

Government of Kenya



Ministry of Industrialization, Trade and Enterprise Development

State Department for Trade

Terms of Reference for Consultant to Develop a Medium Term National
Trade Negotiations Program, Institutional and Organizational
Framework & Rules of Procedure

MOITED/SDT/REOI/002/2019-2020

REQUEST FOR EXPRESSION OF INTEREST (REOI)
CONSULTING SERVICES – FIRM SELECTION

Nairobi, July 2020

1. Background

Since the mid-1980s, the Government of Kenya have pursued an export led growth policy. This has been increasingly complex and competitive environment for international trade and investment. Therefore, the policy implementation has entailed a sequel of export marketing incentives, including Manufacturing Under Bond (MUB) scheme, Export Processing Zones (EPZ) and Duty Remission Facility. Towards the same policy goal, Government has been proactive in establishment of the Common Market for Eastern and Southern Africa (COMESA) Free Trade Area (FTA), and the East African Community (EAC) Customs Union, through which Kenya as a member accesses exports markets for its products in over 20 countries on duty free or on preferential duty basis.

Kenya has also actively championed and seized opportunities for export markets created by such global multilateral initiatives as the Cotonou Agreement of 2000, where Kenya along with other African Caribbean and Pacific (ACP) countries were granted duty free market access into the European Union for most of the products originating from this regional bloc. The Government has sustained this momentum in the European Union (EU) market access by transitioning into Economic Partnership Agreement (EPA) under the EAC-EU Economic Partnership Agreement (EPA) framework. Through this framework Kenya's exports to the EU enjoy duty free and quota free market access. Also, Kenya was among the first countries to sign the WTO Multilateral Agreements. This action worked favourably towards further opening the horizon for Kenya's exports into the global market consisting of over 140 countries that are WTO members.

Furthermore, Kenya has been at the forefront of advocating and facilitating the African Union initiative to integrate the COMESA, EAC and SADC into a continental Tripartite Free Trade Area (TFTA) with the goal of opening up the entire continent's market for goods and services. In the end, Africa Continental Free Trade Area (AfCFTA) under the African Union framework was signed in July 2014 by 26 countries that belong to these three regional blocs, and Kenya is among the first AU member countries to ratify its protocols in 2018.

By 2019, Kenya has over the years signed 19 bilateral investment treaties (eleven of which were in force), and seven treaties with investment provisions. The more significant of these include the EAC Customs Union; and the efforts to enhance regional economic integration under the Common Market for Eastern and Southern Africa (COMESA), the Tripartite Free Trade Area (TFTA), the African Continental Free Trade Area (AfCFTA), and the EAC-EU Economic Partnership Agreement (EPA), which has been negotiated by the EAC Partner States as a block. In negotiating any new FTA, Kenya's team must be fully cognizant of the country's commitments and obligations under all these existing trade and investment agreements.

Kenya – USA trade negotiations are the only such undertaking by the Government today. However, a strategic and proactive policy stance requires that we take the initiatives to engage with other countries where there is high potential for Kenya's exports. With regard to the latter, the countries that the Government wishes to engage in the next three years are the United Kingdom, India, Russia and South Korea.

To achieve policy target of clinching preferential trade terms agreements with another four countries will entail conducting multiple trade negotiations. Our experiences with EAC, COMESA, AfCFTA and EPA confirm that, firstly, multiple trade negotiations are demanding in terms of technical capacity and time inputs by large teams of national experts from various sectors and disparate organizations, including private sector players. To address this challenge the GOK needs to ensure that there is a strong institutional and organizational framework with adequate and stable capacity to proactively and strategically initiative and undertake trade negotiations. Secondly, it is important that Kenya's trade negotiations teams are carried out with consistency based on standard rules of procedure.

Against that backdrop, the MOITED seeks to recruit consultant(s) to develop and elaborate:

- (i) A robust institutional and organizational framework for future conduct of Kenya's trade negotiations;
- (ii) A medium Term (3-Year) National Trade Negotiations Program; and
- (iii) Standard rules of procedure that will guide the teams that will conduct trade negotiations.

2. Tasks and scope of work

The specific tasks to be performed by the consultant include:

- (a) review the current practices, issues and challenges that face Kenya trade negotiations today, with a view to improving both the strategic orientation and operational modalities, especially in situation of multiple nations;
- (b) Assess the institutional, organizational and human capital capacity of the MOITED, and with particular focus on the State Department of Trade(SDT), to efficiently and effectively conduct multiple trade negotiations;
- (c) Assess the needs and capacity for Kenya's private sector (Member Business Associations and their apex bodies, and relevant enterprises) to participate in trade negotiations with a view to identifying interventions to facilitate the same;
- (d) Review the processes of past Kenya trade negotiations, especially those of EPA and AfCFTA, with a to drawing lessons of experience to inform the strategic orientation, policies and process to be adopted in future trade negotiations;
- (e) Develop Rules of Procedure that will guide the conduct of trade negotiations in future;
- (f) Develop a robust institutional and organizational framework for conduct of future trade negotiations;
- (g) Identify organizational and human capital capacity building measures to ensure the efficacy of Kenya's institutional and organizational readiness to conduct multiple trade negotiations;
- (h) Support the MOITED/SDT to develop a Medium Term (3-Year) National Trade Negotiations Program with specifics on: (i) policy objectives and targets, (ii) target outputs and action plans, and (iii) implementation plan with clear indications of time-bound priority measures;

- (i) Assess the cost and budgetary implications of implementing the NTNP; and
- (j) Recommend measures resources mobilization to implement the NTNP.

In performing the above tasks, the consultant(s) will closely liaise with the officers of the relevant ministries, departments and agencies (MDAs), and especially the MOITED/SDT, and thereby ensure the feasibility of implementation of the recommendations from the consultancy.

It is estimated that this assignment will require a total of 55 consultant-days to complete.

3. Reporting and deliverables

The consultant(s) will report to the Principal Secretary, SDT. The Principal Secretary will also appoint a team of counterparts, comprising senior officers of the State Department, who will on a day-to-day basis facilitate the consultant(s) and at the same time oversight the consultant(s).

The deliverables by the consultant will comprise:

- Inception Report, which will clarify the policy and strategic objectives of the consultancy, the consultants approach and methodology, and a detailed work plan for completion of the assignment. This report is to be completed within a week of commencement of the assignment;
- A draft report, comprising: (i) the institutional and organizational framework, (ii) the National Trade negotiations Program (NTNP); and (iii) Rules of Procedure for trade negotiations. This report is to be completed within five weeks of commencement of the assignment;
- Facilitation of a stakeholders 'forum to discuss results as captured in the draft final report. The meeting will be in the week following the submission of the draft report
- Final report, with an executive summary. This report will be prepared within a week following the stakeholders' meeting.

4. Required Competencies of the Consultant (s) and Estimation of Level of Inputs

This assignment will ideally be undertaken by a team of two consultants with the following general profiles:

- (a) An institutional and organizational analysis and design specialist, who will have the following competencies:
 - (i) At least 10 years of post-graduate experience at senior level in public sector management, preferably in the Government of Kenya;
 - (ii) Proven and extensive experience in programs development, planning and budgeting; and
 - (iii) Strong verbal and written communications skills;

- (b) A lawyer with the following competencies:
- (i) At least 10 years' experience as an Advocate of the High Court of Kenya;
 - (ii) At least 5 years of relevant experience at a senior level as a Legal Counsel in Kenya's public service;
 - (iii) Extensive knowledge and experience in international negotiations, and preferably in trade negotiations; and
 - (iv) Strong verbal and written communications skills.

The expression of interest must be delivered in written form to the address below in person, or dropped at Tender Box situated on 17th Floor, Security Reception Lobby, Telposta House, Kenyatta Avenue, or by **mail** or **email** clearly marked "**Expression of Interest for Consultancy Services: "Consultancy to Develop a Medium Term National Trade Negotiations Program, Institutional and Organizational Framework & Rules of Procedure"**" so as to be received on or before Thursday 9th July, 2020 at **12.00 noon East African Time**.

- i) Electronic submission should be addressed to:-
proc.statedepartmentoftrade@gmail.com
 - ii) All enquiries concerning the consultancy assignment shall be sent to the following email: **proc.statedepartmentoftrade@gmail.com**
1. EOIs will be opened immediately thereafter in the presence of the applicants or their representatives who choose to attend in the Boardroom, 18th Floor, Teleposta Towers.

**The Principal Secretary,
State department for Trade,
P.O. BOX 30430-00100,
NAIROBI, KENYA
HEAD SUPPLY CHAIN MANAGEMENT SERVICES
FOR: PRINCIPAL SECRETARY**