

3rd PUBLIC PROCUREMENT Ph.D. CONFERENCE

PUBLIC PROCUREMENT SYSTEM IN REPUBLIC CROATIA WITH SPECIAL EMPHASIS ON UTILITY SECTOR

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Public procurement system

Procurement encompasses the entire process of obtaining commodities and services - assessing needs and planning the acquisition; preparing and processing a requisition; determining the contractor source selection method and drafting and issuing a solicitation; evaluating bids or proposals and awarding a contract; administering the contract; receiving and accepting goods or services and managing delivery, payment, inventory and property disposition. Purchasing is just one component of the procurement process. It also embraces activities such as quality assurance, training and education, dispute resolution, system oversight, streamlining the acquisition and business processes, and embedding the best of supply chain management techniques in public policy and process.

The public sector delivers or facilitates the delivery of a wide range of public services, increasingly with the involvement of voluntary and community organisations. Public procurement system is assembly of rules, regulations, procedures and tributary it's application. So as to spenditure of public resources could carry out by the rule to do as much as possible for the community with available resources, public procurement system is adopted. Similar systems exist in majority of world's countries and in all of them intention is the same. To gain best value for money, eliminate corruption, to assure transparent money spenditure and to block discrimination. Value systems are clear and they are ground for all rules, regulations and procedures which are interpreted in law, directives, decreets and other acts.

Why is public procurement needed?

Public procurement system in majority of countries and other organizations in which this system exists, refer to the system of public funds spenditure. By public funds are understand national budget funds of some country gathered by various taxation systems which are used for public expenditure like public education system, health care system, police, army, social services, municipal services, public transportation system etc.

Majority of the people deals with scarce resources with special care and economically according to their knowledge, experience, help they can get from others and finally according to their sole interest. But economically. Each of us has developed sense for ownership of certain value which doesn't depend on the form in which these value exists. We have special sense for the resources we dispose of, money, assets and specialy time as the most valuable resource. We use them economically striving to gain as much as possible when we exchange it for something else. Simply we are trying to get greater value during the exchange. For the time we spend on our jobs and for the effort we want to be properly payed and for the money we receive we want to get as much value as we can get. This feeling is implemented in our genes. Majority of the people feels very possessive toward their possessions with strong sense of ownership which results with economic and efficient behaviour.

Yet, what in the case when we are in position to dispose with goods which are not our property? How we act then and why are such circumstances subject for scattering, negligence, corruption and in finally abuse of power? Is it genetics to blame or is it about individual and certain exceptional circumstances? Like «opportunity makes the thief». Thousands of papers are written and research conducted in order to detect existence of corruption in public procurement or to find out the best practice for fighting against it. But rare are ones which explain its phenomena. Because of this and other reasons like transparency, non-discrimination etc. public procurement system is developed.

Public procurement framework in Republic Croatia

Development of the public procurement system

At the moment when the Republic of Croatia gained independence in 1991, the area of public procurement was almost completely unregulated. The origin of the legislative

framework for public procurement can be found in the Act on the Execution of the State Budget for 1994 which stipulated that all procurements exceeding 50,000 DEM in value shall be carried out through a public tender.

On 28 February 1995, the first Regulation came into force, which regulated procurement procedures for goods and services and for award of contracts, based on the procurement procedures of the World Bank.

Two other Regulations followed, which were in force in 1996 and 1997, and which replaced the previous one.

On 19 December 1997, the first Act on Procurement of Goods, Services and Award of Contracts was adopted, whose application began in 1998. The Act was a logical successor of the Regulations because a need was felt in their implementation for a more detailed regulation of the entire public procurement area. The Act was based on the UNCITRAL model of the Public Procurement Act as well as on relevant documents of the WTO, the GATT and the World Bank. The Act was in force until 2001 when the existing Public Procurement Act, which was based on EC directives, came into force.

Taking into account the fact that the procurements above the value of HRK 200,000 were legally regulated, it was felt as necessary to also legally regulate the procurements below that threshold, thus the Regulation on the Procedure of Procurement of Goods, Works and Services of Small Value was adopted. At the same time, the Regulation on Public Procurement Announcements and Records was adopted, by which a higher level of transparency in the public procurement system was reached.

The institutional framework until 2003 was regulated in such a manner that all activities related to public procurement took place within the Ministry of Finance, the Public Procurement Directorate. Following the need for harmonization of the public procurement system in the institutional part as well as for strengthening the implementing ability, the Regulation on the Establishment of the Public Procurement Office of the Government of the Republic of Croatia came into force on 12 November 2003, whereby the Office was detached from the Ministry of Finance and became an independent expert service of the Government of the Republic of Croatia.

By coming into force of the Act on the State Commission for the Control of Public Procurement Procedures and by the establishment of the Commission and appointment of its members, the process of creating an institutionalized framework of the public procurement system was completed.

After new directives were adopted in March 2004: - 2004/18/EC - Directive on Coordination of Procedures for Awarding Public Work Contracts, Public Procurement Contracts and Public Service Contracts, 2004/17/EC- Directive which harmonises procurement procedures of entities operating in water management sector, energy and transport sectors and postal service sections for the purpose of further harmonization of the legal framework from the field of public procurement, the Act on Amendments to the Public Procurement Act was drafted, based on the aforementioned Directives. This Act was adopted in July 2005 and has been applied as of 1 October 2005. Since the amendments to the Public Procurement Act also led to changes in the Regulation on announcements and records of public procurement, the Regulation was amended for the purpose of its harmonization with the Act.

Further objectives are the drafting of a new Public Procurement Act and the development and strengthening of the public procurement system in the Republic of Croatia within the 2002 CARDS Programme, the Twinning Project of the Public Procurement Office titled "Strengthening the Public Procurement System in the Republic of Croatia".

A reform of the public procurement system and full harmonization of the Croatian legal framework with the European Union acquis is a priority of the Government of the Republic of Croatia. The aim of regulating public procurement procedures was to ensure more competitiveness and prevent any discrimination against tenderers, and at the same time improve transparency in the business operations of the contracting authority in property - rights relations, that is, a more rational spending of public funds. The effect of public procurements would also have to be reflected in other fields relevant for a normally

functioning state, as well as in the building of public trust towards the work of the state and the prevention of corruption.

It should be pointed out that public procurement procedures have made a substantial impact on the tenderers' market as they had to start acting in a relatively different and more complex way following the legal regulation of the sector, and which represented quite a deviation from the practice existing until then relating to the conclusion of contracts between the state and the private sector. It was the aim of legislative regulation in the sector to guarantee more intensive competitiveness and prevent any discrimination against tenderers, and at the same time improve transparency in the operations of the contracting authority in property -rights relations, that is, more rational spending of public funds. The effect of public procurement would also have to be reflected in other fields relevant for a normally functioning state, as well as in the building of public trust towards the work of the state and the prevention of corruption.

The total amount of public procurement for the period between 1 January 2005 and 31 December 2005 was 26.085.502.247,00 HRK (VAT excluded) or 11,39 % of GDP. (GDP in 2005 was 229.031.000.000,00 HRK2). The largest clients are Croatian Motorways Ltd., Croatian Electricity Company, Croatian Roads, INA (oil company), Croatian Railways, Plinacro, Highway Rijeka –Zagreb, Odašiljači i veze (Transmissions and broadcasting), Dubrovnik Airport City of Zagreb, Croatian Forests, Ministry of Interior, etc.

Public Procurement Act

Parties obliged to adhere to the Act are state and other bodies of the Republic of Croatia, legal persons who perform one or more activities of common interest, and which are not commercial or industrial activities for the purpose of securing a profit, and associations founded by one or more bodies or legal persons. The list of parties obliged to adhere to the Public Procurement Act is defined by activity or name, whereby all operators are obliged to adhere to this Act even in the case when they are not included in the list. There are more than 4200 obliged parties.

The Public Procurement Act lays down three basic procurement methods (procedures):

- Open procedures means those public competition procedures whereby any interested economic operator may submit a tender.
- Restricted procedures means those procurement procedures by competition based on a call for competition in which any economic operator may request to participate and whereby only those economic operators invited by the contracting authority may submit a tender.
- Negotiated procedures means those procurement procedures by direct dealing whereby the contracting authorities consult one or more economic operators of their choice and negotiate the terms of contract. The negotiated procedure may be used with or without prior announcement of a call for competition.

The Act specifies procurement values above which the contracting authority is obliged to apply the provisions of this Act when procuring identical goods, services and works.

The contracting authority has to announce all procurements in the amount of or exceeding the amount of HRK 200,000 (EUR 27,000) in the Official Gazette (www.nn.hr).

Procurements may also be announced in other media, bulletins or in some other way, but not before having been published in the Official Gazette.

Procurement with a value not exceeding HRK 200,000 in the fiscal and business year is conducted by the contracting authority pursuant to the Regulation of the Government of the Republic of Croatia on procurement procedures for goods, works and services of a lesser value.

The Republic of Croatia is currently preparing for the accession to the EU. It will therefore need to harmonize its public procurement practices with those in the EU as well as align its national legislation with the so-called *acquis communautaire*.

Public Procurement Office

The Public Procurement Office is a special agency of the Government of the Republic of Croatia, authorised to execute the implementation, oversight and application of the Public Procurement Act and any such subordinate legislation as may be passed in the field of procurement. The Office issues instructions and presents opinions to all interested parties regarding the application of the Public Procurement Act; collects, records, processes and analyses procurement data, submits requests for the instigation of minor offence proceedings before minor offence courts or bring criminal charges before the Public Prosecutor's Office, participates in the preparation of draft bills and by-laws providing for the general conditions, rules and procedures of procurement, prepares and implements a training programme for the concerned parties and promote the Public Procurement Act, participates in the work of international institutions in the field of procurement, and performs any such other tasks as may fall within the scope of its competence.

In order to achieve these goals the Public Procurement Office has been conducting a CARDS Twinning Project "Strengthening the Croatian Public Procurement System" with its twinning partner – a consortium of German and Slovenian consultants. The Project which is worth 1.000.000 euros was launched in June 2005 and its implementation is presently in its final stages.

The main goal of the Project is to contribute to the development of a reliable and transparent public procurement system in the Republic of Croatia. This goal is to be achieved through the ever increasing level of alignment of the national legislation with the EU legislative framework, the Public Procurement Office's institutional strengthening, and raising the transparency and competitiveness of the Croatian public procurement system.

A reorganisation of the Public Procurement Office of the Government of the Republic of Croatia is ongoing and, with the objective of attaining as much efficiency as possible within its scope of activities, the Regulation on amendments to the Regulation on the establishment of the Public Procurement Office of the Government of the Republic of Croatia was adopted.

State Commission for Supervision of Public Procurement Procedure

State Commission for Supervision of Public Procurement Procedure is established with the purpose of coordinating the Croatian public procurement system with legal tradition of the European Union, pursuant to obligations arising from the Stabilization and Accession Treaty. The State Commission is established by the Act on the State Commission for Supervision of Public Procurement Procedure as an autonomous and independent national body of second instance which exercises its jurisdiction by deciding on complaints concerning public procurement procedure.

According to its organization and jurisdiction, it follows that the State Commission has the characteristics of both judiciary and administrative body. The principles of legality and transparency, set out in the Public Procurement Act, apply to the structure and practice of the State Commission. Those principles are applied in the State Commission manner of acting and decision making, financing and the manner of members' appointment.

State Commission for Supervision of Public Procurement Procedure has five members, one of whom acts as the Head, and one as Deputy Head.

In order to protect its rights, each client or candidate that has participated in a tendering procedure may, within three days from the receipt of a written decision on the selection or cancellation, lodge with the client an objection to such decision on the grounds of irregularities in the tendering procedure. Clients or candidates must lodge such objections with the client in written form. Any decision passed by the State Commission is deemed final.

Utility sector

The utility sector is under pressure to become more efficient, which means making the money go further. Sometimes this means reducing costs, at other times it means finding new and smarter ways to deliver services. Services must also be sustainable. A voluntary and

community organisation must think about how they provide confidence in their ability to develop, resource and deliver a service over the whole life of the contract.

The activities of the utility sector base their legal framework on municipal management legislation and public procurement legislation. There is no standard approach to utility sector procurement and each sector organisation will have developed its own internal procurement rules and processes.

Procurement procedures established on the basis of the applicable Public Procurement Act that relate to entities operating in the water, energy, transport and telecommunications sectors are, for the most part, based on Directive 93/38/EEC of 14 June 1993. The goal of these provisions is to harmonize the legislation in the field of public procurement and establish the internal market as an area without internal frontiers in which free movement of goods, persons, services and capital is guaranteed.

The regulation of public procurement procedures applied by entities operating in these sectors has also been accomplished by fulfilling these objectives. The regulation of this field was necessary due to the existence of special or exclusive rights granted by the national authorities, concerning the supply to and provision or operation of networks for providing the service concerned, the exploitation of a given geographical area for a particular purpose, the provision or operation of public telecommunications networks or the provision of public telecommunications services. One of the reasons lies in the fact that the national authorities may influence the behaviour of these entities, including participation in their capital and representation in the entities administrative, managerial or supervisory bodies.

Utility sector is one of the biggest clients on the market. There is no register about the value of the procurement but it is estimated about 30 billions kuna (3,5 billions €). Utility sector consists of large number of companies majority state owned. There are only few companies from this sector which are privatised and telecommunication company is one of them. These companies are market oriented and are not financed from the budget but from selling their services to the public. Truth is that there are still some companies left on the market which are natural monopoly but that is also changing with opening market process.

The state central focus, considering public procurement, is to tackle corruption and to ensure that appropriate distance is kept between clients and the suppliers. This is common among developing countries. The focus should be on efficiency and value for money procurement. Value for money often means the lowest price, as long as the contractor delivers the right quality and performance. But sometimes it can mean adding value by offering more than the public sector organisation asked for, even if the price is a little higher.

Companies that operate in the water, energy, transport and telecommunications sectors are usually large and operate on the entire territory of Republic Croatia. This means geographic dispersion and implies very complex organizational structure. Procurement is rarely concentrated in one place. Instead, procurement responsibilities are delegated to local divisions. Therefore procurement activities are fragmented and uncoordinated. This implies that single company procure the same good or service several times on several different places which generate higher costs and duplicated activities. There is lack of consistency and wide variation between the best and the worst practise. There is no common system for recording what was being purchased, at what price and from whom so there is no ground for any kind of benchmarking.

Thesis

1. Gathering procurement activities increase efficiency and gain savings,
2. Establishing standard bidding documents increase efficiency and gain savings,
3. Establishing public procurement information system for recording procurement information increase efficiency and gain savings.

Utility sector is delivering wide spectrum of services to the public, from energy (gas, oil, heat or electric energy) to transport (land, sea and air) and telecommunication services. These companies are dealing with large number of clients and are usually dislocated. Lack of

coordination and knowledge transfer results with large number of tendering processes, involves large number of procurement staff, different practise and approach to the same problem etc. Tendering processes are duplicated, huge amount of time in inefficiently spend and there is no common recording system which could show clients are they getting value for money.

There are some differences among clients but generally situation is bad. Carrying out competitive, fair and transparent procurement process is not a problem any more but there is undoubtedly room for considerable improvement. Clients are more than aware of the Public Procurement Law, legal remedies are practiced and public awareness is very high. Moreover, interest of the public for public procurement is one of the most articulated. Newspapers and other media are often taking advantage of that interest to increase their income. Public procurement system in Republic Croatia has overcome the first step, implementing and comply Public Procurement Law.

The real challenge is to achieve efficiency by lowering tendering costs and by value for money approach. This is not possible without benchmarking, communication, collaboration and raising the level of knowledge of all involved parties; clients, suppliers, government and public. The search for efficiency means that many utility sector organisations should join together to purchase services. They might share the administrative costs of buying the same thing or put a number of different services into a single contract to achieve better value for money. But before that they should organize procurement activities within themselves.

Weaknesses of the procurement process in utility sector are:

1. Low level of preparation,
2. Fragmentation of tendering processes
3. Lack of common tendering practise
4. CPV is not yet implemented in Public Procurement Law
5. Recording of information is not uniformed and therefore informations can't be interpreted
6. Benchmarking and economics statistic are limited
7. Significant costs of tendering process both for clients and suppliers
8. Administrative approach to procurement
9. Post-buy evaluation does not exists
10. Procurement staff is not properly trained

Pre-tendering phase is rarely used for it's purpose. Common tendering process is started without proper legal ground. Sometimes tendering process begins while licences are still in process and blueprints are only a scratch. Due to geographical dispersion (in the case of natural monopoly which operates in the whole country), procurement is fragmented and the same goods, works and services are procured several times at several different divisions. Gathering procurement needs would gain money, staff and time savings.

Common Procurement Vocabulary is still not implemented in Public Procurement Law. That is major problem both for clients and suppliers. Price offered can't be compared to other clients and usually not even different divisions within one client. Suppliers have difficulties in understanding technical specifications (if there are any). Only CPV and technical specifications describing the characteristics of the works, supplies and serviced procured could make measuring performance possible and would be the first step for e-procurement. A series of standard specifications should be developed for goods that are commonly and regularly procured to introduce consistency and increase competition through a non-discriminatory and clear evaluation criteria. This should be published on the web site to invite comments from manufactures, suppliers and users for refinement.

Standard Bidding Documents (SBDs) and Requests for Proposals (RFPs) should be developed. These documents could make significant time and cost savings in preparation of bidding document and make the hole process both for clients and bidders more transparent and more uderstendable.

Efficiency of public procurement could be increased through application of information technologies. The only measure ensuring implementation of this task is creation of public procurement information system that would provide for opportunities to gradually transpose public procurement into electronic media in compliance with the practice of the EU member states.

Minimum reporting requirements and Key Performance Indicators for procurement should be agreed and used in all organisations. Performance benchmarking for procurement must be developed and an upgrade of resources, skills and practices is needed.

Training of public procurement professionals, ensuring improvement of their qualifications, provision of consultations on issues related to public procurement organisation and implementation, and achievement of high-quality consulting is essential.

Methodology and data collection

In order to test the hypotheses I will select a sample frame of (potential) respondents who are all personally involved in the procurement goods and services for which the Public Procurement Law apply. For that purpose a questionnaire will be administered to the purchasing professionals of the tendering services of the utility sector who are all well-informed about the issues at hand. The survey procedure should included a pilot study aimed at enhancing the reliability and validity of the questionnaire. The questionnaire is not yet created. Multiple regression analysis should be applied. The aim of the research is to support thesis and give an insight in utility sector public procurement practice in order to simplify procurement process, make it more transparent to the public, more efficient and to make savings.

Conclusion

Every client needs to give procurement its relevant importance and ensure there are qualified, professional procurement staff with the appropriate level of knowledge and experience. There should be collaboration across the utility sector to aggregate procurement and optimise scarce skills and should be explored could some high-value commodities and services should be procured for the whole of the utility sector in Croatia. The aim is to provide harmonized procurement guidelines to streamline the procurement system and thereby ensure efficiency, transparency and equal opportunity in the procurement process.