

Proposals for the Improvement of the Electronic Public Procurement Classifieds of the Republic of Croatia

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American Chamber of Commerce in Croatia *Američka gospodarska komora u Hrvatskoj*

Table of Contents

- Introduction3**
- Recommendations4**
 - The possibility of subscribing to Prior Consultation and Simple Procurement..... 4**
 - Automatic filling of ESPD..... 6**
 - Automatic view of the bid..... 6**
 - Checking/unchecking groups within the ESPD form..... 7**
 - Mandatory publication of simple procurement procedures in the Electronic Classifieds (amendment of the PPA 2016)..... 7**
 - Automatic retrieval of evidence obtained by retrieving from registers for subcontractors and persons they rely on 7**
 - Connecting the EPPC with the FINA e-invoice in procurement procedures 8**
 - Procurement plans 8**
 - Anonymization of downloading documentation and making inquiries... 9**
 - Automation of the generation of payment orders for fees in the appeal procedure..... 10**

Introduction

Electronic Public Procurement Classifieds of the Republic of Croatia (EPPC) is the official portal for the publication of public procurement notices in Croatia. The EPPC is a central information system intended for contracting authorities, bidders, and other public procurement stakeholders in accordance with Croatian and European Union regulations.

The Classifieds publishes public procurement notices that are mandatory according to the Public Procurement Act and other regulations, such as calls for public tenders, framework agreements, negotiation procedures without prior call, simple procurement, etc. The Classifieds enable the transparency and public nature of public procurement procedures, access to procurement information for all stakeholders, and facilitate participation in procurement procedures.

A few years ago, the Ministry of Economy and Sustainable Development announced the development of a new EPPC platform. After the public procurement procedure was carried out in 2022, a bidder was selected to create a new electronic classifieds system.

In this position, the American Chamber of Commerce presents proposals for improving the Electronic Public Procurement Classifieds of the Republic of Croatia.

Recommendations

The possibility of subscribing to Prior Consultation and Simple Procurement

For now, the Electronic Classifieds does not have the option of subscribing to prior consultation and simple procurement not published in the EPPC, so bidders must, in addition to the EPPC service/search engine, pay for additional services/search engines that also cover that part of the procurement. Another option is to “manually” search published prior consultations and contracting authorities’ websites for newly published simple procurement procedures, which requires a lot of time and is subject to significant errors.

Considering that simple procurement procedures have very short deadlines for delivery (sometimes only five days), that these tenders still, in some cases, need to be delivered in paper form, that bidders find out about the procedure two to three days after publishing, bidders usually have little time to prepare and deliver their tender.

Only five filters are available for unregistered users and users who have not paid the EPPC subscription:

1. Contracting authority
2. Publication number
3. CPV
4. Type of contract
5. Date of publication

An advanced search engine with 13 filters is available for users who have paid for the most basic subscription package (EUR 135.38 per year):

1. Contracting authority
2. Publication number
3. Document type
4. Subject of procurement/group
5. Subject of procurement/group (2)
6. CPV
7. CPV (2)
8. CPV-description
9. Type of contract
10. Procedure
11. Estimated value
12. Delivery point
13. Date of publication

Filters available for non-subscribers:

Elektronički oglasnik
nabave Republike Hrvatske

Elektronički oglasnik

NASLOVNICA OBJAVE JN OBJAVE KONCESIJA ZAKONSKE KLAS. REGISTRACIJA

NALAZITE SE: Naslovnica

Objave javne nabave:
» 20.04.2023. (četvrtak)
» 19.04.2023. (srijeda)
» 18.04.2023. (utorak)
» 17.04.2023. (ponedjeljak)
» 14.04.2023. (petak)

Objave koncesija:
» 20.04.2023. (četvrtak)
» 19.04.2023. (srijeda)
» 18.04.2023. (utorak)
» 17.04.2023. (ponedjeljak)
» 14.04.2023. (petak)

Objave jednostavne nabave:

Tražilica Objavljeni dokumenti

Naručitelj:

Broj objave:

CPV:

Vrsta ugovora:

Datum objave:

Traži

Filter for subscribers:

NALAZITE SE: Naslovnica

Objave javne nabave:
» 20.04.2023. (četvrtak)
» 19.04.2023. (srijeda)
» 18.04.2023. (utorak)
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» 20.04.2023. (četvrtak)
» 19.04.2023. (srijeda)
» 18.04.2023. (utorak)
» 17.04.2023. (ponedjeljak)
» 14.04.2023. (petak)

Tražilica objava:
» Jednostavna (javna nabava)

Tražilica Objavljeni dokumenti

Naručitelj: Nema Ili Osim zadanog Bilo koja rijec

Broj objave: Nema Ili Osim zadanog Bilo koja rijec

Vrsta dokumenta: Nema Ili Osim zadanog Bilo koja rijec

Predmet nabave / grupe: Nema Ili Osim zadanog Bilo koja rijec

Predmet nabave / grupe (2): Nema Ili Osim zadanog Bilo koja rijec

CPV: Nema Ili Osim zadanog Bilo koja rijec

CPV (2): Nema Ili Osim zadanog Bilo koja rijec

CPV - opis: Nema Ili Osim zadanog Bilo koja rijec

Vrsta ugovora: Nema Ili Osim zadanog Bilo koja rijec

Postupak: Nema Ili Osim zadanog Bilo koja rijec

Proc.vrijed.(bez PDV): Nema Ili Osim zadanog Bilo koja rijec

Mjesto isporuke: Nema Ili Osim zadanog Bilo koja rijec

Datum objave: Nema Ili Osim zadanog

Traži

Naručitelj	Broj objave	Vrsta dokumenta	Predmet nabave / grupe	CPV	CPV - opis	Vrsta ugovora
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AmCham proposes to improve the search engine so that the search engine for non-subscribers includes the subject of procurement and keywords from the procurement documentation itself.

Automatic filling of ESPD

- a) During the preparation of the ESPD form, economic operators must enter data on legal representatives of the economic operator and fill out the following data: name and surname, date of birth, place of birth, phone number, email, street name and number, postal code, country, their role and detailed data on their representation. Everything listed is filled out in separate, designated fields. A problem arises when the economic operator has more than one person authorized to represent them (which is often the case), and they have to fill out this data for each of their representatives.

- b) Saving information about authorized representatives and introducing a drop-down menu for people whose data has already been entered into the Electronic Classifieds system.
In the process of filling out data on authorized representatives in a specific procedure, bidders would, in the drop-down menu, select a person who is authorized for that procedure. All other required data (place, date of birth, address, email...) would be filled out automatically.

- c) Automatic filling out of the ESPD with all data that exists in the Court Register, such as data on the legal representative and authorized representatives.

Automatic view of the bid

The viewing of bids creates additional work for contracting authorities, especially small ones, in which the procurement department sometimes does other tasks and very often does not have the time to prepare all the requested documents in a short period of time. Likewise, some contracting authorities still require a bid to be viewed in person, which in most cases is not justified.

Such a situation significantly harms the bidder as it shortens their deadline for preparing an appeal, and in cases of mandatory visits to the contracting authority, unnecessary costs arise.

We suggest that after the publication of the selection/cancellation decision, all bidders who applied to the same group be given the opportunity, within ten days, to view all the documents that were submitted through the Electronic Classifieds. Evidence submitted separately from the bid (e.g., samples) would still be viewed at the contracting authority's location.

The possibility of viewing documents would last ten days, after which that part of the Electronic Classifieds would be closed/locked.

Checking/unchecking groups within the ESPD form

When selecting groups, when filling out the ESPD, the Electronic Classifieds automatically selects all groups. If the economic operator is applying to only one or two groups, and there are several groups in the process (sometimes dozens of groups), it is necessary to manually “uncheck” all the groups that the EO does not plan to apply to.

There is currently no option to “uncheck/check” all groups.

In procedures with dozens of groups, it would be useful to be able to “uncheck” or “check” all groups.

Mandatory publication of simple procurement procedures in the Electronic Classifieds (amendment of the PPA 2016)

Each contracting authority can prescribe the way in which simple procurement procedures will be carried out. Some contracting authorities use the option of publishing their simple procurement procedures on the Electronic Public Procurement Classifieds portal, which means that these procedures are available in one place from the time of publishing.

A much larger number of contracting authorities still publish simple procurement procedures on their websites or even send calls for bids directly to email addresses.

Mandatory publication of simple procurement procedures in the EPPC would significantly increase the transparency and availability of simple procurement procedures.

In order for this proposal not to burden the contracting authorities, AmCham believes that the same should apply to simple procurement procedures that are published in the procurement plan.

Automatic retrieval of evidence obtained by retrieving from registers for subcontractors and persons they rely on

With the current functionality, the Electronic Classifieds allow the contracting authorities to retrieve from the national register: certificates of no criminal conviction, tax administration certificates, and extracts from the court register for an independent bidder and for members of a group of bidders but not for subcontractors and for economic operators (EOs) which the bidder/group of bidders relies on.

It is strongly recommended that the opportunity provided for bidders and members of a group of bidders also be extended to subcontractors and EOs the bidder/group of bidders relies on because such automation would shorten the public procurement procedure and reduce costs for bidders/members of a group of bidders.

Connecting the EPPC with the FINA e-invoice in procurement procedures

Pursuant to Article 1, paragraph 1 of the Act on e-Invoicing in Public Procurement (OJ 94/2018, hereinafter: the Act), this Act applies to electronic invoices issued on the basis of public procurement contracts or framework agreements concluded in accordance with a special law regulating public procurement. Pursuant to Article 1, paragraph 2 of the Act, the provisions of this Act are also applied to electronic invoices issued on the basis of contracts resulting from the procurement of goods and services and implemented project tenders with an estimated value of less than HRK 200,000.00 and works with an estimated value of less than HRK 500,000.00. Pursuant to Article 6, paragraph 2 of the Act, public contracting authorities are obliged to entrust the services of information mediation in receiving and sending electronic invoices to the Financial Agency (FINA). That means that after public and simple procurement procedures have been carried out, public contracting authorities may only receive electronic invoices based on concluded contracts. Pursuant to Article 313, paragraph 2 of the Public Procurement Act, the public contracting authority is obliged to control whether the performance of the public procurement contract is in accordance with the conditions specified in the procurement documentation and the selected bid. As public contracting authorities receive electronic invoices through FINA, it is proposed to link the EPPC with the FINA e-invoice. This would enable public contracting authorities to financially monitor the performance of contracts for individual procurements that are carried out through the EPPC (also for simple procurements if the public contracting authority carries out simple procurement procedures through the EPPC) under equal conditions without having to purchase special applications for monitoring the performance of contracts. That would make it easier for all public contracting authorities to fulfill their legal obligation of monitoring contract performance. Also, information on the financial expenditure under the contract would be available to these public contracting authorities at all times, thus avoiding situations where the value of the contract is exceeded and enabling the public contracting authorities to start a new procurement in time if the contract is close to financial execution. When issuing an e-invoice via FINA, the contractor would be required to provide the necessary information so that the invoice could be linked to a specific public procurement contract. If public contracting authorities had the possibility of monitoring the performance of all procurement contracts (including simple procurement contracts), it would be an incentive for them to carry out simple procurements through the EPPC, which is in the interest of bidders and significantly contributes to compliance with the principles of public procurement (transparency, equal treatment, etc...).

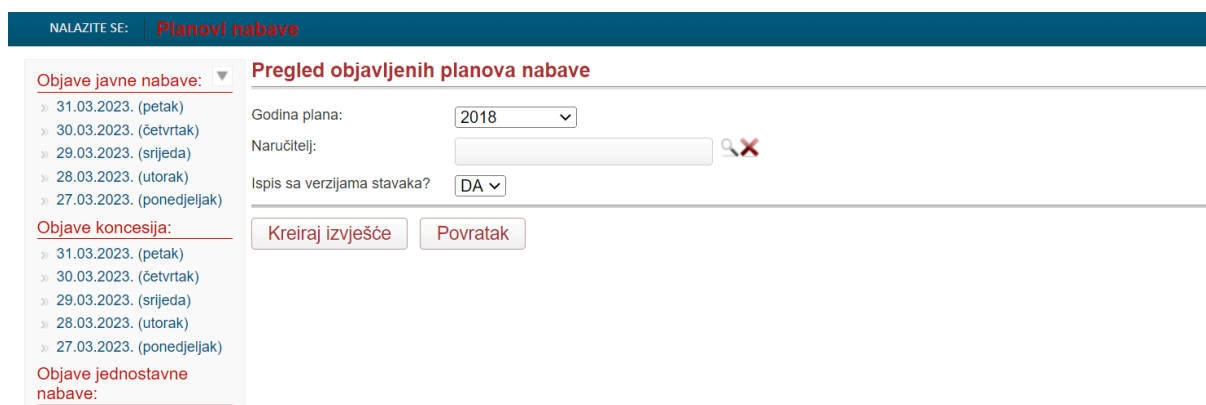
Procurement plans

Currently, procurement plans published on the EPPC can be viewed by selecting a specific contracting authority and performing a search that then lists the procurement plan.

This functionality should be improved to allow bidders to plan their activities during the year by enabling the viewing of all of the contracting authorities that published their procurement plans for the current year. The list should be chronological and

contain a search option. The same also applies to amendments to procurement plans. Specifically, such an option would allow bidders to view the procurement plans in the order they are published without having to search the procurement plan of an individual institution every day and following when it will be published. This alone would contribute to better information for the contracting authority, which could positively affect the competitiveness of procurement procedures.

The module in question is the following:



The screenshot shows a web interface for viewing procurement plans. At the top, there is a dark blue header with the text "NALAZITE SE: Planovi nabave". Below this, the main content area is titled "Pregled objavljenih planova nabave". On the left side, there is a sidebar menu with three sections: "Objave javne nabave:", "Objave koncesija:", and "Objave jednostavne nabave:". Each section contains a list of dates and days of the week, such as "31.03.2023. (petak)", "30.03.2023. (četvrtak)", "29.03.2023. (srijeda)", "28.03.2023. (utorak)", and "27.03.2023. (ponedjeljak)". The main content area contains a form with the following fields: "Godina plana:" with a dropdown menu set to "2018"; "Naručitelj:" with a text input field and a search icon; and "Ispis sa verzijama stavaka?" with a dropdown menu set to "DA". Below the form, there are two buttons: "Kreiraj izvješće" and "Povratak".

Anonymization of downloading documentation and making inquiries

AmCham proposes that contracting authorities no longer be allowed to see the list of economic operators that have downloaded the procedure documentation and those that have asked for an explanation and/or amendment of the procurement documentation.

Article 10, paragraph 2 of the Ordinance on procurement and tender documentation in public procurement procedures (OJ 65/17, 75/20, hereinafter: Ordinance on PTD) stipulates that the EPPC of the Republic of Croatia encrypts the bid in such a way as to make it impossible to view it before the deadline for the submission of bids expires.

Pursuant to Article 15, paragraph 6 of the Ordinance on PTD, the EPPC will make the register of received bids available to the contracting authority only after the deadline for submitting bids has expired.

From all of the above, it follows that the legislator tried to ensure the impartiality of the persons involved in the preparation and implementation of the subject procurement procedures, which prevented insight into the economic operators that submitted bids, as a result of which the question arises about the justification of the current solution by which the contracting authorities have insight into the economic operators that have downloaded the documentation procedure and that submitted a request for an explanation and/or amendment of the procurement documentation.

The current solution certainly opens up room for manipulation and may also affect the application of the principles of market competition, non-discrimination and equal treatment, and transparency.

The principle of transparency requires that all stages of the procedure for awarding a public contract be conducted in a transparent manner so that every bidder, as well as the general public, can access information about the procedure. This principle is closely related to the principle of non-discrimination and the principle of equal treatment since it contributes to the implementation of these principles. It is also important because, if implemented consistently, it reduces the possibility of corruption in public procurement.

Since the contracting authorities do not have insight into the economic operators that submitted the bid until the moment of the public opening of bids, we suggest that the newly established EPPC abolish the possibility of viewing economic operators that have downloaded the procedure documentation and those that have asked for an explanation and amendment of the procurement documentation.

That would contribute to the objectivity of the contracting authority, that is, the persons involved in the preparation and implementation of the procurement procedure, which would prevent possible data manipulation. As there is no legal basis for the contracting authorities to have insight into the economic operators that have expressed interest in participating in the public procurement procedure before the opening of bids, we believe that the EPPC should generate information about the subject of the inquiry, but not about who made the inquiry or who downloaded the procedure documentation.

Automation of the generation of payment orders for fees in the appeal procedure

Article 11 of the Act on Amendments to the Public Procurement Act (OJ 114/22) amended Article 405 of the Public Procurement Act (hereinafter: the PPA), which refers to filing an appeal, in such a way that, among other things, it has introduced into the Croatian public procurement procedure the obligation to file an appeal via electronic means of communication, i.e., via the e-Appeals system. Until the last amendments to the PPA, filing an appeal by electronic means was envisaged as an option, not an obligation. The now valid Article 405, paragraph 3 of the PPA stipulates that an appeal that has not been submitted in accordance with paragraph 2 of the same Article, i.e., through the e-Appeals system, will be rejected, while paragraph 6 of the same Article stipulates that the EPPC is considered the server for the e-Appeals system.

Article 421, paragraph 1 of the PPA stipulates, among other things, that the State Commission for the Supervision of Public Procurement Procedures (hereinafter: DKOM) may reject the appeal as irregular without inviting the appellant to amend it if the fee for initiating the appeal procedure has not been paid in the prescribed amount.

As for the amounts of fees for initiating the appeal procedure, they are prescribed by Article 430a of the PPA.

If, before submitting the appeal, the appellant fails to pay the fee for the initiation of the appeal procedure or pays a fee in a lower amount than that prescribed by Article 403a of the PPA, they face the risk of having their appeal rejected as improper, in accordance with the aforementioned provision of Article 421, paragraph 1 of the PPA.

It is not always easy to calculate the correct fee for initiating an appeal procedure, considering the rules for calculation provided for in Article 430a of the PPA. Specific instructions for the payment of the fee for initiating the appeal procedure are available on DKOM's website.

It is important to emphasize that the Ordinance on electronic appeals in public procurement is also in force (OJ 101/17, 19/23), which stipulates in Article 2, paragraph 4 that the payment of the fee for initiating the appeal procedure can be made electronically through the e-Appeals system if the technical conditions are met.

Since the Ordinance provides for the option of paying the fee for initiating the appeal procedure electronically, we propose that in implementing the technical conditions for electronic payments of the fee for initiating the appeal procedure, the possibility of the electronic system generating a payment order for the fee that will automatically calculate the amount of the fee be considered, taking into account the estimated value of the procurement as the basis, in accordance with Article 430a of the Public Procurement Act.

The estimated procurement value, which would be the basis for generating the payment order for the fee, should be correctly determined/indicated electronically to prevent the contracting authority (un)intentionally misusing the indicated value in the implementation of individual procurement by stating a higher estimated procurement value than the actual/correct value.

Specifically, in practice, there are situations where an individual contracting authority indicates in the "Notice/Call for Bids" in the Electronic Public Procurement Classifieds an amount that is higher than the actual estimated value of the specific procurement procedure, i.e., the amount which results from specific procurement documentation.

This may lead to the appellant filing an appeal being misled regarding the fee for initiating the appeal procedure, which may have a deterrent effect on the very filing of the appeal, given the high prescribed fees for initiating an appeal procedure, the basis for the calculation of which is precisely the estimated value of the procurement.

Specifically, although the PPA (Article 430a, paragraph 9) provides for the amount of overpaid fee to be returned from the state budget, it is precisely because of the establishment of the e-Appeals system and the obligation to file an appeal through it that appellants in practice, in situations where the contracting authority in a call for bids indicates a higher estimated procurement value than that resulting from the documentation of the specific procedure, have no legal certainty that the estimated procurement value is taken into account as the basis for calculating the fee for

initiating the appeal procedure. In the case of an underpaid fee, the appellant is exposed to the risk of the appeal being rejected, while the obligation to pay an excessively high fee can have a deterrent effect from, in fact, filing the appeal.

Therefore, the technical requirements of the EPPC should prevent the described behavior of individual contracting authorities and avoid the legal uncertainty in the actions of the appellant, i.e., they should ensure that when submitting a specific e-appeal in a particular public procurement procedure, the EPPC system itself generates the payment order for the fee based on the estimated value of the procurement specified in the specific procurement documentation for the particular public procurement procedure, irrespective of the estimated procurement value that the contracting authority indicated on its own initiative in the "Notice-Call for Bids" for that procurement procedure

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