

TENDER FILE / TERMS OF REFERENCE

(Competitive bidding procedure / Framework Contract)

Purchase of national consultancy services

Contract N° 8716/2020/01FC



The Council of Europe is currently implementing and until *31 December 2021* a Project on "Supporting constitutional and legal reforms, constitutional justice and assisting the Verkhovna Rada in conducting reforms aimed at enhancing its efficiency" in the framework of the Council of Europe Action Plan for Ukraine 2018-2021. The objectives of the project are aimed at supporting the reform of electoral legislation and practice, supporting constitutional reforms and constitutional justice and assistance to the Verkhovna Rada in conducting reforms aimed at enhancing its efficiency. In that context, the Council of Europe is looking for Provider(s) for the provision of consultancy services to support the implementation of the Project activities 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, or a duly registered private entrepreneur in accordance with the Ukrainian legislation. 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: Call for national consultants_8716/2020/01FC.** 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 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 national consultants_8716/2020/01FC.**

Type of contract ▶	Framework contract
Duration ▶	Until 31 December 2021
Deadline for submission of tenders/offers ▶	15 July 2020
Email for submission of tenders/offers ▶	anastasiia.devos@coe.int
Email for questions ▶	anastasiia.devos@coe.int
Expected starting date of execution ▶	25 July 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](#).

EXPECTED DELIVERABLES

Background of the Project

The Council of Europe is currently implementing a Project "*Supporting constitutional and legal reforms, constitutional justice and assisting the Verkhovna Rada in conducting reforms aimed at enhancing its efficiency*" till 31 December 2021 in the framework of the Council of Europe Action Plan for Ukraine 2018-2021. The objectives of the project are aimed at supporting the reform of electoral legislation and practice, supporting constitutional reforms and constitutional justice and assistance to the Verkhovna Rada in conducting reforms aimed at enhancing its efficiency.

The Council of Europe is looking for a maximum of 20 Providers per Lot (provided enough tenders meet the criteria indicated below) in order to support the implementation of the project with a particular expertise on electoral and constitutional legislation as well as Council of Europe (Venice Commission) standards and recommendations in the field.

This Contract is currently estimated to cover up to 30 activities, to be held by 31 December 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. In case the duration of the Project implementation is extended, the Framework Contract will be automatically/tacitly renewed, annually. It will be renewable until the end date : 31 December 2024.

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: <i>Supporting constitutional and parliamentary reforms</i>	20
Lot 2: <i>Supporting the reform of electoral legislation and practice</i>	20

Lot 1 concerns the expert support in implementing constitutional and Parliamentary reforms in line with standards of the Venice Commission.

In 2019, Presidential and Parliamentary elections took place in Ukraine, which have had a direct impact on the political framework in the country. 70% of elected MPs are completely new faces, who do not have any experience in legislative and law-making processes and who need expert support from the side of Council of Europe and Venice Commission. Since they are elected, the new MPs have boosted the so called "turbo regime" in drafting and adopting laws and registering different amendments to the Constitution of Ukraine. These actions result in chaotic and low-quality amendments. With constant expert support and the possibility of requesting the Opinion of the Venice Commission, the Project is planning to contribute to the development of constitutional reform in Ukraine in line with European standards. The proposed actions aim at supporting the Ukrainian authorities in improving the national constitutional and legal framework as well as constitutional justice in the country.

Current topics of interest for the implementation of the constitutional reforms, rule of law in the activities of the parliament, law-making and legal practices in Ukraine include (but are not limited to this list of issues):

- Implementation of the principles of legality, legal certainty, proportionality and other components of the rule of law in the work of the Parliament of Ukraine on the basis of the Rule of Law Checklist (developed and approved by the Venice Commission);
- Analyze and make recommendations for the development of new draft laws and their implementation based on the components of the rule of law (Rule of Law Checklist);
- Understanding the specifics of law-making and law-enforcement activities and practices in other countries;

- Ways to introduce best practices in international law-making practice in Ukraine;
- Analysis of the system of normative legal acts of Ukraine, principles of its construction, legal nature and status of its separate elements;
- Prevention of violations of the rule of law and democracy in parliamentary activities;
- Development of standards for the assessment of regulations adopted by the Parliament of Ukraine, law enforcement agencies, primarily courts;
- Information support of law-making and law-enforcement processes;
- The issue of liability for law-making activities that do not meet the criteria of the Rule of Law Checklist;
- The issue of increasing the competence of parliamentarians in law-making activities;
- Standards and documents of the Council of Europe (Venice Commission) and their implementation in Ukrainian legislative practice;
- Analysis of amendments to the Constitution of Ukraine in accordance with international and European principles and standards;
- The nature of constitutional changes and the international experience of amending the Constitution;
- Comprehensive vision of prospects for improving the Constitution of Ukraine.

Lot 2 concerns the expert support in implementing the reforms of electoral legislation in line with standards of the Venice Commission.

On 19 December 2019, the text of the new Election Code was adopted by 330 votes during the winter plenary session of Verkhovna Rada. Nevertheless, experts and representatives of local NGOs still have a lot of remarks and proposals to improve the text of the Code especially in the Chapter devoted to the holding of local elections. The process of organising local elections in Ukraine is closely connected to the decentralization reform, in particular to the amalgamation into the united territorial communities, which fronts do not always correspond to the fronts of election districts. This creates certain difficulties for practical and legal aspects of election process. Moreover, after holding Presidential and Parliamentary elections in Ukraine, the newly elected President Volodymyr Zelensky has appointed new members of CEC, who will need a number of capacity-building activities in order to ensure that the electoral process for next local elections is transparent and meets the European standards. It will also have to ensure the normal operation of lower level commissions.

Current topics of interest for the reform of electoral legislation in Ukraine include (but are not limited to this list of issues):

- Electoral systems in parliamentary and local elections;
- Formation of election commissions;
- Complaints of violations of election legislation;
- Financial and logistical support for the preparation and conduct of elections;
- Information support of elections and pre-election campaigning (agitation);
- The role of social networks and the Internet in the election process;
- Preparation and conduct of voting and counting of votes;
- Citizen participation in elections;
- The issue of liability for violations of election law;
- Protection of the voting rights of IDPs and migrant workers;
- Ensuring a balanced representation of articles in elected bodies (ensuring equal rights and opportunities for women and men in the electoral process);
- Voter lists, voter registration, state voter register;
- Issues related to the competence of the Central Election Commission;
- Formation of a network of territorial representations of the CEC;
- Issues of financing political parties in Ukraine;
- Training and professionalization of election commission members;
- Introduction of the possibility of using electronic services and innovative technologies in the election process;
- Improving the election administration process;
- Elimination of discrepancies and gaps in the provisions of the Electoral Code of Ukraine, in particular, on appeals against decisions, actions or omissions relating to the election process; formation of election commissions; the procedure for nomination and registration of candidates; making a cash deposit; territorial organization of elections; establishing election results and other aspects of the election;
- Issues of legislative regulation of national and local referendums in Ukraine;
- Standards of the Council of Europe (Venice Commission) and Ukrainian legislation;
- Best practices in the electoral field.

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 provide expertise on the topics within the thematic areas in the form of deliverables as listed below (the lists are not exhaustive).

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

Under Lot 1:

- provide legal and policy advice in the field of the implementation of the rule of law in the activities of the parliament, as well as the law-making and law-enforcement activities in Ukraine: assess and comment on legal and policy documents, prepare overviews in line with the Council of Europe's (Venice Commission) standards and identified good practice;
- prepare analytical reports and recommendations;
- participate in events (meetings, round tables, workshops, seminars, working groups, trainings, conferences, high level meetings, study visits, regional events), prepare and make presentations;
- moderate/facilitate discussions;
- development of training materials, methodological manuals and other publications related to the implementation of the rule of law in the activities of the parliament, law-making and legal practices in Ukraine;
- developing methodologies, training courses, strategies and conducting needs assessment on specific institutional aspects related to the topic of the lot;
- other deliverables related to the topic above and as requested by the Council of Europe.

Under Lot 2:

- provide legal and policy advice in the field of the electoral legislation in Ukraine: assess and comment documents on elections and referenda, prepare overviews in line with the Council of Europe's (Venice Commission) standards and identified good practices;
- prepare analytical reports and recommendations;
- participate in events (meetings, round tables, workshops, seminars, working groups, trainings, conferences, high level meetings, study visits, regional events), prepare and make presentations;
- moderate/facilitate discussions;
- development of training materials, methodological manuals and other publications related to the electoral legislation and Election Code of Ukraine;
- developing methodologies, training courses, strategies and conducting needs assessment on specific institutional aspects related to the topic of the lot;
- other deliverables related to the topic above and as requested by the Council of 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 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 Ukrainian and/or English specified in concrete order of the Council (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).

B. 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.

C. 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.

D. 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's Degree (or equivalent: specialist) in law, public administration, public policy, political science, sociology, economics, or other sciences in a related field;
- Minimum five years of relevant experience at the national or regional level in the sphere of Ukrainian and international legislation, providing expert advice in the relevant field and/or preparation of analytical articles;
- Excellent Ukrainian language skills, good knowledge of English language.

Award criteria

Quality of the offer (90%), including:

Thematic knowledge and related experience (45%), including:

- in the field of the implementation of the rule of law in the activities of the parliament, law-making and law-enforcement activities in Ukraine,
- in the development and implementation of national policy and reform papers,
- in providing legal and policy advice to national, regional and local authorities,
- in drafting analytical articles on issues relating to parliamentary reform and legislation,
- in conducting training for members of the Ukrainian Parliament and MP's assistants
- excellent knowledge on the international standards in legislation sphere;

Level and relevance of the capacities of the tenderer (45%), including:

- research, analysis, writing and reporting;
- communication and team work, in an international environment.

- Financial offer (10%).

Multiple tendering is not authorised.

E. NEGOTIATIONS

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

F. DOCUMENTS TO BE PROVIDED

- A completed and signed copy of the **Act of Engagement**⁴ (See attached);
- A scanned copy of a valid photographic proof of identity (e.g. passport);
- A **detailed CV in English**, demonstrating clearly that the tenderer fulfills the eligibility criteria;
- Registration documents for private entrepreneurs only (including those that prove the ability to carry out the respective types of economic activities);

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.

- A letter of motivation (why you are interested in participating in the activities of Council of Europe):
- A list of drafted expert opinions, legislation assessments, reports and other relevant materials with active links to them to the extent possible (but not less than 2) on the topics covered by this tender.

Act of Engagement, CV and motivation letter shall be submitted in English, failure to do so will result in the exclusion of the tender. Other supporting documents can be provided in English or Ukrainian.

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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