

TERMS OF REFERENCE
OF FEASIBILITY STUDY

**“IMPLEMENTATION OF MEASURES 1–4 OF IMPLEMENTATION PLAN 2009–
2017 FOR THE STRATEGY FOR MODERNISATION OF CUSTODIAL
FACILITIES”**

I. OBJECTIVE

1. The objective of these Terms of Reference is to prepare investment projects on new custodial institutions in Vilnius, Šiauliai, Klaipėda and Panevėžys, as defined in paragraphs 1–4 of the Implementation Plan 2009–2017 for the Strategy for Modernisation of Custodial Facilities¹ approved by Resolution of the Government of the Republic of Lithuania No 1248 of 30 September 2009 (hereinafter “the Strategy”), to prepare and assess projects on organisation of provision of the services of construction, equipment and exploitation of institutions, prisoner care and occupation as well as other functions by means of public-private partnership (hereinafter “PPP”), and documents mentioned further in this document. The feasibility study shall be prepared and the documents referred to in paragraphs 19.1–19.4 must be submitted to the customer for evaluation and comments within six months of the date of entry into force of the agreement.

II. SUBJECT

2. In accordance with the Action Plan for the Implementation of Measures 1–6 of the Implementation Plan 2009–2017 for the Strategy for Modernisation of Custodial Facilities approved by Order No 1R-386 of the Minister of Justice of the Republic of Lithuania of 11 December 2009, four new remand prisons and houses of correction are to be built within the framework of implementation of the Strategy:

2.1. Vilnius Remand Prison and Correction Facility:

2.1.1. To be built on a plot of land owned by a private partner on the outskirts of Vilnius, a maximum of 25 km from the city centre;

2.1.2. A total of 1,620 places; solitary cells will account for at least one-third of them;

2.2. Šiauliai Remand Prison and Correction Facility:

¹ The amendment is related to the amendment to paragraph 1 of the Strategy Implementation Plan whereby the measure set out in this paragraph (“Upon demolishing unused state-owned buildings and structures in trust of the State Enterprise in Vilnius, Rasų g. 6, near Pravieniškės House of Correction No 1 and Vilnius House of Correction No 2, to build a remand prison and house of correction (a total of 1,120 places) and move Lukiškės Remand Prison and Vilnius House of Correction No 1 there.”) is proposed to be replaced with “To build a remand prison and house of correction on the outskirts of Vilnius (a total of 1,620 places) and move Lukiškės Remand Prison, Vilnius House of Correction No 1 and Vilnius House of Correction No 2 there.” Thus, in order to ensure more efficient management, use and disposal of state-owned property, the valuable state-owned buildings and structures in trust of the State Enterprise in Vilnius, Rasų g. 6 and 8, near Pravieniškės House of Correction No 1 and Vilnius House of Correction No 2 will be included in the list of state-owned objects for sale. This amendment is planned to be submitted to the Government in the nearest future.

- 2.2.1. To be built on a state-owned plot of land (Šiauliai neighbourhood, Ginkūnai cadastral site);
- 2.2.2. A total of 1,180 places; solitary cells will account for at least one-third of them;
- 2.3. Panevėžys Remand Prison and Correction Facility:
 - 2.3.1. To be built on a state-owned plot of land (Mastrakio g. 6, Panevėžys);
 - 2.3.2. A total of 400 places; solitary cells will account for at least a quarter of them;
- 2.4. Klaipėda Remand Prison and Correction Facility:
 - 2.4.1. To be built on a state-owned plot of land (between Jūrininkų pr., Taikos pr. and railways);
 - 2.4.2. A total of 800 places; solitary cells will account for at least one-third of them;
3. The new custodial facilities to be built shall meet the following criteria:
 - 3.1. The solitary cells planned to be built in the residential premises for detainees/convicts should be designed to cover an area of at least 5 square metres and those for two persons at least 8 square metres;
 - 3.2. Natural lighting, ventilation, heating and other parameters of residential and common premises shall comply with the effective standards².
4. Architectural solutions shall facilitate division of the new institutions into semi-autonomous units sharing a common infrastructure, retaining their integrity and joint administration. Semi-autonomous units shall be understood as local sectors that shall consist of approximately 400 places.
5. It is necessary to evaluate possibilities to use the following real estate to be vacated upon building the institutions referred to in paragraph 2 in the project:
 - 5.1. Lukiškės Remand Prison and Prison and the Prison Hospital (the territory covers an area of 22,543 sq m and the total area of buildings is 18,756 sq m);
 - 5.2. Vilnius Correction Facility No 1 (the territory covers an area of 13,879 sq m and the total area of buildings is 2,650 sq m);
 - 5.3. Vilnius Correction Facility No 2 (the territory covers an area of 62,000 sq m and the total area of buildings is 10,650 sq m);
 - 5.4. Marijampolė Correction Facility (the territory covers an area of 132,868 sq m and the total area of buildings is 17,074 sq m);
 - 5.5. Panevėžys Correction Facility (the territory covers an area of 10,469 sq m and the total area of buildings is 3,831 sq m);
 - 5.6. Šiauliai Remand Prison (the territory covers an area of 11,705 sq m and the total area of buildings is 6,205 sq m).

III. TASKS OF THE FEASIBILITY STUDY

6. The author of the feasibility study shall carry out the following tasks:
 - 6.1. To prepare initial comparative public sector (public sector comparator) cost models of investment projects on Vilnius, Šiauliai, Panevėžys and Klaipėda remand prisons

² They include standards set forth in legal acts in force in the Republic of Lithuania as well as recommendations of international entities and requirements laid down in the provisions of legal acts adopted by these entities, e.g. Recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) or the European Prison Rules (see Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules // <https://wcd.coe.int/ViewDoc.jsp?id=955747>); Commentary to Recommendation REC(2006)2 of the Committee of Ministers to member states on the European Prison Rules: http://www.coe.int/t/e/legal_affairs/legal_cooperation/prisons_and_alternatives/legal_instruments/E%20commentary%20to%20the%20EPR.pdf), on the application of which the author of the feasibility study will consult the Prison Department under the Ministry of Justice.

and houses of correction, initial comparative public sector (public sector comparator) cost models corrected in view of risks, and private sector cost models;

6.2. To prepare feasibility studies into the organisation of construction, equipment and exploitation of Vilnius, Šiauliai, Panevėžys and Klaipėda remand prisons and houses of correction as well as provision of services by means of public-private partnership, and partnership projects in view of the activities transferred and risks assumed;

6.3. To prepare public procurement documents for the procurement of selected alternative services.

IV. REQUIREMENTS FOR THE FEASIBILITY STUDY

7. Financial calculations in the feasibility study shall be carried out applying methodologies used in practice. The methodology shall be submitted together with the tender.

8. All financial calculations shall be carried out for an equal economic life cycle (investment time horizon) of the partnership project, which shall be established and the duration thereof justified in the feasibility study, taking account of the fact that, pursuant to Article 15¹ of the Law on Investments of the Republic of Lithuania, a partnership agreement between government and private entities can be concluded for a minimum of three years and a maximum of 25 years.

The private entity shall hold title to the created infrastructure. At the end of implementation of the PPP project, title to the assets created shall be transferred to the public entity. The useful features of assets created before the end of the infrastructure life cycle and compliance with standards shall be retained. The investment period required to create the infrastructure shall be established as a precondition of the feasibility study equally applicable to all implementation models.

9. The public sector's ability to assume obligations in developing the custodial infrastructure within a selected economic life cycle of assets as well as possibilities to use the objects referred to in paragraph 5 that are planned to be vacated in the project shall be evaluated.

10. Project implementation models (the initial comparative public sector cost model, the initial comparative cost model corrected in view of risks and the private sector cost model) shall be drawn up so that they are attractive to creditors and investors (carrying out the evaluation of the investment project's bankability). The feasibility study shall indicate a debt-equity ratio that would make the project appropriate for creditors.

11. Financial flows of the project shall be planned upon evaluating all fees and taxes to be paid by both the public and the private sector during project implementation.

12. **Task 1:** To prepare initial comparative public sector cost models of investment projects on Vilnius, Šiauliai, Panevėžys and Klaipėda remand prisons and houses of correction. The preparation and evaluation of the models shall include:

12.1. Selection and justification of an optimal solution for using state-owned custodial institutions referred to in paragraph 5, which are to be vacated, in the PPP project, which shall also include evaluation of the possibility to compensate for PPP project expenditure using funds received from the sale of this property; evaluation of the influence of income from the sale of the property on cash flows and the total project price; evaluation of the need for investments for the creation of the infrastructure of custodial facilities (including the costs of acquisition of a plot of land on the outskirts of Vilnius) and calculation of the residual value of investments where the project is implemented by the public entity;

12.2. Evaluation of direct and indirect costs of exploitation of the created infrastructure of custodial facilities where the project is implemented by the public entity

(costs of utility services, cleaning of buildings and surroundings, waste management services, system maintenance services, current repairs and additional investments), evaluation of any other costs of services provided at the facilities created as well as the costs of imprisonment and primary health care, organisation of occupation of prisoners, social rehabilitation, catering, washing and other activities. Expenditure shall be analysed by dividing it into direct and indirect service costs;

12.3. Determination of the indicator of the financial net present value of the initial comparative public sector cost model using the cash flow method.

13. **Task 2:** To prepare feasibility studies into the organisation of construction, equipment and exploitation of Vilnius, Šiauliai, Panevėžys and Klaipėda remand prisons and houses of correction as well as provision of services by means of public-private partnership, and partnership projects meeting the requirements approved by Resolution No 1480 of the Government of the Republic of Lithuania of 11 November 2009 on public-private partnership. The activities transferred and risks assumed shall be taken into account:

13.1. Correction of the initial public sector model according to risks:

13.1.1. Identification of risk factors and description of the occurrence thereof as well as evaluation of PPP project implementation costs to be influenced by the occurring risk;

13.1.2. Evaluation of the effect of risk occurrence on the financial flows of the project (financial flow corrections);

13.2. Recalculation of the indicator of the financial net present value of the initial comparative model according to the risks assessed and the probability of their occurrence.

13.3. The possibilities of division of activities between public and private entities shall be analysed and the scope of activities transferable to the private entity shall be determined by choosing the most cost-effective alternatives upon evaluating possibilities to transfer the following activities (in addition to design and construction) to the private entity:

- Maintenance and operation of the created infrastructure (including cleaning of buildings and surroundings and waste management);
- Maintenance and operation of building engineering systems;
- Maintenance and exploitation of electronic security tools;
- Maintenance and exploitation of communication facilities;
- Provision of catering services;
- Provision of washing services;
- Industrial and vocational training and employment of convicts;
- Social programmes, leisure time and occupation (sport, culture, cinema).
- Provision of other economic-commercial services (rental of domestic appliances, a hairdresser's, organisation of shopping activities in custodial institutions);

13.3.1. It shall be taken into account in the feasibility study that the public sector shall unconditionally perform the following functions:

- Administrative control of services performed by the private entity;
- Management of convict records;
- Social rehabilitation activities;
- Provision of primary health care services to convicts;
- Provision of education and teaching services (ensuring of general education);
- Preparation of convicts and submission of proposals on their release on parole;

13.3.2. Alternatives to the (physical and technological) protection of the external perimeter of institutions and the transfer of prisoner care services to the private entity shall be separately evaluated in the feasibility study.

13.4. The following shall be evaluated in the feasibility study when considering the possibilities of distribution of the activities referred to in paragraph 13.3 between the public and private entities:

13.4.1. Existing legal possibilities for transferring the activities to the private entity and the need for drafting (amending) legal acts;

13.4.2. Risk transferred to the private entity and costs of reduction or elimination thereof, the effect of risk transfer on the main financial indicators of the project and the benefits of partnership;

13.4.3. The effect of decisions on interest groups related to project implementation from a social and economic cost and benefit perspective (particularly regarding the transfer of activities referred to in paragraph 13.3.2.), including: the public, employees of custodial institutions and prisoners, evaluating the aspects of trust, possible dismissal of public sector employees and imposition of penalties on prisoners as well as the possible effect of these aspects on human rights protection;

13.4.4. Attractiveness to potential private partners and investors;

13.4.5. The effect on public finance, the amount of maximum obligations of the public sector and correspondence thereof to financial possibilities.

14. The author of the feasibility study shall evaluate all alternatives and offer an alternative which, from the public interests point of view, would facilitate the most economical and efficient implementation of the entire project of modernisation of custodial facilities.

15. The author of the feasibility study shall analyse possible methods of public procurement for the selection of a private partner and offer the most suitable ones for the proposed best PPP model.

16. The author of the feasibility study shall prepare a partnership project for the proposed best PPP model, which shall meet the requirements approved by Resolution No 1480 of the Government of the Republic of Lithuania of 11 November 2009 on public-private partnership.

17. **Task 3:** Preparation of documentation on an international tendering procedure for public procurement of services in accordance with the provisions of legal acts of the Republic of Lithuania (*can be performed on assumed condition that the need for implementing PPP projects is approved by the Ministry of Finance, the Commission on Public-Private Partnership Projects, the Government of the Republic of Lithuania and the Parliament of the Republic of Lithuania (these projects are hereinafter referred to as “approved PPP projects”) within their competence and in accordance with the procedure laid down in legal acts*). In addition to all necessary requirements, compliance with the following requirements shall also be evaluated in the documentation:

17.1. Tender dossiers (including sets of standard procurement documentation) on the approved projects for individual custodial institutions, which shall include the following:

17.1.1. Technical, economic and legal requirements for project documentation;

17.1.2. Technical, economic and legal requirements for one construction site procured;

17.1.3. Technical, economic and legal requirements for structures and premises;

17.1.4. Technical, economic and legal requirements for structures, engineering and technical equipment;

17.1.5. Conditions of the international tendering procedure and evaluation criteria;

17.1.6. List of services transferred to the service provider;

17.1.7. Scope of the services transferred;

17.1.8. Technical, economic and legal requirements for services;

17.1.9. Possibility of changes in the quantity of services;

- 17.1.10. Criteria for the assessment of risk distribution between the service provider and the customer;
- 17.1.11. Safeguards to be applied in order to start service provision on time (compensation for damage, promotion of activities, company guarantees);
- 17.1.12. Dispute settlement mechanisms and methods;
- 17.1.13. Step-in mechanisms in the event of a default on obligations;
- 17.1.14. Determination of loan refinancing options;
- 17.1.15. Procedure for paying for the performance of functions transferred to the service provider;
- 17.1.16. A system of evaluation of the responsibility of the service provider and the customer for the performance of the functions and bonuses for a higher quality of services than provided for in the agreement;
- 17.1.17. Documents on the transfer of plots of land for use by the service provider and on the return of these plots of land;
- 17.1.18. The procedure for the performance and supervision of design and construction works;
- 17.1.19. Requirements for evaluation of the technical condition of buildings, structures and current and non-current assets at the time of transfer upon the end of the public-private partnership project and liability for non-compliance with the technical condition requirements.
- 17.2. Draft agreements on the approved PPP projects.

V. REQUIREMENTS FOR THE AUTHORS OF THE FEASIBILITY STUDY

18. The following requirements shall be established for the author of the feasibility study:
- 18.1. The author shall have experience in preparing public-private partnership or concession projects (in the past five years, shall have prepared a feasibility study for at least one public-private partnership or concession project, based on which the implementation process was started).
- 18.2. Shall have experience in successful implementation of PPP projects in the area of prisons;
- 18.3. The author of the feasibility study shall present documentary evidence of compliance with the requirements of paragraphs 18.1 and 18.2.

VI. PROCEDURE FOR ACCEPTING SERVICES, PAYING FOR THE SERVICES PROVIDED AND USING THE RESULTS

19. Services shall be considered to have been provided after the operator has presented the customer with printed (in three copies) documentation prepared in accordance with the requirements of these Terms of Reference and corrected according to the customer's comments, and recorded on a computer medium:
- 19.1. Four PPP feasibility studies for individual custodial institutions;
- 19.2. Four partnership projects for individual custodial institutions;
- 19.3. A feasibility study acceptance certificate and an invoice.
- 19.4. Tender dossiers on the approved projects for individual custodial institutions (payment for this part of services shall be made separately according to the price indicated in the tender after the tender dossier on a relevant facility has been prepared and corrected according to the customer's comments);

20. The customer shall accept the documents referred to in paragraphs 19.1–19.2 of this agreement, evaluate the compliance thereof with the requirements of the Terms of Reference together with the Ministry of Justice, and present comments within ten working days of the transfer of a relevant document to the customer. The operator shall, within ten working days of the receipt of these comments (or within a period of time established by a separate agreement), correct relevant documents and submit them to the customer again for harmonisation. As soon as a document has been agreed and the customer and the Ministry of Justice do not present any new comments, the parties shall sign an acceptance certificate. The operator may use or transfer to third parties the results of the services provided only with the consent of the customer.

21. In the course of preparation of the documents referred to in paragraphs 19.1–19.2, the operator shall perform interim harmonisation of these documents with the customer and the Ministry of Justice within time limits established by mutual agreement, but not less than once a month. All aspects of preparation of the documents shall be agreed, including PPP project solutions regarding the security of custodial institutions, occupation of convicts, social rehabilitation, and technical and operational solutions of the institutional infrastructure.

22. Any disputes arising between the customer and the operator shall, first of all, be resolved by way of negotiations. In the event of failure to resolve a dispute peacefully, it shall be settled in accordance with the procedure set out in legal acts of the Republic of Lithuania.

VII. GOVERNING LEGISLATION

23. The following legal acts and amendments and supplements thereto shall be observed during preparation of the feasibility study and documentation on the public procurement of services:

23.1. Law on Investments of the Republic of Lithuania (Official Gazette Valstybės Žinios, 1999, No 66-2127);

23.2. Law of the Republic of Lithuania on Public Procurement (Official Gazette Valstybės Žinios, 1996, No 84-2000; 2006, No 4-102);

23.3. Law of the Republic of Lithuania on Management, Use and Disposal of State-Owned and Municipal Assets (Official Gazette Valstybės Žinios, 1998, No 54-1492; 2002, No 60-2412);

23.4. Law on Detention of the Republic of Lithuania (Official Gazette Valstybės Žinios, 1996, No 12-313; 2008, No 81-3172);

23.5. Penal Code of the Republic of Lithuania (Official Gazette Valstybės Žinios, 2002, No 73-3084);

23.6. Criminal Code of the Republic of Lithuania (Official Gazette Valstybės Žinios, 2000, No 89-2741);

23.7. Code of Criminal Procedure of the Republic of Lithuania (Official Gazette Valstybės Žinios, 2002, No 37-1341; 2002, No 46);

23.8. Resolution No 1480 of the Government of the Republic of Lithuania of 11 November 2009 on public-private partnership (Official Gazette Valstybės Žinios, 2009, No 137-5998);

23.9. Resolution No 1248 of the Government of the Republic of Lithuania of 30 September 2009 approving the Strategy for Modernisation of Custodial Facilities and the Implementation Plan thereof for 2009–2017 (Official Gazette Valstybės Žinios, 2009, No 121-5216);

- 23.10. Resolution No 264 of the Government of the Republic of Lithuania of 8 April 2009 on organisation of general education and vocational training of detainees and convicts serving a custodial sentence (Official Gazette Valstybės Žinios, 2009, No 43-1666);
- 23.11. Order No 1R-172 of the Minister of Justice of the Republic of Lithuania of 1 June 2009 approving the internal rules of procedure of remand prisons (Official Gazette Valstybės Žinios, 2009, 68-2782);
- 23.12. Order No 182 of the Minister of Justice of the Republic of Lithuania of 18 June 2003 approving the internal rules of procedure of detention centres (Official Gazette Valstybės Žinios, 2003, 68-3095);
- 23.13. Order No 101/1V-119 of the Minister of Justice of the Republic of Lithuania and the Minister of the Interior of the Republic of Lithuania of 14 April 2003 approving rules for using (public security) units of the Internal Service of the Ministry of the Interior and police for guarding institutions performing detention on remand, correctional facilities and detention centres, and maintaining order therein in the event of an extraordinary situation (Official Gazette Valstybės Žinios, 2003, No 40-1855);
- 23.14. Order No 118/V-234 of the Minister of Justice of the Republic of Lithuania and the Minister of Health of the Republic of Lithuania of 22 April 2003 approving the procedure for treating convicts with addictions in custodial facilities (Official Gazette Valstybės Žinios, 2003, No 39-1801);
- 23.15. Order No V-171/1R-67 of the Minister of Health of the Republic of Lithuania and the Minister of Justice of the Republic of Lithuania of 5 March 2009 establishing the procedure for providing urgent medical assistance to persons kept in custodial facilities at state or municipal health care establishments (Official Gazette Valstybės Žinios, 2009, No 29-1155);
- 23.16. Order No 115/V-231 of the Minister of Health of the Republic of Lithuania of 22 April 2003 approving the procedure for sending and transferring pregnant women and mothers with children up to three years of age to a correction facility with a children's (baby) home (Official Gazette Valstybės Žinios, 2003, No 39-1798);
- 23.17. Order No V-274 of the Minister of Health of the Republic of Lithuania of 13 May 2003 approving requirements for the equipment and exploitation of children's (baby) homes in houses of correction and supply conditions (Official Gazette Valstybės Žinios, 2003, No 50-2243);
- 23.18. Order No V-241 of the Minister of Health of the Republic of Lithuania of 30 March 2010 approving Lithuanian Hygiene Standard HN 76:2010 "Custodial Facilities: General Health Care Requirements" (Official Gazette Valstybės Žinios, 2010, No 41-1999);
- 23.19. Internal rules of procedure of correctional facilities approved by Order No 194 of the Minister of Justice of the Republic of Lithuania of 2 July 2003 (Official Gazette Valstybės Žinios, 2003, No 76-3498);
- 23.20. Order No 4/07-130 of the Director of the Prison Department under the Ministry of Justice of the Republic of Lithuania of 4 July 2005 approving instructions on the protection and supervision of custodial facilities (Official Gazette Valstybės Žinios, 2005, No 89-3361);
- 23.21. Order No 129 of the Director of the Prison Department under the Ministry of Justice of the Republic of Lithuania of 18 May 2010 approving rules for the equipment and exploitation of rooms for long and short meetings at custodial facilities (Official Gazette Valstybės Žinios, 2010, No 58-2875);
- 23.22. Order No V-124 of the Director of the Prison Department under the Ministry of Justice of the Republic of Lithuania of 11 May 2010 establishing the maximum number of persons allowed to be kept in remand prisons and detention centres and the minimum area per person in remand prison and detention centre cells (Official Gazette Valstybės Žinios, 2010, No 55-2731);

23.23. European Commission Green Paper on Public-Private Partnerships and Community Law on Public Contracts and Concessions);

23.24. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Public-Private Partnerships and Community Law on Public Procurement and Concessions;

23.25. Commission Interpretative Communication on the Application of Community Law on Public Procurement and Concessions to Institutionalised PPP (IPPP);

23.26. Other legal acts of the Republic of Lithuania and the European Union and recommendations on the regulation of construction and equipment of custodial institutions.

VIII. OTHER IMPORTANT INFORMATION

24. An alternative to the draft Terms of Reference is preparation of feasibility studies and partnership projects, as specified in these Terms of Reference, without procuring the services of preparation of public procurement documents on the international tendering procedure referred to in paragraphs 6.3, 17 and 19.4, with the procurement of these services organised exclusively for PPP projects and on condition that the need for implementing them is approved by the Ministry of Finance, the Commission on Public-Private Partnership Projects, the Government of the Republic of Lithuania and/or the Parliament of the Republic of Lithuania in accordance with the procedure laid down in legal acts.
