

# TENDER FILE / TERMS OF REFERENCE

(Competitive bidding procedure / Framework Contract)

## Purchase of national consultancy services

### Contract N° 8807/2022/01FC



The Council of Europe is currently implementing and until 31 December 2023 a Project on "Supporting constitutional and legal reforms, constitutional justice and assisting the Verkhovna Rada in conducting reforms aimed at enhancing its efficiency" (Phase 3) in the framework of the Council of Europe Action Plan for Ukraine. 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 Europe<sup>1</sup>, the Organisation shall invite to tender at least three potential providers for any purchase between € 2, 0 0 0 ( o r € 5, 0 0 0 f o r i n t e r n a t i o n a l s e r v i c e s ) a n d €**

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 legal person or consortia of legal and/or natural persons.

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\_8807/2022/01FC.** 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\_8807/2022/01FC.**

<b>Type of contract ▶</b>	Framework contract
<b>Duration ▶</b>	Until 31 December 2023
<b>Deadline for submission of tenders/offers ▶</b>	<b>25 September 2022</b>
<b>Email for submission of tenders/offers ▶</b>	<b>anastasiia.devos@coe.int</b>
<b>Email for questions ▶</b>	<b>sergiy.tkachenko@coe.int</b>
<b>Expected starting date of execution ▶</b>	01 October 2022

<sup>1</sup> 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 a Project "Supporting constitutional and legal reforms, constitutional justice and assisting the Verkhovna Rada in conducting reforms aimed at enhancing its efficiency" (Phase 3) till 31 December 2023 in the framework of the Council of Europe Action Plan for Ukraine. 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 20 activities, to be held by 31 December 2023. 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.

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

#### ***Lot 1 Expert support in implementing constitutional and Parliamentary reforms in line with standards of the Venice Commission.***

Russia attacked the sovereignty, territorial integrity and political independence of Ukraine. But its armed attack is also an attack on the Ukrainian constitutional order. Ukraine is a constitutional democracy governed by the rule of law. Russia uses armed force to unconstitutionally change Ukrainian territory, disregarding the rules, institutions and procedures defined by the Constitution of Ukraine. The protection of Ukraine consists, among other things, in the protection of constitutional democracy and the rule of law. The central institution of the Ukrainian constitutional system is the Verkhovna Rada, which, according to Article 75 of the Constitution of Ukraine, is the only body of legislative power in Ukraine and which continues to work during the state of war and emergency, and which requires comprehensive support from the expert community and international partners.

On June 23, 2022, the leaders of the European Union at the summit in Brussels approved the decision to grant Ukraine the status of a candidate for accession. This historic decision only confirms that Ukraine is part of a large European family, and that Ukraine has come a long way before that, proving to everyone its commitment to the values of democracy, human rights and the rule of law.

However, this decision to grant candidate status was based on the conclusion of the European Commission regarding Ukraine's compliance with the requirements for a candidate state. At the same time as the candidate status was approved, Brussels put demands on Kyiv regarding the implementation of reforms, providing a list of seven points that Ukraine must fulfill in order to maintain the candidate status, some of which relate to judicial reform and reforming the Constitutional Court of Ukraine, and which will be the direct focus of the project.

Topics within this lot will include but are not limited to the following:

- Peculiarities of the Parliament's activity and decision-making during martial law and state of emergency
- 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 based on the Rule of Law Checklist (developed and approved by the Venice Commission)
- Conducting analysis and providing recommendations on the development of new draft laws and their implementation based on the components of the rule of law (Rule of Law Checklist)
- Understanding the peculiarities of law-making and law-enforcement activities and practices in other countries
- Ways of introducing the best examples of international law-making practice in Ukraine
- Analysis of the system of regulatory legal acts of Ukraine, the principles of its construction, the legal nature and status of its individual elements
- Prevention of violations of the rule of law and democracy in parliamentary activity
- Development of standards for the assessment of normative legal acts adopted by the Parliament of Ukraine, law enforcement bodies, primarily courts
- Informational support of law-making and law-enforcement processes
- The issue of responsibility for law-making activity that does not meet the criteria of the Rule of Law Checklist
- The question of increasing the competence of parliamentarians regarding law-making activity
- Standards and documents of the Council of Europe (Venice Commission) and their implementation in Ukrainian legislative practice
- Analysis of changes to the Constitution of Ukraine for compliance with international and European principles and standards
- Nature of Constitutional changes and international experience of amending the Constitution
- A comprehensive vision of prospects for improvement of the Constitution of Ukraine.

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

Elections are a tool of peacetime. However, it is already necessary to think about what risks the war unleashed by the Russian Federation against Ukraine brought for the future electoral process in Ukraine. Already now it is necessary to talk, think, analyze the ways of development of electoral legislation and practices that must be implemented after the victory of Ukraine in order for it (electoral legislation) to be an adequate tool for the development of Ukrainian society and meet the main principles and standards of the Council of Europe, the Venice Commission and the best European practitioners

Topics within this lot will include but are not limited to the following:

- Elections and suffrage in Ukraine before and after the war
- Electoral systems in parliamentary and local elections
- Formation of the composition of election commissions
- Appealing violations of election legislation
- Financial and logistical support for the preparation and conduct of elections
- Informational support for elections and pre-election campaigning (campaigning)
- The role of social networks and the Internet in the election process;
- Preparation and conduct of voting and counting of voters' votes
- Participation of citizens in elections
- The issue of responsibility for violations of election legislation

- Protection of voting rights of IDPs and labor migrants
- Ensuring a balanced gender representation in the electoral 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 representative offices of the CEC.
- The issue of financing political parties in Ukraine
- Training and professionalization of the activities of election commission members
- Introduction of the possibility of using electronic services and innovative technologies in the election process
- The issue of improving the election administration process
- Elimination of inconsistencies and gaps in the provisions of the Election Code of Ukraine regarding the appeal of decisions, actions or inactions related to the election process; forming the composition of election commissions; procedure for nomination and registration of candidates; making a cash deposit; territorial organization of elections; establishment of 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).

### 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 quote<sup>2</sup> (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 ~~dis~~ **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)<sup>3</sup>

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, terrorist financing, terrorist offences or offences linked to terrorist activities, child labour or trafficking in human beings;
- 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 an entity created to circumvent tax, social or other legal obligations (empty shell company), have ever created or are in the process of creation of such an entity;
- have been involved in mismanagement of the Council of Europe funds or public funds;
- are or appear to be in a situation of conflict of interest;
- are retired Council of Europe staff members or are staff members having benefitted from an early departure scheme;
- have not fulfilled, in the previous three years, their contractual obligations in the performance of a contract concluded with the Council of Europe leading to a total or partial refusal of payment and/or termination of the contract by the Council of Europe.

#### 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 or respective documents of allocated staff for companies;

<sup>2</sup> 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 reserves the right to ask tenderers, at a later stage, to supply the following supporting documents:

<sup>3</sup> 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 and sixth 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.

- 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;
- work in an international environment.

- Financial offer (10%).

The Council reserves the right to hold interviews with 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<sup>4</sup>** (See attached);
- A scanned copy of a valid photographic proof of identity (e.g. passport) for natural person;
- A **detailed CV in English**, preferably in Europass Format, demonstrating clearly that the tenderer fulfils the eligibility criteria or company profile for legal persons including detailed CVs in English of allocated experts;
- Registration documents for private entrepreneurs and legal persons only (including those that prove the ability to carry out the respective types of economic activities);
- 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, company profile 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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<sup>4</sup> 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.