



TERMS OF REFERENCE
CONSULTANCY SERVICES TO REVIEW THE MARITIME TRANSPORT ACT 2013, MARINE (ANTI-FOULUNG SYSTEMS ON SHIPS) REGULATIONS 2014 AND THE MARINE (BALLAST WATER MANAGEMENT) REGULATIONS 2014

NOVEMBER 2024

1. Background

The Maritime Safety Authority of Fiji (MSAF) is a dynamic, internationally respected regulator, provider and promoter of maritime safety and marine environment protection. Our vision is navigating Fiji into a safe maritime environment and our mission is charting towards a safe and sustainable course for the maritime future of Fiji.

In line with its vision and mission, Fiji has ratified and domesticated the International Convention on the Control of Harmful Antifouling Systems on Ships (AFS Convention) and the International Convention for the Control and Management of Ships' Ballast Water and Sediments (BWM Convention), in its laws. This is reflected in Fiji's Maritime Transport Act 2013 and its subsidiary legislation in terms of the Marine (Anti-fouling Systems on Ships) Regulations 2014 and Marine (Ballast Water Management) Regulations 2014.

Building on these efforts, Fiji, in 2018 became one of 12 Leading Partnering Countries to spearhead the GEF-UNDP-IMO GloFouling Partnerships Project (the Project). This project addressed the rising global environmental problem of the introduction of invasive aquatic species (IAS) via biofouling. The International Maritime Organisation (IMO), developed the Guidelines for the Control and Management of Ships' Biofouling, to minimize the Transfer of Invasive Aquatic Species (IMO Biofouling Guidelines) and to assist States in mitigating this issue.

At present the Marine (Anti-fouling Systems on Ships) Regulations 2014 and the Marine (Ballast Water Management) Regulations 2014 serve as key measures in mitigating the introduction of IAS into Fiji's waters, addressing risks posed by ballast water and biofouling on ships' hulls. As these Regulations are crucial in protecting Fiji's marine environment, a review will be conducted to ensure it remains aligned with Conventions Fiji has ratified and the IMO Biofouling Guidelines. This review will also focus on ensuring that the Regulations are practical and feasible within the context of Fiji's maritime industry and conditions.

2. Objectives

MSAF, through this Tender, seeks to:

- a. engage a qualified Consultant to provide direct support to MSAF in reviewing the relevant provisions of the Maritime Transport Act 2013, the Marine (Anti-fouling Systems on Ships) Regulations 2014 and Marine (Ballast Water Management) Regulations 2014; and
- b. in doing so, align the legislation to the current relevant international Conventions that Fiji is a signatory to and the Project.

3. Reporting Arrangements and Timeframe

The Consultant(s) during the course of its contract will be expected to:

- a. report to the Chief Executive Officer and work closely with Manager Safety, Compliance, & Response;
- b. provide substantive inputs as and when required between January, 2025 to March, 2025 based on the availability of funding;
- c. complete majority of the work remotely and undertake travel and meet with MSAF personnel as and when required, depending on the situation; and
- d. conduct consultations and meetings with partners and other stakeholders.

4. Key Responsibilities

The Consultant(s) in carrying out its role and to ensure that the project's objectives are met effectively must:

- a. Conduct a comprehensive review of the Marine (Anti-fouling Systems on Ships) Regulations 2014 and Marine (Ballast Water Management) Regulations 2014 to identify gaps particularly pertaining to the introduction of IAS and where applicable, biofouling;
- b. Assess the alignment of the mentioned Regulations with the international conventions and standards such as the AFS Convention, BWM Convention and the IMO Biofouling Guidelines (as amended);
- c. Analyse the current state of biofouling management in Fiji and the risks thereafter of the introduction of IAS;
- d. Evaluate the effectiveness of existing measures and recommend improvements to incorporate biofouling controls;
- e. Prepare and submit a detailed and comprehensive final report on the findings with gap analysis, proposed regulatory amendments, monitoring and implementation mechanisms

- and recommendations for ongoing improvement;
- f. Identify and evaluate any overlap in laws or conflicting jurisdictions particularly with the Biosecurity Act 2008 including any other legislation with marine environmental scope;
- g. Engage key stakeholders, including maritime industry representatives, environmental agencies and international organisations as and when necessary to gather input on the implementation of biofouling management;
- h. Propose drafting instructions for incorporating into the maritime laws to improve the \ corrective actions toward identified gaps;
- i. Meet respective phase deadlines of the project;
- j. have a flexible approach and understand that specific roles and responsibilities may change.

5. Deliverables and Schedule

Deliverables and schedule will be proposed and confirmed prior to the commencement of this project.

6. Selection Criteria

- a. 10 years' experience working in international or domestic development with a focus on provision of technical advice on marine environmental law internationally, and/or with a sound maritime or environment legal background. Experience in the Pacific is highly desirable;
- b. Sound understanding of the Pacific Islands context or small island developing states' maritime development needs;
- c. Demonstrated experience working alongside civil-society organisations, preferably in the Pacific or small island developing states, to support implementation of maritime development plans and or delivery of maritime legislation;
- d. Strong communication skills including the ability to speak and write effectively in English;
- e. Possess strong legal drafting skills is desirable;
- f. Strong time management skills with the ability to work with limited supervision and remotely, and a consultative approach that is open to feedback;
- g. A Master's Degree in maritime law, maritime science or relevant field is desirable;
- h. Experience doing similar projects is desirable;

7. Personal Accountability

- a. An understanding of MSAF's vision, mission and values, and a commitment to uphold the MSAF's policy for the duration of the assignment.
- b. Compliance with MSAF values, code of conduct, policies and procedures and standards where relevant;
- c. Compliance with all Fiji laws;
- d. Declare anything that you become aware of through the course of your engagement which may impede your delivery of services;
- e. Take reasonable care for your own health and safety;

8. Additional Requirements

8.1. Successful candidates will be required to:

- a. Provide insurance coverage for Professional Indemnity and Public Liability, if available and if not available, candidates must provide an explanation for its unavailability;
- b. Undergo reference checks which will be conducted by MSAF;
- c. Enter into formal agreement with MSAF for provision of consultancy services.

8.2. Interested candidates are required to submit:

- a. an expression of interest
- b. a succinct cover letter stating:
 - i. How you meet the selection criteria;
 - ii. Your likely availability during the January 2025 - March 2025 period;
 - iii. Your costs for services:
 - Must be quoted in Fijian Dollar (FJD\$);
 - Outline all costs associated with the undertaking of the services including a daily professional fee, related overhead costs and reimbursement costs (e.g. International flight, per diem, etc.)
 - Quote to be valid for a period of 90 days from the deadline of submission.
- c. A Resume detailing qualification, previous relevant experience and at least three referees and their contact details and provide your confirmation for approaching referees.

All documents relating to the proposal shall be in the English language and must be submitted in writing.

The consultant might be required to provide additional information relating to their submitted proposal, if the Tender Evaluation Committee requests further information for the purpose of tender evaluation.

The consultant shall bear all costs associated with preparing and submitting a proposal, including cost relating to contract award; MSAF will, in no case, be responsible or liable for those costs, regardless of the conduct or outcome of the tender process.

MSAF encourages and celebrates diversity. Please contact Mr Ilesia Batisaresare on ibatisaresare@msaf.com.fj if you have any questions.

Expressions of Interest should be submitted to the Tender Committee Secretary on email: cmafi@msaf.com.fj or dropped in the Tender Box at the MSAF Office on Level 4 Kadavu House, 414 Victoria Parade, Suva, by 15th December, 2024.

Approved by
Maritime Safety Authority of Fiji
20th November 2024