**ТERMS OF REFERENCE**

**for supporting the development of the Central Procurement Organization (CPO) for the Agency for Recovery and Infrastructure Development of Ukraine**

**Background and context**

Supporting anti-corruption efforts in Ukraine is a high political priority for the European Union and Denmark. By combating corruption, the EU contributes to the consolidation of democracy and economic growth of Ukraine, as well as the successful approximation of Ukraine with the EU.

The transparency, integrity and accountability of Ukraine’s recovery is one of the key topics of the EUACI. The Government of Ukraine, the Ministry of Communities and Territories Development of Ukraine (the Ministry) and the State Agency for Restoration and Infrastructure Development of Ukraine (the Agency) are the key counterpart of the EUACI in this area.

As the recovery process involves massive national and international resources, it is key to have a coordinated policy framework to ensure that these funds are managed responsibly and support Ukraine's long-term commitment to good governance and sustainable development.

The mechanism for conducting public procurement procedures should become one of the key elements of public finance management and improve the efficiency of state economic policy. It should be based, in particular, on the principles of fair competition, transparency and integrity, non-discrimination of participants, objectivity and impartiality of tender proposals, and prevention of corruption in this area. Given the large amounts of funds involved and the complexity of regulating agreement relations, public procurement has been identified as one of the most vulnerable corruption-prone areas of regulation.

Currently, the Regional Offices for Restoration (hereinafter – ROR) are the Customers of construction works and independently determine the main principles of organizing and conducting tender procedures. These entities have different approaches to procurement processes, which can lead to certain risks, including management, reputational, corruption, and sanctions risks.

To minimize these risks and standardize procurement procedures the Agency requested the EUACI to support in developing the organization of the Central Procurement Organization (hereinafter – CPO) as a state-owned enterprise in the system of the Agency for Restoration. To effectively manage and support this process, it is necessary to engage an expert (hereinafter – Service Provider) who will provide assistance to the Agency in the creation and operational sustainability of CPO.

**Objective:**

The main objective of the assignment is to support the Agency in minimizing corruption risks through the development of a concept for the establishment of a Central Procurement Organization, taking into account the specifics of public funding, legislative regulations, and the requirements for working with contractors and suppliers.

The main tasks are as follows:

1. Conduct a comprehensive analysis of the tasks, functions, management and organizational public procurement structures of the Agency, RORs as well as an analysis of other critical elements as to the establishment of a Central Procurement Organization (CPO).
2. Identify risks, including corruption risks, associated with the current functions of the public procurement processes of the Agency and RORs, including legislative frameworks, organizational and management structures.
3. Provide recommendations and support to the implementation and operational sustainability of the CPO as a state-owned enterprise. This includes developing a roadmap that outlines the stages and areas of collaboration with the Agency for Restoration, RORs, and other stakeholders. The recommendations should focus on creating internal policies and procedures essential for the effective functioning of the CPO, considering its status as a state entity. That should minimise risks, including corruption, and other risks associated with the functions of CPO and introduce elements of corporate governance. Additionally, suggestions for enhancing the existing regulatory framework should be included to ensure the stable operation of the organization.
4. Identify the main methods and ways of financing the Central Procurement Organization, develop a model and mechanism for financing the CPO based on consultations with relevant stakeholders, including possible donors and Ukrainian authorities. If necessary, develop amendments to the internal regulatory documents of the agency system and/or proposals for legislative proposals.

The Service Provider is expected to work in close cooperation with the Agency’s leadership and Working group for the establishment of the CPO (hereinafter – working group).

**Scope of work:**

The scope of work of the assignment includes different tasks, including, but not necessarily limited to:

**A)** **Establishing a comprehensive framework for the effective functioning of the Central Procurement Organization (CPO):**

1. Develop the detailed CPO Concept (legal, financial, functional, organizational model);
2. Develop 2-3 possible financial models for a sustainable functioning of the CPO;
3. Develop a general roadmap for the implementation and sustainable functioning of the Central Procurement Organization, including outlining the role of relevant stakeholders (including central executive authorities (such as the Ministry of Justice, Ministry of Economy), other state enterprises (in case clarification of the technical specifications if necessary), international donors, and etc.);
4. Define the scope of services to be provided by the Central Procurement Organization (CPO), including centralized tendering, contractor selection and project quality assurance, and assist the Agency in finalizing the selection of 4 or more categories of work to be centralized;

**B) Designing the Organizational Structure of CPO:**

* + - 1. Design an organizational structure for centralized decision-making while ensuring coordination and collaboration with various departments, regional and local authorities when relevant and other relevant stakeholders.

**C) Funding of activities and the business model for the functioning of the CPO:**

This involves developing a business model for the operations of the Central Procurement Organization (CPO), including but not limited to the following:

1. Formulating strategies and methods for financing the CPO (including comparisons of different options, such as commissions from procurement, donor grants, and support from the state budget), including ways to secure funding from contracting authorities. Analysing current legislation related to this issue and proposing changes if necessary;
2. Develop a business model that includes funding strategies, cost management methods;
3. Analyze the funding practices of similar organizations in Ukraine and other countries or regions to identify effective strategies;

**D) Legislative framework for the functioning of the CPO:**

* + - 1. Analyze the current secondary legislation regulating the activities of the CPO as a state-owned enterprise, in particular in the area of public procurement, and identify any gaps or the need for amendments;
      2. Suggest specific amendments to the existing legislation to enhance funding opportunities, clarify compliance requirements, and promote the sustainable functioning of the CPO; Develop clear internal policies and procedures to ensure the effective operation of the CPO. These should define how the organization operates and the roles of those involved in the procurement process;
      3. Develop a draft regulation/procedure for the interaction between the CPO and RORs to regulate and orderly manage legal relations.

**E) Other tasks related to the scope of work to be agreed with EUACI.**

The proposed list is not final and may be changed upon agreement with the Agency, the working group, and EUACI.

The Service Provider to perform the tasks defined in the scope of work should analyse the current legislation of Ukraine and international experience, including but not limited to:

* The Laws of Ukraine "On Public Procurement" No. 922-VIII of 25.12.2015;
* Resolution of the Cabinet of Ministers of Ukraine No. 1178 of 12.10.2022 "On approval of the peculiarities of public procurement of goods, works and services for contracting authorities provided for by the Law of Ukraine "On Public Procurement", for the period of the legal regime of martial law in Ukraine and for 90 days after its termination or cancellation" (with changes);
* Guidelines for Determining the Cost of Construction, approved by Order of the Ministry of Communities and Territories Development of Ukraine No. 281 of 1 November 2021;
* Rules for Determining the Cost of Construction, Reconstruction, Repair and Maintenance of Public Roads, approved by the Order of the Ministry of Infrastructure of Ukraine No. 273 of 2 May 2022;
* Methodology for determining the cost of road works and services for assessing the cost of new construction, reconstruction, repair and maintenance of public roads, approved by the Order of the Ministry of Infrastructure of Ukraine No. 753 of 07.10.2022;
* Law of Ukraine No. 3855-XII of 21.01.1994 "On State Secrets";
* Resolution of the Cabinet of Ministers of Ukraine No. 710 of 11.10.2016 "On the efficient use of public funds" (with changes);
* Resolution of the Cabinet of Ministers of Ukraine No. 1070 of 04.12.2019 "Some issues of advance payment for goods, works and services purchased with budget funds by budget funds managers (recipients)";
* Resolution of the Cabinet of Ministers of Ukraine No. 1216 of 27.12.2018 "On the peculiarities of the establishment and operation of centralized procurement organizations";

For the study of international experience in the functioning of centralized procurement organizations, it is proposed to explore the following normative legal acts and practices:

* Directive 2014/24/EU of the European Parliament and of the Council "On public procurement" - regulates the use of centralized procurement organizations in the EU;
* Experience of the United Kingdom - Crown Commercial Service, the central body that procures for the public sector (<https://www.gov.uk/government/organisations/crown-commercial-service>);
* Experience of Sweden - Kammarkollegiet, the central body that conducts procurement for government agencies (<https://www.kammarkollegiet.se/english/procurement-and-contracts>);
* Experience of Poland - Urząd Zamówień Publicznych, the central body that regulates public procurement (<https://www.uzp.gov.pl/en>).

**Expected deliverables:**

The deliverables are presented in Table 1 below, along with a tentative timeline.

All deliverables are expected to be delivered electronically (e-PDF and editable format) and hard copy unless otherwise agreed. Electronic copies should be sent by e-mail to the EUACI Component 4 contact person in Ukrainian and English languages.

**Table 1: Summary of deliverables/outputs and the tentative timeline for delivery.**

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| --- | --- | --- | --- |
| **#** | **Deliverable/Output** | **Timeline** | **Note** |
| 1 | Develop a comprehensive and detailed concept for the Central Procurement Organization (CPO) that covers the legal, functional, and organizational aspects to support the centralization of procurement activities and the selection of 4 or more categories of works | 1-1.5 months after contract signing | To be submitted to the EUACI |
| 2 | Develop 2-3 financial models that ensure the sustainable operation and function of the Central Procurement Organization (CPO). | 1 month after contract signing | To be submitted to the EUACI |
| 3 | Develop a comprehensive business model for the CPO, including funding strategies, cost management approaches, and effectiveness monitoring mechanisms. | 3 months after contract signing | To be submitted to the EUACI |
| 4 | Develop a detailed roadmap for the implementation and sustainable functioning of the CPO, incorporating the activities of all relevant stakeholders. | 3 months after contract signing | To be submitted to the EUACI |
| 5 | Create an organizational structure for the CPO that centralizes decision-making while promoting coordination and collaboration among various departments and stakeholders. | 1 month after contract signing | To be submitted to the EUACI |
| 6 | Legislative Analysis: Analyze existing legislation related to public procurement to identify gaps and propose necessary amendments to support the CPO's operations. | 3-3,5 months after contract signing | To be submitted to the EUACI |
| 7 | Legal Establishment Support: Provide assistance to the Recovery Agency in developing draft regulation/procedure for the interaction between the CPO and RORs to regulate and orderly manage legal relations. | 3 months after contract signing | To be submitted to the EUACI |
| 8 | Weekly reports (status updates) on the progress of the Tasks | Every week after contract signing | To be submitted to the EUACI by email |
| 9 | Final report | 2 weeks before the contract ending | Subject to EUACI's approval |

The timelines indicated in the table above are indicative towards the Service Provider’s level of effort. Therefore, the above timelines do not include the time required for EUACI approvals and endorsements by the Agency.

The Service Provider shall reflect on and update the timelines for different activities during the preparation and updating of the Service Provider's work plan. During the Kick-Off meeting with the EUACI, the Service Provider's updated work plan will be discussed, including the proposed timeline for the different activities and the submission of deliverables.

**Timeline**

The intended commencement date is the date of signature of the contract (expected: January 2025) with the Service Provider for the period of the contract of 4 months until April 2025, with a duration of **up to 84 working days**.

**Requirements to the Service Provider**

The contract will be awarded to the Service Provider (company, NGO or PE) meeting the following Qualifications criteria:

Proven Expertise:

* Demonstrated track record in the public procurement sphere, including centralization, analysis, and process optimization (incl. digitalization).
* Experience working with international organizations and effectively managing service agreements and/or grants.

Team Capability:

* Ability to shortly establish a qualified team of experts with skills in procurement, compliance, anti-corruption, legal frameworks, and financial management as outlined in the Terms of Reference.

The Service Provider's core team shall include the following key experts:

* + - 1. **One Team Lead / Senior Expert** with prior experience and a comprehensive understanding of the Prozorro public procurement system, and experience in centralizing functions and procurement strategies, risk management instruments, to be responsible for visionary and strategic approach, high-level coordination, and GR, analysing Centralization of Functions in future CPO.
      2. **One Senior Expert** in public procurement to analyse the organization of the procurement process in the ROR and CPO, with extensive experience in the public procurement sphere, and a proven track record in implementing integrity-focused activities.
      3. **One Business Analyst** responsible for analysing the CPO processes and providing recommendations for their optimization, analysing work between CPO and RORs.
      4. **One Lawyer** with prior experience in conducting legal practice related to public procurement, or related fields, such as establishing state institutions/state-owned enterprises or centralizing functions, who will work on establishing the legal framework for the operation of the CPO.
      5. **One Finance/grant specialist** with prior experience in finance, grant management, and operations, monitoring and evaluation mechanisms implementation, and international cooperation who will be responsible for establishing the financing and budgeting mechanisms for the CPO.

Please note that the Service Provider shall submit CVs of each of the abovementioned key experts of the core team along with its proposal.

An important for the EUACI’s evaluation of the received proposals will be proposed distribution of functions and roles within the Service Provider's team, as well as between the team leader and key experts.

More specific requirements for the aforementioned profiles are given below.

**Requirements for the Team Lead/Expert in public procurement**

General qualifications:

1. a Master’s degree in international relations, law, economics, public administration, or similar field is required,
2. a minimum of four (4) years of professional experience working with the state or local governments, NGOs or international programs, or relevant legal experience in state-owned and non-state-owned institutions;
3. at least three (3) years of professional experience working on good governance, anti-corruption or risk management projects;
4. experience from working in or with anti-corruption institutions an asset;
5. at least two (2) years of experience in project management and project coordination;
6. proven experience in cooperation with stakeholders in national government, developmentpartners, and civil society;
7. experience from working with international programs and donors an asset;
8. fluency in Ukrainian is required;
9. strong English language skills are required (both writing and oral);

**Requirements for a Business Analyst:**

General qualifications:

1. Minimum of Bachelor’s degree in audit, business administration, public administration, management, analytics, or a similar field;
2. More than two (2) years of experience in providing relevant advice and services to public authorities/local governments and/or legal entities of state and municipal ownership;
3. A minimum of one recent assignment from projects of a similar nature of conducting analysis of infrastructure/ construction or relevant spheres within the past two years or relevant experience as a public servant.

**Requirements for a Senior Public Procurement:**

General qualifications:

1. Minimum Bachelor's degree in finance, economics, law, or similar field;
2. Additional training in public procurement will be an advantage;
3. At least five (5) years of professional experience in legal, functional, and organizational aspects of public procurement sphere, including organizing, conducting, and monitoring tender procedures and public procurement, preferably in the field of design and construction;
4. In-depth systematic knowledge of Ukrainian public procurement legislation, including peculiarities for the period of martial law;
5. Strong analytical and problem-solving skills to devise effective risk mitigation strategies;
6. At least one project in the last four years involving organizing, conducting, monitoring public procurement, demonstrating a strong understanding of the public procurement sphere, including compliance and anti-corruption measures understanding.

**Requirements for a Lawyer with Experience in Public Procurement Legal Practice:**

General qualifications:

1. Master’s degree in law.
2. Minimum seven (7) years of experience in legal practice related to public procurement or related fields, such as establishing state institutions/state-owned enterprises or centralizing functions, etc.;
3. Demonstrated expertise in drafting and interpreting legislative frameworks, including laws and regulations related to public sector operations, institutional establishment, or centralization of functions, and legislative framework for public procurement in Ukraine;
4. Experience in providing legal advice, representation and administrative proceedings relevant to public sector operations, public procurement-related disputes, court cases, and administrative proceedings (preferably);
5. Strong knowledge of the legal and regulatory environment governing centralized organizations, preferably in procurement or other public sector operations.

**Requirements for a Finance Specialist for Developing the CPO:**

General qualifications

1. Minimum Bachelor's degree in finance, economics, law, or similar field;
2. Minimum five (5) years of experience in grant management, monitoring and evaluation, budgeting and reporting, public finances, financial management and modelling;
3. Proven track record in developing business models and financial strategies for public sector or non-profit organizations will be an advantage;
4. Familiarity with the budgeting and financing mechanisms for government agencies and centralized procurement entities will be an advantage;
5. Expertise in identifying and evaluating potential funding sources, including grants, commissions, and state budget allocations;
6. Proven expertise in cooperation with international organizations, fundraising, and relevant spheres.

**Monitoring and evaluation:**

The performance of the contractor will be regarded upon reaching the purpose of the contract as well as obtaining its results, as indicated in the sections "Objective" and "Expected Deliverables" herein respectively.

The coordinator reports to the Deputy head of Agency and EUACI. The contractor shall de-brief the EUACI prior to finalizing the assignment.

**Bidding details**

The bidder must submit the following information to be considered:

CV (no more than three pages long) that should include a description of the previous relevant assignments, key duties on this assignment.

Portfolio of the bidder

Budget proposal with daily rate/general budget for the assignment in EUR, inclusive of all taxes or other such charges with calculation of 84 working days.

The contract budget cannot exceed **31 000** **EUR.**

**How to apply**

The deadline for submitting the proposals is **7 of January 2025, 18:00 Kyiv time.**

The proposals shall be submitted within the above deadline to **euaci@um.dk with copy to olga\_kolodochka@ukr.net**, indicating the subject line “CPO consultant for the Agency”.

Bidding language: English

Any clarification questions for the bid request should be addressed to olga\_kolodochka@ukr.net, no later than 27 December 2024, 18:00 Kyiv time.

To ensure your documents were successfully received, please check that you receive an auto-reply from our system.

If your application is properly received, you will receive an auto-reply from the EUACI mailbox.

If you don’t receive an auto-reply, your application was not received, please try again or contact.

**Evaluation criteria**

Bids will be evaluated under the criteria provided below

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| --- | --- | --- |
| **#** | **Criteria** | **Weight** |
| 1 | Relevant experience, skills and competencies of the team | 60% |
| 2 | Portfolio of the bidder | 20% |
| 3 | Proposed budget | 20% |