



REPUBLIC OF CROATIA

MINISTRY OF ECONOMY,  
ENTREPRENEURSHIP  
AND CRAFTS

## CALL FOR PROJECT PROPOSALS

### CONSTRUCTION AND EQUIPPING OF PRODUCTION CAPACITIES OF SMEs

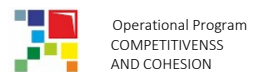
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## ANNEX D

### REGULATIONS ON THE IMPLEMENTATION OF PROCUREMENT PROCEDURES FOR NON-COMPULSORY PERSONS IN THE PUBLIC PROCUREMENT ACT (NCPPP)



REPUBLIC OF CROATIA  
Ministry of Economy,  
Entrepreneurship and  
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1. Persons conducting procurement procedures based on these regulations are not subject to the regulations of which public procurement procedures are conducted (Regulations on Public Procurement). There are legal entities and craftsmen who implement projects co-financed by ESI funds (hereinafter: NCPPP).
2. Legal persons and craftsmen referred to in item 1 of these Regulations, procure works, goods and services applying the following principles:
  - the principle of rational and efficient spending of public funds (ensures that the allocated funds are used in an optimal way and responsible, in order to achieve the objectives in the best possible way and at minimal costs);
  - the principle of free movement of goods and services and the principle of freedom of business establishment (enables self-employed persons and professionals or legal entities legally pursuing an activity in one of the Member States to: (i) permanently and continuously pursue an economic activity in another Member State (freedom of establishment of business or (ii) temporarily offer and provide their services in other Member States, retaining their business location in their country of origin).
  - the principle of equal treatment and non-discrimination (ensures for all bidders the right to equal treatment, including the right to submit and review and assess the tender in an equal manner, as well as their the right to have their tender selected, without discrimination on the criteria such as age, disability, nationality, race or religion);
  - the principle of transparency (ensures the visibility and publicity of information on the procurement process, which must be clearly defined and available to stakeholders);
  - the principle of mutual recognition (ensures the free movement of goods and services lawfully provided, produced or sold in another Member State, regardless of the existence of national technical regulations in the destination Member State);
  - the principle of avoiding conflict of interest – when determining the existence of a conflict of interest, the provisions of the rules based on which public procurement is conducted (Regulations on Public Procurement) governing this issue shall be applied in an appropriate manner.
  - the principle of protection of competition within the meaning of Article 101 and 102 of the Treaty on the Functioning of the European Union and the Treaty on the Functioning of the European Union OJ C 83, 30/3/2010)
  - the principle of proportionality (ensures that any selected measure is necessary and appropriate regarding the requested objectives. In particular, the deadlines and terms and conditions to be sent and applied must be appropriate to the size, nature and complexity of the procurement and the contract arising from it. Also, the evidence required must be only that which is strictly necessary to establish whether all the set conditions are met).
3. For the procurement of goods and services with a total estimated value **of HRK 20,000.00, or the procurement of works of up to HRK 50,000.00**, a NCPPP conducts the procedure of direct contracting by issuing a purchase order. The purchase order must be kept as proof of the purchase of order of the conducted purchase as well as proof of payment, in order of the cost to be considered acceptable.
4. **A NCPPP may conclude a procurement contract based on one tender (a single tenderer):**

- **for the procurement of goods and services of an estimated value from HRK 20,000.00 to HRK 500,000.00, or the procurement of works of from HRK 50,000.00 to 1,000,000.00,**
- in exceptional, justified cases, when there is a need for urgent action due to circumstances that NCPPP could not have foreseen, avoided or eliminated, and are not consequences of their action and/or omission and relate to the need to preserve a human life and health, property or further damage on the property related to this contract; or
- if there is no possibility of collecting tenders in the market as the subject of procurement is exclusively connected to a certain economic entity<sup>1</sup> that is the only one that can deliver it (for technical reasons or reasons related to the protection of special or exclusive rights), or
- if it is necessary to contract additional works, goods or services in relation to these from the Grant Agreement, which are necessary for the completion of the project. In this case, the total value of contracted works, goods or services does not exceed 15% of the value of the basic procurement contract.

**4.1.** The procedure begins by sending a **call for tenders** to an economic operator stating at least the following information:

- description of the subject of procurement,
- quantity of the subject of procurement,
- deadline for the submission of tenders,
- information on the documentation to be submitted by the tenderer
- deadline for delivery of goods, provision of services or performance of works,
- deadline and terms of payment,
- other conditions for the execution of this contract (at the discretion of the NCPPP).

**4.2** Prior to the commencement of the said procedure, the NCPPP is obliged to research the relevant market for the subject of procurement by searching on the Internet or by sending an enquiry for quotation to a certain number of mutually independent economic operators (at least three) (which are not interconnected or partner companies), that is independent of the NCPPP, and may perform the subject of procurement in the opinion of the NCPPP.

**5.** If the total estimated value of procurement of **goods or services is above HRK 500,000.00, or works above HRK 1,000,000.00** a Procurement Notice (hereinafter: **PN**) is published.

**5.1.** PN is published on the website [struktumifondovi.hr](http://struktumifondovi.hr).

**5.2.** The NCPPP, i.e. the person authorized to represent it by law, is responsible for the regularity of the procurement procedure and acting in accordance with these regulations.

**5.3.** The person authorized to represent the NCPPP or the person appointed to conduct the procurement procedure of the NCPPP-a shall be excluded<sup>2</sup> from the procurement procedure in case of a conflict of interest.

**5.4.** When determining the existence of a conflict of interest, the provisions of the applicable Public Procurement Act (Article 75 to PPA 2016) governing this issue shall apply accordingly.

**6. The thresholds** specified in this regulation refer to the total estimated values of the subject of procurement, excluding VAT (tax for which the NCPPP can be refunded for).

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<sup>1</sup> An economic operator is a natural or a legal person or a consortium of these persons offering the execution of work and/or works, delivery of goods or provision of services in the market.

<sup>2</sup> In this case, substitutes must be ensured.

7. The NCPPP is obliged to describe the **subject of procurement** in a clear and non-discriminatory manner, enabling competition between the tenderers and comparability of bids in relation to the set requirements.

7.1. Trademarks may not be mentioned in the description of the subject of procurement, except in cases when this is the only way to describe it, but then each reference to the trademark must be accompanied by the expression »or equivalent«.

8. For the procurement listed under item 5 of these Regulations, the PN and Call with the Procurement Documentation are published.

8.1. The **PN** contains at least:

- name and address and at least a contact information of the NCPPP;
- basic information on the technical details of the subject of procurement;
- deadline for submission of tenders (date and time);
- electronic address/place where additional information/documentation is available (if applicable).

8.2. **The Tender Documentation** contains at least:

- name and address and at least one contact information of the NCPPP;
- technical specifications and/or job description and/or all relevant technical details of the subject of procurement;
- place of execution / performance of works, delivery of goods or provision of services; the estimated value of procurement (*not a mandatory condition*);
- information on the type, scope and general nature of the works/type, quantity and method of delivery of goods/description and scope of services to be provided;
- if the subject of procurement is divided into groups, information on the possibility of submitting tenders for one, more, or all groups;
- deadline for execution of works/delivery of goods/provision of services;
- deadline for submission of tenders (date and time);
- conditions and requirements that must be met by potential tenderers;
- method of submission of tenders;
- address (postal and electronic) for submission of tenders;
- full name, telephone number and e-mail address of the contact person;
- specification of the criteria for selection of the tender that are applied in the procurement procedure
- required warranties (*not a mandatory condition*);
- reasons for exclusions (*not a mandatory condition*).

9. When determining the **deadlines for the submission of tenders**, the NCPPP takes into account the complexity of the subject of procurement and the time required for the preparation of the tender.

9.1. The deadline for submission of tenders in the cases listed in item 4 of the Annex, may not be shorter than *10 calendar days* from the day when the potential tenderer received the Call<sup>3</sup>.

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<sup>3</sup> The Call must state the deadline for submission of tenders and the same starts from the first day following its receipt, in which case, the NCPPP, for each of the invited potential tenderers, monitors the course of the specified deadline, taking into account the proof of receipt of the Call.

9.2. The deadline for submission of tenders in the cases specified in item 5 of this Annex may not be shorter than *20 calendar days* from the day of publication of PN.

10. after the deadline for submission of tenders **the contents submitted tenders is checked**, they are compared with technical specifications and/or job description, and/or all relevant technical details of the subject of procurement and it is determined if all prescribed procurement conditions are met (in terms of deadlines, required documentation, tender selection criteria).

11. **The NCPMP shall cancel** the procurement procedure if, after the deadline for submission of tenders:

- no tenders were received;
- a predetermined number of valid tenders / no valid<sup>4</sup> tenders have been received;
- after rejections of tenders, no valid tender remains.

11.1. If there are reasons for cancellation of the public procurement procedure referred to in item 11 of these regulations, the NCPMP shall, without delay, issue a **decision on cancellation** stating the following:

- subject of procurement (or group of subjects of procurement) for which the decision on cancellation is made;
- explanation of the reasons for cancellation;
- the deadline within which a new procedure will be initiated for the same or similar subject of procurement, if applicable;
- the date of adoption and signature of the responsible person;

and shall deliver it without delay to the economic operators who have submitted tenders.

11.2. When the procurement procedure referred to in item of this Annex is conducted, the NCPMP shall, without delay, publish a notice on the cancellation of the procurement procedure on the website of the NCPMP, and if they do not have it, then on [struktturnifondovi.hr](http://struktturnifondovi.hr), whereas in the procurement procedure referred to in item of the same, the tenderers will be notified in writing without delay.

11.3. In the case described under item 11 of these regulations, the NCPMP shall reinstate the procurement procedure or conclude a procurement contract based on negotiations with the tenderers provided that *original conditions of the same procedure have not been changed*. In the latter case, there is no obligation to re-publish publicly, but a request for tender is sent to a certain number (at least three) of economic operators that, according to the NCPMP, can execute the subject of procurement (the tenderers who have already submitted tendered in the cancelled procedure are also allowed), on the basis of the previously conducted market analysis (there has to be evidence on the conducted analysis), while ensuring in such a way that in the competition all entities can participate in the procedure under equal conditions, in the single market of the European Union.

12. The NCPMP opens and evaluates the submitted bids on which **Minutes** are kept.

12.1. The Minutes on the opening and evaluation of tenders shall contain at least:

- name and seat of the NCPMP,
- place, date and time of start and end of opening of tenders,
- subject of procurement,
- type of procurement procedure (in accordance with these regulations)
- full name of the persons present and their signatures,
- name and seat of the tenderer, in order of receipt of tenders<sup>5</sup>,

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<sup>4</sup> A valid tender is the one that meets the requirements of the tender documentation and is timely.

<sup>5</sup> The Minutes should also contain a list of received tenders with the date of receipt and information, which of the received tenders were late and were therefore not opened. Late tenders are not opened.

- the price of the tender without value added tax, the price of the tender with value added tax, except in the case of the most economically favourable tender when the price is not one of the selection criteria,
- start and end date of review and evaluation of tenders,
- information on clarification regarding documents/tenders (including information on corrections of calculation errors), if any,
- list of requested and submitted bid bonds, if requested by the NCPPP,
- analysis of tenders relating to the fulfilment of requirements regarding the description of the subject of procurement and technical specifications,
- name and seat of the tenderer whose tenders are rejected, with an explanation of the reasons for rejection (also in the case of unusually low prices<sup>6</sup>),
- name of the tenderer the NCPPP intends to conclude a procurement contract / in relation to which they intend to issue a purchase order,
- list of attachments to the Minutes (requested/submitted documents, explanations, commentaries).

13. The tender fulfilling all requirements of the Tender Documentation and

- has the lowest price (when the only criterion for selection of the tender is the lowest price) or is
- economically most favourable (when the criterion for selecting the best value for money, in terms of quality, price, technical characteristics, operating costs, deliver days, etc.) will be considered the best tender.

14. Based on the results of review and evaluation of tenders, the NCPPP is obliged to reject<sup>7</sup>:

- a tender which is not complete,
- a tender which is contrary to the provisions of the Tender Documentation,
- a tender in which the price is not expressed in its absolute amount,
- a tender containing errors, flaws or ambiguities, that is, if errors, ambiguities cannot be eliminated,
- a tender in which the clarification or completion, in accordance with these regulations, does not eliminate the error, flaw or ambiguity,
- a tender that does not meet the requirements related to the characteristics of the subject of procurement, and thus does not meet the requirements of the Tender Documentation,
- a tenderer for which the tenderer did not accept a correction of the calculation error in writing,
- if the required warranties have not been submitted.

15. The NCPPP can exclude the tenderer only if the conditions of the Tender Documentation are not met, i.e. it is not in accordance with the reasons for exclusion stated in the documentation.

16. In the procedure of review and evaluation of the tenders, the NCPPP may invite tenderers to provide, within a reasonable period, no less than five or more than 15 calendar days *a clarification or completion in relation to the documents* required for the exclusion and eligibility conditions and certificates on compliance with certain norms, to eliminate the errors, flaws or ambiguities that can

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<sup>6</sup> If the tender states unusually low tender price or unusually low individual unit price, which calls into question the possibility of delivery of goods, performance of works or provision of services which are the subject of procurement, the NCPPP may reject such tender. When evaluating prices the NCPPP takes into account comparative experiential and market values and all the circumstances under which a particular procurement contract will be executed.

<sup>7</sup> The list is not exhaustive. Any other reason for the rejection of a tender must be clearly stated in the tender documentation, explained and substantiated by appropriate evidence.

be removed, where clarification or completion in relation to the said documents is not considered a modification of the tender (if these conditions are set in the Tender Documentation).

16.1. In the procedure of review and evaluation of tenders, the NCPPP may invite tenderers to *clarify certain elements of the tender* in the part related to the offered subject of procurement within a period that may not be shorter than five or longer than 10 calendar days. The clarification must not end in a change of the tender.

17. The NCPPP shall notify in writing the all entities that have submitted a tender on the selected tenderer, enclosing a copy of the **Decision on the Selection** and will send them a reasoned written notice of rejection of their tender.

17.1. The Decision on the Selection shall contain at least:

- name and address of the selected tenderer;
- total value of the selected tender.

17.2. In the cases listed under item 4 and 5 of this Annex, after selecting the most favourable tender, the NCPPP concludes a contract with the selected tenderer. The procurement contract is concluded based on the conditions from the Tender Documentation and the selected tender.

17.3. **The Procurement Contract** shall contain the following information at least:

- name, address, telephone number, fax number, e-mail address of the NCPPP,
- description of the subject of procurement,
- name and information on the selected tenderer (as in indent 1),
- information on the amount of the contract corresponding to the amount of the selected tender.

17.4. **The Decision on exclusion/rejection of the tender** must contain at least:

- name and address of the tenderer whose bid is excluded/rejected,
- reasons for exclusion za exclusion of the tenderer/rejection of tender.

17.5. The decision on exclusion of the tenderer / decision on rejection of the bid shall be delivered to the tenderer to whom it refers.

18. All the above does not apply to the following contracts concluded by the NCPPP:

- contracts for the acquisition, lease or rental of existing buildings, other immovable property, land or rights concerning them, regardless of the method of financing;
- arbitration and conciliation services;
- employment contracts;
- contracts for radio/TV broadcasting dates;
- contracts procuring the service of publication in the Official Gazette.

Also, the NCPPP does not have to carry out the procurement procedure in a situation when it comes to costs (goods, works, services) which are paid to previously specified bodies on the basis of regulations or other binding acts (such as the cost of utility contribution, use permits, energy connection, water connection) . In addition, if the NCPPP project proposal in the quality assessment phase is scored since information on participation in precisely defined fairs, no procurement (bidding) is carried out in relation to the cost of participation in fairs.



19. When the conditions of **Article 39 of the Public Procurement Act** are met, NCPPPs are obliged to apply the Act when concluding public works contracts and public service contracts.

20. The NCPPP shall perform all communication in accordance with these rules by fax and / or post and / or electronically or by a combination of these means.

Fax delivery is considered to have taken place at the time the fax machine confirms the delivery of the Call (as evidenced by a copy of the successful delivery report). Delivery by post is done by sending the Call by registered mail with a return receipt and is considered done when the potential tenderer received it, which is proven, if it is a natural person by signing the return receipt, or by the authorized person of the legal entity or the person in charge of the legal entity for receiving letters.

Delivery of a notification by electronic means shall be deemed to have taken place at the time when its successful sending (*Delivery Receipt*) is recorded on the server for sending such messages.

20.1 Communication, exchange and storage of information shall be conducted in such a way as to preserve the protection and confidentiality of data in accordance with the relevant national regulations.