



## **COMESA COMPETITION COMMISSION**

### **REQUEST FOR TECHNICAL AND FINANCIAL PROPOSALS**

#### **CONSULTANCY SERVICES TO REVIEW ORGANISATIONAL STRUCTURE OF THE COMESA COMPETITION COMMISSION**

**RFP: CCC/RFP/09/4/2021**

**SEPTEMBER 2021**

## 1. BACKGROUND

- 1.1. The COMESA Competition Commission ("the Commission") is a regional body corporate established under Article 6 of the COMESA Competition Regulations 2004 ("the Regulations") promulgated under Article 55 of the Treaty Establishing the Common Market for Eastern and Southern Africa. The Commission has the legal capacity required for the performance of its functions under the Regulations in the territory of each COMESA Member State.
- 1.2. The Commission's core mandate is to promote and encourage competition by preventing restrictive business practices and other restrictions that deter the efficient operation of markets, thereby enhancing the welfare of the consumers in the Common Market, and to protect consumers against offensive conduct by market actors. The Regulations apply to all economic activities whether conducted by private or public persons within, or having an effect within the Common Market. Such conduct includes anti-competitive business practices, agreements, mergers & acquisitions and consumer protection violations which have an appreciable effect on trade between Member States and which restrict competition in the Common Market. The Regulations also specifically prohibit all agreements between undertakings, decisions by associations of undertakings and concerted practices as incompatible with the Common Market in so far as they may affect trade between Member States and have as their object or effect the prevention, restriction and distortion of competition within the Common Market.
- 1.3. The Commission is composed of two enforcement bodies:
  - 1.3.1. The Commission's Secretariat which commenced its operations on the 14th of January 2013 and is located in Lilongwe, Malawi. The Secretariat is headed by a Director appointed under Article 9 of the Regulations. The Secretariat is also composed of staff members appointed by the Director with the approval of the Board as provided for in Article 13 of the Regulations. The Secretariat is responsible for carrying out investigations and advocacy work of the Commission among other things. Currently, the Commission's Secretariat has 23 staff members; and
  - 1.3.2. The Board of Commissioners, which is established and appointed under Articles 12 and 13 of the Regulations respectively, is mandated with issuing determinations, performing adjudicative functions on any matter considered by it, hear appeals and recommending Rules for approval by the COMESA Council of Ministers (the Council) among others. Pursuant to Article 13 (4) of the Regulations, the Chairperson of the Board may assign three of the Commissioners to constitute a Committee responsible for Initial Determinations of matters brought before it.
- 1.4. The Commission's Organizational structure was developed in 2011. Further, the establishment of the structure of the Commission is guided by the Regulations, the COMESA Competition Rules 2004 (Rules) and the COMESA Competition Commission Staff Rules and Regulations July 2017 Edition (Staff Rules) and Executive Management Staff Rules 2018 as follows:

- 1.4.1. Article 11 of the Regulations provides that the Director, with the approval of the Board, may appoint one or more Deputy Director(s), Registrar and such other officers as may be necessary for the due administration of the Regulations;
- 1.4.2. Rule 13 of the Rules provides that the Commission shall be headed by a Director appointed by the COMESA Council of Ministers and the Commission shall be divided into various departments to oversee work in areas including restrictive business practices, mergers and abuse of dominant positions. A Division responsible for competition awareness and cooperation with member states shall also function under the auspices of the Commission.
- 1.4.3. Rule 14 (1) (e-i), of the Rules provides that the Director of the Commission shall
  - interview staff members and shall ensure that, as far as feasible and based on technical merit, Member States are adequately represented.
  - employ the staff of the Commission. The staff shall comprise of professionals from different disciplines including lawyers, economists and accountants;
  - in the light of the needs of the Commission and the available budget, shall determine the number of staff;
  - appoint a head to each department. The duties and responsibilities of each head of department shall be made by the Director; and
  - be responsible for assigning staff members to each department.
- 1.4.4. Rule 14 (2) and 14 (3) of the Rules provide that the Director may effect changes in the responsibilities of each member of staff, as the need of the work so requires and the number of staff allocated to each department shall be left to the discretion of the Director.
- 1.4.5. Rule 13 of the COMESA Competition Commission's Staff Rules (the Staff Rules) provides that the Director may order that posts be classified or reclassified from time to time and any such reclassification shall be subject to the approval of the Board.
- 1.4.6. Rule 1 of the COMESA Competition Commission Executive Management Staff Rules define "Executive Management" to mean the Director and Deputy Directors of the Commission appointed under Article 9 and Article 11 of the Regulations respectively.
- 1.5. The Commission currently has twenty-three staff members and the recruitment of additional six posts is projected to be finalised before December 2021. Furthermore, the Commission developed its 2021-2025 Strategic Plan and identified Divisions/Units and posts for its efficient operation with a view to better execute its Vision, Mission and Strategic Objectives. In developing the Strategic Plan, the Commission recognised the following needs:
  - 1.5.1. The need to have adequate human capacity;
  - 1.5.2. Review and implementation of the Organizational structure to align it to the Strategic Plan (2021-2025) and emerging issues;
  - 1.5.3. Conduct job analysis and evaluation;
  - 1.5.4. Review of the current job descriptions and develop new Job descriptions for the new posts to be created; and
  - 1.5.5. Conduct a skills audit to determine training needs and succession planning.

- 1.6. In view of this, the Commission is looking for a Consultancy firm which has the capacity, skills and experience to be able to review the Organisational structure, the existing posts, conduct job analysis and evaluation and determine their value/worth.

## **2. SCOPE OF WORK**

- 2.1. Consultants are invited to propose a methodology/approach and model that would address the following concerns as the focus of an organizational structure review:
  - 2.1.1. Does the Commission's institutional structure support the decisions most critical to creating value and fulfilling the mandate of the Commission under the Regulations and Rules and as guided by the current Strategic Plan?
  - 2.1.2. Are the current human resources of the Commission appropriate for high impact and critical work in support of its mandate?
  - 2.1.3. Is the current skills set and competency appropriate to support delivery of the mandate and geared to a high performing organization? If not, what will it take to upgrade the current skills to an optimum operational level?
  - 2.1.4. What intermediate measures need to be put in place to attain reasonable operational level?
  - 2.1.5. Are the internal processes and systems adequate to support effective operations and corporate governance in line with appropriate benchmarks from international best practices of competition and consumer authorities and international Organizations?
  - 2.1.6. How best can the Commission's structure support and reflect the notion of the separation of the Commission Secretariat's investigative functions from the adjudicative functions of the Board?
  - 2.1.7. Recommendation on the best institutional structure that will support and fulfil the Commission's mandate.

## **3. SPECIFIC TERMS OF REFERENCE**

- 3.1. The Consulting Firm shall perform as per the following Specific Terms of Reference:
  - 3.1.1. Conduct a needs assessment of the Commission's staff establishment and classifications of Divisions and job posts;
  - 3.1.2. Align existing job posts and Divisions with the Regulations and Rules, Strategic Plan (2021-2025) and international best practice;
  - 3.1.3. Conduct job analysis, profiling and evaluation;
  - 3.1.4. Review all the Job, posts and job descriptions of the Commission;
  - 3.1.5. Examine the structure and current performance of each Divisions vis-à-vis the existing structure;
  - 3.1.6. Review the organizational structure and functional areas of the Commission;
  - 3.1.7. Develop the Organization structure and organogram based on the needs assessment; and
  - 3.1.8. Review organizations, national competition and consumer authorities which has similarly nature; and
  - 3.1.9. Undertake other tasks incidental or related to the foregoing.
- 3.2. The Consultant is expected to review and consider:

- 3.2.1. The Structure of Board, Director, Deputy Directors, and other positions of the Commission;
  - 3.2.2. Staff Rules and Executive Management Rules of the Commission;
  - 3.2.3. The provisions of the COMESA Competition Regulations and Rules with respect to the staff establishment.
  - 3.2.4. Strategic Plan of the Commission (2021-2025);
  - 3.2.5. COMESA Secretariat and other COMESA Institutions job grading system, positions and job descriptions;
  - 3.2.6. Job descriptions and titles of existing staff members; and International best practices in competition and consumer protection authorities and international organizations of similar nature with respect to their staff establishment.
- 3.3. Further, the Consultant is expected to conduct the assignment in consultation with the Board, Management, staff members and other relevant stakeholders.

#### **4. DELIVERABLES**

- 4.1. By the end of the assignment, the Consultant Firm is expected to have delivered:
- 4.1.1. A report on review of job titles, job description, grade of existing job descriptions and structure of Divisions of the Commission;
  - 4.1.2. A report on the revised Organizational Structure of the Commission which shall include its required Divisions, posts and job descriptions; and
  - 4.1.3. A revised Organogram of the Commission.

#### **5. ACCOUNTABILITY AND RESPONSIBILITIES**

- 5.1. The Commission's Secretariat will provide the following documents to the successful Consultant Firm:
- i. The existing Organisational structure;
  - ii. The COMESA Competition Regulations 2004;
  - iii. The COMESA Competition Rules 2004;
  - iv. The COMESA Competition Commission Staff Rules and Regulations July 2017 Edition;
  - v. Strategic Plan (2021-2025) of the COMESA Competition Commission; and
  - vi. Any other document relevant to enable the successful firm to carry out the assignment
- 5.2. The Consultant is expected to conduct the assignment in consultation with relevant organs of the Commission. The Consultant is also expected to present the above-mentioned deliverables to the Commission's Management and the Board.

#### **6. CONFIDENTIALITY**

- 6.1. Due the sensitivity of the information that will be made available to the Consultant during this assignment, the Consultant shall be required to sign a Non-Disclosure Agreement with the Commission. All information related, both during and after completion of the assignment thereof, shall be treated with strict confidentiality. However, should there be a need to disclose any information obtained from provision of the Services with respect to this assignment, which is either directly or

indirectly related to the Commission's business, written approval to disclose such information must first be obtained from Commission.

## 7. ELIGIBILITY OF CONSULTANTS

- 7.1. This consultancy is open to reputable firms which have sufficient experience on the required deliverables and specific terms of reference. Further, selection to undertake the assignment shall be based on proof of having undertaken similar assignments in the past. The Consultants eligibility shall be evaluated in line with the criteria outlined in paragraph 7 below.

## 8. COMMENCEMENT AND COMPLETION OF WORK

- 8.1. The assignment is expected to commence by December **2021**. Details of completion of work and work schedule including reporting will be discussed further and agreed upon after signing of the contract.

## 9. CRITERIA FOR EVALUATION OF CONSULTANTS

- 9.1. Bidders must provide both Technical and Financial proposals. The evaluation shall be based on the following attributes:
- 9.1.1. The overall responsiveness and quality of the proposal clearly stating an understanding of the work to be performed;
  - 9.1.2. Proposed methodology for conducting such a review;
  - 9.1.3. Indicative timelines for conducting a review of this nature;
  - 9.1.4. Technical ability to perform the required services with demonstrated experience of successful delivery of task of similar nature with regional or international organization;
  - 9.1.5. The experience and reputation of the proposer as represented in the response and the quality of the references;
  - 9.1.6. Composition of the proposed team with CVs of team members;
  - 9.1.7. Cost of services. Fees and expenses will be a particularly important factor when all other evaluation criteria are relatively equal.
- 9.2. Knowledge and experience with competition and consumer authorities will be an added advantage.
- 9.3. The Technical proposal will be assigned a weight of 80% and the financial proposal will be weighted at 20%.

	<b>Evaluation attribute</b>	<b>Percentage Points</b>
1	Firms Understanding of the Commission's requirements	<b>15</b>
2	Approach and methodology	<b>30</b>
3	Specific Experience of the firm in carrying out similar assignments in international or regional organisations  Experience or understanding of a competition and/or consumer authorities as an added advantage	<b>30</b>

	At least three evidence in form of reference letters, offer letters, orders or copies of contracts should be presented	
4	Qualifications and Experience of proposed team Team Leader 15marks Support Experts (2) 10marks	25
	Total	100

- 9.4. The proposed team should consist of a minimum of three experts, that is:
- 9.4.1. The Team leader,
  - 9.4.2. Human Resources or Organizational Development Expert, and
  - 9.4.3. A Support Expert. The Team Leader should be at the level of a partner in the Consulting Firm with a minimum of 10 years' experience.
- 9.5. The Expert should have at least a Master's degree in Human Resources Management, Organizational Development, Industrial Psychology or a related Social Science field with a minimum of seven years working experience.
- 9.6. The Support Expert should have at least a bachelor's degree in either Human Resources Management, Commerce, Business Administration or a related social science field. A Master's degree or a relevant professional certification will be an added advantage.
- 9.7. The proposals must be submitted with a cover letter containing a confirmation and a description of how you have understood the Terms of Reference for the assignment.
- 9.8. In the applications, bidders should also provide that:
- 9.8.1. They have the legal capacity to enter into the contract;
  - 9.8.2. They are not insolvent, in receivership, bankrupt or being wound up, their business activities have not been suspended, and they are not the subject of legal proceedings for any of the foregoing;
  - 9.8.3. They have fulfilled their obligations to pay taxes and social security contributions, and for that purpose, documentary evidence to be provided by a foreign candidate to demonstrate that it meets the criterion in this paragraph may consist of a written declaration to that effect by the candidate;
  - 9.8.4. That their servants, or agents have not offered any inducement to any employees of the Commission.

## 10. DURATION OF ASSIGNMENT

The assignment is expected to be finalized within Ninety (90) days

## 11. COST OF TENDER

The Bidder shall bear all costs associated with the preparation and submission of the bid. The Commission will in no case be responsible or liable for those costs, regardless of the conduct and outcome of the tender.

## 12. CANCELLATION OF THE TENDER

In the event of cancellation of the tender, bidders will be notified in writing of the cancellation by the Commission. Upon request, the Commission shall communicate to any bidder the grounds for its rejection. However, the Commission is not obliged to justify those grounds.

### 13. OWNERSHIP OF TENDERS

The Commission retains ownership of all tenders received under this Request for Proposals. Consequently, bidders have no right to have their tenders returned to them except in the case of any of the following circumstances:

- Cancellation of the tender procedure
- Rejection of tenders before the closing date or
- Late submission of a bid.

### 14. NEGOTIATION AND FINALIZATION

After the selection of the best bid and notification to the selected party, the Commission will commence negotiations with that party for purposes of concluding an agreement.

### 15. PRICING

- 15.1. All prices MUST be indicated in USD.
- 15.2. There will be no price variation after signing of contract except upon a mutual written agreement between the two parties;
- 15.3. The price quoted shall be considered to be for all the services required by the Commission as contained in this Request for Proposal.
- 15.4. Prices must be exclusive of all taxes within Malawi.
- 15.5. Prices must be valid for 90 days from the date of close of tender.

### 16. PAYMENT:

Bidders are advised to indicate their payment terms and conditions.

### 17. SUBMISSION OF APPLICATIONS

- 17.1. The bidder shall submit the proposal in **one envelope containing two sealed envelopes inside** by the closing date set forth in point no. 9 below through courier services or hand delivery to:

**COMESA COMPETITION COMMISSION  
KANG'OMBE HOUSE  
5<sup>TH</sup> FLOOR – WEST WING  
P.O BOX 30742  
LILONGWE, MALAWI  
Tel: +265 (0)1 772 466**

- 17.2. The outer envelope should be clearly marked at the top right-hand corner **“CCC/RFP/9/4/2021 - CONSULTANCY SERVICE FOR REVIEWING ORGANISATIONAL CHART OF THE COMESA COMPETITION COMMISSION”** DO NOT OPEN BEFORE 30<sup>th</sup> October. 2021 at 12.00 Hours Malawi time zone.

**NOTE:** If the envelopes are not sealed and marked as per the instructions in this clause, the Commission will not assume responsibility for the proposal's misplacement or premature opening and may – at its discretion – reject the proposal.

- 17.3. The first internal sealed envelope, which will be clearly marked “TECHNICAL PROPOSAL” must contain two (2) hard copies of the technical proposal with one marked ‘original’ and the other marked ‘copy’. The second internal envelope, which



will be clearly marked “FINANCIAL PROPOSAL”, should contain the original and copy of the financial proposal.

- 17.4. In the event of any discrepancy between the original and the copy, the original shall govern.

#### **18. CLOSING DATE OF TENDER AND OPENING OF BID**

- 18.1. Tenders must be submitted to the COMESA Competition Commission on or before **30<sup>th</sup> October 2021 at 12:00 hours MALAWI TIME.**
- 18.2. Bidders are invited to attend the opening of bids (which may be virtual or physical) scheduled to be held on **30<sup>th</sup> October 2021 at 15:00 hours MALAWI TIME.**

#### **19. TECHNICAL QUERIES**

Technical queries related to this tender should be submitted in writing to [AGMkandawire@comesa.int](mailto:AGMkandawire@comesa.int) with a copy to [mdisasa@comesa.int](mailto:mdisasa@comesa.int)

#### **20. FINANCIAL PROPOSAL - STANDARD BIDDING FORM**

- 20.1. Bidders are advised to use the standard tender Form below as sample format and modify it (where necessary) to cover all relevant costs or charges.
- 20.2. There will be no price variation tender.
- 20.3. Bidders are also advised to disclose any other relevant information on a separate sheet of paper.

**Financial proposal Form**

	AMOUNT IN USD
TOTAL PROFESSIONAL FEE	
OTHER RELEVANT EXPENSES	
VAT AND ALL OTHER TAXES	EXCLUSIVE

**Amount in words:** \_\_\_\_\_

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**Submitted by:**

**Name :** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_