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Zagreb, November 2025

Comments on the Public Procurement Act 2025



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Introduction

The Ministry of Economy has launched a public consultation on the e-Consultation Portal for the "Draft Proposal of the Act on Amendments to the Public Procurement Act," open for comments until 15 November 2025.

In addition to AmCham's long-standing recommendations regarding amendments to the Public Procurement Act, members of the Public Procurement Committee have prepared further input, presented in this position paper.

AmCham welcomes several of the proposed legislative changes, as they are consistent with the Chamber's previous positions and recommendations.

AmCham's comments on specific provisions

Article 2

In Article 6, paragraph 5 is deleted

Current text of the paragraph

(5) An indicative list of public contracting authorities in the Republic of Croatia is published on the Public Procurement Portal by the state administration body responsible for public procurement policy and updated as necessary.

AmCham's comment on Article 2

AmCham believes it would be beneficial to retain Article 6, paragraph 5 of the Public Procurement Act. The publication of an indicative list of public contracting authorities in the Republic of Croatia on the Public Procurement Portal, with regular updates, is considered useful and practical. Furthermore, AmCham proposes that this indicative list be expanded to include sectoral contracting authorities. This would help reduce the risk of misinterpretation of regulations, promote consistency in practice, enhance transparency, and streamline the overall procurement process.

Article 20

Article 210, paragraph 3, is amended to read as follows:

"(3) In the case referred to in paragraph 2 of this Article, the tenderer is obliged to prove the equivalence of the offered goods, works, or services."

AmCham's comment on Article 20

The proposed amendment to Article 210, paragraph 3, introduces an obligation for tenderers to "prove the equivalence of the offered goods, works, or services" in the situation referred to in paragraph 2. However, the provision does not clearly define when in the public procurement procedure the tenderer is required to submit such evidence of equivalence.

Considering the principles of transparency, equal treatment of tenderers, and legal certainty, it is important to clearly define the stage of the procedure at which this obligation must be fulfilled. The current wording leaves room for differing interpretations in practice, such as:

- Whether the proof of equivalence must be submitted with the tender, through the technical specifications and accompanying documentation;

- Whether it pertains to updated supporting documents as referred to in Article 263 of the PPA; or
- Whether equivalence may be demonstrated only after the contract award decision, as part of the verification of qualifications and compliance with requirements.

To prevent legal uncertainty and potential appeal proceedings, it is proposed to more precisely regulate the timing for submitting evidence of equivalence – for instance, by explicitly stating that such evidence must be provided with the tender or at another clearly defined stage of the procedure.

This clarification would support the consistent application of the regulations and enable the timely verification of compliance with the technical requirements of the subject matter of procurement.

Article 21

In Article 214, paragraph 1 point 1, the wording: “*rejection of the correction of an arithmetic error*” is replaced with: “*submitting false information, failing to provide evidence of meeting special conditions for contract performance, and failing to provide evidence of fulfilling the conditions and requirements that must be met in accordance with special regulations or professional rules, if requested in the procurement documentation*”.

Current text of the paragraph

(1) The public contracting authority may require the economic operator to provide the following guarantees:

1. a tender guarantee, in cases where the tenderer withdraws their tender during its validity period, fails to submit updated supporting documents in accordance with Article 263 of this Act, does not accept the correction of an arithmetic error, refuses to sign the public procurement contract or framework agreement, or fails to provide a performance guarantee for the public procurement contract or framework agreement, where such obligation arises under the framework agreement.

AmCham’s comment on Article 21

With regard to “submitting false information”, it often occurs in practice that a tenderer inadvertently provides incorrect information in their tender, which may be subject to clarification under Article 293 of the PPA (2016). Therefore, AmCham proposes that it be explicitly stated that the guarantee becomes enforceable only in cases of deliberate or seriously misleading representations of fact by the tenderer, and not in cases of unintentional or minor inaccuracies resulting from good-faith errors in the tender documentation.

Article 26 and Article 33

Article 26

Article 251 is amended to read as follows:

(1) 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) 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, subpoints (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 33

Article 265, paragraph 1, point 1 is amended to read as follows:

"1. An extract from the criminal record or another appropriate register, or, if such a document cannot be obtained, an equivalent document issued by the competent judicial or administrative authority in the country where the economic operator is established, shall serve as proof that no grounds for exclusion under Article 251 of this Act exist."

Paragraph 2 is amended to read as follows:

"(2) If the country in which the economic operator is established 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, Article 252(1), and Article 254(1)(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."

AmCham's comment on Articles 26 and 33

The proposed amendments introduce significant uncertainty regarding the implementation of procedures for proving the absence of a criminal record.

By removing nationality as a criterion for determining the competent register, the proposal fails to clearly define how the contracting authority should identify the countries from which criminal record extracts must be obtained for persons in the tenderer's management or supervisory structures. This raises several key questions:

- What constitutes an objective criterion for determining the countries in which it is necessary to verify possible convictions (e.g., countries where the individual has lived, worked, had residence, or conducted economic activity, etc.);
- There is no effective mechanism by which the contracting authority could independently identify all the countries in which a person may have been subject to a final judgment;
- The e-Certis system is not designed to generate a list of all international registers relevant to an individual, but rather serves as a catalog of evidence types by country;
- In the absence of clear criteria, there is a risk of inconsistent and arbitrary application among contracting authorities.

It is therefore justified to seek additional normative clarification concerning the scope of the obligation to prove the absence of a criminal record. In this context, AmCham recommends the following:

1. Explicitly specify in the law that the economic operator must identify all countries in which its responsible persons have or have had residence or a business establishment during a defined period;
2. Prescribe the verification period, for example, the last five years, in line with common practice in other EU Member States;
3. Clearly regulate the consequences of failing to identify a particular country in the economic operator's declaration; and
4. Further develop the role of e-Certis and introduce mechanisms for official international verification.

The currently proposed solution, without the recommended clarifications, could in practice result in a significant administrative burden for both economic operators and contracting authorities. It may also increase the risk of appeals due to the unequal treatment of tenderers and create situations in which the contracting authority cannot reliably verify the absence of exclusion grounds, despite being legally required to do so.

In conclusion, AmCham proposes that the proposer provide a more detailed normative framework defining the procedure and criteria for determining the countries from which evidence of a clean criminal record of responsible persons must be obtained. Such clarification would ensure legal certainty, predictability, and consistent application of this mandatory exclusion ground.

Article 29

In Article 254, paragraph 1, point 5 is deleted.

Points 6 to 9 become points 5 to 8.

Current text of the paragraph

(1) The public contracting authority may exclude an economic operator from the public procurement procedure if:

5. a conflict of interest, within the meaning of Chapter 8, Title III, Part 1 of this Act, cannot be effectively remedied by other, less drastic measures

AmCham's comment on Article 29

By deleting point 5 of Article 254(1), the draft removes the possibility of excluding an economic operator on the grounds of a conflict of interest that cannot be remedied through other measures. This amendment narrows the range of discretionary exclusion grounds, despite the fact that conflicts of interest remain among the most significant risks to the legality, transparency, and integrity of

public procurement procedures. Such a change could result in situations where the principle of equal treatment is clearly undermined, yet the contracting authority lacks a legal basis to exclude the tenderer. AmCham therefore proposes that the justification for deleting this provision be reconsidered, or that additional normative provisions be introduced to clearly regulate the management of conflicts of interest.

Article 48

In Article 310, paragraph 1, after the word “tenderer”, the comma is deleted and the words: “immediately, and no later than the next working day” are added.

Current text of the paragraph

(1) The contracting authority shall, after issuing the contract award or cancellation decision and until the expiry of the appeal period, allow any competitor or tenderer to inspect the complete documentation related to the relevant procurement procedure, including minutes, submitted tenders, and requests to participate, except for documents classified as confidential.

(2) By way of exception to paragraph 1 of this Article, the contracting authority is not required to allow inspection of those parts of the documentation to which the applicant has direct access through the Electronic Public Procurement Classifieds of the Republic of Croatia (EPPC).

AmCham’s comment on Article 48

It remains unclear what sanction applies if the contracting authority fails to allow inspection within the prescribed period. This should be more clearly defined or explicitly linked to the relevant offense provision. Furthermore, it is recommended to introduce a mechanism for extending the appeal period proportionally to the number of days of delay in granting the appellant access to the tenders.

Article 56

After Article 403, Article 403.a is added, a title above the Article, and Article 403.b, which read:

"Article 403.a

(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 the Electronic Public Procurement Classifieds of the Republic of Croatia (EPPC) no later than ten (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.

Expert examination

Article 403.b

(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 prefinance 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 prefinanced 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) By way of exception to paragraph 6 of this Article, the deadline for submitting findings and opinions may be extended due to objective constraints or in accordance with special regulations.

(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 on Article 56

We propose deleting Article 403.a in its entirety. By introducing a mandatory procedural prerequisite requiring prior notification of the contracting authority regarding irregularities in the procurement documentation, the proposed provision unlawfully restricts the right to an effective legal remedy.

Such a solution is inconsistent with the principle of effectiveness, under which national procedural rules must not render the exercise of rights derived from European Union law impossible or excessively difficult.

In practice, the proposed Article 403.a would place economic operators in an unreasonably difficult position, as it imposes very short deadlines and the obligation to carry out a comprehensive legal and technical review of the procurement documentation immediately upon its publication. This creates a real risk of losing the right to appeal due to an unintentional omission. In doing so, the provision improperly shifts the burden of ensuring legality, which rightfully lies with the contracting authority and competent supervisory bodies, onto the tenderers.

To uphold the constitutional principle of effective legal protection, AmCham recommends not introducing the mandatory mechanism provided under Article 403.a. Instead, the law could optionally encourage tenderers to notify the contracting authority of identified irregularities as a good practice, without affecting the admissibility of an appeal.

Article 71

In Article 431, after paragraph 6, a new paragraph 7 is added, reading as follows:

"(7) In the event that an appeal is upheld, the State Commission may decide that each party to the appeal proceedings shall bear its own costs if the appeal is upheld on grounds that the contracting authority was not aware of, and could not reasonably have been aware of, during the review and evaluation of tenders."

The former paragraph 7 is to become paragraph 8.

AmCham's comment on Article 71

AmCham proposes deleting the proposed paragraph 7 of Article 431.

This provision introduces the possibility that, even when an appeal is upheld and an illegality in the contracting authority's conduct is established, each party may bear its own costs if the illegality arises from reasons "of which the contracting authority was not aware and could not have been aware" during the review and evaluation of tenders.

Such a normative solution creates unjustified inequality between the parties in appeal proceedings and discourages economic operators from exercising their rights in public procurement procedures. Consequently, even though the contracting authority's decision is lawfully annulled, the tenderer would bear the full cost of proceeding to protect their own rights. In practice, it effectively absolves



the contracting authority of responsibility for its own shortcomings in the tender evaluation process and its duty to establish complete and accurate facts.

Moreover, as the contracting authority is both authorized and obliged to carry out a thorough review of tenders, it is not appropriate for the regulation to pre-emptively limit that responsibility or to shield the contracting authority from the financial consequences of an unlawful decision. The introduction of this provision undermines the principle of effective legal protection, as it shifts the risk arising from unlawful conduct by the contracting authority onto the very party harmed by that conduct.

Furthermore, the proposed wording creates significant legal uncertainty, since there are no objective criteria for determining what the contracting authority “should have known” during the review and evaluation of tenders. This opens the door to arbitrary interpretation and may discourage economic operators from submitting justified appeals.

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