



INDIVIDUAL CONSULTANT PROCUREMENT NOTICE

Date: **February 17, 2016**

Country: Republic of Moldova

Description of the assignment: **National consultant** to support the National Anticorruption Centre in drafting an analytical study on the examination of active corruption cases in judicial practice and application of sentences in these cases for the period 2013-2015

Project name: Strengthening the corruption prevention and analysis functions of the National Anticorruption Center (NAC)

Period of assignment/services: March – April 2016

Proposals should be submitted by **February 26, 2016, 16 pm EET.**

Requests for **clarification** must be sent by standard electronic communication to the following e-mail olga.crivoliubic@undp.org. UNDP will respond by standard electronic mail and will send written copies of the response, including an explanation of the query without identifying the source of inquiry, to all applicants.

1. BACKGROUND

A study on corruption cases archived in the courts for the period of 1 January 2010 to 30 June 2012, developed by the NAC with the support of the Supreme Court of Justice in October 2013¹, showed a series of abuses committed by the courts in the process of individualisation and application of punishments. In particular, courts used in excess certain provisions of the Criminal Code that allowed considerable easing of the positions of the defendants/convicts, including exemption from the criminal liability and subjection to administrative liability; applying a plea bargain agreement and reducing the maximum sentence; and applying suspended execution of the punishment.

It was also determined that the courts did not convict and sanction the acts of passive corruption, committed in other forms that receiving of undue remuneration. The same was the situation with the abuse of power, inflicting considerable damages to public interest – crimes of this kind, committed against public interest, were not considered. The courts never confiscated the results of corruption crimes, limiting themselves to granting only the amounts of money transmitted under control during the crimes of flagrante delicto, that is the money offered also by the state.

According to the NAC 2014-2015 (9 months of 2015) reports, in the respective period courts examined 484 cases opened by NAC and Anticorruption Prosecutor's Office, of which 258 in 2014 and 226 in 9 months of 2015.

In 82 per cent of cases trial courts decided on the conviction with penal or administrative liability. In 18 percent of cases, trial courts ruled acquittals. Condemnation with real execution was applied by

¹http://cna.md/sites/default/files/statdata/eng_studiu_privind_dosarele_de_coruptie_final_decembrie_2013.pdf
UNDP in Moldova • 131, 31 August 1989 str., Chisinau 2012, Moldova

the first instance courts in 13 % of cases in 2014 and 17 % - in the first 9 months of 2015. Penal fines were applied in 70% of cases ruled with conviction.

In 31 % of cases on which verdicts of convict were ruled, courts applied suspension of punishment execution. Only 66% of public officials convicted for corruption offences were deprived from the right to occupy a public function. Penal fines were applied in 70% of condemnations. However, there is an inversely proportional dependency between the value of the received bribe and the applied fine. Thus, in case of a bribe of 10,000 lei the report to the fine is 1:7, while in case of a bribe over 100,000 lei the report is 7:1.²

Although the aforementioned report showed some improvement in judicial practice of trial courts related to conviction in corruption cases, still there is a small number of real condemnation for corruption offenses, the deprivation of the right to occupy certain positions or to perform certain activities, while security measures (special confiscation and extended confiscation) are not applied in the national judicature. In spite of the ambitious justice sector reform started in late 2011, adopted as a precondition for signing the EU-Moldova Association Agreement, these persistent practices continue to generate an uneven jurisprudence and the lack of consistent and coherent actions to punish persons guilty of committing corruption offenses.

To analyse the latest trends and practices applied by courts in corruption cases the project is seeking to engage the services of a *local anti-corruption expert to provide a thorough analysis of the examination of corruption cases in judicial practice and application of sentences in these cases for the period 2013-2015.*

2. SCOPE OF WORK, RESPONSIBILITIES AND DESCRIPTION OF THE PROPOSED ANALYTICAL WORK

Main objective of the assignment is to draft an analytical study on the examination of corruption cases in judicial practice and application of sentences in these cases for the period 2013-2015.

Key Responsibilities

- In close collaboration with the National Anticorruption Centre's Corruption Analysis Unit to analyse the examination of corruption cases in judicial practice and application of sentences in these cases for the period 2013-2015;
- The analysis will include examination of criminal cases relating to Articles 191 (1) letter d) and paragraph (4), 256, 324, 325, 326, 327, 330, 333 and 334 of the Criminal Code of the Republic of Moldova;
- Analyse practices and trends in observing the *Reccomendation 61/2013 of the Supreme Court of Justice (SCJ) on some Issues regarding Individualization of Penal Punishment for Corruption Cases* and the *Decision 11/2014 of the SCJ Plenary on applying legislation on criminal liability for corruption offences*;
- The research will include the analysis of the court judgements on corruption cases delivered during the referred period of time; a desk review of the legal background documents and the most relevant strategic documents in the field of anticorruption;
- Elaborate recommendations for improving the practice and the relevant legal framework;

² http://cna.md/sites/default/files/statdata/raport_de_activitate_2014-2015_11_juni.pdf

- Throughout the assignment transfer specific analytical skills to the staff of the Corruption Analysis Unit through on-job training methods;
- Validate findings of the report and recommendations with NAC and main stakeholders.

For detailed information, please refer to Annex 1 – Terms of Reference.

3. REQUIREMENTS FOR EXPERIENCE AND QUALIFICATIONS

I. Academic Qualifications

- A Masters' Degree in Public and/or Criminal Law or similar. A Bachelor's Degree in the same areas combined with 9 years of experience in the sector will serve in lieu of a Master's Degree.

II. Years and sphere of experience

- At least 7 years of proven experience of working with judiciary and the law-enforcement authorities in the Republic of Moldova;
- Proven professional experience linked to anti-corruption policy and/or capacity building in justice and/or law enforcement areas is a strong asset.

III. Competencies

- Proven knowledge of criminal legislation of the Republic of Moldova and international anti-corruption standards;
- Proven report writing and analytical skills;
- Fluency in Romanian and Russian languages; Knowledge of English is a strong asset; Knowledge of one or more additional languages relevant for Moldova, including Bulgarian, Gagauzian, Romani, Ukrainian or sign language is an asset.

IV. Personal qualities

- Proven commitment to the core values of the United Nations; in particular, is respectful of differences of culture, gender, religion, ethnicity, nationality, language, age, HIV status, disability, and sexual orientation, or other status;
- Responsibility;
- Flexibility;
- Punctuality.

4. DOCUMENTS TO BE INCLUDED WHEN SUBMITTING THE PROPOSALS

Interested individual consultants must submit the following documents/information to demonstrate their qualifications:

Interested individual consultants must submit the following documents/information to demonstrate their qualifications:

1. Proposal: explaining why they are the most suitable for the work and providing a list of relevant publications and a brief methodology on how they will approach and conduct the work;
2. Financial proposal in lump sum, USD;

3. Personal CV including past experience in similar assignments, the duly filled Personal History Form (P11) and at least 3 names for a reference check.

5. FINANCIAL PROPOSAL

The financial proposal shall specify a total lump sum amount, and payment terms around specific and measurable (qualitative and quantitative) deliverables. Payment will be made upon the successful completion of the tasks assigned and submission of the assessment report. Payments are based upon output, i.e. upon delivery of the services specified in the TOR. In order to assist the requesting unit in the comparison of financial proposals the financial proposal shall include a breakdown of this lump sum amount (including fee, taxes, communication costs, travel, per diems, and number of anticipated working days).

Travel

All envisaged travel costs must be included in the financial proposal. This includes all travel to join duty station/repatriation travel. In general, UNDP should not accept travel costs exceeding those of an economy class ticket. Should the IC wish to travel on a higher class he/she should do so using their own resources.

In the case of unforeseeable travel, payment of travel costs including tickets, lodging and terminal expenses should be agreed upon, between the respective business unit and Individual Consultant, prior to travel and will be reimbursed.

No travel is envisaged under this assignment.

6. EVALUATION

Initially, individual consultants will be short-listed based on the following **minimum qualification criteria**:

- A Masters' Degree in Public and/or Criminal Law or similar. A Bachelor's Degree in the same areas combined with 9 years of experience in the sector will serve in lieu of a Master's Degree;
- At least 7 years of proven experience of working with judiciary and the law-enforcement authorities in the Republic of Moldova.

The short-listed individual consultants will be further evaluated based on the following methodology:

Cumulative analysis

The award of the contract shall be made to the individual consultant whose offer has been evaluated and determined as:

- a) responsive/compliant/acceptable, and
- b) having received the highest score out of a pre-determined set of weighted technical and financial criteria specific to the solicitation.

1. Technical evaluation (max 300 points) – 60%;
2. Financial evaluation (max 200 points) – 40%.

Only candidates obtaining a minimum of 70% score of the technical evaluation (at least 210 points) would be considered for the Financial Evaluation.

Technical Criteria	Scoring	Max. Points Obtainable
A Masters' Degree in Public and/or Criminal Law or similar. A Bachelor's Degree in the same areas combined with 9 years of experience in the sector will serve in lieu of a Master's Degree	(Master – 30 pts., PhD – 35 pts.)	35
At least 7 years of proven experience of working with judiciary and the law-enforcement authorities in the Republic of Moldova	(7 years – max. 40 pts, more than 7 years – up to 65 pts, 5 pts – for each additional year)	65
Proven professional experience linked to anti-corruption policy and/or capacity building in justice and/or law enforcement areas is a strong asset	(less than 3 years – 10 pts., 3 years – max 30 pts., more than 3 years – up to 45 pts., 5 pts – for each additional year)	45
Proven knowledge of criminal legislation of the Republic of Moldova and international anti-corruption standards	(no – 0 pts., to some extent – up to 20 pts., yes – up to 35 pts.)	35
Relevance and correspondence to the Terms of Reference of the suggested brief methodology and approach	(no – 0 pts., to some extent – up to 20 pts., yes – up to 40 pts.)	40
Proven report writing and analytical skills	(no – 0 pts., to some extent – up to 20 pts., yes – up to 40 pts.)	40
Fluency in Romanian and Russian languages is mandatory; Knowledge of English is a strong asset; Knowledge of one or more additional languages relevant for Moldova, including Bulgarian, Gagauzian, Romani, Ukrainian or sign language is an asset.	(Romania – 5 pts., Russian – 5 pts., English – up to 5 pts; additional language – up to 5 pts.)	20
Responsibility, flexibility, punctuality	(no – 0 pts., to some extent – up to 10 pts., yes – up to 20pts.)	20
Maximum Total Technical Scoring		300
<u>Financial</u>		
Evaluation of submitted financial offers will be done based on the following formula: $S = F_{min} / F * 200$ S – score received on financial evaluation; Fmin – the lowest financial offer out of all the submitted offers qualified over the technical evaluation round; F – financial offer under consideration.		200

Winning candidates

The winning candidates will be the candidates, who has accumulated the highest aggregated score (technical scoring + financial scoring).

ANNEXES:

ANNEX 1 – TERMS OF REFERENCES (TOR)

ANNEX 2 – INDIVIDUAL CONSULTANT GENERAL TERMS AND CONDITIONS