

THE CROATIAN PARLIAMENT

1739

Pursuant to Article 89 of the Constitution of the Republic of Croatia, I hereby issue the

DECISION

PROMULGATING THE ACT AMENDING THE PUBLIC PROCUREMENT ACT

I hereby promulgate the Act amending the Public Procurement Act adopted by the Croatian Parliament at its session of 21 June 2013.

Class: 011-01/13-01/162

Reg. No.: 71-05-03/1-13-2

Zagreb, 24 June 2013

The President of the

Republic of Croatia

Ivo Josipović, m. p.

ACT

PROMULGATING THE ACT AMENDING THE PUBLIC PROCUREMENT ACT

Article 1

In the Public Procurement Act (Official Gazette 90/11) in Article 10, paragraph 1, item 13 reading as follows:

»13. contracts awarded by one or several contracting authorities to a legal person which they are the sole owners (founders and/or shareholders) of, provided the following conditions are cumulatively complied with:

a) there is no direct or indirect private capital participation in the legal person,

b) legal person has been established with the purpose of pursuing the activities serving the needs of the owner,

c) legal person has in the previous three years realized on the average more than 80% turnover by pursuing the activities serving the needs of the owner, and where no indicators on turnover are available for the preceding three years because of the date of establishment or

commencement of the activities of legal person, it will be sufficient that legal person shows that the achievement of such turnover is credible, for instance by means of business projections,

d) owner of the legal person exercises over the legal person concerned a control which is similar to that which it exercises over its own organizational (business) unit, and where there are several owners, on condition they exercise such a supervision jointly,

e) subject-matter of the contract concerns pursuing of the activities referred to in subitem b) hereof,

f) the owner shall ensure that legal entity applies this Act to the procurement of supplies, works or services necessary for performing the contract under this item.«.

Article 2

In Article 14, paragraph 2 is amended reading as follows:

»(2) In order to submit a tender or a request to participate, the groups of tenderers or candidates may not be required by the contracting authorities/entities to assume a specific legal form, however, after the award the group may be required to do so, to the extent this is necessary for the satisfactory performance of the contract. In joint tender it shall be specified which part of the public procurement contract (subject matter, quantity, value and percentage) shall be performed by individual member of the group of tenderers. The contracting authority/entity shall effect payment directly to each member of the group of tenderers for that part of the public procurement contract performed by such a member, unless the group of tenderers specifies otherwise. The joint tenderers shall be jointly and severally liable.«.

Article 3

In Article 15, paragraph 3 is amended reading as follows:

»(3) Economic operators for whom the right to participate in public procurement procedures or to perform such contracts is reserved may assign up to 20% of reserved contract value to the subcontractors not complying with the requirements laid down in paragraph 1 hereof.«.

Article 4

In Article 31, paragraphs 3 and 4 are amended reading as follows:

»(3) During the time limit for the receipt of tenders, economic operators may request clarifications and amendments related to the documents referred to in paragraph 2 hereof and the contracting authority must provide the response at the same Internet addresses where the basic documents are available without indicating the data of the person who requested them. Provided the request has been made in good time, the contracting authority shall made the response available no later than during the sixth day before the day of expiry of the time limit for the receipt of tenders in the public procurement procedure of high-value or no later than during the fourth day of expiry of the time limit for the receipt of tenders in the public procurement procedure of lesser value. The request is made in good time if submitted to the contracting authority no later than during the eighth day before the day of expiry of the time

limit for the receipt of tenders in the public procurement procedure of high-value or no later than during the sixth day before the day of expiry of the time limit for receipt of tenders in the public procurement procedure of lesser value.

(4) If, for whatever reason, the tender documents and supplementary documents, if any, are not made available pursuant to paragraph 2 hereof, if the contracting authority failed to respond to the timely request pursuant to paragraph 3 hereof, or if tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the tender documents, the contracting authority shall extend the time limit for the receipt of tenders accordingly so that all economic operators concerned may be aware of all the information needed to produce tenders.«.

Article 5

In Article 36, paragraphs 7 and 8 are amended reading as follows:

»(7) During the time period for the receipt of tenders, the candidates may request clarifications and amendments related to the documents referred to in paragraph 2 hereof , and the contracting authority shall respond to all the candidates simultaneously, without indicating the data of the person who requested them. Provided the request has been made in good time, the contracting authority shall submit the response no later than during the sixth day before the day of expiry of the time limit for the receipt of tenders in the public procurement procedure of high-value or no later than during the fourth day before the day of expiry of the time limit for the receipt of tenders in the public procurement procedure of lesser value, restricted procedure and an accelerated procedure referred to in Article 66 hereof. The request is made in good time if submitted to the contracting authority no later than during the eighth day before the day of expiry of the time limit for the receipt of tenders in the public procurement procedure of high-value or no later than during the sixth day before the day of expiry of the time limit for the receipt of tenders in the public procurement procedure of lesser value, restricted procedure and an accelerated procedure referred to in Article 66 hereof.

(8) If, for whatever reason, the documents are not supplied pursuant to paragraphs 2 and 3 hereof, if the contracting authority failed to respond to the timely request pursuant to paragraph 7 hereof, or if tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the tender documents, the contracting authority shall extend the time limit for the receipt of tenders accordingly so that all candidates concerned may be aware of all the information needed to produce tenders.«.

Article 6

In Article 39, paragraph 5, item 5, the word: »seven« is replaced by numeral: »15«.

Article 7

In Article 44, paragraph 6, item 5, the word: »any« is replaced by the word: »requested«.

Article 8

Article 54 is amended reading as follows:

»(1) Communication and other exchange of information between the contracting authority and economic operators may be by post, by fax, by electronic means in accordance with paragraphs 3 and 7 hereof, or by a combination of such means, according to the choice of the contracting authority. The means of communication chosen must be generally available and shall not restrict the access to the tendering procedure for economic operators.

(2) Communication, exchange and storage of information shall be carried out in such a way as to preserve the integrity of data and confidentiality of tenders, requests to participate, plans and projects. Authorised persons of the contracting authority or the jury may be provided access to content of the tenders, requests to participate, plans and designs only upon the expiry of the time limit set for submitting them.

(3) The tools and devices used for communication by electronic means, as well as their technical characteristics, must be non-discriminatory, generally available and interoperable with the communication technology products in general use and shall not restrict the access to tendering procedure for the economic operators.

(4) The requests related to electronic transmission and submission of tenders, requests to participate, plans and designs shall be compliant with the following conditions:

1. permissibility or obligation of electronic submission of tenders and requests to participate shall be laid down by the contracting authority in the contract notice and the tender documents, and as regards the plans and designs in the design contest notice and the contest documents,

2. the information regarding the specifications necessary for the electronic submission of tenders, requests to participate, and plans and designs, including encryption, shall be made available to interested parties, and

3. the devices for the electronic receipt of tenders, requests to participate, and plans and designs shall conform to the requirements specified in Annex VII hereto, and

4. the electronic submission of tenders, requests to participate, plans and designs shall be undertaken applying the advanced electronic signature.

(5) Where the electronic submission of tenders, requests to participate, plans and designs is authorized or compulsory, the contracting authority shall accept the submission in paper form in respect of the following:

1. the parts thereof that may not be transmitted by electronic means, such as physical samples, models, or similar,

2. the parts thereof whose production, due to specific feature of the subject matter of procurement, requires specific file formats not supported by generally available applications,

3. the parts thereof whose processing, due to specific feature of the subject matter of procurement, require specific file formats under a proprietary licensing scheme that for such reason cannot be made available for direct or remote use by the contracting authority, and

4. the documents issued by other bodies or entities which are valid only in the original form, where electronic mean does not provide for their transmission as originals.

(6) Electronic transmission and submission of tenders, requests to participate, plans and designs, as well as electronic auction shall be undertaken via Electronic Public Procurement Classifieds of the Republic of Croatia.

(7) Details concerning the electronic transmission and submission of tenders, requests to participate, plans and designs, as well as other issues in connection with the Electronic Public Procurement Classifieds of the Republic of Croatia shall be stipulated by the Government of the Republic of Croatia by virtue of the Regulation on the methodology for drawing up and handling tender documents and tenders.«.

Article 9

Article 67 is amended reading as follows:

»(1) The contracting authority shall exclude from participation in a public procurement procedure any candidate or tenderer:

1. where the economic operator or the person authorised under the law to represent the economic operator has been convicted by final judgement for any of the following criminal acts or corresponding criminal acts under the legal provisions of the country in which the economic operator is established or of the country which a person authorised under the law to represent the economic operator is a citizen of:

a) fraud (Article 236), fraudulent business activities (Article 247), accepting a bribe in business activities (Article 252), offering a bribe in business activities (Article 253), abuse in the public procurement procedure (Article 254), tax or customs duty evasion (Article 256), subsidy fraud (Article 258), money laundering (Article 265), abuse of position and powers (Article 291), illegal favouring (Article 292), accepting a bribe (Article 293), offering a bribe (Article 294), influence peddling (Article 295), influence peddling bribery (Article 296), criminal association (Article 328) and committing criminal act through criminal association (Article 329) under the Criminal Code,

b) fraud (Article 224), money laundering (Article 279), fraudulent business activities (Article 293), accepting a bribe in business activities (Article 294a), offering a bribe in business activities (Article 294b), association for committing criminal acts (Article 333), abuse of position and powers (Article 337), abuse of state power (Article 338), illegal mediation (Article 343), accepting a bribe (Article 347), and offering a bribe (Article 348) under the Criminal Code (Official Gazette 110/97, 27/98, 50/00, 129/00, 51/01, 111/03, 190/03, 105/04, 84/05, 71/06, 110/07, 152/08, 57/11, 77/11, and 143/12),

2. where it failed to fulfil the obligation to pay all outstanding tax liabilities and contributions for pension and health insurance, unless the economic operator was granted delayed payment of the said obligation under special regulations,

3. where it submitted false information at the time of submitting documents in accordance with this Section of the Act.

(2) For the purpose of ascertaining the circumstances referred to in paragraph 1, item 1 hereof, the economic operator shall submit the declaration in the tender or the request to participate. The declaration shall be issued by a person authorized under the law to represent the economic operator. The declaration may not be older than three months counting from the date of commencement of public procurement procedure.

(3) For the purpose of ascertaining the circumstances referred to in paragraph 1, item 2 hereof, the economic operator shall in the tender or request to participate submit the following:

1. certificate issued by the Tax Administration concerning the state of debt which may not be older than 30 days counting from the date of commencement of public procurement procedure, or

2. valid equivalent document issued by the competent authority of the country in which the economic operator is established, where the certificate referred to in item 1 hereof is not issued, or

3. declaration under oath or a corresponding declaration made by the person who is authorised under the law to represent the economic operator before the competent judicial or administrative authority or the notary public or the competent professional or trade body in the country in which the economic operator is established or the declaration certified by notary public that may not be older than 30 days counting from the date of commencement of the public procurement procedure, where in the country in which the economic operator is established the certificate under item 1 hereof or equivalent document referred to in item 2 hereof is not issued.

(4) The contracting authority may during the course of the public procurement procedure, for the purpose of verifying the circumstances referred to in paragraph 1, item 1 hereof, request from the body competent for keeping the criminal records and exchange of such information with other countries the issuing of a certificate stating the facts that such a body keeps official records on for any candidate, tenderer or person authorized under the law to represent the economic operator.

(5) Where unable to obtain the certificate referred to in paragraph 4 hereof, the contracting authority may for the purpose of verifying the circumstances under paragraph 1 item 1 hereof, request from the candidate or tenderer to present in the reasonable time limit the valid:

1. document issued by the body competent for keeping criminal records in the country in which the economic operator is established, or in the country which a person authorized under the law to represent the economic operator is the citizen of, or

2. equivalent document issued by competent judicial or administrative body in the country in which the economic operator is established, or in the country which a person authorized under the law to represent the economic operator is the citizen of, where the document on criminal records referred to in item 1 hereof is not issued, or

3. declaration under oath or corresponding declaration made by the person who is authorised under the law to represent the economic operator before the competent judicial or administrative authority or the notary public or the competent professional or trade body in the country in which the economic operator is established or in the country which a person

authorized to represent the economic operator under the law is the citizen of, or the declaration certified by notary public, where the in the country in which the economic operator is established or in the country which such a person is a citizen of the documents under items 1 and 2 hereof are not issued or those do not cover all criminal acts referred to in paragraph 1, item 1 hereof.

(6) In the case of group of tenderers or candidates, the circumstances referred to in paragraph 1 hereof shall be established for all members of the group individually.

(7) The contracting authority may in an appropriate manner stipulate the application of this Article also with regard to subcontractors, that also involving the authorization for verification pursuant to paragraph 4 hereof.

(8) The Republic of Croatia shall notify the European Commission of the national bodies competent for issuing the documents under this Article. Such notifications shall be without prejudice to the regulations on data protection.«.

Article 10

Article 68 is amended reading as follows:

»(1) The contracting authority may exclude from participation in a public procurement procedure any candidate or tenderer:

1. where it is bankrupt or subject to pre-bankruptcy settlement, where it is being wound up, where its affairs are being administered by a person designated by the competent court, where it has entered into arrangement with creditors, where it has suspended its business activities, or is in a similar procedure under the national regulations of the country in which the economic operator is established,

2. where it is the subject of preliminary proceedings to establish conditions for the declaration of a bankruptcy, the pre-bankruptcy settlement or, the proceedings of compulsory winding up its business, or the proceedings by the competent court to designate a person to administrate the operation of it, or the proceedings of arrangement with creditors, or in a similar procedure under the national regulations of the country in which the economic operator is established,

3. where the economic operator has been convicted by a judgment which has the force of *res judicata* of any criminal or misdemeanour offence in connection with carrying out of the professional activity, or of corresponding offence under the regulations of the country in which the economic operator is established or

4. where the economic operator in the previous two years up to the commencement of the public procurement procedure has committed grave professional misconduct which the contracting authority can prove by any means.

(2) Where it intends to apply one or several grounds for exclusion referred to in paragraph 1 hereof, the contracting authority shall specify the ground(s) it shall use for the exclusion. In the case referred to in paragraph 1, item 3 hereof, the contracting authority shall state one or more specific criminal or misdemeanour offences in connection with carrying out of professional activity it shall use as the grounds for exclusion.

(3) For the purpose of ascertaining the circumstances referred to in paragraph 1, items 1 and 2 hereof, the economic operator shall in the tender or request to participate submit the following:

1. an extract from the judicial, trade or other relevant register of the country in which the economic operator is established that may not be older than three months counting from the date of commencement of the public procurement procedure or
2. valid equivalent document issued by competent judicial or administrative body in the country in which the economic operator is established, where extract referred to in item 1 hereof is not issued or the extract does not contain all the data necessary for ascertaining such circumstances or
3. declaration under oath or a corresponding declaration made by the person who is authorised under the law to represent the economic operator before the competent judicial or administrative authority or the notary public or the competent professional or trade body in the country in which the economic operator is established or the declaration certified by notary public that may not be older than three months counting from the date of commencement of the public procurement procedure, where the country in which the economic operator is established is not issuing the extract under item 1 hereof or the document referred to in item 2 hereof or those do not contain all the data required for ascertaining such circumstances.

(4) For the purpose of ascertaining the circumstances referred to in paragraph 1, item 3 hereof, the economic operator shall submit the declaration in the tender or the request to participate. The declaration shall be issued by a person authorized operator under the law to represent the economic operator. The declaration may not be older than three months counting from the date of commencement of public procurement procedure.

(5) The contracting authority may during the course of the public procurement procedure, for the purpose of verifying the circumstances referred to in paragraph 1, item 3 hereof, request from the body competent for keeping the criminal and misdemeanour records and exchange of such information with other countries the issuing of a certificate stating the facts that such a body keeps official records on for any candidate or tenderer. The contracting authority shall attach tender documents to the application for issuing the certificate.

(6) Where unable to obtain the certificate referred to in paragraph 5 hereof, the contracting authority may for the purpose of verifying the circumstances referred to in paragraph 1, item 3 hereof request from the candidate or tenderer to present in the reasonable time limit the valid:

1. document issued by the authority competent for keeping criminal, misdemeanour or respective records of the country in which the economic operator is established or
2. equivalent document issued by competent judicial or administrative body in the country in which the economic operator is established, where the document on records referred to in item 1 hereof is not issued or
3. declaration under oath or corresponding declaration made by the person who is authorised under the law to represent the economic operator before the competent judicial or administrative authority or the notary public or the competent professional or trade body in

the country in which the economic operator is established or the declaration certified by notary public, where the country in which the economic operator is established the documents referred to in items 1 and 2 hereof are not issued or those do not cover all offences referred to in paragraph 1 item 3 hereof requested pursuant to paragraph 2 hereof.

(7) Grave professional misconduct within the meaning of paragraph 1, item 4 hereof involves proceeding by the economic operator in carrying out its professional activity contrary to respective regulations, collective agreements, codes of professional conduct or public procurement contracts awarded, which is of such a nature that it makes such an economic operator unsuitable and unreliable party to the public procurement contract or framework agreement that the contracting authority intends to award or conclude. Grave professional misconduct in performing the public procurement contract means such conduct of the economic operator that results in significant and/or repeated deficiencies in the performance of a substantive requirements under the contract which lead to its early termination, damages or other comparable consequences. The existence of grave professional misconduct shall be proven by the contracting authority on grounds of objective evaluation of circumstances of each particular case.

(8) The Republic of Croatia shall notify the European Commission of the national bodies competent for issuing the documents under this Article. Such notifications shall be without prejudice to the regulations on data protection.

(9) In the case of group of tenderers or candidates, the circumstances referred to in paragraph 1 hereof shall be established for all members of the group individually.

(10) The contracting authority may in an appropriate manner stipulate the application of this Article also with regard to subcontractors, that also involving the authorization for verification pursuant to paragraph 5 hereof.«.

Article 11

In Article 70, paragraph 4 is amended reading as follows:

»(4) Insofar the economic operator in the country of its establishment has to possess a particular authorization or to be a member of a particular organization to be able to perform a specific contract or part of the contract, the candidate or tenderer shall prove that it holds valid authorization or membership for itself and/or for the subcontractor.«.

Article 12

In Article 72, paragraph 3, item 1 is amended reading as follows:

»1. a list of contracts on the delivery of supplies executed in the year in which the public procurement procedure commenced and over three years preceding such a year, and where necessary in order to ensure an adequate level of competition, the contracting authority may also specify longer period. A list of contracts contains the amount, date of delivery and the name of the other party to the contract. If the other party to the contract is a contracting authority within the meaning of this Act, the list shall as a proof of duly performed delivery include or be accompanied by certificate signed or issued by the contracting authority. If the other party to the contract is a private subject, the list shall as a proof of duly performed

delivery include or be accompanied by certificate issued by such a subject, and failing that, the declaration issued by economic operator accompanied by the evidence that such certificate was requested shall be valid. Where necessary, the contracting authority may request directly from the other contracting party the verification of authenticity of the certificate,«.

In Article 4, paragraph 1 is amended reading as follows:

»1. a list of works contracts carried out in the year in which the public procurement procedure commenced and over five years preceding such a year, and where necessary in order to ensure an adequate level of competition, the contracting authority may also specify longer period. A list of contracts contains the value of works, date and place of performance of the works and the name of the other party to the contract. A list as a proof of satisfactory performance of works shall include or shall be accompanied by certificate of the other contracting party that the works were carried out according to the rules of the trade and properly completed. Where necessary, the contracting authority may request directly from the other contracting party the verification of authenticity of the certificate,«.

In Article 5, paragraph 1 is amended reading as follows:

»1. a list of services contracts executed in the year in which the public procurement procedure commenced and over three years preceding such a year, and where necessary in order to ensure an adequate level of competition, the contracting authority may also specify longer period. A list of contracts contains the amount, date the service was provided and the name of the other party to the contract. If the other party is a contracting authority within the meaning of this Act, the list shall as a proof of duly provided services include or be accompanied by certificate signed or issued by the contracting authority. If the other party to the contract is a private subject, the list shall as a proof of duly provided service include or be accompanied by certificate issued by such a subject, and failing that, the declaration issued by economic operator accompanied by the evidence that such certificate was requested shall be valid. Where necessary, the contracting authority may request directly from the other contracting party the verification of authenticity of the certificate,«.

Article 13

In Article 75, before the words: »All«, the following paragraph designation is inserted: »(1)«.

After paragraph 1, paragraph 2 is added reading as follows:

»(2) Where there is doubt as to the truthfulness of the information presented in documents that the candidates or tenderers submitted pursuant to this Section of the Act, the contracting authority may for the sake of verifying the truthfulness of information:

- request from the candidate or tenderer to present in the reasonable time limit the originals or certified copies of such documents and/or
- address the issuing body of the document and/or competent authorities.«.

Article 14

Article 77 is amended reading as follows:

- »(1) The contracting authority shall stipulate the means and terms of the tender guarantee.
- (2) The tender guarantee shall be stated in absolute amount that shall not exceed 5% of the estimated value of procurement.
- (3) The validity of the tender guarantee shall not be less than the term of validity of the tender.
- (4) Irrespective of the tender guarantee means specified by the contracting authority, the tenderer can make a cash deposit in the required amount.
- (5) Should the validity of the tender or tender guarantee expire, the contracting authority shall request its extension. To this end, the tenderer shall be given an appropriate time limit.
- (6) The contracting authority shall return tender guarantees to the tenderers immediately after the completion of the public procurement procedure and the copy of the tender guarantee shall be archived pursuant to Article 104 of this Act.«.

Article 15

Article 86 is amended reading as follows:

- »(1) The contracting authority shall not require from economic operators to subcontract a part of the public procurement contract or to engage certain subcontractors nor restrict them in that respect, unless stipulated otherwise by special regulation or international agreement.
- (2) Economic operators who intend to subcontract a part of the public procurement contract to one or more subcontractors shall specify in their tender the following data:
- name or company name, seat, PIN (or national identification number according to the country of establishment of the economic operator, where applicable) and account number of the subcontractor, and
 - the subject-matter, quantity, subcontract value and percentage share of the public procurement contract subcontracted.
- (3) Where the selected tenderer subcontracted a part of the public procurement contract, the data referred to in paragraph 2 hereof shall be stated in the public procurement contract.
- (4) The contracting authority shall effect payments directly to the subcontractor for the works performed, goods supplied or services provided.
- (5) Selected tenderer shall enclose to its invoice or accounting report the invoices or accounting reports issued by its subcontractors that it had previously confirmed.
- (6) Selected tenderer may during the performance of public procurement contract require from the contracting authority the following:
- change of the subcontractor for that part of the public procurement contract that it had previously subcontracted,

- assuming the performance of the part of the public procurement contract that it had previously subcontracted,

- introducing one or more new subcontractors whose total share shall not exceed 30% of the value of public procurement contract irrespective of whether it previously subcontracted a part of the public procurement contract or not.

(7) Along with the request referred to in paragraph 6, subparagraphs 1 and 3 hereof, the selected tenderer shall submit to the contracting authority the information referred to in paragraph 2 hereof concerning the new subcontractor.

(8) The contracting authority may, prior to granting approval with regard to request referred to in paragraph 6 hereof, require from selected tenderer the valid documents proving that the new subcontractor complies with the following:

- conditions referred to in Article 67 and Article 68 hereof insofar as those have been specified in the public procurement procedure with regard to subcontractors as well,

- criteria referred to in Article 71 and Article 72 hereof where the selected tenderer in the public procurement contract for the purpose of proving the financial standing and technical and professional ability relied on the capacities of subcontractors it substitutes,

- holding of valid authorization or membership pursuant to Article 70, paragraph 4 hereof, where applicable.

(9) By way of derogation, where for justifiable reasons related to specific terms of performance of the public procurement contract, the provision of paragraph 4 hereof is not applicable, the contracting authority shall state in the tender documents that it holds no obligation to effect direct payment to the subcontractor.

(10) Participation of subcontractors shall be without prejudice to the question of the liability of the selected tenderer for the performance of the public procurement contract.«.

Article 16

In Article 90, paragraph 3, the words: »91 and 92« are replaced by the following words: »91, 92, and 95«.

Article 17

In Article 91, paragraph 1, at the end of the paragraph, the sentence is added reading as follows: »When evaluating the prices, the contracting authority shall take into account the comparable empirical and market values as well as all the circumstances under which a specific public procurement contract shall be performed.«.

In paragraph 4, at the end of the paragraph, the sentence is added reading as follows: »The contracting authority shall verify whether the prices are economically reasonable and logical, and it may in particular verify whether the price of essential items includes all expenses (personnel, material, devices, services, etc.) and whether the price of items that are more

valuable by market standards or of higher quality is as a rule higher than that of the items that are less valuable by market standards or of lesser quality.«.

Article 18

Article 92 is amended reading as follows:

»(1) In the process of examination and evaluation of tenders, the contracting authority may invite the tenderers to eliminate the errors, shortcomings or vagueness that are remediable by clarifying or supplementing in connection with documents requested pursuant to Articles 67 to 74 hereof.

(2) The errors, shortcomings or vagueness referred to in paragraph 1 hereof are considered the documents which are or appear unclear, incomplete, incorrect, contain the errors, or are missing.

(3) In the case referred to in paragraph 1 hereof, the contracting authority shall invite the tenderers to clarify or supplement the documents which they submitted or to submit the documents due for submission pursuant to Articles 67 to 74 hereof within reasonable time limit that shall be no less than five days nor longer than 15 days.

(4) The clarification or supplement in connection with the documents requested pursuant to Articles 67 to 74 hereof shall not be considered an amendment to the tender.

(5) In the process of examination and evaluation of tenders, the contracting authority may invite the tenderers to clarify particular elements of the tender in the part concerning the tendered subject-matter within the time limit which shall be no less than five or longer than 10 days. The clarification shall not result in amending the tender.

(6) Conduct of the contracting authority pursuant to paragraphs 1 to 5 hereof must not have the effect of discrimination, unequal treatment of tenderers or be in favour of a particular tenderer in the public procurement procedure and shall be transparent.

(7) Paragraphs 1 to 4 hereof shall apply accordingly also in the process of evaluation of the request to participate made by the candidate.«.

Article 19

In Article 95, paragraph 1, the first sentence is amended reading as follows: »After the ranking of tenders according to the award criteria and prior to adopting an award decision, the contracting authority may request the best tenderer to whom it intends to award a public procurement contract, or one or more economic operators with whom it intends to conclude a framework agreement, to submit the originals or certified copies of one or more documents which are requested pursuant to Articles 67 to 74 hereof.«.

Article 20

In Article 96, paragraph 6, after the word: »certificate« within parenthesis, a comma is inserted and the following words are added: »publication in the Electronic Public Procurement Classifieds of the Republic of Croatia, whereby the submission is deemed to be

effected by the expiry of the day of publication«, and after the parenthesis at the end of the paragraph, a sentence is added reading as follows: »The contracting authority shall not be obliged to submit in attachment to the minutes of the examination and evaluation of tenders the enclosures to the minutes.«.

Article 7 is amended reading as follows:

»(7) Should the contracting authority pursuant to paragraph 6 hereof fail to submit the award decision to each tenderer or participant, that shall constitute the grounds for declaration that the award decision is null and void.«.

After paragraph 7, paragraph 8 is added reading as follows:

»(8) The contracting authority may by virtue of a decision rectify the mistakes made in the names or numerals, writing or calculating as well as other obvious inaccuracies made in the award decision that it adopted. The rectification of an error shall produce legal effect as from the date legal effect is produced by the award decision that is rectified.«.

Article 21

In Article 98, after paragraph 2, paragraph 3 is added reading as follows:

»(3) By way of derogation from paragraph 2, item 1 hereof, where the contracting authority publishes a prior notice of the intention to award a contract, it shall be bound by a standstill period of 15 days in the case of high-value procurement or 10 days in the case of procurement of lesser value. The start of the standstill period shall be calculated from the first following day after the day of the publication of a prior notice of intention to award a contract.«.

Article 22

In Article 100, paragraph 6, at the end of the paragraph, the sentence is added reading as follows: »Where such tenders or requests to participate were submitted by electronic means, the Electronic Public Procurement Classifieds of the Republic of Croatia shall disable the access to such tenders or requests to participate permanently.«.

Article 23

In Article 101, paragraph 3, after the words: »paragraph 1«, a comma is inserted and the following words are added: »paragraph 2, items 1 and paragraph 4, item 3«.

In paragraph 7, at the end of the paragraph, the sentence is added reading as follows: »In other cases of cancellation under Article 100 hereof, the standstill period shall not apply, while the cancellation decision shall come into effect upon its receipt pursuant to paragraphs 3 to 6 hereof.«.

In paragraph 8, after the words: »certificate« within parenthesis, a comma is inserted and the following words are added: »publication in the Electronic Public Procurement Classifieds of the Republic of Croatia, whereby the submission is deemed to be effected by the expiry of the day of publication«, and after the parenthesis at the end of the paragraph, a sentence is added

reading as follows: »The contracting authority shall not be obliged to submit in attachment to the minutes of the examination and evaluation of tenders the enclosures to the minutes.«.

After paragraph 9, paragraph 10 is added reading as follows:

»(10) The contracting authority may by virtue of a decision rectify the mistakes made in the names or numerals, writing or calculating as well as other obvious inaccuracies made in the cancellation decision that it adopted. The rectification of an error shall produce legal effect as from the date legal effect is produced by the cancellation decision that is rectified.«.

Article 24

In Article 102, paragraph 1, the words: »pursuant to Article 95 of this Act« are deleted, and the words: »Article 92 of this Act« are replaced by the words: »this Act«.

After paragraph 1, new paragraph 2 is added reading as follows:

»(2) Within the time limit referred to in paragraph 1 hereof, the contracting authority shall provide the tenderer access to all enclosures of the minutes of the examination and evaluation of tenders at its request.«.

Former paragraph 2 becomes paragraph 3.

Article 25

In Article 104, before the words: »The contracting authority«, the following paragraph designation is inserted: »(1)«.

After paragraph 1, paragraph 2 is added reading as follows:

»(2) The tenders, requests to participate, plans and designs submitted by electronic means shall be stored by the Electronic Public Procurement Classifieds of the Republic of Croatia in a manner ensuring the preservation of integrity of data.«.

Article 26

In Article 105, paragraph 5 is amended reading as follows:

»(5) Substantial changes to the public procurement contract within the meaning of paragraph 4 hereof are changes which:

1. introduce conditions which, had they been stipulated in the initial public procurement procedure, would have allowed for the participation of additional tenderers apart from those that participated or the tenderers different than those which participated, or the selection of the tender that is different than that selected, or
2. considerably extend the subject of the contract to encompass supplies, works or services not covered by initial contract, or

3. change the economic balance in favour of the tenderer in manner which was not provided by the conditions of the initial public procurement contract, or
4. change the contracting party with respect to the tenderer selected.«.

After paragraph 5, new paragraph 6 is added reading as follows:

»(6) Changes to the public procurement contract shall not be considered substantial changes within the meaning of paragraph 4 hereof in the following cases:

1. possibility to change the contract (scope and nature of possible changes, conditions under which the changes may arise) were provided for in tender documents and public procurement contract in clear and unequivocal manner, provided that that does not allow for the alteration of legal nature of the public procurement contract;
2. total value of all changes to the contract excluding VAT is less than 10% of the amount of the initial public procurement contract excluding VAT, provided that that does not alter legal nature of the public procurement contract;
3. change of the contracting party with respect to the tenderer selected occurred on grounds of legal succession as a consequence of its status change provided that it had not been effected with the aim of circumventing the application of this Act and that the economic operator who becomes the new contracting party fulfils all the criteria and requirements that had been envisaged in the initial public procurement procedure.«.

Former paragraph 6 becomes paragraph 7.

Article 27

Article 112 is amended reading as follows:

»(1) The activities in the area of postal services mean the activities related to the provision of:

1. postal services pursuant to the provisions of regulations governing postal services,
2. other services than postal services, on condition that such services are provided by an entity which also provides postal services referred to in paragraph 2, item 2 hereof that are not directly exposed to competition within the meaning of Article 114 hereof.

(2) Within the meaning of this Article and without prejudice to the provisions of regulations governing postal services:

1. postal item means any item addressed in the final form in which it is to be carried by postal service provider. Types of postal items are items of correspondence, postal packages, registered mail, insured mail, cecogrammes, direct mail and printed matter,
2. postal services means services involving any proceeding with postal items by the postal service provider, and in particular the clearance, sorting, routing and delivery of postal items in internal or international postal traffic,

3. other services than postal services means services provided in the following areas:

- mail service management services (services preceding and subsequent the despatch, including the mailroom management services),
- services linked to and provided entirely by electronic means (including the secure transmission of coded documents by electronic means, address management services and transmission of registered electronic mail),
- services in connection with postal items not covered by the provision of item 1 hereof, such as postal items bearing no address,
- financial services referred to in Annex IIA category 6 hereof and Article 10, paragraph 2, item 8 hereof, including in particular the postal money orders and postal giro transfers,
- services in connection with issuing and selling postage stamps pursuant to the provisions of regulations governing postal services, and
- logistics services (combining physical delivery and/or warehousing with other non-postal functions).«.

Article 28

In Article 141, paragraph 1, after the word: »agreement«, the following words are added: »or a design contest«.

Article 29

In Article 146, paragraph 1, item 3, after the word: »to«, the following words are added: »failing of the contracting authority/entity to respond to the request submitted in good time for clarification or amendment in connection with the tender documents and to«.

Article 30

In Article 147, paragraph 1, item 6, after the word: »to«, the following words are added: »failing of the contracting authority/entity to respond to the request submitted in good time for clarification or amendment in connection with the tender documents and to«.

Article 31

In Article 155, paragraph 2 is amended reading as follows:

»(2) Should the contracting authority/entity fail to proceed as called upon pursuant to paragraph 1 hereof, the State Commission shall adopt a decision without the documents referred to in Article 154 hereof.«.

Article 32

In Article 157, paragraph 5, at the end of the paragraph, the sentence is added reading as follows: »Where such tenders were submitted by electronic means, the Electronic Public

Procurement Classifieds of the Republic of Croatia shall permanently disable the access to such tenders.«.

Article 33

In Article 158, paragraph 5, at the end of the paragraph, the sentence is added reading as follows: »Where such tenders were submitted by electronic means, the Electronic Public Procurement Classifieds of the Republic of Croatia shall permanently disable the access to such tenders.«.

In paragraph 6, after the words: »Article 147 paragraph 1« the following words are added: »item 1 or«.

In paragraph 10, the word: »tenders« is replaced by the words: »requests to participate«. At the end of the paragraph, the sentence is added reading as follows: »Where such requests to participate were submitted by electronic means, the Electronic Public Procurement Classifieds of the Republic of Croatia shall permanently disable the access to such requests to participate.«.

Article 34

In Article 159, item 9 is amended reading as follows:

»9. proof of payment of the fee for initiating the appellate procedure based on which it may be established that the transaction was effected, whereby the proof is also considered the non-certified copies or printouts of the orders to effect payments, including also those issued in electronic form save in the case referred to in Article 169 paragraph 6 hereof,«.

Article 35

In Article 160, paragraph 1, after the words: »shall«, the following words are added: »in reasonable time limit from the date of receipt of appeal«.

In paragraph 2, after the words: »limit«, a comma is inserted and the following words are added: »and it is not possible to proceed upon appeal«.

Article 36

In Article 162, paragraph 4 is amended reading as follows:

»(4) The State Commission shall adopt the decision on the request referred to in paragraph 1 hereof within a period of five days from the day of receipt of the request.«.

Article 37

In Article 163, paragraph 4 is amended reading as follows:

»(4) The State Commission shall adopt a decision concerning the motion for interim measure within a period of five days from the day of receipt of documents referred to in Article 154 hereof.«.

Article 38

In Article 169, paragraph 1, item 6, at the end of the text the dot is deleted and the following words are added: »to HRK 30,000,000.00.«.

After item 6, item 7 is added reading as follows:

»7. one per mille of the estimated value of procurement equal to or higher than HRK 30,000,000.00 or above, but not exceeding HRK 100,000.00.«.

Paragraphs 4 and 5 are amended, reading as follows:

»(4) On the basis of proof of payment of the fee presented, the State Commission shall verify whether payment of the fee for initiating the appellate procedure was effected on the account of state budget.

(5) Should the State Commission following the receipt of the appeal ascertain that the proof of payment has not been presented with the appeal or it may not ascertain through verification that the fee has been paid in stipulated amount, it shall invite the appellant to effect payment of the fee and present the proof of payment of the fee within a time limit that shall not exceed five days. Should the appellant fail to act in accordance to the State Commission invitation, the appeal shall be dismissed as irregular.«.

Article 39

Article 171 is amended reading as follows:

»(1) In appellate procedures the State Commission shall take decisions at the council meetings that are not open for the public.

(2) The State Commission shall adopt and publish the decision within 30 days from the date or receipt of complete appeal, unless stipulated otherwise in this part of the Act.

(3) State Commission shall in the decision specify the date of receipt of complete appeal.

(4) Should the State Commission for any reason fail to adopt and fail to publish the decision within the time limit referred to in paragraph 2 hereof, the decision shall contain the statement of reasons for delay.

(5) State Commission shall deliver the decisions by publication on the State Commission Internet address. The delivery is considered to be effected by the expiry of the eighth day from the day of publication.

(6) By way of derogation, where it judges that there are justified reasons, the State Commission shall deliver the decision by registered mail or by any other traceable means.«.

Article 40

In Article 179, paragraph 4, the words: »a candidate or tenderer« are replaced by the words: »an economic operator«.

Article 41

In Article 182, paragraph 1, item 15, at the end of the text, the dot is replaced by comma.

After item 15, item 16 is added reading as follows:

»16. they procure supplies, works or services for defence and security purposes without applying the public procurement procedure as laid down in the Regulation on public procurement for defence and security purposes save in cases permitted by the Act (Article 11, paragraph 2).«.

TRANSITIONAL AND FINAL PROVISIONS

Article 42

(1) Electronic submission of the tenders and requests to participate are obliged to permit:

1. State Office for Central Public Procurement as of 1 January 2014 at the latest;
2. other contracting authorities/entities as of 1 January 2015 at the latest with regard to procurement of high-value, and as of 1 July 2015 at the latest with regard to procurement of lesser value.

(2) The obligation of electronic submission of tenders and requests to participate are obliged to lay down:

1. State Office for Central Public Procurement as of 1 January 2015 at the latest;
2. other contracting authorities/entities as of 1 January 2016 at the latest with regard to procurement of high-value, and as of 1 July 2016 at the latest with regard to procurement of lesser value.

(3) Obligations of the contracting authorities/entities under paragraphs 1 and 2 hereof concern open public procurement procedure, restricted public procurement procedure, negotiated public procedure with prior publication and competitive dialogue.

Article 43

Public procurement procedures commenced before the entry of this Act into force in which no public procurement contracts have been awarded or framework agreements concluded, or which are the subject of court or other procedures, shall be brought to completion pursuant to provisions of the Public Procurement Act in force at the moment of commencement of public procurement procedures.

Article 44

The Government of the Republic of Croatia shall within six months from the date of entry of this Act into force align the Regulation on the methodology for drawing up and handling tender documents and tenders with the provisions of this Act.

Article 45

This Act shall enter into force on the eighth day following the day of its publication in the Official Gazette.

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Zagreb, 21 June 2013

THE CROATIAN PARLIAMENT

President
of the Croatian Parliament

Josip Leko, m.p.