

International call for tenders for the provision of international consultancy services in the field of criminal justice including with the focus on war-related crimes and violations committed during armed conflict/war, international humanitarian law and international criminal law, legal remedies for war-affected people

2023/AO/40

Deadline for submission of tenders/offers – 05 June 2023

Questions & Answers

As of 30. 05. 2023

Question 1:

Thank you for your below invitation to provide a Tender for the provision of international consultancy services in criminal justice focusing on war crimes, IHL and international criminal law and legal remedies for victims of armed conflict.

I have read the Tender File and Act of Engagement and fully intend to submit a Tender for your consideration but before doing so I have some questions which I would be very grateful if you could help me with:

*1) **Already Contracted:** I am currently already engaged with you providing very similar consultancy services on a Council of Europe (CoE) Act of Engagement to December 2024 within the Project “Fostering Human Rights in the Criminal Justice System in Ukraine” (PMM ID 3141) I attach a copy of my Act of Engagement for your information. Last year I also previously provided very similar international criminal justice consultancy services to an Armenian CoE Project “Human rights and women in the armed forces in Armenia – Phase II” (PMM ID 3141).*

I appreciate this Tender encompasses criminal justice work strands both in CoE member states and non-member states so is much wider than the specific work I am already involved with in Ukraine and previously in Armenia. However, I just wanted to check that the fact I am already contracted to the CoE in relation to the “Fostering Human Rights in the Criminal Justice System in Ukraine” Project No: PMM ID 3141 makes no difference to the procedure you have set out for me to submit a Tender as set out in your Tender and Act of Engagement files and I will just refer to this work in my CV

*2) **Referees:** Am I able to nominate CoE colleagues who have directed and assessed my recent work for CoE in Ukraine and Armenia who I would of thought could provide very relevant comment on my work or would it be better to nominate individuals who are completely independent of the CoE?*

*3) **Fees:** The fee table on the Act of Engagement invites individuals to propose a daily fee but 400 Euro is listed as the "Exclusion Level" I therefore presume this means that 400 Euro is the maximum daily fee which a Tenderer could propose. This makes sense to me because that is the daily fee I have always been*

remunerated under for all my previous consultancy work for CoE Ukraine and Armenia but I just wanted to check this is the maximum daily fee that could be claimed.

I apologise if the answer to some of my above queries may seem fairly obvious but having spent 27 years as a British Army Legal Officer I am relatively new to the provision of consultancy services so I just wanted to check some of the details to ensure that when I submit my Tender application it is complete and accurate in all respects.

Answer:

1) **Already contracted:** neither your previous contracts with the Council of Europe, nor your current ones, if in force, prevent you from applying to the present call for tenders. You can also refer to your previous/ongoing assignments with the CoE in your application.

2) **Referees:** you could nominate both CoE representatives and/or individuals who are completely independent of the CoE. It would be important that those referees are nominated, who would be best placed to provide substantive feedback as regards your expertise and experience of cooperation with you, taking into consideration the profile of the tender call concerned.

3) **Fees:** In line with the tender call concerned, and defined as “exclusion level”, the 400 Euro is the maximum daily fee which a Tenderer could propose.

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Question 2:

I'm contacting you because I need your support in filling the act of engagement from <https://www.coe.int/en/web/portal/-/2023ao40-dqi-5-june-2023-call-for-tenders-international-consultancy-services-in-the-field-of-criminal-justice-including-with-the-focus-on-war-related-crimes-and-violations-commited-during-armed-conflict/war-international-humanitarian-law-and-international>

*At page 4 I find this table, with Exclusion level. I understand that the Unit fee - Daily fee to fill in should be **greater** than 400EUR per day. Is this correct?*

LOT 1 – Type of Units ▼	Unit fee – Daily fee ▼	Exclusion level ▼
LOT 1 – Functioning of prosecution services and law enforcement agencies.		400 EUR
LOT 2 – Human rights safeguards in criminal proceedings		400 EUR
LOT 3 – Humanisation of criminal justice, resocialisation and restorative justice.		400 EUR
LOT 4 – International Humanitarian Law and International Criminal Law.		400 EUR
LOT 5 – Forensics (criminalistics).		400 EUR
LOT 6 – Collection, preservation and use of evidence, including electronic evidence in criminal proceedings.		400 EUR
LOT 7 - Legal remedies for victims of war/war-related crimes and damages caused by war.		400 EUR

Answer: The mentioned exclusion level is the maximum fee level that can be proposed by tenderers. A proposed fee shall be lower than the identified exclusion level of 400 EUR per day.

Question 3:

I am writing to you in order to enquire about the supporting documents that need to be submitted as part of the application for the tender for a legal person concerning the provision of international consultancy services in the field of criminal justice that was published on the 16th of May 2023.

Our organisation (XXX) intends to apply as a legal person. If we may, we would be grateful to clarify whether:

- *Each member of our NGO should provide a separate individual CV with information as required by Section G, including assignments within thematic scope stipulated by respective lots and active links to recent deliverables?*

- *If in addition to the registration documents, you would like to receive additional documentation related to the legal person, for instance, a list of activities or other relevant summaries of the activities and successes of the organization?*

Answer: in line with requirements of the tender file a concise CV of a tenderer shall be provided that would:

- “demonstrate clearly that the tenderer fulfils the eligibility criteria
- include brief information on accomplishment of assignments within thematic scope stipulated by respective Lot(s) within the last 3 years (up to 3 pages maximum)
- include active links to at least 3 examples of recent deliverables of similar nature as stipulated by respective Lot(s)
- contact information of 2 referees (full name, company/organisation, position, e-mail address and phone)”.

In case of a legal person – such ‘CV’ would imply a description/relevant summary of activities/accomplishments of a legal person/organisation.

And should a tenderer be a legal person, a tenderer shall propose a core team of its experts which will meet the criteria of the tender call. Thus, in such case individual CVs of those experts shall be provided in line with the Tender File: “Description of the proposed team (CVs of professional team members/consultants expected to work on the project within the Lot(s) applied) (for legal persons only)”.

Question 4:

The Tender File for the call in issue specifies that CV should include:

- *brief information on accomplishment of assignments within thematic scope stipulated by respective Lot(s) within the last 3 years (up to 3 pages maximum)*
- *active links to at least 3 examples of recent deliverables of similar nature as stipulated by respective Lot(s).*

Could you please confirm that the first item concerns relevant assignments accomplished in 2020-2023 (by the time of application).

Could you please indicate the time-range implied under ‘recent deliverables’, since it differs from the timespan ‘the last 3 years’ specified in the preceding item.

Answer: the overall CV shall clearly demonstrate that a tenderer fulfils the eligibility criteria; it shall also demonstrate in best terms a tenderer’s correspondence in meeting the award criteria. It shall then include

in particular the information about the relevant assignments within the last 3 years (without excluding the mentioning of previously dated assignments if relevant).

Regarding the time-frame of the 'recent deliverables' to be provided, there is a need to demonstrate their relevance both in terms of substance vis-à-vis the lots a tenderer applies to and their up-to-date; no specific time range is identified in this respect.

Question 5:

Thank you for extending an invitation to submit a proposal for the tender for the provision of international consultancy services in the field of criminal justice including with the focus on war-related crimes and violations committed during armed conflict/war, international humanitarian law and international criminal law, legal remedies for war-affected people.

As our company is currently assembling its team, we would like to clarify whether this tender is open for consortia of private entities (including companies and civil society organisations). If yes, should one private entity be identified as leader within the consortium, and may the members of the candidate consortium be registered in various Council of Europe Member States?

Answer: Please, refer to the Article 6 of the Tender Rules and the Article 10 of the Legal Conditions (part of the Act of Engagement (AoE) as regards the provisions concerning the applications of consortia. If to apply as a consortia potential providers must designate a coordinator that will be responsible for everything related to the activities of the providers- members of the consortia, and the coordinator will be the central contact point for the Council of Europe. However, the AoE should be signed by all members of the consortium.

The fact that the members of the consortium are registered in various Council of Europe Member States should not pose a problem. After all, the members of the consortium are obliged to determine the roles and responsibilities of each provider, and to organise themselves internally, as well as to make sure that the composition of the consortium does not go against national or international law. For this purpose, the providers must have internal arrangement, which must be set out in written consortium agreement.

Question 6:

I write to ask if, for the above tender, a team of individual independent consultants may apply as a consortium.

If this is possible, could you also advise as to how we should indicate in the Act of Engagement:

- *that only one of us is subject to VAT; and*

- *our individual banking details.*

Answer: A team of individual consultants may apply as a consortium. Any additional information that cannot be indicated in the AoE can be added as an appendix to the AoE. As for the banking details, again, there should be one provider selected as a coordinator and the whole amount will be sent to the coordinator that in turn should make sure that the fee is distributed to all of the members. (see also article 10.5 of the Legal Conditions of the AoE).

Question 7:

We recently found out about the call for tenders for providing consultancy services in the field of criminal justice (deadline 5 June). We are interested in applying for the activities within "Lot 3 - Humanisation of criminal justice, resocialisation and restorative justice" on behalf of the XXX. The XXX is a nonprofit network organisation situated in XX and composed of about 450 members, including 80 organisations, dedicated to research, practice, training, and policy work in the field of restorative justice and related areas. We have great expertise in research, training, events organisation and moderation, policy work, thanks to the organisational structure composed by

- *an international Board of 9 European experts (elected among members, voluntary role);*
- *a Secretariat composed by 4.6 XX staff in close contact with academia (XX Institute) and with practice at the local level (Y);*
- *about 100 members actively engaged in the XXX Committees (dedicated to research, training, practice development and communications) and XXX Working Groups (dedicated to different areas of application of restorative justice such as gender-based violence, hate crime, violent extremism, environmental justice, institutional abuse, schools and cities);*
- *about 60 senior practitioners and teachers registered in our Pool of Trainers to deliver A training live and online; and*
- *about 25 representatives of ministries of justice taking part in the European A Policy Network that we established and coordinate since 2018.*

We would like some advice on how to best apply to this call on behalf of our network:

1. Concerning the act of engagement and the CVs of potential experts within our organisation, is there any other material we may provide to support our application? How can we best present a sort of CV of the organisation itself, without going into detail on individual expertise of our members? Can all these files be submitted separately via email, or do we need to send a merged pdf with everything included?

Answer: Please, see already the answer to the above Question 3.

In addition, it should be mentioned that the evaluation will be made based on the expertise of the individuals/experts who will be engaged to provide the deliverables (their university degree, expertise /experience, knowledge of English etc.) Providing CVs of the Secretariat staff and Board members could not serve fully the purpose, unless those members are considered as experts that will participate in the delivery of the tasks. Also, in section G of the tender file it is indicated that all legal persons should provide a description of the proposed team (CVs of professional team members/consultants expected to work on the project within the Lot(s)). Therefore, a best option would be to provide a brief one-pager information about the activity of the organisation itself, and a selection of a number of experts with the needed expertise/experience for the lot/s in question shall be made and their CVs attached. In terms of a form - a merged pdf file will be appreciated.

2. Concerning the max 3 pages concise CVs of our experts: as a network organisation, we can provide now the CVs of our Secretariat staff and Board members, but, depending on the expertise needed, we may rely on other members within the XXX (for example, Committees, Working Groups, Pool of Trainers, Policy Network) to deliver certain tasks. How to apply as a network organisation, being precise on the great expertise of our members without going into detail on the individuals and providing CVs for each of them? Can we identify the specific experts afterwards, depending on the specific task in the Order and availability of our experts? In case you wish to hold interviews with us, would our legal representatives/executive director be enough?

Answer: Please, see the comment above under the same question.

3. Concerning the fact that multiple tendering is not authorized, how does it work if some of our members apply on behalf of their organisations/institutions or as individual experts? We may not even be aware of this, concerning our large (+450) membership. In particular, what would you suggest if one of our Board members wishes to apply too? Would these cases have the consequence of considering these applications as multiple tenders? Would it be enough for us to make sure that all the experts whose CVs we provide won't tender as part of another organisation/individually?

Answer: If the organisation applies with a number of experts, then it would be enough to make sure that all the experts whose CVs are provided won't tender as part of another organisation or individually.

As for all the other members, they will be free to apply if they want.

Question 8:

One of our academics is keen to apply to this framework, we have a couple of questions:

1. *What is a 'legal person' in the context of this tender, does the University of XXX count as a legal person*

2. *May a team of academics apply with one academic as a main point of contact for the council? We would include all details and CVs for the team?*

Please could you clarify if you require an overview of the teams skills and experience in addition to their CVs with reference to the below requirement.

Description of the proposed team (CVs of professional team members/consultants expected to work on the project within the Lot(s) applied) (for legal persons only).

Answer: Universities also count as legal persons, so the University in question could apply as well.

As for the second point, if several academics want to apply together, they could do it as consortium and designate one academic as coordinator who will be the contact point. Please, refer to the Article 6 of the Tender Rules and the Article 10 of the Legal Conditions (part of the Act of Engagement). For that purpose, CVs of all the academics to be part of the consortium will have to be presented. Description of the proposed team is only required when the applicant is a legal person.

Question 9:

We are keenly interested in the tender titled "International consultancy services in the field of criminal justice including with the focus on war-related crimes and violations committed during armed conflict/war, international humanitarian law and international criminal law, legal remedies for war-affected people".

*We kindly request further information about examples of recent deliverables of similar nature as stipulated by _____ respective _____ Lot(s).
Could it be possible to provide examples in languages other than English?*

Answer: According to the Tender File "All documents shall be submitted in English. Failure to do so will result in the exclusion of the tender".

Question 10:

I am looking to submit a tender for the call for experts on law related to the war in Ukraine (reference no. 2023/AO/40). My institution (XXX) contracts team has previously required the modification of terms and conditions in such consultancy work, in line with our own regulations and liabilities. I have attached the draft terms with the CoE has accepted in the past for a short term consultant position. I am looking to know if these terms could be included if the offer is accepted, as I note that under Article 4 of the terms 'Any change in the format, or any alteration or modification of the original tender will cause the immediate rejection of the tender concerned' so I do not want to modify the application/tender at this stage unilaterally.

Answer: A tenderer could propose a modification of terms and conditions in a separate file to be added to the tender application, which would be considered by the tenders board. Should the tenderer be selected, then the proposed modifications could be negotiated at the final stage of the procedure.

Question 11:

I am writing to inquire whether the same individual can apply to tender 2023/AO/40 both individually and as a part of an expert team proposed by a legal entity

Answer: *No, multiple tendering is not allowed.*

Question 12:

I am planning to apply to the call for tenders 2023/AO/40, however I was wondering if you could provide a clarification on the eligibility criteria (5 years experience)

Since 2014 I have been regularly engaged as CoE consultant and my contract was usually stipulated directly with me (as a natural person)

However, while I am Italian, until February 2022 I was residing in Moscow (as I also practice as a human rights lawyer bringing cases against Russia before the ECtHR and other international bodies). When the war of aggression started, I immediately left Russia and eventually relocated to Montenegro where I have registered my consultancy (which I entirely own and control).

Since then most of my pending contracts with the CoE have been transferred to my consultancy in Montenegro.

In one case I was asked, in order to meet eligibility criteria, to guarantee that I will remain the only employee of my consultancy. To which I agreed. However, so far my previous framework contract was not transferred and I have not received an explanation in that case.

In order to avoid submitting an ineligible proposal (as my consultancy firm was registered in Montenegro last year while the tender requires 5 years of experience), could you confirm whether it is possible for me so submit a proposal through my Montenegrin consultancy while providing documentation confirming I entirely own and control it and I am the only person who will provide consultancy services under the consultancy agreement?

Answer: *since the experience is linked to the person/expert that will provide the consultancy services, it is possible to submit the proposal through another consultancy, as long as it is clear that the person who will provide the services will be the one with the needed expert experience. This could be done as suggested, by providing signed confirmation.*
