

TENDER FILE / TERMS OF REFERENCE (Competitive bidding procedure / Framework Contract)

Purchase of local consultancy services with regard to the research on application of pre-trial detention in Ukraine through the prism of art. 5 ECHR

Contract N° 8665/2020AO1



The Council of Europe is implementing the Phase I of a Project "Human Rights Compliant Criminal Justice System in Ukraine" until 31 December 2020, with a possibility of prolongation of its Phase II until December 2022. In that context, it is looking for Provider(s) for the provision of local consultancy services with regard to the research on application of pre-trial detention and house arrest in Ukraine through the prism of Article 5 of the European Convention on Human Rights to be requested by the Council on an as needed basis.

A. TENDER RULES

This tender procedure is a competitive bidding procedure. **In accordance with Rule 1395 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). 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 above 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: "Consultancy services 8665/2020AO1"**. 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 5 (five) 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 8665/2020AO1"**

Type of contract ►	Framework contract
Duration ►	Until 31 December 2020
Deadline for submission of tenders/offers ►	05 August 2020
Email for submission of tenders/offers ►	HRCCJ.UA@coe.int
Email for questions ►	HRCCJ.UA@coe.int
Expected starting date of execution ►	16 August 2020

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 1395 of 20 June 2019 on the procurement procedures of the Council of Europe](#).

B. EXPECTED DELIVERABLES

Background of the Project

The Council of Europe Project "Human Rights Compliant Criminal Justice System in Ukraine" (the Project) phase I is implemented from July 2019 to December 2020. The current Project aims at ensuring effective functioning of the criminal justice system in Ukraine aligned with European human rights standards with a large focus on practical implementation of reforms in the criminal justice area, specifically with regard to the following components: 1) further harmonisation of the criminal procedure legislation and practice of its implementation in line with Council of Europe standards and best practices; 2) consolidation of independence, effectiveness and transparency of the public prosecution service (PPS).

Within the first component, the Project aims, *inter alia*, to conduct a research on the application of pre-trial detention and house arrest in Ukraine through the prism of the right to liberty and security of the person enshrined in Article 5 of the European Convention on Human Rights (ECHR). The research will focus on the assessment of compliance of relevant criminal justice legislation and its practice by Ukrainian prosecutors, attorneys and judges with the requirements of Article 5 of the ECHR and the case-law of the European Court of Human Rights (ECtHR). The research will be based on the methodology defined by the Council of Europe and agreed with the Ukrainian authorities.

The aforementioned research will support Ukrainian authorities in adjusting national legislation and/or practice of its implementation to comply with Council of Europe standards, *inter alia*, in the context of the need to adopt general measures as required in the ECtHR pilot judgments *Ignatov v. Ukraine* and *Chanyev v. Ukraine*.

The Council of Europe is looking for a maximum of *thirty* Provider(s) (provided enough tenders meet the criteria indicated below) in order to support the implementation of the project with a particular local expertise on Ukrainian national criminal justice legislation and practice of its implementation related to the application of such restrictive measures as pre-trial detention and house arrest, as well as on requirements of the right to liberty and security of the person as provided for in Article 5 ECHR and the case-law of ECtHR .

This Contract is currently estimated to cover up to ten activities, to be held by 31 December 2020. The contract may be automatically renewed at the end of its initial term under the Phase II of the Project, for a further term of half a year, unless either party notifies the other in writing of its intention to terminate the contract at the latest 1 (one) month before the termination date of the term in progress. It shall not renew beyond 30 June 2021 and shall end on this date unless either party has already validly terminated the contract. 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 1, 000, 000 Euros** and 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.

Lots

The present tendering procedure aims to select Provider(s) to support the implementation of the project and is divided into the following lots:

Lots	Maximum number of Providers to be selected
Lot 1: Conducting research on compliance of criminal justice legislation and practice of its implementation in the area of pre-trial detention and house arrest with ECHR standards.	10
Lot 2: Collection and provisional analysis of empirical information for the research by analysis of case materials and other relevant materials on application of pre-trial detention and house arrest in different regions of Ukraine, indicatively in Kharkiv, Kyiv, Lviv and Odesa regions;	20

Lot 1 concerns analysis of compliance of the Ukrainian criminal justice legislation which concerns application of pre-trial detention and house arrest; practice of its implementation with the ECHR standards as derives from the data obtained by the analysis of raw materials identified under the scope of the Lot 1 below as well as respective remedies available in course of civil proceedings with requirements of Articles 5 and 13 of ECHR and case-law of ECtHR. It also foresees analysis of information collected through survey completed by judges, prosecutors, attorneys and other legal professionals, focus group meetings, individual interviews, etc.

Lot 2 concerns analysis of raw materials which constitute basis for the research such as (a) decisions of criminal jurisdiction judges regarding application of pre-trial detention and house arrest, together with respective motions of prosecution and defence; (b) decisions of civil courts on awarding compensation for illegal arrest and detention together with respective motions of the parties of the civil proceedings; (c) informational notes on characteristics of certain criminal proceedings such as qualification, duration, application of restrictive measures, transcripts of the court hearings etc. and (d) any other materials identified by the Project as necessary for analysis.

The analysis of abovementioned materials will be conducted using the methodology, tools and instruments (i.e. check lists, questionnaires, survey questions, etc.) and technical means identified and provided by the Council of Europe Project. All consultants engaged in this activity will receive appropriate training before starting the analysis. The analysis will indicatively cover the following regions of Ukraine: Kharkiv, Kyiv, Lviv, Odesa. *For the performance of the research under the lot 2 the presence of consultants in the respective city/region is preferable for the duration of the assignment. Therefore, submissions to the Tender from the residents of Kharkiv, Kyiv, Lviv and Odesa regions are particularly encouraged.*

The Council will select the abovementioned number of Provider(s) per lot, provided enough tenders meet the criteria indicated below. Tenderers are invited to indicate which lot(s) they are tendering for (see Section A of the Act of Engagement).

Scope of the Framework Contract

Throughout the duration of the Framework Contract, pre-selected Providers may be asked to:

Under Lot 1:

- Analysing Ukrainian legislation on application of pre-trial detention and house arrest;
- Analysing empirical data collected by the research teams on practical application of the respective legislation as well as the relevant available statistics;
- Analysing remedies available to challenge illegal pre-trial detention or house arrest in course of civil proceedings (both legislation and empirical data on its implementation collected by the research team);
- Analysing data collected through survey of judges, prosecutors, attorneys and other legal professionals;
- Conducting a training for the research team to perform part of the research under the lot 2, based on the methodology of the research concerned, on how to interpret specific terminology used in the check lists for analysis of case materials as foreseen by this research;
- Participating and/or moderating focus group discussions, conferences, round tables and other similar activities on the Project request;
- Drafting and/or consolidating the analytical report/s summarizing findings and developing recommendations of the overall analysis of the research;
- Regularly liaising with Project team, national consultant in sociology, other persons involved in the research.

Under Lot 2:

- Analysing materials (as identified under the description of the Lot concerned above) by completing check-lists with questions using the methodology and technical means identified/provided by the Project;
- Upon a need attending premises of various courts (or other premises identified by the Project, i.e. court archives), indicatively in Kharkiv, Kyiv, Lviv and Odesa regions for the purpose of the sub-deliverable above;
- Participating in training, focus group discussions, conferences, round tables and other similar activities on the Project request;
- Keeping permanent contact with the local experts responsible for consolidation of the overall research report and local expert in the field of sociology in order to provide necessary information for them;
- Contributing to drafting of the overall research report.

The above list is not considered exhaustive. The Council 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 for the lot concerned.

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.

If contracted by the Council of Europe, the deliverables shall be provided personally by the persons identified in the offer of the Provider whose CVs have been presented to the Council of Europe (See section E. below), in accordance with the terms as provided in the present Tender File and Act of Engagement

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.

Other expenses

In the event of the Provider being required to travel for the purposes of the contract, and provided the Terms of reference for a specific deliverable to be indicated in each Order Form do not stipulate that the global fees already include travel and/or subsistence expenses, the Council undertakes, subject to its prior agreement, to reimburse travel and subsistence allowances in compliance with the Council's applicable Rules and within the Project's budget.

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

Once the selection procedure is 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 for the relevant lot 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 quote² (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)³

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

For lot 1:

- A university degree in Law;
- At least 4 years of professional experience in areas related to the fields of expertise as described under the scope of the contract above, inter alia, 1 year acquired in an international context;
- Excellent knowledge of the Ukrainian language (mother tongue level).

For lot 2:

- A university degree in Law;
- At least 1 year of demonstrated professional experience in the field of law;
- Not being currently employed as a judge, prosecutor, law enforcement officer or defence attorney.

Award criteria

For lot 1:

- Quality of the offer (90%), including:
 - Thematic local expertise in the field of criminal justice including demonstrated knowledge of standards of the Council of Europe with respect to the application of pre-trial detention and house arrest (40%);

² It must strictly respect the fees indicated in the Financial Offer attached to the original Provider's tender as recorded by the Council of Europe. In case of non-compliance with the fees as indicated in the original Provider's tender, the Council of Europe reserves the right to terminate the Contract with the Provider, in all or in part.

³ 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 good knowledge of the English language (at least level B2 of the Common European Framework of Reference for Languages) (10%);
- Relevance of the experience of the tenderer in the areas covered by this call, including some previous similar assignments with international organisations (20%);
- Experience in writing analytical reports, inter alia, on the basis of empirical studies (20%);
- Financial offer (10%).

For lot 2:

- Quality of the offer (75%), including:
 - Thematic local expertise in the field of criminal justice (45%);
 - Demonstrated basic knowledge of standards and recommendations of the Council of Europe with respect to the application of pre-trial detention and house arrest (30%).
- Financial offer (20%).
- Geographic location (place of residence) in the four cities/regions of Ukraine: Kharkiv, Kyiv, Lviv, Odesa (5%)

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

Multiple tendering is not authorised.

Following the assessment of Tenderers upon the criteria above, the Council reserves the right to put a threshold of at least 3 out of 5 maximum weighting scoring points (provided enough tenders meet the criteria indicated above) for the purpose of inclusion of a Tenderer into the pool of selected Providers under the Lots.

F. NEGOTIATIONS

The Council reserves the right to hold negotiations with the bidders in accordance with Article 20 of Rule 1395.

G. DOCUMENTS TO BE PROVIDED

- General requirements for lots 1-2;
 - A completed and signed copy of the **Act of Engagement**⁴ (See attached);
 - A detailed CV (maximum 4-page document), preferably in Europass Format, demonstrating clearly that the tenderer fulfils the eligibility and award criteria;
 - Registration documents, only for duly registered companies under sole proprietorship of a natural person;
 - A motivation letter (maximum 1,5 page document) describing tenderers experience in accordance with the award criteria defined above in section E;
 - 2 (two) relevant references (name, surname, position, Organisation, phone number and e-mail).
- *Specific requirements for lot 1:*
 - 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*;
- *Specific requirements for lot 2:*
 - At least one example of the previous work/deliverables, reference/links to publications, legal assessments/analyses, reports, studies, etc. relevant to the experience the tenderer claims - not obligatory but would be an advantage*;
 - Location(s)/region(s) where the applicant would be available to undertake the assignment out of the indicative targeted regions of Kharkiv, Kyiv, Lviv and Odesa to be indicated in the motivation letter.

All documents shall be submitted in English, failure to do so will result in the exclusion of the tender.

⁴ 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.

** For the present competitive bidding procedure the examples of work could be provided either in English and/or in Ukrainian.*

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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