

TERMS OF REFERENCE

- A. Job Title:** **International consultant** in the area of risk assessment of corruption in public procurement
- B. Duty Station:** Chisinau, Republic of Moldova
- C. Project reference:** Strengthening the corruption prevention and analysis functions of the National Anticorruption Center (NAC)
- D. Contract type:** Individual Contract (IC)
- E. Duration of assignment:** up to 32 working days during October 2015 – January 2016

F. Context

One of the most vulnerable sectors, which is exposed to corruption risks, is public procurement. A recent analysis of corruption risks in public procurement in the EU (*Identifying and reducing corruption in public procurement in the European Union*¹), notes a number of practices having a negative character towards the procurement process, including bid rigging, providing illicit commissions, conflicts of interest, intentional mismanagement or ignorance, etc. According to the estimations conducted in five different sectors, corrupt/grey cases in public procurement generate a public loss of 18 % of their projected costs.

In 2014, the EU updated the existing legislative framework adopting new directives on public procurement in order to ensure better legal protection for the financial interests of the EU public procurement process. In order to strengthen the anti-corruption actions, European Anti-Fraud Office (OLAF) has introduced new indicators on the entire scope of the procurement process, called "Red Flag" to warn Member States and contracting authorities to take appropriate measures to effectively prevent fraud and corruption in the system.

In Moldova the Court of Accounts reports show that public procurement remains a sector with a high risk of inefficient use of public funds. National procurement system is characterized by a series of negative practices, resulting from poor management of the public procurement process. Weaknesses in the sector are determined by the low capacity of actors involved in procurement process to prevent fraud and corruption practices.

The sociological research "Corruption in Moldova: perceptions and experiences of businessmen and households" conducted in 2014 by Transparency International - Moldova², indicates the persistence of informal payments offered by economic operators to public officials to win tenders of about 10% of the amount of contracts.

A recent research *Public Acquisitions in Moldova: Problems and Solutions* (2014) developed by a local think-tank Expert-Group, suggests that the legal and normative framework, even if not perfect, is not the main cause generating risks and loss in public procurement. The experts say that main causes are the weak system of control over the procurement process and results and an inadequate risk management. The contracting authorities pay little attention to the analysis of the existent constraints

¹http://ec.europa.eu/anti_fraud/documents/anti-fraud-policy/research-and-studies/identifying_reducing_corruption_in_public_procurement_en.pdf

²<http://transparency.md/ro/cefacem/publicatii/216-sondaj2014>

with the view of developing new measures to improve the situation. The experts also mention that the system of public procurement is strongly affected by the situation in justice sector, passivity of the law enforcement institutions, opacity in political competition, traditions, quality of business sector, etc.³.

Assessment of corruption risks across different sectors, including public procurement, is part of the National Anticorruption Strategy of the Republic of Moldova 2011 – 2015⁴, approved by Parliament Decision no. 154/21.07.2011. The Strategy highlights that prevention of corruption in public procurement procedures requires excluding the privilege of influence given to economic operators concerning the conditions for submission of bids, increasing transparency of the organization and conduct of public tenders, preventing conflict of interests and their respective treatment while selecting the auction winner, etc.

NAC has a clear mandate to prevent corruption including through the provision of the methodological and other support in conducting corruption risk assessments within public authorities and institutions through training and consultation, monitoring and analysis of data on corruption risks and coordinating the development as well as the execution of the integrity plans.

UNDP, through its project *Strengthening the corruption prevention and analysis functions of the National Anti-corruption Center (NAC)* aims to strengthen the capacities of NAC in the field of risk assessment of corruption and provision of methodological support to identify and reduce corruption in public procurement, offering as the tools raising awareness and training for contracting authorities managers and staff, as well as for private sector entities. For this, the project intends to engage an international consultant that working in a team with a national consultant and in close collaboration with the relevant NAC's units will carry out a comprehensive assessment of corruption risks in public procurement and elaborate an optimal risk indicator system based on the "red flag" concept., using the *OECD Methodology for assessment of national procurement systems*.

G. Objective

The main objective of the assignment is to perform a comprehensive assessment of corruption risks in public procurement, including mapping of integrity risk areas and recommended measures for integrity/corruption risks mitigation; and elaboration of an optimal risk indicator system based on the "red flag" concept.

H. Strategy

The consultant will use as reference the *OECD Methodology for assessment of national procurement systems*.

The assignment will include of two missions. The first mission (tentatively scheduled to take place on 27 October – 6 November 2015) will involve the review of relevant background documents, national legislation, materials, and reports prior to and during the mission, focus group discussions and in-depth interviews involving officials from NAC, Public Procurement Agency, Court of Accounts, Ministry of Finance, line ministries, other relevant institutions. It may also include interviews and/or focus group discussions with key external partners and civil society organizations to discuss possible solutions based on their familiarity and knowledge of Moldovan public procurement system. The second mission, which will be undertaken at least one month after the first mission, will involve the presentation of the draft assessment report of corruption risks in public procurement with required inputs/recommendations and an optimal risk indicator system based on the "red flag" concept, discussion of the recommendations

³ <http://expert-grup.org/en/biblioteca/item/969-achizitii-publice-moldova&category=180>

⁴http://cna.md/sites/default/files/snadoc/national_anti-corruption_strategy_2011-2015_republic_of_moldova.pdf

and their validation. Final assessment report will be submitted to the NAC and UNDP after the second mission. The international consultant will work in a team with a national consultant.

I. Scope of work and expected outputs:

The consultancy will have two major outputs:

- (1) Report assessing corruption risks characteristic to the national system of public procurement, including mapping of integrity risk areas and recommended measures for integrity/corruption risks mitigation;
- (2) An optimal risk indicator system based on the “red flag” concept;

In order to achieve the objective, the expert shall:

- Use *OECD Methodology for assessment of national procurement systems*.
- Carry out an analysis/expertise of the background documentation, including national regulatory framework for public procurement with focus on integrity related issues and conflicting legislation, compared to the international regulatory framework, in particular the new EU Directives on public procurement;
- Evaluate the institutional framework in the field and its operational capacities, efficiency of integrity mechanisms, control and punishment;
- Identify the focus group(s), develop the questionnaires for individual and focus groups interviews and organize the focus group sessions and individual interviews with the stakeholders of the national procurement (contracting authorities and supervisory control agencies , private sector representatives , NGOs and experts in the field) to identify problems and risk sectors, evaluate the needs in the field and formulate the recommendations to mitigate corruption risks;
- Provide recommendations to NAC and relevant stakeholders to be able to avail of comparative experiences;
- Present the draft assessment report with the required inputs/recommendations and an optimal risk indicator system based on the “red flag” concept; discuss and validate it with the relevant stakeholders.
- Submit the final assessment report with required inputs/recommendations and an optimal risk indicator system based on the “red flag” concept to NAC and UNDP.

I. Deliverables:

#	Deliverable	Deadline
1.	Activity Plan for the assignment, including the tasks for the national consultant submitted	26 October 2015 (up to 2 working days)
2.	Draft assessment report, including mapping of integrity risk areas and recommended measures for integrity/corruption risks mitigation and an optimal risk indicator system based on the “red flag” concept submitted	30 November 2015 (up to 18 working days, including 10 days on mission)
3.	Final assessment report, including required inputs/recommendations and an optimal risk indicator system based on the “red flag” concept submitted	20 January 2016 (up to 12 working days, including 5 days on mission)

4.	Final report on the assignment describing how the work was done, including the list of people met, capacity development assistance provided to the Analytical unit, work group and/or public discussions and presentations, etc. submitted	29 January 2016
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Deliverables and timeline can be amended or specified for the purpose of the assignment.

Payment will be made upon the successful completion of the task assigned and submission of the assessment report.

J. Organizational Setting:

This is a part-time consultancy. The expert will work in a team with a national consultant and in close collaboration with the management and staff of the National Anticorruption Centre. The expert will work under direct supervision of UNDP Project manager for administrative issues.

K. Inputs:

The National Anticorruption Centre and UNDP Moldova will provide the expert with the necessary information and materials for the fulfilment of tasks and will provide support with the facilitation of meetings and translation/interpretation services where necessary.

L. Qualifications and skills required

I. Academic Qualifications

- Master's Degree or equivalent (5 years of university studies) in Economics, Finance, Law or other relevant field;

II. Years and sphere of experience

- At least five years of relevant experience in consultancy area in public procurement process and proven experience in anti-corruption area in audit and/or anticorruption agencies or other relevant institutions.
- At least one year of experience in implementing similar missions in new EU Member or candidate states or CIS region;

III. Competencies

- Proven extensive knowledge of corruption phenomenon, efficient mechanisms for its combating and prevention;
- knowledge of effective mechanisms for identifying and reducing corruption in public procurement;
- Practical experience in risk assessment and/or anti-corruption expertise of the regulatory framework;
- Knowledge and experience in application of the OECD Methodology for assessment of national procurement systems is a strong advantage;
- Extensive demonstrated experience in developing analytical studies/reports related to public procurement/corruption risks in public sector;
- Previous successful experience of working with UN agencies is an advantage;
- Effective communication and strong analytical skills;
- Knowledge of English; knowledge of Romanian or Russian would be an advantage.

IV. Personal qualities

- Proven commitment to the core values of the United Nations; in particular, is respectful of differences of culture, gender, religion, ethnicity, nationality, language, age, HIV status, disability, and sexual orientation, or other status;
- Responsibility
- Capacity of collaboration and teamwork
- Flexibility
- Punctuality