



Sigma

Support for Improvement in Governance and Management

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CROATIA

PUBLIC PROCUREMENT SYSTEM

ASSESSMENT MAY 2009

1. Summary

1.1 Main Developments since last year

The public procurement system of Croatia underwent a number of significant changes at the beginning of 2008, including the entry into force of a new Public Procurement Act (PPA) and a new institutional set-up. During 2008 this process continued with:

1. The Act on the Amendments to the Public Procurement Act, adopted on 17 October 2008 (*Official Gazette* 125/08), entered into force on 1 January 2009. Pursuant to the PPA the following subordinate legislation has come into force:

- a. Amendments to the Regulation on public procurement notices and records (*OG* 04/09);
- b. Amendments to the Regulation on the methodology for drawing up and handling tender documents and tenders (*OG* 04/09);
- c. Amendments to the Regulation on the content and the method of forwarding public procurement reports (*OG* 04/09).

2. The new Concessions Act (CA) (*OG* 125/08) entered into force on 1 January 2009.

In January the new Ordinance on the establishment and management of the Concessions Register was published (*OG* 09/09).

3. The new Public-Private Partnership Act (PPPA) (*OG* 129/08) entered into force 15 November 2008. The Public-Private Partnership Agency started its work on 21 November 2008.

1.2 Main Characteristics (strengths and weaknesses)

During 2008/9 a continued strong effort was made by the Croatian authorities to further strengthen the Croatian public procurement system, with a number of positive outcomes. The Public Procurement Act is nearly fully compliant and harmonised with the EC Directives (however, the new Remedies Directive 2007/66 is not fully transposed); the implementation thereof has been very well supported by the Ministry of Economy in a range of activities, including training, guidelines and daily assistance. It is clear that knowledge of public procurement procedures has permeated to procurement officers, both in line ministries and in small contracting authorities (including municipalities).

There continues to be a need for the elimination of a somewhat formalistic approach that today still governs the management of procurement processes. The elaboration of common training materials and a programme for the training of public procurement officers will be important in tackling this problem.

The reform of the PPP/concessions system in 2009 has to be seen as an important step towards drawing investment into Croatia. Also it should be stressed that Croatia should be credited for putting a great deal of effort into ensuring that laws are in compliance with EU procurement law.

A certain risk (legal uncertainty) lies in the fact that there are three acts covering similar situations, e.g. where it is disputable whether it is a public contract or concession. This uncertainty will have to be carefully addressed by the responsible policy-making institutions.

A challenge for the future will be to overcome the formalistic approach of contracting authorities towards public purchasing, putting more stress on how to obtain value-for-money rather than correctly executing a law.

1.3 Recommendations for Reform

Priority should be given to the following actions:

1.3.1 Short-term priorities:

- Educational focus for procurement staff on economic aspects of public purchasing (e.g. increasing the use of MEAT¹ for the award of contracts);
- Operationalise and adjust the new PPP/concessions system;
- Implement amended EC Remedies Directives in the Croatian legislation.

1.3.2 Medium-term priorities:

- Invest in participation of additional economic operators (confidence-building measures, transparent anti-corruption strategies and policy);
- Invest in setting up e-procurement infrastructure;
- Prepare for the introduction of electronic procurement.

¹ MEAT = most economically advantageous tender

2. Assessment of the Public Procurement/Concessions System

2.1 Legislative Framework

2.1.1 Public Procurement Law

Public procurement in Croatia is regulated by the Public Procurement Law of 3 October 2007 (henceforth referred to as the PPA). The PPA entered into force on 1 January 2008, with the exception of some provisions that will become effective only when Croatia becomes a Member State of the European Union (such as publication of notices in the *Official Journal of the EU*, obligations concerning reporting to the European Commission, and statistical information).

The PPA was amended in 2008. The amendment was adopted on 17 October 2008 (published in the *Official Gazette* 125/08) and entered into force on 1 January 2009 (except for a new provision establishing new formal requirements for procurement officers, which will enter into force on 1 January 2010). Most of the changes introduced by the amendment are only technical or linguistic. Many amendments aimed at correcting errors (for instance, incorrect references) that existed in the 2007 PPA. Major substantial changes include:

- Inclusion of works concessions in the PPA;
- Formal abolition of the Public Procurement Office;
- Regulation of defence contracts in line with EU requirements;
- Regulation of an annual procurement plan;
- Introduction of formal requirements (specialised training) for procurement officers (in the case of contracts of higher value) (in force as of 1 January 2010);
- Removal of some types of procurement notices that were not foreseen by the EC Directives (notice on commencing the public procurement procedure excluded from the PPA);
- New (harmonised with the Directives) provisions on proving technical ability and economic and financial standing by consortia and groups of economic operators.

Six regulations (secondary legislation) were also adopted in January and February 2008, concerning the (exemplary) list of persons obliged to apply the law, forms of announcements and records of public procurement procedure, methodology for preparation, assessment and implementation of referred investment projects, terms and conditions for the application of the Common Procurement Vocabulary (CPV), preparation and handling of tender documents and tenders, forms, methods and conditions of education in the area of public procurement, implementation of preventive and instructive activities and content of and method for delivering public procurement reports for the previous year. Two regulations (on the methodology for drawing up and handling tender documents and tenders, and on public procurement notices and records) were amended after the adoption of the amendments to the PPA (November 2008).

The PPA implements provisions of the Public Sector Directive (2004/18), Utilities Directive (2004/17) and two Remedies Directives (89/665 and 92/13). The PPA regulates: 1) public procurement procedures; 2) competences of the “body responsible for the public procurement system” (a department within the Ministry of Economy), which is the main regulatory body for public procurement, and of the State Commission, responsible for supervision of public procurement procedures; and 3) legal protection concerning public procurement procedures.

Attached to the PPA are seven annexes, which correspond more or less to the annexes to the Public Sector Directive and the Utilities Directive. They concern: list of activities (public works) in construction sectors, lists of services (priority and non-priority), list of products for the purposes of defense (completely changed in 2008 to make it compatible with the list of military products adopted in 1958 by the European Council), technical specifications, information to be included in notices, features concerning publication, and requirements relating to electronic tools.

The organisation of the State Commission, which is the review body for public contracts, is regulated in a separate law (no. 117/03).

Principles for awarding public contracts

The PPA requires that, regardless of public contract value, the following principles should be applied throughout procurement proceedings: freedom of movement of goods, freedom of establishment, freedom to provide services, principle of competition, efficiency, equal treatment, non-discrimination, mutual recognition and proportionality. The PPA does not provide for any national (domestic) or local preferences. All suppliers, regardless of their origin, are to be treated equally. Exception is made with regard to sectoral (utilities) procurement where, in accordance with the Utilities Directive, “Community” preference is provided (cf. article 58 of the Utilities Directive).

Also, the PPA provides for the possibility to reserve the right to participate in a public procurement procedure to candidates or tenderers where more than 50% of the total number of employees are handicapped persons (cf. article 19 of the Public Sector Directive).

Scope and coverage of the PPA

The PPA applies to all public contracts above the value of 70,000 HRK.

The PPA covers public works contracts, public supplies contracts and public services contracts. Their definitions are consistent with the definitions of the EC Directives.

The PPA applies a two-tier approach to public services contracts, distinguishing between Annex A services (“priority services”), subject to all provisions of the PPA, and Annex B services (“non-priority services”), covered only by provisions on notices and technical specifications.

The PPA also applies to the award of public works concessions and public works award procedures by concessionaires.

Obligated to apply the PPA are the following contracting authorities: the government bodies of the Republic of Croatia, local and regional self-government bodies, bodies governed by public law (the PPA does not use the term “body governed by public law”, although the definition applied is consistent with the definition of bodies governed by public law in the EC Directives), and associations of the above-mentioned bodies. The PPA also applies to contracts awarded by bodies that are not contracting authorities but where contracts are subsidised directly by contracting authorities for more than 50%. A non-exhaustive list of contracting authorities is provided by an implementing regulation.

With regard to contracts covered by the Utilities Directive, the PPA applies to contracting authorities as defined above, public undertakings and any other contracting entities that operate on the basis of special or exclusive rights. All of the above-mentioned entities are obliged to follow the PPA (Part III) when procuring products, works or services for the purpose of performing the activities referred to in articles 106 – 111 of the PPA. Definitions of public undertakings, special or exclusive rights as well as sectoral activities are consistent with the Utilities Directive.

The scope of the PPA is compliant with the *acquis*.

The PPA applies both to contracts the value of which (net of VAT) exceeds thresholds for the application of the EC Directives and to contracts of lesser value.

The application of specific procedural rules depends on whether the value of the contract in question is estimated to be:

- 1) above EU thresholds – obligatory publication of notices in the *OJEU* (however, the publication in the *OJEU* will become mandatory when Croatia enters the EU), time periods for submission of tenders or request to participate consistent with EC Directives, etc.;
- 2) below EU thresholds but above 150,000 HRK for supplies or services and 300,000 HRK for works – same procedures as in 1) but with shorter time periods (e.g. 26 days in open procedure instead of 52), only national publication (*HR Official Gazette*), additional exemptions from the PPA;

- 3) below thresholds referred to in point 2 but above 70,000 HRK - same procedure as in 1 and 2, to be applied only when the conditions specified in the PPA have been met but with further shortening of deadlines, obligatory publication of notices in *HR Official Gazette*;
- 4) below 70,000 HRK - facultative application of procedures from the PPA.

It transpires that, as far as contracts that are not subject to EU rules (because their value is below the thresholds of Directive 2004/17) are concerned, the same thresholds apply, both for contracting authorities in the public sector and for contracting entities awarding contracts in utilities sectors. In other words, there is no higher threshold for utilities than for public sector bodies.

All thresholds referred to above, in accordance with EU rules, are expressed net of VAT. The PPA does not provide for detailed provisions concerning the estimation of public contracts' value – EU rules are implemented by implementing regulations.

The PPA provides for all exemptions allowed by EU law with regard to both public sector and utilities procurement.

Exemptions provided for contracting entities (utilities sectors) are consistent with the Utilities Directive.

The defense procurement and contracts awarded for purposes of diplomatic and consular offices of Croatia will be regulated in secondary legislation (to be issued by the end of 2009). New article 10 of the PPA, outlining the basic principles of defense procurement, is modeled on the relevant provisions of Directive 2004/18 and on the EC Treaty.

Public procurement procedures

All procedures, including new ones (competitive dialogue) provided for by the new generation of directives, are regulated in the PPA. Contracting authorities may apply, on a regular basis, open or restricted procedures, and in the case of complex contracts, defined in line with the Public Sector Directive, also the competitive dialogue. Provided that the conditions exhaustively regulated by the PPA are met, contracting authorities may have recourse also to negotiated procedures with or without publication. As for the conditions for the negotiated procedure, they are in general compliant with EU rules. Minor deviations were, nevertheless, noticed in certain conditions for the negotiated procedure. According to article 16 para. 1 item 1, the contracting authority need not publish a contract notice if this notice included “only the economic operators whose tenders have not been excluded during the prior open, restricted procedure or competitive dialogue due to the failure of supplier to meet qualification criteria” – EU rules are a bit more strict here since they require inclusion in the negotiated procedure of “all of and only” suppliers satisfying the qualification criteria (cf. article 30 of the Public Sector Directive).

The negotiated procedure without notice is allowed, among other conditions, when in response to open or restricted procedure or competitive dialogue there were no tenders or all submitted tenders were unsuitable. The problem is that the term “unsuitable” tender has a very specific meaning under the PPA – it means a tender price which exceeds the amount that the contracting authority may spend for the subject matter of public procurement. It results then that the contracting authority would not be authorised to apply the negotiated procedure without notice when the tenders submitted were within the budget available but did not comply with the requirements of the contracting authority. In such a case, however, recourse to a more competitive negotiated procedure with notice is nevertheless possible – it transpires thus that the PPA is stricter than the EU rules.

Contracting entities (utilities sectors) may apply open, restricted or negotiated procedure, provided they publish a call for competition, and, if circumstances defined by the PPA occur, also the negotiated procedure without notice.

The PPA also implements electronic procedures and tools from the EC Directives. Thus, selection of the best tender may be preceded by electronic auctions; contracting authorities may also apply dynamic purchasing systems. Electronic communication between contracting authorities and suppliers is equated with the traditional, paper-based means (the choice of the method is left to the contracting

authority). However, submission of tenders in electronic form requires the application of the advanced electronic signature.

Contracting authorities may also use framework agreements. Their definitions and modus operandi are generally compliant with EU law.

Qualification criteria and documents required

With regard to the qualification of suppliers to take part in the procedure, the PPA provides, first of all, mandatory and facultative reasons for exclusion. To be obligatorily excluded from the procedure are: 1) suppliers who have been subject of a conviction by final judgment for criminal acts of participation in a criminal organisation, corruption, fraud or money-laundering or corresponding acts in accordance with the legal provisions of the country in which they are established; 2) suppliers who have not fulfilled obligations relating to the payment of all mature taxes and obligations relating to the payment of pension and health insurance contributions and other state-level taxes and obligations. The contracting authority is also obliged, provided that it had been set as a condition of suitability, to exclude suppliers who meet the conditions referred to in article 46 (2) (which implements provisions of article 45 (2) of the Public Sector Directive). Contracting authorities may also establish criteria related to the financial and economic standing of suppliers and to the technical and professional ability of suppliers. Documents that may be requested as proof of meeting those conditions reflect the evidence defined in the Public Sector Directive.

Contract award criteria

In accordance with EU rules, the selection of best tender may be based either on the criterion of the lowest price only or on the most economically advantageous tender. Evaluation criteria that may be taken into account in the latter case (provided on an exemplary basis) reflect the list in the Public Sector Directive. All criteria applied should be presented together with relative weighting (in descending order of importance only if, for objective reasons, weighting is not possible) and published in the contract notice or at the latest in the tender dossier. The PPA also provides for the procedure concerning abnormally low tenders. In line with EU jurisprudence and with Directive 2007/66, which amended Directives 89/665 and 92/13, the PPA provides for a “standstill” period – minimum time that must elapse between notification to the suppliers of the decision on the award of contract and the conclusion of the contract. The PPA provides one generally applicable 15-day standstill period (five days in smaller-value contracts), while in the Directive it is, depending on the method of communicating the results of the procurement to suppliers, either 10 or 15 days.

Review measures and procedure

Legal protection issues in the area of public procurement are regulated in part V of the PPA. These provisions are applicable to all contracts subject to the PPA (that is to say, to contracts with a value of at least 70,000 HRK). The PPA provides for a two-stage review procedure whereby appeals against decisions (or failure to act) of the contracting authority are addressed to the State Commission but lodged with the concerned contracting authority. The time period for the submission of an appeal is 10 days (three days in the case of contracts of lesser value).

Simplified procedures for low-value contracts

There is a separate chapter in the PPA regulating the procedure for contracts of lesser value. Basically, contracting authorities apply the same procedures as for larger-value contracts, with shorter time periods for the submission of tenders or for requests to participate (for instance, in the open procedure it is at least 10 days). With regard to the negotiated procedure, it is allowed only if the conditions (the same as for contracts of larger value) have been met. Thus, the PPA does not provide for any additional flexibility with regard to small-value contracts. There is also a shorter “standstill period” than in the case of larger-value contracts.

Summary

The PPA implements in a comprehensive way all of the relevant EU rules. Minor deviations, albeit remaining, do not impact on the generally positive perception of the compliance of the law with the acquis. The PPA also complies with the fundamental principles of EU law, including in the case of contracts that are, due to their value, exempt from the scope of the EC Directive.

Generally, the law is well structured, although the order of specific provisions could better reflect the order of procurement activities (provisions related to the description of the subject matter of public procurement – the technical specification appears in the middle of the text of the law). It is also observed that implementation of the PPA in practice may be hindered by the fact that very formal, rigid rules, which are envisaged in EU law for contracts of considerable value, are also required for contracts of lesser value. Practically the same procedures apply for relatively small-value contracts (ca. 10,000 EUR) as for contracts covered by the EC Directives.

2.1.2 Concessions/PPPs

The Croatian Public-Private Partnership Act (PPPA), which entered into force on 15 November 2008, provides the legal framework for selecting, approving, awarding and monitoring particular projects that come within the wide concept of public-private partnerships. The law applies to all PPP contracts regardless of their legal nature, i.e. regardless of whether a given contract is to be qualified as a public contract or a concession. The PPP Agency, an independent public body, has been entrusted with carrying out the public tasks, in particular selecting and approving PPP projects proposed by the Croatian administration. It acts in close co-operation with the Ministry of Finance. PPP contracts must be awarded through a transparent, fair and non-discriminatory procedure (for PPP contracts that are public contracts, the PPPA refers to the award procedures set out in the Public Procurement Act).

The Concessions Act (OG 125/08) entered into force on 1 January 2009.

Summary

The PPP and Concessions Acts can be seen as important steps towards drawing investment into Croatia. Also, it should be stressed that Croatia should be credited for putting a great deal of effort into ensuring that the law is in compliance with EU procurement law.

A certain risk (legal uncertainty) lies in the fact that there are three acts covering similar situations, e.g. where it is disputable whether a PPP contract is a public contract or a concession. It therefore remains to be seen whether the private sector will consider the possible overlap of the three laws as a deterrent to its involvement in Croatia. It is not certain that the private sector will easily accept the fact that the PPP Agency needs to give its consent to the contract at the end of the procurement procedure.

2.2 Central Public Procurement Organisation

The key central institutions are the Directorate for the Public Procurement System (DPPS) within the Ministry of Economy (MELE), the Ministry of Finance (MoF) for concessions, the Public-Private Partnership Agency (PPPA) for PPPs and the State Commission for the Supervision of Public Procurement Procedures (DKOM) for review procedures.

The Directorate for the Public Procurement System (DPPS), set up within the Ministry of Economy (MELE), has been charged with, among other tasks, proposing, preparing and co-ordinating the process of drafting all acts and other public procurement regulations; analysing the implementation of regulations in the public procurement system through preventive and instructive activities; filing requests for the initiation of misdemeanour procedures, preparing PPP policy; identifying the potential to invest via the PPP model, using the PPP policy to embed PPP as a procurement method across central and local authorities so as to allow the model to play a full role in a changing environment for the delivery of public services; preparing and implementing education and training for participants in public procurement and administering the Public Procurement Portal; monitoring

the *Electronic Public Procurement Classifieds*; and publishing the *e-Public Procurement Bulletin* and professional publications.

The following departments have been formed within the DPPS:

- Department for the Analysis of Public Procurement Procedures
- Department for the Development of the Public Procurement System and for Training
- Department for Public-Private Partnerships
- Department for Electronic Support to the Public Procurement System

The DPPS currently has a staff of 24; some additional recruitment is planned during 2009. The ability of the DPPS to continue to strengthen its functions would benefit from the planned recruitment.

MELE co-operates with the Ministry of Finance (MoF) on all activities aimed at the alignment of legislation in the area of concessions, co-ordinating with the MoF all other activities falling within the scope of the public procurement system. The daily operational work is entrusted to MELE. Informal inter-institutional working groups have been established with respect to drafting legislation on public procurement, concessions and private-public partnerships as well as to developing strategic documents; the operational level is represented by the relevant officials and civil servants of MELE, MoF, and the State Commission for the Supervision of Public Procurement Procedures (DKOM). At the political level, all public procurement issues are discussed at the meetings of the Government's Co-ordination for Economic Issues, headed by the Deputy Prime Minister/Minister of Economy, Labour and Entrepreneurship.

In accordance with the Act on Amendments to the Act on the Structure and Scope of Central State Administrative Bodies (*OG 27/08*), the MoF has assumed responsibility for concessions. The MoF records concession agreements into the Concessions Register and thus controls and monitors the payment of concession fees. As part of the changes to the structure of the MoF, the Section for Concessions and PPPs was formed within the Department for Concessions, in addition to the existing Section for the Concessions Register. The MoF has introduced provisions within the new Concessions Act that clearly identify the elements of the concessions policy and the co-ordinating role of the MoF, subject to co-ordination with the body competent for the public procurement system, i.e. MELE. With regard to PPPs, the Ministry of Finance takes part in the procedures and in the analysis of proposals of various concession and public-private partnership (PPP) models, makes proposals and gives its opinions on proposals for public-private partnership agreements. The MoF's opinions are based on budgetary risks, project assessment and risk assessment in the area of PPP within the scope of the ministry and in accordance with the procedures for preparing and executing PPPs. The MoF also takes part in proposing improvements for the further development of the PPP system from the perspective of the ministry's competence.

2.2.1 Review System

The State Commission for the Supervision of Public Procurement Procedures (DKOM) was established by the Act on the State Commission for the Supervision of Public Procurement Procedures (*Official Gazette 117/03*) as an autonomous and independent national body of the second instance, which exercises its jurisdiction by deciding on complaints concerning public procurement procedures.

According to its organisation and jurisdiction, it follows that the State Commission has the characteristics of both a judiciary and an administrative body. The principles of legality and transparency, set out in the Public Procurement Act, apply to the structure and practices of the State Commission. Those principles are applied in accordance with the State Commission's procedures for decision-making, financing and appointment of Commission members.

The State Commission for the Supervision of Public Procurement Procedures has five members, one of whom acts as the head, and one as deputy head. The Act on the State Commission for the Supervision of Public Procurement Procedures stipulates the conditions for candidates to be appointed as the head or as a member of the State Commission. Candidates for membership must be Croatian

nationals with university qualifications, ten years of experience in similar employment, corresponding professional competence and at least three years of experience in employment related to public procurement. The Head of the State Commission must be a law graduate, pass a bar examination, have at least six years of experience as a judge, Attorney General, Deputy Attorney General, public notary or lawyer, or ten years of experience in employment related to law after having passed a bar examination. The same conditions are stipulated for the appointment of county court judges.

The State Commission passes decisions on cases under its jurisdiction at council meetings. The head or a member of the State Commission is to be exempt from participating in a case upon his/her personal request or upon the request of a third party should a conflict of interest be determined or if there are other grounds for non-participation.

Summary

Both the DKOM and the DPPS are now stable and strong institutions. Both have already largely contributed to the strengthening of the new public procurement system and, in general, have the capacity to implement procurement legislation effectively. Some limited additional recruitment of qualified staff would be welcome.

However, after reflection on the division of roles, a slight reorganisation of the DPPS is needed in order to improve its functionality and resolve some of the issues in its service delivery. In particular, there is a need for increased specialisation of functions and staff competencies, combined with a more natural division of these functions in organisational terms.

2.3 Procurement Operations and Practices

The majority of contracting authorities expressed a basic satisfaction with the new PPA and underlined that the last revision of the law has had a positive effect on procurement practice. Only a few overly bureaucratic requirements remain in the secondary legislation (e.g. regulation on tender documentation).

The standard time period for open procedures causes problems, especially in the construction sector, which could be eased by more extensive use of e-procurement tools. So far, e-procurement does not play an important role in practice. Apart from the obligatory electronic publication of tender notices, most contracting authorities do not even make use of online publishing of tender documents. The main reason seems to be the (supposed) lack of technical equipment of bidders.

There is a visible tendency (including in the utilities sector) to use open procedures, even in cases where the PPA allows the use of negotiated procedures. In addition to this trend, the use of standardised tender forms is very common and generally supported. Furthermore, contracts are for the most part awarded on the lowest price principle. The use of more sophisticated procedures that require individual shaping, such as the competitive dialogue, concessions or framework agreements, is still rare.

Altogether, the handling of procurement procedures shows that contracting authorities have a rather formalistic approach towards public procurement. They prefer to conduct their purchasing using "safe" but inflexible procedures, which are aimed at preventing tenderers and bidders from filing an appeal, instead of tuning procedures in accordance with their specific needs. This results on the one hand in relatively few contestations of procurement procedures but on the other hand in low participation and therefore in less competition than is potentially achievable. Participation of foreign bidders is still low.

The professionalism of procurement staff has increased with the help and support of the Ministry of Economy and the Chambers of Commerce. Contracting authorities now put more stress on qualified procurement staff and constant training. In many cases the organisation of procurement has been subject to restructuring measures, mostly by centralising the purchasing competence and building of purchasing teams, consisting of qualified lawyers, economists and technical experts.

Summary

The challenge for the future will be to overcome the formalistic approach of contracting authorities towards public purchasing, putting more stress on how to obtain value-for-money rather than correctly executing a law. Another objective that should not be forgotten is to increase the trust of economic operators and their capacity to participate in public procurement procedures.

The DPPS and the DKOM have] made considerable efforts to support contracting entities and economic operators with training and information and with the publication of secondary legislation, guidelines, and model tender and contract documents. This support has generally been very positively received. However, continued support to purchasers, in particular to smaller local authorities and authorities in the health and education sectors, is required to strengthen the operational side of public procurement.

2.4. Control, Review

2.4.1 Complaints Review

The PPA establishes a three-tier system of reviewing complaints lodged by dissatisfied contractors, suppliers or service providers:

- In the first stage, the complaint is submitted to and then reviewed by the contracting entity itself.
- The complainant who is dissatisfied with the decision of the contracting authority may appeal this decision to the State Commission for the Supervision of Public Procurement Procedures (DKOM).
- The decision made by the DKOM may be appealed to the Administrative Court.

The complaint may be submitted by any contractor, supplier or service provider who claims to have suffered damage or a loss of rights or who is likely in the future to suffer loss or damage resulting from an alleged breach.

The complaint is submitted directly to the contracting authority in written form. The complaint can be lodged in response to any decision of the contracting authority. The complaint must be made in writing no more than three days from notification of the decision. Complaints can also be made within eight days of a published notice of a decision to award a contract using the negotiated procedure without a call for competition. Receipt of the complaint automatically suspends action by the authority. The DKOM is required to make a decision on the complaint within 15 days.

Once the complaint has been submitted, the contracting entity cannot conclude the procedure and sign the contract unless the contracting authority has made a successful application to the DKOM to the effect that failure to award the contract would involve "... the potential occurrence of disproportionate damages... [to the authority]". The authority must notify suppliers of any such application, and the DKOM must decide on the application within seven days. The PPA makes it clear that a positive decision would only be granted exceptionally. The authority must notify suppliers of the outcome within three days.

All decisions of the DKOM are subject to judicial review by the Administrative Court.

Appeal Cases in 2008

Cases transferred from 2007: 54

Newly received cases: 1 020

TOTAL: 1 074

Typical subjects for complaint have included poor adherence to the PPA's complex procedural rules, poor justification of the use of award criteria other than lowest price, errors in qualification (sometimes with the intention of preference), and inadequate procurement time scales. In many cases,

procedural errors were associated with more serious breaches of the principles of transparency and non-discrimination.

Summary

In summary, the current complaints review system continues to work efficiently, and its mechanisms are admirably transparent. The confidence of suppliers in the review system seems to be reflected in the relatively large number of complaints filed.

2.4.2 External Audit

The State Audit Office (SAO) is competent for the audit of activities of all administrative bodies. The SAO's evaluations cover all formal aspects (legality and financial probity) as well as performance, although not on a particularly advanced level. Compliance with public procurement rules is horizontally included in these audits, which are carried out ex post on an annual basis.

If irregularities have occurred in (concluded) public contracts, the SAO addresses the respective administration for justification. In its report the SAO may in consequence issue specific recommendations or sanctions, which can be upheld for two years.

Unclear, however, are the SAO's relations to the state prosecutor, who will only be informed on a voluntary basis about irregularities in public procurement cases if criminal activities are alleged.

Summary

The SAO considers that the new PPA is clearer than the previous one, but that further efforts are needed to support its implementation. The SAO focuses its work on the legality of the procurement process in order to determine compliance with the legislation. Its intention to undertake a cross-cutting audit is a positive development. There is also a need, however, to further strengthen the SAO's understanding of public procurement through training.

PROCUREMENT/CONCESSIONS STATISTICS for 2008

A. Number of contracting entities		
1	Central government	134 ²
2	Regional and local authorities	577 ³
3	Other (bodies governed by public law)	2115 ⁴
4	Utilities	204
1.1.5	Total number of contracting entities	3030 ⁵
B1. Awarded public contracts/Contracting entities⁶		Total (estimated value (Mio EUR))
Central government		
Regional and local authorities		
Other (bodies governed by public law)		
Utilities		
Total public contracts awarded		
B2. Awarded concessions/Contracting entities		Total (estimated value (Mio EUR))
Central Government ⁷		8.186.123
Regional and local authorities ⁸		93
Other (bodies governed by public law) ⁹		4.774.053
Utilities		655.295
Total concessions awarded ¹⁰		Not available
C1. Awarded public contracts above the EU thresholds		Total (estimated value (Mio EUR))
Works		930
Services		1.131
Goods		645
Mixed contracts		
Total public contracts above the EU thresholds		2.706
C2. Awarded concessions above the EU thresholds¹¹		Total (estimated value (Mio EUR))
Works		/

² Based on the list of entities bound by the PPA, art. 2. 1. , and registration in the EOJN (63 registered courts, 3 state attorney's offices)

³ Based on the official data: 427 municipalities, 127 cities, 21 counties

⁴ Based on the number registered in EOJN

⁵ Out of number of 3030 registered in EOJN, 1.481 subjects were active, publishing contract award notices

⁶ Data includes all value contracts

⁷ Line ministries and State administration offices in counties

⁸ Counties, Cities, Districts

⁹ State Agencies

¹⁰ Total determined concession indemnity liability for 2008

¹¹ This type of data is not available for the year 2008. The data is being monitored since January 1st 2009 with coming into force of the new Concessions Act, establishing these concession type definitions.

Services	/	/
Other	/	/
Total concessions above the EU thresholds	/	/
D. Procurement methods used (above the national thresholds)		
Open procedure	2.884	3817
Restricted procedure	73	32
Negotiated procedure with prior publication of notice	21,7	57
Negotiated procedure without prior publication of notice ¹	614	955
Other procedures (competitive dialogue, etc)	0,6	6
D1. Low-value procurement (estimated)	230 ¹²	
E. Participation rate (average number of submitted tenders)		
Works	2,3	
Services	1,9	
Goods	2,5	

F. List of 10 largest procuring entities (name, main activity, (estimated) annual procurement budget):

- 1 Hrvatske autoceste d.o.o., Društvo za upravljanje, gradenje i održavanje autocesta
- 2 Hrvatske ceste d.o.o. Zagreb
- 3 Zagrebački holding d.o.o.
- 4 Jadrolinija
- 5 Grad Zagreb, Gradsko poglavarstvo
- 6 Autocesta Rijeka-Zagreb d.d.
- 7 Hrvatske vode, pravna osoba za upravljanje vodama
- 8 RIJEKA SPORT d.o.o.
- 9 HRVATSKA RADIOTELEVIZIJA
- 10 INA - Industrija nafte d.d.

¹²

Based on the nnotices for low value procuremnet. Procurement below 70.000 HRK is not calculated in this report

**G. List of 10 largest public contracts/concessions awarded and/or advertised in 2008
(subject of the contract, name of the contracting authority and contractor (if selected),
(estimated) value, time of execution):**

Contracting authority/entity	Tenderer	Subject	Value /HRK	Value / EUR
Croatian Highways	Hidroelektra niskogradnja d.d.	works	433.794.228,00	58.620.841,62
Croatian Highways Rijeka Zagreb	Dalekovod,	works	376.355.082,00	50.858.794,86
Jadrolinija	INA d.d.	supplies	258.433.196,00	34.923.404,86
Croatian Highways	Groups of tenderers Konstruktor-ingenjering d.d. Split Hidroelektra niskogradnja d.d. Zagreb ,	works	219.274.608,05	29.631.703,79
Croatian Highways	Groups of tenderers DYWIDAG BAU GmbH i STRABAG d.o.o.	works	197.922.190,50	26.746.241,96
Jadrolinija	Horizon shipping company, Bizaniou street 22, 48100 Preveza, Greece	supplies	147.028.593,25	19.868.728,82
HRVATSKE CESTE d.o.o., Zagreb	GP KRK d.d. Krk	supplies	143.369.179,98	19.374.213,51
Agencija za odgoj i obrazovanje	Školska knjiga d.d.	supplies	142.390.089,82	19.241.904,03
Agencija za odgoj i obrazovanje	Profil International d.o.o.	supplies	103.639.504,78	14.005.338,48

Note with regard to concessions: The data available for 2008 shows that no high-value concession contracts had been awarded or advertised at the time this report was submitted.

ⁱ Including single-source procurement