

**REGULATION ON IMPLEMENTATION OF
PUBLIC PRIVATE PARTNERSHIP PROJECTS**
(Official Gazette 88/2012 and 15/2015 - unofficial consolidated version)

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, fundamental issues of preparation, documentation and implementation of small value public private partnership projects, 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. *Present value* means value of future monetary flows resumed to the day of discounting with application of given discount rate;
3. *Unitary charge* within traditional (budget) model means payments from the budget needed for the settlement of the whole life costs and other outflows of the project in a defined lifetime of public buildings, while in public-private partnerships model all payments of the public partner to the selected private partner needed for the settlement of the whole life costs and other outflows of the project, or payment of the private partner to the public partner, in a defined lifetime of public buildings.

(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 investment and competitiveness 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.

Compulsory documentation for the implementation of small value PPP projects

Article 4a

In the procedure of preparing small value PPP projects, the public body shall prepare the following documents:

–Study on the feasibility of investment in the small value PPP project;

- instructions for developing the financial model;
- proposal of the PPP contract;
- tender documentation;
- other documents necessary for the comprehensive preparation of the project, if the same are determined by special regulations.

Prior consent of the Ministry of Finance

Article 4b

(1) In addition to the documentation stipulated by the regulations governing borrowing and taking on long-term obligations for local and regional self-government units, and the documentation from paragraph 2 of this Article, the public body fills out the application for the issuance of prior consent of the Ministry of Finance over the take-over of long term liabilities in the form from Appendix IV of this Regulation.

(2) The following shall be enclosed to the application from paragraph 1 of this Article:

- proposal of the PPP contract,
- Study on the feasibility of the investment of the small value PPP project,
- adopted budget plan for the year in which the procedure to prepare the small value PPP project shall begin,
- projections of budget revenues and expenditures, with included compensation ensuing from the project for the following three years,
- certified financial reports for the previous year, in line with the provisions from the area of financial reporting and budgetary accounting,
- report on the repayment of borrowing, issued guarantees and agreements on the form prescribed by the Ministry of Finance at the time of submission of the application, and
- information on compensation the public body already pays or will pay ensuing from the concluded PPP contract, pursuant to the Budget Act.

Structure of the Study on the feasibility of the investment of a small value PPP project

Article 4c

The Study on the feasibility of the investment in a small value PPP project contains at least the following data:

1. Introduction;
2. General data on the public body - client;
3. Name and purpose, objective and subject of the project;
4. Description of the project;
5. Qualitative and/or quantitative analysis of value for money;
6. Overview of the proposed model of organisation and financing of projects;
7. Identification and allocation of project risk;
8. Assessment of the value of procurement, and
9. Conclusion.

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. structure of capital costs;
10. structure of maintenance and use costs;
11. risk allocation matrices and risk quantification layouts;
12. calculation of the current value of whole life costs:
 - based on the traditional (budget) model;
 - based on the PPP model;
13. calculation of compensation:
 - hypothetical based on the traditional (budget) model;
 - expected based on the PPP model;

14. financial analysis (PPP model):
 - structure of capital costs and projection of asset amortization;
 - structure of operational costs;
 - structure of sources of financing and projection of debt amortisation;
 - projection of financial reports;
 - analysis of project liquidity;
 - analysis of profitability;
 - analysis of coverage of sources of financing for the project;
15. calculation and graphical overview of the expected value for the money;
16. deterministic and/or stochastic vulnerability analysis;
17. final assessment.

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 investment and competitiveness 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;
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 unaligned with the changed compensation 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. 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 compensation arising from the calculation 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, that arise prior to the conclusion of the PPP contract, 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) the present value of the compensation arising from the calculation of whole life costs in the contracted period.

(6) In the procedure to select the private partner in small value PPP projects, the public body, with the criteria from paragraph 5 of this Article, must use at least one of the following criteria:

a) reduced total installed power,

b) reduced consumption, or

c) reduced costs.

(7) 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 compensation 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.

(8) 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 investment and competitiveness shall publish on its web page a discount rate.

Assessment of amendments of PPP contract

Article 10

When assessing the amendments of PPP contract, Agency for investment and competitiveness 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 provides information on:

1. the PPP project,
2. the public partner,
3. the private partner,
4. compensation stipulated by the contract,
5. reduced payments,
6. other remarks.

(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

Integral parts of this Regulation are:

Appendix I – Form of information on the intention to implement a public private partnership project,

Appendix II A – Form for calculation of capability for concluding a public private partnership contract,

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

Appendix 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,

Appendix III - Form for the submission of the Report on the implementation of the PPP project,

Appendix IV – Form for the calculation of the possibility of taking on long-term liabilities in small value PPP projects.

Article 13

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).

APPENDIX 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 for the submission of the Report on the implementation of PPP projects

For the period from the year _____ to _____¹

1.	PROJECT:	
1.1.	SUBJECT	
1.2.	NAME	
1.3.	DURATION OF THE CONTRACT	
1.4.	TIME REMAINING TO EXPIRY OF THE CONTRACT	
2.	PUBLIC PARTNER:	
2.1.	NAME	
2.2.	ADDRESS	
2.3.	OIB, MB	
2.4.	CONTACT PERSON	
2.5.	TELEPHONE, E-MAIL ADDRESS	
3.	PRIVATE PARTNER:	
3.1.	NAME	
3.2.	ADDRESS	
3.3.	OIB, MB	
3.4.	CONTACT PERSON	
3.5.	TELEPHONE, E-MAIL ADDRESS	
4.	CONTRACTUAL COMPENSATION:	
4.1.	CONTRACTUAL COMPENSATION PERIOD ²	
4.2.	ALIGNED COMPENSATION PERIOD ³	
4.3.	PAID COMPENSATION PERIOD ⁴	
5. REDUCED PAYMENTS		
5.1.	Reasons for reduced payments:	
6.	OTHER REMARKS:	

Date and place of compilation of the Report

PUBLIC PARTNER:

PRIVATE PARTNER:

Signature, MP

Signature, MP

¹ The form is filled out for a six-month period (January – June; June - December).

² Compensation defined by the contract for a six-month period.

³ Value aligned compensation parameters as defined by the contract (inflation, CPI, etc.).

⁴ Actual payments of the compensation by the public or private partner pursuant to the issued invoice.

APPENDIX IV

Form for the calculation of the possibility of taking on long-term liabilities in small value PPP projects

No	Description	Formula	Value (HRK)
	Data on person submitting request (name, OIB, business account)		
i	Amount of total summed compensation in the contracted period with the remainder of value, beginning from the month in which it is expected that the structure will be placed into operation, and concluding with the final month of the duration of the contract (HRK)		
ii	Number of months in the contracting period in which the compensation is paid (number)		
iii	Average monthly compensation (HRK)	(i)/(ii)	
iv	Average annual compensation (HRK)	(iii)*12	
v	Investment period (from conclusion of the contract to the month of the first payment of the monthly compensation) (number)		
vi	Achieved budgetary revenues of the previous year, reduced by the capital revenues according to the Budget Act (HRK)		
vii	Share of the compensation in revenues (%)	(iv)/(vi)	
viii	Other annual contracted PPP compensation (HRK)		
ix	Share of total compensation in revenues (%)	((iv)+(viii))/vi	