REQUEST FOR EXPRESSIONS OF INTEREST

CONSULTING SERVICES – FIRM SELECTION (International)

Assignment Title: Recruitment of the Legal Advisor (Consulting firm) for Assessment and Implementation of the Legal and regulatory environments for official identification systems and civil registration in Tonga


Grant Number: IDA Grant Number IDA D4490-TO

Date of Issuance: 11th October 2019.

Date and time Expression of Interest (EOI) due: 8th November 2019. No later than 4:30 pm local time

Drop off EOI to Main Office: Ministry of Finance, Nuku’alofa, Tonga

Email Submission of EOI: Please email to: bfaotusia@finance.gov.to and copy to gfukofuka@finance.gov.to and to npelesikoti@finance.gov.to

Attn: Chief Executive Officer, Ministry of Finance

Reference Number: TO-MFNP-127710-CS-CQS

The Government of Tonga has received financing from the World Bank toward the cost of the Tonga Digital Government Support Project (TDGSP) and intends to apply part of the proceeds for consulting services.

The consulting services (“the Services”) include the recruitment of the Legal Adviser (consulting firm) to support in the preparation of policy recommendations and drafting instructions required to support national ID system and to foster and promote trust in the design, implementation and use of civil registration / ID systems, especially institutional and governance arrangements, data sovereignty, data security, individual privacy and data protection, non-discrimination and inclusion, digital authentication and validity of on-line transactions (e-commerce and e-transaction), cybercrime and cyber-security. The Consultant will also be expected to be closely involved in the preparation of new legislation and subordinate implementing regulations.

The duration of the assignment is over a period of 12 months.

The detailed Terms of Reference (TORs) for the assignment are shown in Annex 1.

The Ministry of Finance as the Implementing Agency for Tonga Digital Government Support Project 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.
Minimum Qualification and Experience Requirements

The following minimum qualifications and experience are required and will be used to evaluate the expressions of interest from the potential consultants (consulting firms). The consulting firm should be qualified and experienced for carrying out this assignment. The firm should demonstrate at least 10 years of experience in similar services and at least 3 contracts of similar assignments successfully performed for the last five (5) years. The consultant will propose a team of Experts that will include the following specializations:

Overall Qualifications and Experience of the Team members

- The experts should hold a Master’s Degree level or above in Laws
- A team leader should have relevant experience in leading lawyers in carrying out similar assignments;

- One lawyer, with at least ten years of experience:
  - in data protection, privacy, cybersecurity and cybercrime, as well as non-discrimination, law and legislation; specific experience working on legal issues pertaining ID systems highly desirable;
  - in standards, digital authentication and online transactions law and legislation, e-signatures, including Fintech, financial systems, AML and KYC regulations;
  - Familiarity with legal reform issues, legislative drafting and developing countries’ legal systems in the Pacific region.

Lawyers identified by the Consultant for the purposes of this assignment shall hold a professional qualification in law and shall be licensed and entitled to provide legal advice in a recognized jurisdiction.

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

Consultants may associate with other firms to enhance their qualifications, but should indicate clearly whether the association is in the form of a joint venture and/or a sub-consultancy. In the case of a joint venture, all the partners in the joint venture shall be jointly and severally liable for the entire contract, if selected.

A Consultant will be selected in accordance with the Consultant’s Qualification Based Selection (CQS) method set out in the Paragraphs 7.11 to 7.12 of the Procurement Regulations.

Further information can be obtained at the address below during office hours 09:00 to 16:30 hours.

Expressions of interest must be delivered in a written form to the address below (in person, or by mail, or by fax, or by e-mail) no later than 4:30pm of Friday, 8th November 2019.

Attn: Chief Executive Officer, Ministry of Finance
Nuku’alofa Tonga Islands, Tel: +676 23-066, E-mail: bfaotusia@finance.gov.to and copy to DCEO of Corporate Services at gfukofuka@finance.gov.to and to CSU Programme Manager at npelesikoti@finance.gov.to
ANNEX 1: Terms of Reference

Tonga Digital Government Support Project

Terms of Reference: Consulting Firm Assignment

Selection of a Consultant/Firm (Legal Advisor) for Assessment and Implementation of the Legal and regulatory environments for official identification systems and civil registration

1. Background of the Project

The Government of Tonga is in the process of implementing an eGovernment (Digital Government) Support Project supported by the World Bank with multiple components for developing supporting ICT infrastructure, information systems, citizen eServices, and other frameworks and architectures needed to meet goals and objectives within the Tonga Digital Government Strategic Framework (DGSF).

The WB is assisting the Government to develop its national identification (ID) system implemented by the National ID Office under the Lord Privy Seal.

2. Objective of the assignment

The technical assistance is focused on assisting with the reform of the legal enabling environment needed to support the Government’s ID initiative, particularly legislation governing identification, civil registration and vital statistics (CRVS) and data sharing. This work is closely linked with broader development imperatives for Tonga to invest in developing its identity management systems to support digital platforms, including e-government, and to improve the efficiency and effectiveness of public service decision-making and services’ delivery.

The Consultant will work directly with the Ministry of Justice, the National ID Office, Ministry of Finance (MOF) and the Ministry of Meteorology, Energy, Information, Disaster Management, Environment, Climate Change and Communications (MEIDECC) and Steering Committee for the Civil Registration and ID program to support the preparation of policy recommendations and drafting instructions required to support national ID system and to foster and promote trust in the design, implementation and use of civil registration / ID systems, especially institutional and governance arrangements, data sovereignty, data security, individual privacy and data protection, non-discrimination and inclusion, digital authentication and validity of on-line transactions (e-commerce and e-transaction), cybercrime and cybersecurity. The Consultant will also be expected to be closely involved in the preparation of new legislation and subordinate implementing regulations.

The Consultant will also assist Government in carrying out stakeholder consultations, including the identification and mitigation of potential risks focusing on the legal and regulatory enabling environment under each of the following themes:

- governance arrangements: fostering and sustaining trust in identity systems around internationally agreed technical standards, governance, and institutional agreements as well as commercial, regulatory and self-regulatory enforcement mechanisms, promoting an integrated approach across agencies and institutions responsible for civil
registration and identification, ensuring collection and use of quality data in an efficient and effective and secure manner;

- **flow of information/data**: ensuring that accurate information is captured, protected and disseminated in a timely and secure manner, supporting effective policymaking, efficient resource allocation, and accurate evaluation and monitoring, for example with functional registers, health information systems, Know Your Customer requirements, law enforcement agencies, electoral lists and national statistical offices;

- **transparency**: ensuring that registries or databases are implemented and managed pursuant to clear rules that promote accountability for the fair handling and use of data;

- **individual privacy rights**: protecting individual privacy rights and permitting individuals to access their personal information and, where necessary, to challenge and correct any inaccuracies (i.e., enabling individual choice and control over personal data); promoting a privacy-by-design approach, monitored and enforced by appropriate agencies with appropriate enforcement powers;

- **digital authentication and legal recognition of online transactions**: to encourage use through secure authentication systems as well as creating an environment for trusted online transactions;

- **non-discrimination**: ensuring that practices around identity management (access to ID and requirements to prove ID, etc.) are not subject to any discriminatory treatment, with special attention to groups who may be at risk of exclusion for cultural, political, or other reasons including remoteness and lack of basic services (e.g., the poor, women, rural populations, ethnic or religious groups, stateless peoples, etc.); and

- **specific implementation risks**: considering the appropriateness and role of implementing entities, including e.g., the role of the private sector in official identification systems design, management, adherence to international technical standards, deployment, operation, etc., including what measures might be needed to monitor and ensure accountability of public and private sector providers.

The Consultant will also examine and advise on existing laws and regulations to ensure that the ID system provides a suitable platform supporting the Government wider policy imperatives of inclusive digital government and promoting foundations needed to enable the wider digital economy including (among other topics and matters) the following:

- Civil registration (including registration of births, deaths, marriages, adoptions and divorces)
- National identity systems
- Other identity documentation (incl. passports, driver licenses)
- Statistics
- Nationality / Citizenship
- Voter registration / Electoral system
- Data privacy
- Sharing of personal information between government agencies
- Sharing of personal information with private entities
- Medical records / Health information
- Inheritance / Deceased estates
- Change of name
- Adoption, marriage and divorce of foreigners
- Access to information
- Digital authentication
- Validity of online transactions

Government has previously prepared policies, draft laws and other instruments dealing with some of these topics, including options for developing a national ID system, issues around privacy, cybersecurity and civil registration. A draft Privacy Bill, draft Electronic Transaction Bill, draft Computer Crimes Bill and draft Data Protection Standard have been prepared, but need to be reviewed and updated in light of recent developments. In preparing policy recommendations and drafting instructions, the Consultant will be expected to review and comment on existing policies, laws and Government proposals relevant to the proposed national ID system and the wider legal enabling environment for digital government and the digital economy. The Consultant will also help support Government in efforts to implement and build capacity around priority issues, especially privacy, data protection and cybersecurity. The Consultant will be supported on the relevant technical aspects of the program design (including from a technology, systems and data management perspective) by ID data systems experts recruited separately by Government under a separate assignment.

1. Relationship to the Pacific regional initiatives

The Consultant will be expected to take into account the potential for cross border data sharing and authentication services, mutual recognition of identity documents or tokens, common technology standards, privacy, cybercrimes and cyber security, ecommerce and cross border e-transactions, and the management and control of data and national sovereignty issues.

2. Approach and methodology

The Consultant is expected to work closely with the Ministry of Justice, the Lord Privy Seal, MOF, MEIDECC and members of the ID steering committee. The work will involve extensive in-country fact finding and consultations with a wide range of stakeholders. Stakeholders include government officials, agencies, and organizations, private and public sector organizations in relevant sectors and civil society. The Consultant will be expected to consider the demand for registration services as an underpinning for broader access to public and private services. Close consultation with the financial services sector (Central Bank and local banks) is essential. The Consultant will also be expected to address issues such as exclusion, discrimination, protection of personal data, privacy concerns, cybercrime and cyber security issues, in light of evolving use of information and communication technologies (ICT).

3. Deliverables, timeline and payment schedule

The deliverables, timeline and payment schedule are set out below:

<table>
<thead>
<tr>
<th>Deliverable</th>
<th>Timing</th>
<th>Payment (%)</th>
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<tbody>
<tr>
<td>i). Inception report (approach and methodology + high level identification of priority issues)</td>
<td>1 month</td>
<td>10</td>
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<tr>
<td>ii). Policy findings and recommendations</td>
<td>3 months</td>
<td>10</td>
</tr>
<tr>
<td>iii). Drafting instructions for priority legislation (amendments to National ID Act, new data protection and cybersecurity laws, revisions to draft data privacy law and draft computer crimes law)</td>
<td>4 months</td>
<td>20</td>
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<tr>
<td>iv). Consultation report (summary of key findings)</td>
<td>6 months</td>
<td>10</td>
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<tr>
<td>v). Input into draft priority legislation ready for Cabinet approval</td>
<td>9 months</td>
<td>20</td>
</tr>
</tbody>
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vi). Recommendations (including drafting instructions) for other legislative amendments identified under the policy finding and recommendations (including draft electronic transactions law) | 9 months | 20

vii). Final report | 12 months | 10

The inception report should include the following key outputs:

- Assessment of the legal and regulatory enabling environment, gap analysis and recommendations; and
- Time bound implementation plan, including prioritization and sequencing of reforms need to support the Government’s objectives for developing/implementing a national ID system.

4. Duration of the Assignment

The total estimated level of effort is approximately 9 months (full time equivalent for one individual). The consultant will be expected to carry out 5 in-country visits (for the whole team) of approximately 1-week duration for the purposes of carrying out fact finding, consultations and reporting. The assignment will be performed for a total duration of one year (12 calendar months).

5. Qualifications and Experience Required

The following minimum qualifications and experience are required and will be used to evaluate the potential consultants (consulting firms). The consulting firm should be qualified and experienced for carrying out this assignment. The firm should demonstrate at least 10 years of experience in similar services and at least 3 contracts of similar assignments successfully performed for the last five (5) years. The consultant will propose a team of Experts that will include the following specializations:

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  - Familiarity with legal reform issues, legislative drafting and developing countries’ legal systems in the Pacific region.

Lawyers identified by the Consultant for the purposes of this assignment shall hold a professional qualification in law and shall be licensed and entitled to provide legal advice in a recognized jurisdiction. The Consultant will be expected to agree with the Ministry of Justice
and the AG’s office on arrangements to ensure that all outputs are appropriate for the local legal context and consistent with the laws of Tonga.

6. Confidentiality
The Consultant shall keep all information provided by the client in confidence. The Consultant shall only use the confidential information in connection with the performance of the project and for no other purposes. This provision will be incorporated into the consultant’s contract.

7. Reporting Requirements
The consultant Team Leader shall report directly to the CEO, MOF through the Project Manager.

8. Administrative Arrangements
The consultant shall report directly to the CEOs of the Ministry of Finance and MEIDECC through the TDGSP Project Manager. This assignment will be coordinated by the Project Manager and the consultants/firm will work closely with the implementing agencies for technical advice and information.

This procurement process will be conducted in accordance with the World Bank Procurement Regulations for IPF Borrowers, July 2016 (“Borrower Regulations”)

A Consultant will be selected in accordance with the method set out in the Borrower Regulations for Selection of Consultants through the Consultants’ Qualifications Selection (CQS) procedures.

Further information regarding this consultancy services can be obtained by contacting:

Mrs Balwyn Faotusia  
CEO, Ministry of Finance  
bfaotusia@finance.gov.to