

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

### Purchase of local consultancy services under the Council of Europe Project "PGG III: Support to development of the constitutional justice in Ukraine" Contract No. 4978/2024/01



The Council of Europe is currently implementing and will implement until 31 August 2025 with a possibility of extension a Project "Support to development of the constitutional justice in Ukraine" implemented within the framework of the European Union and Council of Europe Joint Programme Partnership for Good Governance, Phase III (BH 4978, PMM 3439), hereinafter – the Project. In that context, it is looking for Providers for the provision of local consultancy services in the sphere of constitutional justice in Ukraine 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 Europe<sup>1</sup>, the Organisation shall invite to tender at least three potential providers for any purchase between €2,000 (or €6,000 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 180 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, a legal person or consortia of legal and/or natural persons.

Tenders shall be submitted **by email only** (with attachments) **to the email address indicated in the table below, with the following reference in subject: Tender – Local Consultancy Services.** 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 three (3) 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 – Local Consultancy Services.**

Type of contract ►	Framework contract
Duration ►	Until 31 August 2025
Deadline for submission of tenders/offers ►	<b>17 March 2024 23h59 CET</b>
Email for submission of tenders/offers ►	<b>alisa.TKACHOVA@coe.int</b>
Email for questions ►	Alisa.TKACHOVA@coe.int
Expected starting date of execution ►	01 April 2024

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

## B. EXPECTED DELIVERABLES

### Background of the Project

The Project aims at the support to development of constitutional justice in Ukraine, fostering expertise and exchange of experience, and building capacities of the Constitutional Court of Ukraine regarding the coherent interpretation of human rights standards, doctrines, and principles, based on methodologies and approaches of interpretation applied by European Court of Human Rights (ECtHR) and Court of Justice of the European Union (CJEU). The Project aims to ensure a close exchange of experience and knowledge, as well as dialogue opportunities for judges and staff of the Constitutional Court of Ukraine with the selected European counterpart both on matters related to organisational structure and working procedures relevant for the functioning of the Court, as well as specialised knowledge for better delivery of constitutional justice in Ukraine.

The Council of Europe is looking for twenty (20) Providers (provided enough tenders meet the criteria indicated below) in order to support the implementation of the Project with a particular expertise on constitutional justice, constitutional reform, capacity building for judges of the Constitutional Court of Ukraine, their assistants, lawyers and staff of the Secretariat of the Constitutional Court of Ukraine, as well as case law of the ECtHR and CJEU with this regard.

This Contract is currently estimated to cover up to 40 activities, to be held by 31 August 2025, with a possibility of a one-year extension. 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 600,000.00 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.

### Scope of the Framework Contract

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

- Assessment of legal acts and policy documents (draft documents and documents in force) and/or practice and provision of advice (in the form of an oral and/or written advice), preparation of legal opinions, comments, recommendations, presentations, reports etc. in the field of constitutional law and capacitation of the Constitutional Court of Ukraine;
- Comparative constitutional and case law analysis, including, but not limited to: i. of the implementation of the ECtHR case law in the case law of the Constitutional Court of Ukraine; ii. of best practices of the constitutional control bodies of the Council of Europe member States regarding conducting constitutional proceedings under the martial law; iii. of best practices of the Council of Europe member States regarding the monitoring of the execution of the decisions of the body of constitutional jurisdiction; iv. of case law with the samples of interpretation techniques in a number of decisions of the ECtHR and CJEU;
- Development of methodology and provision of needs assessment or baseline studies on specific aspects related to the theme of the Contract, including, but not limited to capacity-building/training needs assessment to evaluate impact/effectiveness and development of reports/recommendations;
- Development of the methodology for assessment of implementation by the Constitutional Court of Ukraine the interpretation of human rights standards, doctrines, and principles, based on methodologies and approaches of interpretation applied by ECtHR and CJEU;
- Development of information materials, publications on the issues of legal interpretation for the Constitutional Court of Ukraine;
- Development a library with translated texts on the topic of legal interpretations by ECtHR, CJEU and constitutional courts of the Council of Europe member States and other legal documents and interpretations;;
- Development of information campaigns, awareness raising materials on specific aspects related to the theme of the Contract;
- Participation and contribution to the conferences, round-tables, seminars, trainings, working group meetings, workshops, consultation meetings and other relevant events with national stakeholders, including through moderating/facilitating discussions and delivering presentations in the field of constitutional justice, human rights, personal data protection in constitutional proceedings, legal

interpretation, issues of human dignity and gender equality through the prism of the constitution, etc.;

- Development, adaptation of training courses (including on-line) and materials for different target audiences (judges of the Constitutional Court of Ukraine, legal advisers of the Constitutional Court of Ukraine judges, staff of the Constitutional Court of Ukraine Secretariat etc.) on interpretation of human rights standards, doctrines, and principles, based on methodologies and approaches of interpretation applied by ECtHR and CJEU;
- Developing and delivering workshops, moderating seminars/round tables on issues related to the interpretation of human rights standards, doctrines, and principles, based on methodologies and approaches of interpretation applied by ECtHR and CJEU;
- Provision of recommendations on draft curricula, training courses and materials on specific aspects related to the theme of the Contract.

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.

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.

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 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 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 1 (one) working day 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.

Only those Providers whose score, following the assessment of the Award Criteria (see Section E below), is equivalent to or higher than 3.8 will be selected.

### 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, terrorist financing, terrorist offences or offences linked to terrorist activities, child labour or trafficking in human beings;
- 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 an entity created to circumvent tax, social or other legal obligations (empty shell company), have ever created or are in the process of creation of such an entity;
- have been involved in mismanagement of the Council of Europe funds or public funds;
- are or appear to be in a situation of conflict of interest;
- are retired Council of Europe staff members or are staff members having benefitted from an early departure scheme;
- are currently employed by the Council of Europe or were employed by the Council of Europe on the date of the launch of the procurement procedure;
- have not fulfilled, in the previous three years, their contractual obligations in the performance of a contract concluded with the Council of Europe leading to a total or partial refusal of payment and/or termination of the contract by the Council of Europe;
- are or if their owner(s) or executive officer(s), in the case of legal persons, are included in the lists of persons or entities subject to restrictive measures applied by the European Union (available at [www.sanctionsmap.eu](http://www.sanctionsmap.eu)).

<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 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 and sixth above listed exclusion criteria are met;
- A certificate issued by the competent authority of the country of incorporation indicating that the fourth criterion is met;
- For legal persons, an extract from the companies register or other official document proving ownership and control of the Tenderer;
- For natural persons (including owners and executive officers of legal persons), a scanned copy of a valid photographic proof of identity (e.g. passport).

### *Eligibility criteria*

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

For natural persons:

- A university degree in law, international law, international relations, political sciences, human rights or related fields;
- At least 3 years of professional experience in areas related to the fields of expertise as described above under the scope of each lot the Tenderer is applying to;
- Excellent knowledge of the Ukrainian language (mother tongue level);
- Basic knowledge of the English language (at least level A2 of the Common European Framework of Reference for Languages).

For legal persons:

- Capacity to make available, for the purposes of the contract, one or several consultants:
  - Holding a university degree in law, international law, international relations, political sciences, human rights or related fields;
  - With an excellent knowledge of the Ukrainian language (mother tongue level);
  - With a basic knowledge of the English language (at least level A2 of the Common European Framework of Reference for Languages);
  - At least 3 years of professional experience in areas related to the fields of expertise as described above under the scope of each lot the Tenderer is applying to.

### *Award criteria*

- Quality of the offer (60%), including:
  - Thematic expertise in the human rights and constitutional law sphere, in the areas covered by each specific lot (40%);
  - Knowledge of the national and European regional context in the areas concerned by each specific lot, and/or previous similar assignments with non-governmental, governmental and/or international organisations (20%);
- Financial offer (40%).

The Council reserves the right to hold interviews with tenderers.  
Multiple tendering is not authorised.

## 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

- **A completed and signed copy of the Act of Engagement<sup>4</sup>** (See attached);
- **A completed and signed copy of the Annex to Act of Engagement** (See attached);
- A list of all owners and executive officers, for legal persons only;
- FOR NATURAL PERSONS: a detailed CV, preferably in Europass Format, demonstrating clearly that the tenderer fulfils the eligibility criteria;
- FOR LEGAL PERSONS: the detailed CV(s), preferably in Europass Format, of the consultant(s) who is/are proposed to undertake the work under the contract, demonstrating clearly that the eligibility criteria are fulfilled;
- A motivation letter (up to 1 page), demonstrating clearly that the tenderer has the experience and expertise required;
- At least 2 (two) samples of work/deliverables references/links to publications, legal assessments/analyses, reports, studies, including records of trainings/conferences etc. relevant to

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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.

the experience the tenderer claims in the areas covered by the lot(s) to which the tenderer applies (can be submitted in English or Ukrainian);

- Contact details of 3 (three) relevant referees, from among previous employers/clients/non-governmental, governmental and/or international organisations (name, surname, phone number and e-mail);
- FOR LEGAL PERSONS AND PRIVATE ENTREPRENEURS: copy of the registration documents (in Ukrainian) with brief translation into English of the key information about type of economic activities.

**All documents shall be submitted in English, except for those which may be submitted in Ukrainian, as specified above. 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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