

TENDER FILE / TERMS OF REFERENCE

(Restricted consultation procedure / Framework Contract)

Purchase of national consultancy services in Ukraine

Contract N° 8563/2019/5



The Council of Europe assists Ukrainian authorities in the reforming of the judiciary in Ukraine and compliance of the legislation and practice of courts and judicial institutions with the standards of the Council of Europe. This assistance is provided through the project "Support to the implementation of the judicial reform in Ukraine" (hereinafter – the Project). The Project started in June 2018 and will continue until November 2020. It will focus on solving problems connected with the issues of the judicial reform in Ukraine, namely: development of the legislation on the judiciary and the bar; provision of the independence of judges, including fair and publicity proceedings within the judiciary; compliance monitoring of the judicial practice and functioning of judicial institutions with standards and recommendations of the Council of Europe, including monitoring of the functioning of courts in the East of Ukraine; analysis of the legislation and practice of the State Enforcement Service, legal representation and legal aid in Ukraine.

In that context, it is looking for a maximum of 14 (fourteen) Providers for the provision of national consultancy services in Ukraine to be requested by the Council of Europe as needed in the fields indicated in the Tender File.

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 €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 this file below. 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: "Application for national consultancy service"**. 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: application for national consultancy service"**.

Type of contract ►	Framework contract
Duration ►	Until 31 December 2019, renewable until 30 November 2020
Deadline for submission of tenders/offers ►	12 April 2019
Email for submission of tenders/offers ►	DGI.Justice.Reform.Unit1@coe.int
Email for questions ►	DGI.Justice.Reform.Unit1@coe.int
Expected starting date of execution ►	22 April 2019

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 Council of Europe assists Ukrainian authorities in the reforming of the judiciary in Ukraine and compliance of the legislation and practice of courts and judicial institutions with the standards of the Council of Europe. This assistance is provided through the project "Support to the implementation of the judicial reform in Ukraine" (hereinafter – the Project). The Project started in June 2018 and will continue until November 2020. It will focus on solving problems connected with the issues of the judicial reform in Ukraine, namely: development of the legislation on the judiciary and the bar; provision of the independence of judges, including fair and publicity proceedings within the judiciary; compliance monitoring of the judicial practice and functioning of judicial institutions with standards and recommendations of the Council of Europe, including monitoring of the functioning of courts in the East of Ukraine; analysis of the legislation and practice of the State Enforcement Service, legal representation and legal aid in Ukraine.

In that context, the Council of Europe is looking for a maximum of 14 (fourteen) Providers (provided enough tenders meet the criteria indicated below) in order to support the implementation of the Project through delivering national consultancy services in Ukraine to be requested by the Council of Europe as needed in the fields indicated below:

- **Independence of the judiciary**
- **Analysis of the legislation and practice of enforcement of national judgments and of the bar and legal representation in Ukraine**

This Contract is currently estimated to cover at least 20 activities to be held by 30 November 2020. 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 1 110 000 (one million one hundred ten thousand) Euros and the total amount of the object of the present tender **shall not exceed 55 000 (fifty five thousand) 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

The tender is divided into the following two lots. Consultants may submit a tender proposal for one or for both lots subject to the fulfilment of the criteria listed in the Tender Rules for the lot(s) concerned.

Throughout the duration of the Framework Contract, being instructed, supervised and coordinated by the designated staff members from the Council of Europe Office in Ukraine and from the Council of Europe Headquarters, the pre-selected Providers may be asked to provide the Ukrainian authorities with advice and expertise in the fields described below.

Lot 1 – Independence of the judiciary

The pre-selected Providers may be asked to advise the Ukrainian authorities on the topics listed below, in the form of oral and/or written consultations, including on the draft documents (e.g. internal rules, procedural protocols, appointment and evaluation criteria).

The list of expected deliverables (not exhaustive):

- Assessment of the national legislation and practices to ensure that the principles of external and internal independence of the judiciary are respected and complied with; development of the recommendations on further implementation of the CoE standards in this regard;
- Analysis and monitoring of the High Council of Justice decisions concerning unlawful pressure on judges and detention of judges;
- Monitoring of the judicial practice of the Grand Chamber of the Supreme Court and of the Cassation Courts (uniformity, re-opening of judicial proceedings, interpretation of the ECtHR case-law);
- Assessment of the legislation and the practice of functioning of the High Qualification Commission of Judges of Ukraine concerning the opening and management of the judicial dossier as to their compliance with CoE standards, judicial qualification evaluation; monitoring of the decisions of the Public Integrity Council;
- Analysis of the Ukrainian legislation and practice concerning their compliance with CoE standards on publicity of three key procedures of the judiciary – judicial review, evaluation of judges and judicial discipline;
- Monitoring of the functioning of courts in the East of Ukraine (judicial decisions, conditions of work, access to courts, dealing with issues related to the uncontrolled territories).
- Other deliverables, as requested by the Council of Europe.

The consultants will be asked to undertake up to or more than three missions to provide the expected deliverables.

Lot 2 – Analysis of the legislation and practice of enforcement of national judgments and of the bar and legal representation in Ukraine

The pre-selected Providers may be asked to advise and support the Ukrainian authorities on the topics listed below, in the form of an oral and/or written advice, including on the draft documents (e.g. internal rules, procedural protocols, appointment and evaluation criteria).

The list of expected deliverables (not exhaustive):

- Analysis of the relevant legislation and monitoring of the practice of the State Enforcement Service; the document flow among the courts, state bailiffs and the parties in courts; development of recommendations on further implementation of the Council of Europe standards in this regard;
- Analysis of the functioning of relevant state registers; development of recommendations on further implementation of the Council of Europe standards in this regard;
- Analysis of the legislation on the bar and practice of the legal representation and legal aid in Ukraine; mapping of the roles and powers of the institutions within the system of legal representation, including the gap analysis - concerning the bar, the free legal aid;
- An assessment of the litigation costs for the parties in courts (judicial fees, fees to the lawyer, other costs) in the light of the standards on the access to justice

The consultants will be asked to undertake up to or more than three missions to provide the expected deliverables.

The above lists (under Lot 1 - 2) of expected deliverables are not considered exhaustive. The Council of Europe 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. 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).

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 3 (three) 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

- University Degree in law or social sciences (political science, international relations and related fields);
- At least two years of professional experience in the field of rule of law or human rights;
- Knowledge of the Ukrainian judiciary;
- Familiarity with the standards and recommendations of the Council of Europe in the fields of the judiciary and/or enforcement of national judgments; legislation and practice of the bar and legal aid in Ukraine;
- Excellent knowledge of Ukrainian;
- Command of English.

Award criteria

- Quality of the offer (70%), including:
 - Proven record of involvement in provision of the expertise in a given field (40%);
 - Knowledge of the standards and recommendations of the Council of Europe in the fields of the judiciary and/or the enforcement of national judgments; legislation and practice of the bar and legal aid in Ukraine (30%).
- Financial offer (30%).

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

Multiple tendering is not authorised.

² 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.

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.

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;
- Motivation letter (up to 1 page).

The above documents shall be submitted in English (preferably) or Ukrainian (alternatively). If all the documents are submitted in Ukrainian, the tenderer is to prepare in English a short summary of his/her expertise in a given field, and his/her knowledge of the relevant Council of Europe standards, failure to do so will result in the exclusion of the tender. If any of the documents listed above are missing, the tender will not be considered.

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.

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.