

Public Procurement Training

Zagreb, July 2021



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

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Public Procurement Training

Recommendations from Europe and Professionalization End Goals

As a series of changes designed and applicable with the aim of increasing the quality of a certain system and its overall improvement, the term *professionalization* implies a ramified process in every field in which it is used. The same goes for the system of public procurement.

The European Commission ("**Commission**" or "**EC**") emphasized the necessity for a higher level of professionalization in the systems of national public procurement in October 2017, when the Commission Recommendation (EU) 2017/1805 from October 3, 2017 on the professionalization of public procurement ("**Recommendation**") was issued. ¹ Its aim was to encourage member states of the European Union ("**EU**") to take measures in raising the level of professionalization in their respective systems of public procurement, naturally, proper and adapted to their needs. To that end, the experiences of other member states and positive examples can be accessed in a library of good practices and tools. ²

Numerous fields that could benefit from the system of public procurement were determined. From the special norming of certain categories of procurement or their unification to working on raising the senior management's awareness regarding the risks in public procurement, which includes the consideration of introducing penalization.

In this position paper, we are focusing only on one element in the process of professionalization – the implementation of training in public procurement. We believe that training of higher quality is, if not a prerequisite, then certainly a crucial and necessary first step in the successful implementation of further professionalization of the entire public procurement system.

Similarly, chapter II of the Commission Recommendation focuses entirely on human resources and public procurement, more specifically, on the improvement of their training and enabling them for better career management. It is evident from the formulation of certain recommendations in this framing document that the Commission is conscious of the need for the people employed in the public procurement system to be continuously and appropriately trained, as well as motivated to work in the system. It is worth mentioning chapter III (7) of the

¹ The recommendation can be accessed at <https://eur-lex.europa.eu/legal-content/HR/TXT/HTML/?uri=CELEX:32017H1805&from=EN> (last accessed on February 21, 2021).

² The fifth document on the link <https://ec.europa.eu/docsroom/documents/32184> as well as general information on the web page https://ec.europa.eu/info/policies/public-procurement/support-tools-public-buyers/professionalisation-public-buyers_hr (last accessed on February 22, 2021).

Recommendation which highlights the necessity for raising the awareness of the importance of transparency and integrity as core values in public procurement both in principle and in practice, where they are most commonly breached, among the employees.

Even though it is not a binding document, the provision in Article 10 of the Recommendation encourages member states to inform the Commission on the measures taken regarding public procurement system professionalization.³

As far as we know from the publicly available information, in the Republic of Croatia no concrete measures have been taken in that direction, which in turn means that the Commission has access to no data regarding the potential measures in Croatia. With respect to the circumstances and issues faced by the public sector during the COVID-19 pandemic, we consider the permanent lack of strategic planning regarding further professionalization in public procurement harmful not only for the system but also for the overall public spending. For this reason, we welcome that the Government of the Republic of Croatia has recognized the necessity for a continuous and quality implementation of public procurement training in the National Recovery and Resilience Plan 2021–2026, as well as that there is an emphasis and plans in place for concrete steps to be taken in order to accomplish that goal within an appropriate implementation timeframe and budget.

State of play in Croatia

The current situation regarding public procurement training in practice is not satisfactory. Public procurement law does not exist as a mandatory nor as an optional course in undergraduate study programs at all four faculties of law in Croatia. Croatian legal literature contains only a negligible number of specialized articles and even fewer research articles which analyze the problem of public procurement in theory and practice. The number of articles by Croatian lawyers in relevant international journals is similarly small. In the scholarly literature market, especially after the Public Procurement Act (Official Gazette, No. 120/2016; “**ZJN 2016**”) was passed, there has been only one all-encompassing textbook published, while other available textbooks and materials are not suitable for more general training.

Even though there have recently been some positive changes in the field of public procurement, first and foremost the inclusion of public procurement as a legal branch into postgraduate studies and lifelong education programs at the Faculty of Law, University of Zagreb, those are merely isolated instances. This inclusion should be applauded as the first such solution available in the training market, but its

³ This could have been done as part of the regular reporting in accordance with the provisions from the three Directives on public procurement (Directive 2014/24/EU, Directive 2014/23/EU, and Directive 2014/25/EU).

introduction should also be seen as a critique of the ways in which public procurement training is implemented in RH.

Namely, the “official” training in public procurement is not conducted at universities, colleges, or other educational institutions. It is conducted via training organized by certified legal and natural persons. This solution would not be problematic *per se* if it were not for a significant variation in the quality and performance of the training, which is not standardized. Since Croatia became part of the EU, there has been a certain liberalization of available training, but it has not significantly impacted the existent tendency of a drop in quality. Considering the noted shortcomings, further development and improvement of public procurement training, together with the overall public procurement system, is impossible without certain changes.

This is especially related to changing the current legal frame, which consists of one article of the ZJN 2016 and the corresponding Ordinance on training in the field of public procurement (Official Gazette, No. 65/2017; “**Ordinance**”).

The provision in Article 440 of the ZJN 2016⁴, as the basic legal act governing public procurement in the Republic of Croatia, is the only provision that mentions and “regulates” training in that field.⁵ Regarding the content of the provision, it is clear that the training as such is not regulated, but that it is defined as an element of the system under the competence of the Ministry of Economy and Sustainable Development (“**Ministry**”), which is the central state administration body responsible for the field of public procurement policy.⁶ It is also clear that the provision refers to the Ordinance regarding all important questions.⁷

In accordance with the provisions of the Ordinance, the Ministry as the body responsible for training can authorize other legal persons for its implementation. Therefore, training, apart from the Ministry and the State School of Public Administration, can be organized by legal persons certified by the Ministry, who employ or hire experts to conduct the training. A person regarded as an expert in this context is a trainer with a valid certificate in the field of public procurement and

⁴ The provision reads: “Article 440 of ZJN 2016

(1) The central state administration body responsible for public procurement policy shall prepare and conduct training in the field of public procurement.

(2) The central state administration body responsible for public procurement policy shall conduct examinations and issue certificates in the field of public procurement.

(3) The training program, planning, manner of conducting training, manner of issuing and renewing certificates, and other important issues related to training in the field of public procurement shall be prescribed by the head of the central state administration body responsible for public procurement policy.”

⁵ If the provision in Article 436(1)(9) of the ZJN 2016, where it is stipulated that training in the field of public procurement is within the scope of competence of the central state administration body responsible for public procurement policy, is ignored.

⁶ Therefore, paragraph 1 is unnecessary because it is a repetition of what is set out in the provision of Article 436(1)(9), but its inclusion into this article is technically acceptable, with the aim of emphasizing the central role of the Ministry.

⁷ Paragraph 2, which emphasizes one, but not the other questions crucial for the functioning of the system of training in public procurement, seems unnecessary in this construction.

a minimum of three years of experience in preparing and conducting public procurement procedures and professionals employed in the public procurement system at the Ministry or the State Commission for Control of Public Procurement Procedures (“**DKOM**”). It can also be an expert from a certain field covered in the study program, with a degree in an undergraduate or graduate university program or integrated undergraduate and graduate program or specialist graduate program, and a minimum of two published articles in a field covered in the study program, or a person who has lectured at least two professional counseling sessions, conferences, seminars, workshops, etc. in a field covered in the study program. The Ministry holds the right to train the trainers, but its training programs can be conducted in collaboration with professional associations and other legal and natural persons with whom a cooperation agreement can be signed).⁸ To summarize, for participants, the system is based on what is essentially certification, i.e. on attending training with the aim of collecting credits in order to renew a relevant certificate that can be issued for a maximum period of three years.⁹

Evaluation of the current state of play and the suggested changes

We believe that the above described legal frame is insufficient in the current default conditions of public procurement in Croatia and that it is not headed towards improving the expertise of those participating in the system. With regards to the above-mentioned, as previously pointed out, we suggest certain legislative changes.¹⁰

First of all, it would be useful to change the provision of Article 440 of the ZJN 2016 and add aims and principles of conducting training in Croatia. In its current form, the provision of Article 440 of the ZJN 2016 offers no more than a basic legislative frame for issuing the Ordinance, but it does not express the attitude of the legislator on the importance of training and its role within the system of public procurement. Moreover, the topic of training is located in Part Five of the ZJN 2016 under the title “Public Procurement Policy”, but as that term is not defined or clarified anywhere in

⁸ This applies only to persons who have a valid certificate and a minimum of one year of experience in preparing and conducting public procurement procedures or preparing proposals for public procurement procedures.

⁹ One has to attend at least 32 hours of training within the program of “regular training” – half-day, one-day or two-day workshops approved by the Ministry. As part of public procurement training, there is a specialist program with a duration of 50 hours of training, which includes a written exam, but that is not in the focus of the hereby suggested changes.

¹⁰ While considering the directions of the suggested changes, both legislative and non-legislative changes were taken into account, as both options result in affecting the current situation on the public procurement training market in Croatia. In view of this and the potential negative consequences, it has been decided that the necessary level of security and transparency can only be reached through legislative changes. The prevailing opinion is that the non-legislative initiatives would not result in such an impact; moreover, that due to the lack of the necessary legislative grounds, non-legislative changes could lead to market disruptions and thus negatively affect the existing mechanism.

the text of the law, it is unclear in what way the training (with the exception of the location of the provisions that regulate it) is part of a wider public procurement policy in Croatia and in what way the two topics are related. We deem it unquestionable that training as a matter within its volume should remain regulated in detail by the Ordinance. However, at the same time, there is room in the ZJN 2016 for emphasizing its importance in relation to the legislator, which can be done by changing the relevant provision and in this way granting it the necessary legitimacy.

Furthermore, it is necessary to change the Ordinance in several ways. First, it is likely that, in case of structural changes, its provisions would be clearer and more coherent to the participants. An introduction of a changed structure would set out the basic skills and competencies that the participants in the public procurement system must acquire in order to participate in the system adequately. These provisions would represent the goals that need to be achieved through training and would reflect the ways in which the complexities of the public procurement system should be translated into training programs conducted within that system. It would be useful to define the "higher" skills and competencies of the participants in other categories, which can be acquired through further training, in order to clearly distinguish the levels of expertise within the system and enable a transparent diversification of participants according to the criteria of obtained education. We believe that this has not been done properly in the current Ordinance and that it is important to move the focus from prescribing the formal criteria that the participants must meet. Within the current system and its accentuated formality, the prescribed criteria greatly discourage and in part prevent the people who have worked in the public procurement system for years and who have acquired all the necessary competencies from "advancing" in that system. Formally putting competencies and acquired skills to the forefront, in the Ordinance itself, would put this harmful practice to an end.

It should be emphasized that the basic corpus of the necessary knowledge and skills has already been designed and made available. Intending to promote the professionalization of public procurement through improved training, the Commission has developed a tool ProcurCompEU.¹¹ The publicly available database, which serves as a common frame of reference for EU member states, contains 30 established key competencies that the experts in public procurement should develop, described in detail.¹² Only after the criteria of competencies have been announced, the Ordinance would prescribe who and under what conditions would be certified to conduct public procurement training. It would also be necessary to prescribe the conditions for obtaining the certification for conducting the training in more detail than in the current Ordinance.

¹¹ V. https://ec.europa.eu/info/policies/public-procurement/support-tools-public-buyers/professionalisation-public-buyers/procurcompeu-european-competency-framework-public-procurement-professionals_hr (last accessed on January 22, 2021).

¹² The usefulness and applicability of this tool have been recognized by the Government of the Republic of Croatia as part of the Reform measure C2.9. R1 "Continuous implementation of training in public procurement" of the National Recovery and Resilience Plan 2021–2026 and we advocate its implementation into the public procurement system of the Republic of Croatia as soon and as fully as possible.

The suggested changes are in accordance with the Commission's Recommendation, which emphasizes the necessity of defining "the baseline of skills and competencies any public procurement practitioner should be trained in and possess, taking into account the multidisciplinary nature of procurement projects, both for dedicated procurement officials and for related functions". The key to reaching the necessary levels lies, according to the Commission, entirely in the development of "training programs – initial and lifelong".

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