

## Terms of references

**Job Title:** National Legal Expert for the ESCO Moldova Project

**Project Reference:** Transforming the market for urban energy efficiency in Moldova by introducing Energy Service Companies (ESCO Moldova Project)

**Duration of Employment:** August – December 2013

**Contract type:** Individual Contract

**Expected workload:** 36 working days

### I. Background

In accordance with UNDP and GEF procedures, a team of four consultants is being hired to develop the ESCO Moldova full project. The project is intended to support the development of the first commercial ESCO (Energy Service Company) in Moldova, a public-private partnership between the City of Chisinau and selected investor(s). The ESCO is intended to be launched as a tool to help promote additional investments in the field of energy-efficiency in the municipal sector in Moldova. The purpose of the project preparation grant is to fully design the activities, outputs, and outcomes of ESCO Moldova project in close cooperation with a team of 3 other consultants (2 international, 1 national), UNDP Moldova office and the UNDP Bratislava Regional Centre.

The documents to be prepared include (i) a UNDP Project Document (ii) a Request for CEO Endorsement and (iii) a GEF Tracking Tool. Copies of the GEF documents can be found: [http://www.thegef.org/gef/guidelines\\_templates](http://www.thegef.org/gef/guidelines_templates)

In addition, an investor attraction report shall be prepared, a termsheet, and a draft business plan for the new company, ESCO Moldova.

### Project description

The ESCO Moldova project is being developed by UNDP and the Global Environment Facility (GEF). The project aims to promote green urban development in Moldova using the ESCO (Energy Service Company) modality as the means of promoting sustainability. The focus of the ESCO investments will be in areas where the potential for emission savings is largest such as the housing, municipal heating, and industrial sectors that are concentrated in urban centers. In Moldova, there are no cities that can currently be described as green cities, only cities that aspire to become green as for example Chisinau. Urban development is primarily driven by economic considerations and 'greening' considerations are for the most part not taken into account. Most Moldovan cities are increasingly in decay and have outmoded urban infrastructure, deteriorated communal housing, poor planning, lack of municipal budget to meet the needs of growing urban populations and urban poverty. All these problems are present in the capital city of Chisinau. Specifically, ensuring maintenance and communal services for multifamily housing remains a key priority for all cities. Multi-family apartment blocks account for 157.2 million m<sup>2</sup> or 60% of the housing stock; one out of three (or 50 million m<sup>2</sup>) is in need of capital renovation, while 3.8 million m<sup>2</sup> is in emergency state and has to be demolished. Regardless of technical conditions, over 70% of multifamily apartment buildings have very low thermal performance (especially buildings constructed in 1950 -1980s): thermal losses account for up to 50% of heat consumption.

ESCOs, a concept widely proven in the United States and Europe, and has proven a useful tool to promote energy savings through energy performance contracting and shared savings agreements. In the baseline situation, no municipal ESCOs are likely to be successfully launched in Moldova in the next four years. In Moldova, as of early 2013, not a single ESCO exists in the country and there is almost no experience with working with ESCOs. In the absence of this project, and in the absence of GEF funding it is highly unlikely that a properly capitalized ESCO with the proper expertise will exist in Moldova in the next four years. The reason is simple. The ESCO concept is new to Moldova and there is no prior successful experience with energy performance contracting and there is no advantage in being a first mover. The first mover in the ESCO business in Moldova will have additional costs associated with legal and regulatory issues and related to the fact that energy performance contracts are new instruments which have not yet been tested in the market place. However, the regulatory basis for ESCOs in Moldova is moving in the right direction with a new law energy-efficiency, Law 142, which was adopted in 2010.

Energy-Efficiency Law 142 has as its main purpose to harmonize Moldovan law related to energy-efficiency with the relevant EU directives. The Energy-efficiency Law 142 a) establishes main directions for energy efficiency national policy; b) Approves national energy efficiency programs and action plans; c) Elaborate and apply energy efficiency mechanisms and financial instruments for and d) Establish organizational order, structure and activity procedures for the state energy efficiency authority. In particular, it sets minimum standards for energy-efficiency, requires energy audits, and promotes the establishment of a regulatory framework which would encourage the creation of ESCOs. The law defines ESCOs<sup>1</sup> and the concept of Energy Performance Contracts (EPC).

Despite the existence of Energy-Efficiency Law 142, there are no sub-laws or regulations which would define how ESCOs would operate in Moldova. There are several other baseline activities that Moldova is participating in including the Economic Stabilization and Recovery Plan 2009-2011 (2009); National Development Strategy 2008-2011 (2008); Energy Strategy 2020 (2007); Copenhagen Accord to the Kyoto Protocol (2010); National Energy Efficiency Program for 2011-2020 (2010); Low Emission Development Strategy (LEDS) to year 2010 (pending adoption 2012);- Government's Activity Program 2011-2014 (2011); National Strategy for Development Moldova 2020 (2012). However, none of these activities specifically promotes the concept of ESCOs for green urban development. Therefore, in the baseline situation and without this project it can be concluded that it would be unlikely for a municipal ESCO to successfully be launched under the business-as-usual scenario.

## **II. Scope of work and responsibilities**

A national legal expert will be responsible for assisting the international consultants in collecting required data/information and conducting research/analysis helping them in finalisation of the work. More specifically, the national legal consultant will provide support to the international corporate finance expert in (i) attracting an investor or investors into ESCO Moldova, (ii) helping define the structure of the company once it is operational, and (iii) provide a comprehensive overview of the legal, regulatory and institutional framework in the area of energy efficiency with regards to the establishment of an ESCO as a legal entity. To this end, the Legal Expert is required to submit a review report of existing law(s) and regulations (mentioned above) with the aim of highlighting strengths and weaknesses of each legal document and if needs be, to recommend improvements or the development of additional sub-regulations to advance the ESCO business model and EPC modality in target sectors. The regulation review must also address the commercial banks internal regulation to grant loans to energy end-users and ESCO based on incomes from energy saving. The legal expert must also provide information on the loan approval procedures and collateral requirements.

Under the guidance of the international experts, the national consultant will conduct an analysis of potential investors into ESCO, initiate discussions, liaise and follow-up with these until the end of the assignment. The consultant will also be responsible to initiate discussion and liaise with the municipality and other relevant stakeholders. Once this initial selection of an investor or investors has been made, the national consultant

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<sup>1</sup> Energy service company (ESCO) - natural or legal person that delivers energy services and / or other energy efficiency improvement measures in an user's facilities or premises, and accepts some degree of financial risk in doing so. The payment for the services delivered is based (in whole or in part) on achievement of energy efficiency improvements and on the meeting of the other agreed performance criteria

will support with drafting of an initial termsheet between the City of Chisinau and an investor or investors. Additionally, the national consultant will support in preparing a draft business plan for ESCO Moldova. Work on this draft business plan will only start once it is clear who the investor/investor(s) into ESCO Moldova are going to be. It is recognized that at some point in time, legal costs may be incurred in order to finalize a shareholders agreement/investment agreement between the City of Chisinau and an investor(s). It is not the responsibility of the international corporate finance expert to prepare this shareholders agreement and the national experts is not expected to support in preparing the later.

The national legal expert will prepare a comprehensive overview of the legal, regulatory and institutional framework in the area of energy efficiency which have an impact on the establishment of ESCO Moldova as a legal entity as described above.

### **Expected deliverable and timeframe**

The key products to be delivered are as follows:

- 1) Support to the international corporate finance with preparation for mission 1. The national expert must identify the long list of all potential investors/partners for ESCO Moldova who will be consulted during the course of the assignment and support the international expert in preparing an **'Investor Attraction Report'** which describes in detail the interest of various potential investors/partners in ESCO Moldova. The national consultant is also expected to provide primary recommendations on (i) how to proceed with which investor(s) and conditionalities, (ii) on the most attractive shareholders structure for ESCO Moldova and (iii) provides advice on the business strategy for ESCO Moldova (during mission 1 of the international consultants)

Legal and Regulatory review, and Institutional, Framework report which describes the legal issues concerning the establishment of ESCO Moldova as a legal entity (prior to the first mission). In addition, the legal expert will recommend (if required) appropriate improvements to existing regulations and/or some guidelines and highlights to develop new sub-regulations.

- 2) Support to the international corporate finance expert in preparation of an acceptable MoU (Memorandum of Understanding), and then a **'Termsheet'** between the identified stakeholders (the City of Chisinau and (an) investor/investor(s). The national consultant will provide support as required by the international corporate finance expert on the legal aspects of the MoU and the Termsheet with the aim to assist having the termsheet signed by the end of the assignment. "Signing of the termsheet by the end of the assignment" is however subject to additional discussion in the team before the initiation of the job.
- 3) Support to the international corporate finance expert with mission 2 and previously with drafting a draft **'Business Plan'** for ESCO Moldova which defines the business strategy (prior to mission 2), estimates financing requirements, undertakes SWOT analysis, and makes an estimate of revenues and costs over the next five years. The draft business plan will be the last activity to be prepared under this assignment as work on the draft business plan can only be prepared once an investor(s) have been identified and basic terms agreed. It is accepted that once the company is fully capitalized and operational that the business plan will need to be further updated and improved. The legal expert will provide specific inputs into the business plan concerning the legal requirements related to the establishment of ESCO Moldova as a public-private partnership under Moldovan law.

The timeframe and duration of activities are estimated to be broken down as follows:

Activity	Duration (estimated) / days	Estimated Timing and deadline
Support with mission 1 and with preparing a long list of all potential investors/partners and Support in preparing an <b>'Investor Attraction Report'</b> )	8	August (long list) and Mission 1 in September The Investor

Activity	Duration (estimated) / days	Estimated Timing and deadline
		Attraction Report (Strategy) should be drafted immediately after the first mission in Sept.
Legal, Regulatory, and Institutional, Framework report which describes the legal issues concerning the establishment of ESCO Moldova as a legal entity: to be prepared by the National Consultant	9	August 2013
Support in preparation of a MoU and ' <b>Termsheet</b> '	6	October 2013
Provision of Support to prepare the draft ' <b>Business Plan</b> ' and comments	5	September-November 2013
Provision of support to the International Corporate Finance expert for Mission 2 and provision of support to the National Energy Expert in in organizing the project seminars/workshops/round tables	8	
<b>TOTAL working days</b>	Approx. <b>36</b>	

All work is expected to be completed by **31 December 2013**.

UNDP and the stakeholders will submit comments and suggestions within 10 working days after receiving the draft. It is envisaged that the finalized package of documents shall be submitted by the end of end of 2013 to GEF Secretariat.

### **III. Management Arrangements:**

#### **Responsibility for Managing the Consultant**

The principal responsibility for managing the consultant will lie with the Head of Environment Section of UNDP Moldova and with the International Corporate Finance expert.

#### **Payment for Services**

The National Stakeholders Consultations Expert shall be paid in four installments as follows:

Installment	Payment Amount
Support in preparing a long list of all potential investors/partners and Support in preparing an ' <b>Investor Attraction Report</b> '	25%
Legal, Regulatory, and Institutional, Framework report which describes the legal issues concerning the establishment of ESCO Moldova as a legal entity	25%
Support in preparation of a MoU and ' <b>Termsheet</b> '	25%
Support in drafting a draft ' <b>Business Plan</b> '	25%

Each payment shall be made within 30 working days of receiving a valid invoice from the consultant. All travel and expenses should be paid for by the expert as part of the lump sum for services.

#### **Responsibility for Expenses and their Reimbursement**

The Consultant will be responsible for all personal administrative and travel expenses associated with undertaking this assignment including office accommodation, printing, stationary, telephone and electronic communications, and report copies incurred in this assignment.

### **IV. Requirements for experience and qualification**

#### **Academic Qualification**

- Graduate degree related to energy, law, finance, economics, environment, engineering or related field

#### **Experience:**

- At least 3 years of experience in conducting legal, regulatory and institutional analysis which includes a high level of familiarity with Moldovan law
- Extended experience in in having developed business plans for companies and having provided business advisory services
- Extended extended working experience with energy-related sectors and knowledge of the energy-related stakeholders

#### **Competencies**

- Strong interpersonal skills, communication and diplomatic skills, ability to work in a team
- Ability to plan and organize his/her work, efficient in meeting commitments, observing deadlines and achieving results
- Openness to change and ability to receive/integrate feedback
- Ability to work under pressure and stressful situations
- Strong analytical, reporting and writing abilities

#### **Language requirements:**

- Fluent in written and oral communication in English and Romanian
- Knowledge of Russian is a strong asset