

Terms of reference (ToR) for the procurement of services up to the value of EUR 20,000



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General information

a. Brief information on the project

The African Continental Free Trade Area (AfCFTA) is one of the flagship projects identified under the Agenda 2063 of the African Union Commission (AUC). AfCFTA is an initiative for free movement of goods and services in the continent through gradual elimination of tariff and non-tariff barriers to Trade in Goods (TiG) and successive liberalization of Trade in Services (TiS). In order to facilitate the trading system, AfCFTA ensures that all trade related issues are covered, and the necessary institutional and legal frameworks are realized. AfCFTA assists State Parties to improve competitiveness of their industries, to exploit economies of scale and to create value chains within Africa which in turn contribute to economic growth and creation of jobs. The bigger market has also the potential to attract huge investment from the rest of the world in value adding sectors.

African Union Heads of State and Government decided to fast-track the establishment of the Continental Free Trade Area (CFTA) in January 2012. The negotiations were launched in 2015 in Johannesburg, South Africa, with the adoption of decisions on the scope and sequencing of the negotiations. Agreement was reached to conduct the negotiation in two phases: covering the Framework Agreement and protocols on Trade in Goods (TiG), on Trade in Service (TiS) and Protocol on Rules and Procedures for the Settlement of Disputes in Phase I, while leaving protocols on investment, on competition policy, and on intellectual property rights (IPRs) to Phase II. Phase II negotiation intends to promote intra-African investment, address anti-competitive practices and allow redefining of trade related aspects of Intellectual Property Rights (IPRs) in the context of African countries. In February 2020, the AU Assembly of Heads of State and Government, adopted a decision to negotiate Phase III on E-Commerce.

The Agreement Establishing the AfCFTA was signed in March 2018 in Kigali together with the Kigali Declaration. As of September 2021, all AU member states, except one, have signed the Agreement Establishing the AfCFTA of which 39 member states have deposited their instrument of ratification with the depositary. The AfCFTA has started operation since 1st January 2021 and the newly established AfCFTA Secretariat in Ghana is given the responsibility of supporting implementation of the AfCFTA.

The Federal Government of Germany has been supporting the AfCFTA initiative since end of 2015. The first phase of the GIZ programme, *Project Support to AfCFTA*, supported the African Union Commission (AUC) through financial and technical assistance. The second phase, *Programme Support to AfCFTA*, started operation in August 2020 with a total budget of EUR 18.5M. The programme will be implemented for 2.5 years with the aim of strengthening the framework conditions to realize the African Continental Free Trade Area at continental, regional and national levels. The support is framed under 5 thematic areas, which encompass: strengthening the steering and coordination capacities of AfCFTA negotiation and implementation; facilitating the Trade in Services (TiS) negotiations; supporting implementation of obligations under Trade in Goods (TiG); supporting preparation for the second phase of negotiations; and promoting socially, ecologically and economically sustainable realisation of AfCFTA.

b. Context

Ethiopia ratified AfCFTA in March 2019 and the country is also preparing the required documents such as offers for trade in goods and trade in services while closely consulting with the relevant stakeholders at the national level. At the same time, preparation is vital for the second phase of the negotiation and implementation of commitments under AfCFTA.

Ethiopia is among the eight countries getting support from Programme Support to AfCFTA at national level. GIZ is collaborating with Ministry of Trade and Industry (MoTI) to support the country's effort to effectively participate in the AfCFTA market.

- c. GIZ shall hire the contractor for the anticipated contract term, from 1st of December 2021 to 28th of February 2022.
- d. The contractor shall prepare a position paper for Ethiopia on the Protocol on Competition Policy for the second phase of AfCFTA negotiation.

The contractor shall, working closely with the Ethiopian Ministry of Trade and Industry (MOTI), prepare a report on Ethiopia's preferences, options and strategies in the AfCFTA negotiations towards a new protocol on competition policy. The report shall outline different negotiations scenarios and options, describe the strengths and weaknesses of each, present proposals under different scenarios in order of preference, and submit strategies on how to achieve the position that may be adopted by Ethiopia afterwards.

The specific responsibilities of the short-term consultant include:

- Map out the organizations to be consulted in the preparation of the report;
- Develop an inception report that contains the rationale, objective and scope of the study, as well as the methodology to be used and an action plan for the study;
- Review relevant rules and regulations and the institutional framework within which anti-competitive practices are regulated in Ethiopia;
- Identify potential anti-competitive practices that could affect Ethiopia as a result of joining the AfCFTA;
- Identify and assess the major approaches to competition regulation in regional trade agreements (RTAs) around the world, including African RECs, distill best practices, and examine their relevance and applicability to the AfCFTA context;
- Based on the above assessment, identify issues of particular interest to competition regulation for Ethiopia that fall under the scope of the future AfCFTA protocol on competition, propose options and strategies that Ethiopia may pursue in all aspects of the negotiations, including issues to be covered, institutional structures, level of cooperation, methods of enforcement, consumer protection, and similar issues; and
- Provide detailed justification for each proposed option and strategy along with an assessment of the strengths and weaknesses of each, and a ranking of the options according to the relative strength of the different options and strategies.
- In responding to the above, the report is expected to cover, among others:
 - the objectives, approaches and broad outlines that an AfCFTA Protocol on Competition Policy should adopt and why, including the important topics that the Protocol should cover in order to facilitate cooperation on competition policy among African countries;
 - an analysis of the institutional options to manage differences, including mechanisms of cooperation and dispute settlement;
 - a detailed exposition of Ethiopia's preferences, options and strategies in the AfCFTA negotiations towards a new protocol on competition policy, along with an outline of different negotiations scenarios and options, the strengths and weaknesses of each, proposals under each of those scenarios in order of preference, and strategies on how to achieve the position that may be adopted by Ethiopia;
 - what interests Ethiopia should aim to advance through the negotiations on competition policy (its offensive interests), what it should aim to protect from these negotiations, such as the level of policy space Ethiopia should reserve to protect its national interest (defensive interests), and whether or to what extent Ethiopia may wish to seek exemptions or waivers from certain obligations or demand transition periods for the implementation of obligations; and
 - how Ethiopia should prepare for the nature and level of cooperation envisaged between national competition institutions, on the one hand, and continental competition institutions, on the other.

Deliverables

- an inception report
- a first draft of the complete report covering all the components listed or otherwise implied in this ToR;

- a presentation of the findings of the study at a validation workshop to be organized for the purpose and/or a presentation of the revised report at the National Technical Committee for AfCFTA negotiations; and
- incorporate feedback and comments and submit final report in electronic form.

Tender requirements

1. Qualifications of proposed staff

1.1 Expert 1:

1.1.1 General qualifications

- Masters or Ph.D. degree in international trade law, international trade economics, or international development as the main area of specialization
- Substantive experience in policy making, negotiation and implementation on competition-related topics
- Have extensive knowledge of international trade agreements like WTO and regional agreements with specialization in competition policy;
- Have experience in conducting gap assessment and developing policy recommendations or position papers in the field of international trade and negotiations;
- Good knowledge of the functioning of the trade sector and management of anti-competitive practices in Ethiopia.

1.1.2 Experience in the region/knowledge of the country

- Experience working with national, regional or international institutions in the field of international trade and competition policy related topics is an advantage.

1.1.3 Language skills: : business fluency in English language

2. Specification of inputs

| Fee days | Number of experts | Number of days per expert | Comments |
|--|-------------------|-----------------------------------|----------|
| • Preparation/debriefing | 1 | 1 | |
| • Implementation | 1 | 74 | |
| Travel expenses | Number of experts | Number of days/nights per experts | Comments |
| • Per-diem allowance in country of assignment | N/A | N/A | |
| • Overnight allowance in country of assignment | N/A | N/A | |
| • Travel costs (train, private vehicle) | N/A | N/A | |

| Flights | Number of experts | Number of flights per experts | Comments |
|-------------------------|--------------------------|--------------------------------------|-----------------|
| • International flights | N/A | N/A | |
| • Domestic flights | | | |
| Other costs | Number of experts | Amount per experts | Comments |
| N/A | | | |

Note:

If restrictions are introduced to combat coronavirus/COVID-19 (restrictions on air travel and travel in general, entry restrictions, quarantine measures, etc.), GIZ and the contractor are obliged to make adjustments to their contractual services to reflect the changed circumstances on the basis of good faith; this may involve changes to the service delivery period, the services to be delivered and, if necessary, to the remuneration.