

Strategic Public Sector Transformation Project

Terms of Reference for Consultancy to conduct a Legislative Review to support the establishment of a National Quality Infrastructure

1. Background

1.1 Bureau of Standards Jamaica

The BSJ is a multi-functional institution governed by the Standards Act of 1968, The Weights and Measures Act of 1976 and the Processed Foods Act of 1959. The BSJ also has responsibilities under other national legislations such as the Petroleum Quality Control Act and the Customs Act.

The BSJ is currently divided into 4 main technical divisions:

- 1. Regulatory Division** – responsible for ensuring compliance with mandatory requirements under the Acts governing the BSJ. In particular, compliance and inspectorate functions under the Processed Foods Act and the Weights and Measures Act are executed by the Regulatory Division.
- 2. Standards Division** – responsible for the development of Standards and the Certification of products and processes under the Standards Act.
- 3. Science and Technology Division** – responsible for the provision of analytical services in support of standardization, the development of industry and the functions of the regulatory division
- 4. Engineering Division** – responsible for the development and maintenance of the national metrology infrastructure and engineering testing services in support of trade, the development of industry and the work of the regulatory division.

In addition, the following divisions provide support for the operations of the BSJ:

- 5. Human Resources Division** – includes the Industrial Training Unit and the Facilities Management Department.
- 6. Directorate Division** – includes the Office of the Executive Director, Management Information Systems (MIS), Legal Office, Corporate and Inter-Agency Affairs Office.
- 7. Finance and Accounting Division.**

Under Component 5a of the project, the Regulatory Division has been separated from the BSJ by Cabinet Decision #403/MIIC 25/2015 to become the new National Compliance and Regulatory Authority (NCRA). This change will enable the BSJ to assume a role of service provider in facilitating trade and the development of industry. It is proposed that the NCRA will however continue to utilize the corporate services of Finance and Accounting, Human Resources Management, Facilities Management, Legal and ICT provided by the BSJ.

The regulatory function which was executed by the BSJ is entrenched in the Standards Act and the separation of this function necessitates a change in the Act. In addition the operation of the former regulatory division of the BSJ was heavily influenced by the outdated Processed Foods Act of 1959 and the Weights and Measures Act of 1976. Further, the development of a National Quality Infrastructure comprising the National Standards Body, National Metrology Institute, National Accreditation Body and Conformity Assessment entities will require a new legislative framework for its legitimacy, functions, structure and operation.

1.2 National Quality Infrastructure (NQI)

The NQI is the infrastructure through which goods and services produced in a country are declared "fit for consumption/use" in the marketplace. This infrastructure therefore ensures that all standards are known and met, all assessments are done by entities and persons and entities with verified capabilities and all measurements made are traceable to the SI system of measurements.

Metrology, standards and accreditation are three separate but interdependent and interlinked "pillars" of knowledge and are essential to any NQI. These technical pillars are used by business and government to optimize production, health, consumer and environmental protection, security and quality. Their effective implementation support sustainable development and social welfare, and facilitates trade.

The NQI therefore requires at a minimum

- A National Standards Body (NSB)
- A National Metrology Institute (NMI)
- A National Accreditation Body (NAB)

Based on current institutional arrangements, Jamaica's economic size and the needs of the public and private sectors, the NQI for Jamaica is to be established around a core made up as follows:

- The National Accreditation Body
- The National Standards Body
- The National Metrology Institute
- A National Conformity Assessment Cluster

The National Standards Body which is responsible for the promulgation of documentary standards and the National Metrology Institute which is responsible for maintenance and dissemination of Jamaica's National Measurement Standards currently operate as divisions of the BSJ.

Conformity assessment is the set of activities/processes which are employed in determining the compliance of goods and services with specifications. These activities include inspection, sampling, testing, and certification. The BSJ through its regulatory division and its testing laboratories has provided conformity assessment services under the Standards Act, Weights and Measures Act and Processed Foods Act or as requested by other entities /individuals. Other public and private entities provide conformity assessment services required under other legislation/regulations.

In order for the National Quality Infrastructure to be effective in driving and supporting production of quality goods and services and enhancing the quality of life of Jamaicans, there must be a legislative/regulatory framework which:

- (a) ensures the existence and sustainability of the NQI entities and defines their scope
- (b) establishes the structure and basic requirements and operations of the NQI
- (c) establishes and defines the functions of a National Quality Council while maintaining independence in the activities and decision-making of the NQI entities
- (d) ensure that the NQI entities are governed by modern legislation which takes Jamaica's international commitments into consideration.

1.3 The Strategic Public Sector Transformation Project

The Government of Jamaica (GOJ) has received loan financing from the International Bank for Reconstruction and Development (IBRD) towards the cost of the Strategic Public Sector Transformation Project (SPSTP). The Project Development Objective (PDO) is to strengthen public resource management and support selected public sector institutions in facilitating a more enabling environment for private sector growth. The project has 2 thematic areas divided into 6 components.

The first thematic area of the proposed intervention seeks to reinforce fiscal discipline and revenue enhancement through four main components: (1) Strengthening the Public Investment Management System (PIMS); (2) Strengthening the Budget Preparation Process and Results Based Budgeting (3) Adaptive Public Sector Approaches to Promote Fiscal Sustainability and Project Management; (4) Strengthening Property Tax Compliance and Administration.

The second thematic area seeks to support those institutions that sit at the interface between the public and private sectors: Bureau of Standards of Jamaica (BSJ) and Jamaica Customs Agency (JCA). Component 5, Fostering Industrial Growth and Trade Facilitation, will support strategic public sector institutions essential to creating an enabling environment for the private sector. The management of the project makes up the sixth component.

1.3.1 Component 5. Fostering Industrial Growth and Trade Facilitation

The main objective of this component is to develop and implement an integrated border clearance process through a National Single Window mechanism in which Customs and the participating border agencies will eliminate multiple interventions/inspections by conducting joint inspections or delegating primary functions to Customs.

This component will support revamping the Jamaica Customs Agency (JCA), Bureau of Standards Jamaica (BSJ) and other border agencies so that they become service providers in accordance with international best practices. JCA will be supported in the following critical activities: (i) review and implement a change management strategy; (ii) implement a new organizational structure; (iii) review and complete all job descriptions and selection profiles; (iv) review and implement recruitment and selection strategies thereby ensuring that the organization is equipped with the requisite competences in order to fulfil its mandate and achieve its vision. ; (v) coordinate orientation sessions and training courses in core areas such as (tariff, valuation, origin & preference and risk management) (vi) review and improve JCA's corporate policies in human resources, finance and other corporate services; (vii) facilitate the revision of the Customs Act, (viii) facilitate the revision of client service standards with the objective of creating a more service-oriented business environment and (ix) develop a comprehensive ICT strategy.

Component 5a will also support the BSJ's re-engineering of its business processes which are directly related to the cross-border movement of goods with the aim of removing procedural obstacles and resulting in enhanced effectiveness and efficiency. The expected outcomes are significant reductions in release time of goods and costs to the business community.

2. Purpose of the Consultancy

The purpose of the consultancy is to:

- (a) conduct a review of all policies and legislation which impact the NQI
- (b) make recommendations for the development and drafting of a modern legislative framework for Jamaica's NQI
- (c) make recommendations for the development and drafting of the legislation that will formally establish the National Compliance and Regulatory Authority (NCRA).
- (d) Prepare drafting instructions or draft legislation for the NQI and its entities as well as the NCRA.

3. Scope of Services

Consultant is required to:

1. Review of international requirements for quality infrastructure
2. Review quality policies and NQI legislation from other selected jurisdictions outside of Jamaica.
3. Discuss with key stakeholders and obtain a clear understanding of the functional, relational and reporting structure of the NQI in line with international benchmarks
4. Review draft National Quality Policy as well as existing legislation including *Standards Act*, *Weights and Measures Act* and the *Processed Foods Act* and others which governs or impacts standards, metrology, accreditation, conformity assessment.
5. Provide advice to the Technical Coordinator on the legal implications of the Draft National Quality Policy and the structure of the National Quality Infrastructure.
6. Consult with Legal Officers and other senior management of the NCRA, JANAAC, BSJ and conformity assessment institutions, departments and agencies on matters to do with the execution of the consultancy.
7. Propose a legislative framework for the NQI and legislation for the mandate, authority and operation of the new National Compliance and Regulatory Authority.
8. Formulate recommendations regarding suggested amendments to existing legislation, creation of new legislation and the institutional framework relevant to the NQI
8. Conduct any required policy refinement and analysis through consultations, research, meetings with Technical Coordinator and relevant MDA's
9. Consult and collaborate with the relevant MDAs concerning the detailed requirements for legislation to be drafted;
10. Report on consultations and agree on the understanding as to the intent and scope of the legislation;
11. Prepare detailed drafting instructions for the OPC along with accompanying related research material;
12. Prepare a legislative plan/framework as an outline of the proposed legislations
13. Provide technical assistance to the Office of the Parliamentary Counsel in the development of the draft of the required Bills and consequential amendments necessary in keeping with policy objectives;
14. Conduct such research as may be necessary in order to ensure that the drafted legislations are consistent with the best practices adopted in countries which have sought to implement the requisite legislative framework needed to give effect to the WTO/TBT requirements;
15. Conduct presentation of the draft Bills to the public and private sector interests and the general public where applicable;
16. Provide continuing support as may be necessary to the Chief Parliamentary Counsel to resolve any issues, draft any amendments and provide support and assistance as necessary during all the various stages of the legislative process until it has been passed by Parliament and enacted;
17. Prepare Overview, Clause by Clause Analysis and Briefs on new draft Bills and consequential amendments to the abovementioned Acts;
18. Attend meetings with the Ministry, Office of the Parliamentary Counsel and Stakeholders, as required.

4. Reporting Relationship

The consultant will report to a Legislation Working Group to be established for the purpose of execution of this consultancy. The Legislation Working Group will be chaired by the BSJ's Legal Officer and will include representatives from MIIC, JANAAC, NCBJ, BSJ(Standards and Metrology areas), NCRA.

5. Selection of the Consultant

A consultant with the requisite qualifications and experience will be engaged in accordance with the Quality and Cost Based Selection procedures as per the latest edition of the World Bank's Procurement Guidelines.

6. Characteristics of the Consultancy

6.1 Type of Consultancy: Firm .

6.2 Starting Date and Duration: The Consultant is expected to provide the required services over a period of **9 months**. The start date for the consultancy is expected to be **June 2016**.

6.3 Knowledge Skills and Abilities required for the consultancy:

1. The Selected firm should have at least 10 years experience in providing legal services.
2. The firm must designate a consulting team with strong legal research skills and a general understanding of the Jamaican legislative system and provide evidence that either the firm or at least one member of the consulting team has been involved in:
 - (a) at least 4 engagements that were related to the formulation and drafting of legislation which have been enacted
 - (b) Implementing or facilitating projects for the development and implementation of domestic laws which impact the implementation of international agreements.

The consulting team must consist of a team leader and a technical specialist with the following qualifications

TEAM LEADER	<ol style="list-style-type: none">(a) Postgraduate degree in Law with specialty in Legislative Drafting.(b) At least 10 years' experience in the development of drafting instructions and /or legislative drafting(c) At least 5 years' experience in legal research/analysis, revision, and/or creation of legislation(d) At least 2 years experience in the development and implementation of domestic laws which impact the implementation of international agreements.(e) Must have worked in Jamaica or a CARICOM jurisdiction(f) Excellent written and oral presentation skills
TECHNICAL SPECIALIST	<ol style="list-style-type: none">(a) A technical degree in a subject which relates to meeting the requirements of the World Trade Organizations Technical Barriers to Trade (TBT) Agreement(b) At least 10 years of proven experience in the field of documentary voluntary standards, mandatory technical regulations, conformity assessment as it related to international trade.(c) Proven experience in the development and implementation of a National Quality Infrastructure.

7. Reports and Deliverables

The key deliverables of this consultancy are:

- (a) Proposed drafting instructions for new legislation for the establishment and operation of Jamaica's National Quality Infrastructure as well as
- (b) Proposed drafting instructions for the new primary legislation to establish and govern the operations of the NCRA;
- (c) timely and effective legislative drafting plan/framework document;
- (d) Proposed drafting instructions for consequential amendments/revision to be made to the Standards Act, Weights and Measures Act, Processed Foods Act and any other related legislation as necessary;
- (e) Technical Assistance to the Office of the Parliamentary Counsel in the preparation of the draft legislations
- (f) Review the draft Bills and further prepare proposed drafting instructions in relation to same;
- (g) Provide written comments in relation to issues concerning the development or drafting of the Bills, Regulations and revised drafting instructions as necessary.
- (h) Prepare final summary reports of the Act and Regulations.

General Activity	Specific Deliverables
<p>Inception report (Submission of Report on international best practice, review of all local legislation, which may be impacted, and the requisite recommendations including the proposed legislative framework for the NQI and the NCRA) Preparation of information to inform the Cabinet Submission</p>	<p>Preparation of Inception Report: (1) Internal Meetings, Stakeholder Consultations and Research (2) Preparation of Report (3) Preparation of Cabinet Submission</p>
<p>Milestone Report (prepare drafting instructions with the relevant legislative references, background information and supporting documentation)</p>	<p>(4) Preparation and Submission of Proposed Drafting Instructions (5) Review of draft Bill</p>
<p>Milestone Report (Submit, review of Draft Bill following consultation with GOJ stakeholders, primarily those involved in the legislative process and finalise further drafting instructions as necessary; review the finalised Bill)</p>	<p>(6) Preparation of further drafting instructions for finalization of Bills</p>
<p>Milestone Report (Submission of Overview, Clause by Clause Analysis of Bill and Brief for the Minister)</p>	<p>(7) Preparation and Submission of Clause by Clause Analysis (8) Attending Legislation Committee, Parliamentary meetings, and other</p>

	related meetings (9) Preparation and Submission of Ministerial Brief
Final Report (which gives summary of Bill highlighting operational procedures including role of key Stakeholders)	(10) Preparation and Submission of Final Report

8.0 Short listing Criteria

No.	Criteria	Category	Total Points
1.	Qualifications (max. 35 Points)		
	At least 10 years experience in providing legal services.	≥15 years 10-14 years	25 10
2.	Experience (Max. 15 points)		
	The firm should show evidence of at least 4 engagements that were related to the formulation and drafting of legislation which have been enacted	≥4 2-3 ≤1	25 15 5
	Experience in implementing or facilitating projects for the development and implementation of domestic laws which impact the implementation of international agreements.		30
	Team with strong legal research skills and a general understanding of the Jamaican legislative system.		20
	Maximum points = 100 Qualifying Score = 70 points		