

Section VI. Terms of Reference

**Terms of Reference**

***Consultancy Services for the Conduct of, Training and Transfer of Knowledge of the Privacy Impact Assessment, Creation of Privacy Management Program, Crafting of Privacy and Data Protection Management and Data Breach Management***

**I. Background and Rationale**

The Philippine Statistics Authority (PSA), pursuant to Republic Act No. 11055 (Philippine Identification System Act), is the lead agency tasked to be in charge of implementing the Philippine Identification System (PhilSys) that includes (a) Overall Planning, (b) Management and (c) Administration thereof.

It is considered as a high-profile project of the PSA. To this end, the PSA sought the advice of the National Privacy Commission (NPC) for the implementation of a Privacy Management Program (PMP) for the PhilSys and the conduct of the Privacy Impact Assessment (PIA) to study and look into the different processes of the PhilSys. The PhilSys Registry Office (PRO) shall employ external consultants before the drafting and finalization of the processes and technical specifications who will implement the PMP and conduct the PIA to gain an unbiased opinion on the privacy and security concerns that may be encountered when the PhilSys is implemented and to identify vulnerabilities within the PhilSys. The implementation of the PMP and the conduct of the PIA will be conducted by a team of consultants with expertise in business processes, data privacy and security, network security, privacy-related security and other skills that may be related to the aforementioned. Further, the consultants shall provide their expertise to PSA during the development of the PMP and other privacy and data protection guidelines.

**II. Objective**

The objective of the conduct of the Privacy Impact Assessment (PIA), creation of the Privacy Management Program (PMP) and the Crafting of Privacy and Data Protection Management (PDPM) and Data Breach Management (DBM) is to embed privacy and data protection in the strategic framework and daily operations of the PhilSys maintained through Organizational Commitment and Oversight of coordinated projects and activities.

It intends to also train employees and personnel of the PhilSys Registry Office (PRO) who will eventually be the ones to put in application the different processes in the implementation of the PhilSys. It also aims to have a transfer of knowledge from the Consultants to the PRO.

### III. Scope of Services

The Service Provider shall provide the following services:

<p>(a) Conduct of the Privacy Impact Assessment (PIA)</p> <ul style="list-style-type: none"> <li>• Includes identification of all vulnerabilities of the Proof of Concept and proposed PhilSys</li> <li>• Recommendations to address the vulnerabilities</li> </ul>
<p>(b) Creation of Privacy Management Program (PMP)</p> <ul style="list-style-type: none"> <li>• To cover all the processes as identified in the Proof of Concept and PhilSys</li> </ul>
<p>(c) Crafting of Privacy and Data Protection Management (PDPM) and Data Breach Management (DBM)</p> <ul style="list-style-type: none"> <li>• Include the modules on the development of data privacy and data protection policies and guidelines and steps to be prepared in case of security incidents (including data breaches)</li> </ul>
<p>(d) Evaluation and identification of gaps after the conduct of the PIA, PMP, PDPM and DBM and recommendations (need for further PIA, regularity of conducting the PIA, regularity of review of the PMP and other privacy documents, etc.)</p>
<p>(e) Capacity building of and transfer of knowledge to the PhilSys Registry Office (PRO) officials and employees in relation to the PIA.</p>
<p>(f) Prepare and submit the following report/manuals:</p> <ol style="list-style-type: none"> <li>I. PIA Report</li> <li>II. PMP and Privacy Manual</li> <li>III. PDPM Manual</li> <li>IV. DBM Manual</li> </ol>

### IV. Deliverables and Submission Schedule

Description	Qty	Total	Delivered, Weeks/Months
Procurement of Consultancy Services for Privacy Impact Assessment (PIA), Privacy Management Program (PMP), Privacy and Data Protection Management (PDPM) and Data Breach Management (DBM) including Training	Lot 1	₱10,800,000.00	On or before the end of the six (6) month period based on the phases given below

(a) Conduct of the Privacy Impact Assessment (PIA)			Within thirty (30) calendar days upon approval of final digital proofing
(b) Creation of the Privacy Management Program (PMP)			Within thirty (30) days from the end of the conduct of the PIA
(c) Crafting of the Privacy and Data Protection Management (PDPM) and the Data Breach Management (DBM) Modules			Within forty-five (45) days from the end of the PMP
(d) Evaluation and identification of gaps after the conduct of the PIA, PMP, PDPM and DBM and recommendations (need for further PIA, regularity of conducting the PIA, regularity of review of the PMP and other privacy documents, etc.)			Within the one and a half months (1 ½) of the contract from the end of the PMP creation
(e) Training and Transfer of Knowledge.			Within the last month of the Contract

## V. Responsibilities of the Service Provider

The Service Provider shall:

1. Designate at least one (1) project coordinator to ensure timely delivery of outputs and to coordinate with the PSA in carrying out the required services;
2. Provide necessary manpower, facilities and production equipment, and conduct all necessary preparatory and other activities to accomplish the agreed scope of works and deliverables, as specified in Sections III and IV above. Any additional costs incurred relative to any aspect of the conduct of the PIA, creation of the PMP and the crafting of the PDPM and DBM shall be solely charged to the service provider;
3. Meet with PSA at least twice a month during project duration to discuss activities, issues and concerns related to the conduct of the PIA and creation of the PMP and other data-privacy and protection related activities;
4. Attend meetings/events/seminars/activities that may provide insights useful to the

- project such as presentation to the management;
5. Submit reports detailing work progress, issues and concerns, and recommended next steps in relation to the project at no additional cost to PSA;
  6. Be required to sign a Confidentiality and Non-Disclosure Agreement (CNDA) upon receipt of the Notice of Award (NOA).

## **VI. Responsibilities of PSA**

The PSA shall:

7. Provide all information and materials needed to accomplish the scope of work, including the different processes and modules involved in the PhilSys among others once the Service Provider has signed a CNDA;
8. Provide assistance to the Consultant; and,
9. Determine the acceptability of the deliverables and shall be the approving authority for all operations-related activities, including payment of the Service Provider's remuneration under the contract.

## **VII. Approved Budget for the Contract (ABC)**

The ABC for the provision of services under this TOR is TEN MILLION EIGHT HUNDRED THOUSAND PESOS (**PhP10,800,000.00**), inclusive of all applicable Government taxes and charges. Refer to **Annex A** for breakdown of the ABC.

## **VIII. Qualification Requirements**

10. The Service Provider must be a Consultant doing Data Privacy and Protection and/or a Data Privacy Practitioners with the necessary personnel and staffs to conduct and undertake the Privacy Impact Assessment (PIA) as required under the Data Privacy Act of 2012 (RA 10173). It must be duly established in the Philippines and may have tie-up or joint venture (JV) arrangements with Data Privacy Consultants or Practitioner.

Other qualifications are stated in the Bidding Documents.

**VIII. Mode of Procurement**

The procurement of the Service Provider shall be through competitive public bidding pursuant to Republic Act (RA) No. 9184, or the Government Procurement Reform Act (GPRA), and its Revised Implementing Rules and Regulations (IRR).

**IX. Milestones / Payment Schedule**

Payments to the Service Provider shall be made in accordance with the schedule below and subject to the usual Government accounting and auditing requirements.

<b>Contract Milestones</b>	<b>% of the Total Budget</b>
<p>Conduct of the Privacy Impact Assessment (PIA) (output/deliverable #1), which will:</p> <ul style="list-style-type: none"> <li>A. identify, assess, evaluate, and manage the risks represented by the processing of personal data for the PhilSys;</li> <li>B. assist the PSA as a Personal Information Controller (PIC) in preparing the records of its processing activities, and in maintaining its Privacy Management Program (PMP);</li> <li>C. facilitate compliance by PSA with the Data Privacy Act (DPA), its IRR, and other applicable issuances of the National Privacy Commission (NPC), by determining:                             <ul style="list-style-type: none"> <li>a. its adherence to the principles of Transparency, Legitimate Purpose and Proportionality;</li> <li>b. its existing Organizational, Physical and Technical security measures relative to its data processing systems;</li> <li>c. the extent by which it upholds the rights of data subjects; and</li> </ul> </li> <li>D. aid PSA in addressing privacy risks by allowing it to establish a control framework;</li> </ul>	<p>30%</p>

<p>Creation of the Privacy Management Program (PMP) (<i>output/deliverable #2</i>) which:</p> <ul style="list-style-type: none"> <li>(a) will help PSA as a PIC build a robust privacy infrastructure supported by an effective On-going Review and Monitoring Process to facilitate compliance with the law, its IRR and other Commission issuances;</li> <li>(b) will minimize the risks of privacy breaches, maximizes the ability to address underlying problems, and reduces the damage arising from breaches</li> <li>(c) Demonstrates commitment to building trust with employees and clients through open and transparent information policies and practices.</li> </ul>	<p>30%</p>
<p>Crafting of the Privacy and Data Protection Management (PDPM) and the Data Breach Management (DBM) Modules (<i>output/deliverable #3</i>) that will ensure the creation of policies and procedures on:</p> <ul style="list-style-type: none"> <li>(a) the creation of a Data Breach Response Team (DBRT) which may or may not include the Data Protection Officer (DPO);</li> <li>(b) Implementation of the proper and appropriate Security Measures and Privacy Policies;</li> <li>(c) Implementation of an Incident Response Procedure (IRP); and</li> <li>(d) Mitigation of Possible Harm and other Negative Consequences of a Data Breach</li> </ul>	<p>20%</p>
<p>Evaluation and identification of gaps after the conduct of the PIA, PMP, PDPM and DBM and recommendations (need for further PIA, regularity of conducting the PIA, regularity of review of the PMP and other privacy documents, etc.)</p>	<p>10%</p>
<p>Training and Transfer of Knowledge.</p>	<p>10%</p>

**X. Submission of Proposals**

Interested Data Privacy and Practitioners must secure Bidding Documents and submit proposals to the PSA Bids and Awards Committee (BAC).

A detailed proposal meeting the above requirements must be prepared and presented to the BAC. The proposal must be divided into a technical portion and a financial portion, which

will be submitted in separate, sealed envelopes, in accordance with the specifications set in the Bidding Documents.

The **Technical Proposal** must include the following:

- (a) Proposed Strategies in the conduct of the Privacy Impact Assessment (PIA), the crafting of the Privacy Management Program (PMP), and Development of the Privacy and Data Protection and Data Breach Management Policies and Guidelines.

11. Other documentary requirements as specified in the Bidding Documents.

The **Financial Proposal** must include the following:

1. Detailed breakdown of proposed expenses, including remuneration/personnel expenses, production costs, media placement costs, and other costs; and,
2. Other documentary requirements as specified in the Bidding Documents.

Proposals submitted by qualified bidders will undergo a Quality-Based Selection/Evaluation (QBS/QBE) procedure, as detailed in the Revised IRR of RA 9184, or GPRA.

## **XI. Selection Process and Criteria**

Qualified candidates shall be shortlisted based on the attached criteria in **Annex C**.

Shortlisted candidates will then be requested to present/pitch their proposals within 15 calendar days after the deadline for submission of proposals pursuant to Section 33.2.2 of the Revised IRR of RA 9184. The creative brief/pitch must provide a comprehensive discussion of the proposed campaign, including the following components:

12. Strategic framework and advocacy plan;
13. Strat with cost estimates, that covers all major media types;
14. Implementation strategy to cover production of campaign materials as well as, media buying and coordination; and,
15. Monitoring and evaluation (M&E) system.

Proposals and creative briefs will be evaluated based on the following criteria:

1. Responsiveness of proposed campaign to overall goals of the 2020 CPH;
2. Responsiveness of proposed campaign to the needs and preferences of the target audience;
3. Use of creative methods to engage the target audience;
4. Use of innovative methods to engage the target audience;
5. Use of a variety of communication and/or media channels; and,
6. Achievability of campaign within the timeframe.

## **XII. Ownership**

All creative concepts and original materials formulated and designed in conjunction with this project shall be owned by the PSA with full and exclusive rights on future use thereof both in the Philippines and internationally.

## **XIII. Retention Payment**

A retention payment of 10 percent shall be withheld. It shall be based on the total amount due to the Service Provider prior to any deduction and shall be retained from every progress payment until 50 percent of the value of the project, as determined by PSA, is completed. If, after 50 percent completion, the project is satisfactorily done and on schedule, no additional retention shall be made; otherwise, the 10 percent retention shall be imposed.

The total "retention money" shall be due for release upon approval of the Terminal Report. The Service Provider may, however, request the substitution of the retention money for each progress billing with irrevocable standby letters of credit from a commercial bank, bank guarantees, or surety bonds callable on demand, of amounts equivalent to the retention money substituted for and acceptable to the PSA, provided that the project is on schedule and is satisfactorily undertaken. Otherwise, the ten (10) percent retention shall be made. Said irrevocable standby letters of credit, bank guarantees and/or surety bonds, to be posted in favor of PSA shall be valid for the duration of the contract.

## **XIV. Penalties and Liquidated Damages**

The selected Service Provider shall be subjected to assessment by the PSA as to the effectiveness of any phase of the campaign.

Segments or phase(s) of the campaign not implemented for whatever reason shall be revised or modified by the Consultants at no cost on the part of the PSA for the purpose of translating said segment or phase(s) for future implementation.

Where the Service Provider refuses or fails to satisfactorily complete the work within the specified contract time, plus any time extension duly granted and is hereby in default under the contract, the Service Provider shall pay the PSA for liquidated damages, and not by way of penalty, an amount, as provided in the conditions of contract, equal to at least one tenth (1/10) of one (1) percent of the cost of the unperformed portion of the works for every day of delay. Should the amount of liquidated damages reach 10 percent of the contract amount, the PSA shall at its own discretion terminate the contract without prejudice to any further action it may take to recover whatever losses incurred due to non-performance of the Service Provider.

To be entitled to such liquidated damages, the PSA does not have to prove that it has incurred actual damages. Such amount shall be deducted from any money due or which may become due the Service Provider under the contract and/or collect such liquidated damages from the retention money or other securities posted by the Service Provider, whichever is convenient to PSA.