



## TENDER FILE / TERMS OF REFERENCE

(Restricted consultation procedure / Framework Contract)

### Procurement of consultancy services with respect to the organisational assessment of the General Prosecutor's Office of Ukraine

The Council of Europe Project "Continued Support to the Criminal Justice Reform in Ukraine" is looking for Provider(s) for the provision of consultancy services 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). Unless national legislation prescribes otherwise, deliverables executed on-site will be considered as performed in the country where the event takes place, and deliverables executed in writing will be considered as performed at the place where the Provider is established. 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: Restricted consultations\_Ukrainian GPO organisational assessment.** 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\_ Restricted consultations\_Ukrainian GPO organisational assessment.**

<b>Object of the procurement procedure</b> ▶	Provision of consultancy services with respect to the organisational assessment of the General Prosecutor's Office of Ukraine
<b>Project</b> ▶	Continued Support to the Criminal Justice Reform in Ukraine
<b>Type of contract</b> ▶	
<b>Duration</b> ▶	Until 31 September 2018
<b>Deadline for submission of tenders/offers</b> ▶	<b>31 October 2017</b>
<b>Email for submission of tenders/offers</b> ▶	<a href="mailto:DGI-HRImplementation@coe.int">DGI-HRImplementation@coe.int</a>
<b>Email for questions</b> ▶	<a href="mailto:DGI-HRImplementation@coe.int">DGI-HRImplementation@coe.int</a>
<b>Expected starting date of execution</b> ▶	06 November 2017

#### 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 assignment is to be carried under the framework of the Council of Europe Project “Continued Support to the Criminal Justice Reform in Ukraine” funded by the Government of the Kingdom of Denmark (Project)<sup>2</sup>.

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. The Project provides a combination of legislative expertise and capacity building support, paying attention to impact and aiming at sustainability.

The recent constitutional and legislative amendments concerning the Public Prosecution Service of Ukraine (PPS) have entailed significant changes to the remit, functional framework and powers of the prosecution system. The reform related to the realignment of the PPS functions envisages abolition of certain functions (supervision over observance of human rights and freedoms; representation of the interests of citizens in the court) and gradual transfer of some other functions (investigation; monitoring of places of deprivation of liberty) to the relevant agencies (State Bureau of Investigation, dual system of penitentiary inspections), once the latter are fully-operational.

The new Law on the Public Prosecution Service adopted in October 2014 (in particular the provisions enacted from April 2017) provides for setting up of the prosecutorial self-governance and support bodies: since April 15 2017 the Council of Prosecutors and the Qualification and Disciplinary Commission of Prosecutors were entrusted with a number of important tasks related to the recruitment, appointment, promotion and disciplinary responsibility of prosecutors, etc. In addition, according to the new legislation, as of January 2018 the current number of prosecutors employed in the system should be reduced to maximum 10 000 prosecutors.

All these developments in their turn have to be reflected in the institution’s organisational setup and operational modalities. Moreover, the new legislative framework and recent reforms provide for an opportunity to update the existing management and operation processes, thus increasing the overall effectiveness of the organisation. This is particularly relevant for the General Prosecutor’s Office (GPO) - the main entity in the hierarchy of PPS system responsible for the management of the overall PPS.

Further strengthening of the institutional and operational capacities of the GPO requires an in-depth and tailor-made approach based on the specifics, current accomplishments, possible problems and trends revealed in the institution’s operation. Identification of the existing areas for improvement, development and implementation of the relevant recommendations is one of the best tools to achieve tangible and sustainable results in the long-run.

## *Subject matter*

The Project is planning to carry out organisational assessment of the GPO, in particular: to assess the effectiveness of the GPO from the strategic planning and management perspective; to analyze the existing institutional/organisational set-up and respective business processes with a view to defining measures for ensuring their optimization and alignment with the modern concepts and methods of the organisational management, including through introduction of new procedures and tools; to identify ways for optimization of human resources.

The assessment will comprise organisational diagnostics and recommendations for organisational development/optimisation. The assessment will evaluate the effectiveness and efficiency of the GPO’s current organisational structure, management system(s) and policies and recommend feasible actions for changes or adjustments to ensure optimal organisation and management as a tool for assisting GPO in accomplishing its mission. The existing capacities of the GPO will be assessed in order to identify the strengths and weaknesses and determine priority areas and methods for intervention. Relevant recommendations aligned with best international practices and adjusted to the PPS specificities will be elaborated and presented to the GPO leadership for further action.

Since according to the PPS Law, the GPO is the highest authority organising and coordinating operations of all public prosecutor’s offices, the assessment will mainly focus on the operation of the Headquarters. To some extent Regional PPOs may also fall indirectly under the scope of the assessment given that the Regional PPOs have a place in the management chain through managing the lower level PPOs and serving as an intermediate tier between the local PPOs and GPO.

A tentative (non-exhaustive) list of elements to be analysed is presented below:

- Vision, mission and strategic planning
- Structure and delineation of responsibilities
- Governance and control mechanisms
- Internal information flow and coordination
- Human resources

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

More detailed scope and comprehensive list of aspects to be analysed will be defined in cooperation with the GPO during the preparation of the Terms of Reference of the assessment.

The implementation of the assessment will be outsourced to a selected organisation/company/consortium, i.e. management consultancy service provider (MCSP) with proven record and extensive expertise in the field of advising on organisational effectiveness and development. All stages of the assessment process will be designed in such a way that the specificities of the PPS and the relevant legal framework guiding its operation are duly taken into account. The MCSP will be selected on the basis of a Tender implemented in line with the Council of Europe Rules and Regulations.

Given the above-mentioned, the Project aims at engaging a team of short-term international and national consultants to:

- provide expertise and contribute to the development of the Terms of Reference of the assessment
- provide guidance and advice to the selected MCSP and Project team in the course of implementation of the assessment and preparation of the report containing recommendations.

#### *Expected types of deliverables*

The Council of Europe is looking for a maximum of 6 Provider/Consultant(s) (provided enough tenders meet the criteria indicated below) in order to support the Project with a particular expertise with respect to the organisational assessment of the General Prosecutor's Office of Ukraine

The Contract is currently estimated to cover written contributions (of different scale and form: drafting texts, preparing comments, e-mail correspondence) to the Terms of Reference of the assessment and draft Assessment Report, as well as mentoring/provision of advice in the course of the implementation of the assessment and preparation of the Report by the MCSP, participation/contributions to events to be held primarily in Kyiv, Ukraine or elsewhere by 31 September 2018. 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. **Under no circumstances will the total (cumulative) cost of the contract exceed 55,000 EUR (tax exclusive).**

**The types of deliverables/services the pre-selected Providers/Consultants may be asked to provide are the following:**

1. Conducting analysis of the relevant data and drafting the Terms of Reference for the GPO organisational assessment;
2. Participating and contributing to events (meetings, workshops, presentations, high-level meetings) related to the implementation of the assessment to be held in Kyiv, Ukraine or elsewhere.
3. Participating and contributing to conference calls/skype meetings related to the preparation of the Terms of Reference and implementation of the assessment.
4. Mentoring/providing advice to the Project, GPO and MCSP related to specific working process or cases, to tailor the assessment and its recommendations to the needs and specificities of the prosecution service, through answering written queries submitted by the Project.
5. Conducting analysis of the relevant data and providing written comments on the draft Assessment Report (including findings and recommendations) prepared by the MCSP.

All tenderers are required to apply for all types of deliverables. The Council of Europe will call upon the selected Providers/Consultants on the list and divide the work between them in accordance with their respective areas of expertise and Project's needs.

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 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).

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.

#### 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).

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.

The Provider, **if subject to VAT**, shall also send, together with each signed Form, a quote<sup>3</sup> (Pro Forma invoice) in line with the indications specified on each Order Form, and including:

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

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)

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.

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<sup>3</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.

### *Eligibility criteria*

- University Degree in law, human rights, management, public administration or other relevant thematic area;
- Professional experience of 5 years or more in the relevant thematic area;
- Professional experience of 4 years or more in senior management of the prosecution service or judiciary and/or in implementation of institutional reforms, optimisation of organisational structures and business processes within the public institutions.
- Excellent oral and written English.

Only bids submitted in English shall be deemed eligible.

### *Award criteria*

- Quality of the offer (90%), including:
  - Expertise in the relevant thematic area (40%);
  - Management experience or experience in institutional reforms (40%);
  - Capacity to adapt to the context (10%);
- Financial offer (10%).

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);
- A detailed CV, preferably in Europass Format, demonstrating clearly that the tenderer fulfils the eligibility criteria;
- At least two examples of the previous work/deliverables, reference/links to publications, analyses, presentations, etc. relevant to the experience the tenderer claims.

**All documents shall be submitted in English. Incomplete tenders will not be considered.**

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<sup>4</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.