



## **REQUEST FOR PROPOSALS (RFP)**

**TITLE: PROVISION OF LEGAL SERVICES TO TRADEMARK EAST AFRICA**

**NUMBER: PRQ20140476**

**DATE: 27 OCTOBER 2014**

**DUE DATE: 24NOVEMBER 2014**

**TIME: 5:00PM KENYA TIME**

# INVITATION TO TENDER INSTRUCTIONS

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## **Introduction**

1. TradeMark East Africa is a multi-donor funded agency which provides support for increased regional trade and economic integration in East Africa. It seeks to support East African integration by unlocking economic potential through:

- Increased market access: through reduced transport costs, reduced transport regulatory and operating costs and reduced non-tariff measure costs.
- Enhanced trade environment: through improved investment climate and governance and improved EAC trade policy
- Improved quality and price of products: through more effective trade promotion and more competitive value chains

TMEA has its headquarters in Nairobi with offices in Arusha, Bujumbura, Dar Es Salaam, Kampala, Juba and Kigali.

This Request for Proposal (RFP) and in particular the *Instructions for Compiling and Submitting Your Tender* are designed to help you produce a tender that is acceptable to TradeMark East Africa (TMEA) as well as ensuring that tenders are given equal consideration. TMEA will select the most economically advantageous tender. It is essential, therefore, that you provide the information requested in the specific format and no other.

2. TMEA is not bound to accept the lowest, or any, tender. We also reserve the right to request any, or all, to clarify the bids submitted.

## **Instructions for Compiling and Submitting your Tender**

### **3. Format of Your Tender**

Your tender should be submitted in English and be set out in three main parts:

- Part A –Preliminary requirement
- Part B - Executive Summary
- Part C - General and Technical
- Part D – Commercial

### **4. Part A Preliminary requirements**

Bidders are required to submit certified scanned copies of statutory requirements which laid outlined in sub-section 12.1.

Failure to submit the above requirements will lead to disqualification.

Parts A, B & C may be contained in one document including signed Technical Bid Submission Form (Annex 3), and signed TMEA code of Ethics (Annex 5); however, A, B or C. Inclusion of any price information may lead to bid rejection.

## **5. Part B – Executive Summary**

This should be a brief overview of your tender covering how you intend to achieve the outputs and your assessment of the resources required.

## **6. Part C – General and Technical Tender**

Your Technical submission should contain the following;

- Technical Response to the Terms of Reference (including method of implementation and your proposed quality assurance mechanisms).
- Names & CVs of personnel to work on this project.
- Previous Experience.

## **7. Part D – Commercial Tender**

All prices must be for the duration of the contract. Your financial bid should contain the following information:

- Signed and stamped Financial Bid Submission Form (Annex 6);
- Confirmation of acceptance of TMEA's Conditions of Contract without amendments (available on TMEA website under work with us link button & specifically Supplier resources and information (sample contract contained herein in Annex 2);
- Pricing details/information
- Pricing details using the enclosed pro-formas. Besides completing proforma 1, bidders must complete proformas 2, 3 and 4 on a fees and expenses basis to demonstrate the cost breakdown of the milestone payments. Innovation is encouraged in the development and pricing of technical and commercial proposals.
- A list of the names and designation of all nominated personnel proposed to work on this project
- NOTE: TMEA will determine, on a case by case basis, whether the contract will be based on fees/ reimbursable or on milestone.

## **8. Nominated Personnel**

You must confirm that the personnel you have nominated to work on this project shall be available and dedicated to this project until the assignment is completed.

## **9. Government Tax**

Tenderers are responsible for establishing the status of the Services for the purpose of any government tax in any East African country. All fee rates proposed by the tenderer should be inclusive of all taxes applicable. The contract shall be domiciled in Kenya and Government of Kenya tax laws shall apply.

## 10. Packaging of Tenders

All tender documents will formally be submitted electronically to the TMEA procurement portal <http://procurement.trademarka.com> by **24 November 2014, 5pm Kenya Time**. The **technical** and **financial** proposal will be submitted as two separate documents in PDF format and the maximum size must not exceed 10MB.

**Late tenders will not be accepted in any circumstance.** No special pleadings will be accepted. Faxed and hard copy tenders will not be accepted.

## 11. Evaluation Criteria and Process

In assessing the proposals submitted, the Proposal committee will use the evaluation methodology and criteria explained in detail below:

### 11.1 Preliminary Examination

This stage of evaluation will examine whether the bidders have submitted the following documentation:

- i. Registration Certificate;
- ii. Tax Compliance Certificate valid through to 30 November 2014;
- iii. A Valid Business License;
- iv. A PIN/TIN certificate(s);
- v. Evidence of updated registration with a professional body in the country of operation.

Preliminary Examination shall be on a pass/fail basis

### 11.2 Technical Evaluation

In assessing the proposals submitted, the Proposal committee will use the **Quality Based Selection (QBS)** selection as per **12 below**.

## 12. Technical evaluation

Evaluation of the Bidder's Technical Proposal will include an assessment of the Bidder's technical capacity to mobilize key equipment and personnel for the assignment consistent with its proposal. TradeMark East Africa (TMEA) shall use the criteria and methodologies listed in this RFP document. No other evaluation criteria or methodologies shall be permitted. The bid evaluation will be based on a scoring system marked out of a maximum of 100 marks on the suitability of project team, qualification of experts and experience in the field of assignment for those firms that meet the minimum technical requirements. Marks will be awarded according to the following matrix:

| NO  | DESCRIPTION   | Max. Score (100) |
|---|---|------------------|
| <b>General and Specific Experience(70 marks)</b>                              |   |                  |
| 1   | Successful litigation track record  | 15               |
| 2   | Demonstrated track record of providing legal advice to at least three (3) mid-sized to large multinational organisations. The range of CV should be from senior counsels to counsels (from junior to senior), preferably 3 layers of personnel, that is, senior counsel, middle and lower | 15               |
| 3   | CVs of qualified and experienced personnel across a range of areas which will be derived from bidders understanding TMEA needs.   | 15               |
| 4   | Demonstrated arbitration ability/ experience  | 15               |
| 5   | Experience in any of the EAC countries  | 10               |
| <b>Understanding of the Terms of Reference and Assignment Objectives (30)</b> |   |                  |
| 1   | Proposed methodology and approach   | 15               |
| 2   | Understanding of assignment objects   | 10               |
| 3   | Proposed work-plan  | 5                |
| <b>TOTAL SCORE</b>  |   | <b>100</b>       |

NB: All participating bidders must meet the minimum requirements as outlined in the evaluation criteria and in line with the Terms of Reference laid out in the RFP.

### 13. Special Conditions

Special conditions of RFP as relates to the General Conditions Contract (GCC):

| REFERENCE OF GCC               | SPECIAL CONDITIONS OF CONTRACT |
|--------------------------------|--------------------------------|
| 3. Part D                      | Not applicable                 |
| 7. Part D – Commercial Tender  | Not Applicable in this tender  |
| Annex 1 (Financial Pro-formas) | Not Applicable in this Tender  |

## 14. Terms of Reference

### Terms of Reference for

#### Provision of Legal Services to TradeMark East Africa

##### 1. Introduction

TradeMark East Africa (TMEA) is an initiative funded by a range of development agencies to promote regional and economic integration in East Africa by working with East Africa Community, National government, business and private/ civil society organisations. TMEA has its headquarters in Kenya (Nairobi) and branches in Uganda (Kampala), Tanzania (Dar es Salam), Rwanda (Kigali), Burundi (Bujumbura) and South Sudan (in Juba).

##### 2. Objectives

The aim of this assignment is to offer legal services to TMEA at its headquarters in Nairobi – Kenya.

##### 3. Recipient

TradeMark East Africa.

##### 4. Scope of Work

The successful legal firm will offer the following to TMEA;

- Provision of legal services and advice for TMEA headquarters.
- Representing TMEA and/ or its partners in all legal proceedings where applicable.

Terms of engagement will be agreed prior to commencement of each assignment.

##### 5. Timetable

This contract will run for a period of 2 years starting 5<sup>th</sup> January 2014 with a possibility of extension subject to performance, need and budget availability.

##### 6. Requirements

The minimum qualifications requested are as follows:

- Good track record in legal matters especially in dealing with mid- size to large multinational organisations
- Ability to offer corporate legal support across a range of areas.
- Registration and practicing member of the respective legal bar association.

##### 7. Tentative Procurement Timetable

| Activity                                  | Expected dates***                  |
|---|------------------------------------|
| Advertise for Request for Proposals (RFP) | 27 October 2014                    |
| Receipt of RFP's                          | 24 November 2014                   |
| Long listing of RFP's                     | 25 November 2014                   |
| RFP's evaluation (Short Listing)          | 26 November 2014                   |
| Approval by Tender Board                  | 4 December 2014                    |
| No action Period                          | 5 December 2014 – 18 December 2014 |
| Issue Contract                            | 22 December 2014                   |
| Contract Starts                           | 5 January 2015                     |

\*\*\*Note: The above dates are tentative

## **15. Conflict of Interest**

Tenderers must disclose in their Tender details of any circumstances, including personal, financial and business activities that will, or might, give rise to a conflict of interest; this includes any sub-contractor, if they were awarded this contract. Where Tenderers identify any potential conflicts they should state how they intend to avoid such conflicts. TMEA reserves the right to reject any Tender which, in TMEA's opinion, gives rise, or could potentially give rise to, a conflict of interest.

## **16. Disclosures**

### **The Tenderer must disclose:**

- a. If they or any of the Tenderer's sub-contractors:
  - Are or have been the subject of any proceedings or other arrangements relating to bankruptcy, insolvency or financial standing.
  - Has been convicted of any offence concerning professional misconduct.
  - Has not fulfilled any obligations relating to the payment of social security contributions.
- b. If they or any of the Tenderer's sub-contractors have been convicted of, or are the subject of any proceedings, relating to:
  - Participation in criminal organisation.
  - Corruption including the offence of bribery.
  - Fraud including theft, and not fulfilling any obligations relating to payment of taxes.
  - Money laundering.
- c. If they or any of the Tenderer's sub-contractors:
  - Are, or have reason to believe that they may have been, or are subject of any proceedings, that has resulted in the firms being blacklisted.
  - Disclosure extends to any company in the same group of the Tenderer (including but not limited to parent subsidiary and sister companies, and companies with common shareholders whether direct or indirect and parties with whom the Tenderer is associated in respect of this tender).
  - If a Tenderer or related company or any individual discloses details of any misconduct or complaint, TMEA will make an assessment as to whether the Tenderer should be excluded. TMEA may seek additional information from the Tenderer or other competent authorities to obtain the further information required to make a decision on eligibility.

## **17. Joint Venture (or other form of association) Tenders**

Where the Tender is submitted by the Tenderers in conjunction with one or more associates then, in the absence of a Joint venture agreement the 'Associate' shall be deemed to be a sub-contractor to the Tenderers and shall not be a party to the contract.

Tenders submitted by potential Joint Venture partnerships must include in the Tender documents a "Letter of Intent to form a Joint Venture" in the event of being successful and:



- a. Be signed by a duly authorised representative of each partner with details of each signatory provided in print below each signature
- b. Include an express provision that each partner is jointly and severally liable in respect of the Tenderer's obligations
- c. Provide details of the name of the partner nominated to act as manager of the Joint Venture and who is authorized to act for the Joint Venture in terms of committing it to any obligations and liabilities and to receive and act upon instructions from TMEA and to make and receive payments
- d. State full details of the proposed structure; the division of technical responsibilities between the partners and intended capitalisation

## **18. TMEA's Treatment of Your Tender**

**TMEA is committed to ensuring Value for Money\* in complex procurements.**

Therefore, when you submit a tender, we will:-

- a. Disqualify any non-compliant tenders (i.e. tenders failing to meet the terms of these instructions) received. The commercial details of such tenders will be recorded and marked as disqualified.
- b. Ensure that all tenders are evaluated objectively, in line with the evaluation criteria specified in the covering letter.
- c. Following evaluation, inform the Tenderers within reasonable time of the decision being made
- d. Following evaluation, provide feedback to each Tenderer within 15 calendar days of written request and within the bounds of confidentiality.

\* Value for money is defined as the optimum combination of whole-life cost and quality to meet requirements

### Tenderer Obligations

If you consider that any of the information included in your tender would prejudice your legitimate commercial interests, please identify it and explain (in broad terms together with a time period after which the information could be disclosed) what harm may result from disclosure if a request is received. Tenderers must justify why they prefer any information to be withheld.

### TMEA Obligations

Tenderers should be aware that, even where it is indicated in the tender that information prejudicial to tenderers commercial interests, TMEA may be required to disclose it if a request is received. TMEA recognises the legitimate commercial concerns of suppliers and will consult with the relevant tenderer before disclosing information.

**ANNEX 1: PRO- FORMA**

Pro- forma 1

**TENDER FOR:** [TENDER TITLE]

**TENDER NUMBER:** [REFERENCE NUMBER]

**MILESTONE PAYMENTS PROPOSAL**

**The amount to be paid for the completion of the services is fixed at \$**

Payment will be made either:

a) As a lump sum on completion of the services

or

b) At relevant points throughout the contract period as detailed below

| <b>CRITERIA FOR PAYMENT</b> | <b>AMOUNT OF PAYMENT</b> |
|-----------------------------|--------------------------|
|                             |                          |
| <b>TOTAL</b>                | <b>\$</b>                |

Pro forma 2

**TENDER FOR:** [TENDER TITLE]

**TENDER NUMBER:** [REFERENCE NUMBER]

**PROPOSAL BREAKDOWN - PERSONNEL INPUTS AND FEE RATES**

| <b>NAME</b>       | <b>Country (Specify</b> | <b>No Days</b> | <b>Daily Fee Rate</b> | <b>Cost \$</b> |
|-------------------|-------------------------|----------------|-----------------------|----------------|
| <b>Long Term*</b> |                         |                |                       |                |
| <b>Short Term</b> |                         |                |                       |                |
| <b>TOTAL FEES</b> |                         |                |                       | <b>\$</b>      |

**\* Long Term is in excess of 4 months**

Guidance on Fees and Expenses can be found in Section 2 of the contract - the General Conditions.

Pro- forma 3

**TENDER FOR: [TENDER TITLE]**

**TENDER NUMBER: [REFERENCE NUMBER]**

**PROPOSAL BREAKDOWN – PROJECT EXPENSES**

Costs should be shown separately in the format set out below using separate sheets to provide full details under each heading. Fees proposed by tenderers should be inclusive of all taxes.

| <b>TRAVEL (state country)</b>                                 |                    | <b>NO.</b> | <b>RATE</b> | <b>COST \$</b> |
|---|--------------------|------------|-------------|----------------|
| <b>FARES</b>  | International      |            |             |                |
|   | Domestic           |            |             |                |
|   | Other Travel Costs |            |             |                |
| <b>Sub Total</b>  |                    |            | <b>\$</b>   |                |
| <b>DAILY LIVING COSTS(state country) *Long Term</b>           |                    |            |             |                |
|   | *Short Term        |            |             |                |
| <b>Sub Total</b>  |                    |            | <b>\$</b>   |                |
| <b>EQUIPMENT* Items Purchased/Rented (Including vehicles)</b> |                    |            |             |                |
|   |                    |            |             |                |

|   |  |  |           |
|---|--|--|-----------|
| <b>Sub Total</b>                        |  |  | <b>\$</b> |
| <b>Any other expenses (please list)</b> |  |  |           |
| <b>Sub Total</b>                        |  |  | <b>\$</b> |
| <b>TOTAL PROJECT EXPENSES: (B)</b>      |  |  | <b>\$</b> |

\*TMEA will not reimburse costs for normal tools of trade (e.g. portable personal computers)

\* Long Term consultants are expected to utilise rented accommodation. No per diem is payable.

\*Short Term expectation is either rented accommodation or a hotel

**TENDER FOR:** [TENDER TITLE]

**TENDER NUMBER:** [REFERENCE NUMBER]

**PROPOSAL BREAKDOWN - SUMMARY OF FEE RATES AND EXPENSES**

|                            |    |
|----------------------------|----|
| Total Fees (A)             | \$ |
| Total Project Expenses (B) | \$ |
| Sub Total                  | \$ |
| <b>TOTAL</b>               | \$ |

## **ANNEX 2: CONTRACT**

### **CONTRACT FOR CONSULTANCY SERVICES**

#### **Section 1 – Form of Contract**

CONTRACT FOR: [Insert Title here]

CONTRACT REFERENCE: [Insert Number here]

**THIS CONTRACT** dated [Insert date here] is made

#### **BETWEEN:**

**TradeMark East Africa** (“TMEA”) having its principal place of business at Equatorial Fidelity Center, P O Box 313 00606, Nairobi, Kenya;

#### **AND**

[Insert Consultant Name] (“The Consultant”) having its principal office located in [Insert Contact Details].

#### **WHEREAS:**

TMEA has requested the Consultant to provide certain consulting services as defined in the detailed terms of reference and scope of services attached to this Contract (hereinafter called the “Services”); the Consultant, having represented to TMEA that they have the required professional skills, and personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract.

**IT IS HEREBY AGREED** as follows:

#### **1. Documents**

This Contract from page [Insert page no] to page [Insert page no.] shall comprise the following documents:

Section 1 Form of Contract

Section 2 General Conditions

Section 3 The Services

Section 4 Special Conditions and Key Personnel

Section 5 Fees

This Contract constitutes the entire agreement between the Parties in respect of the Consultant's obligations and supersedes all previous communications between the Parties, other than as expressly provided for in Section 3 and/or Section 4.

**2. Contract Signature**

If the original Contract is not returned to - TMEA duly completed, signed and dated on behalf of the Consultant within 15 days of the date of signature on behalf of TMEA, TMEA will be entitled, at its sole discretion, to declare this Contract void. No payment will be made to the Consultant under this Contract until a copy of the Contract, signed on behalf of the Consultant is returned to TMEA.

**3. Commencement and Duration of the Services**

a. The Consultant shall start the Services no later than [Insert start date] ("the Start Date") for [state contract period in terms of days/moths/years] and shall complete them by [Insert end date] (End Date") or any other period as may be subsequently agreed by the parties in writing unless this Contract is terminated earlier in accordance with its terms and conditions.

b. If the services have not commenced in accordance with clause 3.1 above, TMEA may by not less than 30 days written notice to the consultant, declare the contract to be null and void, and in the event of such declaration, the consultant shall have no claim against TMEA with respect thereto.

**4. Financial Limit**

Payments under this Contract shall not, in any circumstances, exceed [XXX] for fees and [XXX] for expenses within a total limit of [XXX] inclusive of all taxes applicable ("the Financial Limit").

**5. Time of the Essence**

Time shall be of the essence as regards the performance by the Consultant of its obligations under this Contract.

For and on behalf of TMEA

Name: **KEN JONES**  
Position: **CHIEF OPERATING OFFICER**  
Signature:  
Date:

For and on behalf of the consultant

Name:  
Signature:  
Date:



## CONTRACT FOR CONSULTANCY SERVICES

### Section 2 – General Conditions

#### 1. Definitions

“The Contract” means the agreement entered into between TMEA and the consultant, as recorded in this Contract Document signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.

“TMEA Project Manager” means the person nominated by TMEA who is responsible for the management of the Project.

"the Equipment" means any equipment, computer hardware or software, materials, goods and vehicles and associated services necessarily required for the implementation of the Services which are financed or provided by TMEA for use by the Consultant.

"the Financial Limit" means the amount specified in Section 1 and which represents the maximum amount payable by TMEA under this Contract.

“Fees” means the fees payable for the Services as set out in Section 5.

"the Services" means the services to be provided by the Consultant as set out in Section 3.

“the Consultant” means the natural person(s), partnership(s), or company (ies) whose bid to perform this contract has been accepted by TMEA and is named as such in this contract, and includes the legal successors or permitted assigns of the Consultant.

"the Consultant’s Personnel" means any person instructed by the Consultant pursuant to this Contract to undertake any of the Consultant’s obligations under this Contract, including the Consultant’s employees, agents and sub-contractors.

“Subcontractor” means any natural person(s), partnership(s), or company (ies), including its legal successors or permitted assigns, to whom any part of the services to be provided is subcontracted by the Consultant.

#### 2. Interpretation

In the event of any inconsistency between the Form of Contract (Section 1), these General Conditions (Section 2) and the Special Conditions (Section 4), the Special Conditions shall prevail.

#### 3. Project management

TMEA designates the TMEA Project Manager as being responsible for the coordination of activities under this Contract, for the acceptance and approval on behalf of TMEA of the reports and of other deliverables produced by the Consultant, and for receiving and approving invoices for payment.

#### 4. Obligations

- a. TMEA and the Consultant each warrant that it has all the requisite corporate power and authority to enter into this Contract and is fully capable of performing its obligations under this Contract on the terms provided for in this Contract.

- b. The Consultant shall perform the Services and all other obligations under this Contract with all necessary skill, diligence, efficiency and economy to satisfy generally accepted professional standards expected from experts.
- c. The Services shall be provided at the location set out in Section 3. Notwithstanding this, the Consultant may be required to travel to other locations from time to time in carrying out the Services.

## **5. Indemnification**

At its own expense, the Consultant shall indemnify, protect and defend, TMEA, its agents and employees, from and against all actions, claims, losses or damage arising from any act or omission by the Consultant in the performance of the services, including any violation of any legal provisions, or rights of third parties, in respect of patents, trademarks and other forms of intellectual property such as copyrights. Should the act or omission originate from TMEA, then TMEA will indemnify the consultant.

The Consultant hereby indemnifies TMEA, its agents and employees against any legal cost, including attorney/own client costs incurred by TMEA in defending any complaints, disputes or claims lodged by any party as a result of the actions or omissions of the Consultant.

## **6. Consultant's Personnel**

- a. The Consultant acknowledges that it and the Consultant's Personnel have no authority to create or incur any liability or obligation on behalf of TMEA, including but not limited to any liability or obligation to expend or incur capital expenditure and not to recruit, employ or dismiss any member of staff employed by TMEA.
- b. The Consultant shall not at any time, either personally or by an agent, directly or indirectly represent itself as being in any way connected with or interested in TMEA save as being engaged to perform the Services.
- c. Save for the Services agreed and set out at Section 3, TMEA is under no obligation to offer work to the Consultant and the Consultant is under no obligation to accept any work, which may be offered by TMEA.
- d. No changes or substitutions may be made to members of the Consultant's Personnel identified in Section 4, if any, of this Contract without TMEA's prior written consent.
- e. If TMEA considers any member of the Consultant's Personnel unsuitable, the Consultant shall substitute such member as quickly as reasonably possible without direct or indirect charge to TMEA with a replacement acceptable to TMEA.
- f. The Consultant is responsible for all acts and omissions of the Consultant's Personnel and for the health, safety and security of such persons and their property.

## **7. Fees**

- a. Subject as follows, payments shall be due to the Consultant in accordance with the Fee payment schedule set out in Section 5. In the case of Fees that are payable upon the completion of milestones as may be set out in Section 4, such fees shall not become due and payable until the completion, to TMEA's satisfaction, of the relevant milestone event or the delivery of the deliverables to TMEA's satisfaction required for the achievement of the relevant milestone satisfactorily

- b. Payment of the Fees shall be subject to TMEA being satisfied that the Consultant is or has been carrying out its duties, obligations and responsibilities under this Contract.
- c. If for any reason TMEA is dissatisfied with performance of this Contract, an appropriate sum may be withheld from payments that would otherwise be due under this Contract. In such event TMEA shall identify the particular Services with which it is dissatisfied together with the reasons for such dissatisfaction, and payment of the amount outstanding will be made upon remedy of any unsatisfactory work or resolution of outstanding queries.
- d. Fees charged and expenses incurred shall not, in aggregate, exceed the Financial Limit without the prior written consent of TMEA.
- e. No payments shall be made in respect of days not worked due to sickness or holiday or otherwise.
- f. Only the fee rates listed in Section 5 of this Contract will apply to any Services performed by the Consultant under this Contract.

## **8. Expenses**

The Consultant shall be entitled to be reimbursed only for those expenses which have been approved and are set out in Section 5.

## **9. Invoicing Instructions**

- a. Invoices should particularise the contract to which they relate and should be sent to the address referenced in Section 5.
- b. All invoices should contain details of the Services provided, milestones achieved and deliverables provided to which the invoice relates. Where expenses are payable, invoices should be accompanied by proof of the expense. Any invoice not presented in accordance with the above may be rejected and in any event shall be liable to query and delay in payment.
- c. TMEA may request proof of payment in respect of any item and shall be entitled to refuse to meet a claim if this cannot be provided.
- d. TMEA reserves the right to audit, or to nominate a reputable accounting firm to audit the Consultant's records relating to amounts claimed under this Contract during its term and any extension, and for a period of three months thereafter.
- e. TMEA reserves the right not to pay any amount due in respect of an invoice received by TMEA more than 60 days after the day of the Consultant becoming entitled to invoice for the payment to which it relates.
- f. TMEA will deduct withholding tax from the consultant's invoiced amounts as per Government of Kenya regulations. Consultants from countries with double tax agreements will be provided with withholding tax certificates. It is the consultant's responsibility to establish their tax status in the country where the Services will be delivered.

## **10. Payments**

Subject to TMEA being satisfied that the Consultant is or has been carrying out their duties, obligations and responsibilities under this Contract, sums duly approved shall be paid within 30 days of receipt of a valid invoice.

## **11. Nature of relationship**

TMEA and the Consultant agree and intend that this relationship is one of undertaking independent services and specifically is not a relationship of employer or employee agency, joint venture or partnership. Nothing contained herein shall be construed as establishing a relation of master and servant or of principal and agent between TMEA and the Consultant and the Consultant will be solely responsible for the tax status, tax and any statutory contributions payable of and for the Consultant's Personnel and for all or any of its or the Consultant's Personnel's taxes payable in respect of Fees and reimbursements received in connection with this Contract.

## **12. Performance Standards**

The Consultant undertakes to perform the Services with the highest standards of professional and ethical competence and integrity.

## **13. Termination**

Either TMEA or the Consultant may terminate this Contract, by not less than 30 days written notice. In such cases, TMEA shall be liable to make payments only for work completed and delivered, of acceptable standard.

## **14. Confidentiality**

- a. The Consultant shall not, during the term of this Contract and within two years after its expiration or termination, disclose any proprietary or confidential information relating to the Services, this Contract or TMEA's business or operations without the prior written consent of TMEA.
- b. Notwithstanding the above, the consultant may furnish to its subcontractor such documents, data, and other information it receives from TMEA to the extent required for the subcontractor to perform its work under the contract, in which event the consultant shall obtain an undertaking of confidentiality similar to that imposed on the consultant under this contract.

## **15. Ownership of Material**

- a. Any studies, reports or other material, graphic, software or otherwise, prepared by the Consultant for TMEA under the Contract shall belong to and remain the property of TMEA.
- b. Where intellectual property rights in all material produced by the Consultant or the Consultant's Personnel pursuant to the performance of the Services ("the Material") are the property of the Consultant, the Consultant hereby grants to TMEA a worldwide, nonexclusive, irrevocable, royalty free licence to use all the Material.
- c. "use" shall mean, without limitation, the reproduction, publication and sub-licence of all the Material and the intellectual property rights therein, including the reproduction and sale of the Material and

products incorporating the same for use by any person or for sale or other dealing anywhere in the world.

#### **16. Code of conduct**

The consultant shall at all times act loyally and impartially and as a faithful adviser to TMEA in accordance with the rules and/or codes of conduct of its profession.

It shall in particular refrain from making any public statements concerning the services without prior approval of TMEA, and from engaging in any activity which conflicts with its obligations towards TMEA under this contract.

It shall not commit TMEA in any way whatsoever without its prior written consent, and shall, where appropriate, make this obligation to third parties.

#### **17. Conflict of interest**

The consultant shall refrain from any relationship which would compromise its independence or that of its personnel. If the consultant fails to maintain independence, TMEA may terminate the contract in accordance with the provisions of this contract.

#### **18. Insurance**

The Consultant and his/ her/ their personnel are responsible for ensuring adequate and appropriate medical, travel, Personal Accident or any other insurance cover before beginning work, under a TMEA contract for services. The Consultant's fee is deemed to include an element to cover the cost of all insurance

#### **19. Assignment**

The consultant shall not assign, in whole or in part, their obligation under this contract, except with prior written consent of TMEA.

#### **20. Subcontracting**

The consultant shall request approval in writing from TMEA for all subcontracts awarded under this contract that are not included in the contract. Subcontracting shall in no event relieve the consultant of any of its obligations, duties, responsibilities or liability under this contract.

#### **21. Law Governing Contract and Language**

The Contract shall be governed by the laws of Kenya but in the event of a conflict between Kenyan laws and any other Law, then the laws of Kenya prevail. The language of the Contract shall be English.

#### **22. Dispute Resolution**

TMEA and the Consultant agree to seek to resolve any dispute, controversy or claim arising out of or relating to this Contract or the breach, termination or invalidity thereof, by amicable settlement. Where it is not possible to reach an amicable settlement, any dispute, controversy or claim arising out of or relating

to this Contract or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the Arbitration Act of 1995 or any statutory modifications or re-enactment thereof for the time being in force.

Notwithstanding any adjudication or arbitration proceedings no party shall commit an anticipatory breach of contract.

### **23. Liability**

Except where there has been misconduct, gross negligence, dishonesty or fraud on behalf of the Consultant or the Consultant's Personnel, the Consultant's aggregate liability arising out of or in connection with this Contract shall be limited to the amount of the Financial Limit. The Consultant shall not be liable for any failure to perform or delay in performance of any of its obligations arising out of or in connection with this Contract where such failure or delay is caused by TMEA or any of TMEA's agents, employees or contractors.

### **24. Force Majeure**

- a. The failure of the Consultant to fulfil any of its obligations under the Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an act, event, omission or accident beyond its reasonable control ("Force Majeure Event"), provided that the Consultant (i) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (ii) has informed TMEA as soon as possible about the occurrence of such an event and in any event not later than 14 days after the occurrence of such event.
- b. Any period within which the Consultant shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which the Consultant was unable to perform such action as a result of the Force Majeure Event.
- c. During the period of their inability to perform the Services as a result of a Force Majeure Event, the Consultant shall be reimbursed for additional costs reasonably and necessarily incurred by it during such period for the purposes of the Services and in reactivating the Services after the end of such period.

Force Majeure shall not include:

Any event which is caused by the negligence or intentional action of the consultant, or such consultant's subcontractors or agents or employees; nor any event which a diligent party could reasonably have been expected to both: Take into account from the effective date of the contract; and Avoid or overcome in the carrying out of its obligations.

### **25. Joint venture, consortium or association**

Unless otherwise specified in this contract, if the Consultant is a joint venture, consortium or association, all of the parties shall be jointly and severally liable to TMEA for the fulfilment of the provisions of this contract. The composition or constitution of the joint venture, consortium or association shall not be altered without the prior written consent of TMEA. Any alteration of the composition of the joint venture, consortium or association without prior written consent of TMEA shall be considered to be a breach of contract.

**26. Travel**

All authorized air travel must be economy class through the most direct and economical route.

**CONTRACT FOR CONSULTANCY SERVICES**

**Section 3 – The Services**

**TERMS OF REFERENCE**

**[Insert]**



## CONTRACT FOR CONSULTANCY SERVICES

### Section 4 – Special Conditions and Consultant’s Key Personnel

#### 1. Special conditions

The proposal-both technical and financial-submitted for this tender forms an integral part of this contract.

#### 2. Key Personnel

The following of the Consultant's Personnel cannot be substituted by the Consultant without TMEA's prior written consent:

[Insert]

## CONTRACT FOR CONSULTANCY SERVICES

### Section 5 – Fees

#### 1. Professional fees

| Consultant     | Fee rate per day (\$) | Maximum number of days | Total value (\$) |
|----------------|-----------------------|------------------------|------------------|
|                |                       |                        |                  |
| <b>TOTAL 1</b> |                       |                        |                  |

#### 2. Reimbursable expenses

| Item                     | Number | Cost (\$) | Total value (\$) |
|--------------------------|--------|-----------|------------------|
|                          |        |           |                  |
| <b>GRAND TOTAL (1+2)</b> |        |           |                  |

All expenses including accommodation must be supported by valid receipts which must be submitted with the relevant invoice. The only exception to this is the payment of subsistence allowances which are paid at TMEA standard rates and which do not need to be supported by receipts.

#### 3. Invoicing instructions

Invoices should be sent to [invoices@trademarkea.com](mailto:invoices@trademarkea.com) after the deliverables/milestones have been achieved and approved by TMEA and the recipient. The Invoices should clearly state the Contract Number (PO/XXX) and details of the Consultant's bank account to which TMEA shall transfer payments.

### **ANNEX 3: BID SUBMISSION FORM**

*[The Bidder shall fill in this Form in accordance with the instructions indicated No alterations to its format shall be permitted and no substitutions shall be accepted.]*

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

To: **TradeMark East Africa**

**2nd Floor, Equatorial Fidelity Centre**

**Waiyaki Way, Westlands**

**P.O. Box 313 00606**

**Nairobi, Kenya**

We, the undersigned, declare that:

(a) We have examined and have no reservations to the Bidding Documents;

(b) We offer to supply in conformity with the Bidding Documents and in accordance with the Delivery Schedules specified in the Schedule of Requirements the following Goods and Related Services *[insert a brief description of the Goods and Related Services]*;

(c) The total price of our Bid, including any discounts offered is: *[insert the total bid price in words and figures]*;

(d) Our bid shall be valid for the period of time specified in the ITT, from the date fixed for the bid submission deadline in accordance with the ITT, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

(e) If our bid is accepted, we commit to obtain a performance security for the due performance of the Contract;

(f) We have no conflict of interest;

(g) We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed.

(h) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.

**Signed:***[signature of person authorized by the Bidder to sign the bid submission form, and whose name and title are shown below]*

**Name:***[insert full name]*

**Title:***[insert official title]*

**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 4: FAIR PRICE DECLARATION FORM**

We/I [insert name of Supplier] hereby declare that the prices quoted in our financial proposal are in line with the market rates and/or the approved professional charges, are economical and have been arrived at independently and without consultation with any other supplier. We/I hereby give TradeMark East Africa authority to terminate the contract without further communication should they discover that we/I [insert name of Supplier] are/am in contravention of this declaration.

Name: .....

Designation: .....

Signature: .....

Date: .....

## ANNEX 5: TMEA CODE OF ETHICS

### TMEA CODE OF ETHICS

#### 1. Preamble

TradeMark East Africa's (TMEA) success depends on its reputation, integrity, openness and respect for others. The trust and confidence of those with whom we deal is therefore, essential. The protection of our reputation and relationships is of fundamental importance to our long term sustainability. We recognise our obligations to all those with whom we have a direct relationship such as, donors, staff, contractors and suppliers, the private sector in general, government, civil society and the wider community.

This document covers fraud and corruption in the use of funds for ineligible expenditures, as well as fraud and corruption engaged in for the purpose of influencing any decision as to the use of funds. All such fraud and corruption is deemed to occur "in connection with the use of TMEA funds". The recourse for funds mismanagement, where TMEA has sufficient evidence, shall lead to refund of monies by the beneficiary involved and prosecution by the authorities.

Gender mainstreaming also forms part of this document and it is obligatory for all partners to put gender equity issues practice rather than adopting a superficial approach. This will be through continuous assessment of the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels of the project.

Finally, all partners, consultants, contractors and stakeholders will sign the last page signifying they have read and understood this document, which is an integral part of the engagement/contract document with TMEA.

#### 2. Definitions

- A "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- A "fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- A "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- A "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party, and;
- An "obstructive practice" is;

- Deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
- Acts intended to materially impede the exercise of the Bank’s contractual rights of audit or access to information.
- “Gender mainstreaming” is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.
- A “recipient” is any individual, firm, organisation, NGO, PSO or CSO or any partner that works with TMEA and/ or receives TMEA funding either through a contract or a grant.

### 3. Code of ethics

#### (a) Relationship with stakeholders

TMEA’s reputation depends on the way in which we work. It is vital that our stakeholders have confidence in our competence and professional excellence. We will treat our stakeholders with respect, honesty and fairness.

Confidential information relating to our relationship with all stakeholders will be respected. We respect copyright and other intellectual property rights.

Where consultants and other third parties are contracted to perform duties by TMEA, they will be expected to act in accordance with this code. The obligation to comply with this document forms an integral part of the engagement we have with partners or consultants who are expected to append their signature, as a confirmation of commitment to adherence.

Decisions to hire a consultant or source materials from a particular vendor or supplier are made on the basis of objective criteria such as quality, reliability, technical excellence, price and service. Purchasing decisions must never be made on the basis of personal relationships or the opportunity for personal financial gain. The contractor undertakes to pay suppliers, subcontractors and agents in accordance with agreed terms.

The receipt of gifts or favours by recipients can give rise to embarrassing situations and may be seen as improper inducement. Gifts and favours must not be solicited. In the event that any offers of gifts or favours are received, it should be reported immediately using your organisation’s hierarchy.

The recipient shall not avoid tax. The recipient will record and report all transactions, including those where payment is made in cash. All taxable perquisites to which staffs are entitled will be listed and declared for tax purposes.

TMEA is committed to openness and transparency in communicating with stakeholders and seeks a constructive relationship the wider private sector/ civil society, the media, the government, non-governmental organisations and the general public.

**(b) Relationship with employees**

TMEA aims to provide a positive, responsible, open and exemplary working environment. Relationship with staff should be based on respect, dignity and fair treatment for all. We strive to maintain an environment that is based on merit and inclusiveness. The organisation will recruit and promote staff on the basis of their suitability for the job and organisation's needs without discrimination. Diversity of staff is central to our operations and we value it immensely.

TMEA expect staffs to conduct their business activities with colleagues and stakeholders with respect for all and with honesty and courtesy. We will not tolerate harassment or bullying of staff.

The recipient will explain the purpose of its activities and individual jobs, foster effective communication and involve employees in improving their work. As far as possible, it will provide staff with opportunities to enhance their skills and capabilities, enabling them to develop fulfilling careers and to maximise their contribution to the organisation.

The recipient, in recognition of the efforts of an individual, it will maintain an atmosphere of fair terms and conditions of employment and remuneration policies and structures.

The recipient's time, physical and intellectual property should be used for business purposes only. Electronic communication equipment and related services (including email, internet, bulletin boards, fax machines, file storage) must be protected from unauthorised external access or use. Under no circumstances should they be used for receiving illegal, offensive, obscene or otherwise inappropriate materials.

The recipient shall respect staff privacy. We will only collect and retain personal information that is required for effective operation of the organisation or as required by law. The information will be kept confidential and released only to those who have a legitimate need to know. Information received by staff in the course of business dealings may not be used for personal gain.

No staff may be involved in any activity for personal gain. Any personal interests or interests of a member of one's immediate family in relation to the organisation's business must be disclosed. Any perceived conflicts of interest should be discussed with the line manager and it is your responsibility to take action to declare and resolve any real or apparent conflict.

#### 4. Fraud and corruption

The recipient shall:

- (b) Take all appropriate measures to prevent corrupt, fraudulent, collusive, coercive and obstructive practices in connection with the use of TMEA funds, including (but not limited to):
  - adopting appropriate fiduciary and administrative practices and institutional arrangements to ensure that the funds are used only for the purposes for which they were intended, and;
  - ensuring that all of its representatives involved with the project, and all recipients of funds with which it enters into an agreement related to the Project, receive a copy of this document and are made aware of its contents;
- (c) Immediately report to TMEA any allegations of fraud and corruption;
- (d) Cooperate fully with representatives of TMEA or its appointed agent in any investigation into allegations of fraud and corruption. If TMEA determines that any person or entity referred to in 4.1 above has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, it may suspend further funding/disbursement/payment. Should investigations reveal that there was fraudulent activity, TMEA reserves the right to demand a refund and may terminate the agreement in place. TMEA may also hand over the reports from any investigations to proceed with prosecution;
- (e) Take all necessary and appropriate against any representative declared ineligible, as described in below, from duties and responsibilities;
  - If TMEA determines that a recipient is also a potential provider of goods, works or services, it shall declare the recipient ineligible;
  - TMEA shall declare a firm, consultant or individual ineligible under this code of ethics if such firm, consultant or individual has been declared ineligible under TMEA procurement guidelines or those of the respective government/partner or any other international organisation; and
- (f) Assist or enable TMEA obtain a refund of any resources (assets, monies, materials among other benefits) that have been used inappropriately funds including returning any unutilised funds especially where TMEA is not content with progress.

#### 5. Gender mainstreaming

The core guidelines for gender mainstreaming in TMEA funded projects shall be based on but not limited to the following:

- a. Issues across all areas of activity shall be defined in such a manner that gender differences are diagnosed;
- b. Responsibility for translating gender mainstreaming into practice is system- wide and rests at the highest level of the recipient organisation. Accountability for outcomes needs to be monitored continuously;
- c. Gender mainstreaming also requires that every effort be made to broaden equal participation at all levels of decision-making;



- d. Gender mainstreaming must be institutionalised through concrete steps, mechanisms and processes in all areas of TMEA funded projects;
- e. Gender mainstreaming does not replace the need for targeted, policies and programmes or positive legislation, nor does it substitute for gender units or focal points; and
- f. There shall be clear organisational will and the allocation of adequate human and financial resources for gender mainstreaming from all available funding for the successful translation of the concept into practice.

**6. Implementing and monitoring this document**

The recipient’s commitment to this document is essential to TMEA’s success and will be demonstrated through training, enforcement and accountability. Adherence to the provisions of this document is a condition of partnership.

Project Managers should ensure that all recipients receive guidance on this document and understand the values that underpin its usage. They should strive to create an environment that encourages open discussion about any concerns.

These document is a guide rather than an exhaustive description of the recipient’s ethics polices and standards. TMEA aims to create a culture in which it is normal for partners to ‘do the right thing’ and to voice genuinely held concerns about behaviour or decisions that they perceive to be unethical.

All recipients are required to sign an ‘Annual Certificate of Compliance’ stating that they have read this document and have taken all reasonable steps to ensure that they have conducted business responsibly and in compliance with applicable laws and regulations.

**7. Miscellaneous**

The provisions in this code do not limit any other rights, remedies or obligations of TMEA or the recipient under the Memorandum of Understanding/Agreement or any other document to which TMEA and the Partner are both parties.

**8. Commitment to the Code of Ethics**

I have read the code and hereby sign as an indication of commitment to ensuring the code is incorporated and adhered to.

Organisation’s name: \_\_\_\_\_  
 Title of Signatory: \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Date: \_\_\_\_\_

.....

**STAMP/SEAL**

**ANNEX 6: Financial Bid Submission Form**

**Financial Bid Submission Form**

Dear Sir/ Madam,

We, the undersigned, offer to supply the products and related services in accordance with your Request for Proposal dated [Insert Date] and our Technical Proposal.

Our attached Financial Proposal is for the amount of [Indicate the corresponding to the amount(s) currency (ies)] [Insert amount(s) in words and figures], including all applicable taxes in line with Clause 9 of this RFP tender document.

Our Financial Proposal shall be binding upon us subject to the modifications resulting from any contract negotiations, up to expiration of the validity period of the Proposal, up to 120 days after bid submission date, that is, [Insert Date].

We understand you are not bound to accept any Proposal you receive.

We remain,

Yours Sincerely,

Authorized Signature [In full and initials]: \_\_\_\_\_

Name and Title of Signatory: \_\_\_\_\_

In the capacity of: \_\_\_\_\_

Address: \_\_\_\_\_

E-mail: \_\_\_\_\_

[For a joint venture, either all members shall sign or only the lead member/ consultant, in which case the power of attorney to sign on behalf of all members shall be attached]