

TERMS OF REFERENCE

CONSULTANCY TO ANALYSE THE EU'S SERVICES REGULATORY FRAMEWORK GOVERNING CROSS-BORDER TRADE AND TEMPORARY ENTRY AND DETERMINE THE MARKET ACCESS OPPORTUNITIES AVAILABLE TO CARIFORUM SERVICES SUPPLIERS

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1. BACKGROUND INFORMATION

1.1. Partner Country

The Caribbean Forum of African, Caribbean and Pacific States (CARIFORUM).

1.2. Contracting Authority

The Caribbean Community (CARICOM) will be the Contracting Authority.

1.3. Country Background

The Caribbean Forum of African Caribbean and Pacific States (CARIFORUM) refers to the Caribbean States which are parties to the Georgetown Agreement establishing the Group of African Caribbean and Pacific (ACP) States. CARIFORUM is comprised of the following states: Antigua and Barbuda, The Bahamas, Barbados, Belize, Cuba, Dominica, The Dominican Republic, Grenada, Guyana, Haiti, Jamaica, St. Kitts and Nevis, Saint Lucia, St. Vincent and the Grenadines, Suriname and Trinidad and Tobago.

All CARIFORUM States except for Cuba, are parties to an Economic Partnership Agreement concluded between themselves as one party and the European Union (EU) and its Member States as the other Party. The EPA was signed in October 2008 and is currently being provisionally applied by the Parties.

1.4. Current Situation in the Sector

The services sector is a major contributor to CARIFORUM economies through its contribution to Gross Domestic Product (GDP), the generation of foreign exchange, the promotion of economic diversification and the creation of employment. The CARIFORUM-European Union (EU) Economic Partnership Agreement (EPA) together with the rapid expansion of the internet and its resultant enabling of information communication technology-based activities have provided additional options for regional suppliers to access the EU market and derive the gains associated with temporary entry and cross-border trade.

Temporary Entry

The EU's regulatory environment governing temporary entry is complex. Ascertaining the requirements is therefore important given the fact that many of CARIFORUM's services suppliers are small and medium sized entities and are not able to undertake the costs associated with the physical expansion of an enterprise into another jurisdiction.

There remains a concern over the impact of the EU's regulatory environment on the ability to effectively gain market access into the EU via Mode 4 particularly for contractual services suppliers and independent professionals. These include regulations that may be subject to scheduling requirements due to their discriminatory nature (such as nationality and residency requirements)

and those not subject to scheduling requirements, such as visas, licensing procedures and requirements, qualification procedures and requirements and technical standards. The regulations/reservations not subject to scheduling are more pervasive given they can effectively impede market access especially if such procedures and requirements are onerous.

Cross-Border Trade

With respect to cross-border trade, the approach to cross-border services under the CARIFORUM-EU EPA is identical to the approach utilised by the WTO General Agreement on Trade in Services (GATS). The EPA however goes further and incorporates Mode 2 (referred to as the consumption abroad services mode delivery under the GATS framework) as part of its definition of cross border supply of services. This is detailed in Article 75.2 (a) of the EPA which states that cross-border entails the supply of a services

- i. from the territory of a Party into the territory of another Party (Mode 1); and
- ii. in the territory of a Party to the service consumer of the other Party (Mode 2)

Given that cross border trade is primarily facilitated through internet-based technology, CARIFORUM Signatory States must address the systemic challenges which inhibit the utilisation of internet-based technologies if tangible, sustainable benefits to engaging in the cross-border provision of services are to be realised. These challenges primarily relate to, *inter alia*, to the costs of investing in relevant technology; the lack of access to the skills necessary to utilise the technology available; and the weak regulatory environment (especially as it relates to data protection and privacy) to safeguard the integrity of the jurisdiction (and ultimately business interests).

1.5. Related Programmes and other Donor Activities

A Regional Unit, the Economic Partnership Agreement Implementation Unit in the CARIFORUM Directorate of the Caribbean (CARICOM) Secretariat is tasked with assisting States in their implementation of the EPA, including the obligations assumed by the Parties under Title II of the Agreement - Investment, Trade in Services and E-commerce. The ACP TRADECOM II Programme provided support to enhance the capacity of the EPA Implementation Unit to provide technical and legal support to CARIFORUM States in the implementation of the CARIFORUM-EU EPA.

2. OBJECTIVE, PURPOSE, AND EXPECTED RESULTS

2.1. Overall objective

The overall objective of the project is to support CARIFORUM States in their review of the EU's Services and Investment Commitments with a view of determining the market access opportunities available for trade via cross-border and temporary entry.

2.2. Purpose

The purpose of this contract is to conduct a comprehensive analysis of the EU's cross-border and temporary entry commitments under the CARIFORUM-EU EPA. The analysis should also provide CARIFORUM States with information on the market access conditions for cross-border and temporary entry in addition to strategies to convert the market access available into meaningful market presence in the EU.

2.3. Results to be achieved by the Contractor

The Contractor will deliver the following:

- Result 1: An examination of the EU's cross-border and temporary entry commitments identifying the domestic regulations in the EU impacting upon the market access opportunities available especially in key sectors of export interest to CARIFORUM States.
- Result 2: An examination of the market access conditions in priority EU markets for cross-border trade and temporary entry.
- Result 3: Development of strategies for CARIFORUM States to convert the market access available into market presence for CARIFORUM Service suppliers.

3. ASSUMPTIONS & RISKS

3.1. Assumptions underlying the project

The assumptions associated with this contract are:

- (i) The Consultant can conduct the assessment and meet agreed deliverables within the prescribed time; and
- (ii) A Consultant is available to undertake the work required.

3.2. Risks

The risk associated with this contract is:

- (i) The Consultant is unable to conduct the assessment and meet agreed deliverables within the prescribed time; and
- (ii) Unavailability of a suitable Consultant.

4. SCOPE OF THE WORK

4.1. General

4.1.1. Description of the assignment

The scope of work for the assignment is understood to cover all activities necessary to accomplish the stated objective of the Assignment, whether a specific activity is cited in these terms of reference or not. In that regard, the Consultant will conduct a detailed technical examination of the cross-border and temporary entry commitments undertaken by the EU under the CARIFORUM-EU EPA (encompassing (i) an examination of the market access conditions for cross-border trade and temporary entry in the EU and (ii) strategies for CARIFORUM States to convert the market access available to market presence).

4.1.2. Geographical area to be covered

Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, the Dominican Republic, Grenada, Guyana, Haiti, Jamaica, St. Kitts and Nevis, Saint Lucia, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago.

4.1.3. Target groups

CARIFORUM States.

4.2 Specific work

The Consultant will:

- (i) Hold a briefing with EPA Implementation Unit of the CARICOM Secretariat on the objective, activities, expected outputs and any other issues related to the execution of the assignment that require clarification.
- (ii) Within **five (5) days** of the initial briefing meeting at (i) above, submit an initial report summarizing the consultant's understanding of the assignment and including a schedule for the implementation of the assignment.
- (iii) Review Title II of the CARIFORUM-EU EPA - Investment, Trade in Services and E-commerce, in particular Chapter 3 and Chapter 4 to appreciate the scope of the obligations assumed by the EU as well as the benefits to be accrued to CARIFORUM States.
- (iv) Provide a technical examination of the cross-border and temporary entry commitments undertaken by the EU under the CARIFORUM-EU EPA (including the market access conditions for cross-border trade and temporary entry in the EU and make recommendations on strategies for CARIFORUM States to convert the market access

available to market presence)

- (v) Submit a Draft Final Report to the EPA Implementation Unit responding to the activities undertaken above
- (vi) Participate in consultations with the CARIFORUM States to review the Draft Final Report including presenting the Report to stakeholders.
- (vii) Prepare and submit a final report to the EPA Implementation Unit of the CARICOM Secretariat incorporating the comments on the Draft Final Report received from the Secretariat and from the consultation referred to in paragraph (vi).

Communication between the Consultant and the EPA Implementation Unit of the CARICOM Secretariat will largely occur via e-communication.

4.3. Project Management

4.3.1. Responsible body

The EPA Implementation Unit of the CARIFORUM Directorate will be responsible for managing the project.

4.3.2. Management structure

The Director General of the CARIFORUM Directorate will have oversight responsibilities for the Project and will be assisted with the day- to-day administration of the Project by the Trade in Services and Investment Specialist.

4.3.3. Facilities to be provided by the Contracting Authority and/or other parties

The Contracting Authority will provide access to relevant information which it has at its disposal which is required by this assignment.

5. LOGISTICS AND TIMING

5.1. Location

The operational base for CARIFORUM is Georgetown, Guyana. The project will be executed from the home base of the Consultant, and at the CARIFORUM Directorate. The Consultant may be required to travel to the CARICOM Secretariat Headquarters in Guyana for an initial project briefing and for a session with the Secretariat on the interim report. The Consultant will maintain on-going contact, by electronic communication, including e-mail, with the designated officer within the Secretariat with responsibility for the management of the project.

5.2. Start Date and Period of Implementation of tasks

The intended start date is **September 2023** and the period of implementation of the contract will be three (3) months from this date. Please see Articles 19.1 and 19.2 of the Special Conditions for the actual start date and period of implementation.

6. REQUIREMENTS

6.1. Staff

Note that civil servants and other staff of the public administration of the partner country, or of international/regional organisations based in the country, shall only be approved to work as experts if well justified. The justification should be submitted with the tender and shall include information on the added value the expert will bring as well as proof that the expert is seconded or on personal leave.

6.1.1. Key experts

All experts who have a crucial role in implementing the contract are referred to as key experts. The profiles of the key experts for this contract are as follows:

Key Expert 1: Team Leader – Expert in International Trade

Qualifications and Skills

- (i) minimum of a master's degree in law (with a specialisation in International Law or International Trade Law) or in Trade Policy or a closely related field
- (ii) strong analytical and problem solving skills
- (iii) excellent written and oral communication skills in English
- (iv) Project Management Skills will also be an asset

General professional experience and skills

- (i) At least ten (10) years of experience working in the field of trade policy or international trade law
- (ii) Practical experience in undertaking consultative activities with government and inter-Governmental officials in the CARIFORUM States

Specific professional experience

- (i) in-depth expert knowledge of the EPA, in particular its services commitments and the political and economic context underlying its negotiation
- (ii) experience in the interpretation and analysis of treaties and identification of issues related to the specific interests of developing countries
- (iii) experience providing technical advice to CARIFORUM States on matters related to the market access of services suppliers under the CARIFORUM-EU EPA
- (iv) experience in the identification of consequential issues from an assessment of EPA provisions

6.1.2. Other experts, support staff & backstopping

The costs for backstopping and support staff, as needed, are considered to be included in the tenderer's financial offer.

6.2. Office accommodation

Office accommodation for each expert working on the contract is to be provided by the Contractor.

6.3. Facilities to be provided by the Contractor

The Contractor shall ensure that experts are adequately supported and equipped. It must also ensure that there is sufficient administrative, secretarial, and interpreting provision to enable experts to concentrate on their primary responsibilities. It must also transfer funds as necessary to support their work under the contract and to ensure that its employees are paid regularly and in a timely fashion.

6.4. Equipment

No equipment is to be purchased on behalf of the Contracting Authority / partner country as part of this service contract or transferred to the Contracting Authority / partner country at the end of this contract. Any equipment related to this contract which is to be acquired by the partner country must be purchased by means of a separate supply tender procedure.

7. REPORTS

7.1. Reporting Requirements

The Contractor will submit the following reports in English electronically:

- **Inception Report** to be produced within five (5) days of the initial briefing meeting with the CARIFORUM Directorate. In the report the Contractor shall outline the proposed methodology and propose a detailed work plan. The Contractor should proceed with his/her work unless the Contracting Authority sends comments on the inception report.
- **Draft Final report** responding to the activities set out in these Terms of Reference. In the report the Contractor shall describe achievements including problems encountered and recommendations. This report shall be submitted no later than one month before the end of the period of implementation of tasks.
- **Final report** with the same specifications as the draft final report, incorporating any comments received from the parties on the draft report. The deadline for sending the final report is 10 days after receipt of comments on the draft final report. The final report must be provided along with the corresponding invoice.

7.2. Submission and approval of reports

The report referred to above must be submitted to the Project Manager identified in the contract. The Project Manager is responsible for approving the reports.

8. MONITORING AND EVALUATION

8.1. Definition of Indicators

At the level of the contract of which these TOR forms an integral part; the briefings and reports shall be the basis on which the performance is monitored and evaluated. Their timely delivery and quality will be monitored closely by the EPA Unit of the CARIFORUM Directorate.

The following criteria shall be used to assess the performance of the Contractor:

- **Quality of output documents:** The quality of output documents shall be judged by their clarity and the depth to which they comprehensively cover the subject.
- **Format:** These reports shall be completed in the standard formats used by the EU
- **Meeting of deadlines** for outputs.

8.2. Special Requirements

None foreseen