



COUR DE JUSTICE

محكمة العدل

COMESA



COURT OF JUSTICE

RE-ADVERTISEMENT

REQUEST FOR PROPOSALS

FOR CONSULTANCY SERVICES TO:

- 1. Review the Terms and Conditions of Service for Judges**
- 2. Develop a Policy for Review of Terms and Conditions of Service for Judges**

Introduction

1. The Court of Justice of the Common Market for Eastern and Southern Africa (COMESA Court of Justice) was established in 1994 under Article 7 of the COMESA Treaty (the Treaty) as one of the Organs of the Common Market. The Court is comprised of two Divisions, the Appellate Division with five Judges and the First Instance Division with seven Judges. Judges are drawn from twelve different Member States.
2. The Seat of the Court is currently in Khartoum, Sudan but pursuant to to Rule 4(1) of the Rules of Procedure (2016), the Court may hold its court sessions and exercise its functions in any Member State.
3. Article 41 of the Treaty provides that the day-to-day operations of the Court shall be coordinated through a Court Registry which is headed by a Registrar who is the Chief Executive Officer of the Court. The Registrar and other members of staff are permanent employees and are regulated through the Staff Rules and Regulations.

Background

4. Reference is made to the decision of the Eighteenth Meeting of the COMESA Ministers of Justice and Attorneys General held in Khartoum, Sudan on 04 March 2015 to the effect:

"that the terms and conditions of service of the COMESA Court of Justice Judges be reviewed holistically by the Council of Ministers."

5. Judges sit on an ad hoc basis and are not covered by the Staff Rules and Regulations of the Court. Currently, they only receive Letters of Appointment that contain their terms and conditions of service. There is, therefore, no policy document to make provision for:

- (i) a pension scheme or gratuity;
- (ii) medical insurance; and
- (iii) procedure for review of terms and conditions of service.

Consultancy Service/Activities

6. The COMESA Court of Justice now invites qualified firms to carry out the following activities:

1) Review the terms and conditions of service for Judges

While carrying out the assignment, the consultant is expected to undertake the following important activities:

- 1.1 Liaise with the office of the Registrar of the Court to understand and ascertain the details and aspirations of the Client;
- 1.2 Carry out a situational analysis (by considering the provisions of a typical appointment letter of a judge of the COMESA Court of Justice and studying other relevant documents) to understand the current status on:
 - (i) Remuneration including benefits and allowances;
 - (ii) Working conditions, locations and other related situations;
 - (iii) Legal and institutional framework;
 - (iv) Duties and responsibilities of each of the two levels of judges;
 - (v) Mode(s) of separation of a judge from his/her appointment;
 - (vi) Provisions for normal separation/retirement of a judge from service;
 - (vii) Provision for early separation of a judge (before expiry of tenure);
 - (viii) Retirement benefits and pension scheme(s);
 - (ix) Transportation and accommodation arrangements while on official duty; and
 - (x) Medical scheme and insurance including funeral insurance cover.

2) *Develop a draft policy document for review of terms and conditions of service for Judges*

While carrying out this assignment, the Consultant is expected to undertake the following important activities:

- (i) Identify stake holders to be involved in the review by studying the COMESA and COMESA Court of Justice organisational set-up in liaison with the office of the Court Registrar;
- (ii) Scrutinize the provisions of the COMESA Treaty and other related documents to establish if there is any hindrance to a periodical review of the terms and conditions and make suitable recommendation; and
- (iii) Assess and propose a suitable frequency of reviewing the terms and conditions of service.

Pertinent Issues in Carrying out the Consultancy

7. To carry out this assignment, the Consultant will be expected to consider the practice in other comparable Regional Courts and Tribunals especially the East African Court of Justice, the African Court on Human and Peoples' Rights, ECOWAS

Community Court of Justice and the practice at the African Union. The Consultant is also expected to:

- (i) Include a concise statement to demonstrate understanding of the assignment;
- (ii) Expand the scope of areas to be considered under activities as appropriate to facilitate comprehensive performance of the assignment;
- (iii) Outline the methodology to be applied in carrying out related tasks in the consultancy; and
- (iv) Outline a work plan for related activities with clear timelines for each activity culminating in the activity on the completion date.

Documentation

8. The Court of Justice will avail to the Consultant the following documentation among others that may be considered relevant or necessary:

- (i) The COMESA Treaty;
- (ii) The Report of the Eighteenth meeting of the COMESA Ministers of Justice and Attorneys General;
- (iii) The paper on gratuity presented by the Court to the COMESA Ministers of Justice and Attorneys General;
- (iv) The Report of the Twenty First Meeting of the Bureau of Council of Ministers;
- (v) Other relevant Council Report(s);
- (vi) COMESA Staff Rules and Regulations (Executive Management);
- (vii) COMESA Court of Justice Revised Staff Rules and Regulations (2008);
- (viii) COMESA Staff Rules and Regulations 2017;
- (ix) COMESA Competition Commission Executive Management Staff Rules (2018);
- (x) COMESA salary scales and allowances payable for all staff categories;
- (xi) Relevant COMESA Policies and Procedures available;
- (xii) Where available, the current Staff Rules and Regulations of sister RECs;

- (xiii) Copies of Letters of Appointment of the Judges; and
- (xiv) Where available, the remuneration packages for Judges of sister RECs.

Output / Deliverables

9. The Consultant will produce a report containing the following:

1) *draft revised terms and conditions of service for Judges* which should contain the following important elements with recommendations for each item:

- (i) Reviewed and proposed remuneration packages including allowances;
- (ii) The Consultant's view on current working conditions including location, *environment, equipment, office accommodation and related provisions* for the two levels of judges and proposed changes;
- (iii) Policy on retirement/separation, both mandatory and early/voluntary retirement/separation;
- (iv) Retirement benefits including pensions/gratuity; and
- (v) A comprehensive medical scheme including related insurance cover.

2) *a draft policy document outlining the procedure for review of terms and conditions of service for Judges* containing:

- (i) A platform for consultations with stakeholders;
- (ii) A standard period of review of terms and conditions; and
- (iii) A systematic approach in reviewing the terms and conditions in full consideration of the applicable legal and institutional frameworks.

Timelines

10. The report shall be submitted within three (3) months of being awarded the contract.

Pricing

11. All prices MUST be indicated in USD.

12. There will be a no price variation contract after signing of contract.

13. Prices must be exclusive of all taxes.

Validity of the Bid

14. The Bid shall be valid for a period of 120 days after the closing date of this tender.

Amendments of Proposal Documents

15. At any time prior to the deadline for submission of Bids, the Court may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Bidder, modify the Proposal Documents by issuing an addendum.

16. All addenda shall be posted on the COMESA Court of Justice website <http://comesacourt.org> and the COMESA website <http://www.comesa.int>. All Proposers wishing to be notified of any addenda should provide to the Court the proposer's name and email address.

17. In order to afford prospective Bidders reasonable time in which to take the amendments into account in preparing their offers, the Court may, at its discretion, extend the deadline for the submission of Proposals.

Format and Sealing of Bids

18. The bidder shall submit the proposal in **one external envelope containing inside two sealed envelopes** by the closing date set forth in paragraph No. 22 below to the following address.

Chairman - Procurement Committee
COMESA Secretariat
Ben Bella Road
P.O. Box 30051
Lusaka – Zambia

19. The outer envelope should be clearly marked in the top right-hand corner **“TERMS & CONDITIONS – RFP/CCJ/NO.1/2020 DO NOT OPEN BEFORE 16 JUNE 2020 AT 09.00 HOURS LUSAKA TIME”**.

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

20. This 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. The envelope containing the financial

proposal will ONLY be opened if the technical offer attains the pass score of seventy per cent (70%).

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

Deadline for Submission of Proposals

22. The deadline for the submission of proposals is **15 June 2020 at 17.00 Hours Lusaka Time**. The tenders will be opened immediately thereafter in the presence of bidders' representatives who choose to attend.

Late Tenders

23. Any Tender received by the Court after the deadline for submission of Bids shall be rejected. There shall be no exception to this requirement.

Evaluation and Comparison of Proposals

24. To assist in the examination, evaluation and comparison of Bids, the Court may ask the Bidder for clarification of its Bid. The request for clarification and the response shall be in writing and no change in price or substance of the Proposal shall be sought, offered or permitted.

25. The Court will examine the Proposals to determine whether they are complete, whether any computational errors have been made, whether the documents have been properly signed, and whether the Proposals are generally in order.

26. Arithmetical errors will be rectified on the following basis: If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected. If the Bidder does not accept the correction of errors, its Proposal will be rejected. If there is a discrepancy between words and figures, the amount in words will prevail.

27. Prior to the detailed evaluation, the Procurement Committee will determine the substantial responsiveness of each Proposal to the Request for Proposals (RFP). For purposes of these Clauses, a substantially responsive Proposal is one, which conforms to all the terms and conditions of the RFP without material deviations. The Court's determination of a Proposal's responsiveness is based on the contents of the Proposal itself without recourse to extrinsic evidence.

28. A Proposal determined as not substantially responsive will be rejected by the Court and may not subsequently be made responsive by the Bidder by correction of the non-conformity.

29. The bids will be evaluated as follows:

- The envelopes containing the sealed technical and financial offers will be opened.
- The envelope marked "TECHNICAL PROPOSAL" will be opened and the technical proposal will be evaluated.
- If the technical proposal is evaluated as 70 per cent or above, the envelope marked "FINANCIAL PROPOSAL" will be opened.
- The Bidder that has offered what is adjudged to be the best technical and financial offer will be offered the contract.

If the Bidder that offered what was adjudged to be the best technical and financial offer declines to accept the offer, then the Bidder that is adjudged to have offered the second best technical and financial offer will be offered the contract.

30. The bids shall be evaluated based on technical evaluation (with weight of 80%) and financial evaluation (with weight of 20%). Technical bids shall be evaluated based on the following criteria;

Table 1: Criteria for Overall Technical Evaluation

Understanding of the TORs	10%
Specific experience of firm in relation to the assignment	30%
Adequacy of the proposed methodology and work plan in responding to the TOR	35%
Competence of the proposed Team for the assignment	25%

31. The Court does not bind itself to accept any bid and reserves the right to accept the whole or partially any of the submitted bids and/or cancel the tender prior to contract award.

Technical Queries

32. For any technical queries related to terms of reference, kindly contact the Procurement Committee on the following email: SKayama@comesa.int with a copy to SMwesigwa@comesa.int.

33. All queries must be made in writing. Bidders wishing to receive clarifications should register using the above address.

Cost of Tendering

34. The tenderer shall bear all costs associated with the preparation and submission of its tender, and Court will in no case be responsible or liable for those costs regardless of the outcome of the tendering process.

Ethical Conduct

35. The Court requires that Tenderers observe the highest standard of ethics during the selection and execution of such contracts. For this provision, the Court defines the terms set forth below as follows:

- a) "Corrupt practice" means the offering, giving, receiving, or soliciting of anything of value to influence the action of an officer of the Purchaser in the tendering process; and
- b) "Fraudulent practice" means a misrepresentation of facts to influence the tendering process to the detriment of the Court.

36. The Court will reject a proposal for award if it determines that a Tenderer has engaged in corrupt or fraudulent activities in competing for the contract in question.

Notification of Award

37. Prior to the expiration of the period of tender validity, the Court will notify the successful tenderer in writing that its tender has been accepted.

38. The notification of award will signify the formation of the contract subject to the signings of the contract between the tenderer and the Court.

39. Simultaneously the other tenderers shall be notified that their tenders were not successful.

Signing of Contract

40. Within fourteen (14) days of receipt of the contract, the successful tenderer shall sign and date the contract and return it to the Court.

41. The Parties to the contract shall have it signed within thirty (30) days from the date of notification of contract award unless there is an administrative review request.

Mandatory Requirements

42. To be considered responsive and to qualify for the technical evaluation stage, the tenderer must furnish the following information:

- a) *Copy of a valid certificate of registration/incorporation.*
- b) *Signed CVs of the proposed team for the assignment. The assignment requires a consultant with a minimum of Masters Degree in Human Resource Management and 10 years' experience in similar assignments. A Bachelor of Laws (LLB) degree and/or a legal background will be an added advantage.*
- c) *Evidence of major reference clients for similar assignments (at least 2 clients – attach confirmation letters).*
- d) *Power of Attorney in case of a joint venture.*
- e) *Must submit two (2) copies of the tender document (original and copy).*