

TENDER FILE / TERMS OF REFERENCE

(Competitive bidding procedure / Framework Contract)

Purchase of consultancy services (national consultants) in the area of the prison reform in Ukraine



2020/AO/01

The Council of Europe (CoE) and the European Union (EU) are currently implementing, until 9 July 2021, a joint project "Strengthening the protection of Human Rights in Ukraine". In that context, it is looking for Provider(s) for the provision of consultancy services (national consultants) in the area of the prison reform 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 legal person except consortia.

Tenders shall be submitted **by email only** (with attachments) **to the email address indicated in the table below, with the following reference in subject: "SPERU national short-term consultants"**. 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 - SPERU national short-term consultants"**

Type of contract ►	Framework contract
Duration ►	Until 09 July 2021
Deadline for submission of tenders/offers ►	06 April 2020
Email for submission of tenders/offers ►	PolicePrisons.Projects@coe.int
Email for questions ►	PolicePrisons.Projects@coe.int
Expected starting date of execution ►	01 May 2020

B. EXPECTED DELIVERABLES

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](#).

Background of the Project

The Council of Europe (CoE) and the European Union (EU) are currently implementing Joint Action "Strengthening the protection of Human Rights in Ukraine". The Action is composed of three components (1. "Support freedom of Media in Ukraine"; 2. "Strengthen the Ombudsperson's Capacity to Protect Human Rights" and 3. "Further Support to Penitentiary Reform in Ukraine" (SPERU)).

The component 3, SPERU, aims to contribute to the longstanding execution process in the [Nevmerzhitsky](#) group of cases against Ukraine regarding poor detention conditions and inadequate medical care in various detention facilities pending the supervision at the Committee of Ministers (CM) since 2005. The latest CM [Interim Resolution](#) underlines the urgent need for the authorities to adopt a comprehensive long-term strategy capable of leading to the resolution of these problems of a structural nature, with clear and binding timelines for the adoption of the relevant measures and the provision of the necessary human and financial resources.

Given the above, SPERU focuses on three outcomes:

- Outcome 1: measurable improvements in authorities' capacity to execute the ECtHR judgments regarding penitentiary service in Ukraine.
- Outcome 2: improvement of the development and piloting of modern prison management methods and instruments for more rehabilitative regimes.
- Outcome 3: better alignment of healthcare provisions with European standards with a particular focus on detainees with mental disorders, HIV/AIDs and transmissible diseases.

The Council of Europe is looking for a maximum of 30 Provider(s) (provided enough tenders meet the criteria indicated below) in order to support the implementation of the project with a particular expertise on the implementation of the judgments of the European Court of Human Rights (ECtHR) concerning the Ukrainian penitentiary system, prison management and the provision of health care in prisons with a particular focus on detainees with mental disorders, HIV/AIDs and transmissible diseases.

This Contract is currently estimated to cover up to 90 activities, to be held by 9 July 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 1 173 200 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: improvement of the authorities' capacity to execute the ECtHR judgments regarding the penitentiary system of Ukraine	10
Lot 2: development of modern prison management methods and instruments for more rehabilitative regimes	10
Lot 3: better alignment of healthcare provisions with European standards with a particular focus on detainees with mental disorders, HIV/AIDs and transmissible diseases	10

Lot 1 concerns: overcrowding and poor material conditions in police establishments, pre-trial detention centres and prisons; inadequacy of medical care in general and for infectious diseases in particular as well as lack of effective preventive and compensatory remedies; international penitentiary standards and their effective implementation at the domestic level; awareness-rising of the relevant domestic actors in the area of the ECHR (European Convention on Human Rights) requirements, as interpreted by the ECtHR.

Lot 2 concerns: prison management, including management and reorganisation of tasks in chosen pilot prisons, dynamic security, prevention of inter-prisoner violence, prison regimes, prison human resources,

prison staff performance management, initial and continuous training of the prison staff and developed capacities of the prison training centre.

Lot 3 concerns: organisation of health-care - including mental health care - in prisons; ethics for medical staff in prison; training of medical and non-medical prison staff, suicide and self-harm prevention, technical specificities of medical equipment.

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:

- a) Draft analytical reports (assessments, analysis, reviews) on existing legislation, mechanisms, rules and procedures related to the implementation of the ECtHR judgements and CM decisions/interim resolutions concerning penitentiary service in Ukraine and make recommendations on better compliance with the relevant CoE standards in this regard;
- b) Analyse the domestic mechanisms of cooperation/coordination of the legislative, executive and judicial branches of the power;
- c) Draft training curricula, training modules and training materials, manuals, guidebooks and operational guidelines;
- d) Deliver training on specific topics and based on developed training materials;
- e) Deliver presentations to the conferences, round-tables, seminars, training sessions, workshops, consultation meetings and other relevant events with national stakeholders, including through moderating/facilitating discussions;
- f) Facilitate the development of desired deliverables as related to the above and as requested by the Council of Europe.

Under Lot 2:

- a) Prepare legal opinions, legal expertise, guidelines, regulations, comments, recommendations, reports on legal acts, by-laws, institutional internal rules and regulations and policy documents (drafts and in force);
- b) Conduct needs assessment on specific activities (lato sensu – training needs, risk and needs, piloting models of prison management, treatment programmes, etc.) and documents (lato sensu – curricula, guidelines, risk and needs assessment tools, laws etc.);
- c) Provide technical expertise for development/use of specific tools;
- d) Provide expertise and written contributions on pilot initiatives;
- e) Participate and provide written contributions to working group drafting sessions for development of specific documents and materials on given topics;
- f) Draft strategies, action plans, policy documents on specific topics;
- g) Draft training curricula, training modules and training materials, manuals, guidebooks, operational guidelines, etc.;
- h) Deliver training on specific topics and based on developed training materials;
- i) Deliver presentations to the conferences, round-tables, seminars, training sessions, workshops, consultation meetings and other relevant events with national stakeholders, including through moderating/facilitating discussions;
- j) Facilitate the development of desired deliverables as related to the above and as requested by the Council of Europe.

Under Lot 3:

- a) Prepare legal opinions, legal expertise, guidelines, regulations, comments, recommendations, reports on legal acts, by-laws, institutional internal rules and regulations and policy documents (drafts and in force);
- b) Conduct needs assessment on specific activities (lato sensu – training needs, treatment programmes, provision of health care in prisons, including mental health care etc.) and documents (lato sensu – strategies, policy documents, curricula, guidelines, laws etc.);
- c) Provide technical expertise for development/use of specific tools;
- d) Participate and provide written contributions to working group drafting sessions for development of specific documents and materials on given topics;

- e) Draft of strategies, action plans, policy documents on specific topics;
- f) Draft of training curricula, training modules and training materials, manuals, guidebooks, operational guidelines, guidelines, treatment programmes;
- g) Deliver training on specific topics and based on developed training materials;
- h) Deliver presentations to the conferences, round-tables, seminars, training sessions, workshops, consultation meetings and other relevant events with national stakeholders, including through moderating/facilitating discussions;
- i) Provide written contribution, technical advice and expertise for procurement of necessary equipment on specific needs;
- j) Facilitate the development of desired deliverables as related to the 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 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

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 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

For lot 1:

- University degree in the relevant field (human rights/international law/political studies and other related fields);
- At least 5 (five) years of professional experience in the field related to human rights, rule of law and/or judiciary; good knowledge of Ukrainian legal framework and context; knowledge of European human rights standards, case law of the ECtHR and the execution process will be an advantage;
- Excellent oral and written Ukrainian and English languages.

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;
- For natural persons (including owners and executive officers of legal persons), a scanned copy of a valid photographic proof of identity (e.g. passport).

For lot 2:

- University degree in the relevant field (law/political studies or human rights/ social studies/ prison studies/ management/ human resources/psychology and other related fields);
- At least 5 (five) years of professional experience, acquired at the national level, in one or more of the following areas: prison management, dynamic security, prevention of inter-prisoner violence, prison regimes, prison human resources, performance management, initial and continuous training of the prison staff and organisation of prison training centre, review and comment on legislation and internal regulations;
- Excellent oral and written Ukrainian and English languages.

For lot 3:

- University degree in the relevant field (medicine/ psychiatry/ psychology/ law/ social studies and human rights/management of health care);
- At least 5 (five) years of professional experience, acquired at the national level, in one or more of the following areas: organisation of health-care - including mental health care - in prisons; ethics for medical staff in prisons; training of medical and non-medical prison staff, suicide and self-harm prevention, technical specificities of medical equipment, review and comment on legislation and internal regulations;
- Excellent oral and written Ukrainian and English languages.

Award criteria

- Quality of the offer (90%), including:
 - *Criterion 1:* Thematic expertise in the relevant area, including the knowledge of the standards and recommendations of the Council of Europe in the areas covered by this call (30%);
 - *Criterion 2:* Previous similar assignments with relevant domestic bodies or international organisations (10%);
 - *Criterion 3:* Knowledge of the national and/or regional context in the areas covered by this call (50%);
- 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 list of all owners and executive officers, for legal persons only;
- 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);
- A Motivation letter demonstrating the tenderer's understanding of the Council of Europe needs and describing how the tenderer meets the eligibility and award criteria above (1 page maximum);
- At least two examples of the previous work/deliverables reference/links to publications, legal assessments/analyses, reports, studies, etc. relevant to the experience the tenderer claims (in English);
- Three relevant references, from previous employers or clients (name, surname, phone number or e-mail).

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.

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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