



## **COMESA COMPETITION COMMISSION**

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

#### **RE-ADVERTISEMENT FOR CONSULTANCY SERVICES TO REVIEW THE ORGANISATIONAL STRUCTURE OF THE COMESA COMPETITION COMMISSION**

**RFP: CCC/RFP/06/1/2022**

**JUNE 2022**

## **A. BACKGROUND**

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 COMESA Treaty"). The Commission has the legal capacity for the performance of its functions under the Regulations in the territory of each COMESA Member State.
2. The Commission is mandated to enforce the Regulations whose purpose 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.
3. The Commission is composed of two enforcement bodies:
  - 3.1. The Secretariat, which commenced operations on the 14<sup>th</sup> of January 2013 and is located in Lilongwe, Malawi. The Secretariat is headed by a Director appointed under Article 9 of the Regulations. It is composed of staff members appointed by the Director with the approval of the Board pursuant to Article 11 of the Regulations. The Secretariat is responsible for carrying out investigations and advocacy work of the Commission, among other things. Currently, the Secretariat has twenty-six (26) staff members; and
  - 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 on any conduct prohibited by the Regulations, adjudicating on any matter considered by it and make appropriate orders as provided in the Regulations, hear appeals from, or review any decision of the Commission referred to it. The Board also has the power for recommending Rules, governing anything under the Regulations 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.
4. The Commission's current Organizational Structure was developed in 2011. Further, the development of the Organisation Structure of the Commission is guided by the Regulations, the COMESA Competition Rules 2004 ("the Rules") and the COMESA Competition Commission Staff Rules and Regulations July 2017 Edition ("the Staff Rules") and Executive Management Staff Rules 2018 as follows:

- 4.1. Article 11 of the Regulations which 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;
- 4.2. Rule 13 of the Rules which 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.
- 4.3. Rule 14 (1) (e-i), of the Rules which provides that the Director of the Commission shall:
  - 4.3.1 interview staff members and shall ensure that, as far as feasible and based on technical merit, Member States are adequately represented;
  - 4.3.2 employ the staff of the Commission. The staff shall comprise of professionals from different disciplines including lawyers, economists and accountants;
  - 4.3.3 in the light of the needs of the Commission and the available budget, shall determine the number of staff;
  - 4.3.4 appoint a head to each department and the duties and responsibilities of each head of department shall be made by the Director; and
  - 4.3.5 be responsible for assigning staff members to each department.
- 4.4. Rule 14 (2) and 14 (3) of the Rules which 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.
- 4.5. Rule 13 of the Staff Rules provides that the Director may order that posts be classified or re-classified from time to time and any such re-classification shall be subject to the approval of the Board. Such classifications or re-classifications shall be based on job analysis and evaluations and should be implemented subject to the availability of funds.
- 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.
- 4.7. The Commission currently has twenty-nine (29) staff members and additional recruitments is projected to be done gradually depending on the availability of funds. Furthermore, the Commission developed its 2021-2025 Strategic Plan ("the 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:

- 4.7.1. The need to have adequate human capacity;
  - 4.7.2. Review and implementation of the Organizational structure to align it to the Strategic Plan (2021-2025) and emerging issues;
  - 4.7.3. Conduct job analysis and evaluation;
  - 4.7.4. Review of the current job descriptions and develop new Job descriptions for the new posts to be created; and
  - 4.7.5. Conduct a skills audit to determine training needs and succession planning.
- 4.8. In view of the above, the Commission seeks to engage the services of suitably qualified Consultants to review the Organisational Structure which shall include the review/reclassification of existing posts, conduct job analysis and evaluation and determine their value/worth.

## **B. SCOPE OF WORK**

5. Applicants are invited to propose a methodology/approach and model that would address the following concerns as the focus of an organizational structure review:
- 5.1. 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?
  - 5.2. 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?
  - 5.3. Recommendation on the best institutional structure that will support and fulfil the Commission's mandate.
  - 5.4. Are the current human resources of the Commission appropriate for high impact and critical work in support of its mandate?
  - 5.5. 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?
  - 5.6. What intermediate measures need to be put in place to attain reasonable operational level?
  - 5.7. 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?

## **C. SPECIFIC TERMS OF REFERENCE**

6. The successful Consultants shall perform the following Specific Terms of Reference:
  - 6.1. Conduct a needs assessment of the Commission's staff establishment and classifications of Divisions and job posts following review and consideration of the following;
    - 6.1.1. The Structure of Board, Director, Deputy Directors, and other positions of the Commission;
    - 6.1.2. Staff Rules and Executive Management Rules of the Commission;
    - 6.1.3. The provisions of the COMESA Competition Regulations and Rules with respect to the staff establishment;
    - 6.1.4. Strategic Plan of the Commission (2021-2025);
    - 6.1.5. COMESA Secretariat and other COMESA Institutions job grading system, positions and job descriptions;
    - 6.1.6. 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.
  - 6.2. Review the organizational structure and functional areas of the Commission;
  - 6.3. Develop the Organization structure based on the needs assessment;
  - 6.4. Review organizations, national competition and consumer authorities which have similarly nature;
  - 6.5. Align existing job posts and Divisions with the Regulations and Rules, Strategic Plan (2021-2025) and international best practice;
  - 6.6. Conduct job analysis, profiling and evaluation;
  - 6.7. Review all the Job, posts and job descriptions of the Commission;
  - 6.8. Examine the structure and current performance of each Divisions vis-à-vis the existing structure; and
  - 6.9. Undertake other tasks incidental or related to the foregoing.
7. Further, the Consultants are expected to conduct the assignment in consultation with the Board, Management, staff members of the Commission and other relevant stakeholders.

## **D. DELIVERABLES**

8. By the end of the assignment, the successful Consultants shall deliver:

| <b>Deliverables</b>   | <b>Tentative Timeline</b>                    |
|---|--|
| A report on review of job titles, job description, grade of existing job descriptions and structure of Divisions of the Commission        | 15 working days from signing of the Contract |
| A report on the revised Organizational Structure of the Commission which shall include its required Divisions, posts and job descriptions | 15 working days                              |
| A revised Organisational structure of the Commission  | 15 working days                              |

## **E. ACCOUNTABILITY AND RESPONSIBILITIES**

9. The Commission shall provide the following documents to the successful Consultants:
- 9.1. The existing Organisational structure;
  - 9.2. The COMESA Competition Regulations 2004;
  - 9.3. The COMESA Competition Rules 2004;
  - 9.4. The COMESA Competition Commission Staff Rules and Regulations July 2017 Edition;
  - 9.5. Strategic Plan (2021-2025) of the COMESA Competition Commission; and
  - 9.6. Any other document relevant to enable the successful consultants to carry out the assignment
10. The Consultants are expected to conduct the assignment in consultation with relevant organs of the Commission. The Consultants are also expected to present the above-mentioned deliverables to the Commission's Management and the Board.

## **F. CONFIDENTIALITY**

11. Due to the sensitivity of the information that will be made available to the Consultants during this assignment, the Consultants 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.

## **G. ELIGIBILITY OF CONSULTANTS**

12. Applicants are invited from all eligible consultants who 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 I (14-19) below. Individual consultants or consultancy firms are eligible to apply for the assignment.

**H. COMMENCEMENT AND COMPLETION OF WORK**

13. The assignment is expected to commence within ninety (90) calendar days (three months) of signing of the Contract. Details of completion of work and work schedule including reporting will be discussed further and agreed upon after signing of the contract.

**I. CRITERIA FOR EVALUATION OF CONSULTANTS**

14. Bidders must provide both Technical and Financial proposals. The evaluation shall be based on the following attributes:

- 14.1. The overall responsiveness and quality of the proposal clearly stating an understanding of the work to be performed;
- 14.2. Proposed methodology for conducting such a review;
- 14.3. Indicative timelines for conducting a review of this nature;
- 14.4. Technical ability to perform the required services with demonstrated experience of successful delivery of task of similar nature with regional or international organization;
- 14.5. The experience and reputation of the proposer as represented in the response and the quality of the references;
- 14.6. Composition of the proposed team with CVs of team members;
- 14.7. Fees and expenses will be a particularly important factor when all other evaluation criteria are relatively equal; and
- 14.8. Knowledge and experience in reviewing organizational structures of competition authorities.

15. 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 | Understanding of the Commission’s requirements   | <b>15</b>                |
| 2 | Approach and methodology   | <b>30</b>                |
| 3 | Specific Experience of the team in carrying out similar assignments in international or regional organisations | <b>30</b>                |

|   |  |            |
|---|--|------------|
|   | Experience or understanding of a competition and/or consumer authorities as an added advantage<br><br>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   | <b>25</b>  |
|   | Total  | <b>100</b> |

16. The proposal shall be considered unsuitable and shall be rejected at the technical stage if it does not respond to important aspects of the Terms of Reference and/or fails to achieve a minimum technical score of 70%.
17. The Consultants should consist of expertise with profile of having done at least two similar tasks required under this Request for Proposal, particularly for international or regional organisations.
18. The required qualifications and experiences of the expertise shall be in Human Resources Management, Organisational Development, Industrial Psychology, Commerce, Business Administration, economics, law or related social field.
19. In the event the consultancy proposal has a team of experts, they should at least have one member of the team have experience in reviewing organizational structure of competition authorities. Further, at least one member of the team should have experience in Human Resource or Organization Development with similar tasks required under this Request for proposal. The required composition of the team shall be:
- 19.1. A Team leader with at least a Master's degree and a minimum of ten years' experience in any of the required qualifications and experiences stated in paragraph 18 above;
- 19.2. Support Expert (s) with at least a Bachelor's degree and a minimum of five years' experience in any of the required qualifications and experiences stated in paragraph 18 above.
20. In the event the consultancy proposal has an individual consultant, the experience and qualification of the Consultant is required to have the one provided in paragraph 18 and paragraph 19.1-19.2 above.

#### **J. BID SUBMISSION**

21. Bidders are advised to include in their bids the following standard tender forms attached to this tender document and marked Annexes 1 – 6:
- a. Financial Proposal Form
  - b. Bid Submission Sheet
  - c. Bidder's reference



- d. Comments and suggestions on the Scope of Work;
  - e. Description of the methodology for performing the assignment; and
  - f. Proposed fees
22. The proposals must be submitted with a covering letter containing a confirmation and a description of how you have understood the Terms of Reference for the assignment. The bidders must also confirm and/or provide copies of documents evidencing that:
- 22.1. They have the legal capacity to enter into the contract (provide copy of certificate of incorporation);
  - 22.2. 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 (provide copies of six months bank statement or 3 months audited accounts);
  - 22.3. They have fulfilled their obligations to pay taxes and social security contributions (if applicable in the concerned country, and if not, provide a clear statement confirming the non-applicability in that country), and for that purpose, documentary evidence to be provided by the relevant authorities to demonstrate that the bidders have met their obligations (provide copy of valid and current tax compliance certificate);
  - 22.4. That their servants/employees, or agents have not offered any inducement to any employees of the Commission.
23. Bidders who do not submit their proposal using the Annexes 1-6 and respond to the required documents under paragraph 21 above shall be disqualified.

#### **K. DURATION OF ASSIGNMENT**

24. The assignment is expected to be finalized within forty-five (45) days

#### **L. COST OF TENDER**

25. 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.

#### **M. CANCELLATION OF THE TENDER**

26. 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.

## **N. OWNERSHIP OF TENDERS**

27. 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:
- 27.1. Cancellation of the tender procedure
  - 27.2. Rejection of tenders before the closing date or
  - 27.3. Late submission of a bid.

## **O. NEGOTIATION AND FINALIZATION**

28. 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.

## **P. PRICING**

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

## **Q. PAYMENT**

34. Bidders are advised to indicate their payment terms and conditions.

## **R. SUBMISSION OF APPLICATIONS**

35. 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:

**The Chairperson – Procurement Committee  
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**

36. The outer envelope should be clearly marked at the top right-hand corner **“CCC/RFP/6/1/2022 - CONSULTANCY SERVICE FOR REVIEWING ORGANISATIONAL STRUCTURE OF THE COMESA COMPETITION COMMISSION” DO NOT OPEN BEFORE 3 August 2022 at 15.00 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.

37. 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.
38. In the event of any discrepancy between the original and the copy, the original shall govern.

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

39. The closing date for submission of proposals is 3 August 2022 at 13:00 hours MALAWI time. Proposals received after this date and time will not be accepted. There shall be no exception to this requirement.
40. Bidders or their authorized representatives are invited to attend the bid opening ceremony either physically or virtually on 3 August 2022 at 15:00 hours Malawi Time at the Commission Offices, 5<sup>th</sup> Floor Kang’ombe House, Lilongwe
41. Bidders who wish to attend the opening of the tender virtually; may request the log-in details from [eabraham@comesa.int](mailto:eabraham@comesa.int) on 3 August 2022 between 12:00 to 15:00 hours.”
42. The Commission does not bind itself to accept any bid and reserves the right to accept the whole or part of any of the submitted bids.

#### **T. TECHNICAL QUERIES**

43. 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)

**Annex 1**

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

## **ANNEX 2: BID SUBMISSION SHEET**

*[This Bid Submission Sheet should be on the letterhead of the Bidder and should be signed by a person with the proper authority to sign documents that are binding on the Bidder.]*

**Date:** [insert date (as day, month, and year) of bid submission]

**Reference No:** [insert Reference number]

**To:** The Chairman of the Procurement Committee

**We, the undersigned, declare that:**

**We have examined and have no reservations to the Bidding Document.**

**We offer to provide the services in conformity with the Bidding Document for the [insert a brief description of the Services];**

**We hereby submit our bid which includes the following (to state the documents included);**

**Our bid shall be valid for a period of six months from the date fixed for the bid submission deadline in accordance with the Bidding Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.**

**We are not participating, as Bidders, in more than one bid in this bidding process.**

**We do not have any conflict of interest and have not participated in the preparation of the project document for the COMESA Competition Commission.**

**We, our servants, or agents have not offered any inducement to any employees of the Employer.**

**Our Proposal is binding upon us, subject to modifications agreed during any contract negotiations, and we undertake to negotiate based on the staff proposed in our Bid.**

**We understand that this Bid, together with your written acceptance thereof included in your Letter of Bid Acceptance, shall NOT constitute a binding contract between us, until a formal letter of engagement is prepared and executed; and**

**We understand that you are not bound to accept the lowest bid or any other bid that you may receive.**

**Name:** [insert complete name of person signing the Bid]

**In the capacity of** [insert legal capacity of person signing the bid]

**Signed:** [signature of person whose name and capacity are shown above]

Duly authorized to sign the bid for and on behalf of: [insert complete name of Bidder]

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ [insert date of signing]

### ANNEX 3: BIDDER'S REFERENCES

#### Relevant Services Carried Out that Best Illustrate Experience

Using the format below, provide information on each assignment for which the Bidder, either individually or as a corporate entity or as one of the major firms within an association, was legally contracted.

**Bidder's Name:**

|  |                                  |  |  |
|--|----------------------------------|--|--|
| Assignment Name:   |                                  | Country:   |  |
| Location within Country:   |                                  | Professional Staff Provided by Bidder (profiles):                      |  |
| Name of Client:  |                                  | Nº of Staff:   |  |
| Address:   |                                  | Nº of Staff-Months; Duration of Assignment:                            |  |
| Start Date<br>(Month/Year):  | Completion Date<br>(Month/Year): | Approx. Value of Services (in Current US\$):                           |  |
| Name of Associated Consultants, If Any:  |                                  | Nº of Months of Professional Staff Provided by Associated Consultants: |  |
| Name of Senior Staff (Project Director/Coordinator, Team Leader) Involved and Functions Performed: |                                  |  |  |
| Narrative Description of Project:  |                                  |  |  |
| Description of Actual Services Provided by the Staff:  |                                  |  |  |

**ANNEX 4: COMMENTS AND SUGGESTIONS ON THE SCOPE OF WORK**

The bidder is required to give his comments and suggestions on the scope of work as follows:

| Scope of work | Comments and Suggestions |
|---------------|--------------------------|
|               |                          |
|               |                          |
|               |                          |
|               |                          |
|               |                          |

**ANNEX 5: DESCRIPTION OF THE METHODOLOGY FOR PERFORMING THE ASSIGNMENT**

| Scope of work | Methodology for performing the Assignment |
|---------------|---|
|               |   |
|               |   |
|               |   |
|               |   |

**ANNEX 6: TEAM COMPOSITION AND TASK ASSIGNMENTS (Applicable only where the worked will be undertaken by a group of people and not an individual)**

| 1. Technical/Managerial Staff |          |         |
|-------------------------------|----------|---------|
| Name                          | Position | Task(s) |
|                               |          |         |
|                               |          |         |
|                               |          |         |
|                               |          |         |