

TENDER FILE / TERMS OF REFERENCE

(Competitive bidding procedure / Framework Contract)

Purchase of short-term consultancy services on strengthening accountability and professionalism in the judicial system in Montenegro – local consultants



The Council of Europe is currently implementing the Action "Accountability and Professionalism of the Judicial System in Montenegro" as a part of the European Union and the Council of Europe programmatic framework "Horizontal Facility for the Western Balkans and Turkey II".

In that context, it is looking for Provider(s) for the provision of 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 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: Local short-term consultancy services on strengthening accountability and professionalism in the judicial system in Montenegro.** 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: Q&A local short-term consultancy services in Montenegro**

Type of contract ►	Framework contract
Duration ►	Until 22 May 2022
Deadline for submission of tenders/offers ►	25 October 2019
Email for submission of tenders/offers ►	dg1.judsys.mtnegro@coe.int
Email for questions ►	dg1.judsys.mtnegro@coe.int
Expected starting date of execution ►	18 November 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 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 currently implementing the Action "Accountability and Professionalism of the Judicial System of Montenegro" as a part of the European Union and the Council of Europe programmatic framework "Horizontal Facility for the Western Balkans and Turkey II".

Beneficiaries of the Action are the Judicial Council, the Prosecutorial Council, the Supreme Court of Montenegro, the Supreme State Prosecutor's Office, the Center for Training in Judiciary and State Prosecution, the Ministry of Justice of Montenegro, the Chamber of Public Bailiffs, the Chamber of Notaries, the Bar Association, the Association of Court Experts, the Association of Court Interpreters and the Center for Mediation.

The objective of the Action is to further enhance professionalism, accountability and the overall quality of service of the judicial system of Montenegro.

The Action will be implemented until 22 May 2022 and the overall budget is 800.000 Euros.

The Council of Europe is looking for a maximum of 28 Provider(s) (provided enough tenders meet the criteria indicated below) in order to support the implementation of the project with national experience on the rule of law expertise and specifically in the following issues:

- Selection, appointment, evaluation and promotion of judges and prosecutors
- Ethics, liability, integrity and disciplinary rules and procedures for judges, prosecutors, advocates, notaries, public bailiffs, court experts and court interpreters
- Financial, administrative and human resource management, strategic planning and coordination, communication and external relations, as well as roles and responsibilities of press judges and prosecutors, and on-line media presence of the judiciary and state prosecution service
- Organisation, administration and management, external relations and communication, initial and in-service programme design and their continuous assessment and evaluation, training of trainers and mentors, e-learning programs for judges, prosecutors and other court staff of the training institutions for judges and prosecutors
- Roles and responsibilities of court presidents and heads of prosecution services
- Alternative dispute resolution and mediation, its system and legal framework, capacity and skills of mediators, quality standards for mediation, accountability and ethics in mediation, awareness raising and promotion
- Organisation, administration and management (including aspects of human resources and financial management), efficient functioning and coordination, strategic development and planning, communication and external relations of the Center for Mediation
- Other field of experience related reform of the justice system, independence, accountability and liability of the judiciary and prosecutors, and other legal professions, ADR and mediation services.

This Contract is currently estimated to cover up to 60 activities, to be held by 22 May 2022. 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 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 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: Research, analysis, legal review	8
Lot 2: Institutional capacity building	8
Lot 3: Support to the Judicial Training centre and training of judges, prosecutors, court staff, other judicial professions, as well as staff and trainers of the Judicial Training Center	12

Lot 1 concerns:

Conducting of research and analyses, revision of legal, ethical and disciplinary frameworks and development of policy documents and quality standards

Lot 2 concerns:

Institutional capacity building in terms of conducting functional analysis, supporting and contributing to improvement in functioning of judicial institutions

Lot 3 concerns:

Support to the Judicial Training centre and training of judges, prosecutors, court staff, other judicial professions, as well as staff and trainers of the Judicial Training Center in terms of implementation of strategic policies and measures and building capacities of the Center and trainers.

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:

Under Lot 1:

- Analyse and review specific laws, practices and regulations in Montenegro related to selection, appointment, evaluation and promotion of judges and prosecutors; ethical and disciplinary liability of judges and prosecutors,
- Analyse, review and develop ethical and disciplinary framework, rules and regulations, practices and codes of conduct for other legal professions such as advocates, notaries, public bailiffs, court experts and court interpreters,
- Analyse and review legal framework, practices, rules and regulations on alternative dispute resolution mechanisms, and ethics in mediation, as well as develop professional rules of conduct for mediators,
- Develop quality standards for mediation and methodology for evaluation of mediators' work,
- Review and development of policy documents (e.g. strategies, action plans, guidelines, in the areas mentioned above),
- Act as key speaker in seminars, workshops, conferences, roundtables and public debates on the topics and issues listed above, contributing with an expertise on European standards and best practices.

Under Lot 2:

- Conduct functional analysis and review of Judicial and Prosecutorial Councils and relevant judicial bodies, and the Center for Mediation with a view of providing recommendations for improvement and their compliance with European standards and practices,
- Support the Judicial and Prosecutorial Councils and the Center for Mediation, in the implementation of measures and strategic policies developed in the framework of this Action and addressing the issues and topics covered by the Action and mentioned above,
- Contribute to the improvement of the structure, functioning and fulfilling the responsibilities of judicial and prosecutorial self-governing and bodies responsible for court/prosecutorial services management in view of European standards and best practices,
- Act as key speaker in seminars, workshops, conferences, roundtables and public debates on the topics and issues listed above, contributing with an expertise on European standards and best practices.

Under Lot 3:

- Support the Judicial Training Center, in the implementation of measures and strategic policies developed in the framework of this Action and addressing the issues and topics covered by the Action mentioned above,
- Follow up on the implementation of the specific measures and recommendations concerning functioning, management and planning, and overall effectiveness of the Judicial Training Centre with a view of providing recommendations for improvement and their compliance with European standards and practices,
- Conduct a training needs assessments, develop new training programmes, their methodology and materials, as well as delivery of training of trainers (ToT),
- Support capacity building of the trainers of the Judicial training centre, conducting training of trainers and mentors of the Judicial Training Center,
- Conduct training sessions on issues and topics covered by the Action, listed above, for judges and prosecutors, and their self-governing bodies staff,
- Act as key speaker in seminars, workshops, conferences, roundtables and public debates on the topics and issues listed above, contributing with an expertise on European standards and best practices.

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

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.

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;
- are government employees or civil servants;
- 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

Lots 1 and 2

- University degree in law, political sciences, social sciences, international relations or related fields;
- At least 5 years of professional experience in areas related to the rule of law and the judiciary, legal professions, Alternative Dispute Resolution and Mediation at national or international level
- Excellent oral and written knowledge of Montenegrin

Lot 3

- University degree in law, political sciences, social sciences, international relations or related fields
- At least 5 years of professional experience in areas related to institutional capacity development of the judicial training institutions, and the training of the judiciary, prosecutors and legal professionals at national or international level
- Excellent oral and written knowledge of Montenegrin

Only bids submitted in English shall be deemed eligible.

Award criteria for all lots

- Quality of the offer (90%), including:
 - Relevance of the experience of the tenderer in the areas covered by this call (30%)
 - Drafting and analytical skills in the field of research, analysis and legal review (30%)
 - Knowledge of the national and regional context in the EU accession process focusing on rule of law and judicial reforms or knowledge of contexts that are relevant to the areas covered by this Action mentioned above (25%)
 - Knowledge of English (5 %)
- Financial offer (10%).

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
- A scanned copy of a valid photographic proof of identity (e.g. passport), for natural persons only (including from owners and executive officers of legal persons)
- Registration documents, for legal persons only
- A list of all owners and executive officers, for legal persons only;
- Motivation letter describing how the tenderer meets the eligibility and award criteria (see Section E. above) as well as the requirements of the expected services (see Section B above) including indication of the specific and/or preferred fields of expertise (max. 2 pages)
- Sample of a text (article, legal opinion, report, etc.) recently drafted by the tenderer, maximum length 5 pages
- Contact details of 3 (three) references.

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 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.