



## **CONSULTANCY TO COMMISSION A LEGAL EXPERT TO PROVIDE ADVISORY SERVICES ON THE LEGALITY OF THE LEGISLATIVE FRAMEWORK AND THE DEVELOPMENT PROCESS RELEVANT TO THE NUTRITION AND INFANT FOOD INDUSTRY SUB SECTOR**

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### **1.0 Background**

The Kenya Association of Manufacturers (KAM) is the leading Business Member Organization in East Africa and is the representative organization for manufacturing value-add industries in Kenya. KAM plays a key advocacy role on behalf of manufacturers in Kenya by providing an essential link for co-operation, dialogue and understanding with the Government and related agencies. KAM has over 1000 members and represents over 40% of Kenya's manufacturing value add industries.

KAM also represents Kenya's manufacturing sector interests in the region and beyond e.g. East Africa Community (EAC). To achieve the core mandate of policy advocacy, KAM promotes trade and investment; upholds standards; and encourages the formulation, enactment and administration of sound policies that facilitate a competitive business environment and reduce the cost of doing business. KAM has fourteen (14) Manufacturing sectors which include the Salt Subsector.

The Association has a nutrition and infant food sub sector under its Food and Beverage Sector. The sub sector is made up of companies manufacturing and trading in goods for infants and young children. World over, there have been efforts to promote breast-feeding due to its benefits to improve the overall nutrition and maternal and child health. This has led to the regulation of breast milk substitutes especially the marketing of the same. Kenya has adopted key legislation to regulate breast substitutes known as the Breast Milk Substitutes (Regulation and Control) Act, 2012. The law provides for appropriate marketing and distribution of breast milk substitutes; to provide for safe and adequate nutrition for infants through the promotion of breastfeeding and proper use of breast milk substitutes. The Government through the Ministry of Health, Nutrition and Dietetic Services department has recently developed draft Regulations to further implement provisions of the said Act. The sub sector has developed its position which has been shared with the Government agency.

## **2.0 Objective of the Consultancy**

The objective of the consultancy is to provide legal advisory services to KAM's nutrition and food sub sector on the Breast Milk Substitutes (Regulation and Control) Act, 2012. Specifically, the sub sector seeks to;

- Analyse the extent of the Act's provisions on advertisement, promotion, labelling of packages and educational and informational materials in line with, *the proposed draft regulations on the Breast Milk Substitutes (Regulation and Control) Act, 2012* (access <http://www.health.go.ke/wp-content/uploads/2019/08/DRAFT-THE-BREASTMILK-SUBSTITUTES-GENERAL-REGULATIONS-2019.pdf>), *human rights and freedoms safeguarded under the Constitution of Kenya, 2010, the KAM memorandum on the said draft Regulations on the Breast Milk Substitutes, Adopted Standards on breast milk substitutes, the International Code of Breast milk Substitutes, 1981 and subsequent World Health Assembly resolutions or any other relevant public policy;*
- The composition and mandate of the national committee on infant and young child feeding established under the Breast Milk Substitutes (Regulation and Control) Act, 2012; and
- The legislative development process of the draft regulations based with constitutional requirements on public participation, the Statutory Instruments Act and on the sub sector experiences in the public participation process.

## **3.0 Scope of work**

The scope of the consultancy is to;

- 1) Develop a legal opinion.
- 2) Present the findings to KAM technical team and sub sector members.

## **4.0 Expected outputs**

The following are the expected outputs;

1. Inception Report to demonstrate understanding of the assignment.
2. Legal Opinion.

In the course of providing the services, the legal expert is required to:

1. Report to and provide regular updates to KAM secretariat and nutrition and infant food sub sector;
2. Consult internally with KAM and the nutrition and infant food sub sector members on technical legal issues affecting the sub sector;
3. Provide advice, where the laws or amendments may conflict with existing legislation;
4. provide legislative drafting assistance in line with national, technical and procedural requirements;
5. Make presentations to KAM secretariat, leadership on legislative issues arising from the Opinion.

## **5.0 Timeframe and implementation schedule**

The consultant will work under the overall supervision of the Kenya Association of Manufacturers, Legal Team as well and the nutrition and infant food sub sector.

The consultancy is to be performed over 7 days, starting in the month of October 2019. The proposed timeline excludes the time gap in between relevant meetings between the consultant and KAM members; as well as time that may be required for KAM to review the output for approval purposes.

<b>Task</b>	<b>No of days</b>	<b>Deliverables</b>	<b>Timeline</b>
Submit an <b>inception report</b> .	2	Inception report	By October 2019
Hold an initial briefing meeting with KAM technical internal team and nutrition and infant food sub sector	1	Briefing meeting	By November 2019
Submit the Legal Opinion.	5	First drafts of the Legal Opinion	By mid-November 2019
<b>Participate in 3 feedback and presentation meetings:</b> <ul style="list-style-type: none"> <li>• 2 meetings with KAM technical internal team and nutrition and infant food sub sector;</li> <li>• 1 meeting with the KAM Leadership and nutrition and infant food sub sector.</li> </ul>	7	2 <sup>nd</sup> Draft Legislative study with incorporated feedback from the meetings.	By mid and end of November 2019
<b>Submit a final</b> Legal Opinion.	2	Final Legal Opinion	By end November 2019.
<b>Total number of days</b>	<b>16 days</b>		

## **6.0 Qualifications of the Consultant**

The successful consultant (Individual or Firm) must have extensive experience in legislative research and drafting. In addition, the consultant should:

### **Educational Qualifications of Individual/ Lead consultant (s) in the case of a Firm**

1. A law degree from a recognised and reputable institution.
2. Be a holder of a Masters qualifications in law. A PhD would be an added advantage.
3. A postgraduate degree in legislative drafting would be an advantage.

### **Professional Experience of Individual/ Lead consultant (s) in the case of a Firm**

1. Minimum of 10 years' legislative drafting experience.
2. Experience working within an Attorney General's Chambers, Law Reform Commission, Parliament or similar organisation.
3. Demonstrable experience in working with the various arms of Governments related to the subject matter.
4. Experience producing high quality related policies and legislation (including trade and tax -related legislation)

5. Ability to engage with a cross-section of stakeholders in the public and private sectors.
6. Experience working with the national and county levels.
7. In-depth knowledge and understanding of Kenyan laws (Constitutions, statutes, subsidiary laws)
8. Experience in drafting legislation will be an advantage
9. Have excellent writing and research skills.
10. Excellent communication skills as well as the ability to communicate fluently in English (spoken and written);
11. Ability to engage with gender mainstreaming issues
12. Proven ability to work under pressure and meet deadlines.

## **7.0 Application for consultancy**

Interested consultants are requested to submit physical proposal (both technical and financial) by **31<sup>st</sup> October 2019** at KAM House “KAM Legal Services - Nutrition and Infant Food”;

### **1. Technical proposal**

- 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 together with CV of lead consultant;
- ix. Executive brief of relevant similar projects undertaken in the past 2 years.

### **2. Financial proposal**

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

**NB; Technical and financial proposal should be presented in different envelopes.**

### **3. Curriculum Vitae and two recommendations** (For a firm should contain CVs for all Consultants involved in the Consultancy)

Physical address:      KAM Procurement  
                                  Kenya Association of Manufacturers  
                                  KAM House  
                                  Mwanzi Road, Opposite Westgate Mall  
                                  P.O Box 30225 -00100  
                                  Nairobi

## **8.0 Payment terms (provisions)**

Kenya Association of Manufactures policy is to pay for contractual services based on performance of contractual services rendered.

### **9.0 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%.

*Marginalized groups such as youth, women and persons with disability are encouraged to apply.*