

GOVERNMENT OF THE REPUBLIC OF CROATIA

Pursuant to article 7 paragraph 2, article 9 paragraphs 4 and 9, article 10 paragraph 3, article 14 paragraph 2, article 18 paragraph 2 and article 19 paragraph 10 of the Public Private Partnership Act (Official Gazette 78/2012), Government of the Republic of Croatia at its session on July 6th 2012, adopted the following

REGULATION ON IMPLEMENTATION OF PUBLIC PRIVATE PARTNERSHIP PROJECTS

Subject matter of Regulation

Article 1

This Regulation stipulates the following: content of information on the intention to implement a public private partnership project, other documentation which is part of the public private partnership project proposal, structure of the Public Sector Comparator (PSC), other criteria for the approval of public private partnership proposal, significant modifications of the approved public private partnership project, criteria for the selection of economically most advantageous bid which public body shall follow in the procedure of the selection of private partner, content of the report on implementation of public private partnership project and other important issues related to the amendments of public private partnership contracts.

Basic terms

Article 2

(1) For the purposes of this Regulation, the following terms have the following meanings:

1. *Expected value for the money* means the positive balance between the present value of whole life costs according to the traditional (budgetary) model in the period stipulated by the contract expressed in the Public Sector Comparator

(PSC) and the present value of whole life costs in the same period according to public private partnership model.

2. *Capital value of the project* means a total costs of building a public infrastructure, determined by the Public Sector Comparator (PSC), including all supplementary costs related to building a public infrastructure except the maintenance costs, costs for the replacement of worn material and equipment and utilization costs, which shall be expressed in the Public Sector Comparator (PSC);

3. *Present value* means value of future monetary flows resumed to the day of discounting with application of given discount rate;

4. *Whole life costs* mean total costs of the public infrastructure including costs of building a public infrastructure, maintenance costs, costs for the replacement of worn material and equipment and their quantified balance determined in the Public Sector Comparator (PSC) and, where appropriate, utilization costs (such as: costs for energy-generating products, cleaning, security etc.) if utilization is prescribed by the public private partnership contract and the revenues from the third persons (commercial revenues) if such possibility exist.

(2) Other terms used in this Regulation shall have meanings stipulated by the Public Private Partnership Act (hereinafter: the Act).

Information on the intention to implement a public private partnership project

Article 3

(1) Information on the intention to implement a public private partnership project (hereinafter: PPP) shall contain the basic data on the public body and the PPP project.

(2) Public body shall file the information on the intention to implement a PPP project with the Agency for public private partnership on the form contained in the Appendix I of this Regulation.

Other documentation which is part of the public private partnership project proposal

Article 4

(1) Beside documentation prescribed by the Act, PPP project proposal shall contain documentation relevant for meeting criteria listed in article 6 of this Regulation.

(2) If public body is a unit of local or regional self-government or a legal person owned by the unit of local or regional self-government and if PPP project proposal provides payment of compensation to a private partner, beside documentation from paragraph 1 of this article, PPP project proposal shall contain filled form from the Appendix IIA of this Regulation, enabling calculation of capability for concluding PPP contract.

(3) If public body is a unit of local or regional self-government and if PPP project proposal provides payment of compensation to a private partner, beside the filled form from paragraph 2 of this article, PPP project proposal shall contain documentation listed in Appendix IIB of this Regulation.

(4) If public body is a legal person owned by the unit of local or regional self-government and if PPP project proposal provides payment of compensation to a private partner, beside the filled form from paragraph 2 of this article, PPP project proposal shall contain documentation listed in Appendix IIC of this Regulation.

(5) In case of concession with characteristics of public private partnership, feasibility study, which shall be made according to regulations on concessions, shall contain calculation of the expected value for the money determined by the Public Sector Comparator ((PSC).

Structure of the Public Sector Comparator (PSC)

Article 5

(1) Public Sector Comparator (PSC) contains:

1. introduction;
2. general data on the public body – ordering party;
3. name of the project;
4. purpose, aim and subject matter of the project;
5. description of the project;

6. presentation of the proposed PPP model;
7. situation analysis;
8. business revenues;
9. necessary investments comprised of:
 - capital expenses;
 - maintenance and utilization costs;
 - risk allocation matrices and risk quantification layouts;
 - calculation of whole life costs according to the traditional (budgetary) model;
 - calculation of whole life costs according to PPP model;
10. calculation of compensation according to the traditional (budgetary) model;
11. calculation of compensation according to PPP model;
12. economic and financial analysis contained of:
 - assessment of necessary investments;
 - sources of financing;
 - projections of financial reports;
 - financial flow;
 - economic flow;
13. calculation of value for the money;
14. assessment of cost effectiveness;
15. conclusion of economic and financial analysis;
16. presentation of the results of the analysis – Public Sector Comparator (PSC).

Other criteria for the approval of public private partnership proposal

Article 6

In the procedure of the approval of PPP project, beside criteria stipulated by the Act, the Agency for public private partnership determines whether the following criteria are also met:

1. PPP project proposal shall be in accordance with the documents of physical planning for the area in which the project is intended to be implemented;

2. property-law relations on the real estate on which the PPP project is intended to be implemented are solved or shall be solved in due time;

3. compensation and revenues derived from the performance of commercial activities, if such are envisaged, shall be sufficient for settlement of whole life costs and outflows during the term of the contract, as expressed in the Public Sector Comparator (PSC).

Significant modifications of the approved PPP project

Article 7

Significant modifications of the approved PPP project are those that change:

- purpose and subject matter of the approved PPP project,
- performance of commercial activities in accordance with the purpose of PPP project,
- allocation of risk and/or
- stipulated term of the PPP contract.

Criteria for the selection of private partner

Article 8

(1) Procedure for the selection of private partner shall be conducted pursuant to regulations on public procurement if PPP project realization implies a transfer of building rights. Procedure for the selection of private partner shall be conducted pursuant to regulations on procedure for awarding a concession if PPP project realization implies awarding a concession.

(2) Estimated procurement value in the procedure of selection of private partner, from paragraph 1 of this article, indicates present value of whole life costs according to the traditional (budgetary) model during the term of the contract, expressed in the Public Sector Comparator (PSC).

(3) If public body intends to transfer to private partner all or part of the costs of preparing the PPP project proposal, such costs shall be included in the estimated procurement value, from paragraph 2 of this article, and listed in tender documentation in the procedure of selection of private partner.

(4) In the procedure of selection of private partner from paragraph 1 of this article, criterion for the selection of private partner shall be exclusively the economic advantage.

(5) In the procedure of selection of private partner public body shall use the following criteria for the selection of economically most advantageous bid:

a) present value of whole life costs during the term of the contract and the present value of total compensation which shall be paid to the private partner by the public partner for PPP project in which payment of such compensation is envisaged;

b) present value of whole life costs during the term of the contract and the present value of total compensation which shall be paid to the public partner by the private partner for PPP project in which payment of such compensation is envisaged.

(6) If in the procedure of the selection of private partner for PPP project in which payment of compensation by a public partner to a private partner is envisaged present value of whole life costs during the term of the contract from the final offer of the bidder exceeds estimated procurement value from paragraph 2 of this article, such bid shall be rejected.

(7) Public body is free to apply other criteria, beside those listed in paragraph 5 of this article, in selection of economically most advantageous bid.

Discount rate

Article 9

(1) For calculation of present value of whole life costs during the term of the contract and the present value of compensation, discount rate shall be applied.

(2) Public body is obliged to emphasize in tender documentation a discount rate which all bidders shall apply for calculation of present value of whole life costs and the present value of compensation

(3) Discount rate for calculation of present value of whole life costs and compensation applied by the bidders in the procedure of selection of private partner shall equal a discount rate applied in the Public Sector Comparator (PSC).

(4) Agency for public private partnership shall publish on its web page a discount rate which shall be valid for the period of six months from the day of publishing.

Assessment of amendments of PPP contract

Article 10

When assessing the amendments of PPP contract, Agency for public private partnership shall consider:

- purpose and subject matter of the approved PPP project,
- whether performance of commercial activities is in accordance with the purpose of PPP project,
- allocation of risk,
- stipulated term of the PPP contract,
- value for the money,
- amount of compensation and other potential liabilities,
- standards of public services,
- payment mechanism,
- internal rate of return to custom financial sources.

Content of the report on implementation of PPP project

Article 11

(1) Report on implementation of PPP project shall obligatory provide information on:

1. the PPP project,
2. the public partner,
3. the private partner,
4. compensation stipulated by the contract,
5. fulfilment of obligations,
6. disputes,
7. penalties / liquidated damages.

(2) Report shall be filed on the form of the Report on implementation of PPP project contained in the Appendix III of this Regulation.

(3) Beside the Report on implementation of PPP project, official annual financial report for the special purpose vehicle or the joint company shall be filed once a year.

Article 12

On the date of entry into force of this Regulation, the following regulations shall cease to have effect:

- Regulation on the content of private public partnership contracts (Official Gazette 56/2009),
- Regulation on the criteria for the assessment and approval of the private public partnership projects (Official Gazette 56/2009),
- Regulation on the supervision of implementation of private public partnership projects (Official Gazette 56/2009),
- Regulation on training of participants in procedures for the preparation and implementation of private public partnership projects (Official Gazette 56/2009).

Article 13

This Regulation shall enter into force on the day of its publication in the Official Gazette.

Class:

File, no:

Zagreb,

Prime Minister:

Zoran Milanović, m.p.

APPENDIX I

Form of information on the intention to implement a public private partnership project

A) PUBLIC BODY

Name	
Registration number	
OIB (personal identification number)	
Address	
Person authorized to represent the public body	

B) PROJECT

Name of the project	
Persons in charge of preparation and implementation of the project	
Purpose and aim of the project	
Short description of intervention regarding the present and the planned state of the public infrastructure	
Proposal of the procedure for selection of private partner	
Estimated capital value of the project	
Expected duration of contract	

APPENDIX II A

Form for calculation of capability for concluding a public private partnership contract

I. INFORMATION ON THE APPLICANT:

Name	
OIB (personal identification number)	
Deposit account	

II. INFORMATION ON COMPENSATION:

1	Total amount of compensation for the contractual term [HRK]	
2	Number of years in the contractual term in which compensation shall be paid	
3	Average compensation per year (II.1 / II.2) [HRK]	
4	Construction period (from concluding PPP contract to the month of first payment of compensation) expressed in months	
5	Budgetary income realized in the previous year minus capital income according to the Budget Act [HRK]	
6	Share of compensation in the income of the previous year (II.3 / II.5)	
7	Total amount of PPP compensation paid in the previous year and accrued yet not paid PPP compensations from the previous year [HRK]	
8	Total amount of PPP compensations in budgetary income of the previous year minus capital income ((II.7 + II.3)/II.5) [%]	

APPENDIX II B

Documentation that shall be part of PPP project proposal if public body is a unit of local or regional self-government

1. adopted budgetary plan for the year in which the procedure for preparation of the project is initiated;
2. projection of budgetary receipts and expenses with PPP compensation included, for the following three years;
3. decision of the representative body on accepting a project. In case when more public bodies or legal persons owned by public bodies participate in the project, their decisions on participation in the project shall also be submitted;
4. amount of the expected PPP compensation;
5. certified financial reports for the previous year in accordance with Ordinance on financial reporting in budgetary accounting;
6. calculation of amount of realized budgetary income according to the Budget Act minus capital income according to Budget Act for the period from 1st January to 31st December of the year that precedes a year in which PPP contract shall be concluded;
7. report on payment of debentures, granted guarantees and consents on IZJS form at the moment of filing the application;
8. report on PPP compensations which the applicant already pays based on PPP contracts in force;
9. last final report of the State Audit Office on performed audit of financial reports and business;
10. statement issued by the mayor, municipal prefect or a county prefect that under material and criminal liability he guarantees for the authenticity of documentation (except for item 4).

PRILOG II. C

Documentation that shall be part of PPP project proposal if public body is a legal person owned by the unit of local or regional self-government

A) DOCUMENTATION OF THE UNIT OF LOCAL OR REGIONAL SELF-GOVERNMENT

1. adopted budgetary plan for the year in which the procedure for preparation of the project is initiated;
2. projection of budgetary receipts and expenses with PPP compensation included, for the following three years;
3. decision of the representative body on accepting a project. In case when more public bodies or legal persons owned by public bodies participate in the project, their decisions on participation in the project shall also be submitted;
4. certified financial reports for the previous year in accordance with Ordinance on financial reporting in budgetary accounting;
5. calculation of amount of realized budgetary income according to the Budget Act minus capital income according to Budget Act for the period from 1st January to 31st December of the year that precedes a year in which PPP contract shall be concluded;
6. report on payment of debentures, granted guarantees and consents on IZJS form at the moment of filing the application;
7. report on PPP compensations which the applicant already pays based on PPP contracts in force;
8. last final report of the State Audit Office on performed audit of financial reports and business;
9. statement issued by the mayor, municipal prefect or a county prefect that under material and criminal liability he guarantees for the authenticity of documentation.

B) DOCUMENTATION OF THE LEGAL PERSON OWNED BY THE UNIT OF LOCAL OR REGIONAL SELF-GOVERNMENT

1. depending on kind of financial reports a legal person submit, adopted budgetary plan or adopted plan of profit and loss account for the year in which the procedure for preparation of the project is initiated;
2. projection of budgetary receipts and expenses or projection of profit and loss account with PPP compensation included, for the following three years;
3. decision of authorized body on accepting a project. In case when more public bodies or legal persons owned by public bodies participate in the project, their decisions on participation in the project shall also be submitted;
4. amount of the expected PPP compensation;
5. certified financial reports for the previous year
6. projection of financial reports with the effect of investment described in the project proposal included;
7. report on payment of debentures and granted guarantees;
8. report on PPP compensations which the applicant already pays based on PPP contracts in force;
9. last final audit report on performed audit of financial reports;
10. statement issued by the authorized person of the legal person that under material and criminal liability he guarantees for the authenticity of documentation(except for item 4).

APPENDIX III

Form of the Report on implementation of public private partnership project

1. PROJECT:	
a) SUBJECT MATTER	
b) NAME	
c) TERM OF CONTRACT	
2. PUBLIC PARTNER:	
a) NAME	
b) ADDRESS	
c) OIB (personal identification number),MB (registration number)	
d) RESPONSIBLE PERSON	
e) TELEPHONE, E-MAIL ADDRESS	
3. PRIVATE PARTNER:	
a) NAME	
b) ADDRESS	
c) OIB (personal identification number),MB (registration number)	
d) RESPONSABLE PERSON	
e) TELEPHONE, E-MAIL ADDRESS	
4. STIPULATED COMPENSATION:	
a) Paid by a public partner – per month	
b) Paid by a private partner – per month	

5. FULFILMENT OF OBLIGATIONS:	
a) Does public partner fulfils his obligations regularly, if not – which ones?	
b) Does private partner fulfils his obligations regularly, if not – which ones?	
6. DISPUTE:	
a) Did any dispute occurred related to implementation of project within the last 6 months – for what reason?	
b) Have dispute resolution procedure been instituted – when and where, what is its present status?	
7. PENALTIES / LIQUIDATED DAMAGES	
a) Is there discrepancy between the compensation stipulated by the contract and actually paid compensation due to recorded default of the partner during implementation of the project - why?	
b) Which partner failed to fulfil contractual obligations?	
c) State the amount of discrepancy – reduction of value	
8. OTHER REMARKS:	

Date and place of the report

PUBLIC PARTNER:

PRIVATE PARTNER:

Signature

Signature