024**”

by hard copy to be deposited in the Tender Box situated on 2nd Floor, Works Building so as to be received not later than 10:00 a.m. East African Time on 14<sup>th</sup> September, 2023.

The Envelop should be clearly addressed to:

**The Principal Secretary  
State Department for Mining  
Ministry of Mining, Blue Economy and maritime Affairs  
Public Works Building, Ngong Road  
P.O. Box 30009-00100  
NAIROBI**

### **EOI Opening:**

The EOI documents will be opened in the presence of bidders' representatives who choose to attend at Works Building, 3rd Floor, Ministry Boardroom on 14<sup>th</sup> September, 2023 immediately after closing.

This EOI is also available in the Government of Kenya Tender Portal [www.tenders.go.ke](http://www.tenders.go.ke) and in the Ministry's website [www.mibema.go.ke](http://www.mibema.go.ke).

The State Department for Mining reserves the right to accept or reject any or all applications.

## ANNEXURE A

S/No.	Competence	Criterion	Key Aspects of the Criterion	Points
1.	Qualifications of Key personnel	Lead Consultant	A Masters Degree in any of the following: Public Policy, Law, Mining, Natural Resources	15
		Supporting Consultants	A Masters Degree in the related field with at least 5 years' experience in the extractive sector	10
2.	Specific experience	Provide evidence of experience in legal and regulatory formulation in mining or extractives and relevant projects successfully completed, clearly indicating the year undertaken, the country, and the name of the client. Evidence of acceptance of past works accomplishment of success in formulation of mining regulations	More than 10 years working experience	25
			5-9 years working experience	15
			3-4 years working experience	10
			Less than 3 years working experience	5
			No experience	0
3.	Methodology	The bidder should provide clear methodology, including timelines, of undertaking the assignment	Clear methodology, including timelines, of undertaking the assignment	25
			Methodology not clear	0
4.	Provide mandatory requirements	Statutory requirements	A copy of Certificate of Incorporation/Business Registration	5
			A copy of CR 12 not more than one year old or equivalent	5
			A copy of KRA PIN	5
			Valid Tax Compliance Certificate	5
5.	Audited Accounts	Provide certified copies of Firms Audited Accounts	Three or more years	5
			Two Years	3
			Less than two years	1
<b>Total</b>				<b>100</b>