



**TERMS OF REFERENCE TO SUPPORT THE REVIEW AND ADOPTION OF  
MOMBASA COUNTY TRADE & MARKETS BILL**

**AUGUST 2023**

## **1.0 Kenya SBDC Program**

The Kenya Small Business Development Centers (Kenya SBDC) program addresses key challenges that have stifled the growth of Micro, Small and Medium Enterprises (MSMEs) as major drivers of Kenya's economic growth. The program strengthens the capacity of Kenyan MSMEs in the agribusiness and apparel and creatives sectors through business development and advisory services. This includes the transfer of best practices from the United States' Small Business Development Center (SBDC) model to six (6) small business development centers in Kenya spread across Isiolo, Kiambu, Kisumu, Makueni, Mombasa, and Nakuru counties.

This local network of business development centers will implement the SBDC's accredited training curriculum for supporting small businesses. The program also builds linkages between Kenyan and American MSMEs, helps Kenyan MSMEs take advantage of local and export market opportunities, gain improved access to finance, apply market analytics, and benefit from a business-enabling policy environment at the county level. Taken together, this strengthens Kenya's economic competitiveness and stimulates the power of the private sector to accelerate Kenya's Journey to Self-Reliance (J2SR).

With support from the United States Government, the 5-year Kenya SBDC program is implemented by Strathmore University in collaboration with the University of Texas at San Antonio, national government, county governments, private sector, academia, and other non-state actors.

## **2.0 Mombasa County**

Mombasa County is home to Kenya's oldest and second-largest city. The County is Kenya's logistics hub due to its marine, rail, road, and air transport infrastructure. It is also a major tourist attraction with established manufacturing, export, and service industries. All these demonstrate the strategic importance of Mombasa as an investment destination. Mombasa's economic growth largely depends on private investments. Therefore, policies that deliberately attract investment into priority sectors of the economy ought to be formulated by the county government.

Mombasa County Integrated Development Plan (CIDP; 2023-2027) has prioritized trade as a key driver of economic growth, job creation, and revenue generation. Further, the Mombasa County Investment Policy mandates the county to actively promote economic development by attracting investments, creates an institutional framework that fosters coordination for efficient investment attraction by both levels of government, and recommends specific policy reforms towards an enabling policy environment. The Utangamano Bay Economy Policy documents also outline the overall financing, production, processing, and marketing of agriculture products as part of the Jumuiya ya Kaunti za Pwani (JKP).

The Mombasa County Trade License Act (2013) also grants trade licenses and connected purposes. The proposed Mombasa County Trade and Markets Bill (2015) seeks to streamline trade licensing and recommends the creation of the Directorate of Trade, and the regulation of markets. Other frameworks include the Mombasa County Investment Corporation Act (2019) which creates a corporation to promote and coordinate investments, while the Mombasa County Consolidated Revolving Fund Act (2016) promotes financial inclusion and administration of the Mombasa County Consolidated Revolving Fund. A host of other county and national policies impact enterprise development in Mombasa County.

### **3.0 Policy Environment Challenges**

First, Mombasa has a long history of facilitating trade links within East Africa and beyond. However, the linkage between the county's economic progress and the local community is somewhat biased. Despite high Foreign Direct Investment (FDI) inflows, there are inadequate mechanisms that ensure accrual of the said benefits to domestic firms. This loss frame has stifled the opportunity to tell a unique story of aggregating local productivity. This frame also conceals multiple stories. On the one hand, it tells the story of an investment hub that has nurtured family enterprises over the past 100 years. On the other hand, it tells the story of lost opportunity regarding inclusive growth.

Second, there is the problem of incomplete county policy reforms that mostly manifest in drafts of legislation, adopted legislation that is poorly implemented, new institutions struggling to discharge their respective mandates, and the preference for hardware (visible infrastructure) over software (policies and plans) projects. The duplication seen in adopted policies and institutions created from there is closely tied to this. For example, various agencies are tasked with promoting trade and parceling small business regulations. The county also has a consolidated revolving fund, yet Mombasa Investment Corporation (MIC) provides separate funding. Preference for group funding and low borrowing limits adds to the barriers.

Third, Mombasa County has witnessed an exodus of prominent investors leaving for neighboring countries because of inadequate aftercare. This happens partly on account of a severely under-resourced investment promotion agency. Proper aftercare is one of the most cost-effective and efficient ways to increase private investment as existing investors expand their operations. It is also an effective source of information to identify areas requiring action to improve the investment climate further.

Fourth, informal nature of MSMEs comes with a host of other challenges including constraint access to credit and market. MSMEs particularly struggle to access export markets for they are least prepared to navigate complex international trade regulations, non-trade barriers and linkages with large enterprises already operating in such spaces. Taken together, this threatens business continuity of informal MSMEs, and jeopardize livelihood resources they provide to women and youth. As such, there is need to initiate formalization of the sector through improved regulation.

Fifth, lack of reliable data on MSMEs that then creates a difficulty in formulating targeted policy interventions. Closely tied to this is inadequate budgetary allocation by both levels of government allocation that often manifests in delayed execution of prioritized activities. Inadequate budgets also mean that few staff are recruited to support MSMEs. This hampers the implementation of prioritized initiatives especially by the County Department of Trade. Poor infrastructure also escalating the cost of doing business. Moving forward, the mandated institutions are encouraged to conduct comprehensive MSMEs baseline survey. This will strengthen the resource mobilization mechanisms for targeted response.

Sixth, inadequate integration of vulnerable groups remains a persistent problem of trade policy implementation at both levels of government. This has worsened youth unemployment while limiting opportunities for women and other vulnerable groups. Recommendations include allocating adequate resources through affirmative action, undertake gap analysis to determine specific financing needs for the vulnerable groups, involving vulnerable groups in county planning and budgeting processes and initiative

appropriate affirmative action programs for MSMEs owned by vulnerable groups (e.g. women, youth and persons living with disability).

Seventh, inadequate mechanisms for technology transfer still poses a challenge for most MSMEs. This is particularly pronounced owing to the dynamic nature of technological landscape. As a result, MSMEs struggle with innovation and performance improvement that often manifests in the narrow range of quality products/ services offered. Recommendations include skills development, technology transfer, expansion of business advisory services suitable for MSMEs, and creation of strong MSMEs associations linked to industry players.

#### **4.0 Objectives of the Assignment**

Kenya's SBDC program promotes a business-enabling policy environment at the county level by supporting the development of MSME-related strategies, policies, bills, or regulations. This will generate positive impacts (jobs, livelihoods and incomes) for the Kenyan people while contributing to increased economic growth, tax revenues, and business formalization. The County Governments of Mombasa has a mandate in trade facilitation, regulation and taxation. Appropriate trade regulation creates an enabling environment for doing business both for small and big enterprises. However, there is a problem of incomplete trade policy reforms at the county that mostly manifest in drafts of legislation, poor implementation of adopted legislation and new institutions struggling to discharge their respective mandates among other trade barriers.

The proposed Mombasa County Trade and Markets Bill (2015) seeks to streamline trade licensing, recommends the creation of Directorate of Trade, and the regulation of markets. However, this piece of legislation remains in draft form. There is also an opportunity to review the Bill by including other progressive provisions including, among others, appropriate institutions, support package for women-owned and small enterprises, access to credit, trade infrastructure development, and aftercare for investors and other incentives that promise an improved business environment. Therefore, the Kenya SBDC will assist the County Government of Mombasa to review and adopt the Trade and Markets Bill. It is anticipated that this task will lead to:

- Creation of an enabling policy environment for MSMEs;
- Increased market access for MSMEs;
- Provision of suitable services, institutions and adequate funding for MSMEs;
- Fostering entrepreneurship skills in MSMEs sector, increased uptake of business advisory services, and enhanced performance of MSMEs generating revenues for the county; and
- Enhanced participation of women, youth, persons with disability and other vulnerable groups in the MSMEs sector.

#### **5.0 Scope of Work**

The Kenya SBDC seeks a consultant to support reviewing and adopting the Mombasa County Trade and Markets Bill (2023). The consultant will act as a Legislative Drafting Specialists to support the reform process. Generally, this will be a cross-cutting policy support. Specifically, the policy reform will seek to unlock specific challenges identified earlier, among others, inadequate access to appropriate business

advisory services, credit and markets. The reform process will also address challenges in the job creation and revenue generation. This scope requires working collaboratively with the county government (as the lead), private sector, academia, county residents, and relevant stakeholders and includes:

- **Policy and legislative review:** Analyze existing policies and laws (at both levels of government) on trade facilitation and recommend proposals that promise enabling environment for enterprises in the county, consult county stakeholders and amend the existing Bill as appropriate.
- **Legal drafting:** In collaboration with county stakeholders and based on the findings of policy review, revised the existing Bill, and presented for stakeholder validation. This process will also involve developing Rules and Regulations to implement the principal legislation better.
- **Technical validation:** Present the revised Bill and Rules & Regulations for validation by the Technical Working Group (TWG) comprising relevant stakeholders in the county. Lead by the County Department responsible for trade, the TWG brings together technical leads from both levels of government, private sector, civil society organizations, and academic institutions among others.
- **Public participation:** This is a constitutionally mandated process and will include, jointly with government officials, consultation and vetting of proposed drafts (revised Bill and Rules & Regulations) through town halls with relevant stakeholders and incorporating their views in subsequent drafts.
- **Legislative adoption:** Proposed laws (revised Bill and Rules & Regulations) shall be finalized in a form and format ready for submission to the cabinet or County Assembly for approval. This includes support in developing cabinet memos and sensitizing political leaders before adoption.
- **Legislative implementation:** Provide support to the County Government in the implementation of the legislation. This will include, among others, presenting the Trade (Rules & Regulations) for validation by the cabinet and County Assembly, incorporate feedback from the cabinet and County Assembly into the revised Regulations and present to the CECM responsible for adoption and supporting the formation of new institutions created under the Trade and Markets Act (2023).

## 6.0 Milestones

	Deliverables	Due date
1.	Inception report detailing the consultants' proposed approach for the task. This will provide a detailed description of the methodology and tools, research questions, revised budget with a breakdown of costs, and a detailed work plan for the entire exercise	October, 2023
2.	Policy/legislative review and recommendations on revising the existing Bill. Among others, this review will address challenges and opportunities around: <ul style="list-style-type: none"> <li>• Creation of an enabling policy environment for MSMEs;</li> <li>• Increased market access for MSMEs;</li> </ul>	October, 2023

	<ul style="list-style-type: none"> <li>• Provision of suitable services, institutions and adequate funding for MSMEs;</li> <li>• Fostering entrepreneurship skills in MSMEs sector, increased uptake of business advisory services, and enhanced performance of MSMEs generating revenues for the county; and</li> <li>• Enhanced participation of women, youth, persons with disability and other vulnerable groups in the MSMEs sector.</li> </ul>	
3.	<p>Draft of Mombasa County Trade and Markets Bill (2023) and Rules &amp; Regulations in a form ready for submission to the cabinet or County Assembly for approval. Among other parameters;</p> <ul style="list-style-type: none"> <li>• The Bill will be a cross-cutting policy support but also aimed at unlocking specific challenges affecting MSMEs, among others, inadequate access to appropriate business advisory services, credit and markets. The reform process will also enhance job creation and revenue generation;</li> <li>• The Bill will contribute to improved policy and legislative environment that stimulates investments, access to credit for small businesses, provides incentives that promise a level playing field for women-owned enterprises, boosts investor confidence and increases capital investments by small businesses</li> </ul>	October, 2023
4.	Technical validation report and revised drafts (revised Bill and Rules & Regulations) based on comments received	November, 2023
5.	Public participation report and revised drafts (revised Bill and Rules & Regulations) based on comments received	November, 2023
6.	<p>Provide support to the County Government in the adoption of the legislation</p> <ul style="list-style-type: none"> <li>• Cabinet sensitization</li> <li>• Develop a cabinet memo to aid approval</li> <li>• County Assembly sensitization</li> <li>• Incorporate feedback from the cabinet and County Assembly into the revised legislation</li> <li>• Support adoption by the County Assembly and publication in the Kenya Gazette</li> </ul>	December, 2023
7.	<p>Provide support to the County Government in the implementation of the legislation</p> <ul style="list-style-type: none"> <li>• Present the Trade (Rules &amp; Regulations) for validation by the cabinet and County Assembly</li> <li>• Incorporate feedback from the cabinet and County Assembly into the revised Regulations and present to the CECM responsible for adoption</li> <li>• Support the formation of new institutions created under the Trade and Markets Act (2023) including the clarification of mandates especially those relating to the Small Business Centre</li> </ul>	January, 2024
8.	Final assignment report	February, 2024

## **7.0 Performance period and Working Arrangements**

The tentative starting date of the assignment is **25<sup>th</sup> September 2023**. The consultant must provide the services requested, including final reporting within 45 days, spread over 4 months from the starting date. Working closely with the Kenya SBDC Policy Specialist, Mombasa SBDC Coordinator, and the County Director for Trade (Mombasa County), the Consultant will undertake the described assignments as per the Terms of Reference.

## **8.0 Selection Criteria**

- A University degree in law, public policy, Business Administration, Economics, or equivalent. A Master's degree in related field is preferred.
- Minimum of 10 years' experience supporting public policy formulation, implementation, and related activities.
- Demonstrated understanding of institutional and policy issues in Kenya's trade sector, including a good grasp of Kenya's devolved governance system.
- Proven track record in successfully carrying out assignments of similar nature.
- Proficiency in English and Kiswahili
- Experience and skills in the facilitation of policy dialogues.

## **9.0 Submission**

Submit a technical proposal detailing the consultant's approach to the assignment, financial proposal, CV(s) of key personnel, and KRA PIN

In addition to the above, a firm must submit; a Certificate of Incorporation/ Business Registration, Tax Compliance Certificate, Business permit, CR 12 Form, and KRA PIN, and the firm shall not be sanctioned or blacklisted by any government or institution.

Potential consultant(s) must submit their proposals and mandatory attachments to Kenya SBDC program on **Careers SBS** <careersbs@strathmore.edu> by **15<sup>th</sup> September 2023** quoting **“REVIEW AND ADOPTION OF MOMBASA COUNTY TRADE & MARKETS BILL”** in the email subject line.