

## **Question & Answer Note**

**12 July 2018**

*Under the Council of Europe Call for Tenders 2018AO27 bis*

**Question 1: Section G of the Terms of Reference "Documents to be provided" contains a requirement to provide copies of registration documents of a tenderer. Could you please specify what type of documents will be acceptable to the Council of Europe (e.g., certificate of registration, extrude from a trade register, if any, other documents) for the purposes of submitting a proposal?**

**Answer 1:** "Registration documents" shall demonstrate that the Tenderer has the right to conduct activities in Ukraine in the field of expertise provided under the eligibility criteria. It is up to the Tenderer to decide which particular document it would provide upon the condition that the document provides the above information; the Council of Europe (CoE) does not have a preference as to the type of the document.

**Question 2: Do the documents that the Tenderer sends within the application package have to be legalised?**

**Answer 2:** No need to legalise the documents. Scanned copies would be enough.

**Question 3: Amongst other documents to be provided as part of the Proposal, a prospective tenderer is required to provide at least 2 samples of similar work that the tenderer has undertaken**

- Given that such reports/deliverables/outputs, as a rule, are of confidential nature, usually such documents may not be provided to the third parties neither in whole, nor in part, without explicit permission of a client unless they are available in public domain, for instance. Could you please clarify how critical requirement is and how the proposal will be evaluated by the Council of Europe if a tenderer is not in a position to provide such a document due to confidentiality reasons?
- Please confirm our understanding that in this case wording "or any other document/material that clearly demonstrate previous experience" means reference letters from the clients with all the necessary information regarding "the length, the number and the nature of projects, outputs/deliverables as required in the Eligibility Criteria".

**Answer 3:** The requirement is critical. The objective of the CoE is to receive information to the largest extent possible about the nature of the similar project implemented, methodology applied, how it relates to the CoE specific project at issue and what is the added value of the specific Tenderer. It is up to the Tenderer to decide what would be the most appropriate form of the sample to present the project it had implemented. This could be, for example, an executive summary of the report/s, the presentation on the deliverables which describes the methodology applied, the tools used, the objectives and deliverables; the extracts from the reports. The provision of the reference letters from clients in this regard only would not be sufficient. If there are constraints related to the confidentiality, the information identifying the client can be deleted/hidden.

**Question 4: A prospective tenderer is required to provide contact details of three relevant referees (current or previous employers or clients). Does the requirement mainly relates to the key experts included into the proposal, however, in certain countries/regions this requirement may not be complied with without a prior consent of such a referee. Could you please clarify how critical this requirement is and how it will impact the overall assessment if a key expert provides less than three contact details or provides no contact details at all?**

**Answer 4:** The requirement is critical. The CoE requires providing contact information of three referees for the organisation/Tenderer, not for experts. If prior consent of referees is required, it is for the Tenderer to ensure such consent.

**Question 5: Does the Tenderer have to provide letters of reference from the previous clients?**

**Answer 5:** No, the Tenderer has to provide just contact details of three relevant referees.

**Question 6: Please confirm that the Tenderer has to provide only 2 samples out of “3 similar analytical assignments/implementing similar projects”.**

**Answer 6:** The CoE requires at least 2 samples of similar work, as mentioned in the Section G. “Documents to be provided” in the Terms of Reference.

**Question 7: The Tenderer is a member of the global network consulting firms, each of which is a separate legal entity. Can the tenderer include experience of other member-firms of its global network in order to prove that it meets eligibility criteria regarding experience?**

**Answer 7:** The experience of other member-firms of the global network can be included in the proposal to demonstrate the experience required in the eligibility criteria, so long as it is demonstrated in the technical offer that the global network is structured and works in such a way that the tenderer is actually able to draw on the experience of its other member-firms in carrying out the current assignment.

The relevance of the tenderer’s experience (particularly the firm’s own experience, but also the experience of other member-firms, if the requirements above are met) will be taken into consideration by the CoE for the assessment of the award criteria.

**Question 8: Does the wording “at least one of the team members should have 5 years of experience within the legal/ justice area” means legal or justice area?**

**Answer 8:** It means that legal or justice area.

**Question 9: Can the Service Provider add other consultants from the side? Does the Service Provider need to provide information on such person?**

**Answer 9:** Yes, this is possible. It’s up to the Service Provider to decide what kind of contract it would have with such a person. The information needs to be provided in respect of the whole team (staff members of the Service Provider or external consultants engaged for the purpose of this project). It needs to be understood that the team of the Service Provider will be assessed and it will have to keep this team until the end of the project. The Service Provider also has to define the role for each team member/expert, what exactly each of them does, whether they work part time or full time, etc.

**Question 10: Do all members of the consortia need to provide documents on their registration?**

**Answer 10:** Only the lead company should provide documents on its registration. And the lead applicant must demonstrate that a legally binding agreement exists imposing joint and severable liability on all parties to the consortium.

**Question 11: Should the hardcopy of the tender application package be delivered before the deadline?**

**Answer 11:** The deadline for the submission of tenders is 23 July 2018 as evidenced by the postmark, or by the receipt of delivery provided by the dispatching company.

**Question 12: Does the 23 July 2018 deadline imply till end of the day?**

**Answer 12:** Yes, the end of the day is implied, the 23 July 2018 till 23:59 CET.

**Question 13: Can the tender application packages by email and by post contain different documents?**

**Answer 13:** The application packages to be submitted by email and by post must be identical.

**Question 14: Does the technical documentation have to be sent in the same envelope with other documentation?**

**Answer 14:** All the documents shall be sent in one package.

**Question 15: In case the Tenderer proposes amendments to the contract conditions which are not acceptable to the CoE, would it lead to the exclusion of the Tenderer from the assessment?**

**Answer 15:** If the Tenderers suggest amendments, these suggestions will not lead to exclusion; they will not be assessed either as part of the eligibility nor award criteria. However, the CoE encourages the tenderers to adhere to the standard clauses to the extent possible, and propose only such amendments as are critical for the Tenderer. Tenderers are reminded that any contract signed with the Council will have to contain the following clauses: Article 3.6 (disclosure of the terms of the contract), Article 3.7 (Use of name) and Article 11 (Disputes), as explained in the Tender File. These clauses may not be altered in any way.

The Council reserves the right to ask for any contractual clauses proposed by the selected tenderer to be amended in order to protect the Council's interests, to meet the requirements of its status as an international organisation, and to keep a fair balance between the parties. The final contract will therefore be subject to negotiation before signature, in the event that modifications are proposed by the successful tenderer. The CoE also reserves the right to hold a competitive dialogue with the bidders who have best responded to the call for tenders according to the award criteria, and any amendments to the contractual clauses suggested by the tenderers selected to participate in a competitive dialogue may be discussed in that context, in order to arrive at mutually agreed terms.

**Question 16: Do you expect the Service Provider to register this project with the Ministry of Economic Development and Trade of Ukraine?**

**Answer 16:** The CoE Project "Continued Support to the Criminal Justice Reform" under which the Assessment is planned to be has already been registered in the Ministry of Economic Development and there has been no additional requirement set by the Ministry as regards to the need for additional registration of specific procurement contracts/activities implemented in the framework of the Project.

**Question 17: Is the service VAT exempted?**

**Answer 17:** Shall the service be VAT taxable in Ukraine the CoE does not enjoy the VAT exemption under the CoE project within which the assignment is being implemented. As mentioned in the Tender File, the detailed budget should indicate description/type of costs, amount per unit, number of units, subtotal per type of cost and total amount (in the currency indicated on the Tender Application Form, VAT exclusive), and the applicable VAT rate, the amount of VAT and the total amount VAT inclusive. See also the information on the application of the VAT regimes in the Article 4.2 of the Standard Legal Conditions (Appendix 2 to the Tender File).

**Question 18: Is it possible to apply in consortium? Can members of the global network to which the tenderer is part to be consortium members? Can consortium include physical persons as members of consortium, i.e. experts?**

**Answer 18:** The tenderer can apply in consortium. The Tenderer must be a legal person. The consortium shall comprise legal entities only. It is for the Tenderer/lead applicant of the consortium to decide which legal entities (within its own global network or outside) to invite to consortium. If a consortium is selected by the CoE further to the present procurement procedure then the resulting contract will be between the consortium as a whole and the Council of Europe.

As far as external experts/consultants are concerned, they can be engaged by the Tenderers on the basis of contractual arrangements of their own choice, but shall not be regarded as part of a consortium. The use of

external experts/consultants for the present assignment will be regarded as sub-contracting. If the tenderer's bid clearly sets out the intention to engage external experts/consultants (with the external experts and their experience and qualifications clearly specified, together with the tasks that will be entrusted to them), the CoE's acceptance of that bid will constitute written authorisation to sub-contract (the-tasks, and to the specified individuals ONLY) in terms of Article 6.5 of the Council of Europe's standard legal conditions. Responsibility for the deliverables must lie with the tenderer.

**Question 19: What type of agreement should be signed between consortium members?**

**Answer 19:** It is essential that in the case of consortia the lead applicant demonstrates that a legally binding agreement exists imposing joint and severable liability on all parties to the consortium. The tenderer is free to identify the type of agreement provided that the above condition is met.

**Question 20: Is subcontracting possible?**

**Answer 20:** According to Article 6.5 of the standard legal conditions, the provider may not subcontract all or part of the Deliverables without the written authorisation of the CoE. In the framework of this contract, subcontracting authorisation requests, *subsequent to signature of the contract*, will only be granted for non-essential services (for example logistical services). Responsibility for the deliverables must lie with the tenderer.

**Question 21: Is there a vision of the team on the part of General Prosecutor's Office (GPO) which will be taking part in this project?**

**Answer 21:** There have already been agreements with the GPO as to the need to have a specific reference group who would facilitate the work of the Service Provider. Such group will be nominated at a later stage once a Service provider is selected by the CoE. The CoE has assigned a group of the consultants for this project, which includes: international consultants with prosecutorial experience, an international consultant with management consultancy experience, local consultants - Ukrainian lawyers familiar with the public administration and operation of the prosecution service in Ukraine.

**Question 22: Who are stakeholders?**

**Answer 22:** The main stakeholders are: the GPO as a beneficiary and the CoE as a client.

**Question 23: How will acceptance of the deliverables be conducted? Will it be done by the GPO?**

**Answer 23:** At different stages we will share draft documents produced by the Service Provider with the beneficiary institution so that the latter have to the opportunity to provide comments and to ensure the beneficiary's ownership of the process. The acceptance of the deliverables will be done exclusively by the CoE.

**Question 24: What should be included in the budget/financial proposal?**

**Answer 24:** As described in the tender File, Tenderers shall submit a detailed breakdown (number of man-days and fee per day per category of team members/consultants, administrative and travel costs, etc.) of their financial offer, i.e. detailed budget on a separate sheet attached along with other supporting documents required. To avoid any doubt, this amount shall include all fees and allowances/expenses incurred in the course of the assignment (including travel and subsistence expenses, translation costs and any other administrative expenses). The detailed budget should demonstrate breakdown of costs per deliverable as indicated in the Tender Application Form. The detailed budget should indicate description/type of costs, amount per unit, number of units, subtotal per type of cost and total amount. Any expenses not included in the proposal cannot be covered at the later stage.

**Question 25: It is mentioned in the tender file that the document must be produced in English. Will the GPO group of people, who are supposed to comment on the documents, speak English as well?**

**Answer 25:** The Tender File requires that the documents must be produced both in English and Ukrainian. Therefore translation costs, if needed, should be foreseen in the budget.

**Question 26: Could you please clarify what do you expect from the Service Provider under “optimisation of costs” deliverable (p. 10, Section 4 (b) of the Appendix 1 to the Tender File)?**

**Answer 26:** Detailed cost analysis is not expected. It is expected to receive General guidance/recommendation on the possible financial implications as far as realignment of the structure is concerned.

**Question 27: Would the GPO senior management be involved in the discussion of the changes related to the mission, vision and values?**

**Answer 27:** GPO senior management will be involved in the discussions of all major findings and recommendations of the assessment. There is a strong commitment on the part of the senior management.

**Question 28: Does the Service Provider have to wait for the feedback from the GPO each time before moving to the next stage? Is this envisaged?**

**Answer 28:** When developing a working schedule the Tenderer has to take into consideration that the beneficiary institution has to provide feedback. However, it is within the interests of the CoE and the beneficiary institution to have this assignment accomplished within the deadlines set in the Terms of Reference. One of the most important phases in terms of the feedback would be the feedback on the draft inception report, since it should serve as a roadmap to be followed throughout the rest of the project implementation and has to be approved by the CoE taking into consideration the beneficiary’s feedback.

**Question 29: It is mentioned in the Scope of the Organisational Assessment that the Service Provider has to assess current state and provide options and recommendations to facilitate building human resource capacity. Does it also mean that the Service Provider has to conduct testing?**

**Answer 29:** It needs to be established what framework and policies the beneficiary organisation has in terms of human resources aspects, whether proper arrangements are in place for the staff to have clear understanding of the applicable regulations and procedures. When the training needs are mentioned, it is implied that the assessment would establish whether the organisation itself is identifying needs and putting in place appropriate response measures. As to the conduct of testing, the CoE does not define such a requirement. It is up to the Tenderer to decide which type of methodology and tools it will use to achieve the objectives mentioned above.

*Later edit as of 17 July 2018*

**Question 30: In the Table of Fees, we would suggest some changes to the order of deliverables provision, i.e.:**

- 1. Inception report**
- 2. Organisational Assessment**
  - 2.1 Draft Organisational Assessment report**
  - 2.2 Final Organisational Assessment report**

### **3. Transformation action plan preparation and monitoring**

#### **3.1 Draft transformation action plan**

#### **3.2 Final transformation action plan**

#### **3.3 Monitoring progress report**

**Thus, moving the Final Organisational Assessment report before the Transformation Plan, the changes of the order of deliverable will also affect the fees breakdown. Would these changes be acceptable by the CoE, or should we strictly follow the deliverables plan suggested by the Form while submitting our proposal?**

**Answer 30:** The changes to the order of deliverables in the application form/table of fees cannot be made. The table provides for the major deliverables as main milestones of the implementation of the assessment. However, within each main milestone a Tenderer is free to propose its own approach towards the preparation of the deliverable as well as its stages (including breakdown into sub-deliverables and order of their preparation), as well as identification of the need for the CoE's/beneficiary's feedback required at the respective stage where necessary. This approach can be proposed in the technical offer and then further detailed in the Inception Report.

Please note that the scope of the assignment does not cover the implementation of the recommendations of the Assessment Report and the implementation of the transformation plan. The assignment ends at the stage of the submission of the final report and its acceptance by the CoE. The "Progress reports" to which the Council refers to in the Application Form and in the Appendix 1 to the Tender File (pp.11-12) imply the reporting obligation of the Service Provider towards the Council on the implementation of the contract, i.e. implementation of the Assessment: "The Provider will submit to the Council Progress Reports in writing at the end of each subsequent four weeks period, summarizing progress, including achievements and constraints, as well as providing information on any needs for changes in priorities and directions, as outlined in the Appendix 1 to the Tender File - Terms of Reference".