



TERMS OF REFERENCE FOR PR NO. GAA-23-03-16427 DD. 27 MARCH 2023

I. OBJECTIVE

The Department of Science and Technology (DOST) – Advanced Science and Technology Institute (ASTI) intends to procure **Consultancy Services for Freedom-to-Operate (FTO) Report of Four (4) DOST-ASTI Technologies** which will determine infringement risks of DOST-ASTI technologies for commercialization.

II. PROJECT DESCRIPTION

The project entails the procurement of consultancy services for FTO report of four (4) DOST-ASTI technologies namely:

1. Kooha;
2. REIINN and/or RuralSync;
3. Gul.Ai; and
4. HR Lite.

III. PROJECT DURATION

The delivery of the service shall start not later than ten (10) calendar days upon issuance of Notice to Proceed (NTP). The engagement of the consultant shall be for thirty (30) calendar days upon commencement of services, in which reports must be submitted to DOST-ASTI.

IV. PROJECT COST

- A. Fund for this procurement shall be sourced from the General Appropriations Act (GAA) for the Fiscal Year 2023 of the DOST ASTI and Grants-in-Aid (GIA) for the HR Lite TechniCom Project.
- B. The Approved Budget for the Contract **Two Hundred Thousand Pesos Only (₱200,000.00)**, inclusive of all government taxes and services charges, specifically:
 1. GAA FY 2023
 - a. Three (3) Lots (Kooha, REINN/RuralSync and Gul.Ai) - ₱150,000.00
 2. GIA / Research Collaboration Project: HR Lite TECHNICOM Project
 - a. One (1) Lot (HR Lite) - ₱50,000.00

V. MODE OF PROCUREMENT

The procurement for the Consultancy Services of Four (4) DOST-ASTI Technologies shall be undertaken through Alternative Method of Procurement – Small Value under the 2016 Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184, otherwise known as “Government Procurement Reform Act.”

VI. SUBMISSION OF REPORTS/OUTPUTS/DELIVERABLES AND PAYMENT SCHEDULE

- A. The Supplier shall deliver four (4) FTO reports drafted in accordance with the acceptable standards that analyzes the risk of potential infringement, comprising but not limited to the following:
 1. Comprehensive FTO search using databases such as IPOPHL, Espacenet and Patentscope as minimum, with the following scope:
 2. Published pending Philippine patent, utility model applications and industrial design applications of similar and closely related or counterpart technologies.
 3. Valid Philippine granted patents, utility model applications and industrial design registrations if applicable; and
 4. Valid foreign patent applications or registrations that may enter the Philippines through the Patent Cooperation Treaty.
 5. Search pool in a table form including:
 - a. Keywords used;
 - b. Number of hits;
 - c. Number of documents considered; and
 - d. Number of relevant document/s.
- B. FTO report will be prepared per technological basis, which may have at least one (1) IP protection, wherein the search will be based on the relevant technical features of the technology.
- C. FTO analysis, opinion and recommendation on the technology being rolled out for commercialization.
- D. Submit FTO report within thirty (30) working days from the date of receipt of complete and updated data/disclosures for each technology as evidenced by an email or any form of communication sent by DOST-ASTI TLO to the contractor, and such disclosure was acknowledged as complete by contractor.
- E. Non-acknowledgement of DOST-ASTI TLO's email in seven calendar days would deem the disclosed data as complete
- F. Payment shall be made only upon certification/acceptance/by the end-user to the effect that the Services have been rendered or delivered in accordance with the terms of this Contract and have been duly inspected and accepted. No payment shall be made for services not yet rendered or for supplies and materials not yet delivered under this Contract.

VII. QUALIFICATIONS OF THE CONSULTANT

Perspective consultant should be a law firm that has been involved in providing FTO services to at least one government research and development institution for at least three (3) years and has experience in engaging at least one (1) similar contract with other government agencies.

The firm should be subscribed to at least one (1) paid patent search tool or any paid online subscription to scientific paper or references which should be used for the project (i.e., Derwent, Patbase, Science Direct, Wipo's Inspire, etc.)

The firm should have at least one (1) to five (5) employee/s, associate/s, or partner/s who are admitted to and active member/s of the Philippine Bar.

The firm's lawyer member, associate, or partner to be assigned or lead the project should have been trained in the field of Intellectual Property Law, specifically on the following topics:

- a. FTO;
- b. Infringement Cases/or IP enforcement; and
- c. Market Study (e.g., certificates of completion/attendance showing the dates of training).

Prospective Consulting Firms are required to submit the documents as enumerated in the DOST-ASTI's Request for Expression of Interest or RFEI.

VIII. SHORTLISTING CRITERIA

Consultants will be shortlisted using the following criteria and weights:

- Applicable experience of consultants - 50
- Qualification of personnel to be assigned to the job - 30
- Current workload capacity - 20

Passing Score: Seventy-five (75)

IX. METHOD OF EVALUATION OF PROPOSAL

The proposal will be evaluated using the Quality-Based Evaluation or QBE procedure pursuant to the revised IRR of RA No. 9814, with the following criteria:

- Quality of Personnel – 20%
- Experience and Capability of Consultant – 40%
- Plan of Approach and Methodology – 40%

Passing Score: Seventy-five (75)

X. Liquidated Damages

Where the Consultant 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 Consultant shall be subject to 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 percent (1%) of the cost of the unperformed portion of the works for every day of delay.

Should the amount of liquidated damages reach ten percent (10%) of the contract amount, DOST-ASTI may, 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 Consultant.

To be entitled to such liquidated damages, DOST-ASTI 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 to the Consultant under the contract and/or shall be paid by the Consultant within five (5) days from notice of such default, whichever is convenient to DOST-ASTI.