

## DECISION

### ON THE PROCLAMATION OF THE PUBLIC PROCUREMENT ACT

I hereby proclaim the Public Procurement Act, which was enacted by the Croatian Parliament at its session held on 14 December 2001.

Number: 01-081-01-3962/2

Zagreb, 21 December 2001

President  
of the Republic of Croatia  
**Stjepan Mesić** (*signed*)

### PUBLIC PROCUREMENT ACT

#### Part I. GENERAL PROVISIONS

##### *Subject Matter and Content*

##### Article 1

This Act shall regulate the conditions of and procedures for public procurement which precede the conclusion of contracts on the procurement of goods and services and the contracting of works with the objective of securing the effective utilisation of budgetary and other funds and of encouraging a free market for tendering.

##### *Definition of Terms*

##### Article 2

For the purpose of this Act, the fundamental terms are:

1. *Procurement* shall mean the acquisition of goods and services, the contracting of works, purchasing (including purchasing in instalments, with or without purchasing commitment) and renting or leasing, in accordance with methods and procedures established hereby, whereby the ordering party may make commercial use of the goods or services procured.

2. *Procurement procedures* cover all procedures and operations which shall be conducted and completed pursuant to the provisions hereof prior to the conclusion of a contract.

3. *Public procurement* is the procurement of goods and services and the contracting of works which is executed by the clients determined herein.

4. A *client* shall be the body or legal person described in Article 4 hereof.

5. A *competitor* is a legal or natural person participating in the first stage of selective tendering, in a limited or negotiating procedure by means of tendering through direct dealing.

6. A *tenderer* shall be a legal or natural person who submits a bid in the course of the procurement procedure.

7. *Goods* are movable tangible assets of all types, including semi-products, raw materials and spare parts and other items, and real estate in the sense of undeveloped and developed construction sites with the pertaining completed facilities and industrial and other equipment as well as associated services, if the value of so pertaining items does not exceed the value of the principal items, the title to a portion of industrial property (patents, licenses, transfer of technology and knowledge), computer programmes (software; systems and user-defined) and various research.

8. *Works* shall cover the construction, extensions, renovation (reconstruction) and restoration (repair) of architectural and other civil engineering structures, the installation, alteration, modification, maintenance or removal of facilities, equipment and other technological systems, including all accompanying operations, provided that the value of such operations does not exceed the total value of the principal operations.

9. *Services* means rendering of professional knowledge and skills in technical, technological,

legal, financial and other fields, including the elaboration of studies, programmes and projects, the conduct of experiments, supervision, electronic data processing and exchange support, the organisation of operations, management, expert consultation, and training when it is a matter of any field or activity of the services which pertain to their rendering.

10. *Identical goods/services/works* implies a unified classification, designation, records, purpose and properties.

11. *Acceptable tender* is a tender that fully complies with all the stipulated conditions and requirements from the tender documentation.

12. *Preferred tender* is an acceptable tender from a qualified tenderer with the same type, properties and quality of goods, services or works sought in the tender documentation and which is determined by the lowest price or economically most acceptable tender based on price and additional selection criteria if cited in the tender documentation.

13. *Procurement contract* is a contract concluded in written form between the client and the tenderer pursuant to the conditions of the implemented procurement procedure.

14. *Open tendering* is an open procurement method in which all interested tenderers may submit their tenders.

15. *Selective tendering* is a two-phase limited procurement method in which tenders may only be submitted by tenderers that have proven their qualifications and are invited by the client.

16. *Direct dealing* is a procurement method by negotiation on the conditions of the contract with one or more tenderers as selected by the client.

17. *Competition* is a procurement method employed to procure services in the field of spatial or physical planning and in the fields of architectural design and information technology, with or without the allocation of a reward.

18. *Special or exclusive rights (authorisations)* are rights conferred by a competent body to one or more legal or natural persons to perform the activities from Article 5 hereof:

– if, for the purposes of setting-up a network or facilities, such persons can make use of expropriations or assets, or if the network equipment may be installed on, under or above a public road,

– if a legal person supplies potable water, electricity, natural gas or thermal energy managed by the beneficiary of special or exclusive rights.

### *General Procurement Principles*

#### Article 3

(1) The client shall conduct the procurement procedure in timely manner in order to facilitate effective procurement pursuant to this Act and valid legislation. Through tendering and selection of the best tender, the client must secure the efficient and meaningful management of procurement funds.

(2) Tenderers or candidates may equally participate in procurement procedures without limitation pertaining to residence or registered seat, differing national classification of activity, status of legal or natural person and origin of goods. The client shall not reject the tender of a tenderer solely on the grounds that such tenderer's seat is in a country with which the Republic of Croatia has not concluded an agreement on equal rights for tenderers.

(3) The client may not apply discriminatory measures nor limit free market competition between tenderers or candidates, nor demand and apply evidence or procedures which would place them in an unequal position, nor demand that they employ national sub-contractors or perform any other operation, export of goods or services, unless specified otherwise by international agreement, treaty or special legislation, in which case the client shall cite the extent of participation by domestic tenderers or candidates or the share of goods or services of domestic origin in the tender documentation. Legal and natural persons who directly or indirectly participate in the preparations for tendering, or among whom there is a co-ownership relation or conflict of interest, may not participate in tendering as tenderers unless their participation is necessary under particularly justified circumstances.

(4) Procurement procedures and utilisation of funds shall be public and transparent. All persons interested in participating in procurement procedures shall be entitled to receive information on procurement procedures pursuant to the provisions hereof.

## Part II. JURISDICTION

### *Parties Obligated to Adhere to the Act*

#### Article 4

The procurement of goods and services and the contracting of works pursuant to this Act shall be conducted by:

1. governmental and other bodies which are budget beneficiaries, and these are:
  - bodies of state authority of the Republic of Croatia,
  - local self-government units,
  - regional self-government units,
2. legal persons:
  - in which the Republic of Croatia, local self-government units and/or regional self-government units have a direct or indirect majority share in the equity or a majority operating interest, or a majority of decision-making rights, or a direct or indirect majority of voting rights, or in which they can appoint over one half of the members of the management or supervisory board, or they are entitled to exert or in fact implement a dominant influence and manage the operating and financial policies of the company based on their authority,
  - who in their overall revenues for regular operations and for capital investments utilise over 50 per cent of funds directly or indirectly from the central budget or from the budgets of local or regional self-government units,
  - who utilise funds or financial security instruments of the Republic of Croatia, local or regional self-government units for procurement,
  - who on the basis of a construction concession in which instead of payment of completed works exercise the right to utilise constructed facilities with or without the additional payment of a specified price.
3. legal persons who engage in one or more activities in water supply, energy supply, transportation and telecommunications pursuant to Article 5 hereof.

### *Clients in Water Supply, Energy Supply, Transportation and Telecommunications*

#### Article 5

(1) In the sense of this provision, a client is a legal person with special or exclusive rights (authorisation):

1. who performs one or more activities pertaining to the management or operation of fixed networks for public supply:
  - associated with the production, transportation or distribution of potable water, electricity, natural gas or thermal energy or associated with the supply of these networks with potable water, electricity, natural gas or thermal energy,
  - associated with the supply of potable water, if procurement is tied to water supply-related construction projects, including irrigation and drainage projects, provided that the quantity of water produced thereby and earmarked for the supply of potable water is over 20 per cent of the total quantity of water and which is facilitated by these irrigation or drainage projects or devices, or if procurement is tied to sewage and wastewater treatment,
2. who uses a portion of the national territory to:
  - research or extract petroleum, natural gas, coal or other solid fuels,
  - facilitate access to airports, maritime and inland ports and other transport terminals by transporters in air, maritime or shipping transport within the national territory,
  - manage public transportation networks, railroads, automated transport systems, tramcars,

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buses, trolleys or funiculars,

– manage or operate public telecommunications networks or several public telecommunications services.

(2) A legal person is not a client in the sense hereof:

1. if potable water or electricity

– is produced by such person to perform activities other than those mentioned in Paragraph (1) hereof,

– is delivered to a public network depending on such person's own consumption, and the average delivery in the past three years including the current year does not exceed 30 per cent of the total production of potable water or energy by the client,

2. if natural gas or thermal energy

– is produced by such person to perform activities other than those mentioned in this Article,

– is delivered to a public network by such person exclusively with the goal of commercially using such production, and delivery does not exceed over 20 per cent of revenues, taking into account the average triennial average, including the current year.

(3) The provisions hereof shall not pertain to:

1. procurement conducted by the client for purposes other than the activities mentioned in Paragraph (1)1 hereof, or to perform the aforementioned activities in a country which is not a member of the European Communities in a manner which does not include the physical use of networks or geographic territory within the Communities,

2. procurement with the objective of further sales or leasing to third parties, provided that the client has no special nor exclusive rights to the sale or leasing of these goods or services, so that other legal persons may sell or lease them without restriction under the same conditions as the client,

3. procurement conducted by clients that are involved in one or more activities in the sense of Paragraph (1)2 hereof, if such procurement is associated with one or more of these services and if other legal persons can offer these services in the same national territory under equal conditions,

4. procurement of services from affiliated companies, i.e. on the basis of joint ventures, provided that the affiliate earns not less than 80 per cent of its revenues in the Republic of Croatia in the last three years in rendering these services to affiliates.

(4) Clients who engage in one or more activity from Paragraph (1) hereof shall inform the Commission of the European Communities, at its request, of all activities, types of products, services, names of companies, procurement methods, value of contracts and other data necessary in the view of the Commission of the European Communities as evidence that relations between clients and tenderers fulfil all requirements stipulated herein.

### *Exceptions*

#### Article 6

The provisions of this Act shall not apply to procurement:

1. by bodies and legal persons who are clients pursuant to Article 4 hereof and/or were established to engage in activities of public interest or public services based on special rights or authorisations to perform the services subject to procurement,

2. conducted by the legal persons from Article 4(2) hereof who are not subject to the State Auditing Act and if they are established to engage in commercial activities (industrial, trade or other) which are not activities of public interest,

3. based on international agreements or treaties:

– which include the purchase of goods and services, the contracting of works and design competitions, and intended for joint implementation or project use,

– which pertain to the deployment of military forces,

– whereby the procurement procedure is stipulated,

4. to facilitate the rapid repair of damages caused by natural disaster or due to other threats,
5. of arms, military equipment and special equipment,
6. if the Government of the Republic of Croatia, at the proposal of the competent ministry, determines presence of a special interest, circumstances or purposes surrounding the goods and/or services to be procured and makes a decision:
  - on exceptional procurement,
  - on exemption from application of this Act in relation to a legal person for a specified transitional period,
7. designated as state, military or official secrets,
8. which covers:
  - delivery of potable water, electricity, natural gas, fuel and thermal energy,
  - postal services,
  - public transit services,
  - telecommunications network services, telephony, radio-telephony and satellite services,
  - land, existing structures and other fixed property, or title thereto, except the acquisition of funds for this procurement,
  - production or co-production services, sales of broadcast material and radio and television broadcasting time-slots,
  - arbitration, legal counsel and notary public services,
  - financial services pertaining to the issuance, sales, purchase or transfer of securities or other financial instruments, brokerage services and central banking services,
  - employment mediation services,
  - commodities when directly procured on commodities exchanges,
  - contracts covering research and development services, except services which the client uses for its own needs in the execution of its activities, provided that such services are paid in full by the client,
  - the conferral of concessions.

### Part III. PROCUREMENT VALUE

#### *Procurement Value*

#### Article 7

- (1) Clients must adhere to the provisions of this Act when procuring identical goods, services and works.
- (2) Procurement with a value not exceeding HRK 200,000.00 in the fiscal and business year shall be conducted by clients pursuant to the Regulation of the Government of the Republic of Croatia on procurement procedures for goods, works and services of a lesser value.
- (3) The client shall be obliged to adhere to the procurement conditions and methods according to established values and may not distribute the procurement value during the budget year with the intent of avoiding the application of this Act and the stipulated procurement procedure.
- (4) The value of procurement does not include the value-added tax (VAT).
- (5) The planned procurement value shall be calculated:
  1. on the basis of the Croatian National Bank mean exchange rate between the Croatian kuna (HRK) and the euro effective on the last day of August of the year the budget and procurement plan are passed in, or
  2. pursuant to a decision of the Government of the Republic of Croatia pertaining to drawing rights and the exchange rate between the Croatian kuna and the euro if stipulated by the Commission of the European Communities and published in the Official Journal of the European Communities.

## *Determining of Procurement Value*

### Article 8

(1) Procurement value:

1. shall be the estimated total value of procurement to be conducted in the fiscal or business year, or over several fiscal or business years until the goods or services procured become functional or the conditions for use are fulfilled,

2. shall cover the value of identical goods, services and works and all other compensations, including premiums, fees, commissions, interest and other expected costs necessary to conduct procurement.

(2) In regular procurement or procurement which must be renewed within a specific period, the procurement value shall be:

– the total value of all partial procurements during the previous fiscal year or 12 months or less, harmonised, if possible, for forecasted changes in quantity or scope and value during the next 12 months,

– the estimated total value during the 12 months after the first partial procurement or for the total duration of procurement when the procurement period is longer than 12 months.

(3) In cases when the final amount of procurement is not known, the estimated procurement value shall imply:

1. the total procurement value for a fixed period if it is a period of 48 months or less,

2. the monthly procurement value multiplied by 48 for procurement over an indefinite period,

3. the total value of all partial procurements if procurement consists of partial procurements,

4. procurement which entails the right of option, the estimated procurement value is the greatest possible extent of purchasing, leasing, rental or instalment payment, including option clauses.

(4) For the purpose of computing estimated procurement values, the following shall be taken into account:

– insurance premiums for insurance services,

– fees, commissions, interest and other types of costs for banking and other financial services,

– awards and commissions and other compensation for planning and design services.

(5) The base for computing the estimated procurement value of goods and services shall be the total procurement value regardless of their individual value.

(6) The client may not add goods or services not required for the execution of works to the goods or services procured for the purposes of avoiding the application of this Act to the procurement of these goods and services.

(7) The client may not apply other methods to determine the procurement value other than those stipulated hereby.

## Part IV. PROCUREMENT METHODS

### *Procurement Methods*

#### Article 9

(1) The client shall select the procurement method.

(2) The method for the procurement of goods and services and the contracting of works shall be conducted by means of:

1. public tendering in a public procurement procedure,

2. selective tendering in a limited procurement procedure,

3. direct dealing in a negotiating procurement procedure.

### *Open Tendering*

#### Article 10

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Open tendering shall be deemed the basic procurement method and the public procurement procedure in which a public invitation is announced for tenders and in which interested parties may participate and submit tenders pursuant to the requirements and conditions set forth in the tender documentation.

### *Selective Tendering*

#### Article 11

(1) Selective tendering in a limited-access procedure shall consist of two-stage tendering in which the client invites in the first stage all interested parties, based on a publicly announced tender, to submit requests to participate in the procurement procedure and selects qualified candidates. In the second stage the client invites all the qualified candidates to submit tenders pursuant to the tender documentation without the public announcement of an invitation to tender.

(2) In the selective tendering procedure, the client shall be obliged:

1. in the first phase:

– to publicly announce the invitation to tender for all interested persons to submit a request to participate in the procurement procedure,

– to establish the qualifications of the candidates,

– to select not less than five qualified candidates,

2. in the second phase, to send a written invitation to all selected qualified candidates to submit tenders and to attach tender documentation thereto.

(3) Only invited candidates may submit tenders.

(4) The client may exercise the selective tendering procedure in the following cases:

1. if the number of qualified or capable or reliable tenderers is limited,

2. if open tendering could threaten public interests in the sense of confidentiality,

3. if open tendering could lead to disproportionate costs or difficulties or if it would not serve the intended purpose in some other manner (complex or extensive or demanding procurement).

### *Direct Dealing*

#### Article 12

(1) The client shall publish an invitation to tender through direct dealing in negotiating procedures:

1. if in the previous open tendering or selective tendering obtains incomparable but permissible alternative tenders due to differing financial and technical solutions, unless such negotiating procedures do not involve all tenderers who proved their qualifications in the previous open or selective tendering procedures,

2. if the type of services and the associated risks preclude the possibility of prior determination of the total price,

3. if the services to be procured, particularly intellectual and financial services and insurance services, banking and investment services, are of such type that they cannot be accurately delineated and procurement cannot be conducted by other procurement methods.

4. Not less than three qualified tenderers may participate in the negotiating procedures.

(2) In exceptional cases, the client may exercise the direct dealing method of procurement with one tenderer without tendering and without the announcement of an invitation to tender by direct dealing in negotiating procedures:

1. If only one tender is received, or if there are no acceptable tenders to select after renewed open tendering or selective tendering pursuant to this Act, but the procurement conditions have not changed and new tendering will not guarantee successful completion of the process,

2. If procurement can be completed by only one tenderer with exclusive rights to goods, services and works,

3. If procurement arises from a design competition and must be conferred to the successful tenderer,

4. If procurement is urgent and induced by events which the client could not foresee, while the procurement procedure cannot be conducted within the deadlines foreseen for other types of procurement without incurring even greater damages,

5. If under the contract, for which open tendering or selective tendering were conducted previously, an urgent need arises for additional delivery of goods, services or unforeseen works but under the same conditions as in the original contract and which are essential to integrity and functionality and cannot be technically nor economically separated from the principal contract without incurring damages and difficulties for the client. Such procurement is only possible once under the original contract and may not exceed 25 per cent of the value of the original contract and may be conducted within a period not to exceed six months after the performance of the original contract.

6. If the works to be procured are standardised works, and these works are performed by the tenderer under the same conditions as in the original contract for which open tendering or selective tendering has been previously conducted. This procedure may be exercised by the tenderer for a period of three years after the conclusion of the original contract was concluded, provided that in the open tendering or selective tendering procedure the possibility of using this procedure is cited and that the value of these works is calculated into the estimated procurement value pursuant to Article 8 of this Act,

7. If the goods, services or works to be procured serve the purposes of research, experimentation, or study and are not in the function of production with the objective of securing profits or a return on research and development costs,

8. If the goods, services or works to be procured may be procured by taking advantage of favourable circumstances available only within a limited period and at a price considerably lower than customary market prices,

9. If the purchase of goods is possible under particularly favourable conditions, or from a tenderer that is terminating business activities (liquidation, bankruptcy) or in agreement with creditors or in similar proceedings.

#### *Prior Consent*

##### Article 13

(1) The client that intends to exercise the procurement procedure by means of selective tendering and direct dealing shall obtain the consent of the Public Procurement Office of the Government of the Republic of Croatia (hereinafter: Public Procurement Office) prior to the commencement of the procurement procedure in order for the procedure to be implemented.

(2) Prior consent shall be sought by written request which shall contain the legal grounds from Article 11 or Article 12 hereof, the reasons and explanation for the selection of this procurement method, evidence on fulfilling the conditions to apply the selected procurement method, financing sources, the procurement amount and other data pertinent to the procurement.

(3) The Public Procurement Office may request the tenderer to supplement the request for prior consent and submit documentation within a specific period.

(4) The Public Procurement Office shall respond to the request of the client within a period not to exceed eight days after receiving the request, as well as the documentation and supplemented request if such are required.

(5) Prior consent for the commencement of the procurement procedure shall remain valid until the end of the fiscal or business year.

(6) If the Public Procurement Office refuses to provide prior consent the tenderer shall be obliged to conduct the procurement procedure by means of open tendering.

#### Part V. COMMENCEMENT OF PROCUREMENT PROCEDURE

##### *General Conditions for Commencement of the Procurement Procedure*

##### Article 14

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(1) The clients from Article 4 hereof shall draft a procurement plan for the fiscal or business year.

(2) The client may commence the procurement procedure if the procurement funds have been forecasted in the budget, financial plan or are obtained or secured in another manner.

(3) For capital investments, the client shall previously prepare and adopt an investment project pursuant to the methodology for the preparation, assessment and implementation of investment projects.

#### *Establishment of Procurement Commission*

##### Article 15

(1) Prior to the commencement of the procurement procedure, the client must issue a written decision on the establishment of a commission to prepare and implement the procurement procedure.

(2) The decision shall contain:

1. details on the client (name, seat, address, registration number) and procurement registration number,

2. details on the client's responsible officer, members of the commission and commission head (name and surname, occupation/post),

3. purpose, methods and implementation deadline for the procurement procedure,

4. estimated procurement value,

5. payment methods and conditions and methods whereby procurement funds are to be secured,

6. other procurement conditions,

7. date and signature of the client's authorised officer.

(3) The procurement commission shall consist of not less than three members for the implementation of the procurement procedure.

(4) The procurement commission shall prepare and conduct the procurement procedure, and direct the work of the client's professional staff, independent professionals or deputies authorised by the client to perform various tasks associated with the needs of the procurement procedure.

(5) The client's officer shall be responsible for the selected procurement method, and the preparation and conduct of the procurement procedure pursuant to this Act. The members of the procurement commission shall be responsible for their work to the client.

(6) The members of the procurement commission must seek replacements in cases of conflict of interest and furnish an explanation of their standpoint if it does not concur with the standpoint of the majority and record this in the minutes.

(7) For the sake of efficiency, the Government of the Republic of Croatia may establish a joint commission or a joint procurement body.

(8) At the proposal of the procurement commission, the client shall authorise in writing another body or legal person mentioned in Article 4 hereof in cases of joint conduct of procurement procedures.

#### *Outside Commission Member*

##### Article 16

Authorised governmental bodies, local and regional self-government units and legal persons may appoint their own representatives to commissions which conduct procurement procedures for the needs of legal persons pursuant to Article 4(2) hereof.

### Part VI. PROCLAMATION AND COMMUNICATION

#### *Public Announcement*

##### Article 17

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(1) The client shall publicly proclaim the procurement procedure in an announcement.

(2) Announcements shall be:

1. prior notification of procurement,
2. invitation to tender,
3. notification of the conclusion of a contract,
4. call for tenderer qualification,
5. periodical notifications.

(3) The announcements from Paragraphs (2)4 and 5 hereof shall be used only by legal persons engaged in water supply, energy supply, transportation and telecommunications activities pursuant to Article 5 of this Act.

(4) The client shall not publicly announce:

1. the invitation to candidates to deliver tenders in the second phase of selective tendering,
2. the invitation to submit tenders in the direct dealing procedure with one tenderer.

#### *Prior Notification of Procurement*

##### Article 18

1. At the beginning of the fiscal or business year, the client may make public prior notification of procurement:

- for the overall procurement of identical goods and services foreseen for the following 12 months, if the total estimated procurement value is equal to or greater than EUR 750,000,
- for the overall procurement of identical works foreseen in the next 12 months, if the total estimated procurement value of works is equal to or greater than EUR 5,000,000.

2. Prior notification of procurement shall contain details on the client, the procurement type, quantity and value, the expected commencement and performance period, other data pertaining to goods, services or works to be procured and procurement conditions, and information on the delivery and acceptance of the notification.

#### *Invitation to Tender*

##### Article 19

(1) The client shall publish:

1. an invitation for open tendering;
2. an invitation for selective tendering in the first phase;
3. an invitation for tendering by direct dealing by negotiation.

(2) Depending on its type, each invitation shall contain the following: the procurement registration number, details on the client (i.e. name, registered address and registration number), information on the goods, services or works to be procured (i.e. type, quantity, group or, if tenders may be submitted for its specific portions, any such itemised portions thereof), the payment terms and conditions, the required guarantees, the place, timetable or expected completion of delivery, conditions regarding the qualifications of tenderers, the time limit for the submission of tenders or requests to participate in the tendering procedure, and any such other details as may be required.

#### *Notification of the Conclusion of a Contract*

##### Article 20

(1) Each client shall, within 30 days from the date of the conclusion of a contract, release a notification of the conclusion of such a contract.

(2) Notification of the conclusion of a contract shall not be required if the publication of such information would prevent the implementation of the law or be in any other way contrary to the public interest, if it affects the legitimate business interests of corporate entities, or may affect competition among tenderers.

(3) Each notification of the conclusion of a contract shall contain details on the client (name, registered address and registration number), the scope, mode and conditions of procurement, the selected tenderer and tender, and any other particulars as may be required.

### *Invitation to Qualify*

#### Article 21

(1) The qualification procedure shall constitute the first phase of any limited tendering procedure, which may be applied by clients performing the activities under Article 5 hereof.

(2) The qualification procedure may consist of several qualification phases and shall involve objective criteria and rules to be determined by the client. The client shall apply European standards wherever and whenever possible.

(3) The client shall notify each interested party wishing to submit its request to participate in the qualification procedure of all qualification criteria and rules. Each interested party shall also be notified of any amendment to such criteria and rules. Should the client deem that the qualification procedure of any third entity or body meets its requirements, the client shall notify each interested party of the names of such third entity or body.

(4) The client shall notify each applicant of its decision on qualification. If the decision-making procedure takes more than six months following the date of the submission of requests to participate, the client shall, within two months from the submission of such requests, notify each party that has submitted its request of reasons justifying such an extended period and the date by which it shall make its decision.

(5) When making its decision on qualification, or when amending any qualification criteria or rules, the client shall not request:

– the fulfilment of any discriminatory technical or financial conditions that have not been set for other interested parties; or

– any examination or evidence that has already been performed or presented.

(6) Each applicant that has been rejected in the qualification procedure shall be notified of such a decision and the reasons thereof. Such reasons shall be based on qualification criteria.

(7) The client shall maintain records of the qualified applicants, which may be classified into categories by goods, services or works to be procured or the groups or portions thereof to which the concerned qualification procedure applies.

(8) The client may revoke any applicant for reasons based on the criteria referred to in Paragraph (2) hereof. The client shall send such applicant a written notice on its intention to revoke it, together with an explanation thereof.

(9) If the duration of this procedure exceeds three years, a notification shall be published once each year. For shorter procedures, notification prior to the commencement of such procedure shall suffice.

(10) Each invitation to qualify shall contain details of the client (name, seat, address and registration number), the purpose and objective of the qualification procedure, the address where information may be obtained, the qualification procedure and its duration.

### *Periodic Notification*

#### Article 22

(1) Periodic notification may be used by clients performing the activities referred to in Article 5 hereof.

(2) Each periodic notification shall contain:

1. details of the client (name, seat, address and registration number), goods, services or works to be procured, the type, quantity, scope, value and expected timetable of procurement, and any such other details as may be required;

2. an indication that the procurement will be conducted on the basis of a limited or negotiation procedure, without further publication of any invitation to tender, and an invitation to

candidates to confirm their interest by way of a written application.

(3) The client may subsequently, but no later than 12 months after the release of the periodic notification, invite all candidates to confirm their interest based on detailed procurement information.

### *Publication Methods*

#### Article 23

(1) Each client shall announce in *Narodne novine* any procurement wherein the value is equal to or greater than HRK 200,000.00. An invitation to tender may also be published in other media or in any such other manner, provided that such publication does not occur before its publication in *Narodne novine*.

(2) The publication of notifications in *Narodne novine* and the Official Journal of the European Communities shall be required for:

1. the procurement of goods and services:

– the clients referred to in Article 4(1) and (2) hereof, for any procurement wherein the value is equal to or greater than EUR 200,000 or, for special types of services, EUR 130,000;

– the clients referred to in Article 4(3) hereof, operating in the sectors of water supply, energy or transportation, for any procurement wherein the value is equal to or greater than EUR 400,000;

– the clients referred to in Article 4(3) hereof, operating in the sector of telecommunications, for any procurement wherein the value is equal to or greater than EUR 600,000;

2. the procurement of works – all clients referred to in Article 4 hereof, for any procurement wherein the value is equal to or greater than EUR 5,000,000.

(3) In cases when the procurement procedure consists of several portions (tranches or lots), and their total value is not below the amounts referred to in the preceding paragraph, the client shall not be obliged to publish in the Official Journal of the European Communities the notification of any procurement wherein the estimated value is below EUR 1,000,000 for works or EUR 80,000 for services, provided that the total estimated value of all portions taken together does not exceed 20 per cent of the aggregate value of all portions of total procurement.

(4) The client shall, as soon as possible and in the most appropriate manner, notify the Office for Official Publication of the European Communities. In the event of an accelerated procurement procedure, such notification shall be sent by telex, telegraph, facsimile or e-mail.

(5) Each notification shall be published in full in the Official Journal of the European Communities in all of the official languages of the European Communities, but only the text in the Croatian language shall be deemed authentic.

(6) No notification shall be published in *Narodne novine*, other media or in any such other manner before the date of its submission to the Official Journal of the European Communities. Each notification published in *Narodne novine* shall contain details identical to those sent for publication in the Official Journal of the European Communities.

(7) Each client shall be capable of presenting the evidence of the date of sending any such public notification.

(8) All costs of publication in *Narodne novine* shall be borne by the client, whereas the costs of publication in the Official Journal of the European Communities shall be borne by the Community.

(9) A notification shall not be longer than one page, i.e. 650 words. In each edition of the Journal, the appearance of any such notification shall be the same.

### *Annual Records and Reports*

#### Article 24

(1) Each client shall keep records of all procurement procedures and concluded procurement contracts.

(2) Each client referred to in Article 4 hereof shall submit to the Public Procurement Office:

1. by 31 March of the current year, an annual report on procurement contracts concluded during the preceding year, including details on clients (name, address and registration number) and specifying:

a) the total number and amount of all contracts concluded by such client for any procurement wherein the value is equal to or greater than HRK 200,000.00, up to the values referred to in Article 23(2) hereof;

b) the total number and amount of all contracts concluded by such client for any procurement wherein the value is equal to or greater than those referred to in Article 23(2) hereof, such contracts being classified by mode of procurement, scope of procurement and countries of tenderers that have concluded such contracts, and –in the event of direct dealing – classified on a legal basis, in accordance with Article 12 hereof, including an indication of the total number and amount of contracts awarded to tenderers from European Community member states, as well as the number and value of contracts concluded with GATT signatories; and

2. by 31 January, an annual report containing details of the party submitting such report and details on all legal persons (names, addresses, registration numbers):

– in which it may exercise or exercises its rights in accordance with Article 4(2) hereof; and

– which have their specific authorisation to perform one or more activities, including the names of such activities.

(3) Legal entities headquartered in the Republic of Croatia shall notify the competent ministry if a client from another country prevents equal participation in the procurement procedure, or if it acts contrary to the status enjoyed by tenderers from such country in the Republic of Croatia, or if it applies any discriminatory measures. The competent ministry shall, as soon as possible, notify the Government of the Republic of Croatia thereof.

#### *Communication Methods*

##### Article 25

(1) All documents, including communications, notifications, invitations, decisions, requests, annual reports and any other correspondence as may be provided by law shall be delivered in writing.

(2) Clients and tenderers may also use other methods of communication, provided that any such communication is forthwith confirmed in writing and, if the date of delivery or receipt cannot be proven, the date of delivery or receipt of such written communication shall be deemed valid. Clients shall not treat any tenderer differently due to the technical appearance or form of or the manner in which they receive or provide written documents.

(3) Correspondence between the client and tenderers shall be in the Croatian language and the language or languages in which tender documents have been published.

#### Part VII. TENDER DOCUMENTATION

##### *Contents of Tender Documentation*

##### Article 26

(1) Tender documentation shall be clear and comprehensible.

(2) Data contained in the invitation to tender shall be identical to those in the respective tender documentation.

(3) Documentation for open tendering and the second phase of limited selective tendering shall contain the following essential elements:

1. invitation to tender;
2. tender preparation instructions for tenderers;
3. tender form;
4. statement on the acceptance of general and specific conditions;
5. contract proposal; and

6. specification and other necessary documentation.

(4) Tender documentation for the first phase of limited selective tendering shall contain the following essential elements:

1. invitation to tender;
2. description of goods, services or works to be procured and other procurement conditions;
3. participation request form; and
4. the evidence of and the manner of proving the qualifications of candidates.

#### *Instructions to Tenderers*

##### Article 27

Instructions to tenderers shall contain the following information:

1. client's name, address, and telephone and facsimile numbers;
2. place of delivery, execution of works or rendering of services;
3. description of goods, services or works to be procured and their type, quality, scope or quantity;
4. description and designation of groups or portions of goods, services or works to be procured and the provision permitting tendering for such groups or portions thereof;
5. manner of proving and the evidence and documents to be submitted by tenderers with a view to demonstrating their qualifications;
6. if appropriate, the legal form and the conditions to be met by joint tenderers and the principal tenderer in order to submit a joint tender;
7. method of calculating the price of goods, services or works to be procured, the structure of such price, the costs of transportation, insurance, commissions, customs duties and taxes, the invariability of the price or the method of its modification;
8. currency in which the tender price should be expressed and the conversion method;
9. terms and conditions of payment;
10. tender security and performance security requirements;
11. commencement and timetable for delivery or completion, or the schedule of delivery;
12. the period of tender validity;
13. criteria, if any, applied in the selection of the preferred tender in addition to the price, the relative weight of each criterion, and the method of application and calculation;
14. language or languages in which tenders are to be submitted;
15. date, time and place of tender submission and opening;
16. name and address of the client's competent department, the name of the client's contact person, and the method of communication with tenderers;
17. required representations;
18. prohibition of options and alternative tenders, or minimum conditions and the method of comparing and evaluating such tenders if allowed;
19. description of the method of tender preparation and the form and content of tenders;
20. general contract conditions or, if appropriate, contract proposal;
21. method and timetable for communicating the results of selection;
22. right to lodge complaints;
23. any such other conditions as may be relevant to goods, services or works tendered in accordance with professional rules or stipulated by other law.

#### *Delivery of Documentation*

##### Article 28

(1) As of the date of announcing an open tender, the client shall make tender documents available for review to all interested parties. Provided that it has been duly requested by a tenderer from the client, tender documentation or any modification thereof shall be delivered to

such tenderer forthwith or made available for review or taking over within six days after the receipt of such request from the tenderer or, if the payment of a documentation fee constitutes a condition, after the presentation of evidence that such fee has been paid, but not later than four days prior to the deadline for the submission of tenders.

(2) Documentation for selective tendering shall be delivered simultaneously to all tenderers. The client shall secure one copy of such tender documentation for each tenderer. If any part of such documentation cannot be given or delivered, it shall be made available for review as appropriate.

(3) The client shall not restrict the timetable for the submission of requests for the delivery of tender documentation.

(4) The names of tenderers that have requested or received tender documents shall remain confidential until the opening of tenders.

(5) The client may request each tenderer that has received or reviewed tender documents to make a representation on the protection of rights. The client and each tenderer may use tender documents for their own purposes or refer them to third persons, but only with the consent of the other party.

#### *Documentation Fee*

##### Article 29

(1) The documentation fee shall include only the price of copying and/or delivery, and the client shall not request the payment of any other amounts in connection with documentation or participation in the procurement procedure.

(2) Should the documentation price be unfounded, the client shall refund to the tenderer the amount paid for documentation within eight days from the receipt of its request for such refund.

(3) In the event of selective tendering or direct dealing, the client shall make tender documents available to each applicant free of any charge.

#### *Explanation of Documentation*

##### Article 30

If the client has received from any tenderer a request for an explanation of tender documentation and provided that such request has been received in a timely manner, i.e. not later than six days prior to the deadline for the submission of tenders in case of the regular procurement period or not later than four days before such deadline in case of other procurement periods, the client shall forthwith comply with to such tenderer's request. The same explanation shall also be delivered to other tenderers that have received tender documents, without identifying the tenderer that has submitted such request.

#### *Corrections to Invitations to Tender*

##### Article 31

Should the client modify any tender conditions published in an invitation to tender within the timetable for the submission of tenders, the correction of such invitation to tender shall be published in the same manner as the original invitation to tender, and shall be delivered to all parties that have received tender documents. If such correction substantially affects the preparation of tenders and if it is not published before the expiry of half of the time allotted for the submission of tenders, such period shall be extended as appropriate.

#### *Modification of Documentation*

##### Article 32

(1) Prior to the deadline for the submission of tenders, the client may, at its own discretion or based on a request for explanation, modify tender documents by way of a modification supplement. After the deadline for the submission of tenders, the client shall not modify or supplement tender documents and, if it deems that the published tender documentation contains substantial omissions or deficiencies, the client shall cancel and repeat the tendering procedure.

(2) The client shall, not later than six days prior to the deadline for the submission of tenders and free of any charge, send a supplement providing for modification of tender documentation to all tenderers that have received tender documents.

(3) If the client convenes a meeting in order to explain tender documentation, the client shall record minutes on the content of requests and clarifications. Not later than three days after the completion of any such meeting, the minutes thereof shall be sent to all persons that have received tender documents.

(4) With a view to modifying tender documents, the client may extend the deadline for the submission of tenders.

(5) The client shall notify all persons that have received tender documents of any such extension of the deadline for the submission of tenders.

(6) The extension of any deadline for the submission of tenders shall commence as of the expiry thereof.

#### *Goods, Services or Works to be Procured and Division Thereof*

##### Article 33

(1) The scope of goods, services or works to be procured shall be determined by the client and shall be described clearly, comprehensibly and unambiguously, so that all tenderers may offer goods, services or works comparable in terms of their type, quality, price and any other properties and conditions as may be required.

(2) The scope of goods, services or works to be procured shall be divided on the basis of economic and technical criteria into groups or portions, in accordance with sectors of the economy, professional areas, or type, volume, place and time of delivery. A group or part of goods, services or works to be procured shall include goods, services or works of equal, related or similar features or purposes, which shall allow the participation of several small or medium-sized tenderers.

(3) Should the client divide goods, services or works to be procured into groups or portions, it shall specify them accordingly, and tender documentation shall cover all groups or portions of such goods, services or works.

(4) In connection with goods, services and works to be procured, the client shall establish and specify in tender documentation all circumstances that may affect the price.

(5) The scope of procurement shall not simultaneously cover the purchase of goods, services or works and the raising of funds for such procurement. The raising of funds for procurement shall fall within the scope of a separate tendering procedure.

(6) The client shall not limit or condition the right to tender for any group or portion of goods, services or works to be procured which has been specified in tender documentation and for which the submission of tenders is allowed.

#### *Application of Technical Standards*

##### Article 34

(1) Technical requirements regarding goods, services or works to be procured shall constitute an integral part of tender documentation and shall be determined by technical specifications and national standards applicable in the Republic of Croatia. Such specifications and standards shall be based on European standards and technical approvals or, in exceptional circumstances, on a certain non-standard feature.

(2) The provisions of Paragraph (1) hereof shall not apply:

- if they are inapplicable due to incompatibility with existing equipment;
- if there is no way to establish compliance with the aforementioned standards;
- if goods, services or works to be procured are innovative and unsuitable for the use of existing standards;
- if the application of such standards would put into question the mutual recognition of equivalent approvals for specific types of telecommunications equipment or those in the fields of



information technology and telecommunications.

(3) A client that applies the provisions of Paragraph (2) hereof shall indicate this in the tender documentation.

### *Description of Goods, Services or Works to be Procured*

#### Article 35

(1) In order to describe goods, services or works to be procured, usual descriptions and requirements shall be used regarding quality, safety, denotation, testing, testing methods and packaging.

(2) The client shall not use technical specifications requiring goods of particular make or origin, which may favour certain tenderers.

(3) By way of exception, goods, services or works to be procured may, due to their unusual features, be designated by a brand, type, trademark, drawing, origin, etc., but always followed with the wording "or any such other appropriate..." and only if such designation is justified by the type of procurement or if comprehensible description cannot be provided otherwise.

(4) If so required by circumstances, goods, services or works to be procured may also be described by drawings, samples or in any such other manner, provided, however, that such drawings or samples are delivered together with the tender and are clearly designated as forming a part thereof.

(5) If options or alternative tenders are allowed, the client shall specify so in tender documentation and determine minimum technical requirements to be met by such tenders, as well as the methods of their comparison and evaluation.

### *Qualifications of Tenderers*

#### Article 36

(1) Each tenderer participating in a tendering procedure shall demonstrate its:

- legal personality;
- business qualifications;
- financial and economic qualifications;
- technical qualifications;
- qualifications with respect to personnel;
- professional authorisation – membership in a professional association or registration in a trade register as a condition for participating in the relevant procurement.

(2) Tenderers participating in a joint tender shall demonstrate their joint qualifications for the overall tender and their multiple qualifications for their respective portions of such tender.

(3) The client shall exclude any unqualified tenderer from participation in procurement procedures:

1. if bankruptcy proceedings have been initiated against such tenderer, unless there is a final decision confirming the bankruptcy plan;
2. if such tenderer undergoes liquidation proceedings or has terminated its operations;
3. if a final sentence has been passed in criminal against the responsible officer in the past five years, such sentence being connected with its business activity;
4. if such tenderer has failed to duly fulfil any obligation previously assumed toward any tenderer under this Act or has committed any such other failure;
5. if such tenderer has failed to fulfil any of his tax liabilities or obligations related to pension or health insurance;
6. if such tenderer has failed to provide any information or has provided any false information or made any false statement or concealed any information in connection with its qualifications or goods, services or works to be supplied; or
7. if such tenderer has failed to meet other requirements related to its professional authorisation.

(4) The provisions of this Article shall not apply to the mode of procurement referred to in Article 12(2)4 of this Act.

### *Evidence of Qualifications*

#### Article 37

(1) All tenderers or candidates participating in a tendering procedure shall furnish any such evidence as may be required to demonstrate their qualifications. The client shall not impose any requirements with respect to the qualifications of tenderers apart from those stipulated by the provisions of this Act, nor shall the client set any requirement that may place any of the tenderers at a disadvantage.

(2) The client shall specify in the tender documentation the types of evidence demonstrating the qualifications of tenderers, as well as the conditions and relative weights of specific indicators. Such conditions and evidence of qualifications shall be equal for all tenderers.

(3) All evidence shall be attached in its original or certified copies. The evidence demonstrating due fulfilment of tax liabilities and payment of pension and health insurance contributions shall not be older than 30 days counting from the date on which the invitation to tender was released, whereas other evidence shall not be older than six months.

(4) The evidence of qualifications shall include:

1. certificate from the court register and professional or trade registers kept in the country of domicile, or any such other certificate or statement issued in place of a certificate as may be required in the country of domicile;

2. appropriate banker's statement or evidence demonstrating the coverage of professional liability, a tender guarantee, a performance guarantee, a presentation of balance sheets or balance sheet abstracts or statements of accounts if they have to be published in the tenderer's country of domicile, and a statement on total sales for the past three years;

3. certificate from criminal records or any such equivalent certificate as may be issued by judicial or administrative bodies of the country of domicile for the tenderer's responsible officer;

4. certificate issued by the competent pension and health insurance institutions, a statement issued by the tax authority or any equivalent document as may be issued in the country of domicile;

5. certificates issued by the client referred to in Article 4 hereof, certifying a due execution of contracts for goods and services in the past three years and for works in the past five years, certificates of quality, training, professional competence and the number of employees;

6. statement of the status and scope of technical equipment, devices, resources, personnel, capacity, quality assurance methods and the share of subcontractors in the tender and the professional authorisation; and

7. samples and photographs;

(5) In cases when the client requires a certificate of quality and the presentation of certificates issued by independent authorised bodies on the basis of European standards, the client shall be obliged to accept the equivalent certificates issued by other authorised bodies of the European Community member states. The client shall accept any other form of evidence of quality assurance measure if the tenderer demonstrates that it not in a position or has no right to seek the aforementioned certificates.

(6) Quality certificates may be required from a tenderer only if such request is justified by the nature of goods, services or works to be procured, and in accordance with such tenderer's interests regarding the protection of its own technical or business secrets. The client may request any tenderer to supplement or explain the attached certificates within a reasonable period.

(7) If no certificates, debt statements or statements of accounts are issued in a tenderer's country of domicile, the client may request such tenderer to make an appropriate statement before a judicial or administrative body, notary public or any such other competent body of the client's country.

(8) Candidates shall demonstrate their qualifications in the same manner.

#### *Participation of Sub-contractors*

##### Article 38

(1) In its tender documentation, the client may include provisions on the permissibility of participation of sub-contractors and their share in procurement, which shall, in aggregate terms, i.e. for all sub-contractors, not exceed 49 per cent of the total amount of the tender, except in cases when goods are being procured.

(2) Where services or works are being procured, the client may request a tenderer to indicate in its tender the portion to be performed by sub-contractors, details of such sub-contractors and the evidence of their qualifications. Such indications shall not affect the integrity of the tenderer's guarantee.

#### *Joint Tenders*

##### Article 39

(1) A joint tender shall be a tender submitted by two or more tenderers. The client shall not request joint tenderers to establish themselves in a certain legal form before the submission of their tender, but may require a specific legal form after the selection procedure, i.e. for the performance of the contract.

(2) In tender documents, the client shall request joint tenderers to demonstrate their joint and various qualifications in their tender or request to participate in tendering, and to indicate the names and qualifications of persons responsible for the performance of the procurement contract.

(3) The legal document on any joint tender submitted in a particular tendering procedure shall specify the name of the principal tenderer and the liability of each tenderer participating in such joint tender. The liability of tenderers participating in a joint tender shall be joint and several.

#### *Tender Price*

##### Article 40

(1) Each tenderer shall submit its tender stating a tender price, which shall exclude taxes and be expressed in Croatian kuna or any such other currency as may be specified in tender documentation. Tender prices shall be stated in both numerals and words.

(2)

Tenderer shall express the total tender price for all goods, services or works to be procured or, if so permitted by tender documentation, separately for each group or part of such goods, services or works which is subject to tendering.

(3) The tender price shall include all costs and discounts on the total tender price, but shall exclude taxes that shall be stated separately, i.e. after the price, unless otherwise stated in tender documents.

(4) Alternative tender price, stating of the total tender price together with separate prices for specific groups or portions of procurement goods, tenders indicating relative amounts without stating a price in its absolute amount, and tenders providing for conditions that are not specified in tender documentation, shall not be allowed.

(5) In its tender documentation, the client shall specify the method of price calculation, the structure of the price and the terms and conditions of its payment.

(6) In its tender documentation, the client shall determine the currency or currencies in which the tender price may be expressed, as well as the currency to which prices will be converted and the financial institution whose exchange rates are to be used for converting the tender currency to such currency on the specified date of tender opening.

#### *Price Modification*

##### Article 41

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RADNI PRIJEVOD**

(1) In case of procurement contracts with a performance period of up to 12 months, the tender price shall not be changed.

(2) Price may be increased in case of long-term procurement contracts with a performance period of more than 12 months.

(3) Methods and conditions of price modification shall be determined in tender documentation in accordance with the Obligatory Relations Act.

#### *Contract Performance Period*

##### *Article 42*

(1) In its tender documentation, the client shall specify a period for the performance of the procurement contract.

(2) The procurement performance period shall be a fiscal or business year and shall correspond to the period for which funds have been provided or planned, except for:

1. procurement of goods, services or works which, due to their nature, technological or other conditions, require a period longer than one fiscal or business year,
2. procurement services related to the maintenance of infrastructure facilities for a maximum period of three years; or
3. rental, leasing or hire purchase.

#### *Guarantees*

##### *Article 43*

(1) In its tender documentation, the client may require tender bond in accordance with the tender validity period.

(2) In its tender documentation, the client shall determine the amount, form and conditions of any bond, its issuer, the right to such bond, and the forfeiture thereof.

(3) The amount of any guarantee shall be sufficient to cover the amount of potential damage. The reimbursement of a guarantee shall not be postponed for a date later than necessary to protect the client from potential damages.

(4) The client shall not require the provision of a performance bond together with the tender, but shall request the issuer's letter of intent confirming its willingness to provide such a bond to the tenderer if its tender is selected as the most favourable.

(5) Before the expiry of the guarantee period, the client may request the tenderer to extend such period. The tenderer may reject such request without forfeiting its guarantee.

(6) The tenderer shall forfeit its guarantee if it:

1. recalls or modifies its tender after the deadline for the submission of tenders;
2. fails to sign a procurement contract; or
3. fails to provide a contract performance guarantee.

#### *Tender Validity*

##### *Article 44*

(1) Each tender shall specify a tender validity period, which shall be not shorter than 60 days from the date of tender opening.

(2) The client may request an appropriate extension of any tender validity period. Requests to extend tender validity periods and tenderers' replies to such requests shall be in writing.

(3) A tenderer may reject any request to extend the tender validity period without forfeiting its tender guarantee.

(4) If a tenderer agrees to a request to extend the tender validity period, it shall not modify its tender and its tender guarantee shall be extended.

#### *Language*

##### *Article 45*

(1) The client shall conduct the procurement procedure and prepare tender documents in the Croatian language.

(2) In addition to documents prepared in the Croatian language, the client may, where this is required due to goods, services or works to be procured, prepare its tender documentation or any part thereof pertaining to technical details in a foreign language or in languages officially used in the European Community.

(3) If the client allows the submission of tenders or any part thereof in a foreign language or languages, then it shall indicate so in its tender documentation, specifying the language or languages in which tenders are to be submitted and, where this provision applies only to specific portions of tenders, specifying such portions.

(4) In the event of any dispute, the Croatian version of documents shall be deemed relevant.

### *Best Tender Selection Criteria*

#### Article 46

(1) The client shall, in the invitation to tender and tender documentation, specify the criteria to be applied in selecting the best tender.

(2) The best tender shall be:

1. a tender with the lowest price, or
2. a tender that is the most economical on the basis of price and the additional criteria for best tender selection listed in the tender documentation.

(3) In the case of determining the most economical tender and depending on the goods, services or works being procured, the client may, apart from the tender price, provide in tender documentation for additional selection criteria, such as payment terms, delivery or performance deadline, quality guarantee, financial indicators, amount of equity and number of employees of the company, efficiency and technical advantages, current maintenance costs, aesthetic and functional characteristics, post-delivery service and technical support.

(4) The qualification requirement of the tenderer may not be selection criteria.

(5) In the event that the client, together with the tender price, intends to apply any additional selection criteria, it shall list such additional criteria in the tender documentation in order of their importance and shall ascribe to them their relative weight from 1 to 100 per cent as well as determine the method of computation.

(6) The share of tender price in the valuation system shall be determined by subordinate regulations.

(7) In selective tendering, the only criterion for best tender selection shall be the lowest tender price.

(8) Before drafting tender documentation, the procurement commission shall prepare a statement explaining, as well as justifying the application of, any additional criteria.

### Part VIII. TENDER

#### *Tender*

#### Article 47

(1) In preparing its tender, the tenderer shall comply with tendering terms and conditions. The tender shall comply with tender documentation.

(2) The tender shall be composed in the Croatian language and the tender price stated in Croatian kuna, unless otherwise stipulated by the tender documentation.

(3) The tender shall be submitted as an original, unless otherwise specified by the client.

(4) Alternative tenders shall be permitted only if allowed for in the tender documentation, in which case the tenderer is obliged to produce evidence of an equal quality of such tender. Any alternative tender shall be marked by the words "*alternativna ponuda*" and shall be submitted separately from the main tender.

(5) Prior to the expiry of the tender submission deadline, the tenderer may amend and supplement the tender or withdraw it on the basis of a written notice to that effect. Any modifications, supplements or notice of withdrawal shall be delivered by the tenderer in the same manner as the tender has been delivered. In the event of a withdrawal of tender, the tenderer may require that its tender be returned unopened.

(6) Tenders shall be produced free of charge.

#### *Tender Contents*

##### Article 48

The tender shall contain the following parts:

1. tender form filled in as prescribed by tender documentation and signed by the tenderer,
2. guarantee, if required,
3. evidence of the tenderer's eligibility pursuant to tender documentation and of its qualifications to perform under the contract,
4. all other documentation to be submitted by the tenderer in compliance with the tender documentation.

#### *Form of the Tender*

##### Article 49

(1) Tenders shall be submitted as originals marked by the word "izvornik" and shall contain a table of contents and a list of required appendices in the order of sequence prescribed by tender documentation. If submission of tender facsimiles has been required, the tenderer shall supply the required number of facsimiles marked by the word "preslika".

(2) In the event that any doubt arises as to the validity of the original and facsimiles, the original shall prevail.

(3) Both the original and facsimiles shall be printed in indelible ink. The tender shall be bound together and paginated. Pagination marks shall be formatted in such a way as to indicate the page number out of the total number of pages.

(4) A tender shall not contain any modification or supplement other than those required by the tender documentation or in order to rectify the tenderer's errors. The client shall sign and certify all corrections or supplements in a tender.

#### *Submission of Tenders*

##### Article 50

(1) Each tenderer shall submit its tender in writing, in a closed and sealed envelope.

(2) Each tenderer may submit only one tender for all goods, services or works to be procured or separately, for each group or portion thereof for which tendering is allowed in accordance with terms and conditions set in tender documents.

(3) If tendering for specific groups or portions of goods, services or works to be procured is allowed, a tender shall be submitted for each group or portion thereof, with a reference to and the name of such group or portion of goods, services or works being procured.

(4) A tenderer that has submitted its tender independently shall not simultaneously participate in a joint tender for the same goods, services or works being procured or any group or portion thereof.

(5) Each tender shall be submitted in two envelopes. The outer envelope shall contain the client's name, the designation "za nadmetanje – ne otvaraj" ("For tendering – Do not open") and any such other indication as may be specified in the tender documents. The inner envelope shall contain the tenderer's address.

(6) Each tender shall be submitted not later than any such date and at any such time as may be specified in tender documents for tender opening. The client shall, if requested, give the tenderer a confirmation of the date and time of the receipt of its tender.

(7) Any tender that has not been submitted within the specified period shall remain unopened

and be returned as such to the tenderer.

(8) Samples shall be submitted together with the tender and within any such period as may be specified for the submission of tenders.

### *Receiving and Safeguarding Tenders*

#### Article 51

(1) On the envelope of each tender, the client shall indicate the date and time this tender is received.

(2) All information on received tenders, tenderers and the number of tenders shall be deemed confidential until the opening of tenders.

(3) Tenders shall be stored and maintained so as to be accessible only to authorised persons.

### *Time Limits*

#### Article 52

(1) The client shall determine such time limits as to give all tenderers sufficient time to prepare and submit their tenders.

(2) In its tender documentation, the client shall specify the same date, place and time for the submission and opening of tenders.

(3) The time limit and date for the submission of tenders specified in the invitation to tender shall be identical to those stated in the tender documentation.

(4) The deadline for the submission of tenders shall at the same time be the date and time of tender opening.

### *Determination of Time Limits*

#### Article 53

(1) The period for the submission of tenders shall commence as of the date on which the request to release the invitation to tender was sent.

(2) In the event of regular procurement procedures for goods, services and works wherein the value is specified in Article 23(2) hereof, time limits shall be determined as follows:

1. In case of open tendering, the minimum time limit for the submission of tenders shall be 52 days from the date on which the request to release the invitation to tender was sent.

2. In the first phase of selective tendering, the minimum time limit for the delivery of requests to participate in the procurement procedure to interested parties shall be 37 days from the date on which the request to release the invitation to tender was sent.

3. In the second phase of selective tendering, the minimum time limit for the submission of tenders shall be 40 days from the date on which the invitations to submit tenders were sent to candidates.

4. In case of tendering by direct dealing through a negotiation procedure, the minimum time limit shall be 32 days from the date on which the request to publish the invitation to tender was sent.

(3) If the client has published a prior procurement notification under Article 17(2)1 of this Act, the client may apply an accelerated procurement procedure in accordance with Article 4 hereof. Such shorter periods may be applied under this Paragraph by reason of contract performance urgency, i.e. the need to perform a contract within the current fiscal year, or the threat of potential damage.

(4) The minimum period for the submission of:

1. tenders upon an invitation for open tendering or a request to participate in the selective tendering in the first phase shall, counting from the date on which the request to advertise the invitation to tender was sent, amount to:

- 36 days or, exceptionally, by reason of urgency, 15 days in case of clients referred to in Article 4(1) and (2) hereof;

– 22 days in case of clients referred to in Article 4(3) hereof;

2. tenders upon an invitation to tender in the second phase or an invitation to tender by direct dealing through a negotiation procedure shall be 26 days or, exceptionally, by reason of urgency, 10 days from the date on which the invitation to submit tenders was sent to candidates.

(5) *Narodne novine* shall publish any invitation to tender within not less than 12 days from the date on which the request to release such tender was sent or, if such notification has been sent by e-mail, telex or facsimile, not later than five days from its delivery.

(6) The period for the submission of tenders for the supply of goods, services or works shall not be shorter than 10 days from the date of announcement in *Narodne novine*.

## Part IX. SELECTION

### *Public Opening of Tenders*

#### Article 54

(1) The client shall publicly open the tenders in the open tendering procedure and in the second phase of the selective tendering procedure.

(2) Tenders shall be opened at a specific location pursuant to a date, at a specific time in the order in which they are received and in the presence of the commission members. Opening of tenders may be attended by an authorised representative of the tenderer provided that such person provides written evidence of his/her authorisation.

(3) During the public tender opening procedure, prior to the commencement of opening tenders the client shall ascertain the tenders in the order they were received, verify the authorisations of tenderer representatives, ascertain modifications and supplements to tenders, new tenders or withdrawn tenders as well as their timeliness, and the stipulated correct submission of tenders. The tenderer that withdraws its tender shall not be entitled to attend the public tender opening procedure.

(4) During the public opening of tenders for services, if the tender documentation requires tenders in separate envelopes, the client shall first open the envelope with evidence of the tenderer's qualifications. Upon the establishment of the tenderer's qualifications, pursuant to the tender documentation the client shall simultaneously or subsequently proceed to the public opening of the financial tenders of acceptable tenderers. In case of the subsequent opening of the financial tender, all tenderers shall be informed of the date, time and location of the subsequent public opening of the tender with the price.

(5) The client shall be obliged to keep minutes on the public tender opening procedure which contains the procurement number and data on the client, the location and time of the tender opening, the tender procedure number, the name and surname of the procurement commission members and of the authorised representatives of the tenderers, the goods, services or works to be procured or the portions or groups which may be offered pursuant to the tender documentation, the number of tenders received, the complete and abbreviated names and addresses of the tenderers, notifications on withdrawal of, or supplements and modifications to tenders, the final tender price and remarks of the tenderers.

(6) The minutes, and the attachments to the minutes if they are a component of the minutes, shall be signed by the commission members. The minutes shall forthwith be open to review, verification of content and signing by the attending authorised representatives of the tenderers.

(7) Copies of the minutes on the public tender opening shall be sent to all tenderers who seek them and whose tenders were opened in the open tendering process within a period of three days after the date on which the request for minutes is received.

### *Examination, Evaluation and Comparison of Tenders*

#### Article 55

(1) Examination, evaluation and comparison of the tenders shall be conducted by the client's procurement commission. During this procedure, the client may be assisted by a specially qualified professional staff and/or individual experts.

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(2) The client shall be obliged to maintain minutes on the examination, evaluation and comparison of tenders that shall contain:

- tender procedure number,
- goods, services or works to be procured,
- the names and addresses of the seats of the tenderers which submitted tenders according to the order from the minutes on the public opening of tenders,
- an analytical overview of the evidence required and presented which pertains to the qualification of the tenderers and an evaluation of the suitability and acceptability of the tender,
- the tender price for the goods, services or works to be procured, or the groups or portions thereof to be procured,
- the criteria and relative value of the criteria for establishing the best tender, if there are additional criteria together with the price foreseen in the tender documentation, and their calculation for each tender,
- comparative overview of evaluations, tender analyses and opinions of professional staff or experts if the client employed their services,
- explanation on the selection of the most favourable tender,
- explanation if all tenders are rejected,
- explanation of the reasons if the procurement procedure did not conclude with selection,
- a list of attachments accompanying the minutes and the cited attachments,
- date of the minutes and the signatures of all members of the commission.

(3) The evaluation of the tenders shall be approached in a way that the content of tenders is verified pursuant to the tender documentation and conditions.

(4) Untimely and incomplete tenders shall not be considered.

(5) Until selection, the evaluation procedure shall be confidential. The minutes and data pertaining to the examination, explanation, evaluation, comparison and selection may be submitted for review to tenderers after receiving the selection decision by the deadline for submitting appeals.

#### *Clarification of Tenders*

##### Article 56

(1) During tender examination, evaluation and comparison procedure the client shall seek, and the tenderer shall be obliged to provide, the necessary interpretations to facilitate the clarification of the tender or the elimination of any doubt as to the validity of the tender.

(2) No changes to the tender, changes in price (with the exception of corrections to computation errors) or changes which would render an unacceptable tender acceptable shall be sought, offered or permitted by the client or the tenderer.

(3) The client may exceptionally seek from the tenderer, for the purposes of clarifying the tender, the translation of a portion of the tender pertaining to the technical documentation for which the tender documentation permits the compilation of the tender in a foreign language, and set an appropriate deadline therefore.

#### *Negotiation with the Tenderer*

##### Article 57

(1) The client shall not be permitted to negotiate with the tenderer in connection with the price and modification of or supplements to the tender which has been selected as the most favourable.

(2) Negotiations between the client and the tenderer shall be permitted in connection with the clarification of the tender and the equality of alternative tenders if so permitted by the tender documentation.

(3) All negotiations shall be held in the presence of the commission members. The client shall record minutes on the reasons and results of such negotiations.

### *Exceptionally Low Price*

#### Article 58

(1) If the price of the most favourable tender excluding taxes is lower than 30 per cent in relation to the average tendered price of all acceptable tenders, the client may, if deemed necessary and based on suspicion in the possibility of contract performance at such a low price, seek from the client a clarification and analysis of the tender within a reasonable period. The client may accept the clarification based on applied methods or technical solutions, advantageous conditions available to the tenderer or the originality offered by the tenderer.

(2) If the tender documentation stipulates that the most favourable tender is that with the lowest price, the client shall inform the Public Procurement Department and the Commission of the European Communities of the rejection of a tender with an exceptionally low price.

### *Acceptable Tender*

#### Article 59

(1) An acceptable tender is a tender from a qualified tenderer:

- completely complying with the tender documentation, or
- containing minor deviations in the tender or in the evidence presented to accompany the tender, but which do not alter the properties, conditions and other requirements from the tender documentation, or
- containing minor errors or oversights that do not essentially change the character of the tender.

(2) Tenders deemed acceptable shall be examined and verified by the client to ascertain whether there are any computation errors. The client shall rectify errors in the following manner:

1. if the amounts in numerals and words differ, the amount written out in words shall be deemed correct,
2. if there are discrepancies between unit prices and the total price, the unit price shall be deemed correct and the total price shall be adjusted. If the decimal is misplaced in the unit price, the total price shall be deemed correct, while the unit price shall be adjusted.

(3) The amount stated in the tender shall be rectified by the client in accordance with the aforementioned procedures to rectify errors. The client shall correct computation errors which are detected and immediately inform the tenderer whose tender is corrected, and seek from the tenderer a confirmation of the corrected computation error within a period of three days from the date of receiving notification. If, after notification of the error, the tenderer fails to respond and does not accept the corrected amount, the tender shall be rejected.

(4) A tender with a computation error shall be acceptable if the sum of absolute amounts of all corrections more or less equal over 5 per cent of the originally tendered final price excluding the value-added tax.

(5) In contracting works based on the “turnkey” principle, the final tendered price shall encompass all costs, liabilities and contributions less taxes, and shall be valid regardless of computation errors.

(6) The amounts in a tender obtained on the basis of verification shall be recorded in the minutes on the examination, evaluation and comparison of tenders.

(7) At the request of tenderers, the client shall allow access to the minutes on examination, evaluation and comparison of tenders.

### *Unacceptable Tenders*

#### Article 60

(1) A tender shall be deemed unacceptable if:

1. it is received by the client after the deadline for the submission of tenders or is not in the possession of the commission prior to the public opening of the first tender,
2. it does not comply with the tender documentation and conditions,

3. it is subject to a contract signed by the tenderers pertaining to tendering which illegally limits tendering or competition,

4. it is incomplete or contains aberrations or impermissible sections that contradict the tender documentation,

5. it contains conditions, operations or procedures by the client or tenderer that could lead to bargaining, or it limits or conditions in any manner whatsoever the rights of the client or obligations of the tenderer,

6. it is alternative, unless otherwise permitted by the client,

7. it is from a tenderer not selected as qualified or who did not prove its qualifications within the deadline for submitting tenders,

8. it is from a tenderer who did not duly take over or purchase the tender documentation pursuant to the conditions stipulated in the tender documentation,

9. it is from tenderers who did not submit evidence of joint tendering and appoint an agent for a joint tender or fulfil the conditions on compulsory legal structure,

10. it is from a tenderer who was not invited to submit a bid in the selective tendering process,

11. no clear total price in an absolute amount is shown,

12. the tenderer refused to provide a requested clarification,

13. if the tenderer does not accept corrections to computation errors in the tender in the manner proscribed by this Act,

14. corruption or fraud are involved,

15. it is from a tenderer who did not satisfactorily respond to the client's request in connection with a low tendered price or clarification of the tender,

16. if the tenderer submitted two or more tenders in which it is a tenderer or participant in a joint tender.

(2) Unacceptable tenders may not be used for new tenders or for other purposes.

(3) Samples accompanying tenders shall be returned to tenderers at their request, unless specified otherwise in the tender documentation.

(4) The client may reject any tender in which the share from third countries with which the Republic of Croatia has not concluded agreements or treaties is over 50 per cent of the total tender value.

### *Selection*

#### Article 61

(1) For goods, services or works to be procured, or groups or portions thereof that are open to tendering, the client shall:

1. select only one best tender among the acceptable tenders, or

2. select all acceptable tenders from tenderers who accept the price and conditions from the best selected tender with the objective of implementing reconstruction programmes in regions receiving special state aid.

(2) The client shall apply the criteria and relative values of the criteria set forth in the tender documentation.

(3) The client may not apply criteria that are not stipulated in the tender documentation.

(4) If the client did not set forth additional criteria together with the price in the tender documentation, then the best tender is the tender with the lowest price for the same type and properties of goods, services or works.

(5) The client may select the best tender between not less than two acceptable tenders.

(6) The client may not set down additional conditions and requirements to tenderers different

than those in the tender documentation or divide tenders or demand this from tenderers, or select only a portion or portions of tenders.

(7) If two or more tenders are equal according to the conferral criteria, the advantage shall be given to the tender of a tenderer pursuant to the Regions Receiving Special State Aid Act.

#### *Verification of Evidence of Qualifications*

##### Article 62

(1) The client may seek to verify evidence of the qualifications of the tenderer whose tender is deemed the most favourable.

(2) The conditions and procedures for providing evidence of qualifications once more must be foreseen and stated in the tender documentation. In cases of completed procedures in the first phase of selective tendering, the conditions and procedures to provide evidence of qualifications in the tendering procedure shall be equal to those applied in the first phase of tendering.

(3) If the tenderer whose tender is evaluated as the most favourable cannot once more provide evidence of qualifications, the client shall reject this tender.

#### *Client Decision*

##### Article 63

(1) The client shall issue a written decision on selection (or non-selection) or cancellation of the tendering. The client shall be obliged to simultaneously issue a decision for all groups or portions of goods, services or works to be procured which are open to tendering.

(2) Decision of the client shall be sent by registered mail within a period of 30 days after the expiry of the deadline for the submission of tenders.

(3) Decision shall contain the tender procedure number and the procurement registration number, details on the client, the number and date of the decision, information on public notification, the procurement number, the procurement methods and the legal basis for use of these methods, goods, services or works to be procured, the number, title of groups or portions of the goods, services or works to be procured which are open to tendering, the number of tenders received, data on the selected candidates or selected tenderer, the reasons for selection or for non-selection, the reasons for cancellation of the tendering (if any), instructions on legal recourse, the signature of the accountable officer and certification.

(4) The decision shall be signed by the client's responsible officer.

#### *Cancellation of Tendering*

##### Article 64

(1) Tendering or portions thereof may be cancelled by the client's decision:

1. if less than two acceptable tenders arrive,
2. if the tender documentation must be altered considerably prior to the deadline for submitting tenders,
3. if the price of the most favourable tender is greater than budgeted or secured procurement funds,
4. if there are other altered circumstances such that the conclusion of a contract is no longer in the public interest and the tender is not repeated during the fiscal year.

(2) Notifications on the cancellation of tendering shall be released by the client in the same manner as notifications on tendering.

#### *Confidentiality*

##### Article 65

The client shall not be allowed to release any data wherein disclosure thereof would be contrary to or prevent the implementation of this Act, damage the business interests of the client

or the tenderer or hinder fair market competition. Similarly, the client shall not be permitted to release any data designated as business secrets or intellectual property.

### *Procurement Contract*

#### Article 66

(1) The client shall conclude a contract with only one capable tenderer, except in the case referred to in Article 61(1)2 of this Act, provided that the tender of such tenderer has been selected as the most favourable in terms of goods, services or works to be procured in accordance with tender documents and no later than 30 days from the date on which the notification on the selection of the most favourable tender was sent.

(2) Each contract shall be concluded in accordance with the tender.

(3) If tender documents do not include a contract proposal, the client shall send such contract proposal to the tenderer within eight days from the final decision on selection. The tenderer shall sign such contract proposal within eight days from its receipt and return it to the client together with the requested performance guarantee. If the tenderer fails to sign the contract proposal after a repeated request of the client and fails to provide the performance guarantee as requested in tender documents within eight days from the receipt of a reminder, the client may cancel and repeat the tendering procedure or conclude a contract with the next most favourable tenderer, provided that the difference between the tender prices does not exceed 5 per cent in relation to the previously selected tender.

(4) If a procurement contract is subject to the approval of a competent body or the Government of the Republic of Croatia, such approval shall be obtained prior to its conclusion. The period for obtaining the required approval shall commence as from the date on which the notification on the acceptance of the tender was sent and shall be provided for in tender documentation. The failure to obtain the required approval within the specified period shall not affect the tender validity period or tender guarantee.

(5) Prior to the signing the contract and if the validity of the tender has expired, the client shall request the tenderer to extend the validity of its tender.

(6) The client and the tenderer shall not take any actions that may impede the conclusion of a contract.

(7) The client shall not conclude a contract after the expiry of the tender validity period and before the expiry of any such period as may be determined for the submission of objections to or complaints on the decision on selection.

### *Maintenance of Documentation*

#### Article 67

(1) The client shall maintain all documents pertaining to a tendering procedure for a period of four years after the completion of such tendering procedure if the latter has not resulted in concluding a contract or, if the procedure has resulted in concluding a contract after the performance of such contract.

(2) Any project documentation prepared for works shall constitute permanent archives and be maintained in accordance with special regulations.

### *Fraud and Corruption*

#### Article 68

The client shall reject any tender, revoke any decision on selection, or renounce the conclusion of any contract if it establishes that the tenderer has attempted to influence or give, or has given or agreed to give, either directly or indirectly, a reward or favour of any kind whatsoever, or any such other valuable to any officer or employee of the client in connection with the tendering procedure, decision or implementation of the procurement procedure, or has concealed or misrepresented any information.

## Part X. IMPLEMENTATION AND OVERSIGHT

### *Implementation and Oversight*

#### Article 69

(1) The Public Procurement Office shall be a special agency of the Government of the Republic of Croatia, authorised to execute the implementation, oversight and application of this Act and any such subordinate legislation as may be passed in the field of procurement. It shall grant prior approvals, issue instructions and present opinions to all interested parties regarding the application of this Act, collect, record, process and analyse procurement data, submit requests for the instigation of minor offence proceedings before minor offence courts or bring criminal charges before the Public Prosecutor's Office, participate in the preparation of draft bills and by-laws providing for the general conditions, rules and procedures of procurement, prepare and implement a training programme for the concerned parties and promote this Act, participate in the work of international institutions in the field of procurement, and perform any such other tasks as may fall within the scope of its competence.

(2) At the request of the Public Procurement Office, each client shall make its tender documentation available for inspection.

## PART XI. OBJECTIONS AND COMPLAINTS CONCERNING PROCEDURAL IRREGULARITIES

### *Objections to the Client*

#### Article 70

(1) In order to protect its rights, each tenderer or candidate that has participated in a tendering procedure may, within three days from the receipt of a written decision on the selection, lodge with the client an objection to such decision on the grounds of irregularities in the tendering procedure. Tenderers or candidates shall lodge such objections with the client in written form.

(2) No objections shall be allowed as to the selected mode of tendering or the client's decision to invalidate the tendering procedure in accordance with Article 64 hereof.

(3) Any objection lodged within the stipulated period shall suspend the conclusion of a procurement contract.

(4) Each objection shall specify irregularities and include an explanation and a proposal for the elimination of such irregularities.

(5) When acting upon such objection, participants in a procurement procedure may attempt to settle their dispute amicably.

(6) The client shall respond to a tenderer's objection within eight days from the receipt of such objection.

(7) If the client accepts an objection, it shall notify a new decision to all tenderers or candidates.

### *Complaints to the Public Procurement Supervisory Commission*

#### Article 71

(1) Any tenderer or candidate that has participated in a tendering procedure and that has previously lodged an objection with the client may, if the latter rejects such objection or fails to act in compliance with Article 70 hereof, file a written complaint with the Public Procurement Supervisory Commission (hereinafter: Supervisory Commission), with a copy of such complaint being sent to the client.

(2) The organisation, tasks and jurisdiction of the Supervisory Commission shall be regulated by special legislation.

(3) Any complaint shall be filed within 8 days from the receipt of the client's response or, if the client has failed to respond to an objection in compliance with Article 70(6) hereof, not later than 15 days from the submission of such objection to the client.

(4) A tenderer or candidate shall file its complaint with the Supervisory Commission

simultaneously with delivering its copy to the client.

(5) Any complaint filed within the stipulated period and in compliance with this Article shall suspend the conclusion of a procurement contract for goods, services or works to be supplied or for all groups or portions thereof, as specified in tender documents.

(6) Each complaint shall contain:

- details of the complainant;
- name and registered address of the client;
- number and date of the tendering procedure and a copy of relevant documents
- number and date of the client's decision to an objection has been lodged, the registration number of procurement, and details of the invitation to tender;
- description of facts;
- description of irregularities and an explanation; and
- copy of the clients reply to the objection, if any.

(7) At the request of the Supervisory Commission, the client shall, within 8 days from the receipt of such request, deliver its tender documentation.

(8) The Supervisory Commission shall issue a decision within 15 days from the receipt of a complaint, or from the delivery of tender documentation.

(9) Any decision passed by the Supervisory Commission shall be deemed final.

(10) Each decision shall be delivered to the client, the complainant, the State Audit Office and the Public Procurement Office.

(11) The client shall act in compliance with any decision passed by the Supervisory Commission.

#### *Judicial Protection*

##### Article 72

An administrative suit may be instigated before the Administrative Court of the Republic of Croatia against any decision passed by the Supervisory Commission.

#### *Invalid Procurement Contracts*

##### Article 73

Any contract concluded contrary to the procedures stipulated by this Act shall be null and void, in particular, any contract:

1. that has been concluded with a tenderer whose tender has not been selected as the most favourable;
2. that breaks down the value of procurement into amounts below those stipulated by this Act with a view to evading the application of its provisions;
3. that assigns supply to a third party or any party which is not subject to this Act with a view to evade its application;
4. that amends or supplements the principal contract in contravention with Article 12(2)(5) and Article 78 of this Act; or
5. that is contrary to any decision passed by the Supervisory Commission.

#### Part XII. PENAL PROVISIONS

##### *Penal Provisions*

##### Article 74

A fine ranging from HRK 5,000.00 to HRK 50,000.00 shall be imposed on any legal person and its responsible officer if such person fails to comply with the following provisions:

1. Article 7(1) and (3) hereof; or
2. Article 13(1) and (5) hereof; or
3. Article 14(2) and (3) hereof; or

4. Article 15(1) hereof; or
5. Article 21(3), (4) and (5) hereof; or
6. Article 22(3) hereof; or
7. Article 23(1) hereof; or
8. Article 24(1) and (2) hereof; or
9. Article 28(1) and (3) hereof; or
10. Article 29(1) and (3) hereof; or
11. Article 31. hereof; or
12. Article 32(2), (3) and (5) hereof; or
13. Article 33(5) and (6) hereof; or
14. Article 54(1) hereof; or
15. Article 61(1), (2), (3) and (6) hereof; or
16. Article 63(1) and (2) hereof; or
17. Article 64(1) hereof; or
18. Article 66(1), (2) and (7) hereof; or
19. Article 67. hereof; or
20. Article 69(2) hereof; or
21. Article 71(11) hereof.

### Part XIII. TRANSITIONAL AND FINAL PROVISIONS

#### Article 75

(1) The Government of the Republic of Croatia shall establish the Public Procurement Office within one year from the entry into force of this Act.

(2) Pending the establishment of the Public Procurement Office and the Supervisory Commission, their tasks shall be performed by the Procurement Department of the Ministry of Finance.

(3) The Public Procurement Office shall assume the officers of the Procurement Department of the Ministry of Finance, as well as equipment, files, outstanding matters and other documentation and means of work.

#### Article 76

The Government of the Republic of Croatia shall, within 30 days from the entry into force of this Act, pass by-laws governing the procurement of low-value goods, works or services, containing general provisions on the procurement of goods, services and works, and providing for the methodology of preparation, assessment and implementation of investment projects.

#### Article 77

The provisions of Article 23(2)-(6), Article 53(2) and (3) and other provisions of this Act pertaining to the obligations of reporting to the European Community and publishing notifications in the Official Journal of the European Communities shall be applied upon the admission of the Republic of Croatia to full membership in the European Community.

#### Article 78

(1) All procurement procedures that have commenced before the effectiveness of this Act and for which no procurement contract has been concluded, or against which judicial or any such other proceedings are being conducted, shall be completed in accordance with the Goods, Services and Works Procurement Act.

(2) Within 6 months from the entry into force of this Act, clients shall conduct new procurement procedures on the basis of contracts concluded for an indefinite period.

#### Article 79

As of the entry into force of this Act, the Goods, Services and Works Procurement Act (as



published in *Narodne novine*, no. 142/97. and 32/01) shall be rendered null and void.

Article 80

This Act shall enter into force on 1 January 2002.

Class: 330-01/01-01/02

Zagreb, 14 December 2001

CROATIAN PARLIAMENT

**Zlatko Tomčić**, (*signed*)

Speaker

of the Croatian Parliament

