

## TENDER FILE / TERMS OF REFERENCE

(Restricted consultation procedure / Framework Contract)



### Purchase of international consultancy services on various aspects of the operation of the legal aid in Ukraine

**Contract N° 8423/2018/251**

The Council of Europe Project "Continued Support to the Criminal Justice Reform in Ukraine" (the Project) is implemented from September 2015 to February 2019 under the financial support of the Government of the Kingdom of Denmark. In that context, it is looking for Providers for the provision of international consultancy services on the various aspects of the operation of the legal aid in Ukraine within the scope of the Framework Contract as indicated below, and to be requested by the Council on an as needed basis.

#### 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 €2,000 (or €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 the Act of Engagement (See attached). 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: Intl consultancy\_CJR UA Project\_Legal Aid**. 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\_Intl consultancy\_CJR UA Project\_Legal Aid.**

Type of contract ►	Framework contract
Duration ►	Until 28 February 2019
Deadline for submission of tenders/offers ►	02 July 2018
Email for submission of tenders/offers ►	DGI-HRImplementation@coe.int
Email for questions ►	DGI-HRImplementation@coe.int
Expected starting date of execution ►	12 July 2018

<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](#).

## B. EXPECTED DELIVERABLES

### Background of the Project

The Council of Europe Project “Continued Support to the Criminal Justice Reform in Ukraine” (the Project) is implemented from September 2015 to February 2019 under the financial support of the Government of the Kingdom of Denmark.

The Project pursues the objective of supporting the primary target institutions, namely the Public Prosecutor’s Office (PPO) and the Coordination Center for Legal Aid Provision (CCLAP) under the Ministry of Justice (MoJ), to strengthen and apply their increased capacity to implement the criminal justice reform, ensuring full compliance with relevant Council of Europe standards. Furthermore, the action is aimed at contributing to increasing public participation in reforms and enhancing public trust in the concerned institutions<sup>2</sup>.

Within one of its specific objectives the Project aims at enhancing the capacity of the Free Legal Aid (FLA) System to provide accessible and quality legal assistance, as part of the right of access to justice in line with Council of Europe (CoE) standards.

The right to FLA in Ukraine is guaranteed by the Constitution. According to the Law of Ukraine “On Free Legal Aid” of 2011, there are two types of FLA that can be provided: primary and secondary legal aid.<sup>3</sup> Before 2011 institutionalised state-funded free legal aid did not exist. Nowadays it has already become an integral component of the Ukrainian legal system and it is also one of the most rapidly developing state services.

The scope of the FLA has expanded significantly since 2012. For instance, throughout 2012-2014, the right to free secondary legal aid has been gradually granted to all detained, arrested, and, to a large extent, to other accused persons, as well as to some categories of persons convicted to imprisonment or restriction of liberty. The list of other vulnerable categories has also been extended in 2012-2017 to cover low-income persons, persons with disabilities, orphans, internally displaced persons, persons seeking to receive this status, as well as persons seeking to receive the status of combat veterans, victims of domestic violence and so on.

At the institutional dimension, the establishment of the Coordination Centre for Legal Aid Provision under the Ministry of Justice in June 2012 was followed by opening of 23 regional legal aid centres for the secondary legal aid provision in the regional cities and the city of Kyiv. Starting June 2015, 96 local legal aid centres were added to the network, while in 2016 the access to legal aid was afforded to a larger audience, upon opening 432 bureaus of primary legal aid in all district centres of Ukraine and smaller towns.

Improving access to legal aid, quality of legal aid and supporting implementation of the Law of Ukraine on Free Legal Aid, including through the institutional, operational enhancement of the system and professional capacity building of the lawyers providing legal aid in criminal cases - all these elements are in the focus of the Project.

In 2016 the CoE issued the Report on the Assessment of the free secondary legal aid system in Ukraine in the light of the CoE standards and best practices, prepared within the Project<sup>4</sup>. The Assessment analysed the compliance of the system with CoE standards and best practices, identified challenges and needs, and provided recommendations as to potential changes in the legal or policy framework or implementation practices, as well as defined areas where further support is required. The Project continues to provide support to the Ukrainian authorities in the implementation of the recommendations of the Report.

The Project ensures a combination of legislative expertise, institutional, operational and professional capacity building support, paying attention to impact and aiming at sustainability. The Project disseminates good practices and contributes to raising the standards of human rights observance in Europe.

The Project draws upon an extensive network of consultants with knowledge of international and European standards and different European systems (international consultants) and consultants with local expertise/knowledge of the domestic system in which the activities are implemented (national consultants) to carry out its work.

<sup>2</sup> See more information about the Project at: <https://www.coe.int/en/web/criminal-justice-reform>

<sup>3</sup> Primary legal aid is guaranteed to any person under the jurisdiction of Ukraine and includes the following types of legal services: provision of legal information, consultations and explanations on legal issues, drafting legal documents, complaints, assistance in ensuring the person’s right to secondary legal aid. Secondary legal aid is available to certain vulnerable categories and involves defense, legal representation in courts and preparation of procedural documents.

<sup>4</sup> See, at: <https://rm.coe.int/16806ff4a8>

### **This call is aimed at selecting international consultants**

The Council of Europe is looking for a maximum of 15 Provider/Consultant(s) per Lot (provided enough tenders meet the criteria indicated below) in order to support the implementation of the Project with a particular expertise pertaining to the various aspects of the operation of the legal aid in Ukraine in the thematic fields under the Lots below.

This Framework Contract is to be concluded until 28/02/2019.

This Contract is currently estimated to cover up to 30 activities, to be held by 28.02.2019. 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.

The total amount of the object of present tender **shall not exceed 55,000 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 five Lots. Consultants may submit a tender for one, several or all Lots subject to the fulfilment of the criteria listed in the Tender Rules for the Lots 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 advice and expertise pertaining to the various aspects of the operation of the legal aid in Ukraine in the thematic fields as described below.

### **Lot 1 – General issues pertaining to compliance of the legal aid system with CoE standards and its effective functioning**

The pre-selected Providers may be asked to advise on the topics within the thematic area of the Lot 1. The list of expected deliverables is as follows (not exhaustive):

- Assessment of legal acts and policy documents (draft documents and documents in force) and/or practice; provision of advice (in the form of an oral and/or written advice), preparation of legal opinions, comments, recommendations, reports, etc.
- Participation and contribution to the working group meetings, workshops, consultation meetings with national stakeholders, including through moderating/facilitating discussions and delivering presentations
- Participation and contribution to the conferences, round-tables, seminars, trainings and other relevant events, including through moderating/facilitating discussions and delivering presentations
- Developing methodology and conducting needs assessment on specific institutional or operational aspects related to the functioning of the legal aid system
- Contributing to the development of information and guiding materials
- Other deliverables as related to the above and as requested by the Council of Europe.

The consultants can be asked to undertake missions to provide the expected deliverables.

### **Lot 2 – Access to legal aid**

The pre-selected Providers may be asked to advise on the topics within the thematic area of the Lot 2. The list of expected deliverables is as follows (not exhaustive):

- Assessment of legal acts and policy documents (draft documents and documents in force) and/or practice; provision of advice (in the form of an oral and/or written advice), preparation of legal opinions, comments, recommendations, reports, etc.
- Participation and contribution to the working group meetings, workshops, consultation meetings with national stakeholders, including through moderating/facilitating discussions and delivering presentations
- Participation and contribution to the conferences, round-tables, seminars, trainings and other relevant events, including through moderating/facilitating discussions and delivering presentations

- Developing methodology and conducting needs assessment on specific institutional or operational aspects related to the theme of the lot
- Contributing to the development of information and guiding materials
- Other deliverables as related to the above and as requested by the Council of Europe.

The consultants can be asked to undertake missions to provide the expected deliverables.

### **Lot 3 – Quality of legal aid**

The pre-selected Providers may be asked to advise on the topics within the thematic area of the Lot 3. The list of expected deliverables is as follows (not exhaustive):

- Assessment of legal acts and policy documents (draft documents and documents in force) and/or practice; provision of advice (in the form of an oral and/or written advice), preparation of legal opinions, comments, recommendations, reports, etc.
- Participation and contribution to the working group meetings, workshops, consultation meetings with national stakeholders, including through moderating/facilitating discussions and delivering presentations
- Participation and contribution to the conferences, round-tables, seminars, trainings and other relevant events, including through moderating/facilitating discussions and delivering presentations
- Developing methodology and conducting needs assessment on specific institutional or operational aspects related to the theme of the lot
- Contributing to the development of information and guiding materials
- Other deliverables as related to the above and as requested by the Council of Europe.

The consultants can be asked to undertake missions to provide the expected deliverables.

### **Lot 4 – Institutional independence and governance models of legal aid systems**

The pre-selected Providers may be asked to advise on the topics within the thematic area of the Lot 4. The list of expected deliverables is as follows (not exhaustive):

- Assessment of legal acts and policy documents (draft documents and documents in force) and/or practice; provision of advice (in the form of an oral and/or written advice), preparation of legal opinions, comments, recommendations, reports, etc.
- Participation and contribution to the working group meetings, workshops, consultation meetings with national stakeholders, including through moderating/facilitating discussions and delivering presentations
- Participation and contribution to the conferences, round-tables, seminars, trainings and other relevant events, including through moderating/facilitating discussions and delivering presentations
- Developing methodology and conducting needs assessment on specific institutional or operational aspects related to the theme of the lot
- Contributing to the development of information and guiding materials
- Other deliverables as related to the above and as requested by the Council of Europe.

The consultants can be asked to undertake missions to provide the expected deliverables.

### **Lot 5 – Training needs assessment, training course development and impact/effectiveness assessment, delivery of trainings for legal aid providers on the European Convention of Human Rights**

The pre-selected Providers may be asked to advise on the topics within the thematic area of the Lot 5. The list of expected deliverables is as follows (not exhaustive):

- Conducting analysis of documents/practices and providing recommendations, designing/adapting training courses and training materials
- Preparing and delivering training
- Preparing and making presentations during workshops, seminars, study visits and round tables
- Providing advice on adult learning methodology
- Preparing and delivering training for staff/trainers of the legal aid system on adult learning methodology
- Other deliverables as related to the above and as requested by the Council of Europe.

The consultants can be asked to undertake missions to provide the expected deliverables.

The above lists (under Lot 1, 2, 3, 4 and 5) 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/scope of the present Framework Contract.

The Council will order (see Section D below on ordering procedure) specific deliverables similar to the ones listed above, provided they correspond to the project implementation needs and are within the range of the competencies of the selected Provider.

In terms of **quality requirements**, the selected Provider(s) must ensure, *inter alia*, that:

- The deliverables 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

The units of work under the present Framework Contract are time-based, i.e. daily fee.

Tenderers are invited to indicate their daily 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 2 (two) 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>5</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>6</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*

Tenderers shall demonstrate that they fulfil the following criteria (to be assessed on the basis of all supporting documents listed in the Section F):

- A university degree in law, political sciences, social sciences, international relations, public administration or related fields;
- At least 5 years of professional experience in areas related to the fields of expertise as described under the scope of the contract above, *inter alia* acquired in an international context;
- Excellent knowledge of the English language (at least level C1 of the Common European Framework of Reference for Languages);
- A financial offer not exceeding the exclusion level set out in the Act of Engagement.

### *Award criteria*

- Quality of the offer (90%), including:
  - Thematic expertise in the relevant area, knowledge of international standards and best practices in the areas covered by this call (40%)
  - Relevance of the experience of the tenderer in the areas covered by this call, including previous similar assignments with international organisations (40%)
  - Knowledge of the national and regional context in the field of the legal aid relevant to the areas covered by this call (10%)
- Financial offer (10%).

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

Multiple tendering is not authorised.

<sup>5</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>6</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.

#### F. DOCUMENTS TO BE PROVIDED

- **Two** completed and signed copies of the Act of Engagement.<sup>7</sup>
- A detailed CV, demonstrating clearly that the tenderer fulfills the eligibility criteria (4 pages maximum)
- A Motivation letter describing how the tenderer meets the requirements of the expected types of deliverables related to the fields of expertise as described under the scope of the contract above (1 page maximum)
- At least two examples of the previous work/deliverables reference/links to publications, legal assessments/analyses, reports, studies, etc. relevant to the experience the tenderer claims.
- 3 (three) relevant references, from previous employers or clients (name, surname, phone number or e-mail).
- Registration documents, for legal persons only.

**All documents shall be submitted in English, failure to do so will result in the exclusion of the tender.  
If any of the documents listed above are missing, the Council of Europe reserves the right to reject the tender.**

**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>7</sup> The Council of Europe reserves the right to ask tenderers, at a later stage, to supply the following supporting documents:

- 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 requirements listed above under "exclusion criteria" are met;
- A certificate issued by the competent authority of the country of incorporation indicating that the fourth requirement is met.