



**REQUEST FOR PROPOSAL (RFP) FOR CONSULTANCY ON REVIEWING THE  
NCAJ 2014 “ENFORCEMENT MANUAL TO COMBAT ILLICIT TRADE IN KENYA.”**

**Invitation to Submit Proposal**

August 13, 2019

**SUBJECT: RFP FOR CONSULTANCY ON REVIEWING THE 2014 NCAJ  
“ENFORCEMENT MANUAL TO COMBAT ILLICIT TRADE IN KENYA.”**

You are requested to submit a proposal for consulting services in respect of the above referenced subject. Your proposal could form the basis for a contract between your firm / institution and the Kenya Association of Manufacturers (KAM).

To enable you submit a proposal, please find enclosed:

- a) Annex I: Proposal submission: Description of requirements for proposal submission;
- b) Annex II: Terms of Reference (TOR), containing a description of KAM requirements for which these services are being sought.

In case you will need clarification on the RFP kindly feel free to contact us through [info@kam.co.ke](mailto:info@kam.co.ke). We will be more than willing to share and clarify on any query regarding the project. Kindly make sure you have the words **REVIEWING THE 2014 NCAJ ENFORCEMENT MANUAL** in the subject of the email.

Note:

This letter is not to be construed in any way as an offer to contract with your firm/ institution.

Yours Sincerely,

**Phyllis Wakiaga,  
CHIEF EXECUTIVE**

## ANNEX I

### **Manner of Submission:**

1. Your proposal shall be prepared in the English Language.
2. Your proposal shall comprise the following documents in **separate envelopes**:
  - a) Technical component and
  - b) Financial (price component).
3. Your proposal shall be prepared in duplicate with one marked "original" and the other marked "copy." In the event of any discrepancy between them, the original shall govern.
4. Please insert dates and address as necessary.

### **Content of Proposal:**

#### **1. Technical Component**

- i. Description of the firm and the firm's qualifications,
- ii. Copy of Company Certificate of Incorporation,
- iii. Tax Compliance Certificate (Valid),
- iv. Statutory KRA PIN and VAT certificate copies,
- v. Brief description of Understanding of the requirements for services, including assumptions;
- vi. Proposed approach and methodology;
- vii. Proposed team structure;
- viii. Proposed project team members;
- ix. Executive brief of relevant similar projects undertaken in the past 5 years.

#### **2. Financial (Price Component):**

- i. A summary of the price with breakdown;
- ii. The period of its validity;

### **Payment Terms (provisions):**

Kenya Association of Manufactures policy is to pay for contractual services based on performance of contractual services rendered. **For this task, KAM intends to make all payments upon completion of the assignment.**

### **Evaluation of proposals:**

A two stage procedure will be utilized in evaluating the proposals, with evaluation of the Technical component being completed prior to any price component. Scores will be awarded for the technical proposal.

The price component proposal will be opened only for those firms/ institutions whose technical component meets the requirements for the assignment, as indicated by a score of more than 70%.

**Deadline for Submission:**

The proposals are to be submitted to **KAM HOUSE, 5th floor, by August 23<sup>rd</sup>, 2019 at 5.00 p.m. Late submissions will not be opened.**

Please Label the Envelope **“ENFORCEMENT MANUAL TO COMBAT ILLICIT TRADE IN KENYA”**

**Annex II****TERMS OF REFERENCE****CONSULTANCY ON REVIEWING THE 2014 ENFORCEMENT MANUAL TO****COMBAT ILLICIT TRADE IN KENYA****1.0 Background.**

Various forms of illicit trade, with counterfeiting being the recent and hence the most prevalent form of this vice, are a very serious and growing economic problem not only in Kenya, but also in the EAC region and the world at large. This is part of organized crime which should be handled as a matter of urgency before it becomes sophisticated and difficult to detect and handle.

It is with the above background that the Kenya Association of Manufacturers, during the 2013 Kenya Magistrates and Judges Association (KMJA) Annual General Conference, floated the idea of working together with the Judiciary under the National Council on the Administration of Justice (NCAJ) to develop the Enforcement Manual to help fight against all forms of illicit trade in Kenya.

In 2014, KAM and NCAJ embarked on the above assignment and achieved a major milestone that involved consolidation of all the relevant laws against illicit trade in Kenya into one reference book titled, ‘Enforcement Manual to Combat Illicit Trade in Kenya’. The manual provides background information on what illicit trade is, the various forms of illicit trade that exist, the impact of illicit trade and best practice in tackling cases, hence serving as a point of reference for law enforcement and the public.

The idea came up as a result of numerous challenges being faced by investigators and prosecutors of such cases, which, in the past, has made such serious crimes to

be treated as petty crimes by law enforcers due to lack of first-hand information on the vice and existing legislations against the vice.

### **Statement of the Problem**

Illicit trade is a global phenomenon. Despite the numerous legislative and regulatory efforts to streamline trade in Kenya, the plague of illicit trade has continued to thrive in this country. The existence of various laws to curb the vice has not done much to stop illicit trade in Kenya, as such crimes have been treated in the past as victimless crimes with law enforcers dismissing such cases as petty crimes.

As a result of this misunderstanding, the perpetrators of this vice continue to freely enrich themselves while on the other hand, exposing innocent and unsuspecting consumers to severe health and safety hazards. What remains to be done is the establishment of a strict and comprehensive system to edge the vice out of the economy.

Illicit trade undermines the concept of a free and open marketplace which is fundamental to improving competitiveness, increasing investment, generating jobs and improving the economic situation (Vision 2030), not only in Kenya but also in all the EAC partner states collectively.

The trends in illegal trade indicate that there remains a vast field for investigators, prosecutors and the courts to explore and enhance their understanding of this problem and the existing legislations, to effectively and efficiently direct investigations and prosecute the perpetrators of these crimes.

Since 2014, there has been tangible progress in the fight against illicit trade in Kenya, some of which are related to amendments to the various laws that address the menace. Other efforts include policy related efforts such as the Presidential Directive against the vice and the development and launch of the National Action Plan and Implementation Framework to Combat Illicit Trade, 2019-2022 by the Ministry of Industry, Trade and Cooperatives.

It is on this background that KAM would like the enforcement manual to be reviewed and updated accordingly, so that it continues to be the most preferred

reference tool when it comes to the protection and enforcement against various forms of illicit trade in Kenya.

## **2.0 Purpose of reviewing/updating the Enforcement Manual.**

The above proposed task of reviewing/updating the manual will come up with an up-to-date 2<sup>nd</sup> edition of the Enforcement Manual which will provide investigators, prosecutors and the courts with first-hand information on illicit trade: what it is, what it involves and the various forms it takes. It will explore the various reforms that have been realized through legislative reviews and amendments since 2014, including updating highlights on the key offenses under various legislations that an investigator, prosecutor and judicial officer dealing with any form of illicit trade should be aware of. It will also include an updated guide to key principles of Criminal law and trial procedure to be taken into consideration throughout the stages of investigation, the court trial process, up until sentencing is complete.

We also propose the development of a template to be completed by adjudicating magistrates that highlights elements specific to the cases. This can be used as a monitoring and evaluation tool to track progress of illicit trade cases and can also serve as a learning tool for other magistrates within the court system.

## **3.0 Scope of Work.**

The scope of work covers the following:

1. Analyse all the laws in Kenya relating to illicit trade in order to collate all updates/ amendments that have taken place between 2013 to date, with reference to the existing enforcement manual. Several pieces of legislation are in place to address the various forms of illicit trade which include:
  - a) smuggling of goods;
  - b) intellectual property infringements – manufacturing of and trade with counterfeit and pirate goods;
  - c) trading with illegal weights and measures;
  - d) human trafficking;
  - e) environmental crime – illegal trade in natural resources;

- f) trade in illegal, prohibited, restricted, harmful or substandard goods or substances that may carry serious health and safety risks;
- g) illegal manufacturing; and
- h) illicit financial flows.

Note: All stakeholders should be involved in gathering the information needed.

2. Analyse the regional framework and current international best practise for dealing with illicit trade and collate all the vital/relevant updates that can enhance the enforcement manual.
3. Propose recommendations on how to tackle illicit trade within the framework of current challenges that limits effective fight against illicit trade e.g. examine the effectiveness of pre-shipment verification of imported goods.
4. Prepare and present the draft report, capturing the analysis and recommendations outlined in parts 1 to 3 above to the NCAJ Special Working Group (SWG).
5. Participate in the NCAJ SWG review and validation forums for the updated enforcement manual.
6. Outline the investigation, pre-trial and court trial stages in investigating and prosecuting illicit trade cases in Kenya within the new Multi-Agency framework.
7. Develop a new structure and content of the updated enforcement manual.
8. Produce the final draft of the edited enforcement manual ready for printing/publishing.
9. Actively participate in NCAJ planned awareness forums against illicit trade as a trainer on the updated enforcement manual.

#### **4.0 Expected Outputs**

- i. Inception report within seven (7) days from commissioning.
- ii. A draft updated Enforcement Manual (2<sup>nd</sup> edition) consolidating all anti-illicit trade laws and related laws into one document for all interested parties involved in combating illicit trade including law enforcement

agencies, Judiciary, ODPP, Lawyers, Judicial Training Institute and Academia.

- iii. A final inclusive Enforcement Manual (2<sup>nd</sup> edition) ready for publication.
- iv. Progress report for all the meetings, retreat and stakeholders' forums on the manual.
- v. Facilitate awareness/sensitization forums of law enforcement officers i.e. judicial officers, prosecutors, investigators, among others on the updated enforcement manual.

#### **5.0. Methodology**

- i. The objective is to review all legislations that touch on illicit trade and update the existing manual in order to obtain an all-inclusive manual.
- ii. Capture stakeholder views on challenges and recommendations on enforcement against illicit trade.
- iii. Collate and assemble both quantitative and qualitative information.

#### **6.0. Time-Frame**

We expect this assignment to be completed within 1 month (30 working days) after the date of commissioning (9<sup>th</sup> September 2019) and thereafter, we expect to review the first draft of the updated report by 2<sup>nd</sup> week of October 2019 (final draft ready for publishing by 1<sup>st</sup> week of November 2019).

#### **7.0 Qualifications of the Consultant**

The consultant shall be an Advocate of the High Court of Kenya with proven and verifiable experience in drafting legislations and policies, a clear understanding of the criminal law system in Kenya and experience in training on legislation and policy. The consultant shall demonstrate knowledge of the facets of illicit trade in Kenya and be available for all processes up to the launch of the updated enforcement manual.

#### **8.0 Submission of the Updated Enforcement Manual - roadmap**

The 1<sup>st</sup> draft of the report will be shared with the enforcement manual core working committee by 2<sup>nd</sup> week of October 2019, awaiting stakeholder's validation in mid-October 2019, where the Consultant will present the draft updated

enforcement manual for comments. The second draft report incorporating stakeholder's comments will be validated in the last week of October 2019. The final updated enforcement manual (in soft) will be submitted to KAM Chief Executive by the 1<sup>st</sup> week of November 2019.

#### **9.0 Application Process:**

The proposals are to be submitted to **KAM HOUSE, 5th floor, by August 23<sup>rd</sup>, 2019 at 5.00 p.m. Late submissions will not be opened.** Please Label the Envelope **"ENFORCEMENT MANUAL TO COMBAT ILLICIT TRADE IN KENYA"**

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...THE END...