**TENDER FILE / TERMS OF REFERENCE**

**(Competitive bidding procedure / Framework Contract)**

**Purchase of legal and technical consultancy in the area of personal data protection in the Southern Mediterranean countries**

**[*Contract N°* (if any)]**

The Council of Europe is currently implementing until 31/12/2025, jointly with the European Union, a co-operation Project on "Protecting human rights, rule of law and democracy through shared standards in the Southern Mediterranean" (South Programme V). One of the components of the project focuses on the protection of personal data. The Council o Europe and the European Union closely work together with the beneficiary countries of the southern Mediterranean (Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestine\* and Tunisia) to promote a strong common legal space that would be aligned with European standards and respect the priorities and specific needs of each country.

In that context, it is looking for Provider(s) for the provision of provision of intellectual services to be requested by the Council on an as needed basis.

1. 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[[1]](#footnote-2), 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 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: Tender for the supply of consulta,cy services in personal data protection – 2023.** 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 - Tender for the supply of consulta,cy services in personal data protection – 2023**

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| **Type of contract ►** | Framework contract |
| **Duration ►** | Until 31 December 2023 |
| **Deadline for submission of tenders/offers ►** | **15 April 2023** |
| **Email for submission of tenders/offers ►** | Anne.boyer-donnard@coe.int |
| **Email for questions ►** | Imen.bahri@coe.int |
| **Expected starting date of execution ►** | 01 May 2023 |

EXPECTED DELIVERABLES

**Background of the Project**

The component focused on the protection of personal data of the South V Programme "Protecting human rights, rule of law and democracy through shared standards in the Southern Mediterranean" aims at enlarging the common legal space between Europe and the countries of the south of the Medirterranean on the basis of relevant legal standards.

This programme comprises several elements to support local authoritiesend plusieurs éléments visant à soutenir les locl and regional :

* Legislation : analysis of existing legislation, support to the revision and/or adoption of specific laws, on the basis of an assessment of the specific needs and situation of each country ;
* Awareness raising : at regional and national levels, raising the awareness of stakeholders to the protection of privacy and personal data and promoting the Council of Europe Convention for the protection of individuals with regard to the processing of personal data (Convention 108+) as appropriate legal and operational framework;
* Implementation of the legislation : promoting existing or new laws on personal data protection, notably through support of the setting up of supervisory bodies and support to existing bodies;
* Capacty building: general and sectorial capacity building in the area of personal data protection through workshops, meetings, conferences, study visits…
* Networking: support to the setting up of a network / working as a netrwork of countries and data protection supervisory authorities in the region, with the objective of building and enhancing the sought comon legal space.

*Types of expected deliverables*

The Council of Europe is looking for a maximum of 10 (ten) Provider(s) (provided enough tenders meet the criteria indicated below) in order to support the implementation of the project with a particular expertise on personal data protection.

The intellectual services covered by this competitive bidding procedure will consist in:

* Assessment of the legal and institutional framework of the countries of the Southern Mediterranean region in the aera of personal data protection in the loight of European standards;
* Identification of possible shortcomings in each legal and institutional system in terms personal data protection;
* Identification of the specific needs of each country regarding the protection of personal data ;
* A study of the specific needs of each beneficiary country of the South V Programme, with an objective of alignment of their legal framework on data protection with the internationally recognised standards, taking into consideration their national priorities and in co-ordination with the national authorities;
* Propose an operational action plan for the promotion of the right to the protection of personal data and the alignment of the relevant legal framework with the internationally recognised standards in the beneficiary countries, taking also into consideration the regional scope of the South V Programme;
* Identiy key national actors able to promote the right to the protection of personal data and be leaders for positive changes.

Each selected consultant will work on 2 or 3 of the beneficiary countries of the Programme.

This Contract is currently estimated to cover up 15 activities, to be held by 31/12/2025. 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.

**Scope of the Framework Contract**

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

* Carry out documentary research ;
* Analyse laws and draft laws ;
* Analyse the institutional framework of the countries concerned by the South V Programme;
* Identify relevant national governmental and non-governmentel contacts persons in the area of personal data protection;
* Take part in meetings, including with partnes and stakeholders, in situ or via videio-conferencing platforms ;
* Draft analysis reports and operational recommendations;
* Propose action plans at national and regional level for the achievement of the objectives of the South V Programme.

The above list is not considered exhaustive. The Council reserves the right to request deliverables not explicitly mentioned in the above list of expected services, but related to the field of expertise object of the present Framework Contract.]

In 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 (UK) or in French (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).

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.

1. 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.]

1. 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 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 5 (five) 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[[2]](#footnote-3) (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.

1. 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]](#footnote-4)

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;
* 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](http://www.sanctionsmap.eu)).

*Eligibility criteria*

* University education in law, political science, international relations or other relevant superior education
* Work experience at high level in a data protection supervisory authority or in relevant government department
* Professional experience (minimum 2 years) in activities demonstrating an excellent knowledge of the Council of Europe Convention for the protection of individuals with regard to automatic processing of personal data (Convention 108)and its modernised version (Convention 108+) and of the European Union reglementary texts regarding personal data protection.

*Award criteria*

* Quality criteria (80%):
  + Demonstrated expertise in the fields of personal data protection;
  + Ability to respect fixed dealines;
  + Ability to adjust to context and cultural constraints;
  + Demonstrated understanding of the constraints of national and international technical assistance programmes;
  + Professional command of English and French ; a solid professional knowledge of Arabic would be an asset;
  + Ability to work in team, strong interpersonal and communication skills.
* Financial offer (20%).

The Council reserves the right to hold interviews with tenderers.

Multiple tendering is not authorised.

1. NEGOTIATIONS

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

1. DOCUMENTS TO BE PROVIDED

* **A completed and signed copy of the** **Act of Engagement[[4]](#footnote-5)** (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 motivation lettre underlining the expertise in the area of personal data protection and demonstrating how the tenderer meets the award criteria;
* A scaned copy of an identification document bearing a photography (e.g. passeport) for physical persons (including owners and executives of legakl entities)

**All documents shall be submitted in English or French, 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.**

**\* \* \***

1. The activities of the Council of Europe are governed by its [Statute](https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680306052) 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](https://search.coe.int/intranet/Pages/result_details.aspx?ObjectId=090000168094853e).

   \*This designation shall not be construed a designation of a state of Palestine and is without prejudice to the individual positions of council of Europe member state on this issue

   . [↑](#footnote-ref-2)
2. It must strictly respect the fees indicated in the Act of Engagement. In case of non-compliance with these fees, the Council of Europe reserves the right to terminate the Contract with the Provider, in all or in part. [↑](#footnote-ref-3)
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 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;

   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). [↑](#footnote-ref-4)
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. [↑](#footnote-ref-5)