

Independent State of Samoa

Sample Terms of Reference: Consulting Firm Assignment

Legal and regulatory environments for official identification systems and civil registration

A. Background and Context

The Government of Samoa has received financing from the World Bank for technical assistance to the Government to assist in establishing a national identification (ID) system. This assignment is focused on assisting with the establishment of the legal enabling environment needed to support the Government's ID initiative, particularly legislation governing identification, civil registration and vital statistics (CRVS), privacy, data protection, cybersecurity and data sharing. This work is closely linked with broader development imperatives for Samoa to invest in identity management systems to support digital platforms, including digital government, and to improve the efficiency and effectiveness of public service decision-making and services' delivery.

B. Objective of the assignment

The objective of the assignment is for the Law Firm (Consultant) to provide legal advisory work to the Government on the development and introduction of the legal and regulatory enabling environment for the proposed new ID system.

The Consultant will work directly with the Office of the Attorney General, the Samoa Bureau of Statistics for the Civil Registration and the NID Steering Committee to support the preparation of policy recommendations and drafting instructions required to support the new 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 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 people, 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 new ID system provides a suitable platform to support the Government's 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 dealing with some of these topics, including options for developing a national ID system, issues around privacy, cybersecurity and civil registration. 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. 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.

B. Relationship to the Pacific regional initiatives

In preparing the work on the legal enabling environment to support the introduction of a new ID system, 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 boarder e-transactions, and the management and control of data and national sovereignty issues.

C. Approach and methodology

The Consultant will report to the AG’s office and work closely with the members of the NID Steering Committee. The work will involve extensive in-country fact finding and consultations with a wide range of stakeholders. Stakeholders include government officials, agencies, 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 and cyber security issues, in light of evolving use of information and communication technologies (ICT). The AG’s office will designate a local lawyer to work with the Consultant. The Consultant will be expected to incorporate inputs from the AG’s office to ensure that all recommendations and outputs are appropriate from a local law perspective.

D. Deliverables, timeline and payment schedule

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

Deliverables	Timing	Payment (%)
1. Inception report (approach and methodology + high level identification of priority issues)	1 month	10
2. Policy findings and recommendations	3 months	10
3. Drafting instructions for priority legislation (ID, data protection, data privacy, cybersecurity and cybercrimes)	5months	20
4. Consultation report (summary of key findings)	6 months	10
5. Input into draft priority legislation ready for Cabinet approval	9 months	20
6. Recommendations (including drafting instructions) for other legislative amendments identified under the policy finding and recommendations	9 months	20

7. Final report	12 months	10
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The inception report should include the following key outputs:

- Assessment of the existing legal and regulatory enabling environment, gaps’ 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.

The total estimated level of effort is approximately 9 months (based on the full time equivalent of one individual). The Consultant will be expected to carry out at least 6 in-country visits of approximately 1 week duration for the purposes of carrying out fact finding, consultations and reporting.

D. Reporting

The Consultant will report to the NID Steering Committee which will also approve payment of the specified work.

E. Qualifications

The selected firm must meet the following qualification requirements.

Essential Experience

The Consultant shall designate as members of the team lawyers with levels of demonstrable and relevant experience and expertise in the following substantive areas of law as follows (the positions may be combined):

- A team leader with relevant experience leading a team of lawyers undertaking activities similar to this assignment;
- A minimum of ten years of experience:
 - in data protection and privacy, data sharing arrangements, cybercrimes and cybersecurity, and law reform; specific experience working on legal issues pertaining ID systems highly desirable;
 - in standards, e-signatures, e-commerce, digital authentication and online transactions law and legislation, including Fintech, financial systems, AML and KYC regulations;
- Technology expertise;
- Familiarity with legal reform issues and legal systems in the Pacific region;
- Legislative drafting, preferably in Samoa or a country with similar governance and legislative processes and institutions.

Essential: Qualifications

All lawyers identified by the Consultant for the purposes of this assignment must hold a degree in law and be licensed to provide legal advice in a recognized jurisdiction.