



## TENDER FILE / TERMS OF REFERENCE

### (Restricted consultation procedure / Framework Contract)

## Purchase of intellectual services in Ukraine

The Council of Europe assists the Ukrainian authorities in the execution of judgments of the European Court of Human Rights in which a violation of Article 6 of the European Convention on Human Rights was found. This assistance is provided through the project "Supporting Ukraine in execution of judgments of the European Court of Human Rights" (hereinafter – the Project). The Project started in February 2018 and will continue until September 2019. It will focus on solving the problems that connect the issues of the judicial reform in Ukraine and the execution of judgments of the European Court of Human Rights in cases against Ukraine, and namely: the re-opening of judicial proceedings following a judgment of the European Court of Human Rights, the introduction of adequate legal remedies for the non-enforcement of national judgments and lengthy judicial proceedings, the effective guarantees of judicial independence, including fair proceedings for judicial dismissal and judicial discipline and others.

In that context, the Project is looking for a maximum of 20 (twenty) Providers for the provision of intellectual services in Ukraine, as requested by the Council.

### A. TENDER RULES

This tender procedure is a restricted consultation procedure. **In accordance with Rule 1333 of the Secretary General of the Council of Europe on the procurement procedures of the Council of Europe<sup>1</sup>, the Organisation shall invite to tender at least three potential providers for any purchase between €5,000 for intellectual services and €55,000 tax exclusive.**

This specific tender procedure aims at concluding a **framework contract** for the provision of deliverables described in this file below. A tender is considered valid for 120 calendar days as from the closing date for submission. The selection of tenderers will be made in the light of the criteria indicated below. All tenderers will be informed in writing of the outcome of the procedure.

The tenderer must be either a natural person, or a duly registered company under sole proprietorship of a natural person, or equivalent, provided that the signatory of the Act of Engagement is individually liable for all obligations undertaken by the entity, and is the owner of the moral rights in any creations of the entity. If contracted by the Council of Europe, the signatory of the Act of Engagement shall provide the deliverables personally, in accordance with the terms as provided in the current Tender File, Act of Engagement and future Order Forms (see Section D below on ordering procedure).

Tenders shall be submitted **by email only** (with attachments) **to the email address indicated in the table below, with the following reference in subject: "Application for consultancy service"**. Tenders addressed to another email address will be rejected.

The general information and contact details for this procedure are indicated on this page. You are invited to use the CoE Contact details indicated below for any question you may have. **All questions shall be submitted at least 3 (three) working days before the deadline for submission of the tenders and shall be exclusively addressed to the email address indicated below with the following reference in subject: "Questions: application for consultancy service"**.

Type of contract ▶	Framework contract
Duration ▶	Until 31 December 2018, renewable until 30 September 2019
Deadline for submission of tenders/offers ▶	<b>15 August 2018</b>
Email for submission of tenders/offers ▶	<a href="mailto:DGI.Justice.Reform.Unit1@coe.int">DGI.Justice.Reform.Unit1@coe.int</a>
Email for questions ▶	<a href="mailto:DGI.Justice.Reform.Unit1@coe.int">DGI.Justice.Reform.Unit1@coe.int</a>
Expected starting date of execution ▶	03 September 2018

### B. EXPECTED DELIVERABLES

<sup>1</sup> The activities of the Council of Europe are governed by its [Statute](#) and its internal Regulations. Procurement is governed by the Financial Regulations of the Organisation and by [Rule 1333 of 29 June 2011 on the procurement procedures of the Council of Europe](#).

## Background of the Project

The Council of Europe assists Ukrainian authorities in the execution of judgments of the European Court of Human Rights in which a violation of Article 6 of the European Convention on Human Rights was found. This assistance is provided through the project "Supporting Ukraine in execution of judgments of the European Court of Human Rights" (hereinafter – the Project). The Project started in February 2018 and will continue until September 2019. It will focus on solving the problems that connect the issues of the judicial reform in Ukraine and the execution of judgments of the European Court of Human Rights in cases against Ukraine, and namely: the re-opening of judicial proceedings following a judgment of the European Court of Human Rights, the introduction of adequate legal remedies for the non-enforcement of national judgments and lengthy judicial proceedings, the effective guarantees of judicial independence, including fair proceedings for judicial dismissal and judicial discipline and others. In that context, it is looking for a maximum of 20 (twenty) Providers for the provision of intellectual services in Ukraine to be requested by the Council as needed in the fields indicated below:

- **Independence of the judiciary:** implementation of the Council of Europe standards on the independence of the judiciary through the amendments of the national legislation concerning, inter alia, appointment and dismissal of judges, judicial career and disciplinary liability;
- **National mechanisms for the execution of judgments of the European Court of Human Rights:** the efficiency of Ukrainian procedures of the execution of judgments of the European Court of Human Rights, cooperation of different branches of power with the Government Agent before the European Court of Human Rights, the role of the judiciary in the execution process.

The project implementation team includes a Project Manager, a Project Officer and a Project Assistant based in Kyiv, Ukraine. This team is composed of Council of Europe staff members.

The status of staff members will not in any manner be awarded to the selected consultant (See Article 1 d) of the General Conditions – Intellectual Services, PART III).

The Council of Europe is looking for a maximum of 20 (*twenty*) Providers (provided enough tenders meet the criteria indicated below) in order to support the implementation of the Project.

This Contract is currently estimated to cover at least 30 activities to be held by 30 September 2019. This estimate is for information only and shall not constitute any sort of contractual commitment on the part of the Council of Europe. The Contract may potentially represent a higher or lower number of activities, depending on the evolving needs of the Organisation.

For information purposes only, the total budget of the Project amounts to 700 000 (seven hundred thousand) Euros and the total amount of the object of the present tender **shall not exceed 25 000 (twenty four thousand) Euros tax exclusive** for the whole duration of the Framework Contract. This information does not constitute any sort of contractual commitment or obligation on the part of the Council of Europe.

## Scope of the Framework Contract

The tender is divided into the following two lots. Consultants may submit a tender for one or for both lots subject to the fulfilment of the criteria listed in the Tender Rules for the lot(s) concerned.

Throughout the duration of the Framework Contract, being instructed, supervised and coordinated by the designated staff members from the Council of Europe Office in Ukraine and from the Council of Europe Headquarters, the pre-selected Providers may be asked to provide the Ukrainian authorities with advice and expertise in the fields described below.

### Lot 1 – Independence of the judiciary

The pre-selected Providers may be asked to advise the Ukrainian authorities on the topics listed below, in the form of an oral and/or written advice, including on the draft documents (e.g. internal rules, procedural protocols, appointment and evaluation criteria).

The list of expected deliverables (not exhaustive):

- Assessment of the national legislation and practices to ensure that the principles of external and internal independence of the judiciary are respected and complied with;
- Analysis of the system of institutions and procedures concerning the issues of judicial dismissal and judicial discipline and their compliance with the CoE standards on the judiciary, including the ECtHR judgment *Oleksandr Volkov v. Ukraine*;
- Analysis and monitoring of the procedures of the assessment of judges in Ukraine, including the integrity checks undertaken by the Public Integrity Council;
- Review of the national legislation on the selection of judges and a development of the recommendations on further implementation of the CoE standards in this regard;
- Other deliverables, as requested by the Council of Europe.

The consultants will be asked to undertake up to or more than three missions to provide the expected deliverables.

## **Lot 2 – National mechanisms for the execution of judgments of the European Court of Human Rights**

The pre-selected Providers may be asked to advise and support the Ukrainian authorities on the topics listed below, in the form of an oral and/or written advice, including on the draft documents (e.g. internal rules, procedural protocols, appointment and evaluation criteria).

The list of expected deliverables (not exhaustive):

- Assessment of the legislative proposals concerning the national mechanisms for the execution of judgments of the ECtHR, development of the recommendations on its better compliance with the relevant CoE standards;
- Analysis of the domestic mechanisms of cooperation of the institutions of the legislative, executive and judicial branches of power with the Government Agent before the ECtHR;
- Provision of advice to the judiciary, in particular the Supreme Court, on improving of its procedures and, if relevant, the national legislation so as to ensure the effective execution of judgments of the ECtHR at the national level;
- Development of information materials on the European practice concerning the procedure of reopening of cases by the Supreme Court based on the ECtHR judgments against Ukraine,
- Support to the national authorities in drafting legislative proposals regarding the effective remedies for the violations of the European Convention on Human Rights.

The consultants will be asked to undertake up to or more than three missions to provide the expected deliverables.

The above lists (under Lot 1 and 2) of expected deliverables are not considered exhaustive. The Council of Europe reserves the right to request deliverables not explicitly mentioned in the above list of expected services, but related to the field of expertise object of the present Framework Contract.

In terms of **quality requirements**, the pre-selected Service Providers must ensure, *inter alia*, that:

- The services are provided to the highest professional/academic standard;
- Any specific instructions given by the Council – whenever this is the case – are followed.

In addition to the orders requested on an as needed basis, the Provider shall keep regular communication with the Council to ensure continuing exchange of information relevant to the project implementation. This involves, among others, to inform the Council as soon as it becomes aware, during the execution of the Contract, of any initiatives and/or adopted laws and regulations, policies, strategies or action plans or any other development related to the object of the Contract (see more on general obligations of the Provider in Article 3.1.2 of the Legal Conditions in the Act of Engagement).

Unless otherwise agreed with the Council, written documents produced by the Provider shall be in English (see more on requirements for written documents in Articles 3.2.2 and 3.2.3 of the Legal Conditions in the Act of Engagement).

### **C. FEES**

Tenderers are invited to indicate their fees, by completing and sending the table of fees, as attached in Section A to the Act of Engagement. These fees are final and not subject to review. Tenders proposing fees above the exclusion level indicated in the Table of fees will be **entirely and automatically** excluded from the tender procedure.

The Council will indicate on each Order Form (see Section D below) the global fee corresponding to each deliverable, calculated on the basis of the unit fees, as agreed by this Contract.

### **D. HOW WILL THIS FRAMEWORK CONTRACT WORK? (ORDERING PROCEDURE)**

Once this consultation and the subsequent selection are completed, you will be informed accordingly. Deliverables will then be delivered on the basis of Order Forms submitted by the Council to the selected Provider (s), by post or electronically, on **an as needed basis** (there is therefore no obligation to order on the part of the Council).

### **Pooling**

For each Order, the Council will choose from the pool of pre-selected tenderers the Provider who demonstrably offers best value for money for its requirement when assessed – for the Order concerned – against the criteria of:

- quality (including as appropriate: capability, expertise, past performance, availability of resources and proposed methods of undertaking the work);
- availability (including, without limitation, capacity to meet required deadlines and, where relevant, geographical location); and
- price.

Each time an Order Form is sent, the selected Provider undertakes to take all the necessary measures to send it **signed** to the Council within 3 (three) working days after its reception. If a Provider is unable to take an Order or if no reply is given on his behalf within that deadline, the Council may call on another Provider using the same criteria, and so on until a suitable Provider is contracted.

### Providers subject to VAT

The Provider, **if subject to VAT**, shall also send, together with each signed Form, a quote<sup>2</sup> (Pro Forma invoice) in line with the indications specified on each Order Form, and including:

- the Service Provider's name and address;
- its VAT number;
- the full list of services;
- the fee per type of deliverables (in the currency indicated on the Act of Engagement, tax exclusive);
- the total amount per type of deliverables (in the currency indicated on the Act of Engagement, tax exclusive);
- the total amount (in the currency indicated on the Act of Engagement), tax exclusive, the applicable VAT rate, the amount of VAT and the amount VAT inclusive .

### Signature of orders

An Order Form is considered to be legally binding when the Order, signed by the Provider, is approved by the Council, by displaying a Council's Purchase Order number on the Order, as well as by signing and stamping the Order concerned. Copy of each approved Order Form shall be sent to the Provider, to the extent possible on the day of its signature.

## E. ASSESSMENT

### *Exclusion criteria and absence of conflict of interests*

(by signing the Act of Engagement, you declare on your honour not being in any of the below situations)<sup>3</sup>

Tenderers shall be excluded from participating in the tender procedure if they:

- have been sentenced by final judgment on one or more of the following charges: participation in a criminal organisation, corruption, fraud, money laundering;
- are in a situation of bankruptcy, liquidation, termination of activity, insolvency or arrangement with creditors or any like situation arising from a procedure of the same kind, or are subject to a procedure of the same kind;
- have received a judgment with res judicata force, finding an offence that affects their professional integrity or serious professional misconduct;
- do not comply with their obligations as regards payment of social security contributions, taxes and dues, according to the statutory provisions of their country of incorporation, establishment or residence;
- are or are likely to be in a situation of conflict of interests.

### *Eligibility criteria*

- University Degree in law or social sciences (political science, international relations and related fields);
- At least two years of professional experience in the field of rule of law or human rights;
- Strong knowledge of the Ukrainian judiciary;
- Good knowledge of the standards and recommendations of the Council of Europe in the fields of the judiciary and/or the national mechanisms of the execution of judgments of the European Court of Human Rights;
- Excellent knowledge of Ukrainian;
- Very good knowledge of English.

### *Award criteria*

- Quality of the offer (70%), including:
  - Proven record of involvement in provision of the expertise in a given field (40%);
  - Knowledge of the standards and recommendations of the Council of Europe in the fields of the judiciary and/or the national mechanisms of the execution of judgments of the European Court of Human Rights (30%).
- Financial offer (30%).

The Council reserves the right to hold interviews with eligible tenderers.

Multiple tendering is not authorised.

## F. DOCUMENTS TO BE PROVIDED

- A completed and signed copy of the **Act of Engagement**<sup>4</sup> (See attached);

<sup>2</sup> It must strictly respect the fees indicated in the Act of Engagement. In case of non-compliance with these fees, the Council of Europe reserves the right to terminate the Contract with the Provider, in all or in part.

<sup>3</sup> The Council of Europe reserves the right to ask tenderers, at a later stage, to supply an extract from the record of convictions or failing that an equivalent document issued by the competent judicial or administrative authority of the country of incorporation, indicating that the first three above listed exclusion criteria are met, and a certificate issued by the competent authority of the country of incorporation indicating that the fourth criterion is met.

- A detailed CV, preferably in Europass Format;
- Motivation letter (up to 1 page), clearly demonstrating that the tenderer fulfils the eligibility criteria.

**The above documents shall be submitted in English (preferably) or Ukrainian (alternatively). If all the documents are submitted in Ukrainian, the tenderer is to prepare in English a short summary of his/her expertise in a given field, and his/her knowledge of the relevant Council of Europe standards, failure to do so will result in the exclusion of the tender. If any of the documents listed above are missing, the tender will not be considered.**

**The Council reserves the right to reject a tender if the scanned documents are of such a quality that the documents cannot be read once printed.**

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<sup>4</sup> The Act of Engagement must be completed, signed and scanned in its entirety (i.e. including all the pages). The scanned Act of Engagement may be sent page by page (attached to a single email) or as a compiled document, although a compiled document would be preferred. For all scanned documents, .pdf files are preferred.