**Supporting Montreux Document Implementation:**

 **Concept Note for Contract Guidance Tool**

1. **Background and Rationale:**

States, international organisations (IOs), humanitarian and non-governmental organisations, as well as private clients are increasingly relying on private security companies (PSCs) and private military and security companies (PMSCs) to complement their security needs. As a result, there is an expressed need for more practical and unified guidance regarding the contracting of PSCs/PMSCs.[[1]](#footnote-1) Effective contracts can be a powerful tool to reinforce high standards, including human rights and international humanitarian law (IHL). The [Montreux Document on private military and security companies](http://www.mdforum.ch/) dedicates an entire section to Good Practices for Contracting States and addresses procedures for the selection of and contracting with PMSCs.[[2]](#footnote-2) The UN Guiding Principles on Business and Human Rights also refer to States’ procurement activities as providing “unique opportunities to promote awareness of and respect for human rights by those enterprises.”[[3]](#footnote-3)

A diversity of States, international organisations, non-governmental actors, and private clients of PSCs/PMSCs (such as multinational companies) have expressed a need for practical tools to assist in overcoming key challenges when contracting with PSCs/PMSCs. In addition to developing the [Legislative Guidance Tool for States to Regulate PMSCs](http://www.ppps.dcaf.ch/en/legislative-guidance-tool-0), the Geneva Centre for the Democratic Control of Armed Forces (DCAF) has acknowledged that contracts and contracting procedures are complementary to effective legislation of PSCs/PMSCs and can assist in filling some regulatory gaps.

On this basis, DCAF seeks to develop a Contract Guidance Tool to support these diverse actors to include human rights and IHL considerations when drafting contracts for private security services. The Contract Guidance will draw on international norms and standards as well as reflect the principles of responsible contracting and procurement practices to provide clear and practical guidelines.

1. **Objectives:**

The primary objective of this Contract Guidance will be to provide **simple, concise and practical guidance** for States and IOs, non-governmental actors, and private clients on structuring their contracts and contracting procedures for private security services, drawing on international norms and standards.

The tool will be **based on lessons and good practices from existing contracting procedures**, and will raise awareness on the key role of effective contracting processes which integrate respect for international human rights law and compliance with IHL.

1. **Envisioned Outcomes:**

This Contract Guidance will consider the potential of States, IOs, non-governmental actors, and private clients to impact general contracting practices and to influence directly PSC/PMSC standards. The Contract Guidance will provide a bridge between research on good practices and the practical needs of actors with roles in national procurement and contracting processes. By translating knowledge and research into the usable format of a practical tool, the Guidance will provide implementation support for those actors writing contracts with PSCs/PMSCs.

1. **Methodology:**

To better understand the most appropriate and relevant format that could speak to a global audience, DCAF seeks to launch an open and inclusive consultation process. The aim of the Contract Guidance is to provide a practical, simple tool. To this end, we wish to gather as many direct inputs as possible from relevant actors. The hereby attached questionnaire represents a key element of research and we would highly value your inputs and contributions to this project. Further interviews will be conducted to gather additional insight from a wide range of relevant actors on both existing PSC/PMSC contracting frameworks, gaps, challenges and needs for additional guidance.

1. **Guidelines for completing the questionnaire:**
* You may fill out the questionnaire by typing directly in the spaces below.
* One consolidated response from your organisation is sufficient. However, please feel free to distribute this questionnaire to any person or department that may be interested in providing input to this project.
* Please attach any documentation, policies, regulations, or model contracts that you consider important for completing your responses.
* The questionnaire responses will not be shared externally but will be used as research to inform the development of the tool. Specific responses will not be attributed.
* Please send your responses electronically to the email PPPs@dcaf.ch, or by post to:

 Geneva Centre for the Democratic Control of Armed Forces (DCAF)

 Public-Private Partnerships Division

 P.O. Box 1360

 CH-1211 Geneva 1

 Switzerland

**Questionnaire**

**on Contracts with PSCs/PMSCs**

**General Contracting Framework:**

1. Does your organisation use a specific tool to address the contracting of private security services? If so, please share details relating to this tool. For example, this can be in the form of specific guidance to the contracting officer (such as a template, model contract or a check-list). We would be grateful if you could attach this guidance/tool to this questionnaire or provide us a web link where publicly available.

Type here to enter text.

1. If there is no specific guidance for contracting private security services, please indicate the general framework applicable to contracts with PSCs/PMSCs.

Type here to enter text.

**Contract Award Process:**

1. Please indicate what selection criteria are used by contracting departments/officers when choosing companies to contract with for private security services.

Type here to enter text.

1. Does your organisation’s private security tendering process contain automatic exclusion criteria? If so, please list the specific exclusion criteria.

☐Yes ☐No

Type here to enter text.

1. Does the procurement process prevent selecting a bidder solely on the “most economically advantageous” criteria? If so, what criteria other than economic advantage must be considered, and how are those factors balanced with the best price? Please indicate how you assess and weigh the individual tender criteria and ultimately award the contract.

Type here to enter text.

**Contractual Terms:**

1. Does your organisation require the contracted PSC/PMSC to carry out screening of personnel? Please describe the requirements for such screening and indicate how this is overseen / enforced in the contracts.

☐Yes, it is required in the organisation’s policies or regulations

☐ Yes, it is required in the contract ☐ No

Type here to enter text.

1. In contracts, does your organisation stipulate minimum training requirements of personnel by companies?

☐Yes ☐ No

1. Does your organisation require private security company activities to be performed in compliance with the following rules:
2. Use of force and firearms?
☐ Yes, in the organisation’s policies or regulations ☐Yes, in the contract ☐ No
3. International human rights?

☐Yes, in the organisation’s policies or regulations ☐Yes, in the contract ☐ No

1. International humanitarian law?

☐Yes, in the organisation’s policies or regulations ☐Yes, in the contract ☐ No

Please indicate if contractors are required to provide company policy manuals on the above.

Type here to enter text.

**Contract Monitoring and Accountability:**

1. Do contracts stipulate performance review or other monitoring of the PSC/PMSC and its personnel? If so, please elaborate and indicate if monitoring is periodic or regular.

☐Yes ☐ No

Type here to enter text.

1. Transparency: Is the information regarding the contracting of private security services made public?

☐Yes ☐ No

Type here to enter text.

1. What kinds of sanctions are stipulated in the contract in the event of contractor misperformance and/or misconduct, breach of contract, or violation of international or national law? Please indicate if and how sanctions are applied.

Type here to enter text.

1. Do you require companies to have grievance mechanisms (e.g., internal, third party)? If so, please describe.

☐Yes ☐ No

Type here to enter text.

**General Questions:**

1. For what services/ under what circumstances is contracting of private security initiated?

Type here to enter text.

1. From your unique perspective, what kind of additional implementation tools would be most useful to you for the contracting of PSC/PMSC services? Please indicate specific content of a tool and/or format (for example: a study structured around challenges/recommendations, a model contract template, summary of good practices, check-list, and evaluation criteria etc.).

Type here to enter text.

1. DCAF, “Putting Private Security Regulation into Practice: Sharing Good Practices on Procurement and Contracting,” Public-Private Partnerships Series 2, 2016. [↑](#footnote-ref-1)
2. See *The Montreux Documents on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict,* Part Two, Section A. [↑](#footnote-ref-2)
3. See UN, *Guiding Principles on Business and Human Rights; Implementing the United Nations « Protect, Respect and Remedy » Framework,* 2011, Art. 6. [↑](#footnote-ref-3)