

TENDER FILE / TERMS OF REFERENCE

(Competitive bidding procedure / Framework Contract)

Purchase of international consultancy services

Contract N° FC/4757/2020/6



The Council of Europe is currently implementing a **Component 2 “European Union and the Council of Europe working together to strengthen the Ombudsperson’s capacity to protect human rights”** (hereinafter – the Project) of the **Joint EU/Council of Europe Project “European Union and Council of Europe working together to strengthening the protection of human rights in Ukraine”**. The Project’s general aim is to strengthen the Ombudsperson’s institutional capacity in the areas of personal data protection and prevention of human rights violations in places of deprivation of liberty via effective realisation of the National Preventive Mechanism).

In that context, it is looking for Provider(s) for the provision of international consultancy services to be requested by the Council on an as needed basis.

A. TENDER RULES

This tender procedure is a competitive bidding procedure. **In accordance with Rule 1395 of the Secretary General of the Council of Europe on the procurement procedures of the Council of Europe¹, 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 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 4757/2020/6**. 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 5 (five) 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: Tender 4757/2020/6_Question**

Type of contract ▶	Framework contract
Duration ▶	Until 09 July 2021
Deadline for submission of tenders/offers ▶	01 March 2020
Email for submission of tenders/offers ▶	DGI-HRImplementation@coe.int
Email for questions ▶	DGI-HRImplementation@coe.int
Expected starting date of execution ▶	10 March 2020

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

B. EXPECTED DELIVERABLES

Background of the Project

The Council of Europe is going to implement till 09 July 2021 a Component 2 "European Union and Council of Europe working together to strengthen the Ombudsperson's capacity to protect human rights" of the Joint EU/Council of Europe Project "European Union and Council of Europe working together to strengthening the protection of human rights". The Project's general aim is to strengthen the Ombudsperson's institutional capacity in the areas of personal data protection and prevention of human rights violations in places of deprivation of liberty via efficient realisation of the National Preventive Mechanism (NPM).

The Project aims at achieving the following outcomes:

- the regulatory framework of the Ombudsperson's Office work will be further aligned with the relevant international and European standards including gender equality perspective;
- amended data protection legislation will be properly implemented and applied that eventually creates a high, uniform level of data protection across Ukraine;
- Ombudsperson's Office staff will increase their proficiency and effectiveness in realisation of the NPM mechanism and data protection advocacy that lead to improvement of human rights situation in the country.

The Council of Europe is looking for a maximum of 45 Provider(s) (provided enough tenders meet the criteria indicated below) in order to support the implementation of the Project with a particular expertise on organisation of the Ombudsperson's Office work and its internal procedures, protection of personal data, prevention of ill-treatment via implementation of the NPM etc.

This Contract is currently estimated to cover up to 70 activities, to be held by 9 July 2021. 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 EUR 988 500.00 with a total amount of the tender object **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.

Lots

The present tendering procedure aims to select Provider(s) to support the implementation of the project and is divided into the following lots:

Lots	Maximum number of Providers to be selected
Lot 1: International standards as regards regulatory framework of the National Human Rights Institutions (Ombudsperson's Offices) functioning	15
Lot 2: International standards of Personal Data Protection	15
Lot 3: International standards of prevention of ill-treatment through implementation of the National Preventive Mechanism	15

The Council will select the abovementioned number of Provider(s) per lot, provided enough tenders meet the criteria indicated below. Tenderers are invited to indicate which lot(s) they are tendering for (see Section A of the Act of Engagement).

Scope of the Framework Contract

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

Lots	Maximum number of Providers to be selected
<p>Lot 1: International standards as regards regulatory framework of the National Human Rights Institutions (Ombudsperson's Offices) functioning</p> <p>The pre-selected Providers may be asked to advise on the topics within the thematic area of the Lot 1. The list of expected deliverables is as follows (not exhaustive):</p> <ul style="list-style-type: none"> • Assessment, amendment of legal acts and internal 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 comments, recommendations etc. based on proper knowledge of the mandate and operational work of the National Human Rights Institution; • Participation and contribution to the working group meetings, workshops, expert meetings with national stakeholders, including through moderating/facilitating discussions and delivering presentations; • Participation and contribution to the conferences, roundtables, seminars, trainings and other relevant events, including through moderating/facilitating discussions and delivering presentations. <p>The thematic areas under Lot 1 will include inter alia the following:</p> <ul style="list-style-type: none"> • Legal status and organisational framework of the Ombudsperson work (appointment and dismissal procedure, immunity and social guarantees, accountability etc.); • Mandate of the Ombudsperson with focus on enhancement of the individual complaint handling procedure as well as specific areas of Ombudsperson's mandate on data protection and access to public information. 	15
<p>Lot 2: International standards of Personal Data Protection</p> <p>The pre-selected Providers may be asked to advise on the topics within the thematic area of the Lot 2. The list of expected deliverables is as follows (not exhaustive):</p> <ul style="list-style-type: none"> • Assessment, amendment 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 and requirements of the Modernised Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108+) of the Council of Europe, EU General Data Protection Regulation (GDPR), ECtHR case-law; • Participation and contribution to the working group meetings, workshops, expert meetings with national stakeholders, conferences, roundtables, seminars, trainings including through moderating/facilitating discussions and delivering presentations on the topics covering the GDPR, Convention 108+ and other legal regulations in the field of data protection including specific and interrelated thematic fields (special data processing, video surveillance etc.) ; • Development of information and guiding materials, instructions on the latest amendments of the EU data protection legal framework and Convention 108+ as well as specific of their implementation at the national level, application in the context of public governance, law-enforcement activities etc.; • Development of the e-learning training course on data protection that 	

<p>will be delivered through the Ombudsperson's Office ongoing training system for the relevant staff;</p> <ul style="list-style-type: none"> • Preparation and delivering of training on methodology of adult learning with a further series of ToTs on data protection course for the Ombudsperson's Office staff; • Preparation and delivering of trainings on data protection and interrelated topics for public officials and legal professionals (lawyers, investigators, prosecutors, judges); • Creation of the on-line toolkit on basic principles of data protection for public institutions, business and public in general; • Provision of analysis and development of the concept for establishment of an independent data protection supervisory authority, preparing legal opinions, comments, recommendations to the legislative and regulatory framework governing operations of the new authority. • Legal translation, proofreading of the various documents on data protection, such as: European regulations, recommendations and decisions issued by the EU and CoE regulatory and monitoring bodies, relevant cases of the ECtHR, information and educational materials. <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>	
<p>Lot 3: International standards of prevention of ill-treatment through implementation of the National Preventive Mechanism</p> <p>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 is as follows (not exhaustive):</p> <ul style="list-style-type: none"> • Assessment, amendment of the 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 legislation and domestic context of the NPM implementation; • Participation and contribution to the working group meetings, workshops, consultations, meeting with the national stakeholders as well conferences, seminars and other relevant events, including through moderating/facilitating discussions and delivering presentations on various issues of human right adherence and prevention of ill-treatment <u>with a special focus on psychiatric and social care institutions</u>; • Development and revision of the internal instructions regulating the NPM's activity including creation of the Code of Conduct for the NPM monitors etc.; • Development of the comprehensive practical training system with the basic courses for NPM staff, Ombudsperson's representatives in regions, public monitors on standards of human rights adherence, monitoring methodologies of different places of deprivation of liberty, reporting and recommendations' provision with due reference to the gender perspective; • Preparation of recommendations as regards improvement of legal and regulatory framework for provision of mental health care services in psychiatric care hospitals and social care homes in the light of the International human rights standards; • Preparation and delivering of training on methodology of adult learning with a further series of ToTs on basic NPM course for the Ombudsperson's Office staff; 	15

- Preparation of analysis on the current legal, social and administrative grounds for creation of rehabilitative mechanism for victims of torture in Ukraine;
- Preparation of analysis on the best European practices on creation of rehabilitative mechanism for victims of torture;
- Provision of recommendations, consultations and participation in the peer-exchange meetings on development of assessment methodology of human rights adherence at the territories under the war conflict;
- Provision of recommendations on development of efficient modalities of cooperation between the Ombudsperson's Office, law enforcement bodies, state authorities and local self-government bodies, as well as public monitors aimed at elimination and effective investigation of the cases of ill-treatment in line with the national strategies on combatting torture and ill-treatment;
- Development of information and guiding materials on standards of ill-treatment prevention, including medical, psychological and social aspects, in different places of detention 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.

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.

The above list is not considered exhaustive. The Council reserves the right to request deliverables not explicitly mentioned in the above list of expected services, but related to the field of expertise object of the present Framework Contract for the lot concerned.

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.

If contracted by the Council of Europe, the deliverables shall be provided personally by the persons identified in the offer of the Provider whose CVs have been presented to the Council of Europe (See section E. below), in accordance with the terms as provided in the present Tender File and Act of Engagement.

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 the selection procedure is completed, you will be informed accordingly. Deliverables will then be delivered on the basis of Order Forms submitted by the Council to the selected Provider (s), by post or electronically, on **an as needed basis** (there is therefore no obligation to order on the part of the Council).

Pooling

For each Order, the Council will choose from the pool of pre-selected tenderers for the relevant lot 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 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;

² It must strictly respect the fees indicated in the Financial Offer attached to the original Provider's tender as recorded by the Council of Europe. In case of non-compliance with the fees as indicated in the original Provider's tender, 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 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 above listed exclusion criteria are met;
- A certificate issued by the competent authority of the country of incorporation indicating that the fourth criterion is met;
- For legal persons, an extract from the companies register or other official document proving ownership and control of the Tenderer;
- For natural persons (including owners and executive officers of legal persons), a scanned copy of a valid photographic proof of identity (e.g. passport).

- are or are likely to be in a situation of conflict of interests;
- are or if their owner(s) or executive officer(s), in the case of legal persons, are included in the lists of persons or entities subject to restrictive measures applied by the European Union (available at www.sanctionsmap.eu).

Eligibility criteria

- University degree in law / political sciences / social sciences / international relations / public administration or related fields, medicine and medical science.
- At least 5 years of professional experience in the areas mentioned as topics of Lots 1-3 (consulting, academic research, analytical work, expert assessments, working as trainers, contribution to the events as speakers, etc.);
- Excellent knowledge of English;
- For legal persons and private entrepreneurs, being authorized to carry out the respective economic activities.

Award criteria

- Quality of the offer (80%) that means relevance of the experience and level of expertise of the tenderer, knowledge of regional and national context in the areas covered by specific Lots, including previous assignments with international organisations that would be regarded as an asset.
- Financial offer (20%).

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

Multiple tendering is not authorised.

F. NEGOTIATIONS

The Council reserves the right to hold negotiations with the bidders in accordance with Article 20 of Rule 1395.

G. DOCUMENTS TO BE PROVIDED

- A completed and signed copy of the **Act of Engagement**⁴ (See attached);
- A detailed **CV**, preferably in Europass Format, demonstrating clearly that the tenderer fulfils the eligibility criteria (e.g. education and professional experience);
- A list of all owners and executive officers, for legal persons only;
- Registration documents for private entrepreneurs (including those that prove the ability to carry out the respective types of economic activities);
- **A list of drafted expert opinions, legislation assessments, reports, training curriculum and materials** and other relevant documents **with active links** to them to the extent possible on the topics covered by the Lots 1-3 above produced in the last 5 years.

Act of Engagement, CV, list of owners should be submitted in English, other documents can 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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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.