



JAMAICA FOUNDATIONS FOR COMPETITIVENESS AND GROWTH PROJECT

Loan No.:9203-JM – Component 1

Assignment Title: Proposals to Inform the Cabinet Submission & Proposed Drafting Instructions for the Repeal & Replacement of the Trade Act, 1955

Reference No. (as per Procurement Plan): FCG/AF/CON/30

Terms of Reference

1. BACKGROUND

Since the passing of the Trade Act in 1955, the most significant and far-reaching change in the global trading environment was the creation of the World Trade Organization (WTO) in 1995. The WTO is the only global international organization responsible for monitoring and regulating the rules of trade among nations. Jamaica has been a Member of the WTO since 9 March 1995. Forming the heart of the WTO are agreements negotiated by the bulk of the world's trading nations and approved by their legislatures. The goal is to help producers of goods and services, exporters, and importers conduct their businesses in a 'liberalized' and 'free trading' environment. More than ever, the international trading environment has become dynamic and challenging in light of bilateral, regional and international trade agreements that exist. This has resulted in the reduction of non-tariff barriers, providing interlocking frameworks of laws, regulations and policies as standards to which nations and by extension businesses and individuals within these nations must conform.

The Trade Act, 1955 was enacted in Jamaica primarily for the establishment of a Prices Commission, the core mandate of which was to protect the interests of consumers. At its inception, the main emphasis of the Prices Commission, as part of its consumer protection mandate, was that of price control, regulating the prices at which goods were sold, by setting and rigorously monitoring the prices in consumer outlets. Eventually, the Prices Commission became the Consumer Affairs Commission, acquiring its own legislation being the Consumer Protection Act but nonetheless, the Trade Act remained unchanged. The changes brought about by the liberalization of the international trading system, allied to the rapid pace of globalization, requires that Jamaican laws substantially adjust to a modern approach to trade and international best practices. In its current form, the Trade Act does not do so, presenting the need for an overarching repeal and replacement.

It is envisaged that the new Trade Act will contain provisions that support a trading environment that is aligned to Trade Facilitation measures. These measures should be geared towards a legislative and regulatory framework aimed at facilitating ease, predictability and transparency when trading in goods, trading in services and services associated with trading in goods. Unlike the Trade Act which focuses solely on trade in goods, the new Trade Act is expected to include a regulatory environment for trading in services. Jamaica's Ministry of

Foreign Affairs and Foreign Trade reported that since 2015, 35.7% of Jamaica's GDP is related to trade in services. This represents a very high percentage of trade volume for Jamaica. As such, a new Trade Act is expected to capture such provisions that deal with any gaps that currently exist in Jamaica's legal and regulatory environment as it relates to restricting and/or impeding trade in services. Trade Facilitation remains a very high priority for the Government of Jamaica.

Agriculture remains an important staple in the Jamaican economy. The Ministry of Agriculture & Fisheries in Jamaica has been charged with the responsibility of driving the integration of the production of primary agricultural produce along all the stages of the supply chain through to value -added; and facilitating full commercialization of outputs of the agriculture, manufacturing and service sectors. To this extent, it is expected that the new Trade Act will contain provisions that support these initiatives particularly as it relates to Trade and Agriculture and agricultural and agricultural-based exports.

The Trade Board Limited (TBL) is spearheaded by a Trade Administrator. The Trade Administrator's authority to issue import licences lies within the Trade Act. It is expected that the new Trade Act will contain provisions that regulate the office of the Trade Administrator and the general appointment of other officers and servants of the TBL, for example, the appointment of its Chairman, Board of Directors and Deputy Trade Administrator. The new Trade Act should also include content specifically targeting the current operational and functional aspects of the TBL. This includes for example the TBL's operation of the Jamaica Trade Information Portal; the TBL being the certifying body for Rules of Origin for the majority of Trade Agreements and Trade arrangement that Jamaica is a party to; and the TBL being the competent body in Jamaica for the certification and recertification of motor vehicle dealers.

Project Execution

The Government of Jamaica has secured a US\$50 Million loan from the World Bank to finance a project entitled Foundations for Competitiveness and Growth (FCG). The overall objective of the project is to strengthen the business environment in Jamaica for private sector investment. In 2020, an additional US\$15 Million was secured through joint financing between the Government of Jamaica and World Bank loan funds.

The Project Execution Agency is the Planning Institute of Jamaica with key Project Components to be implemented by Jamaica Promotions Corporation (JAMPRO) and the Development Bank of Jamaica (DBJ). JAMPRO requested assistance under Component 1 of the FCG Project to undertake Phases 2 and 3 of the National Business Portal Project. Phase 2 included the Re-engineering of Targeted Investment Processes to be accessed through an online platform and Phase 3 is the build-out of the transactional online platform. Plans are also in place for the implementation of a Phase 4, which will see the reengineering and integration of additional Government to Business transactions on the Portal.

This request is consistent with the FCG Project Appraisal Document (PAD) where provisions are made for technical assistance and implementation support to address critical business

regulation and procedural issues that constrain firm entry, operation and expansion, competition, trade and logistics.

2. PURPOSE OF THE CONSULTANCY

The FCG Project Development Objective of which this contract will form a part is, “*To strengthen the business environment in Jamaica for private investment*”.

The purpose of this consultancy is to provide technical assistance to the Ministry of Industry, Investment & Commerce in the development of proposals to inform the Cabinet Submission & the proposed drafting instructions to repeal and replace The Trade Act, 1955 and all relevant ancillary Regulations.

3. OBJECTIVES OF THE ASSIGNMENT

The main objectives of this assignment are as follows:

- i. Concept Paper outlining the key areas to be addressed in the in New Trade Act and Regulations to replace and repeal the Trade Act, 1955 and ancillary regulations;
- ii. Proposals to inform the Cabinet Submission and proposed Drafting Instructions for the repeal and replacement of the Trade Act, 1955 and ancillary regulations;
- iii. Accompanying Explanatory Notes which includes the rationale for the proposals and international best practices in relation to same to be used as a guide for understanding and explaining the considerations informing the proposals for the Cabinet submission and proposed Drafting Instructions; and
- iv. Consultation and sensitization of Stakeholders in relation to the proposals to inform the Cabinet Submission and proposed Drafting Instructions.

4. SCOPE OF SERVICES

The scope of work for the assignment is understood to cover all activities necessary to accomplish the stated Objectives of the Assignment, whether or not a specific activity is cited in these terms of reference. The services of a Firm or a team of Consultants will be engaged to:

- i. Participate in an Inception Meeting with representatives of the Ministry of Industry, Investment & Commerce and The Trade Board Limited on the objectives, activities, expected outputs, projected timelines and any other issues related to the execution of the Consultancy that requires clarification.
- ii. Review the Trade Act, 1955 and all the ancillary Regulations.
- iii. Review all relevant policies, reports and laws in Jamaica that are affiliated with trade in Jamaica.
- iv. Review and assess laws dealing with industry, trade or commerce in other jurisdictions that may be considered in whole or in part, useful towards the preparation of the new Trade Act.

- v. Liaise with relevant stakeholders and institutions in preparation for developing the Concept Paper **and** proposals to inform the Cabinet Submission and proposed Drafting Instructions for the repeal and replacement of the Trade Act, 1955 and ancillary regulations. These stakeholders and institutions are to include but not be limited to-
 - a. The Legal, Trade, Trade Facilitation and Commerce Divisions of the Ministry of Industry, Investment & Commerce;
 - b. The Ministry of Agriculture & Fisheries;
 - c. The Ministry of Foreign Affairs & Foreign Trade;
 - d. The JAMPRO;
 - e. The Jamaica Customs Agency;
 - f. The Trade Board Limited;
 - g. The Bank of Jamaica
 - h. The Jamaica Manufacturers and Exporters Association;
 - i. The Private Sector Organisation of Jamaica; and
 - j. The Jamaica Chamber of Commerce;
 - k. The Micro, Small and Medium Enterprises;
 - l. The Small Business Association of Jamaica;
 - m. The Jamaica Customs Brokers Association; and
 - n. The Customs Brokers Freight Forwarders Association.
- vi. Conduct consultation and facilitate meetings with stakeholders, as required.
- vii. Provide continuing support to the Ministry's Legal Department as may be necessary to inform the Chief Parliamentary Counsel and the Attorney General's Chambers to resolve any issues, proposals for drafting any amendments and provide support and assistance as necessary during all the various stages of the legislative process.
- viii. Engage in meetings, teleconferences and/or video conferences throughout the consultancy in order to, *inter alia*, present and discuss each deliverable.

5. EXPECTED DELIVERABLES

For each deliverable, the Consultant is expected to submit an intermediate/draft report with the preliminary findings so that MIIC, the TBL and where applicable other relevant stakeholders can provide comments before the final deliverable is submitted. Each deliverable should be submitted electronically with final deliverables submitted in electronic (Word and PDF) formats. All deliverables will remain confidential until MIIC decides to make public relevant information included in them. The key deliverables of this project are:

- 1) Concept Paper;
- 2) Proposals to inform the Cabinet Submission & proposed Drafting Instructions to repeal & replace the Trade Act & the accompanying Explanatory Notes;
- 3) Presentation(s) to stakeholders; and
- 4) Final Report.

6. TEAM COMPOSITION & QUALIFICATIONS REQUIREMENTS FOR THE KEY EXPERTS

Key Expert 1: Team Leader

- Masters degree in law (with a specialisation in International Law or International Trade Law) or a Masters Degree in Trade Policy (with a specialisation in International Law or International Trade Law);
- Analytical skills, particularly the ability to conduct research and isolate relevant information and findings and present them in the form of a legal paper which assesses the issues and make recommendations;
- Demonstrable practical experience in undertaking activities set out in the objectives;
- Excellent written and oral communication skills in English;
- At least ten years of experience working in the field of trade policy, international law or international trade law; and
- Experience in undertaking consultative activities with Government, and Inter-Governmental officials.

Key Expert 2: Legal Drafter

- Masters degree in Law from an accredited institution in the area of legislative drafting;
- Knowledge of International Law or International Trade Law would be an asset.
- Minimum 10 years of legal experience in legislative drafting in common law jurisdictions or the Jamaican legislative system;
- A general understanding of the Jamaican legislative system and familiarity with the process of enacting and promulgating legislation; and
- Demonstrable practical experience in undertaking activities set out in the objectives.

The Consultant must select and hire other experts as required according to the profiles identified in the Terms of Reference. All experts must be independent and free from conflicts of interest in the responsibilities.

The Consultant will provide support facilities to their team of experts (back-stopping) during the implementation of the contract. The Consultant must ensure that experts are adequately supported and equipped. In particular, the Consultant must ensure that there is sufficient administrative, secretarial and interpreting provision to enable experts to concentrate on their primary responsibilities.

7. REPORTING REQUIREMENTS AND TIME SCHEDULE FOR DELIVERABLES

The **Planning Institute of Jamaica** is the Contracting Authority and shall be responsible for contractual amendments and payments.

The **Ministry of Industry, Investment & Commerce** will have oversight responsibilities for the Consultancy, the designated representative of the Supervising Entity is the Senior Legal Officer of the MIIC. **The Trade Board Limited** will be responsible for the day-to-day administration of the Consultancy. All Deliverables prepared by the Consultant are to be submitted to the MIIC and TBL. The MIIC will be responsible for the approval of contractual reports and payment requests in consultation with the TBL.

The intended start date is November 2022 and the period of implementation is nine (9) months from this date.

The Consultant Team shall provide the following reports:

Deliverable	Minimum Content	Due Date (Draft)	Review Period	Due Date (Final)	Final Review Period	Payment on Approval
Deliverable #1: Concept Paper	Concept Paper outlining the key areas to be included in the Drafting Instructions for the repeal and replacement of the Trade Act, 1955 and ancillary regulations. ¹	Week 8	2 weeks	Week 11	1 week	30%
Deliverable #2: Proposals for Cabinet Submission and Drafting Instructions	Proposals to inform the Cabinet Submission & proposed Drafting Instructions for the new Trade Act & Accompanying Explanatory Notes and references to international best practice. To review and provide comments on the draft Cabinet Submission as necessary.	Week 22	3 weeks	Week 26	2 weeks	50%
Deliverable #3: Stakeholder Participation Report	Participation at the stakeholder meetings or any other meeting as necessary.	Week 30	1 week	Week 32	1 week	10%
Deliverable #4 Monthly Reports	Updates on the progress of the assignment, achievements, planned actions for the next period, issues and challenges affecting	Five days after the end of each month	1 week	n/a	n/a	n/a

¹ Consultation must be done with the relevant Stakeholders to inform the concept paper.

Deliverable	Minimum Content	Due Date (Draft)	Review Period	Due Date (Final)	Final Review Period	Payment on Approval
	assignments with recommendations to address identified issues, risk identification and actions taken/proposed to manage those risks.					
Deliverable #5 Final Report	Short description of achievements including issues faced, risks contemplated and related responses and recommendations.	Week 34	1 week	Week 35	1 week	10%

Deliverables must be presented in draft for review and approval prior to the finalized deliverable being submitted. Once approved, deliverables should be submitted in electronic editable format. All deliverables produced under this assignment are the property of the GoJ and **cannot** be reproduced, shared, or distributed without prior consent of the Contracting Authority and Supervising Entity.

Payment will be made in keeping with the submission and acceptance of final draft of each deliverable within the stipulated timelines as indicated in the table above. To effect payment, relevant invoices should be submitted with the accepted final draft of each deliverable.

8. CLIENT’S INPUT AND COUNTERPART PERSONNEL

The Consultant Firm or team of Consultants will work remotely and only be accommodated at The Trade Board Limited as needed. The MIIC/Trade Board will provide:

- Introductory letters;
- Soft copies of relevant legislation and regulations;
- Suitably qualified personnel to function as counterpart for the Consultant; and
- Satisfy all reasonable requests for information by the Consultant.

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