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Date: 19 February 2014

INDIVIDUAL CONSULTANT PROCUREMENT NOTICE

for individual consultants and individual consultants assigned by consulting firms/institutions

Country:	Viet Nam
Description of the assignment:	Senior International Expert for policy research “Liability of Legal Entities: A study of international practices and applications for Viet Nam”
Project name:	PAT - Public Administration Reforms and Anti-corruption
Period of assignment/services (if applicable):	15 April to 31 July 2014

1. Submissions should be sent by email to: nguyen.thi.hoang.yen@undp.org no later than: **18 March 2014 (Hanoi time)**.

With subject line: Senior International Expert on Liability of Legal Entities

Submission received after that date or submission not in conformity with the requirements specified this document will not be considered.

Note:

- Any individual employed by a company or institution who would like to submit an offer in response to this Procurement Notice must do so in their individual capacity, even if they expect their employers to sign a contract with UNDP.
 - **Maximum size per email is 7 MB.**
 - Any request for clarification must be sent in writing, or by standard electronic communication to the address or e-mail indicated above. Procurement Unit – UNDP Viet Nam will respond in writing or 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 consultants.
2. Please find attached the relevant documents:
 - [Terms of Reference \(TOR\)](#)..... (Annex I)
 - [Individual Contract & General Conditions](#)..... (Annex II)
 - [Reimbursable Loan Agreement](#) (for a consultant assigned by a firm) [& General Conditions](#) (Annex III)
 - [Insurance Coverage Table](#)..... (Annex IV)
 - [Vendor Form](#) (Annex V)
 - [Guidelines for CV preparation](#)..... (Annex VI)
 - [Format of financial proposal](#)..... (Annex VII)
 3. Interested individual consultants must submit the following documents/information **(in PDF Format)** to demonstrate their qualifications:

a. Technical component:

- Signed Curriculum vitae
- An abstract of 350 words summarising initial concrete points (including names of countries to be suggested for lessons learnt for Viet Nam and rationale and relevance for the Vietnamese context) to be made in the research study under the TOR
- A tentative work-plan for this research
- Copy of minimum publications in English
- Reference contacts of past 4 clients for whom you have rendered preferably the similar service

b. **Financial proposal (with your signature):**

- The financial proposal shall specify a total lump sum amount in **US Dollar** including consultancy fees and all associated costs i.e. airfares, travel cost, meal, accommodation, tax, insurance etc. – see format of financial offer in Annex VII.
- Please note that the cost of preparing a proposal and of negotiating a contract, including any related travel, is not reimbursable as a direct cost of the assignment.
- If quoted in other currency, prices shall be converted to Viet Nam Dong at UN Exchange Rate at the submission deadline.

4. Evaluation:

The technical component will be evaluated using the following criteria:

Consultant(s)' experiences/qualification related to the services		Maximum Points
1	Advanced degree in comparative legal studies, interdisciplinary legal studies, and/or political science studies	100
2	At least 10 years experience in leading and conducting international empirical research, with analytical work done preferably in preferably in Asian and emerging middle income economies;	100
3	Demonstrated expertise on empirical legal studies on criminology in anti-corruption, or on anti-corruption legislation	200
4	A strong international publications record, especially in the area of criminalization of corruption offences, including liability of legal entities;	100
5	Proven ability to write clear, jargon-free English	50
Technical proposal		
1	Demonstrated good understanding of the objectives of this assignment	150
2	Clearly defined methodology for carrying out the research to obtain the expected outputs	150
3	Clear and succinct justifications for selection of a set of countries for comparative study	150
Total		1,000

A two-stage procedure is utilized in evaluating the submissions, with evaluation of the technical components being completed prior to any price proposals being opened and compared. The price proposal will be opened only for submissions that passed the minimum technical score of 70% of the obtainable score of 1000 points in the evaluation of the technical component.

The technical component is evaluated on the basis of its responsiveness to the Term of Reference (TOR).

Maximum 1000 points will be given to the lowest offer and the other financial proposals will receive the points inversely proportional to their financial offers. i.e. $S_f = 1000 \times F_m / F$, in which S_f is the financial score, F_m is the lowest price and F the price of the submission under consideration.

The weight of technical points is 70% and financial points is 30%.

Submission obtaining the highest weighted points (technical points + financial points) will be selected.

Interview with the candidates may be held if deemed necessary.

8. Contract

“Lump-sum” Individual Contract will be applied for freelance consultant (Annex II)

“Lump-sum” RLA will be applied for consultant assigned by firm/institution/organization (Annex III)

Documents required before contract signing:

- Personal History
- International consultant whose work involves travel is required to complete the course on Basic Security in the Field and submit certificate to UNDP before contract issuance.

Note: The Basic Security in the Field Certificate can be obtained from website:

<https://training.dss.un.org/consultants>. The training course takes around 3-4 hours to complete. The certificate is valid for 3 years.

- Full medical examination and Statement of Fitness to work for consultants from and above 62 years of age and involve travel. (This is not a requirement for RLA contracts).
- Release letter in case the selected consultant is government official.

9. Payment

UNDP shall effect payments to the consultant (by bank transfer to the consultant’s bank account provided in the vendor form (Annex V) upon acceptance by UNDP of the deliverables specified the TOR.

1st payment: 40% of total contract value will be paid upon UNDP’s receipt and acceptance of Output 1 as set forth in Section 3 of the TOR.

2nd payment: 40% of total contract value will be paid upon UNDP’s receipt and acceptance of Outputs 2 as set forth in Section 3 of the TOR

3rd payment: 20% of total contract value will be paid upon UNDP’s receipt and acceptance of Outputs 2 as set forth in Section 3 of the TOR.

If two currencies exist, UNDP exchange rate will be applied at the day UNDP instructs the bank to effect the payment.

10. Your proposals are received on the basis that you fully understand and accept these terms and conditions.



TERMS OF REFERENCE (TOR)

Service	Senior International Expert for policy research “ Liability of Legal Entities: A study of international practices and applications for Viet Nam ”
Duty station:	Hanoi and home-base
Expected Duration	The successful International Service Contractor is expected to provide services from 15 April to 31 July 2014
Supervision:	The Contractor will work closely with UNDP Viet Nam Policy Advisor on Public Administration Reforms and Anti-corruption and with National Expert(s) to be provided by UNDP Viet Nam. The Contractor will report directly to UNDP Vietnam.

1. BACKGROUND

Viet Nam as a developing country has grown rapidly over the last two decades. Like many other East Asian countries, it has developed specific context related governance capabilities and economic strategies. In particular, it has developed a comprehensive legal framework to combat and prevent corruption. This includes the Law on Combating and Prevention of Corruption (Law No. 55/2005/QH11); the adoption of a National Strategy for Preventing and Combating Corruption towards 2020 (Resolution 21/2009/NQ-CP); the ratification of the UN Convention against Corruption (UNCAC) and a dozen of secondary legislation on the prevention aspects.

In 2011 and 2012, Vietnam underwent the process of national self-assessment of UNCAC implementation. Findings from the review suggest areas where Vietnam has met UNCAC’s requirements, as well as areas that need further compliance with UNCAC’s provisions and to strengthen its own legislation and enforcement mechanisms on combating corruption. In particular important gaps identified in the self-assessment report¹ regarding criminalization are mostly related to partial compliance on issues of bribery of national public officials (art. 15.a and 15.b); bribery of foreign public officials (art. 16.1 and 16.2); trading in influence (art. 18.a); embezzlement of property in private sector (art. 22); laundering on proceeds of crime (art. 23.2.b); protection of witnesses, experts and victims (art. 32.1; 32.2.a,b; 32.3); protection of reporting persons (art. 33); cooperation with law enforcement authorities (art. 37.5), and issues of criminal records (art. 41). In addition, the self-assessment identified important areas of no-compliance, including “illicit enrichment (art. 20); bribery in the private sector (art. 21a and 21b) and liability of legal entities (art 26.1).

For this assignment, article 26 of UNCAC on liability of legal persons will be cornerstone for analysis. Article 26 reads as follows:

“Article 26. Liability of legal persons

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.
2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.
3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.
4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.”

In 2014 the Government of Viet Nam, under the coordination of the Ministry of Justice (MoJ) are drafting a series of amendments to the Penal Code. Therefore, it is a high time to provide advice on how corrupt acts, including fraud, corruption and bribery committed through legal entities in both the public and private sectors, are successfully covered and handled in other countries’ criminal provisions to prevent and curb organised crimes. In order to analytically support the on-going process on amendment of the Penal Code, UNDP will

¹ Government Inspectorate (2011). National Self-Assessment Report on UNCAC Implementation. Draft Report. Hanoi, July 2011

commission a research study on international experiences in 'Liabilities of Legal Entities' using a comparative approach with emphasis on institutional and legislative analysis. The study will help identify good practices and lessons for Viet Nam to consider in its review of criminalisation of corruption acts to supplement and/or revise in the amendment of the Penal Code, and to narrow the identified gap between Viet Nam's AC legislation and the UNCAC.

Adopting a comparative approach, this study seeks to identify and analyse a set of Penal Codes that cover such as fraud, corruption and bribery committed by legal entities in a number of countries, as well as the institutional and legal environments where those Penal Codes take effect. The study also highlights successful and/or failing attributors to enforcing criminalisation of liability of legal entities, and opportunities and/or challenges to the enforcement. These analytical elements are put in comparison with Viet Nam's Penal Code and relevant legislation to point out practicalities and/or impracticalities of criminalising liability of legal entities in Viet Nam.

In a nutshell, the usefulness of this study can be assured when good practices and lessons learnt from other countries are both politically and practically feasible. This exercise does not aim to claim that legislative and other measures to criminalise 'Liability of Legal Entities' that are adopted in one country can be directly replicated in any other country. Instead, it helps to identify what measures are successfully implemented and the reasons for this implementation. The policy research aims to facilitate debates about what Viet Nam can learn from other countries when amending its Penal Code and on what conditions such amendments if any to include 'Liability of Legal Entities' in the legislation will work in the country when the revised Penal Code takes effect.

2. OBJECTIVES

2.1. Main objective

The research will adopt a comparative institutional and legal analysis approach to examine what works, what does not and why for a selected number of Penal Codes (including Viet Nam's) regarding 'Liability of Legal Entities' as set for under UNCAC's framework and article 26. The policy research will present a set of good institutional practices and lessons for Viet Nam to consider in amending its Penal Code.

2.2. Specific Objectives

1. To undertake a comparative analysis of Penal Codes in at least five middle-income countries and/or countries that have transited towards MICs (including Viet Nam), focusing on the aspects of criminalising 'Liability of Legal Entities';
2. To provide examples of how criminalising liability of legal entities has been (in)effectively enforced in curbing corrupt practices such as fraud, corruption and bribery committed by legal entities in those selected country case studies;
3. To identify what lessons Vietnam can consider learning from while amending the Penal Code in order prevent and control fraud, corruption and bribery committed by legal entities in Viet Nam and to narrow the gap identified between Viet Nam's AC legislation and UNCAC's article 26.

3. RESEARCH STAGES AND EXPECTED OUTPUTS

The Contractor, according to the following terms of reference, and under the coordination of UNDP's Policy Advisor on Public Administration Reform (PAR) and Anti-Corruption (AC) shall deliver the products described below:

Stage 1: Estimated 10 days of work done, home-based, to conduct in-depth, evidence-based literature review to provide the following output:

Output 1: A 15-paged briefing note to provide comparative an institutional and legal analysis of Penal Codes in regards criminalization of liability of legal entities by different but relevant jurisdictions²

Stage 2: Estimated 20 days of work done in Hanoi and home-base to provide the following output:

Output 2: A final draft research paper (with 40 pages long in the main texts) sufficiently evidenced, adequately referenced and following the suggestive outline below:

² A suggested reading: Asser Institute & PISM (2012). Prevention of Fraud, Corruption and Bribery Committed through Legal Entities for the Purpose of Financial and Economic Gain. A paper commissioned by the European Commission.

- Introduction. The context, research objectives and rationales of the study (2 pages)
- Section 1. Introduction to a Set of Penal Codes Regulating Criminalisation of Liability of Legal Entities (10 pages)
 - Briefing about the Penal Codes that provide for criminalisation of 'liability of legal entities' and institutional and legal contexts where they are in effect;
 - An analysis of successful and/or failing attributors to the enforcement of regulations on criminalisation of liability of legal entities in the selected Penal Codes;
- Section 2. Lessons Learnt for Viet Nam (10 pages)
 - An analysis of Viet Nam's institutional and legal context where an introduction of criminalisation of liability of legal entities is required;
 - An analysis of which international good practices can work in Viet Nam when introducing criminalisation of liability of legal entities to the Penal Code under amendment
 - An analysis of the opportunities and challenges to criminalisation of liability of legal entities to the Penal Code under amendment
- Conclusions and Policy Recommendations for Viet Nam's Penal Code (5 pages)
 - A summary of what is found from the study
 - A summary of recommendations by introducing different, phased alternatives and/or options for Viet Nam to consider while amending the Penal Code
- Appendices to summarize Penal Codes studied

Stage 3: Estimated 10 days of work in Hanoi to provide the following output:

Output 3:

- A PowerPoint presentation (12-15 slides) summarizing key findings and policy recommendations to be presented at a policy dialogue to be convened by UNDP and relevant counterparts
- Refined final research paper upon incorporating comments by national and international peer-reviewers to be convened by UNDP and relevant counterparts

4. METHODOLOGY

The Senior International Expert will work under the supervision of and in collaboration with UNDP's Policy Advisor on PAR and AC during the assignment. The UNDP's PAR and AC Advisor will provide the Senior International Expert with substantive support where deemed necessary.

The research methodology involves desk review, analysis and synthesis of data, statistics, documents and publications on the subject matters. The research process is participatory and consultative, including in depth interviews and focused group discussions with key Vietnamese policy makers and relevant stakeholders during the two field missions. The Senior International Expert is expected to conduct all such research methods and processes to substantiate and validate the final research paper.

The Senior International Expert shall be responsible for identifying sources of information and evidence, and citing and referencing them properly in the research. Plagiarism is by all means prohibited.

The final research paper is neither an essay of qualified opinions nor a newspaper type article. It needs to be grounded on evidence and documented data/information. Therefore, the Senior International Expert will keep frequent working sessions with the PAR and AC advisor who can request additional information and clarity where deemed appropriate.

The Senior International Expert will be supported by a team of national consultants that will be contracted separately. This support helps sensitising and internalising good international practices and experiences to make policy recommendations fit the Vietnamese political and legal dynamics. The national research team will support the Senior International Expert with substantive inputs from Viet Nam, arrangement of interviews with different relevant stakeholders and translation of the final report into Vietnamese for discussion and dissemination. It is therefore required that the Senior International Expert possesses good team work skills. UNDP will also support the research process; however the ultimate responsibility on access and accuracy of data relies on the Senior International Expert and his/her research team.

UNDP will arrange for publication of the final report if and when satisfied with the quality of the paper. The paper will be made publicly available through the normal distribution channels, and distributed to national and international agencies. UNDP also actively encourages the Senior International Expert and his/her research

team members to publish the paper in other outlets, including scholarly journals and institutional websites as long as the researcher fully observes UNDP's general terms and conditions in terms of title rights, copy rights, patents and other proprietary rights to be specified in "General Conditions of Contract for the Services of Individual Contractors.

5. QUALIFICATIONS AND REQUIREMENTS

The International Senior Expert should meet the following minimum requirements:

- Advanced degree in comparative legal studies, interdisciplinary legal studies, and/or political science studies;
- At least 10 years experience conducting applied research in developing countries, preferably in the analysis of Asian and emerging middle income economies;
- Demonstrated expertise on empirical legal studies on criminology in anti-corruption, or on anti-corruption legislation
- A strong international publications record;
- Proven ability to write clear, jargon-free English.

It is required that interested candidates include in their application dossiers:

1. an abstract of 350 words summarising initial concrete points (including names of countries to be suggested for lessons learnt for Viet Nam and rationale and relevance for the Vietnamese context) to be made in the research study under this TOR;
2. a tentative work-plan for this research;
3. a most updated CV with information about three referees for reference check; and,
4. at least one relevant publication in English.
5. Reference contacts of past 4 clients for whom you have rendered preferably the similar service

6. TIMING, DURATION AND LOCATION

This assignment will be conducted for an indicative period of 40 days of work, comprising of three concrete phases:

- 15 April - 15 May 2014: Home-based research and desk reviews
- 15 May - 30 June 2014: Home-based and one (01) business trips to Hanoi for fieldwork for 10 working days at most
- 01 July - 31 July 2014: Home-based and one (01) business trip to Hanoi for 5 working days at most to partake in policy dialogues with national stakeholders.

The interested contractor shall suggest a tentative work-plan for this study to be done for further discussion with UNDP upon being selected, as indicated in Section 5.

Note: This is an estimated number of days only and it is up to the interested candidate to allocate the number of days required to deliver the deliverables in this TOR as per the timeframe. The financial offer is expected to reflect the number of working days required to fulfill the assignment and include travel costs and per diems and other relevant costs for the two (02) field trips to Hanoi, Vietnam.

7. CONTRACT PAYMENT

UNDP Viet Nam shall effect payments to the successful Individual Contractor upon UNDP's satisfaction with expected deliverables set forth in Section 3 above and after acceptance by UNDP of the request for payment submitted by the Contractor to the address specified in the sample contract. UNDP shall not make the final payment when the final output does not meet the discussed and mutually agreed expectations. Milestones for deliverables and payments for the two phases shall be as follows:

Sequence	Percentage of installments	Indicative Dates for Installments
1 st payment	40% upon receipt and acceptance of Output 1 as set forth in Section 3	20-May-2014
2 nd payment	40% upon receipt and acceptance of Outputs 2 as set forth in Section 3	10-July-2014
Final payment	20% upon receipt and acceptance of Outputs 2 as set forth in Section 3	10-Aug-2014(*)

(*) with possible extension of the deadline due to possible delay in the research process

8. SUPPORT FROM UNDP AND REFERENCE DOCUMENTS

UNDP will provide the following support where deemed appropriate:

- Substantive inputs in and quality control of deliverables;
- Office space for meetings and working sessions when needed;
- When requested, arrangement of introduction letters and/or requests for meetings/interviews;
- Any other substantive support where deemed appropriate.

9. PROVISION OF MONITORING AND PROGRESS CONTROLS

- Upon contract signing, the contractor shall work closely with the UNDP Policy Advisor on PAR and Anti Corruption to discuss and agree on the task requirements, working methodology;
- The UNDP Policy Advisor and the relevant stake holders review and comment on the contractor's required outputs/reports in the TOR;
- The contractor reviews the comments and submits the revised outputs/ reports for further review and comments;
- The UNDP Policy Advisor shall monitor every stage of deployment of the project and shall evaluate the deliverables of each phase as described in Section 3 of this TOR.
- UNDP shall disburse installments to the contractor against the milestones for each phase of the project. Each payment shall be made upon UNDP's satisfaction with the deliverables. The final installment shall be made to contractor only when UNDP is fully satisfied with the final deliverable of this assignment.

Annex VI

GUIDELINES FOR PREPARING CV

WE REQUEST THAT YOU USE THE FOLLOWING CHECKLIST WHEN PREPARING YOUR CV:

Limit the CV to 3 or 4 pages

NAME (First, Middle Initial, Family Name)

Address:

City, Region/State, Province, Postal Code

Country:

Telephone, Facsimile and other numbers

Internet Address:

Sex, Date of Birth, Nationality, Other Citizenship, Marital Status

Company associated with (if applicable, include company name, contact person and phone number)

SUMMARY OF EXPERTISE

Field(s) of expertise (be as specific as possible)

Particular development competencies-thematic (e.g. Women in Development, NGOs, Privatization, Sustainable Development) or technical (e.g. project design/evaluation)

Credentials/education/training, relevant to the expertise

LANGUAGES

Mother Tongue:

Indicate written and verbal proficiency of your English:

SUMMARY OF RELEVANT WORK EXPERIENCE

Provide an overview of work history in reverse chronological order. Provide dates, your function/title, the area of work and the major accomplishments include honorarium/salary. References (name and contact email address) must be provided for each assignment undertaken by the consultant that UNDP may contact.

UN SYSTEM EXPERIENCE

If applicable, provide details of work done for the UN System including WB. Provide names and email address of UN staff who were your main contacts. Include honorarium/salary.

UNIVERSITY DEGREES

List the degree(s) and major area of study. Indicate the date (in reverse chronological order) and the name of the institution where the degree was obtained.

PUBLICATIONS

Provide total number of Publications and list the titles of 5 major publications (if any)

MISCELLANEOUS

Indicate the minimum and maximum time you would be available for consultancies and any other factors, including impediments or restrictions that should be taken into account in connection with your work with this assignment.

Please ensure the following statement is included in the resume and that it is signed and dated:

I CERTIFY THAT ALL INFORMATION STATED IN THIS RESUME IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE. I AUTHORIZE UNDP/UNOPS OR ITS AGENT TO VERIFY THE INFORMATION PROVIDED IN THIS RESUME.

(Signature)

