

TENDER FILE / TERMS OF REFERENCE

(Restricted consultation procedure / Framework Contract)

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Purchase of international consultancy services with regard to the analyses of the Ukrainian criminal justice legislation concerning its impact on the length of proceedings in criminal matters

Contract N° 8423/2018/283

The Council of Europe Project "Continued Support to the Criminal Justice Reform in Ukraine" (the Project) is implemented from September 2015 to June 2019 under the financial support of the Government of the Kingdom of Denmark. In that context, it is looking for Providers for the provision of international consultancy services with regard to the analyses of the Ukrainian criminal justice legislation concerning its impact on the length of proceedings in criminal matters 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 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 €25,000 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: Restricted consultations_Length of criminal proceedings_UA_February-June 2019.** 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: Questions_Restricted consultations_Length of criminal proceedings_UA_February-June 2019.**

| | |
|---|--|
| Type of contract ▶ | Framework contract |
| Duration ▶ | Until 30 June 2019 |
| Deadline for submission of tenders/offers ▶ | 11 February 2019 |
| Email for submission of tenders/offers ▶ | DGI-HRImplementation@coe.int |
| Email for questions ▶ | DGI-HRImplementation@coe.int |
| Expected starting date of execution ▶ | 13 February 2019 |

¹ The activities of the Council of Europe are governed by its [Statute](#) and its internal Regulations. Procurement is governed by the Financial Regulations of the Organisation and by [Rule 1333 of 29 June 2011 on the procurement procedures of the Council of Europe](#).

B. EXPECTED DELIVERABLES

Background of the Project

The assignment is to be carried out under the framework of the Council of Europe Project “Continued Support to the Criminal Justice Reform in Ukraine” funded by the Government of the Kingdom of Denmark (Project)².

Duration of the Project: September 2015 – June 2019.

The Project pursues the objective of supporting the primary target institutions, namely the Public Prosecutor’s Office (PPO) and the Coordination Center for Legal Aid Provision (CCLAP) under the Ministry of Justice (MoJ), to strengthen and apply their increased capacity to implement the criminal justice reform, ensuring full compliance with relevant Council of Europe standards. Furthermore, the action is aimed at contributing to increasing public participation in reforms and enhancing public trust in the concerned institutions. The Project provides a combination of legislative expertise and 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 new Criminal Procedure Code of Ukraine (CPC) adopted in 2012 was a positive development that paved the way for the comprehensive reform of the criminal justice. Still Ukraine remains in top-5 countries³ according to the number of complaints lodged before the European Court of Human Rights against a particular country.

The excessive length of judicial proceedings remains one of the core issues according to the ECtHR case-law against Ukraine. Six years after adoption of the new Ukrainian CPC, some criminal cases are under judicial consideration under the CPC of 1960, which means they last for at least 7 years now. The lengthy proceeding are concerned with the effectiveness and efficiency of the operation of prosecution service, other criminal justice stakeholders, including judiciary, and have impact the effectiveness of administration of justice as a whole.

The Council of Europe was requested by the Ministry of Justice of Ukraine to provide the legal analyses of the Ukrainian criminal justice legislation concerning its impact on the length of proceedings. Under this assignment the analyses of the criminal justice legislation concerned with the length of criminal proceedings (primarily, the criminal procedure code) in combination with the relevant internal regulatory framework of criminal justice stakeholder and judicial practice is expected.

The Council of Europe is looking for a maximum of 3 Service Provider/Consultant(s) (provided enough tenders meet the criteria indicated below) in order to provide legal analyses of the Ukrainian criminal justice legislation concerning its impact on the length of proceedings in criminal matters in the light of its compliance with the Council of Europe standards and best practices.

Provision of the final legal analysis of the criminal justice legislation on the length of proceedings prepared by 2 international experts working in a synergy with the local consultant would be expected by end March 2019. However, a further co-ordination with the Council of Europe Secretariat/Projet team, international and national consultants and local authorities/working group working on the the similar assignment, inter alia with respect to the length of civil proceeding etc., may be needed with regard to potential consolidation of the analyses into a comprehensive report before the latter’s submission by the Council of Europe to the Ukrainian authorities.

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 amount of the object of present tender **shall not exceed 25,000 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

This Contract is currently estimated to cover the following possible types of deliverables (non-exhaustive list):

- legal analyses of the Ukrainian criminal justice legislation concerning its impact on the length of proceedings (in combination with the relevant internal regulatory framework of criminal justice stakeholder and judicial practice) in criminal matters and providing recommendations for its compliance with the Council of Europe standards and best practices;
- provision of written contributions, ensuring coordination/consolidation tasks for the preparation of the comprehensive report/opinion in liaison with other international and local consultants, Council of Europe Secretariat, projet team, relevant authorities and working groups on the matter concerned;

² See more on the Project at: <https://www.coe.int/en/web/criminal-justice-reform>

³ See more on the ECtHR Statistics of 2018 at: https://www.echr.coe.int/Documents/Stats_analysis_2018_ENG.pdf

- participation/contributions/presentations during expert discussions with regard to the analyses of the Ukrainian criminal justice legislation concerning its impact on the length of proceedings in criminal matters and/or presentation of the analysis on length of criminal proceedings, to be held in Kyiv, Ukraine or elsewhere in Europe.

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.]

In terms of **quality requirements**, the pre-selected Service Providers 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

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. Tenderers are required to propose a fee for all types of deliverables, **otherwise they will be entirely and automatically excluded from the tender procedure.** 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 number of units ordered, calculated on the basis of the unit fees, as agreed by this Contract.

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).

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 quote⁴ (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 .

⁴ 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.

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)⁵

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

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

Eligibility criteria

- University Degree in law, human rights or other relevant for the thematic area;
- Professional experience of 7 years or more in the relevant thematic area (criminal law and procedure);
- Professional experience of 4 years or more in legislative review in the thematic area;
- Strong knowledge of the Council of Europe principles and standards and international legal frameworks related to the criminal procedure;
- Excellent oral and written English.

Award criteria

- Quality of the offer (90%), including:
 - Legal assessment, analysis and writing skills
 - Thematic expertise
 - Capacity to adapt to the context (i.e. general awareness and knowledge of the criminal justice legal framework in Ukraine and/or of the region)
- Financial offer (10%).

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

Multiple tendering is not authorised.

F. DOCUMENTS TO BE PROVIDED

- A completed and signed copy of the **Act of Engagement**⁶ (See attached);
- A detailed CV, preferably in Europass Format, demonstrating clearly that the tenderer fulfils the eligibility criteria;
- References to/copies of at least two examples of the previous work/deliverables/reference/links to publications, legal analyses, etc. relevant to the experience the tenderer claims;
- 2 (two) relevant reference contacts, of previous employers or clients (name, surname, position, phone number or e-mail);
- Registration documents, for legal persons only.

All documents shall be submitted in English, failure to do so will result in the exclusion of the tender.

If any of the documents listed above are missing, the tender will not be considered.

⁵ 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.

⁶ 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.

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.

* * *