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| Contract No. ► | 2020AO48 |
| Project ID / Sector ► | DIrectoRATe GEneral HumaN Rights and Rule of law  HUMAN RIGHTS POLICY AND COOPERATION DEPARTMENT  HELP UNIT |
| Council of Europe contact point ► | Ana MEDARSKA – LAZOVA, Deputy Head of HELP Unit, [ana.medarska-lazova@coe.int](mailto:ana.medarska-lazova@coe.int) |

**Act of Engagement**

**(International public call for tenders / One-off contract)**

This Act of Engagement lays down the terms and conditions of the One-off contract between the Provider (as described below) and the Council of Europe[[1]](#footnote-1) for the provision of services related to the hosting and maintenance of the Council of Europe (HELP) e-learning platform

The signature of this Act of Engagement by the tenderer alone shall not constitute or imply any sort of contractual commitment on the part of the Council of Europe. This Act shall become contractually binding only **upon signature by a Council of Europe authorised staff member** (see Section B below).

Tenderers shall:

1. Fill in the below sections **Contact details of the Provider** and **Bank details**. Ensure that the “Name” of the Provider and the “Account holder” are the same.

2. Fill in the column “Fees” of the table of fees (See Section A);

3. Sign the Act of Engagement (See Section B) and send two completed and signed copies to the Council, together with the other supporting documents (see Tender File Section VI).

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| **Contact details of the Provider** | Name and address  ► |  | | | |
| Representative  ► |  | | | |
| Contact person  ► |  | | | |
| VAT n° (if any)  ► |  | | | |
| Country and registration n° (if any)  ► |  | | | |
| Email (Contact person)  ► |  | | | |
| Phone number (Contact person)  ► |  | | | |
| **Bank details** | Account holder  ► |  | | |
| IBAN n°  (if available)  ► |  | Full bank account n° (for non-IBAN countries only) ► |  |
| Bank name  and Branch  ► |  | BIC/SWIFT Code  ► |  |
|  | Bank Address  ► |  | Account currency ► |  |

**A. Terms of reference/Table of fees**

The Council of Europe Programme for **H**uman Rights **E**ducation for **L**egal **P**rofessionals (**HELP**) is aimed at enhancing the capacity of judges, lawyers and prosecutors, and increasingly other relevant professionals (law-enforcement officers, prison and probation officers, etc.), to apply the European human rights standards in their daily work in all 47 Council of Europe member States and beyond. This is done through the **HELP online courses** that cover a range of human rights topics.

The **Council of Europe is looking for one (1)Service Provider** (provided that at least one tender meets the criteria indicated below) in order to support the implementation of the online training activities with a particular expertise on hosting, maintaining and providing technical support to the proper functioning of an e-learning platform.

The selected Provider will be required to perform all of the services listed below at the outlined conditions:

1. **Hosting of the Council of Europe HELP online platform**

The Service Provider will be expected to **host** the HELP online platform <http://help.elearning.ext.coe.int/> (‘the platform’), as of 1 January 2021.

The provision of this service includes the hosting of a Moodle based LMS e-learning platform, with the following characteristics:

* Minimum of 3 TB of disk space.
* Capacity to integrate a range of materials from varying sources including SCORM based e-learning content, videos, images, podcasts, PDF and Word files and other documents developed in Microsoft Office applications. Capacity to provide other e-learning tools and functionalities: fora, messaging functionalities, users’ progress monitoring and reporting etc.
* Sufficient system performance and bandwidth to support a registered user base of 50,000 active users (expected by end 2020), including an estimated 60% active users’ annual growth. An unlimited number of users will be an asset. The minimum number of concurrent users to support will initially be 1,000 and it should be possible to seamlessly scale up system performance if/when it becomes needed.
* Functionality on mobile applications and tablets.
* Daily incremental back-up.
* Weekly full back-up.
* Provision of a 6-months report on user statistics (users by countries, by HELP virtual pages [or HELP courses], by countries within the same course and by users per course/country that complete the course as self-study and obtain the so-called HELP ‘statement of accomplishment’).
* Retaining the existing overall design of the HELP online platform.

In addition:

* All tools, plug-ins and functions of the HELP online platform shall be made available for translation and adaptation by the Council of Europe into other languages and then inbuilt in the HELP online platform. The outcome should be the interface of the HELP Platform in the following languages: **French, Russian, Turkish, Ukrainian and Spanish**, with the possibility of the user to choose the language of the interface. Inclusion of **Arabic and Serbian** will be a strong asset. The translations of the relevant text of the interface will be provided by the Council of Europe.
* Any developments to the platform must respect the already developed architecture and secure the stability of the system while maintaining functionality and preserving content.
* All software must be open-source. Customization or purchase costs of specific plug-ins are of the entire and sole responsibility of the service provider.

The platform should be provided as a SaaS (Software as a Service). Provision of statistics upon request (maximum twice per year) on number of users and time spent by users on the platform will be an asset. Personalised Learning Designer will likewise be an asset.

DATA PROTECTION REQUIREMENTS:

The proposed solution will have to comply with the following data protection requirements:

* Personal data, including back-up, shall be stored within the European Union;
* Appropriate security measures, including encryption, shall be put in place to ensure confidentiality and integrity of the personal data;
* Possibility to restrict access to the personal data and management of access rights shall be envisaged;
* Upon the expiry of the term of services, all personal data shall be returned to the Council or transferred to a different service provider upon the Council’s instructions.

Tenderers are informed that a Data Processing Agreement (DPA) will be signed with the selected Service Provider.

REVERSIBILITY:

In the event of termination of the contractual relationship, regardless of the reason for this, the Service Provider undertakes to return to the Council of Europe all the data belonging to it (to the HELP online platform), in a standard readable format that would not pose problems in an equivalent environment.

The Moodle documentation specifies in detail the recommended method for migrating a Moodle site: <https://docs.moodle.org/39/en/Moodle_migration#Backup_the_Moodle_database_on_the_old_server>

This shall be carried out free of charge, upon the first request of the Council of Europe, and within 7 days of receiving such a request.

The Council of Europe shall actively work with the Service Provider in order to facilitate the data retrieval.

The Service Provider shall ensure that the Council of Europe may continue using the data, without interruption, directly or with the assistance of another service provider.

Upon the Council of Europe request, the Service Provider may provide additional technical support to the Council of Europe and/or a third party designated by it, within the framework of reversibility.

This additional support shall be invoiced at the Service Provider’s rate in effect when the reversibility notification is issued.

TRANSITION:

The Service Provider undertakes to upload all the data from the previous Service Provider, in order to ensure uninterrupted functioning of the HELP online platform.

**The data transfer has to be completed before 31 December 2020,** to ensure the interrupted functioning of the HELP Platform **as of 1 January 2021.**

**Tenderers should specify the amount of time (in days, counting both working and non-working) in which they would complete this transfer/transition in case they are selected as Service Provider.**

**The costs of the transfer of the platform from the current Service Provider should be included in the overall fee proposed by the Tenderers.**

**The training history of existing users must be retained.**

**The Tenderers are invited to submit a project plan for the migration, including potential risk management.**

The Moodle documentation specifies in detail the recommended method for migrating a Moodle site: <https://docs.moodle.org/39/en/Moodle_migration#Restore_the_database_backup_to_the_new_server>

The Council of Europe shall actively work with the Service Provider in order to facilitate the data retrieval.

The Service Provider shall ensure that the Council of Europe may use the platform using the data from the current platform, without interruption, directly or with the assistance of another Service Provider at the designated date for the switchover from the current platform to the new (Go Live Date).

The Service Provider shall reload the data into the system of the Hosting Provider. The Service Provider should provide all information and support required to ensure that a full migration can be accomplished.

The Service Provider should provide all technical support necessary to the Council of Europe to make the new platform fully operational with the data from the current platform.

Backup will be delivered in full to the HELP Secretariat at the end of the contract.

1. **Maintenance and support of the Council of Europe HELP online platform**

The Service Provider will also be expected to **maintain** the HELP online platform and to provide **technical support** for its uninterrupted proper functioning. The provision of these services includes:

* Ensuring the accessibility of the HELP online platform and of its content and functionalities round the clock (24 hours a day, 7 days a week).
* Ensuring yearly update to the latest version of the Moodle LMS platform. This update should be automatized, without requiring any intervention from the HELP Secretariat.
* Providing ongoing and corrective maintenance of the HELP online platform.
* Provide technical support service accessible during working hours, from Monday to Friday, 8:00-19:00 Central European Time (CET).
* Ensuring uninterrupted proper functioning of the HELP online platform during initial takeover of the services.
* Assisting the HELP Secretariat with the initial takeover of the services and with the use of the administration interface.
* Providing small-scale design updates on the HELP online platform (interventions not surpassing 10% of the overall design of the HELP online platform per year).
* Supplying to the HELP Secretariat information about access to the server and to the hosted content.
* 1-day training session for the HELP Secretariat on the functioning of the platform.
* Establishing and maintaining channels for the HELP Secretariat and/or the Council of Europe Directorate of Information Technology to immediately report any anomalies with the platform functioning.
* Resolve anomalies within the following time limits:

|  |  |  |  |
| --- | --- | --- | --- |
| Type of anomaly | **Time-limit for intervention** | **Time-limit for bypass** | **Time-limit for final correction** |
| **Blocking** | 2 hours | 4 hours | 24 hours |
| **Non-blocking** | 4 hours | 24 hours | 4 days |

Unavailability of the hosted content and failure to comply with the time limits for action or remedial action (bypass and final correction), as defined above, may result in the application of a penalty as follows:

* 4 to 10 hours of unavailability or failure to comply with the time limits for action or remedial action: 100 euros per hour.
* More than 10 hours of unavailability or failure to comply with the time limits for action or remedial action: 200 euros per hour.

These penalties have the character of contractual penalty payments. They do not result in discharge of obligations under the Act of Engagement or have a compensatory character. They therefore apply without prejudice to the damages which might be charged to the Service Provider in compensation for the damage caused to the Council of Europe. They also apply without prejudice to the possibility for the Council of Europe to terminate the contract.

These penalties will be payable on first demand by the Council of Europe, which may, if it so wishes, validly offset those penalties against the sum due to the Provider.

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The requirements laid down above are minimum requirements. The Tenderers can provide better specifications and/or improved and/or additional features, but cannot provide offers which do not comply with the minimum requirements.

The offered solutions must conform and/or be compatible with any relevant standards, or with the commonly accepted best production practices currently in force, including any ISO, IEC or other relevant standards that may apply.

The following two options: MULTITENANCY and CAS server (SSO authentication) would be an asset:

* MULTITENANCY - the possibility to include separate multiple tenants including custom theme and frontpage. Each tenant site could have a separate domain name, and a customised login page. The Council of Europe would set-up DNS for each tenant separately.
* CAS server (SSO) authentication: The Council of Europe is using a Web Single Sign-On (WebSSO) solution for access to its web applications. For Moodle sites used by Council of Europe staff, the Council of Europe could activate the Moodle CAS server (SSO) authentication as well as CAS accounts synchronisation.

Tenderers are required to demonstrate that their offers comply with the tender file requirements, by providing necessary documentation such as catalogues, brochures, manuals and/or booklets that provide detailed technical specifications of the offered solution, in order to enable the Council of Europe to check the information provided in the offer.

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The tenderers are requested to indicate **their yearly fee for the hosting, maintenance and technical support of the HELP online platform**. The fee will cover all expected services as described above.

Prices indicated below are final and not subject to review, throughout the duration of the contract.

The Council of Europe may contact the Service Provider for additional services - related and complementary to the services subject to this contract - not exceeding 10% of the value of the contract for hosting, maintenance and technical support of the Platform.

Prices are indicated in Euros without VAT. For the VAT regime to be mentioned on the invoice(s), please refer to Appendix II. **Tenders proposing a fee above the exclusion level will be entirely and automatically excluded from the tender procedure.**

**For the VAT regime to be mentioned on the invoice, please refer to Section B below. For other invoicing requirements, please refer to Appendix II.**

The Provider shall indicate its proposed fee(s) in the box(es) below.

|  |  |  |  |
| --- | --- | --- | --- |
| **Deliverables ▼** | **Deadline for**  **delivery ▼** | **Fees**  **▼** | **Exclusion level**  **▼** |
| Annual fee inclusive of Hosting, maintenance and technical support services for the Council of Europe HELP online Platform as described above | 31/12/2021 |  | 100.000 EUR |
| TOTAL ► | |  |  |

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| --- | --- |
| This Contract takes effect as from the date of its signature by both parties is concluded until: | 31/12/2021 |
| The contract shall be tacitly renewable on an annual basis.  At the end of its initial term, the contract will be tacitly renewed for a further term of one year, and shall renew each year thereafter, unless either party notifies the other in writing of its intention to terminate the contract at the latest 6 (six) months before the renewal date.  The contract shall not be renewed beyond: | 31/12/2023 |

**B. Declaration of Agreement and Signature**

I, the undersigned, acting on my own behalf or as a representative of the Provider indicated below, hereby:

* Declare having the authority to represent the Provider;
* Declare that the information provided to the Council under this procedure is complete, correct and truthful.
* Acknowledge, in signing this document, that I have been notified that if any of the statements made or information provided prove to be false, the Council reserves the right to exclude the tender concerned from the procedure or to terminate any existing contractual relations related to the latter;
* Express consent to any audit or verification that the Council may initiate by any means on the information provided under this procedure;
* Declare that neither I or the Provider I represent is in any of the situations listed in the exclusion criteria as reproduced in the Tender Files;
* Declare that neither I, nor the Provider I represent, are in a situation of a conflict of interests or a potential conflict of interest in relation to this procedure. I have been notified and understand that a conflict of interests may arise, in particular, from economic interests, political or national affinities, emotional or family ties or any other type of shared relationship or interest;
* Undertake to update the Council with significant information changes within a reasonable time. Significant information changes include, but are not limited to change of legal status, ownership, name and address, loss of licence of registration, filing bankruptcy, suspension or debarment by any national or local governmental agency or assimilated, inclusion 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));
* Accept without any derogation all the terms laid down in the Tender File and understand that the signature of the Act of Engagement **shall constitute signature of the contract** with the Council subject to the selection of the tender by the Council and the signature of this Act by a representative of the Council.

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| The Provider shall **fill in this part**, **print the document**, **sign in the last box** below and send two completed and signed copies to the Council, together with the other supporting documents (see Tender File Section VI). | | | | | |
|  | | | | | |
|  | **For the Provider ▼** | |  | **For the Council of Europe ▼**  On behalf of the Secretary General of the Council of Europe | |
| Signature | Signatory (Name, Function and Entity) ► |  |  | Signatory (Name, Function and Entity) ► |  |
| Provider ► |  |  | % of advance payment accepted ► |  |
| Place of signature ► | In |  | Place of signature ► | In |
| Date of signature ► | \_\_\_ / \_\_\_ / \_\_\_\_\_\_ |  | Date of signature ► | \_\_\_ / \_\_\_ / \_\_\_\_\_\_ |
| Signature  ► |  |  | Signature► |  |
|  |  |  |  | PO Number ► |  |
|  |  |  |  | FIMS Number ► |  |

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| **Invoicing** (This part is reserved for the Council of Europe) | | | |
| **Invoicing Address** ► | | | **Council of Europe, Avenue de l’Europe, F – 67075 Strasbourg Cedex** |
| ☐ | The invoice shall indicate prices ***net fixed amount.*** | | |
| ☐ | The invoice shall be established ***excluding tax.*** | | |
| ☐ | The invoice shall be established ***excluding tax***, the following shall appear on the pro-forma invoice and on the final invoice: According to Article 2 b) of Directive 2001/115/EC: “Intra-Community service/sale to an exempted organisation: Articles 143 and 151 of Directive 2006/112/EC."  The Council of Europe shall provide a VAT exemption certificate to the service provider/supplier with each order. The exemption certificate should be retained by the Provider/Supplier and presented to the relevant tax authorities to justify tax-free invoicing. In case the Council of Europe is not in a position to provide the said certificate, the invoice shall be established including all taxes. | | |
| ☐ | The invoice shall *be established* ***including all taxes***. The invoice shall indicate the total amount without taxes, the rate and the amount of the VAT and the total amount ‘including all taxes’.  For services physically carried out in France, Providers who do not have a French VAT number must register with the French Fiscal Authorities: Directorate for non-resident tax – DINR / [sie.entreprises-etrangeres@dgfip.finances.gouv.fr](mailto:sie.entreprises-etrangeres@dgfip.finances.gouv.fr) / 10, rue du Centre / 93465 Noisy-le-Grand Cedex / + 33 (0)1 57 33 85 00 | | |
| ☐ | The invoice shall be established ***including all taxes*** (French VAT at the applicable rate). Providers/suppliers are required to register for VAT purposes at the VAT Mini One Stop Shop (VAT MOSS) of their choice. The invoice shall indicate the total amount without taxes, the rate and the amount of the VAT and the total amount ‘including all taxes’. The invoice shall also stipulate the following statement: “French VAT collected by the Provider and paid to the Mini One-Stop shop in [Address/Country] under the MOSS identification number [No. XX]”. | | |
| Comments | |  | |
| The Provider shall invoice the Council as indicated above. For any question, please contact the contact point of this contract. For aspects other than VAT, the invoice shall conform to the applicable legislation. Unless agreed otherwise between the parties, the invoice shall be in the currency specified in the table of fees (See Section A). | | | |

**Appendix I – Non-negotiable legal clauses**

*As indicated in Section F of the Tender File, Tenderers are required to submit a copy of their legal conditions. Tenderers are informed, however, that the* ***Council considers the legal clauses indicated below as non-negotiable****. Such clauses shall, therefore, be included in the legal conditions submitted by the Tenderers and shall replace potentially conflicting clauses.*

**Disclosure of the terms of the contract**

1. The Provider is informed and gives an authorisation of disclosure of all relevant terms of the contract, including identity and price, for the purposes of internal and external audit and to the Committee of Ministers and to the Parliamentary Assembly of the Council with a view to these latter discharging their statutory functions, as well as for the purpose of meeting the publication and transparency requirements of the Council of Europe or its donors. The Provider authorises the publication, in any form and medium, including the websites of the Council of Europe or its donors, of the title of the contract/projects, the nature and purpose of the contract/projects, name and locality of the Provider and amount of the contract/project.
2. Whenever appropriate, specific confidentiality measures shall be taken by the Council to preserve the vital interests of the Provider.

**Use of the Council of Europe’s name**

The Provider shall not use the Council’s name, flag or logo without prior authorisation of the Council.

**Disputes**

1. Any dispute regarding this Contract shall - failing a friendly settlement between the Parties - be submitted to arbitration.
2. The Arbitration Board shall be composed of two arbitrators each selected by one of the parties, and of a presiding arbitrator, appointed by the other two arbitrators; in the event of no presiding arbitrator being appointed under the above conditions within a period of six months, the President of the Tribunal de Grande Instance of Strasbourg shall make the appointment.
3. Alternatively, the parties may submit the dispute for decision to a single arbitrator selected by them by common agreement or, failing such agreement, by the President of the Tribunal de Grande Instance of Strasbourg.
4. The Board referred to in paragraph 2 of this Article or, where appropriate, the arbitrator referred to in paragraph 3 of this Article, shall determine the procedure to be followed.
5. If the parties do not agree upon the law applicable the Board or, where appropriate, the arbitrator shall decide *ex aequo et bono* having regard to the general principles of law and to commercial usage.
6. The arbitral decision shall be binding upon the parties and there shall be no appeal from

**Intellectual Property Rights over Hosted Content**

1. The Hosted Content and all the rights attached thereto, particularly intellectual property rights, remain the sole property of the Council of Europe. The domain names which make access to the Hosted Content possible also remain the sole property of the Council of Europe. The contract confers on the Service Provider no rights of any kind whatsoever in respect of the Hosted Content and the Council of Europe’s domain names.
2. The Service Provider undertakes, on its own behalf and on behalf of the persons working for it, that it will not misappropriate, reproduce, make use of or communicate to third parties the Hosted Content. The only copies which the Service Provider is authorised to make are back-up copies.

**Appendix II – VAT, Invoicing and Payment Requirements**

**VAT requirements**

1. Should the Provider not be subject to VAT, the amount invoiced shall be net fixed amount. Should the Provider be subject to VAT, the amount shall be invoiced as indicated in paragraphs 2 to 5.
2. Should the deliverables be taxable in France, the amount invoiced shall be VAT inclusive.
3. Should the deliverables be taxable in another EU country, and unless otherwise agreed between the Parties, the Council will provide the Provider with an exemption certificate prior to the signature of the contract. The exemption certificate sent by the Council of Europe should be retained by the Provider and presented to the relevant tax authorities to justify tax-free invoicing. In accordance with Article 2 b) of Council Directive 2001/115/EC, the following should be stated in the invoice: “Intra-Community sale/service to an exempted organisation: Articles 143 and 151 of Council Directive 2006/112/EC” and should indicate the final total amount excluding VAT. In case the CoE will not be in a position to provide the said certificate, the Council will pay the invoice with VAT included.
4. Should the deliverables be taxable in a non-EU country, the amount invoiced will not include VAT if the local (national) legislation allows for it, or if the Council of Europe enjoys tax exemption through other means in the country concerned. Otherwise, it shall include VAT.
5. For the provision of “online services”, should the Provider be established either in an EU country (other than France) or in a non-EU country, the invoiced amount shall include French VAT at the applicable rate. The invoice shall indicate the total amount without taxes, the rate and the amount of the VAT and the total amount ‘all tax included’. The invoice shall also stipulate the following statement: “Intra-community sale/service: French VAT collected by the Provider and paid to the Mini One-Stop shop in [Address/Country]”.

**Invoicing and payment**

1. The Provider shall issue an invoice, or a request for payment, every 3 months, calculated on a prorata basis. Such an invoice, or request for payment, shall be issued in triplicate and in the currency specified in the Table of fees, in conformity with the applicable legislation.
2. Before accepting the Deliverable(s), the Council reserves the right to ask the Provider to submit any other document or information that may serve the purpose of establishing that the Contract has been duly executed.
3. The payment for the Deliverables to be paid by the Council shall be made within 60 calendar days of submission of the invoice described in paragraph 1, subject to the submission of the Deliverable(s) described in the Terms of reference and its/their acceptance by the Council.
4. Advance payments are subject to a written agreement between the parties, on an order by order basis, and should be paid within 60 calendar days upon signature of the Order concerned.

1. Which has its seat Avenue de l’Europe, 67075 Strasbourg Cedex, France [↑](#footnote-ref-1)