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Project: Strengthening of the Single Electronic Window for Trade and Business Facilitation

Title: Advisory Services for the Development of a Legal Framework for Secured Transactions

This notice is also available in Word format by selecting the link at the bottom of the notice

Request for Expression of Interest

Advisory Services for the Development of A Legal Framework For Secured Transactions

Contract/Bid No: MTI/LFFST/2019

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Section 1: Letter of Invitation

Monday 11th March 2019

To whom it may concern,

Advisory Services for the Development of a Legal Framework for Secured Transactions, Government of the Republic of Trinidad and Tobago, Inter-American Development Bank (IDB) Loan #3575/OC-TT

The Government of the Republic of Trinidad and Tobago (the "Borrower") has received a loan (hereinafter referred to as "the Loan") from the Inter-American Development Bank (IDB) (the "Bank") to finance the Strengthening of the Single Electronic Window for Trade and Business Facilitation. The Borrower plans to use a portion of those funds to defray eligible expenses under the contract for which this Expression of Interest is being issued.

The Ministry of Trade and Industry (the "Client"), is seeking a suitably qualified Individual Consultant to Provide **Advisory Services for the Development of A Legal Framework for Secured Transactions** for an approximate duration of six (6) months. In this regard, the MTI invites interested persons to indicate their interest in providing the advisory services as detailed in the attached Terms of Reference.

We kindly ask that Expressions of Interest (EOI) include the following in the format specified in the Request for Expression of Interest (RFEOI) document:

- Curriculum Vitae (see template at Attachment #1)
- Consultant's Experience (see template at Attachment #2)
- Submission Letter (see template at Attachment #3)

These documents are also available on the Ministry of Trade and Industry's website at <http://tradeind.gov.tt/> and the United Nations Development Business' website at www.devbusiness.com

The EOI and all related documents must be submitted by email in English no later than by 12:00 midnight (Trinidad time) on 22nd March 2019. The EOIs should

An Evaluation Committee will evaluate the EOIs on the basis of the Individual's qualifications and experience. Any request for clarification must be sent with the heading "Request for Clarification" in writing by electronic mail to the MTI's address as follows:

Attn: Programme Manager
Email: piusew@gov.tt

As a formal part of the evaluation process, shortlisted candidates will be required to undertake an interview either face to face or online.

At any time before the submission of the EOIs, the MTI may, for any reason, amend the attached documents. Any amendment shall be issued in writing through addenda and posted on the websites identified above.

MTI may at its discretion extend the deadline for the submission of EOIs.

The Ministry of Trade and Industry reserves the right to cancel the present invitation in its entirety or partially without defraying any cost incurred by individuals.

The MTI does not bind itself to accept any EOI.

Late EOIs will **NOT** be considered under any circumstances.

Yours respectfully,

Permanent Secretary

Ministry of Trade and Industry

Section 2: Terms of Reference

Advisory Services for the Development of A Legal Framework For Secured Transactions

1. Background

The Government of the Republic of Trinidad and Tobago (GORTT) as part of its national strategy, in 2009, launched the Single Electronic Window (SEW) for Trade and Business Facilitation Project, branded as TTBizLink, an IT-based trade facilitation solution. This nationwide project arose out of efforts to improve the country's ease of doing business, enhance its competitiveness, and instill a culture of excellence in GoRTT. TTBizLink, the first of its kind in the Caribbean, is a secure business portal that provides 24/7 access to trade and business related government services by allowing parties involved in trade and transport to lodge standardized information and documents at a single entry point, in order to fulfill import, export and transit-related regulatory requirements. It is a 'one-stop-shop' mainly transactional portal accessible via the link www.ttbizlink.gov.tt where private stakeholders and approving government agencies can collaborate to process necessary approvals online in a seamless and efficient manner.

After three (3) phases of development, and with more than fourteen thousand two hundred (14,000) registered user accounts TTBizLink currently hosts forty six (46) transactional e-services administered by twenty four (24) government agencies across nine (8) separate Ministries.

TTBizLink has substantially reduced the need to send duplicate and repetitive information to multiple agencies, improved information sharing among government agencies and removed many of the inconsistent and fragmented trade and business processes which existed.

Despite the success of TTBizLink, the business climate in Trinidad & Tobago still presents challenges for enterprise development as highlighted by the Global Competitiveness Report 2017-2018^[1] where Trinidad and Tobago ranked 83rd out of 137 countries. The Report identified "inefficient government bureaucracy" as one of the most problematic factor for doing business. Trading across borders was also reported as problematic; according to the 2019 Doing Business Report^[2], Trinidad and Tobago ranked 105th out of 190 economies, taking an average of 92 hours and US\$749 (per container) to export, and 122 hours and US\$885 (per container) to import, significantly higher than leading countries such as Singapore (12 hours and \$372 to export, and 36 hours and \$260 to import) based on 2019 statistics.

More specifically, there are a number of gaps in the local trade and business facilitation architecture and in the operation of the SEW which have been jointly identified by public and private sector stakeholders including:

- (i) the SEW has not achieved interoperability with all the information systems within key logistics stakeholders (such as the Customs and Excise Division, the Port Authority of Trinidad and Tobago and the Port of Point Lisas) as well as international interoperability with main trading partners;
- (ii) current operational processes in key agencies such as Customs and Excise Division are not in line with international best practices and require an in-depth business process reengineering to further simplify and automate processes;
- (iii) although TTBizLink is available 24/7, government agencies process applications only from 8am to 4pm due to national legislative requirements;
- (iv) current risk management system in the Customs and Excise Division, as well as within the other major regulatory agencies, is rudimentary at best and requires substantial improvement;
- (v) national legislation needs to be reviewed and updated to conform to a new operating environment and facilitate the transition to a paperless environment;
- (vi) there is currently no electronic payments solution on the SEW;
- (vii) lack of a Business Continuity Plan and Data Recovery Solution for the SEW; and
- (viii) Institutional Governance of the SEW requires strengthening in order to ensure its long-term sustainability.

In the continued effort to boost trade and business facilitation for the private sector, expand government services which are available 24/7 and improve transparency and institutional governance, the Government has found it necessary to improve access to finance particularly for small and medium sized enterprises (SMEs) through

the modernization of the secured transactions regime and the establishment of an electronic online collateral registry. As outlined in the approved *Policy to Enhance the Secured Transactions Regime* (See **Appendix I**), this reform aims to enhance the ability of businesses to use their moveable property as collateral for loans in order to improve their access to finance and thus generate economic growth.

The existing regime is characterized by an estimated total credit gap of US\$3.44 Billion^[3], which can potentially hamper the domestic economic environment. Additionally, the existing framework for secured transactions not only favors the use of immovable property as collateral but is also complex and fragmented as there exists a number of security arrangements including 'quasi-securities' as well as multiple registries which are regulated under different pieces of legislation.

As such, the *Development of a Legal Framework for Secured Transactions* is being pursued which will improve the 'Getting Credit' indicator in the Doing Business Report in which Trinidad and Tobago is currently ranked 55th out of 190 economies.

The Ministry of Trade and Industry as part of implementation of this reform will constitute a Steering Committee of the key stakeholders for technical input and also to guide the drafting of the secured transactions law. The Committee will consist of:

- The Ministry of Trade and Industry (Chair)
- The Ministry of the Attorney General and Legal Affairs

(Registrar General Department)
(The Chief Parliamentary Counsel)

- The Ministry of Finance
- The Ministry of Planning and Development
- The Central Bank of Trinidad and Tobago
- The Bankers Association of Trinidad and Tobago
- The Credit Union League of Trinidad and Tobago
- Private Sector Attorneys/Secured Transactions Specialists

A sound legal and institutional infrastructure is critical to maximize the economic potential of movable assets so that they could be used as collateral instruments. Therefore, the coordinated involvement of the Government and the private sector in Trinidad and Tobago will improve credit access through the development of a unified secured transactions law. In particular, the current legal framework governing secured transactions in Trinidad and Tobago is fragmented and complex. This framework comprises several pieces of legislation that govern a variety of securities which are registered in many different registries. The laws that cover the various securities and proceedings relating to secured transactions include:

- The Companies Act;
- The Bankruptcy and Insolvency Act;
- The Bills of Sale Act;
- The Registration of Titles to Land Act;
- The Civil Aviation Act;
- The Patent Act;
- The Trade Marks Act;
- The Industrial Designs Act;
- The Copyright Act; and
- The Shipping Act.

Trinidad and Tobago's laws do not restrict the use of any particular type of collateral. However, in practice immovable property is preferred. Stakeholders indicated that intellectual property, agricultural products and membership interests were rarely taken as collateral. The current secured transactions regime recognizes mortgages, charges and pledges as the principal consensual security devices as well as a consensual lien which is less important in practice. The following are some of the issues identified with the current legal framework:

- (i) distinction is made between companies and unincorporated firms and individuals
- (ii) although the Companies Act allows companies to use all security devices freely, unincorporated firms and individuals may not utilize a charge
- (iii) the Bills of Sale Act effectively limits the use of mortgages to mortgages of existing but not future goods.
- (iv) there exists 'quasi-securities' which are functionally equivalent transactions such as hire purchase, financial leases, factoring or assignment of accounts, conditional sale or retention-of-title contracts and guarantee trusts which are not required to be registered under the name of the debtor (as the creditor has the title of the property) and in the case of default or insolvency the creditor can repossess the asset without the need for judicial proceedings
- (v) the rules on priority over a security interest are complex and based on 'first in time, first in right' and the effect of notice of another's interest.

Several challenges still remain for both borrowers and creditors including (a) the absence of an integrated or unified legal framework in the economy for secured transactions that extends to the creation, publicity and enforcement of functional equivalents to security interests in movable assets; (b) The absence of an collateral registry in operation for both incorporated and non-incorporated entities that is unified geographically and by asset type with electronic database indexed by debtor's name; (c) Lending organisations such as Banks and financial institutions cannot access borrowers' credit information online (d) It takes 1.340 days and costs 33.5% of the value of the claim, and the average recovery rate is 26.7 cents on the dollar.^[4]

1.1 Programme Details

The Strengthening of the SEW for Trade and Business Facilitation is an Inter-American Development Bank (IDB) funded programme to be executed by the Ministry of Trade and Industry. The overall objective of this project is to improve trade performance and enhance the business competitiveness of Trinidad and Tobago through the strengthening and transformation of the SEW (TTBizLink) into a world-class solution based on international standards. The expected outcomes of the project are enhanced trade performance and competitiveness of the private sector, improved coordination and interoperability between government agencies and main international trading partners. The project will be divided in three (3) major components:

- Component 1 - Enhancing and expanding the services of the Single Electronic Window - This component will focus on upgrading the current TTBizLink to international best practices.
- Component 2 - Enhancing the Interoperability of TTBizLink- This component will facilitate the exchange and analysis of data between TTBizLink and the information systems of key stakeholders as well as the information systems of strategic trading partners of Trinidad & Tobago.

- Component 3 - Modernizing the Legislative, Institutional Framework for International Trade and Institutional Governance of the SEW. This component will address the deficiencies in the legislative framework and strengthen the institutional governance of the SEW.

Specifically, the *Enhancement of the Secured Transactions Regime* which includes the *Development of a Legal Framework for Secured Transactions* is being pursued under *Component 1: The Enhancement and Expansion of the Services of the Single Electronic Window* of the Strengthening of the Single Electronic Window Programme.

1. General Objective of this Consultancy

- 2.1. The objective of this consultancy is to provide expert services which include but are not limited to the provision of advice, training, and drafting of legislation to assist the Government of Trinidad and Tobago in establishment of a legal framework for an integrated Secured Transactions Regime in Trinidad and Tobago.

1. Scope of Services

3.1 Specific Tasks

The specific task related to this Consultancy shall be executed in three (3) phases:

Phase 1 - Project Initiation

- Conduct inception meetings with the Executing Agency and key stakeholders upon commencement of the project to (i) review the process for conducting all activities within the project, (ii) determine roles and responsibilities, (iii) discuss the basis on which this work will be implemented, and (iv) finalize the methodology, work breakdown structure and project schedule for all project deliverables

Prepare an Inception Report

Phase 2 - Situational Analysis

- The consultant shall meet with key public and private sector stakeholders while utilising the Policy to Enhance the Secured Transactions Regime, the Diagnostic Report conducted by the World Bank and the draft legislative brief to be provided by the Ministry of Trade and Industry.
- Review the existing *Policy to Enhance the Secured Transactions Regime in Trinidad and Tobago*, *Secured Transactions and Collateral Registries: Diagnostic Report, Trinidad and Tobago* and *Secured Transactions Regime Legislative Brief* and prepare a revised *Secured Transactions Regime Legislative Brief*.

Phase 3 – Implementation

- The Consultant shall support the work of the Cabinet-appointed Steering Committee^[5] to determine the most practical, cost effective and best practice approach to the development of the legal framework for the secured transactions regime in Trinidad and Tobago.
- The Consultant will work together with personnel of the Ministry of Trade and Industry and other key stakeholders to the *Secured Transactions Regime Legislative Brief*. The Consultant shall pay close attention to the requirements for establishing a web-based immovable collateral registry so that such requirements could be appropriately incorporated in the proposed legislative initiative for secured transactions.
- The Consultant will work together with personnel of the Ministry of Trade and Industry and other key stakeholders appointed to the Cabinet appointed Steering Committee to create a draft Secured Transactions Bill
- The Consultant will produce a make a presentation to the Ministry of Trade and Industry and other key private and public sector stakeholders on the draft Secured Transactions Bill.

1. Deliverables / Specific Outputs

The Consultant will be expected to deliver the following deliverables:

No.	Deliverable	Frequency	Delivery Timeframes Days – Calendar days	Review Period Days – Calendar days	Payment Amount	Report Details
PHASE 1 - Project Initiation						
1	Inception Report: Report detailing the methodology, work breakdown structure and project schedule for all project deliverables	One Time	7 days after contract signing	Five (5) days	Ten percent (10 %) of Contract Price	Electronic MS Word and PDF 2 bound hard copies
PHASE 2 – Situational Analysis						
2	Stakeholder Workshop: Facilitation of discussion and	Two (2)	1 week from acceptance of Inception Report		Fifteen percent (15%) of Contract Price	Workshop

	or discussion and consensus building among key public and private sector stakeholders					
3	Detailed Report: Current Secured Credit Regulations and proposed changes aligned with the UNCITRAL Legislative Guideline on secured credit transactions	One time	Two weeks after stakeholder workshop	Seven (7) days		Electronic MS Word and PDF 2 hard bound copies
PHASE 3 – Amendment of the Secured Transactions Regime Legislative Brief and the Development of Draft Legislation for the Creation of a Secured Transactions Regime.						
4	Progress Report 1 : Amendments to the legislative brief	One Time	10 days after approval of Detailed Report	Seven (7) days	Ten percent (10 %) of Contract Price	Electronic MS Word and PDF 2 bound hard copies
5	Submission of the Draft Legislative Brief: This includes substantive work performed on the legal brief and presented to the Chief Parliamentary Counsel and the Steering Committee for comment.	One Time	Forty five (45) days after approval of Progress Report 1	Ten (10) days	Ten percent (10 %) of Contract Price	Electronic MS Word and PDF 2 bound hard copies
6	Final Submission of the Legislative Brief: This includes the comments given by the Committee and the Chief Parliamentary Counsel	One Time	One week after approval of the Draft Submission of the Legislative Brief	Ten (10) days	Twenty percent (20 %) of Contract Price	Electronic MS Word and PDF 2 bound hard copies
7	Submission of the Draft Secured Transactions Bill	One Time	Twenty (20) days after approval of the Final Submission of the Legislative Brief	Ten (10) days	Ten percent (10 %) of Contract Price	Electronic MS Word and PDF 2 bound hard copies of each document
8	Submission of the Final Secured Transactions Bill	One Time	One week after approval of the Draft Secured Transactions Bill	Ten (10) days	Twenty percent (20 %) of Contract Price	Electronic MS Word and PDF 2 bound hard copies of each document
9	Workshops for stakeholders	Two (2)	To be completed within five (5) 30 days of approval of the final draft of the legislative brief and the draft Secured Transaction legislation	One (1) day	Five percent (5 %) of Contract Price	Workshops, lectures, practical application

1. Characteristics of the Consultancy

The characteristics of this Consultancy are outlined as follows:

- Type of Consultant: International Individual Consultant selection based on qualifications (IICQ)
- Contract Duration: Six (6) calendar months after signing of contract.
- Place(s) of work: External consultancy which will be developed at the place of residence of the contractual. Three (3) separate missions to Trinidad & Tobago are expected with approximately twelve (12) business days on the ground.

1. Requirements Skills and Core Competencies

The Consultant will be expected to possess the following

- Post Graduate Degree in Law, Policy or other related field
- At least ten (10) years related experience in Secured Transactions reform, access to finance, microfinance with a focus on business and innovation climate reform within a developing country context.
- At least ten (10) years' experience in legislative review, and drafting of laws and regulations
- Successful Experience in the implementation of public policies on secured transactions framework
- Knowledge of, and experience in the law making process and legislative drafting techniques in Trinidad and Tobago or another CARICOM jurisdiction will be an asset
- Experience working across multiple government organizations and private sector stakeholders involved in Trade
- Strong communication /analytical/presentation skills
- Working knowledge of projects funded by Inter-American Development Bank, World Bank, United Nations or similar multilateral organizations
- Fluent in English

7.0 Supervision and Reporting Requirements

The Consultant will report to the Director of Policy and Strategy and the Programme Manager of the Project Implementation Unit of the Ministry of Trade and

The Consultant will report to the Director of Policy and Strategy and the Programme Manager of the Project Implementation Unit of the Ministry of Trade and Industry. Additionally, the incumbent will be required to meet with representatives from the IDB Unit and key stakeholders at regular intervals.

All submissions must be in English Language, delivered via the form and media stated by the MTI and delivered on the date requested and addressed to:

Programme Manager

Strengthening of the Single Electronic Unit (SEU) for Trade and Business Facilitation

Ministry of Trade and Industry

Level 5, Nicholas Tower

63-65 Independence Square

PORT OF SPAIN

Email: PIUSEW@gov.tt

7.1 Responsibility of the Client

The MTI, as the Executing Agency for the Project, shall support the implementation of this Consultancy. Accordingly, the MTI shall:

- i. Facilitate the arrangements for interviews and provision of access to Project documents, relevant existing regulations, legislations, policies and relevant organisational process assets as required. Efforts will also be made to have the Consultant provided with relevant reports, information and contacts from other key stakeholders;
- ii. Provide a Counterpart Team to guide the implementation of the Consultancy.
- iii. Provide relevant and appropriate information as required by the Consultant.

7.2 Responsibility of the Consultant

The Consultant will:

- iv. Absorb all other expenses including direct staff, office space and facilities, computer systems and software, telecommunication systems, travel expenses, hard copy report deliveries and any other incidentals.
- v. Undertake the activities of the consultancy utilizing primarily its own resources.
- vi. Respect and adhere to the proposed time-frames.
- vii. Conduct meetings with stakeholders in a professional, responsible manner.
- viii. Ensure the validity and reliability of any instruments and tools developed and/or utilized by the Consultant for training, workshops and sessions.
- ix. Ensure the confidentiality of all aspects of the process/consultancy
- x. To work in close cooperation with other key stakeholders involved in trade facilitation in Trinidad and Tobago and representatives of the private sector through sectoral organizations such as Chambers of Commerce.

8.0 Working Language

The working language shall be English

9.0 Confidentiality

The Consultant shall not, except as authorized by the MTI or required by the stipulated duties under the contract, use for the Consultant's own benefit or gain or divulge to any persons, firm, company or other organization whatsoever any confidential information belonging to the Government or relating to the affairs or dealing which may come to the provider's knowledge during the engagement. This restriction shall cease to apply to any information or knowledge which may subsequently come into the public domain other than in breach of this clause.

10.0 Ownership

All data, records, reports and other documents prepared by the Consultant, or obtained from whatever source in connection with carrying out the functions of this position, shall become and remain the property of the Ministry of Trade and Industry. The service provider shall not later than upon termination or expiration of the contract, deliver all such documents to the Ministry together with a detailed inventory thereof. The Consultant may retain a copy of such documents but shall not use them for purposes unrelated to this contract without prior written approval of the Ministry.

11. Eligibility

The applicable rules of the Government of the Republic of Trinidad and Tobago will apply in determining the eligibility and selection of the consultant. It should be noted that only individuals from member countries of the Inter-American Development Bank (IDB) are eligible to apply.

Section 3: Standard Forms

STANDARD FORMS

ATTACHMENT #1

CURRICULUM VITAE FOR CONSULTANT

1. Name of Consultancy: _____

1. Name of Individual: _____

3. Date of Birth:

Nationality:

1. Education: [Indicate college/university and other specialized education, giving names of institutions, degrees obtained, and dates of obtainment]:

1. Membership of Professional Associations:

1. Other Training: [Indicate significant training since degrees named in 4 - Education]:

1. Countries of Work Experience: [List countries where you have worked in the last ten years]:

1. Languages: [For each language indicate proficiency: good, fair, or poor in speaking, reading, and writing]:

1. Employment Record: [Starting with present position, list in reverse order every employment since graduation, giving for each employment (see format here below): dates of employment, name of employing organization, positions held.]:

From [Year]: _____ To [Year]: _____

Employer: _____

Positions held: _____

1. Detailed Tasks Assigned:

1. Work Undertaken that Best Illustrates Capability to Handle the Tasks Assigned

[Among the assignments you have been involved, indicate the following information for those assignments that best illustrate your capability to handle the tasks listed under 10-Detailed Tasks Assigned.]

[List all tasks to performed under this assignment]

Name of assignment or project:

Year:

Location:

Main project features:

Position held:

Activities performed:

1. Reference: [three (3) client references from projects of a similar nature with full contact information for two (2) professional references]

13. Certification: *[Attach copies of qualifications certification]*

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes me, my qualifications, and my experience. I understand that any willful misstatement described herein may lead to my disqualification or dismissal, if engaged.

Date:

[Signature]

Day/Month/Year

ATTACHMENT # 2

CONSULTANT'S EXPERIENCE

[Using the format below, provide information on each assignment for which you were legally contracted either individually as part of a corporate entity, for carrying out consulting services similar to the one requested under this assignment.].

Assignment Name:	Approx. value of the contract (in current US\$):
Country : Location within country:	Duration of assignment (months):
Name of Procuring Entity:	Total No of staff-months of the assignment:
Address:	Approx. value of the services provided by you or your firm under the contract (in currency US\$):
Start date (month/year):	No. of professional staff-months provided by you:
Completion date (month/year):	Name of senior professional staff of the firm involved (if applicable) and functions performed (indicate most significant profiles such as Project Director/Coordinator, Team Leader):
Name of associated Consultants, if any:	
Narrative description of Project:	

Description of actual services provided by you within the assignment:

Individual's Name: _____

ATTACHMENT # 3

SUBMISSION LETTER

[Location, Date]

To: [Name and address of MTI]

Dear Sirs:

I, the undersigned, offer to provide the consulting services for [Insert title of assignment] in accordance with your advertisement dated [Insert Date] and my Submission. I am hereby submitting my Expression of Interest.

I hereby declare that all the information and statements made in this Expression of Interest are true and accept that any misinterpretation contained in it may lead to our disqualification.

I undertake, if my Expression of Interest is accepted, to initiate the consulting services related to the assignment as per the Terms of Reference.

Yours sincerely,

Authorized Signature [In full and initials]:

Name and Title of Signatory:

Address:

[1] World Economic Forum, Global Competitiveness Report 2017-2018.

[2] World Bank, Doing Business Report 2019

[3] World Bank Group, October 2015, 'Secured Transactions and Collateral Registries: Diagnostic Report, Trinidad and Tobago

[4] World Bank Doing Business 2018 Report.

[5] The Policy mandates that "a Steering Committee for the legal drafting of the Secured Transactions Law will be established and will include The Ministry of Trade and Industry (Chair); The Chief Parliamentary Counsel (CPC); The Ministry of Finance; The Ministry of Planning and Development (MPD); The Central Bank of Trinidad and Tobago; Bankers Association of Trinidad and Tobago (BATT); The Credit Union League of Trinidad and Tobago; Registrar General Department, Ministry of the Attorney General and Legal Affairs; and Private Sector Attorneys/Secured Transactions Specialists.