

EAST AFRICAN COMMUNITY

EAST AFRICAN SCIENCE AND TECHNOLOGY COMMISSION (EASTECO)



TERMS OF REFERENCE

FOR CONSULTANCY SERVICES TO DEVELOP THE EAC REGIONAL INTELLECTUAL PROPERTY RIGHTS POLICY

1. Background

The East African Science and Technology Commission (EASTECO) is semi-autonomous institution of the East African Community (EAC) that was established by the fifth Extra-Ordinary Summit of the EAC Heads of State on June 18, 2007. This was in accordance with the relevant provisions of the Treaty on the Establishment of the East African Community as set out in Chapter 16, Article 103 (a), where the Partner States undertook to promote co-operation in the development of science and technology within the Community's member states.

EASTECO's overall objective is ***to promote and coordinate the development, management and application of science and technology to support regional integration and socio-economic development.*** (www.easteco.org)

The East African Community is an intergovernmental organisation composed of six countries viz: Burundi, Kenya, Rwanda, Tanzania South Sudan & Uganda - South Sudan formally acceded to the Community on 5 September, 2016. In 2010, the EAC launched its own common market for goods, labour, services and capital within the region, with the goal of creating a common currency and ultimately a full political federation. It is a member

of the EAC-COMESA-SADC Tripartite Free Trade Area. The EAC has a common market of over 150million people. (www.eac.int)

The leaders of the EAC Partner States have explicitly recognised the importance of Science Technology and Innovation (STI) in the EAC Treaty. They have also launched a number of regional STI initiatives including the establishment of the East African Science and Technology Commission (EASTECO), the Inter University Council of East Africa and the East African Health Research Commission. Under the EAC Common Market Protocol, STI has been accorded significant prominence as a driver for economic growth with Article 42 speaking of the cooperation of Partner States in Research and Development, Article 43 the importance of cooperation in intellectual property rights and Article 44 espousing the modalities for cooperation in industrial development. The EAC Vision 2050, aims to achieve a per capita income of US\$ 10,000 by 2050. The community has recognised that this target can only be achieved if STI plays a significant role in catalysing innovation and development to meet the current challenges facing the region.

Science, technology and innovation is important for the enhancement of the socio-economic status of individuals and communities and is key to the establishment of the competitiveness of regional economies. It will be altogether impossible, to create wealth and improve the living standards of the people of this region without developing and applying science and technology and strengthening systems to harness innovation at the national level.

In an economy based more and more on knowledge and technology, industrial and technical innovation will be fundamental to the improvement of citizens' social and economic conditions. Industrial and technological innovation enables productivity to be strengthened, new industries and new job opportunities to be created, as well as strengthening the competitiveness of national companies on global markets. Industrial property protection also creates a framework for cooperation between universities, research institutions and industry, and promotes the transfer of technologies to productive sectors.

Rationale

The EAC Partner States as members of the World Trade Organisation (WTO) are obliged to comply with the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs Agreement). This requires that member states provide for the protection of Intellectual Property Rights (IPRs) in all fields of technology. Further the EAC partner states have recognized the importance of using science, technology and innovation to achieve sustainable growth through the EAC Vision 2050.

Intellectual Property Rights are important not only because the EAC partner states acceded to the TRIPs Agreement but because they offer possible means for stimulating research, enable access to technology and promote the growth of enterprises. One of the objectives of Intellectual Property (IP) management is to protect the intellectual wealth generated through research. Moreover, in today's context, it has become increasingly necessary to protect IP because a lot of unprotected Research Results in the public domain can lead to use and / or exploitation of such research for commercial gain.

Protection of IP creates incentive for more knowledge and technology generation as scientists and other creators are recognized and rewarded. While the primary purpose of protection is not financial rewards particularly for publicly funded research, the income so generated can contribute significantly to further research and development. It is expected that these guidelines will lead to a change of mindsets in the academic world and allow responsible sharing of research results with a view to commercialization, without losing sight of the primary academic purpose.

A well-functioning Science, Technology and Innovation (STI) system needs to have among other things political stability and well-functioning institutions, an educated work force, sound research and education infrastructure and linkages between public and private innovation actors. Additionally, such a system requires enterprises that are committed to research and development as well as a balanced intellectual property rights (IPRs) framework. Article 43 of the EAC Common Market Protocol makes it an imperative for the Partner States to cooperate in the field of intellectual property rights in order to

promote and protect creativity and innovation for economic, technological, social and cultural development in the Community while enhancing the protection of intellectual property rights. This makes it necessary for the Partner States to:

- Institute measures to prevent infringement, misuse and abuse of intellectual property rights;
- Cooperate in fighting piracy and counterfeit activities;
- Exchange information on matters relating to intellectual property rights;
- Promote public awareness on intellectual property rights issues;
- Enhance capacity in intellectual property;
- Increase dissemination and use of patent documentation as a source of technological information;
- Adopt common positions in regional and international norm setting in the field of intellectual property;
- Put in place intellectual property policies that promote creativity, innovation and development of intellectual capital.

The Policy is intended to encourage technical innovation, and to promote the industrial and commercial use of technical inventions and innovations so as to contribute to the social, economic, industrial and technological development of the country.

EASTECO has developed the EAC guidelines for Intellectual property management, technology transfer and commercialisation. The objective of these guidelines is to highlight good practices, to EAC universities, research & technology institutions and other publicly-funded R&D bodies, regarding the management and transfer of knowledge, technology and intellectual property (“IP) in the context of both publicly-funded R&D and delivery of collaborative research with private sector. The guidelines are to provide for a frictionless process to accelerate the translation of R&D innovations in the EAC market and to get inventions into the widest possible use. The IPR policy once developed will directly link to the regional priority sectors of development that have been identified in the

guidelines for improving knowledge, technology transfer and intellectual property as priorities for social and economic transformation in the EAC region.

2. Purpose and Objectives

The purpose of the consultancy is to develop the EAC regional intellectual property rights policy that will facilitate the harmonization of intellectual property rights across the region. The regional IPR policy is aimed at providing guidance and a road map to ensure that the IP laws, practices and strategies in EAC region support and facilitate the achievement of the country's high-level vision and targets.

The overall objective of the regional intellectual property rights policy is to create a dynamic, vibrant and balanced IPR system in EAC partner state. It aims to use the IPR system as a means for stimulating creativity and innovation and for promoting advancement in science and technology, traditional knowledge and biological resources.

The specific objectives of the consultancy are to:

- i) Prepare the Regional Status Report on IPRs policies and legislation include literature review of regional, continental and international good and best practices.
- ii) Carryout analysis of how the IPR policy will facilitate the technology transfer, technology licensing and foreign direct investment in the EAC region
- iii) Prepare a draft Regional IPR policy including detailed policy objectives, preferred options of the policy in terms of IPR administration and IPR enforcement, implementation mechanism that outlines the institutional, financing, legal and regulatory frameworks for implementation, policy monitoring and evaluation plan that highlights the monitoring and evaluation framework and strategy.
- iv) Carryout the consultations with National IPR stakeholders on how the policy can be useful in increasing patents in research and development, trademarks and industrial designs as tools for branding, value additions and fostering use and exploitation of IP in EAC region.

3. Tasks and duties of the consultant

In formulating the EAC regional intellectual property rights policy the Consultant will undertake (but not be limited to) the following tasks:

- 1) Review EAC legal instruments; Protocols and policy/strategic frameworks in relation to reference made to IPRs and other relevant documentation including, WIPO, ARIPO & TRIPS Agreements for identification of gaps, challenges in implementation and good practices.
- 2) Prepare the Regional Status Report on IPRs policies and legislations include literature review of regional, Continental and international good and best practices through conducting inventory of Member States IPRs laws, implementing rules/regulations, policies, strategies, institutional frameworks and arrangements; Treaty Memberships international and regional; IP in Innovation Policies; key stakeholders public, private and non-governemental and good practices and challenges;
- 3) Carryout consultations with Partner States to gather the stakeholder's views on IPR priority needs by various stakeholders at the national and regional level.
- 4) Prepare EAC IPR Policy that include the goal and mission of the EAC regional IPR policy, detailed policy objectives of the EAC regional IPR policy and illustrate what they will entail, analysis of how the IPR policy can facilitate the innovation and technology transfer, technology licensing and foreign direct investment in the EAC region and preferred options of the policy in terms of IPR administration and enforcement.
- 5) Provide the regional IPR policy implementation mechanism that highlights the institutional, financing, legal and regulatory frameworks for implementation.
- 6) Provide the regional IPR Policy monitoring and evaluation plan that highlights the monitoring and evaluation framework and strategy.
- 7) Present the draft of EAC regional intellectual property rights policy to a regional IPR stakeholder workshop for review and improvement of the draft Regional IPR policy; Based on the input and consultation from this workshop, prepare the revised and final draft Regional IPR Policy.
- 8) Recommend the membership and provide the terms of reference for the EAC regional IPR Forum.

4. The Approach and Methodology for the Assessment:

The Consultant shall develop and propose the methodology to be used. The Consultant will be expected to employ the most effective methodology and standards to achieve results with optimum stakeholder involvement. The methodology will outline the analysis and planning tools to be used and how these tools will enable the optimum results. The Consultant's methodology and approach will be further reviewed and validated after receipt of their inception report. The final methodology will be finalized in consultation with the client.

The Consultant shall interact with National IPR Institutions in Partner States at the data collection and analysis stage as well as during the stakeholder consultations. In this regard, the Consultant shall carry out, but not be limited to, the following;

- Engage with the national IPR institutions in the methodologies to collect national IPR data, through physical and online interaction and feedback;
- Engage with the National IPR Institutions in Partner States, in collecting and analyzing national data required for evidence-based IPR Policy formulation, as well as in identifying regional IPR priority policy objectives and targets;
- Engage with the Ministries responsible for EAC Affairs, National Science and Technology commissions/Councils, Research and Technology Development Organizations, ICT, Planning, Education and Higher Education, Trade and Industry, civil society and private sectors for stakeholder consultations;
- Engage with Partner States' Private Sector Federations/Associations in collecting relevant expectations from the business and manufacturing sector.

5. Deliverables

5.1 List of reports and schedule of deliverables

The assignment will be carried in 30 man days spread over three months.

<i>Time</i>	<i>Deliverable</i>	<i>Submission</i>
Man days	Contract/Letter of appointment of the Consultant	
Day 7	<p>Inception Report which shall contain:</p> <ul style="list-style-type: none"> - The understanding of assignment, comments on the ToR, a refined approach & methodology, the updated work plan, issues identified for Client's attention, the proposed content and structure of the various reports (interim, draft and final) - Review EAC legal instruments; Protocols and policy/strategic frameworks in relation to reference made to IPRs and other relevant documentation including, WIPO, ARIPO & TRIPS Agreements, - Initial stakeholder analysis - Meeting with client will be held 3 days after submission to discuss the report. <p>The consultant will present the inception report to team of IPR experts for validation and approval.</p>	The report shall be submitted electronically.
Day 17	<p>Interim Report including;</p> <ul style="list-style-type: none"> - Comprehensive stakeholders analysis - Inventory of Member States IPRs laws, implementing rules/regulations, policies, strategies, institutional frameworks and arrangements; Treaty Memberships international and regional; IP in Innovation Policies; key stakeholders public, private and non-governmental and good practices and challenges; - Results of consultations with Partner States to gather the stakeholder's views on IPR priority needs with existing policies, gaps and challenges by various stakeholders at the national and regional level. - Goal and mission of the EAC regional IPR policy. - Detailed policy objectives of the EAC regional IPR policy - Analysis of how the IPR policy will facilitate the technology transfer, technology licensing and foreign direct investment in the EAC region. 	The report shall be submitted electronically
Day 25	<p>Draft report including;</p> <ul style="list-style-type: none"> - Regional Status Report on IPRs include literature review of regional, continental and international good and best practices. - Preferred options of the policy in terms of IPR administration and IPR enforcement. - Regional IPR policy implementation mechanism that highlight the institutional, financing, legal and regulatory frameworks for implementation. 	6 hard copies and electronic submission

	<ul style="list-style-type: none"> - Regional IPR Policy monitoring and evaluation plan that highlights the monitoring and evaluation framework and strategy. - Present the draft of regional intellectual property rights policy to a regional IPR stakeholder workshop for review and improvement of the draft Regional IPR policy; Based on the input and consultation from this workshop, prepare the revised and final draft Regional IPR Policy. - Recommended Membership and TOR for the EAC regional IPR Forum 	
	<p>A validation workshop will be organized after submission of the draft report. The regional IPR stakeholder workshop will review and improve the draft Regional IPR policy.</p> <p>The Validation workshop will be organised by the client. At the workshop, the consultant will make PowerPoint Presentation and provide concise reports for discussion to a cross section of stakeholders.</p> <p>Based on the input and consultation from this workshop, the consultant will prepare the revised and final draft Regional IPR Policy.</p>	
Day 30	<p>Final report on the EAC Regional IPR Policy, with an executive summary and incorporating comments from the stakeholder workshop.</p> <p>In addition to the final report, the consultant will prepare a summarized version of the IPR Policy, the main purpose of which will be to provide decision-makers with an easy to grasp understanding of the relevance and role of the IPR Policy. The summary should not exceed 10pages.</p>	6 hard copies and 6 memory sticks electronic submission
Monthly report	<p>1st week of every month</p> <p>This report (2-4 pg maximum) comprising a narrative and other graphic presentation, showing details of the Consultant's progress, changes in the assignment schedule, impediments and proposed remedies will be submitted on a monthly basis.</p>	Email to the EASTECO Secretariat

6. Responsibilities of the Consultant

Responsibilities of the Consultant will include: (i) preparation of the program of work; (ii) ascertaining the work is carried out in a professional and ethical manner and to the required standards; (iii) holding discussions and consultations with the Client (EASTECO) and relevant staff of the relevant Partner States' institutions, and interviews IPR

stakeholders at national and regional levels and other institutions and organizations in both the public and the private sectors.

7. Responsibilities of the Client

Responsibilities of the Client (EASTECO) will include:

- (i) provision of relevant reports, data and documentation for the assignment as and where available – however the Consultant has the ultimate responsibility for collecting the required data and documentation which cannot be made available by the Client;
- (ii) linkage with relevant Nationals and regional authorities by providing contacts for Member States and other regional, continental and international stakeholders where necessary.
- (iii) Making comments on work progress, collection of comments from other stakeholders and submission of all the comments to the Consultant.
- (iv) facilitate meetings with relevant EAC Secretariat Directorates, sectors and regional Agencies.

The EASTECO Secretariat is responsible for ensuring that the Consultant performs his/her duties in an efficient manner. The consultant shall be responsible to the Executive Secretary of the EASTECO on a day to day basis.

The Secretariat will assist in making appointments with Stakeholders for meetings, the workshop and all other undertakings relevant to this consultancy.

8. Payment conditions.

The EASTECO secretariat will pay the consultant following the below schedule

- 10% upon submission of the inception report
- 20% upon submission of the Interim Report

- 20% upon submission of the Draft report
- 50% upon submission and acceptance of the final report

9. Qualifications, skills and competences of the Consultant:

Applications are hereby invited from suitably qualified citizens of the EAC Partner States, with the following profile:

- Academic Qualification: A university Degree (minimum Masters level or equivalent) in Science, Economics, Law or any related social science discipline or field with specialization in Intellectual Property Rights.
- Extensive knowledge of all aspects of Intellectual Property rights; Regional and National policy development with EAC Partner States;
- Professional experience:10 years in Research and Development, Intellectual Property policy development; Detailed list of similar consultancies previously done in the past seven (8) years; evidence of at least three (3) previous copies of contracts/orders of similar assignments; the candidates should demonstrate success in policy formulation in biotechnology and biosafety and experience in handling multinational/regional programs/projects;
- Excellent knowledge of public international law and administrative law
- Good knowledge of international intellectual property law and other legal issues associated with information and communication technology.
- Good knowledge of contract law and international commercial agreements.
- Good knowledge of the framework on privileges and immunities as applied to intergovernmental organizations.
- Excellent analytical and legal drafting skills
- Knowledge of EAC System and procedures;
- Sound work ethics, including commitment to time and meeting deadlines, as well as maintaining courtesy and trustworthiness;
- Tax compliance certificates;
- Fluent in English language, fluent in French is added advantage
- Have worked in the EAC region.

10. Application

All eligible and interested candidates should submit an application, with sealed bids clearly marked “*Application for Provision of Consultancy Services to develop IPR policy in EAC*”, mentioning the applicant’s address on the outer envelope, and containing the following:

- i) An envelope containing the technical proposal, with the following components:
 - o A letter of expression of interest;
 - o The description of the profile of the candidate(s), with an outline of recent activities on similar work;
 - o The proposed methodology/approach, the work plan and the related timeline;
 - o The CV/resume of the candidate
 - o 3 References
- ii) An envelope containing the financial proposal presented in US Dollars, with:
 - o Daily rate of professional fees
 - o Any other costs to be incurred during the assignment

The application should be delivered to the following address:

***The Executive Secretary
East African Science and Technology Commission (EASTECO),
2nd Floor, Wing C, Telecom House, Bld de l'Umuganda, Kacyiru,
Kigali, Rwanda.***

For more information or clarification, please contact us at the address above or through the email below:

easteco@eachq.org with CC to: obateta@eachq.org

Application deadline is 15th January 2018 at 5:00 PM Kigali time (6:00 PM EAST).