**TERMS OF REFERENCE**

**regarding Corruption Risk Assessment of the Consulting Engineers’ Activities in Ukraine for**

**the Agency for Restoration and Development of Infrastructure of Ukraine**

**BACKGROUND AND CONTEXT**

Supporting anti-corruption efforts in Ukraine is a high political priority for the European Union and Denmark. By combating corruption, the EU contributes to the consolidation of democracy and economic growth of Ukraine, as well as the successful approximation of Ukraine with the EU.

The transparency, integrity and accountability of Ukraine’s recovery is one of the key topics of the EUACI. The Government of Ukraine, the Ministry for Development of Communities and Territories of Ukraine (the Ministry) and the State Agency for Restoration and Infrastructure Development of Ukraine (the Agency) are the key counterpart of the EUACI in this area.

As the recovery process involves massive national and international resources, it is key to have a coordinated policy framework to ensure that these funds are managed responsibly and support Ukraine's long-term commitment to good governance and sustainable development. Post-war reconstruction of Ukraine is a critically important task that not only restores damaged infrastructure but also lays the foundation for sustainable economic growth and social development. This process requires a comprehensive approach, which includes project management at all stages of reconstruction, as well as overcoming numerous challenges.

Construction is a complex process that involves more than just building a structure (e.g., new construction, reconstruction, restoration, or major repairs). It also includes various tasks, such as organization, design, inspection and execution of construction and installation works. The result of construction is a completed building and a full package of permits that confirm the legality of the project, the stability and strength of the structures, and their safe use.

The General Conditions of Contracting and Implementation of Contracts in Capital Construction, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 668 dated 01.08.2005, provide that the customer has the right to engage a consulting engineer for project management, organizing and consulting support of the complex of works related to the creation of a construction object, other functions specified in the contract for the provision of consulting engineering services, with the contractor's powers and obligations under the contract specified in the contract.

The consulting engineer is an expert who provides consulting services to the client on project implementation, manages construction on site, and fully supports the project at all stages.

Legislation governing consulting engineer's activities sometimes lacks clarity and contains gaps and irregularities. The legal status of a consulting engineer is not fully regulated by the current legislation of Ukraine. Unlike technical supervision, which is obligatory, a consulting engineer is engaged at the discretion of the customer. At the same time, there are no requirements as to their mandatory status and no clear description of their functions.

It is also important to note that the engineer's work is based on discretionary powers, i.e., he acts at his own discretion, which may lead to certain corruption risks.

 In view of the above, there is a need to standardize and improve the legislation governing consulting engineers’ activities, as well as to implement quality control systems to reduce corruption risks.

In this context, the EUACI is seeking a Service Provider (Consultant, Consulting Firm, or NGO) to collaborate closely with the Agency for Restoration in conducting risk assessment of the sphere of activities of the consulting engineer.

The practice of implementation of consulting engineers in Europe offers valuable lessons for Ukraine, particularly in ensuring robust project management and efficient infrastructure development.

The legal guide for making international construction contracts, developed by the United Nations Commission on International Trade Law (UNCITRAL), identifies the consulting engineer as one of the main market participants. The consulting engineer became well-known mainly through the use of standard contract forms from the International Federation of Consulting Engineers (FIDIC). The standard agreement between the client and consulting engineer can be found in the FIDIC White Book: "Client-Consultant Model Contract." In 1992, EFCA (European Federation of Engineering Consultancy Associations) was founded as the European representative of the International Federation of Consulting Engineers, uniting 30 professional national FIDIC associations from European Union countries.

Analysing the practices of the European Union in the field of consulting engineer and implementing them in Ukraine is crucial for establishing best practices in accountability and transparency. This step will not only enhance the effectiveness and quality of engineering projects in Ukraine but also serve as an important essential for the country's accession to the European Union.

These Terms of Reference (ToR) provide more details about the assignment.

**OBJECTIVE:**

The main objective of the assignment is to identify mainly possible corruption risks, but also relevant technical and management risks, in the processes of activities of the consulting engineer and propose how to mitigate them.

**SCOPE OF WORK:**

The scope of work of the assignment includes different tasks, including, but not necessarily limited to:

1. **Comprehensive survey of regulations and practices of the consulting engineers’ activities.**

1.1. Review of **legal framework** governing activities of the consulting engineer, including:

1. Legal status and requirements of consulting engineers;
2. Certification process for consulting engineers, including possibility for legal entities to be certified as consulting engineers;
3. Contract requirements with consulting engineers, including but not limited to analysis sample forms service contracts with consulting engineers;
4. Legal responsibility of consulting engineers.

1.2. Analysis of **practical aspects** and issues related to consulting engineer’s activities in Ukraine, including:

1. Obstacles with access to Ukrainian market by consulting engineers;
2. Сriteria for customers to engage the services of a consulting engineer;
3. Public procurement practices for services of consulting engineers;
4. Implementation of contracts with consulting engineers.
5. Approach to pricing of consulting engineers.
6. Assessment of risks in works and services related to consulting engineer activities, specifically the main risks of conducting author supervision in Ukraine.

To perform this task the Consultant must perform desk study of available Ukrainian laws and regulations, information in open sources and hold at least five (5) interviews with stakeholders: public Customer Service, contractors, consulting engineers.

**1.3.** Analysis of the **international best practices** for the consulting engineers, including **practices in the EU (**Germany, France, Austria)**.**

**2.** Identification of main corruption, technical, management and other risks associated with activities of consulting engineers at all stages of construction project cycle, including:

1. Monitoring consulting engineer activities, including reporting and works/services acts acceptance.
2. Interactions between consulting engineers, construction customers, technical supervision, and contractors.
3. Other risks that negatively affect the quality of activities of the consulting engineer.

Risk assessment shall include the following elements:

1) Risk identification

2) Analysis of the causes of risk

3) Determination of the consequences of the existence of a risk

b) Describe possible ways to reduce the identified risks.

Develop general recommendations on how to mitigate risks, including based on EU practices.

**3. The results of the analysis shall be presented in the report.**

The report should contain, among other:

* Overview of regulation and practices related to consulting engineer’s activities;
* Risks register;
* Detailed recommendations to eliminate identified corruption risks, including based on international best practice.

 **DELIVERABLES:**

The Deliverables are presented below in Table 1 with a tentative schedule.

Deliverables are to be provided in Ukrainian language with the exception of the final report that should be in Ukrainian and English language versions. Electronic copies shall be sent by email to the particular EUACI contact person.

Table 1: Summary of deliverables/outputs and the tentative timeline for delivery.

| № | **Deliverable/Output** | **Timeline** | **Note** |
| --- | --- | --- | --- |
| 11 | Consultant's work plan showing tentative timing for the start and completion of the activities listed in the scope of work section. | 1 week after contract signing | To be submitted to the EUACI contact person by e-mail ahead of presentation in Ukrainian |
| 22 | Report as described in point 3 above  | 8 weeks after contract signing | To be submitted to the EUACI contact person by e-mail in Ukrainian. |

The timelines indicated in the table above are indicative. The Consultant may reflect on and update the timelines for different activities. Other deliverables are agreed upon with the EUACI.

The Consultant will work under the supervision of the EUACI responsible person.

**TIMELINE**

The intended commencement date is the date of signature of the contract with the Сonsultant and the period of implementation of the contract will be **3 months**, with an expected duration **of 45 working days**.

**PAYMENT**

Payment will be made in a maximum of two installments.

The first installment, representing a maximum of 30% of the total contract value, will be made after receipt of the Consultant's updated work plan, Deliverable 1, and invoice.

The second and final payment will be made upon receipt and approval of the Reports and all other supporting documents, including a Final Invoice.

**CONSULTANT REQUIREMENTS**

The assignment described above is expected to be carried out by a Ukrainian legal entity, including NGO, or a private entrepreneur.

The Consultant's core team shall include the following key experts:

* One Expert in Consulting Engineering to assess main risks in the activities of consulting engineers at all stages of construction project management.
* One Legal Expert to conduct an assessment of the current legal framework and practices in the field of consulting engineering.

**Requirements to the Expert in Consulting Engineering:**

1. Master's degree or equivalent that demonstrates the ability to perform the duties and responsibilities as described.
2. Proven track record of expertise in the field of technical supervision or consulting engineering over the past 5 years.
3. Experience in construction project expertise and collaboration with public authorities for a minimum of 3 years in Ukraine, would be an asset.
4. Fluency in Ukrainian is required;
5. Ability to speak and write in the English language would be an asset.
6. Consulting engineer certificate would be an asset.

**Requirements to Legal Expert:**

1. Master’s degree in law, international law, or similar field is required,
2. Proven track record (no fewer than 3 years) of analysis of Ukrainian legislation, conducting corruption and/or managerial risks assessments, providing recommendations for legislative changes;
3. Legal experience in construction, architecture, engineering or another related field for the state and private sectors will be an asset,
4. Excellent written and oral communication skills,

**MONITORING AND EVALUATION:**

Definition of indicators

The performance of the contractor will be judged upon reaching the purpose of this contract as well as obtaining its results, as indicated in the sections "Objective" and "Expected Deliverables" herein respectively.

Special requirements

By signing the contract, the contractor (and its representatives) agree to hold in trust and confidence any information or documents ("confidential information"), disclosed to the contractor or discovered by the contractor or prepared by the contractor in the course of or as a result of the implementation of the contract and agrees that it shall be used only for the purposes of the contract implementation and shall not be disclosed to any third party without EUACI authorization.

The contractor reports to the EUACI. The contractor shall de-brief the EUACI prior to finalizing the assignment.

The developed deliverables can be checked (as a quality assurance) and payments will be provided by the quality assurance results.

# **BIDDING DETAILS**

The bidder must submit the following information to be considered:

1. The CV (no more than three pages long) of each key expert that should include a description of the previous relevant assignments, and key duties on this assignment.
2. A portfolio that includes a list of assignments similar to this project executed in the last five years.
3. A budget for the services in EUR, inclusive of all taxes or other such charges with a calculation of 45 working days.

**The contract budget cannot exceed 10,000 EUR.**

 **HOW TO APPLY**

The deadline for submitting the proposals is **06 of May 2025, 18:00 Kyiv time.**

The proposals shall be submitted within the above deadline to **euaci@um.dk** **with copy to olhkol@um.dk**, indicating the subject line “Consultant for Risk Assessment”.

 Bidding language: English

Any clarification questions for the bid request should be addressed to **olhkol@um.dk**, no later than **01 May 2025, 18:00** Kyiv time.

 To ensure your documents were successfully received, please check that you receive an auto-reply from our system. If your application is properly received, you will receive an auto-reply from the EUACI mailbox. If you don’t receive an auto-reply, your application was not received, please try again or contact.

 **EVALUATION CRITERIA**

Bids will be evaluated under the criteria provided below:

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

|  |  |  |
| --- | --- | --- |
| # | Criteria | Weight |
| 1 | Budget | 30% |
| 3 | Key Expert’s CV(s) | 70% |