

REQUEST FOR EXPRESSIONS OF INTEREST (REoI)
CONSULTANT'S QUALIFICATIONS BASED SELECTION (CQS)

Project: Federated States of Micronesia Maritime Investment Project (P163922)

Grant No. IDA-D4500

Assignment Title: Review of Institutional and Governance Arrangements for Port Management

Reference No.: FM-PIU-MIP, DOTCI-133385-CS-CQS

The Federated States of Micronesia has received financing from the World Bank toward the cost of the Micronesia Maritime Investment Project, and intends to apply part of the proceeds for the following consulting services.

The Government of FSM is seeking a firm to assess how the maritime sector is governed in FSM and identify measures to improve and streamline port management. The consulting services (“the Services”) will focus on a comprehensive review of the current institutional and regulatory setting of the maritime sector and develop a detailed set of priority recommendations for GoFSM to manage immediate and emerging issues. A summary of the key tasks and deliverables for this assignment are as follows:

- An initial review of current institutional and governance arrangements at the National and State levels,
- Presentation of an initial report to the FSM and State Governments in a form requested by the Contract Manager (Secretary of the Department of Transport, Communications and Infrastructure). This will be accompanied by PowerPoint briefs and/or short executive summaries on particular points, to supplement the overall report;
- If requested by the Contract Manager, prepare drafting instructions for any recommended legislative/regulatory amendments based on the recommendations as agreed under bullet 2, and provide the drafts to the FSM and State Governments for review and comment;
- Deliver a presentation of the draft legislation and proposed institutional and governance changes to Secretaries of the FSM Government, state Governors and any other interested stakeholders who shall be invited to provide inputs on this draft;
- Revise the draft report based upon the generally accepted inputs received at bullet 4;
- Prepare a final report to be provided to the Federal and State Governments including the elements of the initial review, an update to reflect Government feedback, as well as the final version of the legislative drafting instructions.

It is expected that the consulting assignment shall take four months to complete and will require a total of six person-months input by three key experts to complete. The detailed Terms of Reference (TOR) for the assignment are attached below.

The Department of Transportation, Communication and Infrastructure (DoTC&I) now invites eligible consulting firms (“Consultants”) to indicate their interest in providing the Services. Interested Consultants should provide information demonstrating that they have the required qualifications and relevant experience to perform the Services.

The attention of interested Consultants is drawn to paragraph 3.14, 3.16 and 3.17 of the “World Bank Procurement Regulations for IPF Borrowers”, dated July 2016, revised November 2017 and August 2018 (“the Regulations”), setting forth the World Bank’s policy on conflict of interest.

The best qualified firm to carry out the services will be selected in accordance with the Consultant’s Qualifications Based Selection (CQS) method set out in the Regulations, and based on the following criteria:

- i. General experience advising on institutional review and governance arrangements for port management or management of other major infrastructure facilities (a minimum of 10 years’ experience will be required).
- ii. Experience on similar assignments as per the Terms of Reference (at least 3 similar assignments over the past 10 years).
- iii. Proof of technical, managerial and financial capacity of the firm.
- iv. Responsiveness to this REoI and demonstrated understanding of the key elements of this assignment.
- v. Experience in the Pacific Region is desired.

Further information can be obtained at the address below during office hours, *i.e., 0800 to 1700 hours*.

Expressions of interest must be delivered in a written form to the address below (in person, by mail, or by e-mail) by **4:00 p.m. (1600 hrs) Pohnpei Time on Friday, 23rd October, 2020**.

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Terms of Reference (ToRs)

Review of Institutional and Governance Arrangements for Port Management

Background

The Federated States of Micronesia (FSM) is highly dependent on the maritime sector for international, inter-state and inter-island trade via the sea, and for access to education and health services to and from the main and outlying islands, making maritime connectivity of critical importance.

However, it faces challenges in improving overall governance of the sector, including in legislative, operational, technical and human capacity areas. As a result, there are inconsistencies and gaps between various regulations, particularly between sectors and between national and subnational governance, and attendant regulations and policies are not sufficiently adapted to the local context. There is also a need for clarity with regard to operating procedures and accountability mechanisms in the sector.

In response to these challenges, the Government of FSM (GoFSM) have begun implementing the FSM Maritime Investment Project (FSMIP). The objective of FSMIP is to improve the safety, efficiency and climate resilience of maritime infrastructure and operations in FSM's territory, and in the event of an Eligible Crisis or Emergency, to provide an immediate response to the Eligible Crisis or Emergency. The proposed project has four components:

- Component 1: Maritime Infrastructure
- Component 2: Maritime Safety and Security
- Component 3: Technical Assistance for Port Planning and Project Management
- Component 4: Contingency Emergency Response

A critical element of Component 3 is technical assistance to review institutional and governance arrangements for port management in FSM.

Objectives of Role

The objective of this role is to assess how the maritime sector is governed in FSM and identify measures to improve and streamline port management.

Detailed Scope of Assignment and Deliverables

A consulting firm will undertake a comprehensive review of the current institutional and regulatory setting of the maritime sector and develop a detailed set of priority recommendations for GoFSM to manage immediate and emerging issues. Detailed deliverables are as follows:

1. An initial review of institutional and governance arrangements including:
 - a. An executive summary that outlines all important points and recommendations.
 - b. A summary of the current regulatory framework for port management including the National Maritime Act, which sets the legal framework for maritime transport and shipping, and those

aspects of the FSM Code associated National regulations, State Codes and associated State regulations which relate to port management, including environment, customs, immigration, and health and safety legislation to ensure it is aligned with government priorities, including flag state responsibilities. The assessment will also include a review of safety responsibilities; identification of a national and state government emergency response policy, protocols and arrangements to address coastal flooding and extreme weather events in and around ports. Legislation in relation to human trafficking and gender-based violence should be specifically addressed as they are significant concerns in the maritime sector. The summary should also outline how port management functions in practice (including in relation to port operations leasing/licensing arrangements), where it differs from what the regulatory framework details.

- c. A summary of the current roles, responsibilities and functions of the maritime sector agencies and other units (both National and State) responsible for elements of port management with recommendations made to address any gaps identified and to resolve overlapping responsibilities. This would include the departments and authorities responsible for port management, environment, land, health and safety. The firm will propose appropriate institutional arrangements to effectively and efficiently carry out port management functions within FSM.
 - d. Recommendations, including possible legislative/regulatory amendments, additions, drafting instructions, and explanatory memoranda, required at the State and National levels necessary to develop a governance framework for effective and efficient port management, that are relevant and appropriate in the FSM context and, to the fullest extent reasonably possible, consistent with international best practice in areas including environmental protection, occupational health and safety, maritime safety, anti-human trafficking, and addressing gender-based violence. Effective and efficient port management in this context includes port management which supports a viable maritime sector in the outer islands of FSM, to the extent that it facilitates economic sustainability to support and maintain outer island population centers.
2. Presentation of an initial report to the FSM and State Governments in a form requested by the Contract Manager (Secretary of the Department of Transport, Communications and Infrastructure). This will be accompanied by PowerPoint briefs and/or short executive summaries on particular points, to supplement the overall report.
 3. ***If requested by the Contract Manager***, prepare drafting instructions for any recommended legislative/regulatory amendments based on the recommendations as agreed under (2), and provide the drafts to the FSM and State Governments for review and comment.
 4. Give a personal presentation of the draft legislation to Secretaries of the FSM Government, state Governors and any other interested individuals who shall be invited to provide inputs on this draft.
 5. Revise the draft legislation based upon the generally accepted inputs received at (4).
 6. Prepare a final report to be provided to the Federal and State Governments including the elements of 1(a-d) above, an update to reflect Government feedback, as well as the final version of the legislative drafting instructions.

It is anticipated that the assignment will be completed within six months from the date of the signing of the consultancy contract between GoFSM and the consulting firm.

Payments will be made by the FSM Government to the firm as follows:

- 50% of the total contract fees are payable on firm’s completion of tasks set out in paras 1(a-d) and 2 in form and substance satisfactory to the Contract Manager;
- 25% of the total contract fees are payable on firm’s completion of tasks set out in paras 3 and 4 in form and substance to the Contract Manager; and
- 25% of the total contract fees are payable on the firm’s completion of tasks set out in paras 5 and 6 in form and substance satisfactory to the Contract Manager.

The firm’s International Legal Consultant and International Port Management Consultant (key experts noted below) will each make one trip to FSM for not more than a total of 18 working days in country (i.e. excluding travel time) to meet with the Contract Manager and other Federal and State Government officials.

Key resources

Throughout the assignment, a number of GoFSM stakeholders are to be engaged, including, but not necessarily limited to:

Federal Government: The Department of Transportation, Communication and Infrastructure (DoTC&I), the Department of Finance & Administration (DoFA), the Department of Department of Environment, Climate Change and Emergency Management (DECEM), the Department of Justice (DoJ), the National Oceanic Resource Management Authority (NORMA), the Department of Transport and Public Works (DTPW), and the Attorney General’s office.

State Governments: Kosrae State Government, the Kosrae Port Authority, the Pohnpei State Government, the Pohnpei Port Authority; the Chuuk State Government, and the Chuuk State Department of Transportation, Communication, and Infrastructure; and the Yap State Government, and the Yap State Department of Public Works and Transportation.

Private sector counterparts: Micronesian Shipping Commission, port lease or license holders, agents and commercial vessel owners; and donor partners.

Existing policy documents, laws, regulations, and standards, guidelines and other materials and documents relating to maritime sector management in FSM outlined in Annex A. In completing the deliverables, the firm should consider, but not limit itself to the suggested list in Annex A.

Key Expertise Requirements

A consulting firm will be engaged through Consultants Qualification Selection in accordance with the World Bank’s Procurement Policy and Procurement Regulations. The duration of the assignment is expected to be approximately four months. Proposing entities will determine the number and the nature of experts they will require to achieve the objectives of the contract, in accordance with their proposed approach and methodology. However, the assignment requires a minimum of the following three key experts: 1. International Legal Consultant; 2. International Port Management Expert; and 3. Local Legal Adviser. It is expected that the International Legal Consultant will serve as Team Leader, and the key experts will have the following minimum qualifications:

Table 1: Key Experts Required

Position	Minimum Qualifications Requirement
International Legal Consultant	Degree in law, qualified to practice in at least one jurisdiction, and with at least 10 years of post-qualification experience that includes advising Governments on regulatory and institutional issues pertaining to the maritime sector.

	Fluent in written and spoken English.
International Port Management Expert	Degree in Business Management, Economics, Engineering or other relevant field with at least 10 years post-qualification experience in port management and operations; including port management in small island countries Fluent in written and spoken English
Local Legal Adviser	Degree in law, qualified to practice in FSM, and with at least 10 years of post-qualification experience in public law Fluent in written and spoken English

In addition to the above required key experts, proposing entities should also include all non-key experts in their technical proposal, in the personnel work plan and in their financial proposal in accordance with their proposed approach and methodology.

Duration and Level of Effort

It is expected that this assignment will take four months to complete and will require a total of six person-months input by the three key experts to complete.

Reporting Requirements

The firm will be contracted to and based in DoTC&I and will report operationally to the Secretary of DoTC&I.

Annex A – FSM maritime sector core documents

Core documents to review include:

- Maritime Act
- Domestic Violence Act 2017 and related state laws (currently Kosrae and Pohnpei at the time of writing, Chuuk and Yap are pending)
- Trafficking in Person Act of 2011
- Sections of the Code of the Federated States of Micronesia, relevant to the maritime sector including, but not limited to:
 - Foreign Relations [Title 10]
 - Crimes as relates to human trafficking, national security, weapons control and controlled substances
 - Territory, Economic Zones and Ports of Entry [Title 18]
 - Admiralty and Maritime [Title 19]
 - Communication [Title 21]
 - Agriculture and Livestock [Title 22] as relates to quarantine
 - Marine Resources [Title 24]
 - International Trade [Title 38]
 - Commercial Law [Title 33]
 - Public Health, Safety and Welfare [Title 41]
 - Labor [Title 54]
 - Taxation and Customs [Title 55]
 - Government Finance and Contracts as relates to revolving funds for:
 - Maritime Operations (613-617)
 - Fisheries Observer (630-634)
 - Aquaculture (655-659)
 - Maritime Surveillance 679-682)
 - Immigration, Customs and Quarantine Overtime (§§ 1608-1612)
- Relevant port leases and licenses
- Relevant case law
- Relevant policies – at the time of writing, FSM has yet to adopt a national policy for maritime transport or shipping.
- Institutional frameworks, corporate plans and/or mandates for the national and state agencies involved in maritime sector management.

In addition to the national regulatory framework governing the maritime sector, the firm should also consider any international obligations that may apply to FSM. This includes compliance with the International Ship and Port Facility Security Code (ISPS) and International Maritime Organization (IMO) conventions to which FSM is a party, even though FSM is not an IMO member.

Other international obligations may include a duty to protect and preserve the marine environment and rare or fragile ecosystems and habitats¹, duty to conserve biodiversity², ensure prior environmental impact assessment of activities likely to cause significant harm³ and ongoing monitoring of environmental

¹ United Nations Law of the Sea Convention (LOSC) Articles 192 and 194(5) and Article 14 of the Noumea Convention.

² 1992 Convention on Biological Diversity Article 3.

³ LOSC Article 206 and Noumea Convention Article 16

impacts⁴. FSM may also be obligated to prevent, reduce and control pollution from seabed activities⁵; or caused by ships⁶, as well as prevent trans-boundary harm⁷ and not interfere with rights and freedoms of other States, such as the installation of submarine pipelines and cables, and marine scientific research⁸. Governments also have an international duty to take measures for ensuring safety at sea.⁹

Regionally, the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region (the Noumea Convention) will have particular relevance. The convention focuses on the protection and management of the development of the environment of the Pacific region in marine and coastal areas.

⁴ LOSC Article 204.

⁵ LOSC Articles 194(3)c, 208, 209; Noumea Convention Article 8.

⁶ LOSC Articles 194(3)(b) and 211; International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL) 73/78, or by dumping of waste at sea (LOSC Articles 194(3) and 210; the London Convention and the 1996 Protocol thereto).

⁷ LOSC Article 194, London Convention Preamble; London Protocol Art. 3(3); Seabed Disputes Chamber of the International Tribunal for the Law of the Sea (ITLOS), Case No. 17, ITLOS Advisory Opinion of 1 February 2011.

⁸ LOSC Articles 58, 78, 79 and 246.

⁹ LOSC Article 94, 1974 Convention for the Safety of Life at Sea.