GOVERNMENT PROCUREMENT SERVICES
MINISTRY OF FINANCE AND ECONOMIC MANAGEMENT

INDEPENDENT ADJUDICATOR
TERMS OF REFERENCE

1. Background and Legal Basis

The Public Procurement Act 2025 (Act 5 of 2025) ("the Act") and the Public Procurement Regulations 2025 (SRO 43 of 2025) ("the Regulations") makes provision for the appointment of an **Independent Adjudicator**.

Part 9 of the Act establishes a structured challenge and review mechanism, including review by the procuring entity and a right of appeal to an Independent Adjudicator. Part 6 of the Regulations set out the appointment, ethical obligations and procedures relating to the Independent Adjudicator and the conduct of appeals and evidence.

Regulation 47 provides that the Independent Adjudicator shall be a legally qualified individual appointed by the Financial Secretary in consultation with the Attorney General, for a term of three (3) years, renewable once.

These Terms of Reference (ToR) are issued by the Financial Secretary to operationalise the role of the Independent Adjudicator in accordance with the Act and Regulations.

2. Objective of the Assignment

The overall objective of the Independent Adjudicator is to provide an independent, impartial and timely review and appeal mechanism for:

1. Complaints and challenges lodged by suppliers/tenderers against decisions of procuring entities under the Act (following review at procuring entity level); and
2. Appeals relating to Suspended Debarment and Temporary Debarment decisions referred by the Public Procurement Board (PPB),

thereby strengthening confidence in GoM's procurement system and safeguarding the rights of suppliers and procuring entities.

3. Scope of Service

The Independent Adjudicator shall perform functions as prescribed under the Act and Regulations to include the following:

3.1. Appeals on Procurement Challenges

3.1.1. Receive and review appeals submitted by suppliers following review by the procuring entity under section 43(2) of the Act, where the tenderer decides to appeal to the Independent Adjudicator in accordance with section 44 of the Act.

3.1.2. Satisfy him/herself of jurisdiction and admissibility, including that:

- The appeal has followed the prescribed sequence (initial complaint and review by the procuring entity under the Act); and
- The appeal has been submitted in writing through the Secretariat, in the prescribed form, setting out the grounds of appeal and including supporting documentary evidence.

3.1.3. Determine the procedure for each appeal, including the order, time and place of any hearing, taking into account the nature and complexity of the case.

3.1.4. Conduct hearings, where required:

- Decide whether the matter can be determined on the basis of written submissions only (documents-only procedure);
- Where a hearing is held, establish the manner of the hearing;
- Proceed in the absence of a party where satisfied that proper notice was given and the absence is without good cause.

3.1.5. Manage evidence:

- Consider all relevant documentary evidence submitted with the appeal and reply;
- Co-op other persons capable of assisting with expert advice;
- Decide whether to admit any subsequent documentary evidence, only where relevant and with prior written consent;
- Hear oral evidence and the voluntary appearance of witnesses;
- Request additional documentary evidence or the presence of other witnesses or expert witnesses, where necessary.

3.1.6. Ensure confidentiality and orderly proceedings:

- Conduct hearings in private, while allowing persons with a justifiable interest to be admitted;
- Ensure that proper minutes/records of hearings are kept by the Secretariat.

3.1.7. Reach and issue a reasoned decision:

- Confine the decision to the issues raised by the appeal and the reply;
- Deliver the decision to the Secretariat within fifteen (15) working days from the date of commencement of the appeal, subject only to a justified adjournment not exceeding an additional ten (10) working days.
- Ensure that the decision is clear, reasoned and capable of implementation.

3.1.8. Ensure finality and notification:

- Recognise that decisions are final and binding on the parties, without prejudice to any right to bring a subsequent claim before the High Court;
- Ensure that decisions are transmitted to parties through the Secretariat and that the Secretariat records them in the procurement record in accordance with Regulation 45.

3.2. Appeals on Debarment Decisions

3.2.1. Review debarment appeals referred by the Public Procurement Board under Regulation 57(3), where a supplier is dissatisfied with a Suspended Debarment or Temporary Debarment decision.

3.2.2. Determine the procedure for such debarment appeals at his or her discretion, ensuring a decision is finalised within a reasonable period and in any event within thirty (30) days of receipt of the request.

3.2.3. Undertake an objective assessment of the evidence presented during the debarment investigation and hearings:

- Do not rehear the case or allow further written or oral submissions;
- Confirm or reject the Notice of Debarment, only rejecting where the preponderance of evidence does not establish a prohibited or collusive practice.

3.3. General Responsibilities

3.3.1. Uphold independence and impartiality in every proceeding, free from undue influence, in accordance with the Act and Regulations.

3.3.2. Ensure compliance with the Act and Regulations, including observing the prescribed timelines for decisions.

3.3.3. Promote consistency of decisions to enhance predictability and fairness in public procurement.

3.3.4. Contribute to system learning by highlighting recurring issues or systemic weaknesses in procurement practice to the Financial Secretary and Head of Government Procurement Services (GPS), without disclosing confidential case-specific information.

4. Independence, Ethics and Conflict of Interest

4.1. The Independent Adjudicator shall conduct all reviews independently and impartially and shall, in all respects relating to status and ethical standards, be bound by the rules applicable to public servants.

4.2. The Independent Adjudicator shall complete and sign a Declaration of Interests form prepared by the Head of Government Procurement Services immediately upon

appointment, reappointment and before any proceedings, in accordance with Regulation 46.

4.3. The declaration shall:

- State any existing or potential conflicts of interest as set out in section 38(3) of the Act;
- Confirm understanding of the duty to disclose any conflict arising during the course of a procurement in question.

4.4. Any conflict disclosure shall be forwarded to the Head of Government Procurement Services, and the Independent Adjudicator undertakes to abide by any decision of the Head of GPS regarding such disclosure.

4.5. The Independent Adjudicator shall not participate in any case in which:

- He/she has, or appears to have, a direct or indirect personal, professional or financial interest; or
- His/her participation could reasonably be perceived to compromise independence or impartiality.

5. Working Arrangements and Secretariat Support

5.1. The Head of Government Procurement Services shall provide:

- A Secretariat to the Independent Adjudicator responsible for the organisation and management of any appeal; and
- An appropriate meeting venue, equipment, IT facilities and other supplies necessary to perform the functions of the Independent Adjudicator.

5.2. The Secretariat shall, inter alia:

- Receive and register appeals and replies, assigning a case reference number;
- Notify the respondent procuring entity and affected parties;
- Compile the case file and transmit it to the Independent Adjudicator;
- Arrange hearings and provide logistical support;
- Take and keep minutes and records of hearings;
- Notify parties of the decision of the Independent Adjudicator and ensure inclusion of the decision in the procurement record.

5.3. The Independent Adjudicator may co-opt persons with specialist expertise to assist with expert advice, provided that such persons have no right to vote on any matter.

6. Reporting and Accountability

6.1. Functionally, the Independent Adjudicator shall be independent in decision-making and not subject to direction or control from any party in respect of specific cases.

6.2. Administratively, the Independent Adjudicator shall:

- Report to the Financial Secretary on overall performance and summary statistics of cases, at least annually;
- Provide, through the Secretariat, anonymised data on challenges and appeals to the Head of GPS for inclusion in procurement reporting, consistent with Regulation 45.

6.3. Any serious concerns about systemic non-compliance or repeated breaches identified through appeals may be flagged to the Financial Secretary.

7. Duration of Appointment and Removal

7.1. The Independent Adjudicator is appointed for a period of three (3) years, and is eligible for one (1) additional term of three (3) years, in accordance with Regulation 47(1).

7.2. The office of the Independent Adjudicator becomes vacant if he or she:

- Dies;
- Resigns by instrument in writing addressed to the Financial Secretary; or
- Has the appointment revoked by the Financial Secretary where he or she:

  - Becomes bankrupt;
  - Is convicted of an offence under the Act;
  - Engages in conduct which, in the opinion of the Financial Secretary, disqualifies the appointee from holding office, including conduct prejudicial to the interests of Government; or
  - Fails to carry out the functions of the office in accordance with the Act and Regulations.

8. Qualifications and Experience

The Independent Adjudicator shall be a **legally qualified individual**, as required by Regulation 47(1), with the following preferred profile:

8.1. A recognised law degree and professional legal qualification, eligible to practise in Montserrat or a comparable common-law jurisdiction.

8.2. At least 10 years of post-qualification experience, in areas including:

- Administrative law, commercial law, procurement law or related fields;
- Experience in adjudication, arbitration, mediation, tribunal work or judicial/quasi-judicial functions.

8.3. Demonstrated understanding of:

- Public procurement principles, including competition, transparency, fairness and value for money;

- International good practice in procurement challenges and review mechanisms.

8.4. Strong analytical, drafting and decision-writing skills, capable of issuing clear, robust and legally sound decisions within tight timelines.

8.5. High ethical standards, integrity and a track record of impartiality and discretion.

8.6. No existing or foreseeable conflicts of interest that could impair independence in discharging the functions of the office.

9. Remuneration

9.1. The Independent Adjudicator shall be remunerated per case.

9.2. Reasonable travel and other reimbursable costs incurred in the performance of official duties will be reimbursed in line with applicable GoM policies.

10. Confidentiality and Data Protection

10.1. The Independent Adjudicator shall treat all information, documents and records received in the course of appeals as confidential, subject only to disclosure as required by law, the Act, the Regulation, or by order of a competent court.

10.2. All records generated will be managed in accordance with Montserrat's applicable legislation on records retention and data protection, and with Regulation 45 (SRO 43 of 2025) on procurement records.

11. Amendment of the Terms of Reference

These Terms of Reference may be amended by the Hon. Financial Secretary, in consultation with the Attorney General.