

Observations and Comments

on

Request for Proposal for Automated Border Control / ABC Gates
Chisinau International Airport

Thank you for the opportunity to present SITA's observations and comments on the proposed contract terms and conditions relating to the RFP noted above, which are set out in the Draft Contract (Annex 24).

We understand that, if selected, we will discuss the contract terms with you as part of the final negotiations on the awarded contract. We also expect that more minor issues can be addressed during the course of those discussions.

To be clear, our bid in response to the RFP is not conditional upon these observations and comments being accepted by you. These are suggested changes only and form the basis of future discussions.

If you have any questions about these observations and comments, please contact:

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	Reference	Observation / Comment
1	Clause 3 – Price and Terms of Payment	SITA assumes that all pricing and payment will be expressed in EUROS in the final contract. Does the Contracting Authority agree with that?
2	Clause 8.2(b)	<p>This sub-clause states:</p> <p><i>The Contract may be resolved unilaterally by...</i></p> <p><i>b) Buyer /Beneficiary in case of failure by the Supplier/Provider to comply with the established delivery/performance deadlines;</i></p> <p>With respect, SITA suggests that this unilateral termination right should not apply. Failure to achieve any agreed delivery date may happen for any number of reasons, including where caused by the Contracting Authority or by a</p>

		<p>third party that is not under the service provider's control – or where a force majeure occurs. Therefore, this termination right could be interpreted as being unfair and not reflective of the reality of delivering projects of this type.</p> <p>The service provider is incentivised to deliver as soon as possible under this contract, to ensure that the monthly charges can be invoiced as soon as possible.</p> <p>Please note that the general legal principles of termination for material breach will always apply here (hence the reason why we believe this sub-clause can be removed). If the service provider is late in delivering and that has a material effect on the project, then the Contracting Authority can always choose to exercise its rights under applicable law and terminate for material breach.</p>
3	Clause 10 - Penalties	<p>SITA notes that there is currently no cap on general liability in the draft contract. The Contracting Authority will appreciate that SITA, as a large organisation and one of the world's leading providers of border management services, is required to carefully manage its liability exposure in every contract that it signs. This is dictated by internal policies, and by the requirements of our global insurers.</p> <p>SITA therefore respectfully requests that the Contracting Authority adds to the contract a cap on the general liability of the parties, in addition to the cap on penalties (which are liquidated damages). SITA suggests a cap set at 100% of charges paid, applied on an annual basis. Can the Contracting Authority agree to that?</p> <p>For your reference, SITA has, in recent years, agreed the following cap with other government customers in Moldova:</p> <p>5. General Liability</p> <p>5.1 The general liability of each party under this Contract, for all claims, losses, damages, costs, and expenses (including legal fees), whether contractual, tortious, or otherwise, shall not exceed an annual limit equivalent to 100% of the total amounts</p>

		<p>paid by the Beneficiary to the Service Provider under the Contract during the relevant contractual year.</p> <p>5.2 This general liability cap applies cumulatively to all claims and demands made in connection with this Contract, regardless of the number of incidents or parties involved.</p> <p>5.3 The liability cap set forth in this article is additional to and separate from any other penalties or liquidated damages provided for in the Contract.</p> <p>5.4 This limitation of liability does not apply in cases of fraud, intentional misconduct, or gross negligence by either party, nor in cases where applicable law does not permit such a limitation of liability.</p>
4	Clause 10 – Penalties	<p>SITA also notes that the Draft Contract does not contain any exclusion of indirect and consequential losses. It is common practice to exclude such things, which include loss of profits, loss of revenue, loss of business opportunities etc.</p> <p>The final contract should include a clarification to say that neither party will be exposed to potential liability for indirect and consequential losses.</p> <p>Can the Contracting Authority agree to that?</p> <p>Again, for your reference, SITA has, in recent years, agreed the following cap with other government customers in Moldova.</p> <p>6. Limited Liability</p> <p>6.1 Under no circumstances shall either party be liable for indirect, incidental, special, or punitive damages arising out of or in connection with this Contract, even if the party was advised of the possibility of such damages.</p>

5	Clause 10 – Penalties	<p>With regard to operational penalties, SITA is able to offer service credits (i.e. penalties) each month. SITA suggests that a monthly cap of 5% should be applied to the SLA penalties that arise after ‘go-live’ of the service, meaning:</p> <ul style="list-style-type: none"> • a cap at 5% on a monthly basis (meaning the penalties arising in any month would be capped at 5% of the charges paid for that month). <p>This is aligned with standard SLA in the market, and SITA’s standard offering. Is this acceptable for the Contracting Authority?</p>
6	Clause 10 – Penalties	<p>SITA understands that the performance guarantee will apply to the period following ‘go-live’ but will not apply in relation to the delivery phase of the project (meaning that the Contracting Authority cannot call upon such guarantee in the event that any agreed delivery deadlines are not met, for any reason). Please see above for reasons why a delivery deadline might be missed.</p> <p>Please confirm that the contract will be amended to reflect this position.</p>
7	Clause 12.5 (Final Provisions)	<p>Can the Contracting Authority agree to add the following wording to the end of the existing Clause 12.5:</p> <p><i>“The Beneficiary will ensure that this Contract is registered with one of the regional treasuries of the Ministry of Finance without undue delay and, in any event, within 15 days of the date on which it is signed by the second of the two parties to sign it.”</i></p>

8	Clause 12.8 (Final Provisions)	Can the Contracting Authority agree that the laws of either: (a) England and Wales; or (b) the Netherlands; or (c) Switzerland, will govern this contract?
9	Clause 12.8 (Final Provisions)	Can the Contracting Authority agree that the courts of either: (a) England and Wales; or (b) the Netherlands; or (c) Switzerland, will have jurisdiction to hear any disputes under this contract?

Thank you.

SITA

Friday, 15th August 2025