

Comments on the Proposed Public Procurement Act in Parliamentary Procedure

Zagreb, March 2026

Introduction

AmCham achieved constructive cooperation with the Ministry of Economy, the State Commission for the Supervision of Public Procurement Procedures, and the Committee on the Economy in the Croatian Parliament during the drafting of the proposed Public Procurement Act. It actively participated in the public consultation and now, in the parliamentary procedure phase, wishes to comment on the current text of the proposed act. The comments focus on the parts of the amendments that were also referred to by the Committee on the Economy, and on which AmCham has already previously formed its position.

Comments on specific provisions

Simple procurement

- The thresholds for simple procurement are being increased – for goods and services to EUR 50,000.00, and for works to EUR 100,000.00. For diplomatic missions and consular offices of the Republic of Croatia – for goods and services to EUR 140,000.00, works to EUR 700,000.00, all for the purpose of aligning with the thresholds of other member countries.

Article: 12

Text of the new article:

“(1) This Act shall not apply to:

1. The procurement of

a) goods and services, and the implementation of project tenders with an estimated value of less than EUR 50,000.00

b) works with an estimated value of less than EUR 100,000.00

2. In the diplomatic missions and consular offices of the Republic of Croatia abroad, the procurement of

a) goods and services, and the implementation of project tenders with an estimated value of less than EUR 140,000.00

b) works with an estimated value of less than EUR 700,000.00.

(2) Notwithstanding paragraph 1 of this Article, Article 15 of this Act also applies to simple procurement.

(3) The contracting authority is obliged to apply the provisions of this Act for the procurement of goods, works, or services, as well as for the implementation of project tenders, the estimated value of which is equal to or greater than the thresholds set out in paragraph 1 of this article.

(4) Contracting authorities are not obliged to apply this Act to the procurement of goods, works, or services for the purpose of addressing the consequences of natural disasters, major accidents, and catastrophes, and for post-disaster recovery, if this is regulated by special regulations, up to the thresholds set out in Article 13 of this Act.”



AmCham's comment: Since these are financial thresholds that AmCham Croatia itself had proposed in its earlier positions, as well as during the e-consultation process on the Draft Proposal of the Public Procurement Act, the proposed alignment of the thresholds is supported.

Simple procurement

- To achieve greater transparency and contribute to an anti-corruption effect in simple procurement procedures, an obligation is being introduced to conduct all procedures above EUR 15,000.00 through the simple procurement module in the Electronic Public Procurement Classifieds of the Republic of Croatia (EPPC), where the invitation to submit tenders is sent only to certain economic operators, while for procurements above EUR 25,000.00 for goods and services and above EUR 45,000.00 for works, an obligation is introduced to publicly publish the invitation to submit tenders in the EPPC, allowing all interested economic operators to submit a tender, similar to procedures in public procurement. In addition, in the general act on simple procurement, the contracting authority is obliged to prescribe rules for preventing, identifying, and eliminating conflicts of interest, as well as the procedure for exercising legal protection through complaints to the head of the body or the responsible person of the contracting authority.

Article: 15

Text of the new article:

“(1) Simple procurement refers to procurement below the thresholds in Article 12, paragraph 1 of this Act.

(2) The contracting authority regulates the rules, conditions, and procedures for simple procurement through the general act.

(3) Through the general act, the contracting authority is obliged to regulate the following rules:

a) on compliance with the principles of public procurement set out in Article 4 of this Act and on preventing, identifying, and eliminating conflicts of interest in accordance with the provisions of Articles 75 to 83 of this Act

b) on ensuring legal protection for economic operators, namely through complaints to the head of the body or the responsible person of the contracting authority for procurements with an estimated value greater than EUR 15,000.00

c) on the possibility of using electronic means of communication for procurements with an estimated value equal to or less than EUR 15,000.00.

(4) The contracting authority is required to publish this general act referred to in paragraph 2 of this Article, as well as any amendments, on its website.

(5) For a simple procurement procedure with an estimated value greater than EUR 15,000.00, the contracting authority is obliged to conduct it through the simple procurement module in the Electronic Public Procurement Classifieds of the Republic of Croatia (hereinafter: EPPC).

(6) For the procurement of goods and services with an estimated value greater than EUR 25,000.00, and for the procurement of works with an estimated value greater than EUR 45,000.00, the contracting authority is obliged to conduct the simple procurement procedure through public announcement in the simple procurement module.

(7) Notwithstanding paragraph 6 of this Article, the contracting authority is not obliged to conduct the simple procurement procedure through public announcement in the simple procurement module, but shall conduct it in accordance with paragraph 5 of this Article:

a) if no tender or no valid tender was submitted in the previously conducted simple procurement procedure, provided that the initial contract terms have not been materially changed

b) if, for objective reasons, the subject of the procurement can be executed, delivered, or provided only by a specific economic operator, namely:

1. if the subject of the procurement is the creation or acquisition of a unique work of art or artistic performance

2. if there is no market competition due to technical reasons, or

3. if this is necessary for the protection of exclusive rights, including intellectual property rights

c) if there is exceptional urgency caused by events that the contracting authority could neither foresee nor influence.

(8) The reasons for applying the exception under paragraph 7 of this Article are stated and explained in the announcement in the simple procurement module EPPC.

(9) Notwithstanding the provisions of paragraphs 5, 6, 7 and 8 of this Article, the rules, procedures, and manner of conducting simple procurement in the diplomatic missions and consular offices of the



Republic of Croatia abroad, up to the thresholds referred to in Article 12, paragraph 1, point 2 of this Act, shall be prescribed by the minister responsible for foreign affairs, by ordinance.”

AmCham's comment: AmCham supports the proposed Article 15 but believes it is necessary to further clarify the difference between simple procurement procedures above EUR 15,000 and those above EUR 25,000 for goods and services, and EUR 45,000 for works, particularly with regard to the implementation of paragraphs 5 and 6. It is particularly important to clearly distinguish whether conducting the procedure through the simple procurement module in the EPPC under paragraph 5 also constitutes a public announcement of the invitation, which would be visible to all interested economic operators and accessible to submit tenders, or whether it is a technical execution of the procedure of a closed type, which is not publicly visible and only the economic operators that the contracting authority planned to include are contacted. AmCham fully supports the option of a publicly published invitation that is visible and accessible to all economic operators.

Regarding the general acts, we believe it is necessary to determine the minimum content and structure of the general act that all simple procurements should contain or specify the adoption of a separate rulebook for simple procurements. Additionally, it would be necessary for the competent Ministry of Economy to prepare and publish guidelines regarding the structure and fundamental provisions that each general act on simple procurement should contain, in order to standardize the contracting authority's conduct in simple procurements.

Market analysis

- The mandatory conduct of market analysis before initiating procedures is prescribed so that they can be prepared as thoroughly as possible and thus carried out in a shorter time, or so that, in the case of a duly justified urgent situation, the provisions on the obligation of the contracting authority's prior consultation with interested economic operators do not apply.

Article: 198

Text of the new article:

“(1) Before starting the public procurement procedure, the public contracting authority shall carry out a market analysis for the purpose of preparing the procurement and informing economic operators of its plans and requirements in connection with the procurement.

(2) The public contracting authority may seek or accept advice from independent experts, competent authorities, or market participants that can be used in planning and conducting the procurement procedure and in preparing procurement documentation, provided that such advice does not distort market competition and does not violate the principles of non-discrimination and transparency.

(3) Before starting an open or limited public procurement procedure for the procurement of works or

a high-value public procurement procedure for the procurement of goods or services, except in the case referred to in Article 234 of this Act, the public contracting authority is obliged to submit the description of the subject matter of procurement, the estimated procurement value, technical specifications, cost estimate, criteria for qualitative selection of the economic operator, criteria for the evaluation of tenders, and special conditions for execution of the contract to a prior consultation with interested economic operators for a period of at least seven days.

(4) After the consultation has been conducted, the public contracting authority is obliged to consider all comments and proposals from interested economic operators, prepare a report on accepted and rejected comments and proposals, and make it available to the public.”

AmCham's comment: We support the obligation to conduct a market analysis.

Regarding the mandatory implementation of market analysis, this is supported because it should lead to a more precise and objective determination of estimated procurement values, which is important, among others, in relation to tenders with exceptionally low prices. If the estimated procurement values were aligned with market conditions, that is, with healthy market competition, it would also be easier to detect tenders with prohibited dumping prices. In addition, more precise determination of procurement values based on market analysis would also have a positive effect on the amount of appeal fees, which depend precisely on the estimated procurement values. We believe it is necessary to more precisely legislatively regulate the conduct of an economic operator which participates in the market analysis and later appears in the procedure as a tenderer/participant, as well as the contracting authority's relationship with such an economic operator. In practice,



particularly in more complex or innovative public procurement procedures, the contracting authority needs information to prepare technical specifications that can indeed be very specific, and therefore requires insights obtained from market operators.

The absence of criminal convictions

- In order to align with the wording of Directive 2014/24/EU, a change is introduced to the grounds for exclusion relating to the absence of criminal convictions, such that this condition is no longer linked to the nationality of persons authorized to represent the entity. Instead, exclusion is tied to the absence of a final conviction regardless of where it was issued, with the possibility of proving this by means of a declaration. Additionally, a national ground for excluding a tenderer is introduced due to the criminal offense of non-payment of wages under Article 132 of the Criminal Code.

Article: 251 and 265

Text of the new article:

"Article 251

The public contracting authority shall exclude an economic operator from the public procurement procedure if

it determines that:

1. an economic operator established in the Republic of Croatia, or a person who is a member of its management, administrative, or supervisory body, or who has the authority to represent, make decisions on behalf of, or supervise that economic operator, has been convicted by a final judgment for any of the following criminal offenses:

a) participating in a criminal organization, in accordance with

Article 328 (Criminal association) and Article 329 (Commission of a criminal offense as part of a criminal association) of the Criminal Code

b) corruption, in accordance with

Article 252 (Accepting bribes in business operations), Article 253 (Giving bribes in business operations), Article 254 (Abuse in the public procurement process), Article 291 (Abuse of position and authority), Article 292 (Illegal favoritism), Article 293 (Accepting bribes), Article 294 (Giving bribes), Article 295 (Trading in influence), and Article 296 (Bribery for trading in influence) of the Criminal Code

c) fraud, in accordance with

Article 236 (Fraud), Article 247 (Fraud in business operations), Article 256 (Tax or customs evasion), and Article 258 (Subsidy fraud), Article 278 (Forgery of a document), Article 279 (Forgery of an official or business document) and Article 280 (Misuse of a personal document) of the Criminal Code

d) terrorism or criminal offenses related to terrorist activities, in accordance with

Article 97 (Terrorism), Article 99 (Public incitement to terrorism), Article 100 (Recruitment for terrorism), Article 101 (Training for terrorism), and Article 102 (Terrorist association) of the Criminal Code

e) money laundering or terrorist financing, in accordance with

Article 98 (Terrorist financing) and Article 265 (Money laundering) of the Criminal Code

f) child labor or other forms of human trafficking, in accordance with Article 105 (Slavery) and Article 106

(Human trafficking) of the Criminal Code

or for corresponding acts that constitute grounds for exclusion under Article 57(1)(a)-(f) of Directive 2014/24/EU in any other country; or

2. an economic operator established in the Republic of Croatia, or a person who is a member of the management, administrative, or supervisory body, or has the authority to represent, make decisions for, or supervise that economic operator, has been convicted by a final judgment for any of the criminal offenses referred to in point 1, points (a)-(f) of this paragraph, or for equivalent offenses which, under the national legislation of the state where the economic operator is established, or of any other country, constitute grounds for exclusion in accordance with Article 57(1)(a)-(f) of Directive 2014/24/EU.

(2) The public contracting authority shall exclude an economic operator from the public procurement procedure if it determines that the economic operator, or a person who is a member of its management, administrative, or supervisory body, or who has the authority to represent, make decisions on behalf of, or supervise that economic operator, has been convicted by a final judgment for the criminal offense of non-payment of wages under Article 132. of the Criminal Code, or for an

equivalent criminal offense under the legislation of the country in which the economic operator is established.

(3) The public contracting authority shall exclude an economic operator at any time during the public procurement procedure if it determines that any of the grounds for exclusion set out in this Article apply.”

“Article 265

(1) The public contracting authority is under obligation to accept the following as sufficient evidence that there are no grounds for exclusion:

1. an extract from the criminal record or other appropriate register or, if that is not possible, an equivalent document of the competent judicial or administrative authority in the country of establishment of the economic operator, or the country where the person has citizenship, proving that there are no grounds for exclusion referred to in Article 251, paragraph 1 of this Act
2. a certificate from the tax administration or other competent body in the country of establishment of the economic operator proving that there are no grounds for exclusion referred to in Article 252, paragraph 1 of this Act
3. a certificate from the court register, the commercial court, or other competent body in the country of establishment of the economic operator proving that there are no grounds for exclusion referred to in Article 254, paragraph 1, item 2 of this Act

(2) If the country in which the economic operator is established, or the country of which the person is a citizen

does not issue the documents referred to in paragraph 1 of this Article, or if such documents do not cover all the circumstances referred to in Article 251, paragraph 1, Article 252, paragraph 1, and Article 254, paragraph 1, point 2 of this Act, they may be replaced by an affidavit, or, if affidavits are not recognized under the legislation of that country, they may instead be replaced by a statement made by the economic operator and certified by a competent judicial or administrative authority, a public notary, or a professional or trade body in the country in which the economic operator is established or the country in which the person is a citizen.”

AmCham's comment: Regarding the introduction of the possibility of providing a statement of no convictions under oath, or a statement with a certified signature before a competent authority, it is unclear whether the economic operator submits such a statement for all its authorized persons, or whether each authorized person must submit it individually. At the same time, it is not clear how contracting authorities will be able to verify which types of statements can be issued in the country where the economic operator is established.

Criteria for the exclusion of an economic operator

- Provision is made for the possibility of not excluding an economic operator from the procurement procedure if outstanding tax and social contribution obligations are less than EUR 1,000.00, in response to practical needs and in order to broaden the pool of tenderers.

Article: 252

Text of the new article:

“(1) The public contracting authority shall exclude an economic operator from the public procurement procedure if it determines that the economic operator did not fulfill its obligations to pay due tax liabilities and pension and health care liabilities:

1. in the Republic of Croatia, if the economic operator is established in the Republic of Croatia, or
2. in the Republic of Croatia and in the country of establishment of the economic operator, if the economic operator is not established in the Republic of Croatia.

(2) Notwithstanding paragraph 1 of this Article, the public contracting authority shall not exclude an economic operator from the public procurement procedure if the economic operator fulfills its obligations within an appropriate period, not less than three days from receiving the contracting authority's request.

1. Notwithstanding paragraph 1 of this Article, the public contracting authority shall not exclude an economic operator from the public procurement procedure: if the obligations to pay due taxes and pension and health insurance contributions are less than EUR 1,000.00, or
2. if, in accordance with a special regulation, payment of the obligations is not permitted, or a deferral of payment has been granted to it.”



AmCham's comment: AmCham Croatia welcomes the proposed amendment.

Tenderers in the VAT systems and those who are not in the VAT system

- To prevent discrimination and inequality between tenderers who are in the VAT system and those who are not, regarding the comparison of tender prices, a comparison of tender prices excluding VAT is introduced.

Article: 294

Text of the new article:

“(1) Public contracting authority compares prices of tenders without value added tax.

(2) If a tender contains a calculation error, the public contracting authority is obliged to request the tenderer to accept the correction of the calculation error, and the tenderer is required to respond within five days from the receipt of the request.”

AmCham's comment: AmCham Croatia agrees with the proposed amendment, as it had also suggested in its earlier positions, as well as during the e-consultation process on the Draft Public Procurement Act.

Digital signing of the contract

- The exchange of digitally signed contracts with a qualified signature through the EPPC system is being introduced, which will ensure shorter timelines for mutual signing and contract entry into force, as well as an obligation that all amendments to public procurement contracts must be in written form, given that the public procurement system has been almost entirely digitalized, with procurement procedures conducted through EPPC.

Article: 312

Text of the new article:

“(1) A public procurement contract or framework agreement concluded in accordance with Article 307, paragraphs 3 and 5 of this Act, shall be digitally signed by the contracting parties with a qualified electronic signature within 30 days from the enforceability of the award decision.

(2) In the procurement documentation the public contracting authority may set a period for signing a public procurement contract or framework agreement in written form longer than the period prescribed in paragraph 1 of this Article, which in such a case must not exceed 90 days from the enforceability of the award decision.

(3) All amendments to a public procurement contract or framework agreement during its term must be made in written form.

(4) Public procurement contracts and framework agreements are exchanged via electronic means of communication through the EPPC system in accordance with Article 68, paragraph 1, points 5 to 8 of this Act.

(5) A public procurement contract or framework agreement must be concluded in accordance with the conditions specified in the procurement documentation and the selected tender.

(6) In the case of a framework agreement with multiple economic operators, the public contracting authority may conclude a single framework agreement with all selected tenderers or separate framework agreements with each of them.

(7) A contract based on a framework agreement shall be concluded in written form, and the same effect may be achieved by a purchase order, payment order, bill of sale, requisition, etc., provided it contains all essential elements of the contract.

(8) In the case referred to in Article 307, paragraph 4 of this Act, the period for concluding a contract in written form shall be calculated from the day of obtaining the consent.”

AmCham's comment: AmCham Croatia considers the proposed amendments to Article 312 to be extremely useful and believes they will modernize and improve the efficiency of the procurement procedure. However, it should be emphasized that, given that no amendment has been proposed to the provision of Article 307, paragraph 3 of the Public Procurement Act (“A public procurement contract or framework agreement is deemed to be concluded on the date of enforceability of the award decision, except in the cases referred to in paragraphs 4 and 5 of this Article”), in correlation with the proposed provisions of Article 312, it follows that a contract will still be deemed concluded



on the date of enforceability of the award decision, while the obligation to conclude the contract in written form would fall within a subsequent period of 30 days, up to a maximum of 90 days. In that way certain public procurement procedures would still cause dilemmas in relation to, for example, determining the deadline for the beginning of the delivery of goods or the like, and which is correlated with the date of concluding the public procurement contract. AmCham emphasizes that it should be explicitly stated that a public procurement contract enters into force at the moment it is signed in writing by both contracting parties.

Publication of contract amendment

- To achieve greater transparency and equal treatment of economic operators, and to contribute to an anti-corruption effect, the obligation to publish all amendments to public procurement contracts is being extended to include non-financial amendments as well, enabling economic operators to access this information and to file an appeal if the amendments are concluded in violation of the provisions of the Public Procurement Act.

Article: 314

Text of the new article:

“(1) The public contracting authority may amend a public procurement contract during its term without conducting a new public procurement procedure only in accordance with the provisions of Articles 315 to 320 of this Act.

(2) Amendments to the public procurement contract based on Articles 315, 318, 319 and 320 of this Act

must be published by the public contracting authority in EPPC within 30 days from the date of the contract amendment.

(3) A public contracting authority is obliged to conduct a new public procurement procedure in accordance with the provisions of this Act in case of significant changes to the public procurement contract throughout the term of the contract.

(4) Provisions of Articles 315 to 321 of this Act on amendments to public procurement contracts shall apply accordingly to amendments to a framework agreement during its term.”

AmCham's comment: The obligation to publicly publish all amendments to public procurement contract will further strengthen the transparency of the procedure and have an anti-corruption effect; therefore, we support the proposed amendment to the Act in this regard.

Appeals

- A procedural prerequisite is established for filing an appeal against irregularities in the call for tenders, procurement documentation, or amendments to such documentation, by requiring the appellant to notify the contracting authority of the specific irregularity no later than 10 days after the day of its publication, and prohibiting the appellant from submitting an appeal before three days have passed from the date of such notification, while also extending the appeal period from 10 to 15 days. Furthermore, the possibility of presenting evidence through expert assessment on essential facts requiring specialized knowledge is prescribed, at the request of the parties to the appeal procedure or the State Commission for the Supervision of Public Procurement Procedures, since the statutory 30-day period for issuing a decision on the appeal is quite short, and the provisions on expert assessments under the General Administrative Procedure Act are not applicable in appeal procedures before the State Commission for the Supervision of Public Procurement Procedures.

Article: 403a and 403b

Text of the new article:

“Article 403a

(1) Before submitting a complaint concerning the content of the invitation to tender, the procurement documentation, the content of a correction to the invitation, or the content of an amendment to the procurement documentation, the complainant shall be obliged to notify the contracting authority of the alleged irregularity via EPPC no later than 10 days from the date of:

- publication of the invitation to tender, in relation to the content of the invitation or the procurement documentation



- publication of the correction notice, in relation to the content of the correction
- publication of the amendment to the procurement documentation, in relation to the content of the amendment.

(2) In the case referred to in paragraph 1 of this Article, the complainant may not submit a complaint before the expiry of a three-day period following the notification of the contracting authority of the alleged irregularity referred to in paragraph 1 of this Article.

Expert examination Article 403b

(1) Where the determination or assessment of a fact essential for deciding on a complaint requires expert knowledge that the State Commission does not possess, the State Commission may, either upon the proposal of a party to the complaint procedure or ex officio, order the taking of evidence by means of an expert examination.

(2) Where a party to the complaint procedure proposes that evidence be taken through expert examination, that party shall be obliged to bear the costs of the examination.

(3) The State Commission shall refrain from conducting the expert examination if the advance payment of costs is not made within the deadline specified by the State Commission.

(4) Where the State Commission orders an expert examination ex officio, the costs of such examination shall be reimbursed from the State Budget.

(5) The State Commission shall appoint as expert a person or scientific or professional institution possessing the necessary expertise, and shall invite the parties to the complaint procedure to submit any comments on the proposed expert within a specified period, not exceeding three days.

(6) If either party objects to the appointed expert referred to in paragraph 5 of this Article and the State Commission finds the objection justified, it may appoint another expert.

(7) The State Commission shall define the subject matter of the expert examination and invite the expert to submit their written findings and opinion within a period not exceeding ten days.

(8) Notwithstanding paragraph 7 of this Article, in the event that the State Commission determines that, due to the specific nature of the subject of the expert examination, a longer period is necessary, it may extend the period by an additional ten days.

(9) The State Commission shall provide the expert's findings and opinion to the parties to the complaint procedure, who shall have the right to submit comments within a period not exceeding five days."

AmCham's comment: The proposed provision does not regulate in any way the issue of reimbursement of the cost of preparing a warning to the contracting authority, in cases where the warning would be justified, i.e., where the contracting authority would remedy the irregularity based on the received warning. Namely, in more complex public procurement procedures, economic operators, as appellants, often hire professional legal assistance. The proposed legal provision would imply that if a warning from the appellant were accepted by the contracting authority and the irregularity remedied, the cost of preparing the warning would not be reimbursed to the appellant in any way. This would effectively mean that such an appellant would bear the cost "for the public interest", which, in practice and from an entrepreneurial perspective, is not considered sustainable.

Furthermore, regarding expert examination (proposed Article 403b), particularly when it is ordered ex officio by the State Commission for the Supervision of Public Procurement Procedures, it remains unclear which party to the procedure would ultimately bear the cost of the examination, which would have been initially advanced from the State Budget (especially in cases where the appeal is only partially justified).

For additional information, please contact: American Chamber of Commerce in Croatia

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