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THE SYNERGY OF PUBLIC PROCUREMENT AND MANAGEMENT FOR PROJECTS FINANCED FROM THE EUROPEAN STRUCTURAL AND INVESTMENT FUNDS

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ABSTRACT

Under the Partnership Agreement with the European Commission, the Republic of Croatia has available 10,675 billion euros for use from the European Structural and Investment Funds in the period up to the year 2020.

Most of the EU funds will be „spent“ on the basis of public works, public supply and public service procurement contracts and according to experience, it is assumed for it to be the 48% of the total received funds. The implementation of public procurement procedures while respecting the strict legally prescribed procedures precedes the conclusion of the contract, just as the allocation of funds is a matter to complex criteria for choosing the best projects to be co-financed out of EU funds.

Past experience in the implementation of projects funded by European Structural and Investment Funds has shown that frequent errors occur in the area of public procurement due to the non-compliance of officials implementing public procurement and officials implementing projects co-financed out of EU funds. Since it is in the interest of the project submitter to coordinate the usage of funds received under given terms and conditions, it is necessary to include a public procurement specialist in the initial phase in order to avoid unnecessary errors in later phases of the project.

Key words: EU funds, public procurement; project management; public procurement contract; planning and implementation of the projects

1. EUROPEAN STRUCTURAL FUNDS AND EUROPEAN UNION DEVELOPMENT STRATEGY

The European Union, as an unique economic and political partnership between 28 European countries¹ aims to economically foster the whole Union by strengthening each of its member country.

European development strategy guidelines are presented in the document Europe 2020 – A strategy for smart, sustainable and inclusive growth². Europe 2020 is a ten-year strategy for the period from the 2010 to the year 2020 that joints and organises economic, social and development policies into two levels – the EU level and the national level of each individual member country in order to achieve the general progress of all.

“The Commission is proposing five measurable EU targets for 2020 that will steer the development process and be translated into national targets: for employment; for research and innovation; for climate change and energy; for education; and for combating poverty.”³

In order to achieve the goals, the European funds have been established to be sources for financing various investment projects throughout Europe.

The main financing sources for EU’s development policy are five structural and investment funds:

1. European regional development fund (ERDF)
2. European social fund (ESF)
3. Cohesion fund (CF)
4. European agricultural fund for rural development (EAFRD) and
5. European maritime and fisheries fund (EMFF).

European regional development fund (ERDF) aims to strengthen the economic and social cohesion by correcting imbalances between its regions. It mainly focuses on infrastructure investment projects, investments in production for job creation, local development and development of small and medium businesses.

The European social fund (ESF) focuses on human capital investments, promotes investments in the quality of manpower and aims to facilitate employment or education for the unemployed and those who are at risk of poverty.

The cohesion fund (CF) is a financial mechanism for financing the large

¹ The Republic of Croatia became the 28th EU member country on 1 July 2013

² EUROPE 2020 – A strategy for smart, sustainable and inclusive growth. (2010, March 3). Retrieved from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:2020:FIN:EN:PDF>

³ EUROPA 2020. – *Europska strategija za pametan, održiv i uključiv rast*. (2010, March 3). Retrieved from: http://www.safu.hr/datastore/filestore/10/Strategija_Europa_2020.pdf

infrastructure projects in the EU related to transport and environmental protection in countries with a GDP per capita of less than 90% of the EU average, including the Republic of Croatia.

European agricultural fund for rural development (EAFRD) sets six common priorities that aim to strengthen the competitiveness of all types of agriculture on the basis of knowledge transfer and innovations, as well as restoring and preserving the ecosystem.

European maritime and fisheries fund (EMFF) is intended for financing sustainable fishing, supports coastal communities in diversifying their economies and finances projects that create new jobs and improve quality of life along European coasts.

These five funds are known as the European Structural and Investment Funds (ESIF) that in the period from 2014 to 2020 reach the total of 454 billion euros⁴ while the amount provided for the Republic of Croatia totals 10.675 billion euros⁵.

Fund management is subject to strict rules that ensure firm control over the spending of funds. One of the control mechanisms includes the implementation of public procurement procedures in accordance with European directives for all EU members.

2. PUBLIC PROCUREMENT IN THE EUROPEAN UNION AND THE REPUBLIC OF CROATIA

In accordance with the legally prescribed procedures, public procurement is one of the primary tools for control of the efficiency of public spending, while to the beneficiaries of EU funds it also represents a very important business function for the implementation of the *Europe 2020 strategy*.

The Public Procurement Act of the Republic of Croatia and related subordinate regulations are mandatory for contracting authorities⁶, contracting

⁴ *Evropska komisija, Europski strukturni i investicijski fondovi.* (n.d.). Retrieved from: http://ec.europa.eu/contracts_grants/funds_hr.htm

⁵ *ESI fondovi 2014.-2020..* (n.d.). Retrieved from: <http://www.strukturnifondovi.hr/esi-fondovi-2014-2020>

⁶ According to the Article 5 in the Public Procurement Act of the Republic of Croatia, contracting authorities who are bound by the Act are the following:
Contracting authorities are the following:

1. the state bodies of the Republic of Croatia,
2. local and regional self-government units,
3. legal persons established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character and which meet one of the following conditions:
 - they are financed from the State Budget or the budget of local or the budget of regional self-government unit or other such legal persons in more than 50%, or

entities⁷ and for all subjects concluding contracts which contracting authorities subsidize or co-finance with more than 50%.⁸

The public procurement is regulated by European directives, namely by:

1. Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement

2. Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors; and

3. Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts.

Since it is mandatory for all EU member countries to apply these directives to their national legislation, the legal framework for the implementation of public procurement is almost identical to all the member countries.

The basic principles of public procurement are prescribed by the directives, such are the principle of competition, the principle of fairness, the principle of the prohibition of discrimination, the principle of mutual recognition, the principle of proportionality, the principle of transparency, and the application of these principles ensures effective public procurement and the economical use of public funds.

This general principles represent the basic framework for the implementation of public procurement procedures, defined by the Public Procurement Act⁹. It is basic framework for public purchaser but also for all other users of

- they are subject to management supervision by state bodies, local and regional selfgovernment units or other such legal persons, or
- they have a supervisory board, an administrative or managerial board, more than half of whose members are appointed by the state bodies, local and regional self-government units or other such legal persons,

4. associations formed by the bodies referred to in points 1 and 2 of this paragraph or legal persons referred to in point 3 of this paragraph.

⁷ According to the Article 6 in the Public Procurement Act of the Republic of Croatia, contracting entities are the following:

1. contracting authorities which pursue one or more activities referred to in Articles 107 to 112 of this Act when procuring supplies, works or services for the purpose of performing those activities,
2. an undertaking over which one or more contracting authorities exercise or may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein or the rules which govern it, and which pursue one or more of the activities referred to in Articles 107 to 112 of this Act when procuring supplies, works or services for the purpose of performing those activities,
3. entities which have as one of their activities any of the activities referred to in Articles 107 to 112 of this Act or a combination thereof and operate by virtue of a special or exclusive right granted by a competent authority when procuring supplies, works or services for the purpose of performing those activities, and which are not contracting authorities or undertakings within the meaning of points 1 and 2 of this paragraph.

⁸ *Službeni list Europske Unije L94 od 28. ožujka 2014..* (2014, March 28). Retrieved from: <http://eur-lex.europa.eu/legal-content/HR/TXT/PDF/?uri=OJ:L:2014:094:FULL&from=HR>

⁹ Public Procurement Act of the Republic of Croatia (NN 90711, 83/13, 143/13, 13/14)

EU funds (like private profit organization according to this Act – the so-called NPO (Non-Purchasing Organizations). Special rules for NPO are prescribed by the Annex 01 Public Procurement Procedures for Legal Persons Not Obligated by the PPA¹⁰.

3. PUBLIC PROCUREMENT MANAGEMENT IN PROJECTS FINANCED FROM THE ESI FUNDS

The general principle of the public procurement is “best value for money” which means finding the best way to get in time, get what is necessary for the contracting authorities and for end-users who will, in the end, get the proper quality for their money.

In the process of gaining permissions for the use of the ESI funds¹¹, the applicant is preparing the project documentation that includes the investment plan, the business plan or the feasibility study. Within this documentation the applicant presents the technical structure of the investment, the list of investments in the property, facilities etc., according to which a procurement plan shall be designed. The design of a procurement plan implies that the elements of procurement are known, ie whether the subject of public procurement are goods, services or construction works. At that point, it is right to ask whether the applicant is well-versed in the market so that he can define the procurement that will meet the needs of the project and its users. The public purchaser procurement plan is the basic document defining the procurement item¹², the procedure of the public procurement¹³, the time the procedure process will start and whether to conclude a contract or a framework agreement and how long will it last. At the very beginning, in the process of preparing the documentation for applying for a grant from ESI funds, it is recommended for the applicant to include a specialist in public procurement. In that way significant risks arising out of wrong access to public procurement can be avoided. Moreover because projects financed by the ESI²⁷ funds will always be realised through public procurement contracts, one or more, smaller or larger extent and complexity. Therefore, it is certain that a public procurement specialist will be hired within the project, where he may be the project manager or project employee or external associate.

¹⁰ Structural funds. Retrieved from: <http://www.strukturnifondovi.hr/vazni-dokumenti>

¹¹ European Structural and Investment (ESI) funds

¹² Goods, services and/or construction works

¹³ There are seven types of public procurement procedure: 1. open procedure, 2. restricted procedure, 3. negotiated procedure, 4. competition, 5. competitive dialogue, 6. I.B procedure and 7. National prequalification system

Over the period from 2007 to 2013, *ex-ante* control of the processes of using EU funds in member countries has found a number of errors made in the public procurement procedures. Public procurement is one of the general *ex-ante* requirements in legal acts, it prescribes that appropriate mechanisms are needed for effective implementation of the public procurement rules of the EU, in order to achieve the transparency of the contract awarding procedures and to include staff trained and informed about relevant information¹⁴.

3.1. KEY RISKS IN THE AREA OF PUBLIC PROCUREMENT FOR EU PROJECTS

The fact that 48% of the received EU funds¹⁵ are “spent” through public procurement contracts is a starting point for an argument that the risks of implementing public procurement procedures are the key risks for the success of the placement of public EU funds. Risks occur when defining the needs of the contracting authority and the procurement planning, in the area of defining technical specifications of the subject of procurement, in the selection of the best process for the planned procurement, in the area of preparation of the Tenderer’s Guidelines and tender calls, in the area of defining the selection criteria as well as in the negotiation phase if assumed to be included in the process ultimately there are the risks of delays in the realization of the contract or the risk of non-fulfillment of the contract. Regardless of which of the above mentioned risks is considered, they all ultimately reflect on the quality of the contract realisation or framework agreement, and the success of the entire project.

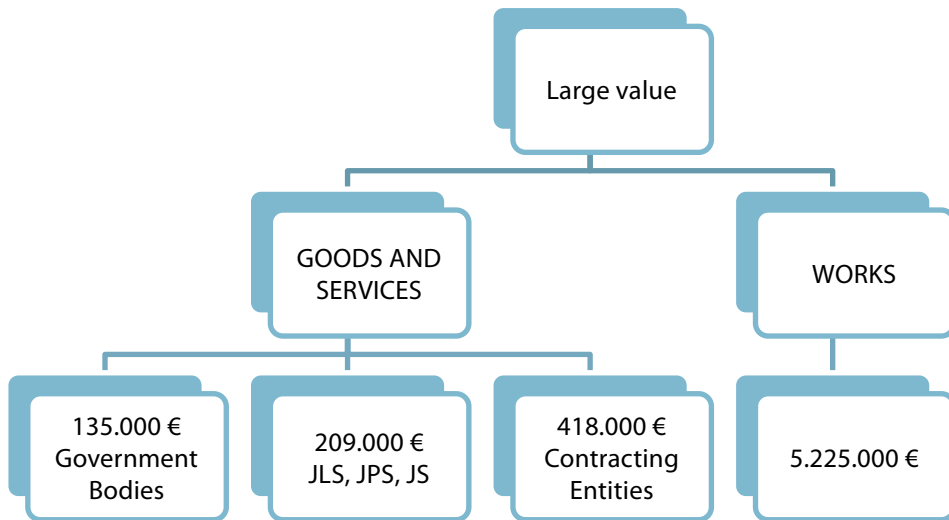
For example, incorrectly defined **technical specifications** or inadequately defined cost estimate will certainly result in additional costs caused by downtimes, additional purchases, or even inefficient procurement that no longer has any purpose. Various oversights in the making of the cost estimate may be done due to the inability to overview the structure of the subject of procurement because all the relevant stakeholders did not participate in the creation of the cost estimate. For example, if performing construction works at sites near which there are archaeological finds, it is necessary to consult experts or even change the location of the building, because possible archeological discovery during the construction works would certainly cause downtime and possibly unsuccessful realization of the project itself.

¹⁴ *Pogreške u rashodima za ruralni razvoj – što ih uzrokuje i kako ih se nastoji otkloniti.* (2014). Retrieved from: http://www.eca.europa.eu/Lists/ECADocuments/SR14_23/SR14_23_HR.pdf

¹⁵ *Javna nabava - Smjernice za praktičare o izbjegavanju najčešćih pogrešaka u postupcima javne nabave u okviru projekata financiranih iz europskih strukturalnih i investicijskih fondova.* (2015). Retrieved from: http://ec.europa.eu/regional_policy/sources/docgener/informat/2014/guidance_public_proc_hr.pdf (p. 7)

question is also whether it is possible to prepare the tender documentation for the EU project within three to six months when it is required that a realistic cost estimate and a procurement plan for the realization of the project are included. Is it possible that such short deadlines provoke the opposite effect, a quick and unrealistic overview of the project that will have a negative impact on the project implementation stage, as well as on the realization of the public procurement contract. For example, for the implementation of an open procedure, it is necessary for it to be planned for at least three to six months before, depending on whether large or small value is being procured, while for the planning of each of the two-phase procedures it takes few months more.

Procurements of small values range from 200,000.00 kunas (for goods and services), and from 500,000.00 kunas (for works) up to the european level values (values in the following table).



Source: Uredba komisije EU 2015/2340, 2015/2341 and 2015/2342 od 15.prosinca 2015.. (2016, January 1). Retrieved from: <http://www.javnabava.hr/default.aspx?id=4079>

	TYPE OF THE PROCEDURE	DEADLINE FOR SUBMISSION			
		APPLICATION FOR PARTICIPATION		TENDERS	
		Low	High	Low	High
1.	OPEN PROCEDURE			20	40 (PIO ¹⁸ up to 36, but not less than 22 days.)
2.	RESTRICTED PROCEDURE	20	30 (In urgent cases not less than 15 days.)	20 (-5 days in cases when complete TD ¹⁹ is published on the EOJN ²⁰ .)	40 (-5 days in cases when complete TD ³⁴ is published on the EOJN ³⁵ , in urgent cases not less than 15 days.)
3.	NEGOTIATED PROCEDURE	20	30 (In urgent cases not less than 15 days.)	Determined by the contracting authority – reasonable deadline	Determined by the contracting authority – reasonable deadline
4.	NEGOTIATED PROCEDURE WITHOUT PUBLICATION	Reasonable deadline for initial tender, but if necessary, after the initial review of the tender – the contracting authority may invite the tenderer to modify and / or supplement the tender or to deliver the final tender within a reasonable deadline .			
5.	COMPETITIVE DIALOGUE	20	30	Determined by the contracting authority – reasonable deadline	Determined by the contracting authority – reasonable deadline

Source: Public Procurement Act of the Republic of Croatia (NN 90/11, 83/13, 143/13 i 14/13) – modified ^{18 19 20}

Therefore, in the phase of preparation of the project documentation for the application for the ESI funds, the deadlines for implementation of pub-

¹⁸ If the public contracting authority has published a PIO - prior (information / indicative) notice provided that the PIO contains all the information that should be in the invitation to tender from Annex V.A (B) of the Act, that the PIO has been notified of a minimum of 52 days and a maximum of 12 Months prior to the day of the call for tenders

¹⁹ Tender Documents

²⁰ EOJN –The Electronic Public Procurement Classifieds portal

lic procurement procedures should be set as well as the time needed for the preparation of the procedure and for market research.

4. CONCLUSION

A long-term period is coming when domestic infrastructure projects, larger and smaller, will be funded through ESI funds. The disharmony between the planning phase, ie the preparation of the project for allocation of funds and the project implementation phase, with particular emphasis on the implementation of public procurement within the project, leads to smaller or greater risks, whether financial, technical, social and / or ecological. It is certainly a recommendation not to avoid public procurement procedures that are in accordance with European directives and the national legal framework, in order to avoid unacceptable costs.

When considering the aspect of public procurement, in order to minimize the risks it is necessary to harmonize the applicant's organisation in the planning phase and in the project realization phase in a way that at the very beginning of the project planning and designing, the applicant engages the person who will later be involved in the implementation of public procurement procedures, resulting in more efficient spending of funds and successful completion of a concrete project. It ensures correct handling of goods, works and services, ie the correct definition of procurement, selection of the best public procurement procedure for goods, services and / or construction works, optimum timing of the implementation of certain activities, reduction of the risk of complaint, and ultimately the successful funding through grants from EU funds.

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SINERGIJA JAVNE NABAVE I UPRAVLJANJA PROJEKTIMA FINANCIRANIH IZ EUROPSKIH STRUKTURNIH I INVESTICIJSKIH FONDOVA

SAŽETAK RADA:

Na temelju Sporazuma o partnerstvu sa Europskom komisijom, Republika Hrvatska ima na raspolaganju 10,675 milijardi EUR-a za korištenje iz europskih strukturnih i investicijskih fondova u razdoblju do 2020. godine.

Najveći dio dodijeljenih sredstava iz EU fondova za odobrene projekte „trošiti“ će se na temelju sklopljenih ugovora o javnoj nabavi roba, usluga i radova, a prema dosadašnjem iskustvu pretpostavlja se da je riječ od oko 48% ukupno dodijeljenih sredstava. Sklapanju ugovora prethodi provođenje postupaka javne nabave uz poštivanje strogih zakonski propisanih procedura, upravo kao što i dodjeljivanje sredstava iz EU fondova podliježe složenim kriterijima odabira najboljih projekata koji će se sufinancirati iz bespovratnih sredstava.

Dosadašnje iskustvo u provedbi projekata, financiranih iz europskih strukturnih i investicijskih fondova, pokazalo je da se učestale greške javljaju u području javne nabave, i to uslijed neusklađenog djelovanja službenika koji provode javnu nabavu i službenika koji provode projekte sufinancirane iz EU fondova. S obzirom da je u interesu prijavitelja projekta da uskladi korištenje dobivenih sredstava zadanim uvjetima, to je potrebno već u početnoj fazi izrade projekta uključiti specijalistu javne nabave, a radi izbjegavanja nepotrebnih grešaka u kasnijim fazama.

Ključne riječi: EU fondovi, javna nabava, upravljanje projektima, ugovor o javnoj nabavi, planiranje i provedba projekta