

TENDER FILE / TERMS OF REFERENCE

(Competitive bidding procedure / Framework Contract)

Purchase of national consultancy services

Contract No. 8683/2020/01FC

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

The Council of Europe is currently implementing the project "Further support for the execution by Ukraine of judgments in respect of Article 6 of the European Convention on Human Rights" (hereinafter – the Project), which assists the Ukrainian authorities in providing accessible, full and effective justice through the execution of judgments of the European Court of Human Rights in which violations of Article 6 of the European Convention on Human Rights are established. The Project started in November 2019 and will continue until June 2021.

In that context, the Project is looking for Providers for the provision of national consultancy services in Ukraine 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, a self-employed sole trader, or a duly registered limited or unlimited liability company with a single employee/director.

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 services 8683/2020/01FC"**. 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 7 (seven) 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_National consultancy services 8683/2020/01FC"**

Type of contract ▶	Framework contract
Duration ▶	Until 30 June 2021, renewable until 31 August 2021
Deadline for submission of tenders/offers ▶	17 February 2020
Email for submission of tenders/offers ▶	DGI.Justice.Reform.Unit1@coe.int
Email for questions ▶	DGI.Justice.Reform.Unit1@coe.int
Expected starting date of execution ▶	05 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 Project "Further support for the execution by Ukraine of judgments in respect of Article 6 of the European Convention on Human Rights" aims to support Ukraine in providing accessible, full and effective justice through the execution of ECtHR judgments in which violations of Article 6 of the Convention are established. The major groups of such judgments include: improvement of access to justice, prevention of the non-execution of judgments of national courts, development of remedies concerning excessive length of judicial proceedings. The Project also supports Ukraine's Supreme Court in building effective procedures related to interaction with the European Court of Human Rights, with a focus on the implementation of Protocol No. 16 to the ECHR (as regards the requests for advisory opinions) and as to the re-opening of judicial proceeding following a judgment of the ECtHR. The Project started in November 2019 and will continue until June 2021.

The Council of Europe is looking for a maximum of 30 (thirty) Providers within 1 – 3 Lots (provided enough tenders meet the criteria indicated below) in order to support the implementation of the Project with a particular expertise on:

- National mechanisms for the execution of judgments of the European Court of Human Rights;
- Length of judicial proceedings;
- Access to justice and judicial independence.

This Contract is currently estimated to cover up at least 40 activities, to be held by 30 June 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 800 000 (eight hundred thousand) Euros and 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.

Lots

The present tendering procedure aims to select Providers to support the implementation of the Project and is divided into the following lots:

Lots	Maximum number of Providers to be selected
Lot 1: National mechanisms for the execution of judgments of the European Court of Human Rights	10
Lot 2: Length of judicial proceedings	10
Lot 3: Access to justice and judicial independence	10

Lot 1. National mechanisms for the execution of judgments of the European Court of Human Rights concerns but is not limited to the efficiency of Ukrainian procedures of the execution of judgments of the European Court of Human Rights, namely on the issue of non-execution of judgments of national courts; building effective procedures related to interaction with the European Court of Human Rights, with a focus on the re-opening of judicial proceeding following a judgment of the ECtHR and the implementation of Protocol No.16 to the ECHR;

Lot 2. Length of judicial proceedings concerns but is not limited to the development of effective remedies within the understanding of the European Court of Human Rights and other practical measures against the excessive length of judicial procedure with a purpose to accelerate the judicial proceedings and provide an appropriate compensation in cases of unduly lengthy proceedings;

Lot 3. Access to justice and judicial independence concerns but is not limited to the execution of respective judgments of the ECtHR on implementation of the Council of Europe standards on the independence of the judiciary through the amendments of the national legislation; on access to justice of shareholders in the proceedings concerning bankruptcy of a company; access to justice in cases with competing jurisdictions; access to the court of appeal in appeal review proceedings; review of finality and

questioning of *res judicata* status of judgments through requests for a re-opening of the proceedings; competing jurisdiction between the national courts and alternative dispute resolution, as well as other related issues of court practice.

The Council will select the abovementioned number of Providers 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:

Under Lot 1. National mechanisms for the execution of judgments of the European Court of Human Rights:

- Assessment of the existing and proposed legislation concerning the execution of the general measures within the Ivanov/Burmych judgments, development of recommendations on the scope and nature of the legislative amendments;
- Analysis of strategic documents developed by state institutions on the implementation of general measures for the execution of Ivanov/Burmych judgments of the ECtHR;
- Assessment of the existing and new statistical databases collecting, processing and analysing the data on the execution of national judgments, development of recommendations on its improving;
- Monitoring of the practice of the Supreme Court on the re-opening procedure and the procedure requesting an advisory opinion from the European Court of Human Rights.

Under Lot 2. Length of judicial proceedings:

- Analysis of the amended Ukrainian procedural codes to reflect the remedies against the excessive length of judicial procedure in compliance with the ECtHR judgments;
- Analysis of effective remedies introduced in the CoE member states and development of appropriate remedies to be introduced in Ukraine aimed at solving the problem of excessive length of judicial proceedings;

Under Lot 3. Access to Justice and Judicial Independence:

- Assessment of the national legislation and practices to ensure that the principle of judicial independence is respected and complied with;
- Analysis of the system of institutions and procedures concerning the issues of judicial independence and their compliance with the CoE standards on the judiciary, including the ECtHR judgment Oleksandr Volkov v. Ukraine;
- Analysis of the Ukrainian procedural legislation and the legislation on the judiciary to identify procedural barriers towards an appropriate access to justice;
- Development of the proposals and recommendations for overcoming the identified procedural barriers and improving the access to justice;
- Assessment/monitoring of the judicial and administrative practices to identify key problematic issues concerning access to justice;
- Preparing recommendations on the prevention and improving practice of the Supreme Court and other courts in Ukraine.

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 Providers, 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

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.

Exclusion criteria and absence of conflict of interests

(by signing the Act of Engagement, you declare on your honour not being in any of the below situations)³

Tenderers shall be excluded from participating in the tender procedure if they:

- have been sentenced by final judgment on one or more of the following charges: participation in a criminal organisation, corruption, fraud, money laundering;
- are in a situation of bankruptcy, liquidation, termination of activity, insolvency or arrangement with creditors or any like situation arising from a procedure of the same kind, or are subject to a procedure of the same kind;
- have received a judgment with res judicata force, finding an offence that affects their professional integrity or serious professional misconduct;
- do not comply with their obligations as regards payment of social security contributions, taxes and dues, according to the statutory provisions of their country of incorporation, establishment or residence;
- are or are likely to be in a situation of conflict of interests.

Eligibility criteria

- Master degree or equivalent in law and/or social sciences (political science, international relations and related fields);
- At least five years of professional experience in the areas mentioned as topics of Lots 1 – 3 (Judiciary, Human Rights and Rule of Law);
- Excellent knowledge of the Ukrainian language (at least Level C1 of the Common European Framework of Reference for Languages), knowledge of English will be an asset.

Award criteria

- Quality of the offer (80%), including:
 - Relevance of the educational and working experience of the tenderer in the areas covered by specific Lots, including previous assignments with international organisations that would be regarded as an asset, and proven record of expertise in the areas covered by this tender (45%);
 - Knowledge of the standards and recommendations of the Council of Europe in the fields of the judiciary, including mechanisms of the execution of judgments of the European Court of Human Rights (35%);
- 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;
- Registration documents, for legal persons or private entrepreneurs only;
- Motivation letter in English, highlighting the specific area of expertise of the tenderer (up to 1 page);
- A list of drafted expert opinions, legislation assessments, reports and other relevant materials (preferably with active links to them), but not less than 2, on the topics related to the lots stated in this tender. This list can be included in the tenderer's CV or submitted as a separate document.

³ The Council of Europe reserves the right to ask tenderers, at a later stage, to supply an extract from the record of convictions or failing that an equivalent document issued by the competent judicial or administrative authority of the country of incorporation, indicating that the first three above listed exclusion criteria are met, and a certificate issued by the competent authority of the country of incorporation indicating that the fourth criterion is met.

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.

Act of Engagement, CV and motivation letter shall be submitted only 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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