



USAID Nove Pravosuddya Justice Sector Reform Program

Request for Applications (RFA) № 12-NJ-08-2020

Monitoring High Council of Justice Judicial Discipline Practice

Issuance Date: September 9, 2020

Dear Applicant:

USAID Nove Pravosuddya Justice Sector Reform Program (hereinafter – USAID New Justice Program, New Justice, Program), implemented by Chemonics International Inc. (hereinafter – Chemonics), is seeking grant applications for monitoring of judicial disciplinary practice by civil society organization being implemented in the light of increased accountability of judges and enforceability of judicial ethics to check the consistency of the High Council of Judges (HCJ) disciplinary case law and its policy to safeguard the due process for judges in question.

The grants will be awarded and implemented in accordance with USAID and US Government regulations governing grants under contracts and USAID New Justice Program's internal grant management policies.

The objective of the activity is to engage civil society organizations in monitoring the HCJ judicial discipline practice and related court decisions in case judges appeal against the HCJ decisions in disciplinary cases; as well as in increasing awareness of the civil society organizations on the progress made about judicial reform with respect to strengthening judicial accountability and improving judicial ethics enforcement mechanisms.

USAID New Justice Program anticipates awarding 1 grant up to 400 thousand UAH, but the final amount will depend upon grant activities scope and final negotiations and may be lower or higher than that range. The duration of grant award under this solicitation is expected to be no more than 5 months. The estimated start date of grant awarded under this solicitation is November 9, 2020. The applications must be submitted no later than October 9, 2020, by 6:00 p.m., local time.

Program and Chemonics employees may not ask for, and applicants are prohibited from offering, any money, fee, commission, credit, gift, gratuity, thing of value, or compensation to obtain or reward improper favorable treatment regarding this solicitation. Any improper request from a project employee should be reported to the chief of party or BusinessConduct@chemonics.com.

Annexes included with this Request for Applications:

- **Annex A**- Grant Application Template
 - A.1 – Instruction
 - A.2 – Grant Application Form
 - A.3 – Implementation Plan Timeline
- **Annex B**– Grant Application Budget Form
- **Annex C**– Applicant Self-Assessment Form

- **Annex D**– Required Certifications

- *Certification of “Representation by Organization Regarding a Delinquent Tax Liability or a Felony Criminal Conviction”*
- *Prohibition on Providing Federal Assistance to Entities that Require Certain Internal Confidentiality Agreements – Representation*
- *Certification Regarding Terrorist Financing*
- *Certification of Recipient*

- **Annex E**–Mandatory and Required As Applicable Standard Provisions:

- Standard Provisions for U.S. and Non-U.S. Nongovernmental organizations receiving a fixed amount award can be accessed through the following URL:
<http://www.usaid.gov/sites/default/files/documents/1868/303mat.pdf>

SECTION I. PROGRAM DESCRIPTION

IA. OBJECTIVE

USAID New Justice Program is awarding grant to Ukrainian civil society organization (CSO) to monitor judicial discipline practice for increased accountability of judges, enforceability of judicial ethics, and ensuring consistency of the HCJ disciplinary case law. The objective of the activity is to engage civil society organizations in monitoring the HCJ judicial discipline practice and related court decisions in case judges appeal against the HCJ decisions in disciplinary cases; as well as in increasing awareness of the civil society organizations on the progress made about judicial reform with respect to strengthening judicial accountability and improving judicial ethics enforcement mechanisms.

IB. BACKGROUND

New Justice is a five year program starting from October 2016 that is designed to support the judiciary, government, parliament, Bar, law schools, civil society, media, and citizens to create the conditions for an independent, accountable, transparent, and effective justice system that upholds the rule of law and to confront corruption in Ukraine. In achieving this overarching goal, New Justice Program focuses on the following five key objectives:

- Objective 1: Judicial Independence and Self-Governance Strengthened;
- Objective 2: Accountability and Transparency of the Judiciary to Citizens and the Rule of Law Increased;
- Objective 3: Administration of Justice Enhanced;
- Objective 4: Quality of Legal Education Strengthened; and
- Objective 5: Access to Justice Expanded and Human Rights Protected

IC. DETAILED PROGRAM DESCRIPTION

On June 2, 2016, the Verkhovna Rada adopted the Law on Amending the Constitution of Ukraine (regarding the justice sector) and the revised version of the Law on Judiciary and Status of Judges to implement constitutional changes. These legislative decisions were aimed at continuing judicial reform in Ukraine, strengthening the independence and accountability of the individual judges and judiciary as a whole to citizens. Implementation of constitutional changes has been also about the optimization of the activities of the Ukrainian court system, key judicial governance and self-governance institutions through improvement of their structure, composition, scope of authority/functions.

The HCJ received the status of the highest judicial governance institution, and became a single authority to develop policies for the judiciary operations and to deal with individual judges' career – nomination for the appointment, transfer, discipline and dismissal. In particular, the HCJ is a sole authority responsible for conducting judicial disciplinary proceedings and considering complaints against Ukrainian judges' misconduct, lifting judicial immunity in cases where judge's in question pre-trial detention is needed, as well as to rule on temporary judge's suspension due to open criminal investigations against him/her. Amendments to the Law on Judiciary and Status of Judges expanded the scope of disciplinary liability for judges, and introduced six types of disciplinary sanctions aimed at their proportionate Imposition depending on the severity of the offence. Detailed procedures for judicial discipline are envisaged in the Law on the High Council of Justice which was approved by the Verkhovna Rada on December 21, 2016, and became effective from January 5th, 2017.

One of the key objectives of the USAID New Justice Program is facilitating the CSOs in increasing their role and participation in monitoring the process of the judicial reform. To this end, the Program is supporting various CSO's initiatives, including monitoring of judicial disciplinary practice.

With this aim to fulfil this task, New Justice will support civil society organization in researching and conducting analysis of the decisions made by the Ukrainian judicial disciplinary authorities against judges over 2019-2020 that include decisions of:

- (1) Disciplinary Chambers (DCs) that are responsible for the disciplinary complaints' preliminary screening, investigation of judicial misconduct facts, and consideration of disciplinary cases merits against judges;
- (2) HCJ that is collegial body responsible for consideration of appeals against of the DCs decisions and for deciding on dismissal of judges from office upon recommendations of the DCs; and
- (3) Administrative Court of Cassation with the Supreme Court (SCt) and SCt Grand Chamber that reviews appeals and cassation appeals of the parties to the disciplinary cases against HCJ decisions.

The detailed objectives under this grant are the following:

- Identify the most often types of judicial misconduct and most common grounds for bringing judges to disciplinary liability;
- Conclude on the quality of complaints which would have been undergone professional lawyers' review as required by law with the aim to preliminarily decide on admissibility of complaints and to avoid overloading the HJ with consideration of inadmissible complaints, and examine the HCJ practice of reacting to inappropriate quality of such services of the lawyers in the disciplinary proceedings against judges;
- Research and analyze selected decisions of the DCs in judicial disciplinary cases, including decisions to reject initiation of disciplinary proceedings and to relieve judges from disciplinary liability, and outline the areas for improving the quality of such types of decisions;
- Review the issued by the HCJ Members rulings on return of disciplinary complaints to complainants in view of their justifiability and conformity with a law;
- Provide feedback from few selectively chosen judges on their personal experience being engaged with HCJ discipline cases consideration procedure and practice regarding the way they have been treated and whether due process principle was respect by HCJ's DCs;
- Identify relevant court practice and study court decisions upon results of challenging the HCJ decisions in disciplinary cases;
- Assess the state of implementation by the HCJ of the expert recommendations upon the results of monitoring HCJ judicial discipline practice in 2017-2018;
- Develop recommendations on improvement of legal framework governing the grounds for and procedures of judicial discipline, on administration of the disciplinary proceedings, as well as on the quality of decisions in disciplinary cases against judges;
- Upon the results of this project implementation, develop specific recommendations for the National School of Judges of Ukraine on consideration of the noted issues regarding judicial discipline in the training programs for judges and judicial candidates;
- Provide the vision on the ways to increase public participation in overseeing effectiveness of the judicial discipline mechanisms;
- Present on the public event monitoring results, research outcomes and recommendations to the interested stakeholders.

Applicants are not limited to the activities listed above and are encouraged to present other idea to address the goal in monitoring the quality of judicial disciplinary practice.

New Justice recognizes that some grantees may need technical assistance to carry out the activities more effectively. Consequently, applicants are encouraged to specify their needs for technical assistance and/or training in their application.

ID. AUTHORITY/GOVERNING REGULATIONS

USAID New Justice Program grant awards are made under the authority of the U.S. Foreign Affairs Act and USAID's Advanced Directive System (ADS) 302.3.5.6, "Grants Under Contracts." Awards made to non-U.S. organizations will adhere to guidance provided under [ADS Chapter 303](#), "Grants and Cooperative Agreements to Non-Governmental Organizations" and will be within the terms of the USAID Standard Provisions as linked in the annexes, as well as the New Justice grants procedures.

ADS 303 references an additional regulatory document issued by the U.S. Government's Office of Management and Budget (OMB) and the U.S. Agency for International Development:

- 2 CFR 200 [Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart E](#)

Full text of 2 CFR 200 can be found at http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl. New Justice is required to ensure that all organizations receiving USAID grant funds comply with the guidance found in the regulations referenced above, as applicable to the respective terms and conditions of their grant awards.

Under the New Justice grant program, USAID retains the right at all times to terminate, in whole or in part, New Justice grant-making authorities.

SECTION II. AWARD INFORMATION

USAID New Justice Program anticipates awarding up to 400 thousand UAH (four hundred thousand UAH) through one grant. The final amount will depend upon grant activities and final negotiations and may be lower or higher than that range. The duration of grant award under this solicitation is expected to be no more than 5 months. The estimated start date of grant awarded under this solicitation is November 9, 2020.

Payments will be made on a reimbursement basis in tranches corresponding to achievement of agreed upon milestones. The type of grant will be fixed amount award.

SECTION III. ELIGIBILITY

IIIA. ELIGIBLE RECIPIENTS

- Applicants must be a registered Ukrainian NGO, professional organization, think tank or other organization formally constituted, recognized by and in good standing with appropriate country name authorities, and compliant with all applicable civil and fiscal regulations.
- Applicants must be able to demonstrate successful past performance in implementation of integrated development programs related to New Justice priority areas.

- Applicants must have: (a) previous experience of conducting justice sector related researches and monitoring; (b) employees with legal background to produce qualified summary based on the results of the monitoring and conclusions; (c) proper knowledge of judicial discipline procedures.
- Applicant must be knowledgeable in the issues of functioning of the Ukrainian judiciary.
- Applicants must display sound management in the form of financial, administrative, and technical policies and procedures and present a system of internal controls that safeguard assets; protect against fraud, waste, and abuse; and support the achievement of program goals and objectives. New Justice will assess this capability prior to awarding a grant.
- Applicant must have sufficient computer equipment and software for the project implementation
- The following are required to be submitted as part of the application package in response to an RFA found in Annex D.
 - Certification of “Representation by Organization Regarding a Delinquent Tax Liability or a Felony Criminal Conviction (AAPD 14-03, August 2014)”
 - Prohibition on Providing Federal Assistance to Entities that Require Certain Internal Confidentiality Agreements – Representation (April 2015)
 - Certification Regarding Terrorist Financing
 - Certification of Recipient
- For any grant award(s) resulting from this solicitation that is other than in-kind and equivalent to \$25,000 USD or more, grantees will be required to provide a Data Universal Numbering System (DUNS) number at the time of award. If the applicant already has a DUNS number it should be included in their application. Otherwise, applicants will be expected to get a DUNS number before an award is made. New Justice will assist successful applicants with this process. DUNS numbers can be obtained online at <http://fedgov.dnb.com/webform/pages/CCRSearch.jsp>
- Successful applicants will be requested to submit a paper and electronic copy of their application in English.
- The project will work with the successful applicants to draft a marking and branding plan which will be annexed to the grant agreement.
- Faith-based and community groups will receive equal opportunity for funding in accordance with the mandated guidelines laid out in ADS 303.3.28 except for faith-based organizations whose objectives are for discriminatory and religious purposes, and whose main objective of the grant is of a religious nature.

New Justice encourages applications from new organizations who meet the above eligibility criteria.

IIIB. INELIGIBLE RECIPIENTS

New Justice grant support may not be extended to the following:

- Organizations that are not legally registered;
- Governmental organizations or any state-owned institutions;
- Any entity that has been found to have misused USAID funds in the past (unless specifically approved by the CO);

- Political parties, groupings, or institutions or their subsidiaries and affiliates;
- Organizations that advocate or promote anti-democratic policies or illegal activities;
- Faith-based organizations whose objectives are for discriminatory and religious purposes, and whose main objective for the grant is of a religious nature;
- Any entity included in any supplementary information concerning prohibited individuals or entities that may be provided by USAID;
- Any entity whose name appears in the System of Award Management (SAM) – www.sam.gov with an active exclusion;
- An organization that refuses to sign all required certifications and assurances.

SECTION IV – APPLICATION AND SUBMISSION INFORMATION

IVA. INSTRUCTIONS TO APPLICANTS

Applicants must propose strategies for the implementation of the program description described above, introducing innovations that are appropriate to their organizational strengths.

IVA1. APPLICANT SELF-ASSESSMENT

All organizations selected for award are subject to a pre-award risk assessment conducted by New Justice, to ascertain whether the organization has the minimum management capabilities required to handle US government funds. The applicant self-assessment is the first step in the pre-award risk assessment process. The Applicant Self-Assessment Form is contained in Annex C.

Instructions and a template for the full application are in Annex A. Applicants that submit full applications that meet or exceed the merit review criteria will be notified of next steps in the application process.

IVA2. GRANT APPLICATION

Templates to be utilized when developing the application are provided in Annex A-B. Applicants shall present their technical application and budget in the formats provided and shall follow the instructions and guidelines listed in these annexes.

All grant activity costs must be within the normal operating practices of the Applicant and in accordance with its written policies and procedures. For applicants without an audited indirect cost rate, the budget may include direct costs that will be incurred by the Applicant to provide identifiable administrative and management costs that can be directly attributable to supporting the grant objective.

The Application must be signed by an authorized agent of the Applicant.

IVA3. ELIGIBLE EXPENSES

Grant activities funded by the New Justice program will meet the following general criteria.

- The proposed activity must respond to the goals and objectives of the New Justice program described in Section I of the RFA.
- Execution of grant activities must take place in Ukraine and with Ukrainian beneficiaries and meet objectives of one or more of the principal Program components. New Justice will look for

evidence that a potential grant will address one or more of New Justice's expected outcomes, such as promoting effective interrelations between the judiciary, executive, and legislative branches of government with due respect for judicial independence.

- If applicant wants to cover more than one topic under this RFA he should submit a separate application for each topic.
- The activities to be implemented under grants to improve the judicial sector in Ukraine (to lead public awareness campaigns, monitor judicial performance, and provided training to judges and other legal professionals, etc.). Any given solicitation may further specify particular activities to be funded.
- The Proposed activity must include gender considerations, including but not limited to a target of equal participation in the activity by men and women
- The proposed activities may be the sole or primary work of an organization, or a special dimension or function of an organization largely dedicated to other programs.
- Grants will cover only necessary and allowable costs linked to the execution of the activity such as program staff salaries, consultant fees, training, meetings and seminars, publications, office and travel expenses, and other direct costs. The specific costs to be funded under New Justice must conform to the USAID guidelines for funding activities.
- Activities can only begin upon signature of the agreement between the applicant and Chemonics. Costs incurred before execution of the agreement (including signed certifications and assurances) will not be reimbursed.

IVA4. INELIGIBLE EXPENSES

New Justice grant funds may not be utilized for the following:

- Construction or infrastructure activities of any kind.
- Ceremonies, parties, celebrations, or "representation" expenses.
- Purchases of restricted goods, such as: restricted agricultural commodities, motor vehicles including motorcycles, pharmaceuticals, medical equipment, contraceptive products, used equipment; without the previous approval of New Justice, or prohibited goods under USAID regulations, including but not limited to the following: abortion equipment and services, luxury goods, etc.
- Alcoholic beverages.
- Purchases of goods or services restricted or prohibited under the prevailing USAID source/nationality (Cuba, Iran, North Korea and Syria).
- Any purchase or activity, which has already been made.
- Purchases or activities unnecessary to accomplish grant purposes as determined by the New Justice Program.
- Prior obligations of and/or, debts, fines, and penalties imposed on the Grantee.
- Travel abroad.
- Creation of endowments.

IVB. APPLICATION AND SUBMISSION INFORMATION

Applications shall be submitted in **Ukrainian** and may not be more than 25 pages. An authorized representative of the organization submitting an application shall sign the original application's cover page as well as affix the organization's official stamp on it

Attention! Successful applicants will be requested to submit their application in English.

The application should consist of the following documents:

- Grant Application Form (see Annex A.2);
- Implementation Plan Timeline (see Annex A.3);
- Grant Application Budget Form with explanations (see Annex B);
- Applicant Self-Assessment Form (see Annex C);
- Description of employees' expertise and qualification (CVs of grant staff and key experts) in any form;
- Certifications (see annex D):
 - Certification of "Representation by Organization Regarding a Delinquent Tax Liability or a Felony Criminal Conviction"
 - Prohibition on Providing Federal Assistance to Entities that Require Certain Internal Confidentiality Agreements – Representation
 - Certification Regarding Terrorist Financing
 - Certification of Recipient
- Supporting documents:
 - copy of registration certificate (on registration of the legal entity in the Unified Register of Enterprises and Organizations of Ukraine);
 - copy of the organization's Statute;
 - copy of the recent auditor statement/ tax report on using funds of non-profit institutions and organizations/ "balance sheet" for your prior fiscal year;
 - copy of the document entitling the head of the organization to signature (minutes of the meeting, order of appointment, etc.);
 - letter from the applicant confirming its(his) readiness to open a separate bank account in hryvnia in case the grant is awarded and this is required by grant agreement.

The applications with all the documents above must be submitted **in electronic and printed** format.

Please submit ***one original of the application*** in printed format to USAID New Justice Program to the below address and with the code and title of the Grant Program: **«RFA №12-NJ-08-2020 – Monitoring High Council of Justice Judicial Discipline Practice»**

USAID New Justice Program
36 Ivana Franka St.
3rd floor, 3rd office
Kyiv, Ukraine 01030
E-mail: saf@new-justice.com

Please submit the application with all the documents above in electronic format at saf@new-justice.com with the code and title of the Grant Program within the subject **«RFA №12-NJ-08-2020– Monitoring High Council of Justice Judicial Discipline Practice»**.

The applications must be submitted no later than **October 9, 2020, by 6:00 p.m., local time**. Applications submitted after the deadline or not complying with the requirements will not be considered. New Justice will not accept applications sent by e-mail only. New Justice will not return any applications submitted.

Applicants are responsible for ensuring that their applications are prepared and submitted in accordance with the instructions stated in the RFA.

Please submit all questions concerning this solicitation via email to saf@new-justice.com. New Justice will assist applicants in understanding the application process.

SECTION V. APPLICATION MERIT REVIEW CRITERIA

Full applications will be evaluated against the merit review criteria in the table below.

MERIT REVIEW CATEGORY	RATING -POINTS (100 TOTAL MAXIMUM)
1. Technical quality	60 POINTS
Feasibility of Design and Technical Approach	20
Impact on Target Group	20
Gender Awareness	10
Previous experience of conducting justice sector related researches and monitoring	10
2. Organizational capacity	35 POINTS
Management and Programmatic capacity	15
Sustainability/Financial Self-Reliance	10
Employees with legal background to produce qualified summary based on the results of the monitoring and conclusions	5
Proper knowledge of judicial discipline procedures	5
3. Cost	5 POINTS
Cost Efficiency	5

These merit review criteria elements are described more fully below.

1. Technical quality

Feasibility of Design and Technical Approach: The quality and feasibility of the application in terms of the viability of the proposed technical approach, (i.e., the proposed technical approach can reasonably be expected to produce the intended expected results), appropriateness of the proposed methodology, innovativeness, and the work plan for achieving project objectives.

The technical approach must directly contribute to the achievement of the grant program expected results and performance under the grant program, and must be measurable under the following New Justice Program's objectives indicators:

1. Number of discipline sanctions implemented by judiciary and bar.
2. Percent of HCJ and HQC decisions published on their websites.

Applicants should also develop 1 or 2 specific indicators for each of the application objectives.

- **Impact on Target Group:** The extent to which the proposed activity corresponds to the needs of target group(s) and will directly benefit it (them). Also, the degree to which it will directly or indirectly stimulate other organizations and resources to replicate, develop, or implement activities supporting the objectives of New Justice.
- **Gender Awareness:** The extent to which the funded activity includes a gender component or represents a strong commitment to women as beneficiaries.
- **Previous experience of conducting justice sector related researches and monitoring.** Experience of performing similar work in the past or present. In fact, based on this criterion the success of the applicant's previous and current work is verified regarding monitoring the activities of government institutions related to the justice sector and / or judicial governance and self-government bodies, which is an important component of assessing the applicant's ability to implement the proposed project.

2. Organizational Capacity

- **Management and Programmatic Capacity:** Evidence of the capability to undertake and accomplish the proposed activities aimed to strengthen professionalism and efficiency of the Ukrainian judiciary. The proposal should demonstrate the organization's effectiveness in terms of internal structure, technical capacity, and key personnel, in meeting the overarching grant program goal. In addition, the applicant must demonstrate adequate financial management capability. Appraisal will be based principally on the checks of references by New Justice; the background, qualifications, reputation, appropriateness and skills of its key personnel; and the "track record," reputation, and achievements (including development of self-sufficient, sustainable activities) of the organization involved.
- **Sustainability and Financial Self-Reliance:** The extent to which the funded activity will result in building and/or strengthening the capacity of the community and local organizations, and whether the activity itself is sustainable or will stimulate sustainability of the organization.
- **Employees with legal background to produce qualified summary based on the results of the monitoring and conclusions.** In the staff of the applicant's organization or as part of the dedicated team of experts there should be specialists in the field of law who have received a bachelor's degree (incomplete higher education), specialist or master's degree (complete higher education). Preference will be given to applicants who will confirm that such employees have individual or team experience in conducting generalizations/summaries based on the results of monitoring the activities of state institutions related to the justice sector and / or judicial governance and self-government bodies.
- **Proper knowledge of judicial discipline procedures.** Knowledge by the applicant's organization and / or its employees of the procedure for the application of provisions of laws and regulations governing the activities of disciplinary bodies, the grounds and procedure for disciplining judges.

3. Cost

- **Cost Efficiency:** The degree to which budgeting is rational and reflects best use of the organization's and grant resources.

Additionally, New Justice will ensure environmental soundness and compliance in design and implementation as required by 22 CFR 216.

SECTION VI. AWARD AND ADMINISTRATION INFORMATION

All grants will be negotiated, denominated and funded in the national currency - hryvnia. All costs funded by the grant must be allowable, allocable and reasonable. Grant applications must be supported by a detailed and realistic budget as described in Section IV.

Issuance of this RFA and assistance with application development do not constitute an award or commitment on the part of New Justice, nor does it commit New Justice to pay for costs incurred in the preparation and submission of an application. Further, New Justice reserves the right to accept or reject any or all applications received and reserves the right to ask further clarifications from the offerors. Applicants will be informed in writing of the decision made regarding their application.

ANNEXES

- **Annex A** - Grant Application Template
 - A.1 – Instruction
 - A.2 – Grant Application Form
 - A.3 – Implementation Plan Timeline
- **Annex B** – Grant Application Budget Form
- **Annex C** – Applicant Self-Assessment Form
- **Annex D** – Required Certifications
 - *Certification of “Representation by Organization Regarding a Delinquent Tax Liability or a Felony Criminal Conviction”*
 - *Prohibition on Providing Federal Assistance to Entities that Require Certain Internal Confidentiality Agreements – Representation*
 - *Certification Regarding Terrorist Financing*
 - *Certification of Recipient*
- **Annex E** – Mandatory and Required As Applicable Standard Provisions:
 - Standard Provisions for U.S. and Non-U.S. Nongovernmental organizations receiving a fixed amount award can be accessed through the following URL:
<http://www.usaid.gov/sites/default/files/documents/1868/303mat.pdf>