

Request for Proposals (RFP)

RFP Number:	#StartupCityCahul-2023-003
Issuance date	February 23, 2023
Deadline for offers	March 16, 2023, 15:00 Chisinau time
Description	Provision of Audit Services for the EU4Moldova: Startup City Cahul Project as per Sida requirements
For	EU4Moldova: Startup City Cahul
Funded By	European Union in Moldova through a delegated agreement with Sweden
Issued by	National Association of ICT Companies (ATIC)
ATIC Point of Contact:	csirbu@ict.md - Sirbu Cristina, Procurement Specialist contabil@ict.md – Violeta Bordeniuc, Financial Manager

SECTION 1: INTRODUCTION AND INSTRUCTIONS TO OFFERORS

1.1 Acronyms and Definitions

ATIC	National Association of ICT Companies
Donor	Organization that finances the implemented project/program
EU	European Union
ICT	Information and Communication Technology
IT	Information Technology
Project	Project implemented by ATIC
STEM	Science Technology, Engineering and Math
ToR	Terms of Reference
VAT	Value Added Tax

1.2 Introduction:

THE MOLDOVAN ASSOCIATION OF ICT COMPANIES (“ATIC”) is looking for eligible and responsible firms to perform the audit of 13797 EU4Moldova: Startup City Cahul as described in this RFP and the details specified in the Annex 1 - Sida’s Standard Terms of Reference for Annual Audit of Project/Programme Support including ISRS 4400.

The objective of the assignment is to audit the financial report on the EU4Moldova: Startup City Cahul Project for the period from July 2022 to June 2023 submitted to Sida and to express an audit opinion according to ISA, applying ISA 800/ISA 805, on whether the financial report of 13797 EU4Moldova: Startup City Cahul is in accordance with the Cooperation partner’s accounting records and Sida’s requirements for financial reporting.

1.3 Offer Deadline and Submission Protocol:

Offers must be submitted not later than **March 16, 2023, 15:00, Chisinau time.**

Offers received after the specified time and date will be considered late and will NOT be evaluated by ATIC.

Electronic Submission Only:

The only acceptable submission method is electronic – via email.

Any email offers must be sent to the following address:

to: csirbu@ict.md – Sirbu Cristina, Procurement Specialist

cc: contabil@ict.md – Violeta Bordeniuc, Financial Manager

Offers must be submitted in two (2) separate .pdf format files corresponding to the:

- 1) Technical Proposal (Forms A-E and other mandatory documents required by this solicitation documents). There may be one or several PDF files with relevant names.
- 2) **Financial Proposal (should be password-protected)**. ATIC will request the password if the proposal is deemed eligible and technically compliant. Any submission of the financial proposal that is not password-protected will be disqualified. Also, any submission of the financial proposal together with the password will be disqualified.

Please refer to the RFP number in any response to this RFP.

All offers must be prepared in one of the 3 languages: English, Romanian or Russian.

Offers received after the specified time and date will be considered late and will NOT be reviewed by ATIC.

1.4 Questions and Requests for Clarifications:

Questions regarding the technical or administrative requirements of this RFP may be submitted **no later than March 13, 15:00 Chisinau time** by email to csirbu@ict.md, cc contabil@ict.md. Questions must be submitted in writing; phone calls will not be accepted. Questions and requests for clarification—and the responses thereto—that ATIC believes may be of interest to other offerors will be circulated to all RFP recipients who have indicated an interest in bidding.

Only the written answers issued by ATIC will be considered official and carry weight in the RFP process and subsequent evaluation. Any verbal information received from employees of ATIC, or any other entity should not be considered as an official response to any questions regarding this RFP.

1.5 Technical and Cost Volume

1.5.1 Technical Volume

The Technical Volume should describe in detail the offeror's proposed plan for providing the services and commodities described in the specifications found in Annex 1. It should demonstrate a clear understanding of the work to be undertaken and the responsibilities of all parties involved. The plan should include details on equipment, personnel, and subcontractors that the offeror will make available to carry out the required activities. The plan should also provide details on the anticipated delivery schedule, including an estimated completion date.

At a minimum, the Technical Volume must contain the following required completed documents:

- Application form (FORM A)
- Letter of Transmittal (see FORM B)

- Certificate of Independent Price Determination (see FORM C)
- Certification Regarding Responsibility Matters (see FORM D)
- Evidence of Responsibility Statement (see FORM E)
- Copy of official registration and business license if applicable (also for subcontractors – if any)
- Bank Account Award Certificate - copy – (issued by the bank)
- Certificate of regular payment of taxes - copy - or certificate issued by the Tax Inspectorate on double taxation records
- Company profile
- Past performance information:
 - *List of audit assignments completed within the last 3 years, ongoing assignments to be mentioned separately, if any (provide beneficiary, year). Highlight the audit assignments provided as per International Standards on Auditing (ISA), and experience with the audit of NGOs, international Organizations, donor funded projects, etc.*
 - *2 reference letters from the last 3 years;*
- Staffing capacity to perform the proposed services, describing in particular the experience with the audit of NGOs, international Organizations, donor funded projects, etc. CVs and qualification of audit team planned to be assigned (Senior audit, auditor). CVs should include details on audits carried out by the applicable staff, including ongoing assignments indicating capability and capacity to undertake the audit. Auditor's qualification certificates to be attached;
- Description of proposed services/technical approach with a clear timeline;

FORMS A-E – attached word file to this RFP.

Subcontracting arrangements:

If the assignment to be performed by the offeror requires the hiring of subcontractors, the proposal must clearly identify the subcontractor(s), contact information of subcontractor(s), and the work they will perform. ATIC will not refuse a proposal based on subcontractors' use; however, ATIC retains the right to approve or reject the specific subcontractors selected.

All electronic copies of documents in the Technical Volume must be in PDF, Microsoft Word, or Microsoft Excel format.

The information contained in the Technical Volume should not contain any cost- or price-related information.

1.5.1 Cost Volume

Considering the assignment's complexity, the cost proposal determines which proposals represent the best value and serve as a basis of negotiation before award of a contract.

It should offer a clear understanding of the amount of work, diverse types of activities (if applicable), but offer a fixed price for the assignment, considering all the details.

If relevant, the cost proposal shall also include a budget narrative that explains the basis for the estimate of every cost element or line item. Supporting information must be provided in sufficient detail to allow for a complete analysis of each cost element or line item. ATIC reserves the right to request additional cost information if the evaluation committee has concerns about the reasonableness, realism, or completeness of an offeror's proposed cost.

The agreement under which this procurement is financed does not permit the financing of any taxes, VAT, tariffs, duties, or other levies imposed by any laws in effect in Moldova. No such taxes,

charges, tariffs, duties, or levies will be paid under an order resulting from this RFP.

Currency of Proposal: Financial offers must be presented in **MDL** or **EUR** only. No other currencies accepted. (For evaluation purposes, ATIC will convert the cost proposals into EUR at the NBM exchange rate valid on the RFP deadline).

Format of Financial Proposal: In formulating its financial proposal, the offeror should be guided by the *FORM F – Financial Offer (attached to the RFP)*.

Partial Quotes: not allowed.

1.6 Validity Period

Offers must remain valid for at least 150 calendar days after the RFP deadline.

1.7 Eligibility of Offerors

By submitting an offer in response to this RFP, the offeror certifies that it and its principal officers are not debarred, suspended, or otherwise considered ineligible for an award. ATIC will not award a contract to any firm that is debarred, suspended, or considered to be ineligible.

As per EU procurement rules, a contractor is eligible if:

- it is not included in the EU Sanctions List or is subject to EU Restrictive Measures provided at www.sanctionsmap.eu and all its employees, consultants, suppliers and contractors involved in fulfilment of this Agreement or implementation of any part of the Project are not included in the EU Sanctions List or are subject to EU Restrictive Measures and none part of the Fee is made available to, or for the benefit of, persons, groups and entities designated under the EU Sanctions List or subject to EU Restrictive Measures. The Provider shall cooperate with the Beneficiary in this respect and promptly inform the Beneficiary if it reveals that any recipient of such funds falls under the EU Sanctions List / EU Restrictive Measures.
- it does not support activities that contribute to money laundering, terrorism financing, tax avoidance, tax fraud or tax evasion;
- it refrains from corruption and other irregularities and requires all its employees, consultants, suppliers and contractors involved in fulfilment of this assignment to refrain from any such corruption and other irregularities. Corruption and other irregularities refer to all kinds of: (1) corruption, including bribery, nepotism, illegal gratuities or other form of abuse of trust, power and position for improper gain; (2) misappropriation of cash, inventory and all other kinds of assets; (3) financial and non-financial fraudulent statements; (4) all other use of Project/Core Activities funds which is not in accordance with the work plan and Budget approved under SIDA-ATIC Agreement. The Provider shall cooperate with the Beneficiary in this respect and promptly inform the Beneficiary of any indication of corruption and other irregularities and investigate the presence of corruption and other irregularities and act, including legal actions, against persons suspected of corruption and other irregularities;
- it takes all necessary precautions to avoid any conflicts of interest in all matters related to fulfilment of this Agreement or implementation of any part of the Project and ensures its employees, consultants, suppliers and contractors are not placed in a situation which could give rise to conflict of interest. A conflict of interest shall be deemed to arise where the impartial and objective exercise of the functions of any person fulfilling the Agreement and/or implementing of any part of the Project is compromised.

Only one Offer allowed

- The Offeror (including the Lead Entity on behalf of the individual parties of any Joint Venture/ Consortium/ Association) shall submit only one Offer, either in its own name or, if a joint venture/Consortium/Association, as the lead entity of such Joint Venture/Consortium/Association. Offers submitted by two (2) or more Offerors shall all be rejected if they are found to have any of the following:
 - a) they have at least one controlling partner, director, or shareholder in common; or
 - b) they have the same legal representative for purposes of this RFP;
 - c) any one of them receive or have received any direct or indirect subsidy from the other/s; or
 - d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about, or influence on the Offer of, another Offeror regarding this RFP process;
 - e) they are subcontractors to each other's Offer, or a subcontractor to one Offer also submits another Bid under its name as lead Bidder; or
 - f) some key specialists proposed to be in the team of one Offeror participates in more than one Offeror received for this RFP process. This condition relating to the specialists does not apply to subcontractors being included in more than one Offer.

1.8 Evaluation and Basis for Award

The award will be made to the offeror whose proposal is determined to be responsive to this solicitation document, meets the eligibility criteria stated in this RFP, meets the technical, management/personnel, and corporate capability requirements, and is determined to represent the best value to ATIC.

Offeror's minimum professional qualification criteria:

- Audit firm has min 5 years of previous experience in providing audit services, including as per ISA.
- Audit firm is a good standing member of the residency country's public accounting organization (PAO), which complies with the statements of membership obligations of IFAC (International Federation of Accountants), or another internationally recognized standard setting body.
- experience in applying the EU Auditing Standards
- experience in performing audit services for Sida funded projects would be considered an advantage.
- at least 2 (two) certified auditors:
 - *1 Certified Senior auditor/Team leader - with min. 7 years of experience in audit, and mandatory experience in auditing as per EU auditing standards and auditing of donor funded projects/NGOs (auditing EU funded projects would be considered an advantage);*
 - *1 certified auditor with minimum 3 years of experience in audit;*
 - *Audit team linguistic skills: advanced knowledge of English (both written and oral). Knowledge of Romanian would be a plus. A team member knowing Romanian would be considered a plus, as besides English, many documents (contracts/payment and supporting documents) are concluded in Romanian. In case no team members know Romanian language, the audit company should cover translation costs necessary for the completion of the audit assignment.*

Best value will be decided using the scoring method (technical scoring +financial scoring). That means that each proposal will be evaluated and scored against the evaluation criteria and evaluation sub-criteria, which are stated in this RFP. If technical scores of several proposers reaching or exceeding the minimum pass score are determined to be equal or nearly equal, cost will become the determining factor.

ATIC may award the contract to a higher priced offeror if a determination is made that the higher technical score of that offeror merits the additional cost/price.

The rating of each proposal will be defined based on the accumulated total scoring: technical and financial scorings. Priority will be given to the highest scored offers, within the limits of the available budget.

In evaluating proposals, ATIC will use the following evaluation criteria:

#	Evaluation Criteria and Sub-criteria	Maximum points
1	TECHNICAL EVALUATION*	Up to 175 pts
1.1.	Technical offer (approach)	Up to 75 points
	<i>a) The Offeror fully understands the objectives and context of the assignment. The proposed approach and the work plan demonstrate fully correspond to this RFR including Annex 1.</i>	Up to 75 pts
	<i>b) The Offeror has a satisfactory understanding of the objectives and context of the assignment. The proposed approach and work plan matches the specification but requires some adjustments to properly address all tasks described in this RFR including Annex 1.</i>	Up to 40 pts
	<i>c) The Offeror has a limited understanding of the objectives and context of the assignment. The proposed approach and work plan do not correspond to this RFR including Annex 1 and require major adjustments to properly address the tasks described.</i>	0 pts
1.2.	Company's past performance information	Up to 40 points
1.2.1	<i>-minimum 5 years of experience in audit, including as per ISA</i>	Up to 20 pts 5 years – 10 pts, 2 pts for each additional year – up to 5 additional years/10 pts;
1.2.2	<i>- experience in applying the EU Auditing Standards</i>	10 pts experience available – 10 pts, no experience - 0 pts;
1.2.3	<i>- experience in auditing the EU/Sida funded projects</i>	10 pts One audited project – 5 pts, up to 10 pts; no project audited - 0 pts;
1.3.	Qualified Staff: Minimum 2 (two) certified auditors	Up to 60 pts
1.3.1	Certified Senior auditor/Team leader	Up to 40 pts
	<i>-Minimum 7 years of experience in auditing, including mandatory experience as per ISA, EU auditing standards and auditing of donor funded projects/NGOs</i>	Up to 26 pts 7 years – 20 pts, 2 pts for each additional year – up to 3 additional years pts;
	<i>-auditing of EU funded projects would be considered an advantage</i>	10 pts One audited project – 5 pts, up to 10 pts; no project audited - 0 pts;
	<i>-Linguistic skills</i>	4 pts
	<i>English</i>	1.5 pts
	<i>Romanian</i>	1.5 pts
	<i>Russian</i>	1 pts

1.3.2	- Certified Auditor	Up to 20 pts
	- Minimum 3 years of experience in audit	Up to 16 pts 3 years – 10 pts, 2 pts for each additional year – up to 3 additional years;
	<i>-Linguistic skills</i>	4 pts
	<i>English</i>	1.5 pts
	<i>Romanian</i>	1.5 pts
	<i>Russian</i>	1 pts
2.	OVERALL COST PROPOSAL PROVIDED	Up to 75 points
		minimum offer - 75 pts; Evaluated offer pts = (lowest offer \$ x 75 pts)/evaluated offer
	Total Points = Technical + Cost Approach	250 points

***Minimum technical passing score – 123 pts (70% of the technical score).** Offers that do not reach the minimum pass score will not be considered for further evaluation.

1.9 Negotiations

The best and final price quotations are requested from all offerors. It is anticipated that awards will be made solely based on these original quotations. However, ATIC reserves the right to conduct negotiations and/or request clarifications prior to awarding a subcontract.

1.10 Terms and Conditions of Contract

This is a Request for Proposals only. Issuance of this RFP does not in any way oblige ATIC or the Donor to award a contract, nor does it commit ATIC or Donor to pay for costs incurred in the preparation and submission of a proposal.

This solicitation is subject to the details in Section 2 and Section 3. Any resultant award will be governed by these terms and conditions. ATIC reserves the right to revise the content, order, and numbering of the provisions in the actual subcontract document prior to execution by ATIC and the selected awardee. Issuance of a subcontract award is subject to availability of sufficient funds.

SECTION 2. BACKGROUND, SCOPE OF WORK, DELIVERABLES AND DELIVERABLE SCHEDULE

2.1 Specifications

THE MOLDOVAN ASSOCIATION OF ICT COMPANIES (“ATIC”) is the business Organization uniting 94 entities. Umbrella Organization that gathers over 9000 employees.

Being established in 2006, ATIC is the action leading association and the voice of the Moldovan ICT industry that promotes the development of the ICT sector in Republic of Moldova through viable partnerships between companies, similar organizations, government, state institutions and international organizations.

Background of the Project

EU4Moldova: Startup City Cahul is a 4-year project financed by the European Union in Moldova through a delegated agreement with Sweden and implemented by the National Association of ICT

Companies (ATIC). The project runs between September 2020-September 2024 based on the Commission Decision ENI/2019/042-243.

The overall objective of the Action is to harness and strengthen the potential of the digital economy and enhance regional competitiveness, its business, and its investment environment.

The specific project objectives are:

- Foster partnerships for innovation and entrepreneurship between the private sector, public sector and educational institutions in the region of Cahul.
- Promote technology, problem solving and creative solutions in learning and make STEM topics (Science, Technology, Engineering and Mathematics) more attractive for women and men, girls and boys.
- Facilitate the emergence of start-ups in innovative sectors, build their capacity and investment readiness.

One of the main activities of the project is the establishment of the EU4Innovation Centre in Cahul (further referred as “Centre”) to serve as a focal point for technological entrepreneurship, digital education, investment attraction, competitiveness enhancement and regional development in the South of Moldova. It had been planned that the construction of the Centre started in 2022 and open in 2023 for students, companies, freelancers, entrepreneurs.

Scope of Work

The Audit Company is expected to perform the audit of the financial statements of the National Association of ICT Companies (ATIC) for the period July 2022 to June 30, 2023, in accordance with provisions Sida’s Standard Terms of Reference for Annual Audit of Project/Programme Support including ISRS 4400.

The Audit Company shall note that the approximative expenses to be incurred by ATIC under the EU4Moldova: Startup City Cahul Project between July 2022 – June 2023 represent EUR 1,830,000.00 EUR). Please refer to Annex 1 – Sida’s Standard Terms of Reference for Annual Audit of Project/Programme Support including ISRS 4400, Terms of Reference for details on the required services.

2.2 Delivery Requirements

The audit of documents should be performed in the office of ATIC: 9/11, Studentilor Str., Chisinau, Moldova. The period of the audit shall be about 30 days. Documents verification should be planned for July 2023 (10 July-20 July 2023). The final signed audit report should be submitted by July 31, 2023.

The audit company shall provide the final version of the audit report both in hardcopy and electronic versions:

- Electronic audit report – to be submitted in the electronic format and way agreed with ATIC. A draft version will be first submitted for feedback.
- Hardcopy Final Audit Report - in 4 (four) copies should be submitted to ATIC (9/11, Studentilor Str., Chisinau MD-2045, Moldova): 3 (three) hard copies in EN + 1 (one) hard copy in RO.

The following deliverables are expected under this assignment:

	<u>Deliverables</u>	<u>% of cost</u>	<u>Time frame</u>
1	<u>Draft Audit Report (electronic version)</u>	<u>80% of total cost</u>	<u>By July 25, 2023</u>
2	<u>Approved Final Audit Report both in hardcopy and electronic versions:</u> - Hardcopy Audit Report - in 4 (four) copies should be submitted to ATIC (9/11, Studentilor Str., Chisinau MD-2045, Moldova) <i>3 (three) hard copies in EN + 1 (one) hard copy in RO</i> - Electronic version of the Final Audit Report	<u>20% of total cost</u>	<u>By July 31, 2023</u>

To make it easier for audit firms to comply with the International Standards on Auditing (ISA) and the Sida's Standard Terms of Reference for Annual Audit of Project/Programme Support including ISRS 4400 as part of its response to this RFP, each offeror is expected to provide an **estimate (in calendar days)** of the delivery and execution timeframe (after receipt of order). The delivery estimate presented in an offer in response to this RFP must be upheld in the performance of any resulting contract.

The delivery estimate presented in any offers in response to this RFP must be honest, accurate, and upheld in the performance of any resulting contract or order.

2.3 Inspection and acceptance of Audit Work and the Report

The statement of work, audit program (including detailed audit steps), and the draft report will be subject to approval and acceptance by the ATIC and EU/SIDA

SECTION 3. PAYMENT AND FINANCIAL OBLIGATIONS

3.1 Contract Price

The Contractor shall complete the services (including furnishing all labor, material, commodities, equipment, if applicable, and services) required under this contract for the fixed price indicated in the offer. This price shall include all equipment, commodities, shipping costs, licenses, permits, administration costs, labor costs, materials, overhead, profit, and all other costs.

The Contractor will be paid the installment amounts listed under the column named "Payment Amount" only upon successful completion and acceptance by ATIC of all corresponding deliverables listed in the column named "Corresponding Deliverable Name."

3.2 Payment Terms

ATIC will pay the total price through a series of installment payments as provided in Article 1.9 above, after the Contractor's completion of the corresponding deliverables and ATIC acceptance thereof. The Contractor may submit invoices for deliverables accepted and approved by the authorized ATIC representative. ATIC will pay the Contractor's invoice within fifteen (15) working days after the following conditions have been fulfilled:

- a) the Contractor has delivered a proper invoice,
- b) and certificate of acceptance of deliverables is signed by both parties;

Payment will be made in MDL of EUR (in MDL if the contracted audit company is registered on the territory of the Republic of Moldova), paid via wire transfer to the account specified in the Contractor's invoice. Payment of unpaid balances will be made upon completion and final acceptance of all works and deliverables by ATIC. Any invoices for services rendered and

deliverables submitted—but not accepted by ATIC—will not be paid until the Contractor makes sufficient revisions to the deliverables such that ATIC may approve the deliverables and thus the invoice.

Payment Will be as Follows:

- 80% upon the submission of the draft report, and 20% - within 15 banking days after the approval of the final report by ATIC and the Donor.

3.3 Invoice Requirements

The Contractor shall present an invoice to ATIC only for services accepted by ATIC. The invoice must be an original invoice, submitted to:

ATIC
Attention: Accountant Office
National Association of ICT Companies

To constitute a proper invoice, the Contractor's invoice must include the following information and/or attached documentation. This information will assist ATIC in making timely payments to the Contractor:

1. Contractor legal name, contract number, invoice date, and invoice number.
2. Deliverable(s) number, description of approved deliverable(s), and corresponding value.
3. Name of the corresponding ATIC project for which the services are being provided and contact reference.
4. Bank account information to which payment shall be sent.

3.4 **Taxes, and Duties**

This contract is entered into by ATIC on behalf of the Project (s) mentioned above, an official program of the mentioned Donors in the Republic of Moldova.

As such, this contract is free and exempt from any taxes, VAT, tariffs, duties, or other levies imposed by the laws in effect in Republic of Moldova. The Contractor shall not pay any host country taxes, VAT, tariffs, duties, levies, etc. from which these Donor programs are exempt. If any exempt charges are paid by the Contractor, they will not be reimbursed to the Contractor by ATIC. The Contractor shall immediately notify ATIC if any such taxes are assessed against the Contractor or its subcontractors/suppliers at any tier.

The Contractor is responsible for payment of all applicable taxes, as prescribed under the applicable laws, associated with wages/salaries/compensation for services rendered by individuals employed by the Contractor and who are directed to work as required under this Contract. The Contractor is liable for payment of all applicable taxes associated with revenues (profit), and other such taxes, fees, or dues for which Contractor is normally responsible because of operating its business.

3.5 **Set-Off Clause**

ATIC reserves the right to set off against amounts payable to the Contractor under this contract or any other agreement in the amount of any claim or refunds ATIC may have against the Contractor.

1. **Grounds for Disqualification:**

A firm may be excluded from the evaluation and the award of a contract, who:

- a) is bankrupt or is being wound up, whose affairs are being administered by court, who has entered an arrangement with creditors, who has suspended business activities or who is subject of an injunction against running business by court;
- b) is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by court, or for an arrangement with creditors or of any other similar proceedings;
- c) has been convicted of an offence concerning his professional conduct by a court;
- d) has been found guilty of grave professional misconduct; or
- e) has not fulfilled obligations relating to payments of taxes or social security contributions.

Economic resources provided by the EU under this Project shall not be made available to, or for the benefit of, third parties - whether entities, individuals or groups of individuals - designated by the EU as subject to restrictive measures in the lists provided at www.sanctionsmap.eu ("EU Restrictive Measures") or designated by UN as subject to restrictive measures in the list provided at www.scsanctions.un.org.

2. **Anti-Kickback**

- a) Definitions:
 - *Kickback*, as used herein, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind, which is provided, directly or indirectly, to ATIC, Project or any of its employees, the Contractor or Contractor employees, or vendors in any way

- related to the performance or subsequent activities of this contract, for the purpose of improperly obtaining or rewarding favorable treatment in connection with this subcontract.
- *Person*, as used in this article, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.
 - *Contractor employee*, as used in this article, means any officer, partner, employee, or agent of the Contractor.
- b) The Contractor and its employees, whether directly or indirectly engaged in the performance of this contract, agree to abide legal provisions which prohibit any person from providing or attempting to provide any kickback; soliciting, accepting, or attempting to accept any kickback; or including, directly or indirectly, the amount of any kickback in the contract price charged by the Contractor to ATIC.

When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this provision may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to ATIC, who shall forward the report to the Donor, as required.

The Contractor agrees to cooperate fully with any relevant Moldovan/EU Agency investigating a possible violation described in paragraph (b) of this article.

ATIC may offset the amount of the kickback against any monies owed by ATIC under this fixed price contract or order the monies withheld from future payments due the Contractor.

The Contractor agrees to include the substance of this article in any contract it may issue under this contract.

3. Terrorist Financing Prohibition

The Contractor (including its employees, consultants, and agents) by entering this contract certifies that it does not engage, support, or finance individuals and/or organizations associated with terrorism.

4. Compliance with Applicable Laws and Standards

The Contractor shall perform all work, and comply in all respects, with applicable laws, ordinances, codes, regulations, and other authoritative rules of Sweden, European Union and Moldova and its political subdivisions and with the standards of relevant licensing boards and professional associations. The Contractor shall also comply with the applicable EU and Sweden regulations governing this contract, which are incorporated by reference into this contract, Clauses Incorporated by Reference.

5. Indemnity and Contractor Waiver of Benefits

A. The Contractor waives any additional benefits and agrees to indemnify and save harmless ATIC, Donor, their officers, directors, agents, and employees from and against any and all claims and liability, loss, expenses, suits, damages, judgments, demands, and costs (including reasonable legal and professional fees and expenses) arising out of:

- (1) the acts or omissions of Contractor, its employees, officers, directors, agents, or its subcontractors;
- (2) injury or death to persons, including officers, directors, employees, agents and subcontractors of Contractor, or loss of or damage to property, or fines and penalties which may result, in whole or in part, by reason of the buying, selling, distribution, or use of any of

the goods or services purchased or provided under this Contract except to the extent that such damage is due to the negligence of ATIC;

- (3) the infringement or violation of any patent, copyright, trademark, service mark, trade secret, or other proprietary interest of any third party resulting from ATIC use, distribution, sale, sublicensing, or possession of the goods (including software and all forms of written materials) or services purchased or provided, as authorized hereunder, or from the use or possession of said goods or services by ATIC, Donor, as authorized hereunder; or false claims submitted by Contractor or its subcontractors under this Contract or as a result of a Contractor misrepresentation of fact or fraud by Contractor.

B. Contractor shall defend and settle at its sole expense all suits or proceedings arising out of the foregoing, if Contractor has notice or is given prompt written notice of such claim or suit and, further, that Contractor shall be given necessary information, reasonable assistance and the authority to defend such claim or suit. Contractor shall not settle, compromise or discharge any pending or threatened suit, claim or litigation, arising out of, based upon, or in any way related to the subject matter of this contract and to which ATIC is or may reasonably be expected to be a party, unless and until Contractor has obtained a written agreement, approved by ATIC (which shall not be unreasonably withheld) and executed by each party to such proposed settlement, compromise or discharge, releasing ATIC from any and all liability.

C. If any of the goods or services provided by Contractor hereunder, including without limitation software and all forms of written materials, become the subject of a claim of infringement or violation of a third party's intellectual property, privacy and/or proprietary rights, Contractor shall, at its own expense, use its best efforts—

- (1) to procure for ATIC the right to continue use and, if authorized under this Contract, distribution of the infringing goods or services or,
- (2) modify the goods or services to make them non-infringing, or to replace them with equivalent, non-infringing counterparts.

If none of the above-mentioned can be successfully implemented, then Contractor shall refund to ATIC all monies paid to the Contractor for the infringing goods and services.

6. Intellectual Property Rights

The ownership of all copyright and other intellectual property rights in respect of any data compilations, research, spreadsheets, graphs, reports, diagrams, designs, work products, software, or any other documents, developed in connection with this contract will exclusively vest in or remain with ATIC, which shall have all proprietary rights therein, notwithstanding that the Contractor or its employees may be the author of the intellectual property. All documents relating to the intellectual property or otherwise connected with this fixed price contract, the services, or duties must be returned or delivered to ATIC at the time of the expiration or termination of the contract. The Contractor agrees not to publish or make use of any of the intellectual property, or documents relating thereto, without the prior written approval of ATIC and proper attribution.

7. Modifications

Modifications to the terms and conditions of this contract, including any modification to the scope of work, may only be made by written agreement between the authorized personnel of both Parties. Each Party shall give due notice and consideration to any proposals for modification made by the other Party.

8. Changes

According to ATIC procurement procedures, ATIC may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed.

If any such change(s) causes an increase or a decrease in the cost, or the time required for the performance, or any part of the work under the contract, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this contract must be asserted within 30 (thirty) days from the date of receipt by the Contractor of the modification or change.

9. Assignment and Delegation

This contract may not be assigned or delegated, in whole or in part, by the Contractor without the written consent of ATIC. Absent such written consent, any assignment is void.

10. Termination

ATIC reserves the unilateral right to terminate this fixed price contract at any time, paying for all deliverables completed at the time of termination and a pro-rata share of any deliverable in progress, in accordance with ATIC procurement procedures.

If the Contractor fails to make progress to endanger performance of this fixed price contract or is unable to fulfill the terms of this fixed price contract by the completion date, the Contractor shall notify ATIC forthwith and ATIC shall have the right to summary termination of this fixed price contract upon written notice to the Contractor.

ANNEX 1

TERMS OF REFERENCE

**Sida's Standard Terms of Reference for Annual Audit of Project/Programme Support
including ISRS**

(separate document attached to this RFP)