**TERMS OF REFERENCE**

**Service provider for the development of practical tasks for HACC competition**

**Background**

The European Union Anti-Corruption Initiative in Ukraine (EUACI) Phase III is the largest support program from the European Union (EU) focused on anti-corruption efforts in Ukraine. It is co-funded by the EU and implemented by the Danish Ministry of Foreign Affairs. Scheduled for the 2024-2027 period, the program includes the High Anti-Corruption Court (HACC) among its beneficiaries.

On 23 November 2023, the High Qualification Commission of Judges of Ukraine (the HQCJ) announced the competition for 25 vacant positions at HACC (15 at the first instance court, 10 – at the HACC Appeal Chamber). As of 30.05.2024, the HQCJ admitted 160 candidates to the respective competitions (100 – to the first instance court and 60 – to the HACC AC). Admission of 1 HACC AC candidate is still to be decided.

According to Parts 1,3 of Article 74 of the Law “On the Judiciary and the Status of Judges”, the candidates admitted to the competition would have to undergo a qualification exam that consists of anonymous testing and a practical task.

According to Para 2.8 of the Regulations Governing the Qualification Examination Process and Candidate Assessment Methods adopted by the HQCJ on 19 June 2024, the practical tasks might be of the following types:

* Type 1 – a model court case with a collection of documents and sufficient data (information), based on which the participant must prepare a model court decision and/or continue the presentation of the proposed part of the model court decision based on the materials of the model court case;
* Type 2 – two model court decisions consisting of an introductory, descriptive (except in criminal proceedings) and/or partially motivational section, based on which the participant must continue their presentation.

On 20 May 2024, the HQCJ requested support from the international technical assistance projects to develop 30 practical tasks for HACC competition, in particular:

* 10 model criminal cases for HACC competition (first instance);
* 20 model court decisions, 10 of which on issues related to criminal law (material law), and the other 10 – on issues related to criminal process (procedural law) for HACC AC competition.

**Scope of work and deliverables**

The EUACI will support the above-mentioned request of the HQCJ in part, supporting the development of:

* 7 model criminal cases for HACC competition;
* 6 model court decisions, of which 4 on issues related to criminal law and 2 – on issues related to criminal process for HACC AC competition.

When developing the mentioned tasks, the Service Provider should adhere to the following requirements:

* the language of the tasks is Ukrainian;
* the style of communication is formal;
* tasks are developed with the involvement of reviewers and literary editors.
* the form of the task is open (the participant must provide the answer independently);
* task numbers must be unique;
* tasks are developed based on the established judicial practice of the HACC, HACC AC, and the Supreme Court.

Format of deliverables

* A digital folder is formed according to the task number that contains:
	+ the task file in DOCX format;
	+ a folder with court decisions which were the basis for the task;
	+ the task key (the correct solution to the task according to the author) in DOCX format;
	+ instructions for evaluating the task (algorithm for forming the score based on the evaluation results of the task, with the distribution of the weight of its components by indicators to be assessed and the rating scale of the indicator). When determining the weight of the practical task assessment indicators, a percentage scale from 0 to 100% should be used.

Structure of a practical task for HACC competition

* The task consists of case materials and a draft court decision (verdict);
* The case materials consist of a set of documents with sufficient data and information based on which the candidate must prepare a verdict, such as (but not limited to): indictment, notice of suspicion, pre-trial investigation materials, evidence provided by the pre-trial investigation body, ruling on the appointment of a preparatory court session, ruling on the appointment of a court hearing, evidence obtained during the court proceedings;
* The draft court decision (of the first-instance court) consists of the introductory part of the verdict, indicating the name and composition of the court, the secretary of the court session; the number of the criminal proceedings; the surname, first name, and patronymic of the accused, their date of birth, place of birth and residence, occupation, education, marital status, and other information about the accused that are relevant to the case; the law of Ukraine on criminal liability that provides for the criminal offense the person is accused of; the parties to the criminal proceedings and other participants in the court proceedings;
	+ Further in the task (draft decision), the candidate is offered the following: complete the court decision based on the consideration of the criminal proceedings on the merits.
* The date of the court decision is not specified. The date of the practical task completion is the date of the exam;
* The task must be formulated using complete and sufficient data (undisputed facts) for its unequivocal understanding.

Structure of a practical task for HACC AC competition

* The task consists of two model court decisions: one based on substantive (material) criminal law and one based on criminal procedural law.
* A model court decision consists of the introductory part of the court decision, the formulation of the accusation for which the person was found guilty by the High Anti-Corruption Court, a summary of the claims and arguments of the appeal (appeals), as well as the evidence examined in the court of first instance (a model court decision);
* The date of the court decision is not specified;
* At the end of the task, a condition is formulated for the candidate for the position of judge as follows:
	+ To solve the task in the practical task, you need to:
		- Determine the type of court decision that, in your opinion, should be made by the appellate court as a result of the consideration of the case according to the conditions set in the task;
		- Complete the court decision.
* The date of the practical task completion is the date of the exam;
* The task must be formulated using complete and sufficient data (undisputed facts) for its unequivocal understanding.

Examples of practical tasks will be provided to the contracted Service Provider upon request.

**Timing**

The Contractor must develop all the tasks until **15 August 2024**.

**Requirements for the Service Provider**

The Service Provider must meet the following requirements:

* official registration as a legal entity or a private entrepreneur (with a team) according to the legislation of Ukraine;
* pool of lawyers with solid professional background in Criminal Law and Criminal Procedure;
* previous experience of developing practical tasks for the competitions to the Ukrainian anti-corruption agencies or courts will be considered as an advantage.

The Service Provider would be contractually obliged to retain full confidentiality when performing this assignment.

The Service Provider and the representatives of its team should warn the EUACI of any situation that might be considered as a conflict of interest in respect of the tasks to be performed (f.e., expected participation of a team member or his/her close relatives in the judicial competitions for HACC) and be ready to resolve it, including by removing such a person from the performance of the necessary tasks.

**Monitoring and evaluation**

The Service Provider's performance will be evaluated based on successful execution of deliverables specified in the “Scope of work and deliverables” section of this document.

**Estimated budget**

The full budget for this assignment (for all the deliverables) may not exceed **EUR 25 000**.

**Payment**

All the payments under the contract will be made in UAH according to the official NBU exchange rate published on the business day of the invoice issuance by the contractor. The contractor would be entitled to the prepayment of 30%. Final payment will be made upon receipt and approval by the EUACI of all the deliverables.

**Evaluation**

Bids will be evaluated in accordance with the criteria provided below:

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| --- | --- |
| **Criterion** | **Weight** |
| Relevant experience, skills, and competencies of team members | 50% |
| Financial Offer | 50% |

**How to apply**

The deadline for submitting the proposals is **7 July 2024 17.00 Kyiv time**.

All interested experts or companies should submit:

* CV of key staff (pool of lawyers);
* financial offer for the services with the breakdown of costs.

This information should be submitted as a single PDF document with a text layer. The proposal shall include the aforementioned information and should be submitted within the above deadline to EUACI@um.dk indicating the subject line: “HACC Practical tasks”.

Bidding languages: English

Any clarification questions regarding the bid request should be addressed to EUACI@um.dk, not later than **5 July 2024 17.00 Kyiv time**.