

REQUEST FOR EXPRESSION OF INTEREST

Terms of Reference

THE GOVERNMENT OF THE COMMONWEALTH OF THE BAHAMAS

The Ministry of Financial Services

For

Competition Law and Policy Consultant

Institution: **The Government of The Commonwealth of The Bahamas**

Ministry: **The Ministry of Financial Services**

Country: **The Commonwealth of The Bahamas**

Project: **Trade Sector Support Programme, BH- L1016**

Process/Bid No.: **3.1.1.4**

Sector: **Trade**

Duration: **4 months**

Deadline: **March 18th, 2016 at 4:00pm (Nassau, Bahamas Time)**

1. Introduction and Background

The Ministry of Financial Services (MOFS) was established in 2012 and currently has responsibility for International Trade. MOFS also has responsibility for Financial Services, the Standards Bureau, the administration of the Industries Encouragement Act and Local Government.

The Trade and Industry Section is headed by a Director who is assisted by six (6) officers dealing with all international trade matters; i.e., the negotiation and implementation of bilateral, regional and international trade agreements.

The Trade Section is also highly dependent on inputs from other agencies to successfully achieve its mandate. In that regard, it maintains strong relations with relevant government ministries and Departments, including The Attorney General's Office, The Ministry of Finance, The Department of Customs, The Department of Statistics, The Ministry of Agriculture and

Marine Resources, The Central Bank of The Bahamas, The Bahamas Investment Authority and The Ministry of Foreign Affairs.

The Government of The Bahamas, in 2012, signed a \$16.5million loan Agreement with the Inter-American Development Bank titled: ***Trade Sector Support Programme, BH-L1016***. Under this loan, project funding has been allocated for Strengthening Customs Management; Modernizing Customs Operations and the Enhancement of the International Trade Institutional Platform. MOFS is responsible for the third component of the loan, the Enhancement of the International Trade Institutional Platform.

2. Context

In 2001 the Government of The Bahamas submitted a formal application to accede to The World Trade Organization (WTO) and is currently negotiating its accession. In 2008 The Government of The Bahamas signed its first reciprocal trade agreement, the CARIFORUM-European Union Economic Partnership Agreement (EPA) which replaced the unilateral preferences granted under the Cotonou Agreement. In October 2012 The Bahamas finalized its commitments under the EPA by incorporating its trade in services and trade in investments commitments into the Agreement.

Although a member of the Caribbean Community and participating in many of the Community's functional cooperation projects such as the University of the West Indies, the CARICOM Emergency Disaster Management Agency, the Caribbean Electric Utility Service Corporation, the Council of Legal Education, the Caribbean Medical Councils and the Pan Caribbean Partnership against the Human Immunodeficiency Virus/ Acquired Immunodeficiency Syndrome, The Bahamas does not participate in the Caribbean Single Market and Economy.

However, it is anticipated that WTO accession, active participation in other international trade negotiations and efficient implementation of resulting agreements will require strong international trade-related institutions. The strengthening of international trade-related institutions in The Bahamas is therefore a priority.

As with many small economies of the region however, the internal market is mostly concentrated with government owned public corporations and relatively large and singularly owned operators that face little to no competition. However, limited competition law and policy strengthens the position of incumbents, helps to maintain high prices (with higher impact

on consumers with less purchasing power), and gives fewer options for consumers as well as disincentives growth in productivity.

Implementation of competition law and policy is a requirement of the EPA Agreement. In that regard there are several pieces of legislation relevant to Competition law namely the *Utilities Regulation and Competition Authority Act* which establishes the powers and functions of the Utilities Regulation Competition Authority (URCA) and the *Communications Act* which contains measures on the licensing of communication providers, consumer protection, and competition provisions which are delegated to URCA. There is also a Draft Competition Bill.

3. Project Objective

One component to strengthening trade-related institutions is building a strong “Competition Policy Framework” that is sensitive to the country’s development needs; meets WTO accession requirements and fulfils The Bahamas’ obligations for Competition Policy under the European Partnership Agreement.

The objective of the Consultancy is to prepare Draft Competition Legislation (Antitrust Law) building on the Draft Competition Bill, developing scenarios for institutional design of a competition agency taking into account the powers and functions of URCA under *Communications Act* and models existing in other CARICOM jurisdictions.

4. Scope of Services and Activities

Inception meeting /Work Plan

The Consultant shall attend an inception meeting to discuss the scope of this consultancy with the Trade Team of the MOFS, other relevant officials having carriage of issues impacting competition law and policy and officials of the Customs Modernization Project under the IDB Trade Support Loan Project.

From this inception meeting, a detailed work plan and an inception report must be presented to the Ministry of Financial Services.

Competition Policy and Law Diagnostic

The Consultant will be required to deliver a Competition Policy and Regulatory Review paper.

This Policy and Regulatory Review Paper should guide the entire consultancy, the areas of critical concern highlighted and how competition law strengthening should proceed.

Draft Competition Law

The Consultant will also be required to deliver Draft Competition Law legislation.

The legislation should build on existing legislation which impacts this area including Draft legislation on competition law and policy taking into account structures in other CARICOM Member States with competition laws and policy in place.

Theoretical Competition Law and Policy Platform

In conjunction with a final report, the Consultant will be required to propose ideas on a suggested framework for a Competition Law and Policy Administration Platform, taking into consideration: Common Law; existing Competition Policy institutions and law; and the WTO and EPA mandates and obligations for a strong Competition Policy regime.

Additional activities and requirements

The Consultant shall make 3 field trips to The Bahamas (5dayseach) and meet with government officials and private sector representatives.

- The first trip will assist the Consultant in preparing an assessment of institutional and regulatory issues affecting competitive markets inside The Bahamas.
- The remaining 2 trips will assist the Consultant in preparing draft competition legislation and institutional setup based on international best practices.
- The results of the consultancy will be presented to Cabinet and to Parliament upon request from the Ministry of Finance and the MOFS.

5. Duration and work characteristics

Type of consultancy (Individual): The selection process for individual consultants is guided by section “V. Selection of Individual Consultants, paragraph 5.1-5.4” set out in the Inter-American Development Bank: *Policies for the Selection and Contracting of Consultants financed by the Inter-American Development Bank* (GN-2350-9 March 2011) and is open to all eligible consultants as defined in the policies.

Type: 1 Individual Consultant

Duration: 40 nonconsecutive days starting the date of signature of the contract.

Work Location: The Commonwealth of the Bahamas.

Qualification: The Consultant working on this assignment should have

- A College degree in International Law, Law, Economics or Public Policy (Graduate Level preferred)
- At least 10 years’ experience in the area of Competition Law and Policy;

- Familiarity with Common Law Jurisdictions
- Strong communication skills;
- Firm Knowledge of the European Partnership Agreement;
- Firm knowledge of the World Trade Organization and the accession process;

Language: Fluency in written and spoken English is required. Fluency in Spanish, both written and spoken, would be an asset.

6. Deliverables

1. Inception notes and Work Plan
2. Diagnosis on Institutional and Regulatory issues in Competition Policy and Regulatory Review
3. Draft Competition Legislation
4. Proposal for institutional platform in competition policy
5. Final Report

7. Reporting and Remuneration

The Consultant will work under the supervision of the Director of Trade and Industry, which will be his/her first point of governmental contact.

The Consultant will work in close collaboration with other designated staff as advised and agreed by the MOFS.

A. Payment

- a. Lump sum fee for professional services including direct and indirect costs (Three 5-day field trips to the Bahamas) for a total of 40days

B. Payment Schedule

- a. 20% upon signature of the contract
- b. 20% upon delivery and acceptance of Product 1 and 2.
- c. 40% upon delivery and acceptance of the product 3.
- d. 20% upon delivery and acceptance of product 4 and 5

8. INFORMATION AND ASSISTANCE TO THE CONSULTANT

The MOFS shall provide relevant support documents to the Consultant as required.

9. GENERAL INFORMATION FROM CONSULTANT RESPONDING TO THIS TOR

The Consultant will be required to clearly demonstrate that they have the experience and capacity for this consultancy.

Provide information required to indicate compliance with IDB Eligibility requirements:

- ☐ Years of Experience
- ☐ Applicants must include with their submission proof of the fact that they are bona fide citizen of IDB Eligible Countries. This can be done by including a copy of an official verifiable document such as a Birth Certificate and/or Passport, etc.

Provide a summary list of similar projects undertaken by the Consultant. This should include the following:

- ☐ Client's name (e.g. Customs, Ministry of Finance, commercial entity, etc.)
- ☐ Official project name
- ☐ Countries where project was implemented
- ☐ Project year & Dollar Value
- ☐ Duration of project

10. CLARIFICATION ON THE TECHNICAL ASPECTS OR SCOPE OF SERVICES OF THIS EOI MAY BE OBTAINED BY EMAILING.

Youri Kemp
Financial and Trade Officer
Ministry of Financial Services
Manx Corporate Centre, 3rd Floor, East Wing
West Bay Street
P.O. Box N- 4843
Nassau, N.P.
The Bahamas

Tel: (242)328-5071-6
Fax: (242) 328-8090

YOURIKEMP@BAHAMAS.GOV.BS OR CUSTOMSPROJECT@BAHAMAS.GOV.BS

11. PROPOSAL SUBMISSION DEADLINES

The original, two (2) copies of the Request for Expression of Interest and a copy on CD-ROM clearly marked **“Request for Expression of Interests on Competition Policy in the Commonwealth of The Bahamas”** must be prepared in English and delivered in sealed envelopes to the following address no later than **Friday, March 18th, 2016 by 4:00pm** (Nassau, Bahamas Time);

Chairman

Tenders Board

REF: “Request for Expression of Interests on Competition Law and Policy in the Commonwealth of The Bahamas”

Ministry of Finance,

Cecil Wallace-Whitfield Center,

Bay Street, P.O. Box N-3017

Nassau, Bahamas

Telephone: (242)-325-6550

Fax: (242)-325-7409

Email: customsproject@bahamas.gov.bs

12. Late submissions will not be accepted and will be returned unopened to the Applicant.

13. Electronic submissions will not be accepted.

14. The Ministry of Financial Services reserves the right to accept or reject any application received.