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ETHIOPIA

TERMS OF REFERENCE (TOR) for Training for Legal Drafters

GENERAL INFORMATION

Services/Work Description: Prepare a training manual and conduct training for legal drafters

Project Title: Accelerating the Ratification and Domestication of AU Treaties

Duty Station: Home-based with possible field missions in targeted countries

Type of the Contract: International Firm

Duration: 90 working days

Expected Start Date: Immediately after the contract is signed

PREFACE

Africa is facing complex challenges related to respect for human rights, the rule of law and governance that hinder the attainment of sustainable development. While these challenges may be of different nature, they are all interlinked, hence the need for regional approaches and solutions. The African Union (AU) intends to address the root causes of underdevelopment in the continent through its Agenda 2063. Implementation of normative frameworks is critical for the achievement of the Agenda 2063 aspirations and the United Nations (UN) Agenda 2030 for sustainable development.

I. BACKGROUND

The UNDP Regional Service Centre for Africa, based in Addis Ababa, Ethiopia, serves UNDP's 45 Country Offices in sub-Saharan Africa, develops high quality knowledge and policy products and is the organization's main interface with regional and continental bodies such as the African Union and the Regional Economic Communities. It provides strategic policy and technical support to UNDP country offices in the region and also implements UNDP's Regional Programme for Africa.

The joint AU-UNDP project, "Accelerating the Ratification and Domestication of African Union Treaties", is a 3-year multi-country and regional initiative. This project is part of and anchored in UNDP's Regional Programme for Africa; it will contribute directly to Outcome 1: African Union and RECs deliver on their mandate, especially cross-cutting issues related to resilience-building.

The project is designed to address the challenges and bottlenecks associated with ratification and domestication, and to help enhance the capacity of the AU over the medium to long-term to be able to manage the ratification process, and to provide tailored support to Member States with domestication-related challenges. It is anchored on a multi-dimensional approach to development, which draws upon the inherent link between peace, security and economic development; it is, furthermore, designed further the achievement of Agenda 2063, 2030 Agenda for Sustainable Development, and the Post-2015 SDGs.

A variety of challenges hinder ratification and domestication of AU treaties at the state level.

- First, capacity within government entities may be lacking as treaty domestication and implementation requires a combination of legal skills as well as sufficient understanding of regional institutions and the substantive area in question, which line ministries may simply not possess; lack of capacity is, furthermore, compounded by the absence of a strategic approach to treaty implementation, insufficient funding allocation, and poor or absent mainstreaming of regional integration across work-streams.
- Second, due to the lack of common standards for ratification and domestication – as a result of the varying constitutional, legislative, and legal methods as outlined above – the processes for ensuring national-level compliance can be difficult to disentangle; often laws may require adaptation, modification or harmonization in order for the country in question to be in conformity with the respective treaty, which can prove to be a complex task.
- Third, bureaucratic processes for translating treaties at the regional-level into domestic laws and policies can be lengthy and cumbersome, leading to significant ‘red tape’¹ and unnecessary delays in implementation; additional challenges can arise when there is insufficient coordination between different branches of government.
- Fourth, the domestication of treaties requires cross-ministerial working methodologies, which many Member States simply do not currently engage in. Fifth, an additional challenge is often political will, not least given the competing and often pressing priorities that governments in the region must confront at any given time. And, lastly, AU treaties suffer due to a lack of champions for AU-related work at the national level.

UNDP is therefore seeking an institution to engage in an extensive capacity-building for legal drafters at the national level/RECs/AUC to ensure they have the skills and knowledge to be able to navigate the complexities of bureaucracy to support effective ratification and domestication of treaties. This training programme will assist participants to better understand the processes of ratification and domestication, thereby accelerating both processes.

II. RATIONALE

The African Union (AU) provides an institutional framework for advancing the achievement of development-related goals across the continent. AU treaties, moreover, provide the normative and legal mechanism through which Member States can foster greater political and economic integration, while simultaneously catalyzing enhanced peace and security, poverty reduction and Sustainable Development Goals (SDGs). Since the creation of the Organization of African Unity (OAU) in 1963 and the AU in 2001, Member States have adopted a total of Sixty -Four (64)

¹ <http://www.au.int/en/newsevents/13144/regional-workshop-ratification-and-domestication-oauau-treaties-direct-relevance>

treaties.

Despite broad recognition of the benefits that can be accrued to the AU and its Member States through the implementation of these treaties, the average percentage of signature and ratification by Member States is 52% and 34%, respectively². Furthermore, the general public's awareness and understanding of the role of the AU in terms of creating norms, furthering development, promoting peace and security remains extremely low.

The slow pace of ratification is also a concern for the AU leadership, which continues to urge Member States to make greater efforts towards increasing ratification of all its treaties. At the Experts Meetings on the 'Review of the OAU/AU Treaties in 2004, the Chairperson of the AU Commission (AUC) stated that "the slow pace of signature and ratification of these treaties by Member States is worrisome, bearing in mind the process of integration that the Member States had embarked on." Effective ratification and implementation of AU treaties is critical if they are to have an impact on national policy-making; they are also essential for the AU to achieve its vision of a peaceful, prosperous and integrated continent as articulated in the AU's Agenda 2063.

III. OBJECTIVES

The overall objective of this consultancy is to deliver on Output 1. 4 (Training programme for Member States on legal drafting developed and implemented) and Output 3.4 (National legal staff engage in extensive training programmes) of the project by developing training materials and delivering training to legal drafters in member states/RECs/OLC.

IV. SCOPE OF THE SERVICE / WORK

The firm will provide a team composed of one Principal Expert (1) and two others capable of developing training manuals and conducting training for legal experts. The team will be responsible for preparing a training manual for legal drafters (taking into account steps in the treaty making process – including domestication) use same manual to train legal drafters drawn from the 6 countries of the project, RECs and OLC.

IV. EXPECTED OUTPUTS / DELIVERABLES

The Firm is expected to deliver a high quality but simple to use training manual for legal drafters useful to member states, RECs and the AU in accelerating ratification and domestication of AU Treaties. In addition to developing the manual, the firm is expected to use the same manual to conduct training for legal drafts.

V. METHODOLOGY / APPROACH OF THE SERVICE (WORK)

² Calculation excludes treaties that do not require signature or ratification. Three treaties do not require signature; Phyto-Sanitary Convention for Africa (0002), Cultural Charter for Africa (0008), Additional Protocol to The OAU General Convention on Privileges and Immunities (0010). The Statute of The African Union Commission on International Law (AUCIL) (0036) does not require signature or ratification and came into effect upon adoption.

The Firm will work together in close communication with the team at the UNDP RSCA as well as the OLC/RECs member states to prepare the manual and conduct the training.

VI. LOCATION, DURATION AND TIMEFRAME OF THE WORK /DELIVERABLES/OUTPUT

This consultancy assignment will be home-based with a field trip to the AU (OLC) for a total of 90 working days. The firm will be responsible for providing the team with the necessary materials required to execute the deliverables and outputs stated.

No.	Deliverables	Implementing Partners (IP)	Location and Action to be Undertaken	Duration (approx.)
1	Training manual for legal drafters	UNDP	Home-based	82
2	Training of trainers	UNDP	TBD	5
3	Training of legal drafters	UNDP	TBD	3
Total Working Days				90 working days

VII. INSTITUTIONAL ARRANGEMENT / REPORTING RELATIONSHIPS

The team will report directly to the Programme Manager but will work closely with the project team at the RSCA and AU-OLC. The firm will update and get feedback from the Programme Manager on a regular basis and will also be required to report with expected agreed upon outputs.

VIII. PAYMENT MILESTONES AND AUTHORITY

Prospective Service Provider will indicate the cost of services for each deliverable in US dollars when applying for this consultancy. The Proposer will be paid based on the effective UN exchange rate (in case of other currency denomination), and only after approving authority confirms the successful completion of each deliverable as stipulated hereunder. In accordance with UNDP rules, the lump sum contract amount to be offered should consider the professional fee inclusive of travel, living allowances, communications, taxes, out of pocket expenses, and other ancillary costs.

A winning Proposer shall then be paid the lump sum contract amount upon certification of the completed tasks satisfactorily, as per the following payment schedule:

Installment of Payment/ Period	Deliverables or Documents to be Delivered	Approval should be obtained from:	Percentage of Payment
1st Installment	Final version of the training manual	Project Manager	50%

Installment of Payment/ Period	Deliverables or Documents to be Delivered	Approval should be obtained from:	Percentage of Payment
2nd Installment	Training of Trainers/training of legal drafters	Project Manager	30%
3 rd Installment	Submission of final report on the consultancy	Project Manager	20%

IX. MINIMUM ORGANIZATION AND CONSULTANCY TASK FORCE REQUIREMENTS

The prospective Service Provider is expected to meet the following minimum requirements:

The firm should be an independent legal or legislative institution that provides researches and training legislative and legal issues in Africa. The firm should have 10 years' experience on legal affairs issues in Africa. The prospective Service Provider is expected to have a pull of experts in the areas of democratic governance and rule of law in Africa. Other requirements include:

- Capability to deploy strong analytical, drafting and presentation expertise
- Capability to deploy good communication expertise in English, French and Portuguese
- It shall demonstrate its capabilities, understanding of the ToR, and methodology
- Experience working with the AU considered as an added advantage.

The team should comprise of one team leader and two experts with the following educational qualifications; experience and competencies:

Principal Expert (1)

Academic Qualification

PhD in Law, Political, Social or Human Sciences, Governance, International Relations/Affairs, Development Management, African studies, Public Administration, or any related field is required.

Experience

Proven experience in law and legislative matters, political and social sciences, governance, human rights in Africa is necessary, with at least 15 years of proven research, policy or teaching on key areas of political, governance, conflict, social, human rights and peace building issues. An excellent track record of publications in the area of political and socio-economic development, governance, human rights, peace and security and related issues on Africa is required

Competencies: Highly developed communication skills, including ability to draft/edit texts and to articulate ideas in a clear, concise style to a variety of audiences, as well as facilitation skills;

Languages: Knowledge in one of the working languages of the UN Secretariat is required. For this position fluency in oral and written English is required and knowledge of French and Portuguese would be an advantage.

Researchers (2)

Academic Qualification

Advanced Degree (MA) Social or Human Sciences, Law, International Relations/Affairs, Development Management, African studies, Community Development, Public Administration, or any related field is required.

Experience: Proven experience in political and social sciences, peace and security, governance, human rights in Africa is necessary, with at least 10 years of proven research, policy or teaching on key areas of political, governance, conflict, social, human rights and peace building issues.

Competencies: Highly developed communication skills, including ability to draft/edit texts and to articulate ideas in a clear, concise style to a variety of audiences, as well as facilitation skills;

Languages: Knowledge in one of the working languages of the UN Secretariat is required. For this position fluency in oral and written English is required and knowledge of French or Portuguese would be an advantage.

X. CRITERIA FOR SELECTING THE BEST OFFER

Upon the advertisement of the Procurement Notice, qualified Consultancy Firm is expected to submit both the Technical and Financial Proposals. Accordingly; the Firm will be evaluated based on Cumulative Analysis as per the following conditions:

- Responsive/compliant/acceptable as per the Instruction to Bidders (ITB) of the Standard Bid Document (SBD), and
- Having received the highest score out of a pre-determined set of weighted technical and financial criteria specific to the solicitation. In this regard, the respective weights of the proposals are:
 - a. Technical Criteria weight is 70%
 - b. Financial Criteria weight is 30%

SUMMARY OF TECHNICAL POINTS

Summary of Technical Proposal Evaluation Forms		Score Weight	Points Obtainable
1	Expertise of Firm / Organization	30%	300

2	Proposed Methodology, Approach and Implementation Plan	40%	400
3	Management Structure and Key Personnel	30%	300
	T O T A L	100%	1000

Technical Proposal Evaluation (FORM I)		
Expertise of the Firm / Organization		Points Obtainable
1.1	Reputation of Organization and Staff / Credibility / Reliability / Industry Standing	50
1.2	General Organizational Capability which is likely to affect implementation <ul style="list-style-type: none"> - Financial Stability - Loose consortium, Holding company or One firm - Age/size of the firm - Strength of the Project Management Support - Project Financing Capacity - Project Management Control 	90
1.3	Extent to which any work would be subcontracted (subcontracting carries additional risks which may affect project implementation, but properly done it offers a chance to access specialized skills.)	15
1.4	Quality assurance procedure, warranty	25
1.5	Relevance of: <ul style="list-style-type: none"> - Specialized Knowledge - Experience on Similar Programme / Projects - Experience on Projects in the Region - Work for UNDP/ major multilateral/ or bilateral programmes 	120

	S U B T O T A L	300
Technical Proposal Evaluation (FORM II)		
Proposed Methodology, Approach and Implementation Plan		
2.1	To what degree does the Proposer understand the task?	30
2.2	Have the important aspects of the task been addressed in sufficient detail?	25
2.3	Are the different components of the project adequately weighted relative to one another?	20
2.4	Is the proposal based on a survey of the project environment and was this data input properly used in the preparation of the proposal?	55
2.5	Is the conceptual framework adopted appropriate for the task?	65
2.6	Is the scope of task well defined and does it correspond to the TOR?	120
2.7	Is the presentation clear and is the sequence of activities and the planning logical, realistic and promise efficient implementation to the project?	85
S U B T O T A L		400
Technical Proposal Evaluation (FORM III)		
Management Structure and Key Personnel		
3.1	Task Manager / Team Leader	
	General Qualification	
	Suitability for the Project	
	- International experience	25
	- Training experience	20
	- Professional experience in the area of specialization	45
	- Knowledge of region	30

	- Language qualification	20
SUB TOTAL		140
3.2	Senior Expert / Lead Consultant	
	General Qualification	
	Suitability for the project	
	- International experience	15
	- Training experience	15
	- Professional experience in the area of specialization	45
	- Knowledge of the region	25
	- Language qualification	20
SUB TOTAL		120
3.3	Junior Expert / Associate Consultant	
	General Qualification	
	Suitability for the project	
	- International experience	5
	- Training experience	5
	- Professional experience in the area of specialization	10
	- Knowledge of the region	10
	- Language qualification	10
SUB TOTAL		40
	Aggregate	1000

XI. LOGISTICAL SUPPORT

The firm is responsible for any logistical support required for the assignment.

XII. RECOMMENDED PRESENTATION OF TECHNICAL PROPOSAL

For purposes of generating proposals whose contents are uniformly presented and to facilitate their comparative review, a Service Provider advised to use a proposed Table of Contents. Hence, your Technical Proposal document must have at least the preferred content as outlined in the respective RFP Proposal Submission Form.

XIII. CONFIDENTIALITY AND PROPRIETARY INTERESTS

The consultants shall not either during the term or after termination of the assignment, disclose any proprietary or confidential information related to the consultancy or the Government without prior written consent. Proprietary interests on all materials and documents prepared by the consultants under the assignment shall become and remain properties of UNDP. This assignment will be administrated by UNDP, and all relevant UNDP rules, policies and procedures will apply.

XIV. ANNEXES TO THE TOR

ANNEX 1 –Financial Proposal Form

ANNEX 2-P11 Form