



REPUBLIC OF KENYA

MINISTRY OF INDUSTRIALIZATION, TRADE AND ENTERPRISE DEVELOPMENT

STATE DEPARTMENT FOR TRADE AND ENTERPRISE DEVELOPMENT

**CONSULTANCY TO PROVIDE TECHNICAL ASSISTANCE TOWARDS THE
NEGOTIATIONS FOR THE PROPOSED FREE TRADE AGREEMENT BETWEEN KENYA
AND THE UNITED STATES OF AMERICA**

MOITED/SDT/REOI/001/2019-2020

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

**TERMS OF REFERENCE FOR CONSULTANCY TO PROVIDE SHORT/MEDIUM TERM
TECHNICAL SUPPORT TO THE STATE DEPARTMENT FOR TRADE AND ENTERPRISE
DEVELOPMENT**

1. Background

Kenya and United States of America enjoy cordial bilateral relations. Trade between the two countries has continued to grow since Kenya’s independence in 1963. This has expanded significantly under the African Growth and Opportunity Act (AGOA) which is expected to come to an end in 2025. Kenya’s decision to negotiate a bilateral Trade Agreement with USA is first and foremost aimed at securing duty free and quota preferential market access to the USA which will lapse with expiry of AGOA unless an alternative trade arrangement is in place. The significance of this decision is underscored by the fact that presently USA is the fourth significant destination market for Kenya, a position that has been sustained over the years after the EAC, EU and COMESA. Kenya’s excellent export performance in the USA is mainly attributed to the duty-free market access preferential treatment under AGOA.

The other objective is to secure investments and employment in firms that are currently producing and exporting to the USA. The proposed Free Trade Agreement (FTA) will also be an attraction for other investors targeting the USA market on the basis of a secure trade arrangement and regional and continental market opportunities. The FTA will seek to strengthen rather than undermine regional integration through consideration and upholding of Kenya’s commitment in Regional Economic Communities and at Continental Level. The scope of coverage includes Trade in Goods, Trade in Services, Intellectual Property Rights, including investment and other trade related areas.

As part of the preparatory work, the Ministry has decided to assemble a team of experts at Technical and Strategic level to support the core team that will spearhead the negotiations. The technical level will involve technicians or specialized experts while the strategic level will involve eminent persons who are subject matter specialists with diplomatic experience in Trade negotiations.

It is against this background that the ministry intends to procure services of a consultancy firm(s) through the support of Trade Mark East Africa to support negotiations of the FTA to provide consultants with different and diverse skills, knowledge and experience to support the negotiations.

2. Objectives of the Assignment

The objective of this assignment is to provide technical assistance at both technical and strategic levels to the Government of Kenya, specifically through the Ministry of Industrialization, Trade and Enterprise Development to negotiate a Bilateral Trade Agreement between Kenya and United States of America. The activity is intended to result in Kenya securing duty free market access in the US to replace AGOA.

3. Recipient

The principal recipient is the State Department for Trade and Enterprise Development within the Ministry of Industrialization, Trade and Enterprise Development.

4. Scope of Work

This assignment entails provision of technical assistance to the Government of Kenya to negotiate a Free Trade Area Agreement between Kenya and the United States of America. The assignment will focus on studies related to Kenya –USA FTA negotiations and advisory services both at technical and strategic levels. In this regard, the consultancy firm(s) will undertake the following tasks:

- a) Undertake capacity building training of the negotiators and other select groups on issues to be negotiated
- b) Undertake analytical study on the proposed Kenya –USA FTA to provide evidence for decision making in all areas of negotiations. This study will analyze Free Trade Area Agreements USA has signed with other countries, carry out an assessment of the impact of proposed FTA on Kenya’s Trade, border revenue collections, and Investment among others;
- c) Profile of potential sectors to benefit from KE-US FTA
- d) Undertake analysis of the WTO Agreements that are relevant to the proposed FTA and identify Multilateral level flexibilities and policy space that could guide in the negotiations, with the aim of translating the FTA to a development tool
- e) Participate in the preparation of Kenya’s negotiation positions on the various issues that will be negotiated;
- f) Undertake short term studies as and when needed to fill knowledge and information gaps necessary to assist in making informed negotiation positions/decisions;
- g) Advise Senior Kenya Government officials responsible for Trade on policy matters relating to the Kenya-USA FTA negotiations;
- h) Undertake simulations on various trade scenarios between Kenya and USA to inform decision making, in the context of industrial, agricultural and services sector development;
- i) Carry out analytical studies on Investment and IPR in the context of proposed FTA
- j) To advise on the position that Kenya should pursue in Service Sectors negotiations;
- k) Analyze how the FTA will impact on Kenya’s bilateral and regional commitments in existing Regional Economic Communities in which Kenya is a member;
- l) Develop, using outcome of analytical work, redlines/boundaries and fall back positions in all areas of negotiations taking into consideration Kenya’s strategic interests and existing bilateral, regional and multilateral commitments;
- m) Assess Kenya’s e – commerce readiness and industrialization Strategy given inclusion of ecommerce in the scope of the proposed Kenya-USA FTA.
- n) Development strategies to be pursued during the negotiations;
- o) Facilitate national consensus building through dialogue meetings (aimed at allowing stakeholders to give views on the strategic direction to be taken by Kenya in the negotiations; and
- p) Provide technical support in stakeholder consultations, media briefing and communication during the negotiations.

5. Deliverables

The main deliverables from the consultancy will be technical studies and policy briefs both technical and strategic to aid in the negotiations. The consultancy firm (s) will be expected to develop a work plan after one week with very clear priorities and outputs. The deliverables for this assignment will be as follows:

- i. Inception Report indicating how the project will be implemented to be submitted within 2 weeks;
- ii. Prepare and finalize negotiating principles, objectives and scope within 3 weeks;
- iii. Detailed Work-plan on the activities identified under the Scope of Work leading to the envisaged outputs towards successful conclusion of the FTA negotiations;
- iv. Training/Capacity Building/Awareness creation for Negotiating Teams, Private Sector Associations leadership and the media houses on the proposed Kenya-USA FTA
- v. Impact study reports and proposed position on the following areas of the negotiation:
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 - Trade in Goods, encompassing agriculture, industry, Rules of Origin, TBT and SPS Issues and Kenya's trade in goods commitments at Multilateral, regional and continental levels
 - Flexibilities provided in the Multilateral trade agreements
 - Trade in services options for negotiations
- vi. Kenya's Offers/Counter Offers on all areas of negotiations
- vii. Negotiating policy briefs/position papers and draft negotiating legal texts in all areas of negotiations
- viii. Periodic Sector Specific Short Term Analytical studies/Reports relevant to the negotiations;
- ix. Periodic Progress Reports on the Negotiations against the milestones in the work plan.

6. Required Skills and Experience

This assignment will require the following mix of experience and professional and academic qualifications. The assignment requires a firm or consortium of firms with requisite capacity and past demonstrable experience in supporting trade negotiations and ability to mobilize required personnel to deliver the assignment.

Required personnel, academic qualifications and experience

The required personnel fall into the following two categories: Key personnel and Short Term Technical Support personnel.

a) Key Personnel

i) Technical Expert

The technical Advisor must be a Kenyan with the following qualifications and experience

- Minimum of a M.A. in Economics, International Trade, Development Economics or export related qualifications.
- Not less than 10 years' experience in trade negotiations including concluded Free Trade Area Agreements;

- Technical abilities in complex simulations using different economic models/methods and demonstrable excellent report writing skills;
- Technical abilities in designing, undertaking trade policy analytical studies, including coordination of multifaceted studies to inform trade negotiations and position building;
- Demonstrable experience in management of stakeholder consultative process in trade negotiations and trade policy formulation and implementation;
- Past experience in management of multi sectoral trade programs;
- Excellent Track record of developing public policy documents;
- Understanding of Kenya's export sector at products and firm/industry level;
- Experience in dealing with integration issues in RECs such as EAC/COMESA/SADC and EU countries will be an added advantage;
- Excellent leadership and management skills;
- Excellent report writing and drafting skills;
- Fluent in spoken and written English; and
- Proficiency in computer end user skills.
- The level of effort for this position will be 325 days

ii) Trade Expert

The Trade Advisor must be a Kenyan citizen with the following qualifications and experience

- Minimum of a M.A. in Economics, Business, International Trade, Development Economics or Export Business related qualifications;
- At least 10 years relevant professional experience in the Multilateral Trading System and Regional Integration;
- Experience in trade negotiations including Free Trade Area Agreements.
- At least 5years of diplomatic experience in Trade negotiations at the Multilateral level;
- At least 5 years' experience in public sector and ability to interact with ease and confidence with top leadership of the Ministry;
- Ability and Experience in using complex research materials or findings to successfully inform public policy choices;
- Good understanding of regional and international issues in goods and services trade and global political economy;
- Demonstrate experience in dealing with complex trade and economic negotiations and leading teams of negotiators;
- Knowledge of the challenges and opportunities encountered by developing countries in the areas of Free Trade Agreement;
- Experience in undertaking similar assignment;
- Proven track record working on international aid projects or international consulting experience will be an added advantage.
- Excellent leadership and management skills;
- Excellent report writing and drafting skills;
- Fluent in spoken and written English;
- Proficiency in computer end user skills; and
- The level of effort will be 325 days.

iii) Legal Expert

The Legal Expert must be a Kenyan citizen with the following qualifications and experience

- Minimum Bachelor a Degree in Law;
- At least 10 years relevant professional experience in the Multilateral Trading System and Regional Integration including drafting of trade agreements;
- Experience in dealing with integration issues in RECs such as EAC/COMESA/SADC and EU countries will be an added advantage;
- Ability and Experience in using complex research materials or findings to successfully inform trade negotiations;
- Demonstrate experience in dealing with complex trade and economic negotiations and leading teams of negotiators
- At least 5 years' experience in public sector and ability to interact with ease and confidence with top leadership of the Ministry.
- Excellent leadership and management skills;
- Excellent report writing and drafting skills;
- Fluent in spoken and written English;
- Proficiency in computer end user skills; and
- The level effort will be 300 days

iv) Short Term Technical Support personnel

Short Term Technical Assistance (STTA) is envisaged in support of four targeted areas that are aligned to the envisaged result of the assignment. The specification of the STTA for each focal result area is as follows:

Result Area #1: Impact Assessment/Sectoral Studies in support of trade negotiations

Trade in Goods, encompassing agriculture, industry, Rules of Origin, TBT and SPS Issues and Kenya's trade in goods commitments at multilateral, regional and continental levels and assessment of USA concluded FTAs and lessons for the proposed FTA

**STTA Requirements
Trade Economist**

The expert must be a holder of a master's degree in economics, as a minimum, with at least 10years experience in trade working on EAC, COMESA and with excellent and demonstrable knowledge of the Kenyan economy. The expert must have demonstrable experience leading multi-disciplinary teams in undertaking trade related research to inform policy making process.

Level of efforts – 80 days

Statistician

The expert must be a holder of a master's degree in science, statistics, mathematics, with at least 5 years demonstrable experience working on research projects involving statistical analysis, and preferably on trade related statistical analysis.

Level of efforts – 40 days

Industry expert

The expert must be a holder of a master's degree in business administration or relevant social science field, with at least 5 years demonstrable experience in Kenya's industrial/manufacturing sector engaged in research, industrial development programs or advisory at policy level.

Level of efforts – 60 days

Agriculture expert

The expert must be a holder of a master's degree in agriculture, business or related social science field, with at least 5 years demonstrable experience in Kenya's agricultural sector, engaged in research, agricultural development programs or advisory at policy level

Level of efforts – 60 days

Fisheries expert

The expert must be a holder of a master's degree in science, fisheries, business or related social science field, with at least 5 years demonstrable experience in Kenya's fisheries sector, engaged in research, fisheries development programs or advisory at policy level

Level of efforts – 30 days

Result Area #2: Study on flexibilities in multilateral trade agreements, their application in FTAs**STTA Requirements****Multilateral trade system expert**

The expert must be a holder of post graduate degree in law, economics, business, or relevant social science field, with at least 10 years demonstrable experience in Kenya's trade sector, Multilateral Trade System, engaged in trade research and development programs or advisory at policy level.

Level of efforts – 40 days

Area #3: Study on Kenya's trade in services status and options for negotiations**Trade in Services expert**

The expert must be a holder of degree in law, economics, business, or relevant social science field, with at least 5 years demonstrable experience in Kenya's business/services sector engaged in trade in services research, business development programs or advisory at policy level.

Level of efforts – 60 days

Area #4: Technical analytical work in responses to negotiation driven requests for analytical support to offers, counter offers and relevant simulations

Call down facility for demand driven short term technical assistance support during the negotiation – Level of Effort – 300 days

v) Firm(s) Experience

The firm or consortium of firms requires to have at least 5 years demonstrable experience in supporting Trade Negotiations, and preferably Free Trade Area or Bilateral Trade Agreements in the EAC, COMESA or Africa. The firm(s) must have demonstrable experience and capacity to conduct multisectoral studies in the field of regional and international trade, including impact assessment of trade agreements and ability to analyze huge trade data sets to inform trade negotiation. The firm(s) will be required to have competence in mobilization and management of the proposed key personnel and short term technical assistance and management of trade programs.

7. Reporting

The Advisors will report directly to the Principal Secretary for the State Department for Trade and Enterprise Development, Ministry of Industrialization, Trade and Enterprise Development.

8. Coordination

The Ministry of Industrialization, Trade and Enterprise Development and TMEA will oversee and monitor the work of the consultancy firm(s). The Principal Secretary will establish a Team that will act as the operational interface between the consultant (s) and TMEA.

9. Duration:

The assignment is expected to be implemented within a period of 24 months commencing from July 2020.

10. Further information can be obtained at the address below during office hours (0900 to 1700 hours East African time).

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 Provide Short/Medium Term Technical Support to the State Department For Trade and Enterprise Development**” 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**

11. 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**