



TENDER FILE / TERMS OF REFERENCE

(Restricted consultation procedure / Framework Contract)

Procurement of consultancy services with regard to the expertise of the draft amendments to the Ukrainian legislation concerning criminal misdemeanours

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 Europe¹, 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_Misdemeanours amendments_UA_December 2017-March 2018.** 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 2 (two) 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_Misdemeanours amendments_UA_December 2017-March 2018.**

Object of the procurement procedure ▶	Intellectual consultancy services
Project ▶	Continued Support to the Criminal Justice Reform in Ukraine
Type of contract ▶	
Duration ▶	Until 31 March 2018
Deadline for submission of tenders/offers ▶	08 January 2018
Email for submission of tenders/offers ▶	DGI-HRImplementation@coe.int
Email for questions ▶	DGI-HRImplementation@coe.int
Expected starting date of execution ▶	17 January 2018

¹ 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 assignment is to be carried out 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)².

Duration of the Project: September 2015 – February 2019.

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. The Project provides a combination of legislative expertise and 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 new Criminal Procedure Code of Ukraine (CPC) adopted in 2012 was a positive development that paved the way for the comprehensive reform of the criminal justice. Among other novelties, it envisaged the concept of criminal misdemeanours. However, there is still no Law introducing this type of offences into the Ukrainian legal system.

There were several draft Laws providing for different options to introduce criminal misdemeanours, none of them adopted. One of the draft Laws was subject to the Council of Europe expertise in 2016: an expert opinion was prepared and expert consultations were held.

In November 2017 a new draft Law of Ukraine No. 7279 “On amending certain legislative acts concerning simplification of pre-trial investigation of certain categories of criminal offences” (Draft law no.7279), introducing criminal misdemeanours, was registered at the Ukrainian Parliament. Firstly, it provides for the amendments to the Criminal Code of Ukraine and to the Code of Administrative Offences (CoAO) classifying certain corpuses delicti of crimes and administrative offences as criminal misdemeanours. Secondly, it introduces some new procedures into the CPC.

The Council of Europe was requested by the Ukrainian Parliamentary Law-Enforcement Committee to provide the legal expertise on the Draft law no. 7279.

Expected types of deliverables

The Council of Europe is looking for a maximum of 3 Service Provider/Consultant(s) (provided enough tenders meet the criteria indicated below) in order to provide expertise with regard to the Draft law no. 7279 in the light of its compliance with the Council of Europe standards and best practices.

This Contract is currently estimated to cover the following possible types of deliverables:

- analysis of the draft amendments to the legal framework concerning criminal misdemeanours and provision of written contributions for the preparation of the legal opinion in the light of compliance of draft amendments with the Council of Europe standards and best practices;
- participation/contributions/presentations during expert discussions with regard to the draft amendments concerning criminal misdemeanours, to be held in Kyiv, Ukraine or elsewhere in Europe.

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 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).

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

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. Tenderers are required to propose a fee for all types of deliverables, **otherwise they will be entirely and automatically excluded from the tender procedure**. 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.

In accordance with the Section C. Legal Conditions of the Act of Engagement, travel and subsistence expenses will be reimbursed separately according to the Council of Europe's applicable rules and should not be included in the financial offer.

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 (under each type of deliverable) 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 quote³ (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;

³ 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.

- 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, human rights or other relevant for the thematic area;
- Professional experience of 7 years or more in the relevant thematic area (criminal law and procedure);
- Professional experience of 4 years or more in legislative review in the thematic area;
- Knowledge/experience with respect to the Ukrainian criminal justice legal framework would be an advantage;
- Strong knowledge of the Council of Europe principles and standards and international legal frameworks related to the criminal law and procedure;
- Excellent oral and written English.

Only bids submitted in English shall be deemed eligible.

Award criteria

- Quality of the offer (90%), including:
 - Legal assessment, analysis and writing skills (40%);
 - Thematic expertise (50%);
- Financial offer (10%).

Multiple tendering is not authorised.

F. DOCUMENTS TO BE PROVIDED

- A completed and signed copy of the **Act of Engagement**⁴ (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, legal analyses, 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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⁴ 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.