



MINISTRY OF FINANCE AND THE PUBLIC SERVICE

TERMS OF REFERENCE

FOR

**An Adjudicator Contract for the
Public Investment Management Information System (PIMIS)**

**STRATEGIC PUBLIC SECTOR TRANSFORMATION PROJECT
IBRD LOAN NO.: 8406-JM**



1.0. BACKGROUND:

The Government has committed to strengthen Jamaica's public investment management system, as part of a comprehensive public financial management (PFM reform) agenda. This reform has seen the incorporation of public investment management as part of an enhanced fiscal governance framework that seeks to increase fiscal surpluses over time and concurrently reduce the debt to gross domestic product (GDP) ratio so that public resources can be allocated to public investment and other activities that have the potential to contribute to growth in the economy.

Cabinet Decision #38/13 of October 2013 gave approval for the institutionalization of the Public Investment Management System (PIMS) and, in doing so, standardized the treatment of public investment with respect to the entire project cycle.

Public investment projects, have significant budgetary impact requiring fiscal prudence and are formally defined as "***investments that require planning, execution, monitoring and evaluation carried out as an integrated set of activities aimed at meeting a development objective, at a specific cost and within a defined timeframe***" (Section 48A, FAA Act Amendments 2014). The Financial Administration and Audit Act (FAA Act) (Amended), 2014¹ sets out the elements of the strengthened Public Investment Management System (PIMS) which will seek to create a *common framework for the preparation, appraisal, approval and management of all public investments in Jamaica, irrespective of the source of funding or procurement and implementation modalities*. A key element of the system is the Public Sector Investment Programme (PSIP); a rolling 5-year plan of Cabinet approved public investment projects.

Since these amendments, additional legislative and regulatory work has been done to further refine the PIMS and, by extension will have a bearing on the PSIP. In February 2015, additional amendments to both the FAA Act and the PBMA Act provided for exceptions to the definition of public investment. The exception limits public investment to those undertaken by entities within the ***Specified Public Sector***. The Specified Public Sector is defined as the public sector minus those entities that will be certified as commercial by the Auditor General and are therefore outside of the fiscal rules, as at April 1, 2017. It is anticipated that only a few entities will qualify and the Specified Public Sector will encompass ~~much~~ more than 90% of the public sector. The ambits of the PIMS and PSIP, therefore, is quite extensive in scope.

¹ Gazette 31st day of March 2014, enacted April 1, 2014

2.0. INTRODUCTION:

2.1. 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 six (6) components divided into two (2) thematic areas.

The first thematic area of the proposed intervention seeks to reinforce fiscal discipline and revenue enhancement through four main components: (a) Strengthening the Public Investment Management System (PIMS); (b) Strengthening the Budget Preparation Process and Results Based Budgeting (c) Adaptive Public-Sector Approaches to Promote Fiscal Sustainability and Project Management; (d) Modernizing of the Accountant General's Department.

The second thematic area seeks to support those institutions that sit at the interface between the public and private sectors that foster industrial growth and trade facilitation.

The SPSTP is executed through six (6) Components. Component 1 is of significance to this assignment.

Component 1: The objective of this component is to put procedures, regulatory and operational structures in place for the PSIP to only incorporate public investment projects with estimated five-year operating costs fully linked to long term development goals and medium-term priority areas.

This component supports the GOJ's fiscal reform efforts through the following activities:

- (i) migration of the current web-based database to a more robust platform to manage all information about public investments across all stages of the project cycle linked to the budgeting and financial management systems of the country, thereby establishing a Public Investment Management System;
- (ii) design and implementation of a public investment management training program for public sector;

- (iii) reviewing legislation and carrying out dissemination activities to integrate the PIMS with the administrative systems including procurement and human resource management;
- (iv) strengthening monitoring of public investments through citizens' participation;
- (v) designing a facility for the funding of pre-investment financial and economic analysis and post-investment evaluations of the Borrower's public investments; and
- (vi) providing technical assistance for the implementation of the Public Financial Management Action Plan.

2.1.1. The Public Investment Management Information System (PIMIS)

Under Schedule 4G of the FAA Act, 2014, the PIMIS is described as '*...the web-enabled system that will serve as the repository of information on all public investment projects (central government, public bodies and public private partnerships), at the various stages of the project cycle (inclusive of concept, feasibility, approval, implementation and evaluation) thereby allowing access for the tracking of status and performance information on all projects as they move through the project cycle.*'

A Project Database has already been designed with the World Bank's assistance and is stored at the MOFP. This database captures information on projects that are in implementation and gives a status report on the progress of implementation of project activities, including information on project disbursement and expenditure.

It is envisaged that data from this database could be used to populate the PIMIS and serve as an interface with other GOJ enterprise-wide information systems such as the IFMIS (Integrated Financial Management Information System) and the e-GP (Electronic Procurement System). Recent updates to the Project Database are expected to be operationalized by the PIMIS Manager. The PIMIS will be a public-sector wide project portfolio enterprise system capable of maintaining information on and tracking of all projects throughout the entire project cycle, as well as, producing a Public Sector Investment Plan to support the development and management of the Capital Investment Portfolio of the country. The point of entry on the PIMIS will be when a project proposal has been agreed and approved by Cabinet.

The Government of Jamaica (GOJ) has committed, through amendment of the Financial Administration and Audit Act, 2014 to establish the PIMIS.

The PIMIS will support the GOJ's reform efforts through the deployment and utilization of a robust application solution to manage all information about public

investments across the project cycle which will then be linked to the budgeting, financial and other related systems of the country. The PIMIS will facilitate the systematic collection, analysis and use of project information to enable:

- ongoing review and monitoring of projects during implementation, to ascertain financial and physical progress against performance objectives and a determination of whether projects are being executed effectively;
- ex-post assessments of impact and outcomes of investment projects and ex-ante evaluations of projects to assess their achievement of outcomes and impacts;
- project portfolio management, decision modelling and business intelligence as it relates to public investment; and
- the determination of the efficacy, efficiency and effectiveness of the public sector investment programme.

The significance of the PIMIS therefore requires that strategies are put in place so that all perceived risks associated with its development and implementation are efficiently managed and or mitigated in a timely manner. For this reason and based on experience of issues that could plague the development and implementation process, it is proposed to proactively engaged the services of an Adjudicator to provide timely informal contract dispute mediation services.

3.0. OBJECTIVES OF THE CONSULTANCY:

The PIMIS Adjudicator will provide services as the Contract Dispute Mediator on disputes of all types that may arise between the Purchaser and the Supplier in relation to matters of interpretation of provisions in the governing Contract. Such disputes may also be occasioned by issues related to performance under the contract including disagreement over modification(s) made to any product or service related document; disagreements in connection with or caused by an inspection finding or judgement with regard to any component the Purchaser would want incorporated into the system that becomes contentious and cannot be settled amicably. The PIMIS Adjudicator will attempt to resolve disputes through mutual consultation and make decisions pursuant to the provisions as set out in the General and Special Conditions (GCC & SCC) of the governing Contract.

Specifically, the PIMIS Adjudicator will review statements and evidence presented by the disputed parties at a hearing and resolves the dispute by issuing a decision.

4.0. SCOPE OF WORK

The PIMIS Adjudicator will adjudge all matters referred to him/her for arbitration decision. These include the following responsibilities:

1. Determine that all parties to the dispute are in agreement that they will be legally bound by the decision arrived at through adjudication;

2. Provide the instrument of agreement that disputing parties will sign to legally bind them to the decision of the Adjudicator;
3. Engage both parties in mutual consultation;
4. Preside over all sessions convened for the purpose of hearing statements and collecting evidence presented by the disputing parties;
5. Ensure transparency in the adjudication proceedings through the sharing of statements and evidence presented with all disputing parties;
6. Conduct independent verification of statements and evidence related to the matter under dispute;
7. Conduct independent research into the subject matter under dispute;
8. Where necessary, identify and engage the expert advice of subject matter specialist;
9. Review all statements and evidence presented and compiled in the PIMIS Adjudicator's bundle in deliberating so as to arrive at an independent and objective decision;
10. Review all Articles and Sections provided in the governing contract including all documents incorporated as Addendum and/or Annexes to the SCC so as to inform decision;
11. Decisions should be in accordance with the provisions of the General Conditions of Contract (GCC) and Special Conditions of Contract (SCC) and its extensions and informed by the principles and rules governing matters under arbitration within the Jamaican jurisdiction;
12. The Adjudicator's decision being final, must therefore uphold the principles of natural justice, common law, and the governing law of the contract;
13. The Adjudicator shall inform all parties of decisions made in writing, sharing the analysis, expert opinions received (if any) and all considerations leading to the decision handed down; and
14. The Adjudicator shall instruct all parties of the duties, obligations and expectations and rights in moving forward.

5.0. KEY DELIVERABLES:

- 5.1. Instruments of agreement to abide by arbitration decision
- 5.2. Decision period for the Adjudicator's response shall be within 30 days
- 5.2. Convening of Adjudication hearings
- 5.3. Creating the Adjudicator's bundle to inform deliberation
- 5.4. Time allotted to review, research, consultation to inform proceedings and decision
- 5.5. Adjudicator's written decision

All deliverables detailed represent minimum requirements of the performance standard expected and the quality of service that should be provided.

6.0. CHARACTERISTICS OF THE ENGAGEMENT:

- a. Level of effort: As needed.
- b. Duration of contract: The duration of the Consultancy will be from

commencement of Contract (est. September 2019) to completion of Contract (est. December 2020)

- c. Location: Jamaica
- d. Type of Consultancy: Individual Consultant.
- e. Type of contract: Time based plus reimbursable
- f. Payment Trigger: Invoices for time, plus qualified reimbursable expenses as detailed in the contract.

7.0. REPORTING RELATIONSHIP:

The PIMIS Adjudicator will report to the disputing parties. The Technical Coordinator, Component 1 will be responsible signing off for all payment request as certified by the PIMIS Project Manager, under this contract that is satisfactorily rendered in keeping with agreed performance standards as detailed at 5.0 above.

8.0. LOCATION:

The PIMIS Adjudicator will work offsite and only be required to attend meetings at the Ministry of Finance and the Public Service upon request.

9.0. QUALIFICATIONS, SKILLS & COMPETENCES

- A post-graduate degree in Information Communication Technology with a focus on systems development; Management/Business Studies or equivalent from a recognized tertiary institution;
- Certification/training in dispute resolution processes
- At least 8 years' experience in Contract Management and or implementation
- Knowledge and understanding of application systems requirements & contract implementation
- Ability to map processes would be an advantage
- At least 8 years' experience working in ICT, systems analysis, corporate and or public sector environments
- Excellent facilitation skills
- Excellent communication skills
- Excellent analytical skills
- Excellent listening skills
- Excellent recording/record keeping skills and techniques

10.0. CONDITIONS

The Adjudicator is expected to provide his/her own tools & resources to undertake this assignment; where necessary the client will provide a venue for meetings and or hearings. All materials and documents and information accessed during the conduct of

this Arbitration proceedings remain the property of the MOF&PS and is not authorized for use or dissemination by the Adjudicator for any other purpose than for the effective conduct of the proceedings.

11.0. EVALUATION CRITERIA:

Qualification	10%
Certification in dispute resolution	15%
Specific experience required	25%
Specific skills required	25%
Understanding of the TOR	25%