

REQUEST FOR EXPRESSIONS OF INTEREST (FIRM CONSULTING SERVICES)

Republic of the Marshall Islands (RMI)
Digital RMI Project
P171517

Assignment Title: Legislative Drafting and Law Reform Implementation
Reference No.: MH-DIDA-395102-CS-CQS

The Government of the Republic of the Marshall Islands (the Government) is undertaking a major investment program supported by the World Bank under the proposed Digital RMI Project (Project). The proposed development objective includes establishing the critical foundations for digital government services and the digital economy.

The Government wishes to develop the policy, legal and regulatory frameworks, and institutional capabilities, for digital government and a digital economy, including but not limited to e-commerce and digital transactions, authentication standards, protocols and processes to improve data governance and data protection, including data privacy, cybersecurity and cybercrime, as well as practices to regulate harmful digital communications.

The detailed Terms of Reference (TOR) for the assignment can be found at the following link: <https://digitalrmi.com/opportunities/> or supplied on request to the Project Officer galbert@digitalrmi.com

Division of International Development Assistance (DIDA) now invites eligible 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 (attach curriculum vitae with description of experience in similar assignments, similar conditions, etc.). The criteria for selecting the Consultant are:

Mandatory

- The firm must have at least 10 years' experience advising Governments on law reform assignments;
- The firm must have at least 7 years of experience in work related to supporting digital government and/or digital economy services;
- The firm must have at least 10 years of legislative drafting experience across a minimum of 5 separate assignments;

Desirable requirements

- Firm's experience in undertaking consultation processes on regulatory reform projects in 2 or more Pacific Island States with relevant stakeholders
- Firm's experience in legislative drafting (primary or secondary law or both) for one or more Pacific Island States
- Firm's experience of assignments involving processes in accordance with The Administrative Procedure Act requirements in any one or more of the following States: Palau, FSM, the RMI or the United States.

- Firm's experience in overseeing implementation of the relevant legislation (primary or secondary) the firm has drafted including examples of building institutional capacity of the lead agency/ies, with examples in Pacific Island States being preferred.
- The firm must have at least 5 years of experience in advisory work in one or more of the following three categories:
 - Cybersecurity, data protection and privacy law;
 - cybercrime law and harmful digital protection;
 - digital ID systems and authentication, e-signatures; and online transactions law.

Firms will get a higher consideration in demonstrating the relevant breadth or depth of their experience in relation to each of the desirable requirements.

The successful firm will be required to nominate a team, that demonstrates the experience required of, and provided by, the firm as part of the evaluation process. At least one member of the team (either as an employee or a contractor) will need to be a lawyer holding a professional qualification in law from a reputable academic institution, licensed and entitled to provide legal advice in a recognized jurisdiction with at least 10 years of legislative drafting experience. Subject to these requirements there is no limit to how small or large the team can be.

The attention of interested Consultants is drawn to paragraph 3.14, 3.16 and 3.17 of the World Bank's *Procurement Regulations for IPF Borrowers dated November 2020* ("the Regulations"), setting forth the World Bank's policy on conflict of interest.

Expressions of interest must be delivered in a written form to the address below (in person, or by e-mail) by no later than **5pm January 19 2024 (RMI time)**.

Malie Tarbwillin

Assistant Secretary

Division of International Development Assistance

mtarbwillin@gmail.com

Phone: (692) 625-5968

cc to:

Mike Lott

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Republic of the Marshall Islands
MH-DIDA-395102-CS-CQS
Terms of Reference: Consultant Firm

Digital Government and Economy: Drafter and Law Reform Implementation (International)

Digital RMI

Terms of Reference	
Assignment	Digital Government and Economy: Drafter and Law Reform Implementation (“Consultant”)
Project	Digital RMI – MH-DIDA-395102-CS-CQS
Location	Majuro
Reports to	The Assistant Secretary, DIDA, Ministry of Finance, Banking and Postal Services (MOF), Ms. Malie Tarbwillin. The Assistant Secretary will oversee and supervise the Legislative Drafter for the Digital RMI Project. The Assistant Secretary will be supported in this supervisory role by the Digital RMI Governance Adviser, Mr. Frank McLaughlin.
Level of input and duration of the assignment	This is a 135 person-day assignment spread over a twenty-four-month period commencing around February 15, 2024, and finishing around February 14 2026. The input level and/or duration of the assignment may be modified in line with DIDA’s needs. The table below outlines the expected distribution of the inputs.

A. Project Background

- 1 The Government of the Republic of the Marshall Islands (the Government) is undertaking a major investment program supported by the World Bank under the proposed Digital RMI Project (Project). The development objectives include expanding access to the internet and establishing the critical foundations for digital government services and the digital economy.
- 2 The Government wishes to develop the policy, legal and regulatory frameworks, and institutional capabilities, for digital government and a digital economy, including but not limited to e-commerce and digital transactions, authentication standards, protocols and processes to improve data governance and data protection, including data privacy, cybersecurity and cybercrime, as well as practices to regulate harmful digital communications.
- 3 The Government has already contracted an individual consultant to undertake a stock take of the current RMI regulatory system to assess what the legal and regulatory gaps are in order to support a digital economy and digital government. A copy of that report can be found www.digitalrmi.com/opportunities/
- 4 In addition, the individual consultant will also be delivering an outline of the desirable regulatory frameworks for addressing the gaps identified. The Government and individual consultant have agreed that the scope of work involved in the next steps, including drafting possibly up to 4 separate Bills, supporting those through the

legislative process and helping build institutional capability to successfully implement and give ongoing effect to the law reform, will require the broader capability of a firm.

- 5 Reflecting this the successful firm appointed under these TORS will build upon the work done by the individual consultant and the individual consultant will cease work on the appointment of the successful firm and any agreed hand over period that would be helpful to the successful firm in understanding the work undertaken to date.
- 6 Applicants should note that:
 - 6.1 The individual consultant is also a member of a firm that undertakes work of the nature being sought under these TORS;
 - 6.2 That firm is not precluded from participating in the expression of interest (EOI) process, and may if it wishes include the individual consultant as part of that firm's team; and
 - 6.3 The method of selection used for this consultancy is *Consultants Qualifications-based Selection (CQS)*. In the interest of fairness and transparency in selecting the most suitable firm, reports relating to this assignment as provided by the individual will be shared with firms interested in submitting EOIs for this assignment. The selected firm will be required to submit a proposal for the assignment, based on which a draft contract will negotiated.

B. Context of work

- 7 Success will be dependent on a high degree of proactive coordination, collaboration and inputs from various Government ministries, including: the Division of International Development Assistance (DIDA) within the Ministry of Finance, Banking and Postal Services (MOFBPS) as current lead agency, the Ministry of Transportation, Communications and Information Technology (MTCIT) as future lead agency, the Office of the Attorney-General, the Ministry of Culture and Internal Affairs (MCIA) and close collaboration with the RMI Digital Unit and the Project team.
- 8 The Consultant will be expected to work closely with, and be supported by the following:
 - 8.1 The Project Governance Adviser who has ultimate responsibility to the Assistant Secretary, DIDA around oversight of the quality and integration of the various consultant inputs into the Project and ensuring that it is best suited to the needs of the RMI;
 - 8.2 The RMI Digital Unit Director and the Government Chief Digital Adviser who are responsible for advising the Government on the development of digital government and a digital economy;
 - 8.3 The Digital Gender Officer within MTCIT both of the legislative program generally, but also in relation to the development of a practical resolution and escalation process for digital harmful communication;

- 8.4 For local legal advice, the Digital RMI Local Lawyer will also be available to provide advice and review where required;
- 8.5 Finally the local project officer will support the Consultant in arranging meetings; and following up requests for information required by the Consultant from various agencies and other relevant stakeholders.
- 8.6 Additional *ad hoc* working level committees may also be established involving a wider group of stakeholders as needed to support Project preparation and implementation

C. SCOPE OF WORK

- 9 This assignment is focused on assisting with the establishment and training of the legal enabling environment needed to support a digital government, a digital ID system, a digital economy and the legal framework for addressing harmful digital communications as well as options for an effective and practical community response to concerns around responding to issues relating to digital harms.
- 10 The assignment consists of the following components:
 - 10.1 Where appropriate review the existing work done by the individual consultant being the:
 - (a) stock take of the existing laws and what laws are required to enable Digital RMI and;
 - (b) the outline of the proposed new legal requirements to enable Digital RMI, the proposed method of law reform and the institutional implications to support the new legal requirements;
 - 10.2 Consultation with key stakeholders on the proposed new legal requirements, the proposed method of law reform and institutional implications and supporting Ministerial and Cabinet consideration of approval to the reforms;
 - 10.3 Drafting the required pieces of legislation (up to a maximum of 4 Bills) and any required regulation;
 - 10.4 Supporting the Nitijela deliberations and passage of the legislation, this may include preparing speeches related to the legislative process for the lead Minister/s and preparing question and answer materials to aid responses to questions;
 - 10.5 Undertake training and development programs with the relevant lead agencies to help develop understanding of their roles and functions under the new laws, and where appropriate prepare operational manual/s to support the relevant lead agencies in the application of the law.
 - 10.6 Consult and work closely with the Chief for the Community Development Division Caring for the Gender Office of the Ministry of Culture and Internal Affairs (MCIA) on the harmful digital communications matters. While any effective and practical community response to concerns around responding to issues relating to digital harms will be led by MCIA, the Consultant will support

MCIA on practical approaches, relevant escalation pathways and suggested tools to support a community-based resolution-based pathway.

D. TIMELINE FOR WORK AND LIKELY REQUIRED COMMITMENT

- 11 The Digital Services Law Reform work relating to these TORS is expected to be for a 24-month period commencing around February 15, 2024, and finishing around February 14 2026. It is expected that the legislation could be introduced to the Nitijela in August/September 2024 with enactment in that session or in the session in January/ March 2025. A further 12 months is allowed for the promulgation of required regulation, the training of the key lead agencies responsible for key roles and functions under the legislation and regulations, as well as the development of the harmful digital community-based resolution-based pathway.
- 12 The Consultant is expected to be able to commit to approximately 135 person-days' work for the Digital Services Law Reform work. Approximately 100 person-days will be related to the deliverables and up to 35 person-days- time in attendance.
- 13 The Consultant's relevant team members will be expected to carry out at least 3 in-country visits of approximately 1 week duration for the Digital Services Law Reform work, including carrying out fact finding consultations, supporting the Executive in consideration of recommendations, being in attendance if required for the Nitijela consideration of the Bills and supporting the MCIA work on designing and consulting on a harmful digital communications community resolution process.

E. CONSULTANT'S REPORTING OBLIGATIONS AND DELIVERABLES

- 14 The Consultant shall provide the following deliverables to the Governance Adviser and DIDA Assistant Secretary:

Digital Services Law Reform Work Deliverable payments

<i>Deliverable</i>	<i>Due date¹</i>	<i>Payment percentage</i>
<i>1. First draft of up to 4 Bills (for consultation with stakeholders)</i>	<i>1 May 2024</i>	<i>35%</i>
<i>2. Second draft of up to 4 Bills (reflecting consultations and ready for Cabinet consideration and introduction to Nitijela)</i>	<i>1 July 2024</i>	<i>15%</i>

¹ The time frames set out above are dependent on among other matters the needs of the Government, the timing of the Government's decision-making process and the Nitijela sitting at which the Bills will be considered. Accordingly, the timing and description of the deliverables may change by agreement between the Consultant and the Client.

3. <i>First draft of regulations under the up to 4 Bills (for consultation with stakeholders)</i>	<i>1 October 2024²</i>	<i>25%</i>
4. <i>Second draft of regulations under the up to 4 Bills (reflecting consultations and ready for relevant Minister consideration and commencement of the Administrative Procedure Act 1979 process)</i>	<i>1 December 2024</i>	<i>10%</i>
5. <i>Training materials for relevant agency/agencies</i>	<i>1 December 2024</i>	<i>10%</i>
6. <i>Final report (summary of post enactment support and identified areas for ongoing support)</i>	<i>30 September 2025</i>	<i>5%</i>

Digital Services Law Reform Work time in attendance payments

- 15 There is approximately 35 person-days in attendance related to:
- 15.1 Support of the 4 Bills in the Nitijela (including work related to issues raised, and drafting required);
 - 15.2 Support MCIA on practical approaches, relevant escalation pathways and suggested tools to support a community-based resolution-based pathway for digital harmful communication matters;
 - 15.3 Other areas of support the Governance Advisor or Assistant Secretary of DIDA might reasonably require if there is remaining time in attendance available after addressing the items above.
- 16 For the 35 person-days in attendance work relating to the Digital Services Law Reform the Consultant and Client will agree an estimated forecast of work outputs and estimated days (for the required work), which shall be agreed in writing (for example by exchange of emails) between the parties on a task-by-task related process.

E. MANDATORY AND DESIRED SKILLS, QUALIFICATION AND EXPERIENCE

The following minimum qualifications and experience of the firm are required and will be used to evaluate the the EOIs and select a suitable Drafting Consultant .

Mandatory requirements

- The firm must have at least 10 years' experience advising Governments on law reform assignments;
- The firm must have at least 7 years of experience in work related to supporting digital government and/or digital economy services;
- The firm must have at least 10 years of legislative drafting experience across a minimum of 5 separate assignments;

² This assume the Bills are enacted in the August to October sitting of the Nitijela. The contract duration through to 30 September 2025 reflects the possibility that the Nitijela may not enact the Bills until the January to April session 2025 and work on regulations and training and the final report are completed April 2025 to September 2025

Desirable requirements

- Firm's experience in undertaking consultation processes on regulatory reform projects in 2 or more Pacific Island States with relevant stakeholders
- Firm's experience in legislative drafting (primary or secondary law or both) for one or more Pacific Island States
- Firm's experience of assignments involving processes in accordance with The Administrative Procedure Act requirements in any one or more of the following States: Palau, FSM, the RMI or the United States.
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