**TENDER FILE / TERMS OF REFERENCE**

**(Restricted consultation procedure / One-off contract)**

**Purchase of services for development of the web-site of the Free Legal Aid System of Ukraine**

**Contract N° 8423/2018/267**

The Council of Europe is implementing the Project “Continued Support to the Criminal Justice Reform in Ukraine” until June 2019, funded by the Government of the Kingdom of Denmark that is aimed at supporting the reform of the Public Prosecutor’s Office and streignthening of the Free Legal Aid System of Ukraine. In that context, it is looking for a Provider for the provision of services for the developing and launching of the new web-site of the Coordination Centre for Legal Aid provision under the Ministry of Justice of Ukraine and carrying-out the data migration from the existing web-site to the new one (See Terms of Reference in Section B below).

1. 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[[1]](#footnote-1), 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 **one-off contract** for the provision of deliverables described in Section B 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 legal person except consortia.

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 8423/2018/267\_Development of the web-site for CCLAP\_CJR 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 2 (two) 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\_Development of the web-site for CCLAP\_CJR Project**

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| --- | --- |
| **Type of contract ►** | One-off contract |
| **Duration ►** | Until complete execution of the obligations of the parties (See Article 2 of the Legal conditions as reproduced in Appendix 2) |
| **Deadline for submission of tenders/offers ►** | 30 November 2018 |
| **Email for submission of tenders/offers ►** | Yulia.SKABOVSKA@coe.int |
| **Email for questions ►** | Yulia.SKABOVSKA@coe.int |
| **Expected starting date of execution ►** | **10 December 2018** |

1. EXPECTED DELIVERABLES

The Provider should provide services for the developing and launching of the new web-site of the Coordination centre for legal aid provision and carrying the data migration from the existing web-site to the new one in line with the technical assignment described in **Appendix 4 to the Tender File** (See attached). **The post-production support period proposed by the Provider should be not less than 6 (six) months.**

**All deliverables and services should be provided maximum until 31 May 2019.**

1. FEES

All tenderers are invited to fill in the **table of fees** below (see Appendix 3, Tenderer’s Offer) .

These fees are final and not subject to review. Tenders proposing fees above the exclusion level indicated in the table of fees above will be **entirely and automatically** excluded from the tender procedure.

Fees should be indicated in Euros without VAT

Tenderers **subject to VAT** shall also send **a quote (Pro Forma invoice)** on their letterhead including:

- the Service Provider’s name and address;

- its VAT number;

- the full list of services;

- the fee per type of deliverables (in Euros, tax exclusive);

- the total amount per type of deliverables (in Euros, tax exclusive);

- the total amount (in Euros), tax exclusive, the applicable VAT rate, the amount of VAT and the amount VAT inclusive .

1. ASSESSMENT

*Exclusion criteria and absence of conflict of interests* (See Declaration in Appendix 1)

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*

* are registered as a legal entity or private enterpreneur which is authorised to carry out service of development of the web sites, portals or similar resources;
* have at least 3 (three) years of experience in the provision of services related to the development of the web sites, portals or similar resources and undertaking data migration projects;

*Award criteria*

* Technical offer (60%), which includes:
* Tenderer’s experience in undertaking similar projects (25%);
* Human resources to be assigned for undertaking of the current project (20%)
* Proposed timeframes for delivery of services (10%)
* Proposed conditions and period of post-production support (5%)[[2]](#footnote-2).
* Financial offer (40%).

Multiple tendering is not authorised.

1. DOCUMENTS TO BE PROVIDED

Tenderers are invited to submit:

* **A completed and signed declaration on exclusion criteria (See Appendix 1)**
* For tenderers subject to VAT only: **a quote, describing their financial offer (a Pro-forma Invoice including the price VAT exclusive, the applicable VAT rate, the amount of VAT and the amount VAT inclusive)**, in line with the requirements of section C of the Tender File (see above);
* **Copy of the registration documents\*** [[3]](#footnote-3) (including those showing activities that the company is authorized to carry out)
* **Tender Application (see Appendix 3)** for the provision of deliverables and services to be supplied in accordance with the **Appendix 4 to the Tender File**, including:

1. Detailed cost estimate of services clearly stating the price in EUR, including all costs (programming, design, layout of pages, testing, data migration, post-production support and etc.) and any applicable taxes or duties, except for VAT;
2. Timeframes for delivery of services (date of submission per each deliverable);
3. Proposed conditions and period of post-production support;
4. Tenderer’s profile describing its experience of provision of similar services (for at least 3 (three) years)
5. Tenderer’s portfolio describing at least 3 (three) similar projects successfully completed and providing examples of/links to these projects;
6. Contact information of 3 (three) referees for the completed projects (full name, company/organisation, position, name of the project completed, year of the completion, referee’s e-mail address, phone);
7. Description of the Tenderer’s team proposed to be assigned for undertaking of the project, including CVs of team members and distribution of their duties;
8. Description/concept of training on the application of the new web-site to be conducted for the Beneficiary’s staff.

**All documents shall be submitted in English (except for documents marked with an asterisk (\*), which can be submitted in Ukrainian); failure to do so will result in the exclusion of the applicant from 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.**

1. CONTRACTUAL REQUIREMENTS

Tenderers will find below in the Appendix 2 a copy of the **Council of Europe’s** **standard Legal Conditions** for this type of contract.

Tenderers are invited to read these conditions, and to specify in their offer any of these clauses which they are unable to accept, together with a justification for this, and a proposal of alternative clause(s).

Alternatively, tenderers may provide a copy of their own standard legal conditions. However, tenderers should note that the capacity to meet the Council’s contractual requirements is one of the award criteria to be taken into account when the Council assesses tenderers’ offers. Tenderers should also note that any contract signed following this consultation will have to contain the following clauses: Article 3.7 (Disclosure of the terms of the contract), Article 3.8 (Use of name) and Article 11 (Disputes). Moreover, the Council reserves the right to ask for the contract proposed by the selected Provider to be amended in order to protect the Council’s interests, to meet the requirements of its status as an international organisation, and to keep a fair balance between the parties.

**\* \* \***

**Appendix 1 – Declaration on the exclusion criteria**

**Appendix 2 – Legal Conditions**

**Appendix 3 – Tenderer’s Offer**

**Appendix 4 – Technical Assignment (a separate file)**

**Appendix 1 to Tender File, Contract 8423/2018/267 – Declaration on the exclusion criteria**

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| --- | --- |
| **Name of the signatory ►** |  |
| **Name of the Tenderer ►** |  |
| **Full address of the Tenderer ►** |  |

**I hereby declare[[4]](#footnote-4) that neither I, nor the company I represent:**

* 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.

|  |  |
| --- | --- |
| **Name ►** |  |
| **Date ►** |  |
| **Signature ►** |  |

**Appendix 2 to Tender File, Contract 8423/2018/267 - Legal Conditions**

Article 1 – General provisions

1.1 The Provider undertakes, on the conditions and in the manner laid down by common agreement hereafter excluding any accessory verbal agreement, to provide the list of deliverables reproduced in the Terms of reference (see Section A), related to the present contract and further defined in the tender submitted by the Provider.

1.2 The present contract is composed, in order of precedence, of 1) this Act of Engagement in its entirety (cover page, Sections A and B and the present Legal Conditions); 2) the Tender File; and 3) the offer submitted by the Provider.

1.3 Any general purchasing terms and conditions of the Provider shall never prevail over these legal conditions. Any provision proffered by the Provider in its documents (general conditions or correspondence) conflicting with the clauses of these legal conditions shall be deemed void, except for any clauses which may be more favourable to the Council.

* 1. For the purposes of this Contract:

1. “Anomaly”means any defect affecting the Server or Software which makes it impossible, slower or in any way difficult to access the content, and more generally any non-conformity of the Services with the provisions of the Contract;
2. "Application" means the software to be developed by the Service Provider within the framework of the present Contract.
3. “Contract” shall refer to the documents described in 1.2, above;
4. “Council” shall mean the Council of Europe;
5. “Deliverables” shall mean the services or goods as described in the Terms of reference;
6. "Documentation" means all the documents describing the architecture, specifications or functionalities of the Application.
7. “Final beneficiary” shall mean the the Coordination Centre for Legal Aid provision under the Ministry of Justice of Ukraine;
8. “Object code” is a sequence of instructions in a computer language in the form of one particular library or module produced by a compiler from the source code, that can in turn be linked to form an executable or library file;
9. “Parties” shall mean the Council and the Provider;
10. “Provider” shall mean the legal or physical person selected by the Council for the provision of the Deliverables;
11. “Source code” is a collection of computer instructions, written using a human-readable programming language that can be transformed by an assembler or compiler into binary machine code.

**Article 2 – Duration**

The contract is concluded until complete execution of the obligations of the parties and takes effect as from the date of its signature by both parties. The services shall be executed in accordance with the timeframe indicated in the Terms of reference (section A) or, by default, in the tender submitted by the Provider.

**Article 3 – Obligations of the Provider**

**3.1 General obligations**

3.1.1 The Provider bears sole responsibility for all the decisions made and the human, technical, logistic and material resources used in the context of the Contract in order to provide the deliverables, with due respect for the Council of Europe’s needs, as contractually defined.

3.1.2 The Provider recognises that it is subject to a general obligation to provide advice, including, but not limited to, an obligation to provide any relevant information or recommendations to the Council. In this context, the Provider shall supply to the Council all the advice, warnings and recommendations necessary particularly in terms of quality of deliverables, security and compliance with professional standards. The Provider also undertakes 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, and of any technological innovation or of the availability of any new product or service more appropriate to the Council of Europe’s needs. The Service Provider undertakes to inform and advise the Council of Europe at any step of the Project, and to warn the Council, in due time, of any difficulty it may encounter or of any over-budget cost, be it already occurred or predictable.

3.1.3 The Service Provider shall hand over to the Council of Europe all the Deliverables, in the format and on the media indicated and in compliance with the deadlines prescribed by the Council of Europe.The Service Provider shall be bound by an obligation of result with regards to compliance with contractual time-limits and the conformity of the Application to the relevant Business Requirements and the normally expected standards of execution.

3.1.4 The Service Provider shall carry out all necessary in-house tests before delivering each Deliverable or completing each phase of the planning, in order to check the conformity of the Deliverables in question. In this connection, the Service Provider shall supply, if the Council of Europe so requests, the test scenarios used for the in-house testing it has carried out.

3.1.5 The Service Provider shall allow the Council of Europe access for the purposes of verification of the design and functioning of the Deliverables.

3.1.6 The Council of Europe is entitled, prior to acceptance of any of the deliverables (Article 9), to perform any checks and tests it deems relevant to the determination of whether the deliverables conform to the technical requirements laid down in the Act of Engagement.

**3.2 Intellectual services**

3.2.1 The provisions of Articles 3.2.2 to 3.2.8 shall apply insofar as the contract concerns the provision of intellectual services. The provisions of those Articles will remain applicable even in case of termination of Contract, whatever its cause.

3.2.2 Unless agreed otherwise by the Parties, any written documents prepared by the Provider under the contract shall be written in English or Ukrainian and produced on a word processing file.

3.2.3 Unless agreed otherwise by the Parties, all written documents of more than 1,500 words shall be preceded or accompanied by a text summarising the subject and main conclusions and shall not, unless specifically required, exceed 5,000 words.

3.2.4 The Provider guarantees that the deliverables conform to the highest professional standards.

3.2.5 The Service Provider undertakes to communicate to the final beneficiary all the source and object codes of the application, object of the present Contract, as well as any preparatory material, and their corrections, updates and documentation.

3.2.6 The Provider cedes irrevocably and exclusively to the relevant final beneficiary throughout the entire world and for the entire period of copyright protection, all rights in the deliverable(s) produced for their benefit as a result of the execution of the present contract. Such rights shall include in particular the right to:

* use the deliverable(s) for whatever purpose the final beneficiary deems necessary;
* reproduce or cause to be reproduced the deliverables, free of charge or for a consideration, in unlimited numbers, all or part of the deliverables, in any medium, known or unknown, existing or future, and in particular on paper or in related form, in analogue or digital, optical or magnetic form or in any other computerised, electronic or telecommunications-based form;
* present, disseminate or cause to be disseminated the deliverables, free of charge or for a consideration, to any audience and by any means of its choice, existing or future, and in particular by presentation, projection, transmission, broadcasting or any form of communication or telecommunication, on any network, in particular telephone, cable, terrestrial or satellite;
* adapt, modify, cause to be developed, improve or curtail the deliverables, directly or through a third party, in particular the right to adapt them to any electronic or data processing mediums, to produce new versions or new developments, and to ensure their maintenance, free of charge or for a consideration;
* translate or transcribe the deliverables, or to cause then to be translated or transcribed, into any language or any computer language;
* exploit and commercialise the deliverables, directly or through a third party, and in particular to assign the rights to third parties, temporarily or permanently, in whole or in part, and in any form, by assignment, licence or any other form of contract.

3.2.7 The present assignment concerns all rights of reproduction, use, exploitation and modification of source codes, object codes and executable codes of any creation in any computer language.

3.2.8 The Provider guarantees that use by the final beneficiary of the deliverable(s) produced as a result of the execution of the present contract will not infringe the rights of third parties. However, should the final beneficiary incur liability as the result of any such infringement; the Provider will compensate it in full for any damage it may suffer in consequence.

3.2.9 Notwithstanding the provision in Article 3.2.6 above, the final beneficiary may, on prior application by the Provider, authorise the Provider to use the deliverable(s) referred to above. When giving the Provider such authority, the final beneficiary will inform the Provider of any conditions to which such use may be subject.

**3.3. Guarantees**

3.3.1 The Service Provider shall guarantee the final beneficiary’s peaceful exercise of the rights transferred or conceded to it under Article 3.2 against all disturbance, claims and attempts at dispossession whatsoever from third parties maintaining that a Deliverable infringes their rights, including intellectual property rights.

3.3.2 The Service Provider shall guarantee that the Application conforms to the relevant Business Requirements, as well as to the normally expected standards of execution. In respect of this guarantee, the Service Provider shall rectify, free of charge, any anomalies reported to it by the final beneficiary up to the expiry of a period of three months dating from the signature of the Application's acceptance report by the Parties.

**3.4 Health and social insurance of the Provider or its employees**

The Provider shall undertake all necessary measures to arrange for health and social insurance for the personnel involved in provision of deliverables during the entire contract. The Provider acknowledges and accepts in this regard that the Council shall not assume any responsibility for any health and social risks concerning illness, maternity or accident which might occur during the performance of work under the contract.

**3.5 Fiscal obligations**

The Provider undertakes to inform the Council about any change of its status with regard to VAT, to observe all applicable rules and to comply with its fiscal obligations in:

a) submitting a request for payment, or an invoice, to the Council in conformity with the applicable legislation;

b) declaring all fees received from the Council for tax purposes as required in his/her/its country of fiscal residence.

* 1. **Loyalty and confidentiality**

3.6.1 In the performance of the present contract, the Provider will not seek or accept instructions from any government or any authority external to the Council. The Provider undertakes to comply with the Council’s directives for the completion of the deliverables and to refrain from any word or act that may be construed as committing the Council.

3.6.2. The Provider shall observe the utmost discretion in all matters concerning the contract, and particularly any matters or data that have been or are to be recorded that come to the Provider’s attention in the performance of the contract. Unless obliged to do so under the terms of the contract, or expressly authorised to do so by the Secretary General of the Council, the Provider shall refrain at all times from communicating to any person, legal entity, government or authority external to the Council any information which has not been made public and which has come to the Provider’s notice as a result of dealings with the Council. Nor shall the Provider seek to gain private benefit from such information. Neither the expiry of the contract nor its termination by the Council shall lift these obligations.

**3.7 Disclosure of the terms of the contract**

3.7.1 The Provider is informed and gives an authorisation of disclosure of all relevant terms of the contract, including identity and price, for the purposes of internal and external audit and to the Committee of Ministers and to the Parliamentary Assembly of the Council with a view to these latter discharging their statutory functions, as well as for the purpose of meeting the publication and transparency requirements of the Council of Europe or its donors. The Provider authorises the publication, in any form and medium, including the websites of the Council of Europe or its donors, of the title of the contract/projects, the nature and purpose of the contract/projects, name and locality of the Provider and amount of the contract/project.

3.7.2 Whenever appropriate, specific confidentiality measures shall be taken by the Council to preserve the vital interests of the Provider.

**3.8 Use of the Council of Europe’s name**

The Provider shall not use the Council’s name, flag or logo without prior authorisation of the Council.

**3.9 Other obligations**

3.9.1 In the performance of the present contract, the Provider undertakes to comply with the applicable principles, rules and values of the Council.

3.9.2 The Staff Regulations and the rules concerning temporary staff members shall not apply to the Provider.

3.9.3 Nothing in this contract may be construed as conferring on the Provider the capacity of a Council of Europe staff member or employee.

**Article 4 – Fees, expenses and mode of payment**

**4.1 Fees**

4.1.1 In return for the fulfilment by the Provider of its obligations under the contract, the Council undertakes to pay the Provider the fees as indicated in their offer, in the currency specified in the Table of fees.

4.1.2 Amounts are final and not subject to review.

**4.2 VAT**

4.2.1 Should the deliverables be taxable in France, the amount invoiced shall be VAT inclusive.

4.2.2 Should the deliverables be taxable in another EU country, and unless otherwise agreed between the Parties, the Council will provide the Provider with an exemption certificate prior to the signature of the contract. The exemption certificate sent by the Council of Europe should be retained by the Provider and presented to the relevant tax authorities to justify tax-free invoicing. In accordance with Article 2 b) of Council Directive 2001/115/EC, the following should be stated in the invoice: “*Intra-Community sale/service to an exempted organisation: Articles 143 and 151 of Council Directive 2006/112/EC*” and should indicate the final total amount excluding VAT. In case the CoE will not be in a position to provide the said certificate, the Council will pay the invoice with VAT included.

4.2.3 Should the deliverables be taxable in a non-EU country, the amount invoiced will not include VAT if the local (national) legislation allows for it, or if the Council of Europe enjoys tax exemption through other means in the country concerned. Otherwise, it shall include VAT.

4.2.4 For the provision of “online services”, should the Provider be established either in an EU country (other than France) or in a non-EU country, the invoiced amount shall include French VAT at the applicable rate. The invoice shall indicate the total amount without taxes, the rate and the amount of the VAT and the total amount ‘all tax included’. The invoice shall also stipulate the following statement: “*Intra-community sale/service: French VAT collected by the Provider and paid to the Mini One-Stop shop in [Address/Country]*”.

**4.3 Invoicing and payment**

4.3.1 Upon acceptance of the deliverable[s] by the Council, the Provider shall submit an invoice or a request for payment in triplicate and in the currency specified in the Table of fees, in conformity with the applicable legislation.

4.3.2 Before accepting the deliverable(s), the Council reserves the right to ask the Provider to submit any other document or information that may serve the purpose of establishing that the Contract has been duly executed.

4.3.3 In the case of event organisation, the Provider shall in any case submit any document that proves that the event took place, including but not limited to an attendance sheet broken down into half days specifying the location, date(s) and time(s) of the event(s) or activity(ies), to be individually signed by each participant and the Provider.

4.3.4 The payment for the Deliverables to be paid by the Council shall be made within 60 calendar days of submission of the invoice described in Article 4.3.1, subject to the submission of the deliverable(s) described in the Terms of reference and its/their acceptance by the Council.

4.3.5 In cases where an advance payment is foreseen, it shall be paid within 60 calendar days upon signature of the contract.

**4.4 Other expenses**

4.4.1 In the event of the Provider being required to travel for the purposes of the contract, and provided the Terms of reference do not stipulate that the fees already include travel and subsistence expenses, the Council undertakes, subject to its prior agreement, to reimburse travel and subsistence allowances in compliance with the Council’s applicable Rules.

4.4.2 Travel expenses referred to under 4.4.1 will be reimbursed on the basis of the rail fare (first class) or air fare (tourist class) upon presentation of an invoice on the letterhead of the relevant vouchers. Subsistence expenses (including travel expenses within the locality visited) will be reimbursed at the applicable daily rate.

4.4.3 In the event of the Provider being required to travel for the purposes of the contract, the duration of the Provider’s travel and stays will be covered by an insurance policy with the insurers CHARTIS (Policy No. 2.004.761). A telephone helpline is available in case of emergency (+ 32 (0)3 253 69 16). The said insurance will cover specific risks related to travel and stay of the Provider (including medical costs related to unforeseen illness or accident, repatriation, death, cancellation of journey or flight, theft or loss of personal possessions). The insurance policy does not cover persons over 75 years of age.

**Article 5 - Breach of contract**

5.1 In the event that the Provider does not satisfy the conditions laid down in this contract or those resulting from any modifications duly accepted in writing by both parties, in accordance with the provisions of Article 6 below, or the deliverables provided as referred to under Article 1.1 do not reach a satisfactory level, the Council shall consider there to have been a breach of contract and may consequently refuse to pay to the Provider the amounts referred to in Article 4.1 above.

5.2 In the cases described in paragraph 5.1 above, the Council reserves further, at any moment and further to prior notification to the Provider, the right to terminate the contract in all or in part. In case of termination, the Council shall pay only the amount corresponding to the deliverables actually and satisfactorily provided at the time of termination of the contract and shall request reimbursement of the sums already paid for Deliverables not provided. In case of partial termination, the obligations of the parties shall endure for all deliverables which are not subject of the notification of termination.

5.3 The outstanding sums shall be paid to the Council’s bank account within 60 calendar days from the notification in writing by the Council to the Provider regarding the outstanding sums to be paid.

**Article 6 - Modifications**

6.1 The provisions of this contract cannot be modified without the written agreement of both parties. This agreement may take the form of an exchange of emails provide it is done using the contact details specified in Article 8.

6.2 Any modification shall not affect elements of the contract which may distort the initial conditions of the tendering procedure or give rise to unequal treatment between the tenderers.

6.3 This contract may not be transferred, in full or in part, for money or free of charge, without the Council’s prior authorisation in writing.

6.4 The contract is a personal contract. The Provider may not subcontract all or part of the deliverables without the written authorisation of the Council. The Service Provider agrees that the Project Manager and all other persons allocated to the Project shall not be replaced before the completion of obligations of the Service Provider without notice to the Council, unless:

1. the individual to be replaced is prevented by ill-health from carrying out his duties in connection with the agreement for a significant period; or
2. the individual resigns from employment with the Service Provider; or
3. the contract of employment of the individual is terminated; or
4. the Council makes a reasonable written request to the Service Provider to replace the individual because he has performed unsatisfactorily or has caused a breach of any of the Service Provider's obligations under this contract howsoever arising.

If any such person is replaced, the Service Provider shall consult with the Council about the identity of a suitable replacement.

6.5. Under no circumstances shall a contractual relationship exist between the Council of Europe and any subcontractor. The Service Provider shall remain entirely responsible for the performance of its obligations towards the Council and the final beneficiary under the current contract.

**Article 7 - Case of force majeure**

7.1 In the event of force majeure, the parties shall be released from the application of this contract without any financial compensation. Force majeure is defined as including the following: major weather problems, earthquake, strikes affecting air travel, attacks, a state of war, health risks or events that would require the Council or the Provider to cancel the contract.

7.2 In the event of such circumstances each party shall be required to notify the other party accordingly in writing, within a period of 7 calendar days.

**Article 8 - Communication between the parties**

8.1The Contact point within the Council of Europe is indicated on the cover page of the Tender File (See page 1 above).

8.2 The Provider can be reached through the means indicated in the Tender File (see page 1 above).

8.3 Any communication is deemed to have been made when it is received by the receiving party, unless the Contract refers to the date when the communication was sent.

8.4 Electronic communication is deemed to have been received by the receiving party on the day of successful dispatch of that communication, provided that it is sent to the addressees listed in paragraphs 1 and 2 above. Dispatch shall be deemed unsuccessful if the sending party receives a message of non-delivery. In this case, the sending party shall immediately send again such communication to any of the other addresses listed in paragraphs 1 and 2 above. In case of unsuccessful dispatch, the sending party shall not be held in breach of its obligation to send such communication within a specified deadline, provided the communication is dispatched by another means of communication without further delay.

8.5 Mail sent to the Council using the postal services is considered to have been received by the Council on the date on which it is registered by the department identified in paragraph 1 above.

8.6 Formal notifications made by registered mail with return receipt or equivalent, or by equivalent electronic means, shall be considered to have been received by the receiving party on the date of receipt indicated on the return receipt or equivalent.

**Article 9 –Acceptance**

The provision of deliverables referred to in this contract shall be the subject of a written acceptance. If acceptance is refused by the Council, the Council shall inform the Provider, accordingly, giving reasons, and may set new modalities for the provision of the deliverables. If acceptance is refused again by the Council, it may terminate the Contract in whole or in part without previous notice and without paying any financial compensation.

**Article 10 – Changes in the Provider’s situation or standing**

10.1 The Provider shall inform the Council without delay of any changes in their address or legal domicile or in the address or legal domicile of the person who may represent them.

10.2 The Provider shall inform also inform the Council without delay:

1. if they are involved in a merger, takeover or change of ownership or there is a change in their legal status;
2. where the Provider is a consortium or similar entity, if there is a change in membership or partnership.
3. if they are sentenced by final judgment on one or more of the following charges: participation in a criminal organisation, corruption, fraud, money laundering;
4. if they 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 not subject to a procedure of the same kind;
5. if they have received a judgment with *res judicata force*, finding an offence that affects their professional integrity or serious professional misconduct;
6. If they 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 legal domicile;
7. If they are or are likely to be in a situation of conflict of interests.

**Article 11 - Disputes**

11.1 Any dispute regarding this Contract shall - failing a friendly settlement between the Parties - be submitted to arbitration.

11.2 The Arbitration Board shall be composed of two arbitrators each selected by one of the parties, and of a presiding arbitrator, appointed by the other two arbitrators; in the event of no presiding arbitrator being appointed under the above conditions within a period of six months, the President of the Tribunal de Grande Instance of Strasbourg shall make the appointment.

11.3 Alternatively, the parties may submit the dispute for decision to a single arbitrator selected by them by common agreement or, failing such agreement, by the President of the Tribunal de Grande Instance of Strasbourg.

11.4 The Board referred to in paragraph 2 of this Article or, where appropriate, the arbitrator referred to in paragraph 3 of this Article, shall determine the procedure to be followed.

11.5 If the parties do not agree upon the law applicable the Board or, where appropriate, the arbitrator shall decide ex aequo et bono having regard to the general principles of law and to commercial usage.

11.6 The arbitral decision shall be binding upon the parties and there shall be no appeal from it.

**Article 12 - Addresses and bank details of the parties**

The bank details of the Provider shall be indicated on the first page of the Act of Engagement. The bank details of the Council of Europe are the following:

Bank address: F-67075 Strasbourg Cedex, France

Bank name: Société Générale Strasbourg

Code IBAN: FR76 30003 02360 001500 1718672

SWIFT Code: SOGEFRPP

**Appendix 3 to Tender File, Contract 8423/2018/267 – Tenderer’s Offer**

**TENDERER’S OFFER**

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| --- |
| 1. **TENDERER** |

|  |  |  |
| --- | --- | --- |
| **Contact details of the Tenderer** | Name and address |  |
| Representative |  |
| Contact person |  |
| VAT n° (if any) |  |
| Country and registration n° (if any) |  |
| Email (Contact person) |  |
| Phone number (Contact person) |  |

1. **FINANCIAL OFFER – TABLE OF FEES**

The expected deliverables identified below should be provided based on the services carried out by the Tenderer in accordance with the **Appendix 4 to the Tender File**.

Prices indicated below are final and not subject to review, throughout the duration of the contract. Prices are to be indicated in Euros without VAT

The Tenderer shall indicate its proposed lead time for delivery and fees in the boxes below.

|  |  |  |  |
| --- | --- | --- | --- |
| **Deliverables ▼** | **Lead time for delivery ▼** | **Fees, EUR** | **Exclusion level (fees)** |
| 1. Functional structure of the web-site is developed:    1. Prototype of all template pages is developed;    2. Interaction protocols are created;    3. Structure of the administrative part of the web-site is developed;    4. Classes and users’ rights policies are defined.   *Development of all functional components of the web-site. Development of window forms, schemes of interaction between window forms and separate functional elements. Classes and users’ rights are to be described. The list of access control for each of user’s roles to be used for operating of the resource is to be developed.* | XX | XX | **Total exclusion level for all services and deliverables is**  **EUR 15,000.00 (VAT excluded)** |
| 1. Design and layout:    1. Design of all template pages is developed;    2. Layouts of all template pages are prepared. | XX | XX |
| 1. Web-site’s control system is developed    1. Development of the control system sections;    2. Development of the functional components of the control system. | XX | XX |
| 1. Classes and users’ rights policies are integrated    1. Users’ rights structure is developed    2. Users’ classes are developed    3. Web-site sections access rights scheme is developed. | XX | XX |
| 1. Content is migrated from the existing web-site <http://legalaid.gov.ua> to the new one. | XX | XX |
| 1. Preparation to testing and delivery and acceptance procedure | XX | XX |
| 1. Testing is conducted and the project is delivered to the customer | XX | XX |
| 1. The web-site is transferred to the customer’s hardware | XX | XX |
| 1. Training on the application of the new web-site is conducted for the Beneficiary’s staff (two web administratirs and two content managers) | XX | XX |
|  | XX | |  |

**All deliverables and services should be provided maximum until 31 May 2019.**

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| 1. **POST-PRODUCTION SUPPORT**   Please indicate conditions and period of post-production support (please note that the minimum required period is 6 months) |
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| 1. **TENDERER’S PROFILE**   Please provide the description of activities proving that the Tenderer has at least 3 (three) years of experience in the provision of similar services |
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| 1. **TENDERER’S PORTFOLIO**   Please provide description of at least 3 (three) similar projects successfully completed by the Tenderer and provide examples of/links to them |
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| 1. **REFEREES**   Please provide contact information of 3 (three) referees for the completed projects (full name, company/organisation, position, name of the project completed, year of the completion, referee’s e-mail address, work phone and mobile phone) |
|  |

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| 1. **COMPOSIITON OF THE TEAM\***   Please provide the description of the Tenderer’s team proposed to be assigned for undertaking of the project contact including description of duties of each team member |
|  |

\* CVs of team members shall be added in separate files.

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| 1. **USERS’ TRAINING**   Please provide the description/concept of Training on the application of the new web-site to be conducted for the Beneficiary’s staff (two web administratirs and two content managers) |
|  |

|  |  |
| --- | --- |
|  | |
| 1. **SIGNATURE** | |
| Signature of the responsible person of the Tenderer: |  |
| Stamp/Seal of the Tenderer: |  |
| Name and surname of the responsible person of the Tenderer: |  |
| Place and date of signature: |  |

1. The activities of the Council of Europe are governed by its [Statute](https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680306052) 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](https://wcd.coe.int/ViewDoc.jsp?p=&id=1807541&direct=true). [↑](#footnote-ref-1)
2. The post-production support period proposed by the Tenderer should be not less than 6 (six) months. [↑](#footnote-ref-2)
3. Documents indicated with an asterisk (\*) may be submitted in English or in Ukrainian [↑](#footnote-ref-3)
4. 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. [↑](#footnote-ref-4)