



## TENDER FILE / TERMS OF REFERENCE

(Restricted consultation procedure / Framework Contract)

### Contract N°8565/2018/7 – re-launch for Lot 2 only.

*The tender procedure FC8565/2018/7 was launched on 6 August 2018 for 4 thematic lots and successfully finished for Lots 1, 3 and 4 on 5 October 2018. Due to limited number of applications selection procedure for Lot 2 was found unfruitful. As of 9 November 2018 this tender procedure is re-launched for Lot 2 only.*

## Purchase of national consultancy services on various aspects of the law enforcement reform in Ukraine, effective functioning of the human rights protective bodies and human rights education for legal professionals (police, SBI investigators, prosecutors, judges)

The Council of Europe Project “Enhancing Implementation of the European Human Rights Standards in Ukraine” (the Project) with the period of implementation from April 2018 till March 2020 is looking for Providers for the provision of **national consultancy services** on the various aspects of the law-enforcement reform in Ukraine, effective functioning of the human rights protective bodies and human rights education for legal professionals within the scope of the Framework Contract as indicated below, and 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 Europe<sup>1</sup>, 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 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: *National consultancy HR UA Project***. 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 Tender 8565/2018/7-Lot 2***.

Type of contract ▶	Framework contract
Duration ▶	Until 31 March 2019
Deadline for submission of tenders/offers ▶	<b>19 November 2018</b>
Email for submission of tenders/offers ▶	<a href="mailto:Iryna.Krutova@coe.int">Iryna.Krutova@coe.int</a>
Email for questions ▶	<a href="mailto:Iryna.Krutova@coe.int">Iryna.Krutova@coe.int</a>
Expected starting date of execution ▶	26 November 2018

<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 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 Project “Enhancing Implementation of the European Human Rights Standards in Ukraine” (the Project) with the period of implementation from April 2018 till March 2020 is pursuing the objective of supporting the primary target institutions, namely the State Bureau of Investigation, Office of the Parliament Commissioner on Human Rights (the Ombudsperson’s Office), national training institutions for legal professionals to strengthen and apply their capacities to implement law-enforcement reform, ensuring full compliance with the relevant Council of Europe standards. Furthermore, the Project is aimed at contributing to implementation of the European Convention on Human Rights at the national level via education for legal professionals<sup>2</sup>.

Within the first specific objectives the Project provides support in realisation of the law-enforcement reform and fight against ill-treatment and impunity. It namely focus its activities on support in development of the State Bureau of Investigation (SBI), a new law enforcement body recently established in Ukraine, to ensure that normative, organisational and administrative framework of its work is in line with the Council of Europe standards as well as the SBI investigators are able to effectively fulfil their investigative functions with a special focus on ill-treatment cases and due regard to the European standards and best practices. According to the Law of Ukraine “On State Bureau of Investigation” and delineation of powers between the law-enforcement bodies provided by the Criminal Procedure Code of Ukraine the SBI have a competence to carry out pre-trial investigation in crimes committed by the high-ranking officials, judges, law enforcement officers, employees of the National Anti-corruption Bureau of Ukraine, Special Anticorruption Prosecutor and persons who have allegedly committed war crimes. Among the specific competence of the SBI is investigation of serious human rights violations, including torture and ill-treatment.

Within the second objective the Project provides support to the Ombudsperson Office in strengthening its operational capacities in realisation of the National Preventive Mechanism (NPM) to set a proper mechanism for prevention of torture and ill-treatment in accordance with the prerogatives of the Optional Protocol to the UN Convention against Torture as well as contributing to the systemic/structural and sustainable change in the society towards improving the treatment and conditions of persons deprived of the liberty. Furthermore, the Project assists the Ombudsperson Office - Data Protection authority in Ukraine in strengthening its capacity in carrying out the data protection advocacy mainly via harmonisation of the data protection legal framework and practice of its application by the public institutions with due regard to the recently amended EU legislative data protection context and modernised Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108).

Within the third component the Project is dealing with the implementation of the European Convention on Human Rights (ECHR) into the national legal practice, in particular via human rights trainings/courses carried out in the framework of the Council of Europe Programme HELP (European Programme of Human Rights Education for legal professionals) promoting face-to-face and distance learning courses covering different aspects of the ECHR and case law of the ECtHR.

The work of the Project ensures a combination of legislative expertise, institutional, operational and professional 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 Project draws upon an extensive network of consultants with knowledge of international and European standards and different European systems (“international consultants”) and consultants with local expertise/knowledge of the domestic system in which the activities are implemented (“national consultants”) to carry out its work.

The Council of Europe is looking for a maximum of 10 Provider/Consultant(s) per Lot (provided enough tenders meet the criteria indicated below) in order to support the implementation of the Project with a particular expertise pertaining to the various aspects of the law-enforcement reform in Ukraine, strengthening Ombudsperson’s Office capacities in realisation of the NPM and data protection advocacy and implementation of the ECHR in the thematic fields under the Lots below.

This Framework Contract shall be concluded until 31/03/2019.

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

The tender is divided into the following four Lots. Consultants may submit a tender for one, several or all Lots subject to the fulfilment of the criteria listed in the Tender Rules for the Lots concerned.

<sup>2</sup> See more information on the Project at: <https://www.coe.int/en/web/kyiv/enhancing-hr-standards-in-ukraine>

Lots ▼	Maximum number of Providers to be selected ▼
<p><b>Lot 1. General issues pertaining to the compliance of the law enforcement reform in Ukraine with the CoE standards and effective functioning of the State Bureau of Investigation (SBI), including effective investigation of ill-treatment cases</b></p> <p><i>The pre-selected Providers may be asked to advice on the topics within the thematic area of the Lot 1. The list of expected deliverables are as follows (not exhaustive):</i></p> <ul style="list-style-type: none"> <li>• Assessment of legal acts, by-laws 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, recommendataions, reports, etc. based on proper knowledge of the national legislation and domestic context of the law enforcement reform;</li> <li>• Participation and contribution to the working group meetings, workshops, consultation meetings with national stakeholders, including through moderating/facilitating discussions and delivering presentations;</li> <li>• Participation and contribution to the conferences, round-tables, seminars, trainings and other relevant events, including through moderating/facilitating discussions and delivering presentations;</li> <li>• Developing methodology and conducting needs assessment on specific institutional aspects related to the functioning of the State Bureau of Investigation from the human rights perspective;</li> <li>• Contributing to the development of internal documents of regulatory and administrative character for the SBI, information and guiding materials;</li> <li>• Providing trainings on methodology of effective investigation of ill-treatment cases and torture for the SBI investigators;</li> <li>• Providing guidance/instructions on application of the modern methodologies of investigation including “investigative interviewing” for the SBI investigators for their better integration into the practical activity of the SBI;</li> <li>• Contributing to the development of information and guiding materials/manuals/instructions on principles of effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment based on the Istanbul Protocol with due reference to the challenging issues raised by the national human rights institutions, NGOs as well as CoE monitoring bodies.</li> </ul> <p>The consultants can be asked to undertake missions to provide the expected deliverables. The costs of the missions will be covered by the CoE Secretariat.</p>	10
<p><b>Lot 2. Efficient realisation of the National Preventive Mechanism within the “Ombudsperson+” model</b></p> <p><i>The pre-selected Providers may be asked to advice on the topics within the thematic area of the Lot 2. The list of expected deliverables are as follows (not exhaustive):</i></p> <ul style="list-style-type: none"> <li>• 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, recommendataions, reports, etc. based on proper knowledge of the national legislation and domestic context of the NPM implementfftion;</li> <li>• Participation and contribution to the working group meetings, workshops, consultation meetings with national stakeholders, including through moderating/facilitating discussions and delivering presentations;</li> <li>• Participation and contribution to the conferences, round-tables, seminars, trainings and other relevant events, including through moderating/facilitating discussions and delivering presentations;</li> <li>• Developing methodology and conducting needs assessment related to the realisation and functioning of the National Preventive Mechanism;</li> <li>• Developing the methodology of monitoring visits to psychiatric institutions and social care homes;</li> <li>• Contributing to the development of information and guiding materials on standards of ill-treatment prevention in different places of detention including psychiatric institutions and social care homes with due reference to the challenging issues raised by the Ombudsperson in the Annual reports and that one identified by the national human rights NGOs;</li> <li>• Contributing to the development of the efficient modalities of cooperation between the Ombudsperson’s Office and law enforcement bodies as well as NGO monitors with due reference to the national legislation;</li> <li>• Contributing to the development of a public strategy of rehabilitative mechanism for victims of ill-treatment and torture.</li> </ul> <p>The consultants can be asked to undertake missions to provide the expected deliverables. The costs of the missions will be covered by the CoE Secretariat.</p>	10

<p><b>Lot 3. Amendment of Data protection legislation and practice of its application</b></p> <p><i>The pre-selected Providers may be asked to advise on the topics within the thematic area of the Lot 3. The list of expected deliverables are as follows (not exhaustive):</i></p> <ul style="list-style-type: none"> <li>• 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, reports, etc. based on proper knowledge of the national data protection legal framework ;</li> <li>• Participation and contribution to the working group meetings, workshops, consultation meetings with national stakeholders, including through moderating/facilitating discussions and delivering presentation;</li> <li>• Participation and contribution to the conferences, round-tables, seminars, trainings and other relevant events, including through moderating/facilitating discussions and delivering presentations;</li> <li>• Contributing to the development of information and guiding materials on the latest amendments of the EU data protection legal framework and modernised data protection Convention of the Council of Europe;</li> <li>• Contributing to the development of the information materials, guidance, instructions on data protection in the context of law-enforcement activities.</li> </ul> <p>The consultants can be asked to undertake missions to provide the expected deliverables. The costs of the missions will be covered by the CoE Secretariat.</p>	10
<p><b>Lot 4. Training needs assessment, training course development and delivery of trainings on ECHR standards for legal professionals (police, SBI investigators, prosecutors, judges)</b></p> <p><i>The pre-selected Providers may be asked to advise on the topics within the thematic area of the Lot . The list of expected deliverables are as follows (not exhaustive):</i></p> <ul style="list-style-type: none"> <li>• Developing methodology and conducting training need assessment for the investigators of the SBI, drafting reports/recommendations;</li> <li>• Conducting analysis and providing recommendations on draft curricula, courses and materials of trainings, designing/adapting training courses (face-to-face and distance learning courses) and material for legal professionals (police, SBI investigators, prosecutors and judges) with due reference to the national legal context as well as standards and requirements set to qualification of the mentioned group of legal professionals</li> <li>• Providing advice on adult learning methodology and preparing/delivering training for staff/trainers of the training institution responsible for initial training of the SBI investigators;</li> <li>• Preparing and delivering trainings for the SBI investigators on the ECHR standards and ECtHR case law;</li> <li>• Preparing and making presentations during workshops, seminars, study visits and round-tables dedicated to training of legal professionals (police, SBI investigators, prosecutors and judges);</li> <li>• Delivering trainings courses of the HELP Programme for legal professionals (police, SBI investigators, prosecutors and judges).</li> </ul> <p>The consultants can be asked to undertake missions to provide the expected deliverables. The costs of the missions will be covered by the CoE Secretariat.</p>	10

The above lists (under Lot 1, 2, 3, and 4) 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/scope of the present Framework Contract. 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.

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).

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.

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

The units of work under the present Framework Contract are time-based, i.e. daily fee.

Tenderers are invited to indicate their daily 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).

Should the Project end before the end date indicated in the Act of Engagement, the Council of Europe will cease ordering services and this Contract will not be used for any other Projects of the Council of Europe for ordering similar services.

### 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 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 quote<sup>3</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>4</sup>

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<sup>3</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.

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*

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

- A university degree in law, political sciences, social sciences, international relations, public administration, medicine or related fields;
- At least 3 years of professional experience in areas related to the fields of expertise as described under the scope of the lot concerned, *inter alia* acquired in an international context;
- Excellent knowledge of the Ukrainian language.

#### *Award criteria*

- Quality of the offer (90%), including:
  - Thematic expertise in the relevant area, knowledge of the national legislation, standards and recommendations of the Council of Europe in the areas covered by the lot concerned (40%);
  - Relevance of the experience of the tenderer in the areas covered by the lot concerned, including previous similar assignments with international organisations (40%);
  - Knowledge of the national context in the field of the law enforcement relevant to the areas covered by the lot concerned (10%);
- Financial offer (10%).

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

Multiple tendering is not authorised.

#### F. DOCUMENTS TO BE PROVIDED

Consultants applying for several lots should submit one tender offer containing the documents confirming the competencies of the Consultant under the relevant lots:

- A completed and signed copy of the Act of Engagement<sup>4</sup>;
- A detailed CV, demonstrating clearly that the tenderer fulfills the eligibility criteria (4 pages maximum);
- A Motivation letter describing how the tenderer meets the requirements of the expected types of deliverables related to the fields of expertise as described under the scope of the lot(s) concerned (1 page maximum);
- At least two examples of the previous work/deliverables reference/links to publications, legal assessments/analyses, reports, studies, list of trainings provided etc. relevant to the experience the tenderer claims;
- Registration documents for sole proprietorships.

**The Act of Engagement and CV shall be submitted in Ukrainian or English, all other documents shall be submitted in Ukrainian, 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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<sup>4</sup> 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.

<sup>5</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 requirements listed above under "exclusion criteria" are met;
- A certificate issued by the competent authority of the country of incorporation indicating that the fourth requirement is met.