



European Construction Sector Observatory

Policy measure fact sheet

Croatia

Public Procurement Act

Thematic Objective 4

January 2017

Implementing body:	Ministry of Economy, Entrepreneurship and Crafts (MoE)
Key features & objectives:	Aims to introduce more efficient and transparent public procurement procedures to achieve better value from public purchasing.
Implementation date:	1 st January 2012
Targeted beneficiaries:	Economic operators interested in bidding for public procurement contracts.
Targeted sub-sectors:	Broad sectoral coverage, including the construction sector.
Budget (EUR):	n/a

In a nutshell

The economic crisis has had a significant impact on the Croatian construction industry. It prompted a 46.7% decrease in production between 2008 and 2014¹. Building and civil engineering production decreased by 53.4% and 39.4% respectively. Between 2008 and 2013, the number of construction companies fell by 19.6% and total sector turnover fell by 44.9%. Croatia's construction sector also faces a number of challenges, which include burdensome administration, curtailed public investments and an unsatisfactory overall performance in public procurement².

Croatia's public procurement system is affected by issues such as corruption and favouritism^{3,4}. A high proportion of contracts are awarded based on the lowest price award criterion and many are awarded when there has only been one bidder⁵. Overall, there is a lack of administrative capacity in public procurement, which sometimes results in lengthy procedures, a lack of accuracy in documentation and a high cancellation rate for tenders. It is most common for these issues to affect complex tenders (e.g.: related to EU-funded projects). In 2014, for example, 42% were cancelled⁶.

As a response to these challenges, and with a view to mitigating the effects of the economic crisis, the Public Procurement Act (PPA) was implemented in 2012. It is now the core legislation for procurement in Croatia and prescribes procedures for all types of contracts, and transposes relevant EU directives⁷. The PPA provides broad sectoral coverage and a considerable share of procurement activities target the construction sector. As a trend, the public sector is becoming increasingly important to the construction sector. In 2013, public contracts accounted for around 65% of the total value of construction works⁸. In terms of implementation, the Ministry of Economy, Entrepreneurship and Crafts (MoE) has overall responsibility for ensuring its roll out.

The PPA is striving to achieve greater transparency in its system and foster competition in the Croatian public procurement market, At the same time as aligning the Croatian procurement framework with EU rules. However, a number of issues remain to be addressed. Some construction stakeholders argue that the PPA has created a public procurement system that is too burdensome and time-consuming for bidders. In addition, there are issues with the administrative capacity of contracting authorities and entities, including insufficient qualified staff, which is hindering full implementation of the PPA. The new act has also failed to ensure broad use of the most economically advantageous tender (MEAT) award criterion. Use of the lowest price award criterion still dominates.

General description

The PPA was introduced into the legislative framework in July 2011⁹ and was made effective by the Croatian Parliament from 1st January 2012¹⁰. The main public procurement authorities in Croatia include legislative, administrative and judicial bodies:

- Directorate for the Public Procurement System (DPPS) within the Ministry of Economy (MoE) which acts as the primary policy organ;

- Central Procurement Office (CPO) which acts as the central purchasing body;
- State Commission for Supervision of Public Procurement Procedure (DKOM) is a primary internal supervision body for procurement and review procedures, which acts as both a judicial and administrative body that answers to the Croatian Parliament;
- State Audit Office (SAO) is a politically independent auditing body that monitors procurement procedures to ensure compliance with the PPA;
- Ministry of Finance which is responsible for concessions; and
- Public-Private Partnership Agency which is responsible for PPPs.

The PPA builds on several previous initiatives to strengthen the public procurement system. The 1997 Act on the Procurement of Goods, Services and Works¹¹ was the first national act to regulate public procurement. The act has subsequently been amended several times – typically with the aim of making it better controlled, more stringent and more transparent¹². In 2001 and 2007, steps were taken to introduce public procurement law based on EU directives¹³. Overall, the previous acts can be considered as the first introductions of the broader public procurement framework that is currently in place.

The PPA provides for the regulation of:

- Procedures for the conclusion and award of public contracts and broader framework agreements for the purchase of works, goods and services;
- Legal protection concerning these proceedings;
- Jurisdiction of the central state administration body with responsibility for the public procurement system.

For the construction sector, the act brought in procedural and cost-related improvements. It created the conditions for the electronic (e-)submission of tender documents to simplify procedures¹⁴ and e-auction tools to reduce administrative costs for both tenderers and contracting authorities¹⁵.

The PPA requires tenderers to provide more detailed information on subcontractors in tender bids, such as the company name and the share of the work that is intended to be subcontracted¹⁶. It also calls for contracting authorities to make payments directly to subcontractors, which is intended to prevent fraud and payment blocking.

The PPA has put mechanisms in place to increase the use of the most economically advantageous tender (MEAT) award criteria, as an alternative to the lowest price criteria. The PPA also establishes more requirements concerning obligations to control the execution of contracts after the award. In particular, there is an obligation to assess whether contract execution complies with the conditions defined in the tender specifications. This clause is intended to identify and restrict corruption.

The PPA rules apply to any contract of a value higher than the national thresholds of EUR 26,000 for goods and services and EUR 66,000 for works. Under these thresholds, each contracting authority can determine its own procedures. The PPA has also set up the State Commission for Supervision of Public Procurement (DKOM). It works as an independent body with responsibility for supervising public procurement procedures. The central state administration and the Ministry of Economy's (MoE) Directorate for the Public Procurement System has responsibility for public procurement in Croatia. In particular, the MoE is assigned to develop, coordinate and improve the public procurement system, to control the process for implementing the act, including implementing regulations, and for preparing and implementing procurement training programmes.

There have been several modifications to the PPA since 2012, which have led to further alignment with EU public procurement requirements¹⁷. Besides a general recognition from the government of the importance of public procurement for economic activities, the EU negotiations have worked as a key driver for the implementation of the PPA. The PPA was amended twice in 2013. The first amendment concerned communication and internal procedures regarding the central procurement body. The second amendment addressed several smaller changes, including outlining that there is no obligation to form additional contracts in situations where the value of the actual work is less than 5% of the contracted work¹⁸.

Achieved or expected results

The PPA has been implemented to regulate public works contracts in accordance with the relevant public procurement directives. The PPA has achieved some success since its implementation in 2012; however, important challenges remain and there continues to be considerable scope for reform and improvement.

Improved data collection and transparency is a key achievement of the PPA. Contracting authorities are now obliged to publish their procurement plans online on the Croatian electronic public procurement website¹⁹ no later than 60 days after their budget or financial plan has been accepted. Any changes to those plans must be published online at the time they are given effect. Procurement plans and any changes made to them must remain online until at least the end of June of the following year and the procurement register must be updated every six months²⁰.

Increasing use of the centralised e-procurement portal as a single gateway to all procurement procedures and information has been another important achievement and a key factor in the progress made towards greater transparency. Use and uptake of the e-procurement portal has been limited since its launch in 2008, as only authorities in charge of large contracts were obliged to use it. To increase uptake, e-access became mandatory in 2014 and e-submission became mandatory in 2015²¹.

The PPA has built on earlier procurement reform work by helping to make contractors more aware of their rights and the legal protection procedures that are available to them²². Greater awareness combined with the financial pressure that businesses have had to deal with since the economic crisis have led to a significant rise in the number of appeal cases that have been lodged in relation to procurement procedures over recent years²³.

Table 1: Number of appeal cases received (2004-2015)

Year	Number of appeals received	Comparison with the previous year (%)
2004	761	
2005	746	-1.97
2006	696	-6.7
2007	637	-8.48
2008	1020	+62.45
2009	1422	+39.41
2010	1919	+34.95
2011	1921	+0.1
2012	1728	-10.05
2013	2135	+23.55
2014	1315	-38.41
2015	1137	-13.54

Source: State Commission for Supervision of Public Procurement²⁴

The number peaked in 2013 with a 23.55% rise on the previous year. In the following two years, the number of appeal cases fell by nearly 50% on 2013 figures. In their annual report for 2015, the State Commission for Supervision of Public Procurement explains that the fall in 2014 and 2015 was due to various factors, such as an increase in the cost and compensation for lodging an appeal and an increase in procurement thresholds following legal changes in December 2013²⁵. Procurement thresholds have risen from EUR 9,000 (HRK 70,000) for works, goods and services to EUR 26,000 (HRK 200,000) for goods and services and EUR 66,000 (HRK 500,000) for works²⁶.

Although progress has been made in some areas, a number of important challenges remain. Public procurement continues to be affected by political influence and corruption, particularly at local level. Effective reform is hampered by a lack of preventative measures and ineffective planning and management of deadlines, roles and budgets. Fragmented administrative capacities and resourcing issues are also obstacles to effective reform²⁷.

PPA implementation and oversight have also faced other challenges. The shortage of adequately skilled human resources is an ongoing issue for contracting authorities and oversight bodies, because it affects their ability to carry out their tasks²⁸. Lack of experience is also a factor. Although the most economically advantageous tender award criteria have been promoted by the PPA, the majority of public procurement contracts are still awarded on the basis of the lowest price procedure. A presentation paper by the Ministry of Economy shows how award criteria were applied in 2014:

Table 2: Award criteria used in procurement procedures²⁹

Award criteria	Application
Lowest price tender	More than 99%
Most economically advantageous tender	Less than 1%

Source: I. Palčić (2015) – e-Procurement in Croatia

In the limited cases where the most economically advantageous tender award criteria have been used, these criteria have often been overruled during the appeal period in favour of the lowest price procedure³⁰. The use of the most economically advantageous tender criteria may have been hindered because of a lack of experience within the contracting authorities that are implementing the PPA³¹.

Although opinions of the PPA differ, the general consensus among stakeholders is that it has improved transparency and competition. In their opinion, it has also made it more costly for companies to apply and bid for public procurement contracts. Companies are increasingly required to invest more time, effort and money in the application process and must comply with more demanding documentation requirements. At the same time, they face greater uncertainty about whether they will win or lose a given contract³².

Further reform is currently being introduced in the form of a new Public Procurement Act which entered into force on 1st January 2017. The main amendments include:

- The most economically advantageous tender (MEAT) becomes the sole criterion – from 1st July 2017, contracting authorities cannot use price only or cost only as the sole award criterion;
- Introduction of the European Single Procurement Document (ESPD) as a self-declaration form for bidders to simplify the bidding process and make it easier for companies to participate in public tenders.
- Requirement for contracting authorities to run market consultations with interested bidders on draft procurement documents to help to ensure greater clarity in tender documentation and equal treatment of bidders;
- Introduction of new types of procurement procedures, such as innovation partnerships;
- Revised rules on the provision of financial guarantees by contractors;
- Introduction of single time limits for lodging an appeal with the State Commission for Supervision of Public Procurement;
- Introduction of a fixed EUR 670 (HRK 5,000) fee for lodging an appeal and removal of the administrative fee;
- The High Administrative Court of the Republic of Croatia to rule on actions against decisions taken by DKOM in appeal proceedings;
- Revised rules and exemptions for modifications of the contract during its term, subject to specific conditions, including price increases up to a maximum of 30% of the original contract value³³.

Perspectives and lessons learned

According to a recent study³⁴, the PPA was implemented in particular because of a need to align Croatian legislation with EU requirements as part of the accession process. In addition, it also sought to address limitations in the existing legal framework for tackling favouritism and other corrupt practices. The study also found that PPA implementation continues to face challenges. Many contracting authorities do not have sufficient numbers of professionally trained procurement staff. The Ministry of Economy's Directorate for the Public Procurement System does however offer training in this area³⁵.

From the **perspective of the Ministry of Economy, Enterprise and Crafts (MoE)**, the administrative capacity of contracting authorities is still too limited. There is a need to invest further in administrative capacities at all levels, to make the public procurement framework more efficient. One way that the Ministry has sought to address the lack of knowledge on public procurement procedures has been to develop a public procurement training and certification programme. The aim is to equip public procurers with the necessary knowledge and skills to implement public procurement procedures effectively at all levels. At least one authorised representative of a contracting authority is required to hold a valid public procurement training certificate. Training certificates are valid for three years. Certificate holders must undergo regular training during the three-year period to ensure the renewal of their certificate³⁶.

From the perspective of the **Croatian Chamber of Trades and Crafts**, which represents tradesmen and craftsmen, the PPA's main advantage is the introduction of the most economically advantageous tender criterion into the award procedure. This is viewed as a positive step towards greater fairness, transparency and competition. The PPA is considered to have put in place a more transparent system of contracts and agreements and has also established procedures to avoid conflicts of interest. However, some members of the Croatian Chamber of Trades and Crafts still consider public procurement processes in the construction domain to be non-transparent, illogical and at times distortive. From the perspective of smaller construction contractors in particular, the main worry is that the most economically advantageous tender (MEAT) criteria are rarely applied in practice, because on most occasions, it is the tender with the lowest price that wins the contract. It is also difficult to appeal against the use of the lowest price criterion. As the government is a key procurer and an investor in construction activities, the members of the Croatian Chamber of Trades and Crafts believe that it is essential to apply MEAT criteria more consistently. Tender evaluations should consider qualitative, technical and sustainability aspects, for example, as well as price. Additionally, the cost of appeal is rather low, meaning that it is relatively easy to start an appeal process and use it as a mean to hinder competitors from starting contract work. This issue also restricts the efficiency of public procurement practices.

From the perspective of the **Croatian Chamber of Economy**, which represents all legal entities engaging in business, its members have singled out a few issues with regard to public procurement in the construction sector. In particular, their members argue that the lowest price criterion is used too often in comparison with the most economically advantageous tender (MEAT)³⁷. In their view, the MEAT criterion should be used more often. The members also argue that the documentation required is too complex, too extensive and has to be collected too often. In their view, the burdensome requirements actually increase public procurement procedural costs.

In addition, regarding the introduction of the Directive 2014/24/EU, they argue that SMEs need easier access to public procurement procedures. To overcome these obstacles, the Croatian Chamber of Economy feels that there is a need for discussions take place between the government and the most important stakeholders to debate and agree upon future amendments or new legal acts to improve public procurement in Croatia.

Endnotes

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- ⁸ European Construction Sector Observatory, Country Fact Sheet Croatia, 2016.
- ⁹ Public Procurement Act 2011 (Croatian Parliament), Ministry of Economy, Entrepreneurship and Crafts:
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- ¹⁰ Podumljak, M. & Dávid-Barrett, E. (2015) The Public Procurement of Construction Works: The Case of Croatia:
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- ¹¹ The Act on the Procurement of Goods, Services and Works has been effective since 19 December 1997 and was published in the Official Gazette (OG) 142/97, 31 December 1997.
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- ¹⁶ Podumljak, M. & Dávid-Barrett, E. (2015) The Public Procurement of Construction Works: The Case of Croatia;
http://integrityobservers.eu/UserDocsImages/wp8_ENG.pdf
- ¹⁷ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance; Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC Text with EEA relevance; Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts Text with EEA relevance.
- ¹⁸ According to a phone interview with the Croatian Chamber of Trades and Crafts.
- ¹⁹ Electronic Public Procurement Classifieds of the Republic of Croatia:
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- <http://www.javnabava.hr/default.aspx?id=3420>
- ³⁷ According to information exchange through email correspondence with the Croatian Chamber of Economy.