

Pursuant to Article 20a, paragraph 2 of the Act on Public Private Partnership (Official Gazette 78/12 and 152/14), the minister of economy hereby issues the

ORDINANCE

ON SMALL VALUE PPP PROJECTS

PART I GENERAL PROVISIONS

Subject of the Ordinance

Article 1

(1) This Ordinance governs other issues of the preparation, documentation and implementation of small value PPP projects, taking into account the activities or type of public service governed, recommendations for drafting the PPP contract and the financial model, and other issues of significance for the implementation of the projects that are the subject of this Ordinance.

(2) The subject of this Ordinance is small value PPP projects in the area of energy efficiency of public buildings and public lighting structures.

Definition of terms

Article 2

In the sense of this Ordinance, individual terms shall have the following meaning:

1. *Public lighting*: structure or group of multiple structures that serve for lighting public areas.
2. *Outdoor lighting*: structures for lighting outdoor areas.
3. *Internal lighting*: part of the structure whose fundamental function is the lighting of interior areas.
4. *Savings*: difference in power (in watts) or consumption (in watt-hours) or costs (in kuna) prior to and after the investment.
5. *Public lighting projects*: in the sense of this Ordinance is a project to construct, maintain and deliver the given construction standards of public lighting, for the purpose of increasing energy efficiency and improving the quality of public services.
6. *Public building energy efficiency project*: in the sense of this Ordinance is a project to construct, maintain and deliver the given standard of public buildings, for the purpose of increasing energy efficiency and improving the quality of public services.
7. *Project preparation*: procedure carried out by the client for the purpose of drafting documentation for implementing public tender procedures and obtaining the decision from the competent authorities for the authorisation of public private partnership proposals.
8. *Financial model*: numerical tabular overview of all project parameters, shown in their monetary values.

9. *Public building*: building of a public body or part of a building used to perform activities from its competences and which is encompassed by the energy efficiency measures.

10. *Standard of public services*: a collection of contractual output characteristics of the project which the contractor is obliged to deliver to the client, and the client is obliged to pay the contractually stipulated compensation for the delivered standard.

Public tender procedure

Article 3

The procedure of selection of a private partner for projects that are the subject of this Ordinance is carried out pursuant to the provisions governing the areas of public procurement and public private partnership.

PART II

SMALL VALUE PPP PROJECTS APPLICABLE TO PUBLIC BUILDINGS AND PUBLIC LIGHTING STRUCTURES

Structure of the Study of feasibility of the investment in the small value PPP project applicable to public buildings and public lighting structures

Article 4

Alongside the content prescribed by other regulations from the field of public private partnership, the Study on the feasibility of the investment in small value PPP projects shall also contain the following:

- analysis of the existing state of the structure;
- analysis of the power, consumption and costs of energy and maintenance prior to the investment;
- projected power, consumption and costs of energy and maintenance after the investment;
- necessary investments pursuant to the project task that consists of the structure of expected capital costs and costs of maintenance and use;
- report on the energy audit;
- project task.

Content of the tender documentation

Article 5

In the procedure of selection of a private partner in small value PPP projects in the area of public buildings and public lighting structures, with the content stipulated by the regulations governing the area of public procurement, the tender documentation must also contain the technical or light-technical requirements pursuant to the standards of the said area, and the quality control and quality assurance requirements for the elements offered in the technical/technological solution.

Procedure to draft the technical basis for public building and public lighting structure projects

Article 6

(1) The technical basis for public building projects and public lighting structures include:

- report on the energy audit for the building;
- project task.

(2) The project task must be drafted in line with the rules of the profession and define the area of the project and technical requirements of the project.

(3) The technical basis from paragraph 1 of this Article is an integral part of the study from Article 4 of this Ordinance.

Article 7

The following are integral parts of this Ordinance:

Appendix 1: Recommendations for drafting the small value PPP contract,

Appendix 2: Recommendations for drafting the financial model for small value PPP projects.

Article 8

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

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Zagreb, 20 February 2015

Minister
Ivan Vrdoljak, m. p.

APPENDIX 1

RECOMMENDATIONS FOR DRAFTING SMALL VALUE PPP CONTRACTS

1. The subject of the contract may be the reconstruction of a part of a structure or entire structure, the construction, adaptation or equipping of a new structure, separation and/or equipping of existing calculation measurement sites, installation of systems for supervision and verification of savings, adaptation of other technologies on the structure for the purpose of achieving a more efficient system.
2. The purpose of the contract may be a reduction in power, reduction in consumption or costs of energy, reduction of greenhouse gas emissions, reduction of light pollution, improvement of the lighting of public areas, etc.
3. The contract must clearly define the division of risks between the contracting parties in a manner that is evident from the provisions of the contract how they are transferred to the contractor, e.g. the risks of construction/reconstruction/installation, risk of securing sufficient sources of financing for the project, risks associated with achieving the envisaged power, consumption or costs of energy, and risks associated with maintaining the structure in an available state for the entire duration of the contract.
4. The contract must clearly state the three groups of risks: risks taken on in full by the client, risks taken on in full by the contractor, and shared risks.

5. If the risks of financing are transferred to the private partner, then the contractor must be obliged by the contract that it will secure all the necessary sources of project financing in full, both for construction and maintenance of the structure which is the subject of the contract, for the entire duration of the contract.
6. In the case of a lack of necessary sources of financing is established during the implementation of the contract, such risk shall be taken on by the contractor.
7. The client shall not give guarantees to the contractor's creditor for the settlement of liabilities on the basis of the credit independent of the delivered contracted standard of public services.
8. The obligations of the client are determined on the basis of project implementation. The fundamental obligation of the client is to secure access for the contractor to sites where the project is implemented.
9. The fundamental obligation of the contractor is to ensure all technical, methodological, security and organisational measures and procedures for the expert and professional implementation of the project.
10. The execution deadline is the final deadline by which the contract must be executed in the part pertaining to the construction/assembly/reconstruction, i.e. the date of the commencement of public services delivery as defined by the purpose of the contract.
11. In the contract, it is necessary to define the procedures and conduct in the case a shortcoming is ascertained pertaining to the execution of works, and in procedures pertaining to reporting on the observed shortcomings, a record on the conclusion of the phase of construction and procedures pertaining to the removal of observed shortcomings.
12. All parameters of existing installed power, and parameters of newly installed power, existing consumption and costs of energy, referential average annual work time, reference data on heating, existing assessed maintenance costs, expected consumption and cost of energy following project implementation, existing cost of energy, expected savings in power, consumption and costs of energy must be clearly marked with the accompanying measurement units.
13. The compensation the client pays the contractor for the implementation of contractual obligations is a monthly obligation in monies which must be clearly stated in the contract. The compensation may be reduced or increased according to previously defined conditions that pertain to the level of the referential values of savings (power, consumption, costs) during the contractual period in a clearly outlined formula.
14. In addition to the amount of compensation, it is necessary to define the due date of payment of the calculated monthly fee, and procedures in the case of late payment.
15. It is necessary to stress when the first monthly compensation is calculated and is due for payment.
16. Considering the take-over of risks associated with variable interest rates, currency exchange rates, inflation, energy prices, etc., a procedure for the alignment of the monthly compensation is also contracted. In that sense, it is necessary to clearly determine the formula that will allow for the simple calculation of the value of the aligned monthly compensation.
17. With the purpose of simple application of the formula, it is necessary to clearly state the sources of the values of the parameters contained within the formula (e.g. Croatian National Bank, Central Bureau of Statistics, etc.).
18. An integral part of the chapter on the contractual penalty is the acceptable manner of collection of penalties.
19. The client may, for the purpose of ensuring payment of the compensation, provide the contractor with an appropriate payment insurance instrument.
20. Statements, guarantees and insurance shall imply statements on ownership over the existing public lighting system and public buildings, legally binding decisions of the contracting parties, authorisation for signing contracts and the validity of issued payment insurance instruments, ownership over new public lighting elements and public buildings, and in the sense of expert capability for the implementation of the contract, any possible licences and permitted and the like.

21. The contract must clearly state the official addresses of the contracting parties in the sense of communications, correspondence and reporting.

22. It is necessary to clearly state the circumstances under which the contract may be terminated. It is necessary to state under which circumstances the contract may be terminated by the client, and under which circumstances by the contractor. Particular attention should be given to procedures of determining the value of assets in the case of early termination of the contract.

23. It is deemed that the entire assets that are the subject of the contract, is fully amortised in the contracted period and, in the case of the regular expiry of the contract, shall be transferred to the ownership of the client without compensation.

24. The contract contains confidential information that shall be treated as a business secret. In the case of disclosure to unauthorised persons, harmful consequences may arise for the economic interests or reputation of the contracting parties. For these reason, it is necessary to define all the elements deemed to be business secrets, and stress the obligation of the contractual parties to keep all business secrets.

25. The contractual compensation is expressed without the accompanying value added tax. The contractor calculates the value added tax pursuant to the valid tax rate for the services from the contract.

26. If the project envisages co-financing of part of the capital costs by the client, such a possibility must be appropriately regulated under the contract.

APPENDIX 2

RECOMMENDATIONS FOR DRAFTING THE FINANCIAL MODEL FOR SMALL VALUE PPP PROJECTS

The mandatory part of the contract's bid is the financial model. When developing the financial model, the contract shall follow the following instructions:

1. The financial model shall be drafted in electronic form in an Excel table in a compatible version to that stated in the tender documentation.

2. The financial model is drafted in kuna, at fixed prices.

3. The financial model consists of three fundamental parts:

(i) operating assumptions of the project,

(ii) budget with projection of financial reports, and

(iii) output values.

4. In the part pertaining to the operating assumptions of the project (i), all the figures the operating projects are based must be encompassed, and in particular: structure of the investment with investment dynamics, structure of sources of financing with dynamics of financing; interest and discounted rates; tax rates; depreciation rates; initial and final dates of individual processes; target (limit) discount rates on investor's own stakes. The assumptions must be logical and functionally tied to the budget section and output values.

5. In the part pertaining to the budget with the project financial reports (ii), all calculations based on the described assumptions shall be encompassed. The budget section shows the project of financial reports, and the account of gains and losses, balance, and reports on monetary flows.

6. The budget part must also clearly state the projections of whole life costs, which include capital costs, costs of energy and energy sources, costs of regular and extraordinary maintenance, costs of insurance and management, financial costs and similar total costs of the public building or public lighting structure project costs in the entire contracted period of the project.

7. In the structure of whole life costs, the nominal costs must be clearly stated if so stated in the tender documentation.
8. Within the framework of the projection of whole life costs, the compensation the client will pay to the contractor in the total contractual period must be clearly stated. The projection must be clearly and precisely structured in a manner that allows for the clear conclusion that the compensation can cover the whole life costs of the project, including the total financing sources.
9. In the third part that pertains to the output values (iii), the values of at least the following indicators must be stated: internal rate of return of the project (IRRP), internal return rate of equity (IRRE), weighted average cost of capital (WACC), net present value of cash flows discounted at WACC (NPVP@WACC), debt-service coverage ratio (DSCR), cumulative debt-service coverage ratio (CDSCR). With this, in the part pertaining to output values, the projection of the account of gains and losses, balance, reports on monetary flows and projections of whole life costs must be clearly listed.
10. The financial model may not be blocked or protected, and must allow the unhindered intervention of the client in all its parts.
11. If the risk of securing sources of financing is transferred to the private partner, the financial model must be accompanied by a letter of intent of the creditor that it is prepared to finance the project if the bidder is selected as the most advantageous bidder. The letter of intent must clearly show that the creditor is familiar with the content of the proposed contract and the financial model.
12. The financial model must contain a mechanism for correction of the IRRE after the payment of capital assistance by the public partner.