

CROATIAN PARLIAMENT

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

DECISION

PROMULGATING THE ACT ON AMENDMENTS TO THE ACT ON PUBLIC PRIVATE PARTNERSHIP

I hereby promulgate the Act on Amendments to the Act on Public-Private Partnership enacted by the Croatian Parliament at its session of 12 December 2014.

Class: 011-01/14-01/173

Reg no: 71-05-03/1-14-2

Zagreb, 17 December 2014

President of the
Republic of Croatia

Ivo Josipović, m. p.

ACT

ON AMENDMENTS TO THE ACT ON PUBLIC-PRIVATE PARTNERSHIP

Article 1

In the Act on Public Private Partnership (Official Gazette 78/12), in Article 1, paragraph 1, item 1, after the word: “projects”, a comma and the words: “issues concerning small value public private partnership projects,” are added.

Item 2 is amended and reads:

“2. the competencies of the Agency for Investments and Competitiveness (hereinafter: Agency) in the implementation of this Act.”.

Article 2

In Article 2, paragraph 2, the words: “financing and” are deleted.

Paragraphs 5, 6 and 7 are amended and read:

“(5) *Status public private partnership* is a PPP model based on a membership relationship between the public partner and private partner in a joint company entrusted with the implementation of the PPP project.

(6) For the purpose of implementation of PPP projects, the public and private partners conclude a PPP contract regulating their mutual rights and obligations.

(7) The public partner may permit the establishment of the right of construction to the benefit of the private partner, without compensation. All issues pertaining to establishment, or the transfer of the right to construction and granting of concessions, including the amount of compensation, shall be regulated by a contract between the public and private partners.”.

Article 3

In Article 3, point 3, the words: “partner and special purpose vehicle in a contractual public private partnership, or public and private partners in an institutionalised public private partnership,” are amended with the words “and private partner”.

Items 8 and 9 are amended and read:

“8. *Public partner* is one or more public bodies concluding a PPP contract with a private partner.

9. *Private partner* in a contractual public private partnership is a special purpose vehicle, and in a status public private partnership is an economic subject in membership relations with the public partner in a joint company.”.

After point 12, points 13, 14 and 15 are added and read:

“13. *Whole life costs (WLC)* are the total costs of the public structure (construction, maintenance, replacement of materials, financing and other costs) defined by the norm HRN ISO 15686-5:2009 with included risks and if necessary the costs of usage (cleaning, energy sources, security, etc.) if the use is included in the subject of the contract and revenues of third parties (commercial revenues) if there is such a possibility.

14. *Small value PPP projects* are projects whose capital value is less than or equal to EUR 5,000,000, without value added tax, in the kuna equivalent.

15. *Capital value of the project* is the total assessed costs of construction of the public structure according to the public sector comparator (PSC), including all dependent costs associated with the construction of the public structure, and excluding the costs of maintenance, replacement of spent parts and equipment, and the costs of use as expressed in the public sector comparator.”.

Article 4

In Article 4, paragraph 1, the word: “five” is replaced by the word: “three”.

Article 5

In Article 5, paragraph 1, the words: “private partner” are replaced by the words: “selected bidder”.

Article 6

In Article 6, after paragraph 3, paragraph 4 is added and reads:

“(4) If the PPP project is from the competence of the central state administration bodies, the Government of the Republic of Croatia may pass a decision designating a state administration body or other public body which will be the leader of the tasks of the public partner or authorise a certain state body for the implementation of activities from paragraph 1 of this Article.”.

Article 7

In Article 9, paragraph 6 is amended and reads:

“(6) If the public body does not remove the shortcoming within the deadline from paragraph 5 of this Article, and the proposed PPP project cannot be acted upon, the Agency shall reject the proposal by a decision.”.

In paragraph 8, subparagraph 6, the number: “5” is replaced with the number: “3”.

In paragraph 11, the number: “5” is replaced by the number: “10”.

In paragraph 14, the words: “Article 11” are replaced by the words “the provisions”.

Article 8

In Article 11, paragraph 1, the words: “Article 9” are replaced by the words: “the provisions”.

After paragraph 6, paragraph 7 is added and reads:

“(7) The Ministry of Finance may request amendments to the documentation of the PPP project proposal prior to giving the prior consent from paragraph 2 of this Article, or in its opinion from paragraph 4 of this Article. In that case, the deadline of 30 days from paragraph 6 of this Article shall begin to run from the delivery of the requested amendments of the documentation to the PPP project proposal. The period of 30 days from paragraph 6 of this Article for the provision of prior consent or a new opinion shall begin to run from the submission of the amended documentation of the PPP project proposal and if the amendments to the documentation of the PPP project proposal requested by the Ministry of Finance is submitted to the Agency.”.

Article 9

In Article 12, paragraph 1, the words: “from Article 9, paragraph 10” are replaced by the words: “issued pursuant to the provisions”.

In paragraph 2, the words: “PPP project proposal acquires the status of a PPP project” are replaced by the words: “execution of the decision on the approval of the PPP project proposal”.

Article 10

In Article 13, paragraphs 1 and 2 are amended and read:

“(1) The selection of a private partner is carried out in line with the regulations from the field of public procurement, with the application of Articles 5 and 14 of this Act.

(2) In derogation from the provisions of paragraph 1 of this Article, in the selection procedure for the private partner, the provisions of regulations on public procurement that pertain to subcontractors and to the consortium or a joint bid with the obligation of listing the section of the contract that will be performed by each individual member of the consortium and issues of payment to the member of that consortium shall not apply.”.

Article 11

In Article 19, paragraph 4, the number: “15” is replaced by the number “30”.

Article 12

In Article 20, after paragraph 1, paragraph 2 is added and reads:

“(2) The provisions of Part II of the Act shall apply appropriately to small value PPP projects, unless otherwise prescribed by the provisions of Part IIa of this Act.”.

Article 13

After Article 20, a new heading and Articles 20a and 20b are added and read:

“PART IIa

SMALL VALUE PPP PROJECTS

Article 20a

(1) The fundamental issues of the preparation, documentation and implementation of small value PPP projects are stipulated by the Government of the Republic of Croatia in a regulation.

(2) Other issues of the preparation, documentation and implementation of small value PPP projects, taking into account the specificities of the activity or type of public service being governed, are prescribed by ordinances issued by the minister responsible for the economy.

Approval of small value PPP projects

Article 20b

(1) Prior to the initiation of the procedure to select a private partner for a small value PPP project, the public body must obtain the approval for the proposal of that project from the Agency, in the procedure stipulated in Part II of this Act.

(2) The data and content of the documentation that make up the small value PPP project proposal, which the public body encloses with the request for approval from paragraph 1 of this Article, is stipulated by the Government of the Republic of Croatia in a regulation, and by the minister responsible for the economy in the ordinances from Article 20a, paragraph 2 of this Act.

(3) In the approval procedure for proposals for small value PPP projects, the criteria for the approval of the project proposal are the fundamental criteria from Article 9, paragraph 8, subparagraphs 1, 2, 4, 5 and 6 of this Act, and the issued prior approval of the Ministry of Finance from Article 11 of this Act.

(4) The Ministry of Finance gives its prior consent for small value PPP projects, taking into account the compensation arising from the calculation of the assessed value of the procurement, pursuant to the provisions of the Regulation.”

Article 14

Article 21 to 29 are deleted.

Article 15

In Article 30, paragraph 2 is amended and reads:

“(2) No appeal is permitted against the acts of the Agency, however, an administrative dispute may be filed against them.”.

Article 16

Article 34 is amended and reads:

“With regard to the statute of limitations regarding the misdemeanours prescribed under this Act, the provisions of the Misdemeanours Act shall apply.”.

TRANSITIONAL AND FINAL PROVISIONS

Article 17

Within a period of 120 days from the date of entry of this Act into force, the director of the Agency for Public Private Partnership shall take all actions necessary for the implementation of the merger of the Agency for Public Private Partnership with the Agency for Investments and Competitiveness in the court register.

Article 18

Procedures commenced prior to the entry of this Act into force shall be completed according to the provisions of the Act on Public Private Partnership (Official Gazette 78/12).

Article 19

(1) The Government of the Republic of Croatia shall align the Regulation on the implementation of public private partnership projects (Official Gazette 88/12) with to the provisions of this Act, within a period of 60 days from the date of entry of this Act into force.

(2) The minister responsible for the economy shall align the Ordinance on the organisation and keeping of the Register of public private partnership contracts (Official Gazette 16/13) with the provisions of this Act within a period of 60 days from the date of entry of this Act into force.

(3) The minister responsible for the economy shall issue the Ordinance from Article 20a, paragraph 2 of this Act within a period of 180 days from the date of entry of this Act into force.

Article 20

This Act shall enter into force on the eighth day from the date of publication in the *Official Gazette*.

Class: 022-03/14-01/150

Zagreb, 12 December 2014

CROATIAN PARLIAMENT

President of the
Croatian Parliament

Josip Leko, m. p.