



Efficient public procurement complaints mechanism and the role of an independent review body - International good practices and roadmap for Lebanon

*Experience of the State Commission for Supervision
of Public Procurement Procedure in Croatia*

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Content

- ✓ 16 years of legal protection in Croatia – ups and downs
 - Establishment of the independent PRB; its status, and relationship with the country's Procurement Regulatory Body;
 - Its role and mandate in dealing with public procurement complaints, with some insights;
 - The appointment of its members, staffing, budget, and issues related to its independence;
 - Challenges faced at the institutional and operational level and how they were mitigated.

- ✓ Lessons learned and situation to avoid





Public procurement system

- The public procurement system should be open and competitive.
- Invitation for tenders should be published on central electronic platforms and/or web sites of contracting authorities/entities.
- Competition among tenderers should be based on competence, capacity, quality and price.
- Efficient and independent review and remedies system should be available to the tenderers.
- How to control legal/illegal behavior of contracting authorities and ensure a proper level of competition?





Croatia: How was it at the beginning?

– MoF 2003: all in one institution

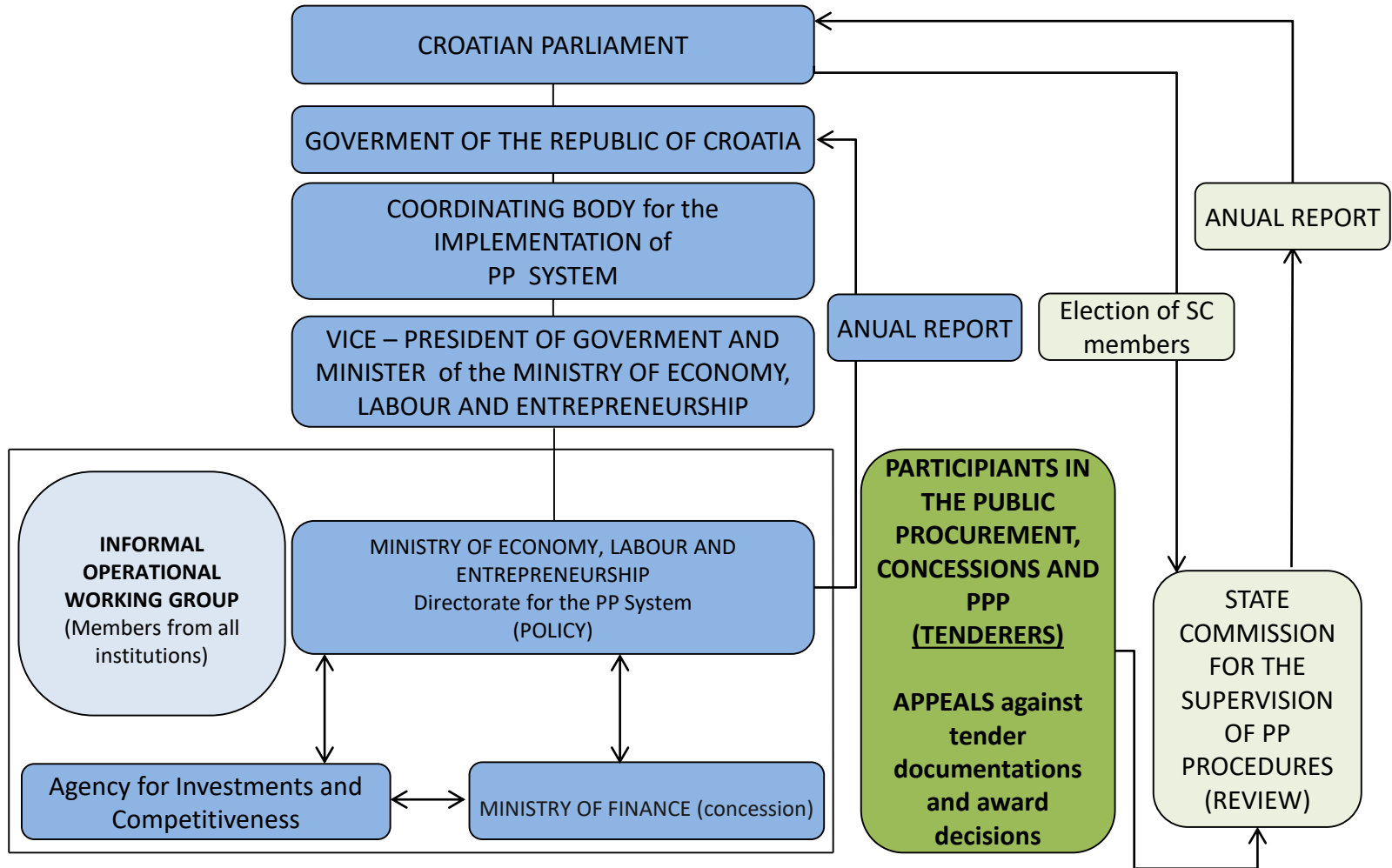
- Public Procurement Department (PPD) within Ministry of Finance is responsible for:
 - participate in the preparation of legislation and by-laws;
 - issue instructions and present opinions about PPL;
 - prior approvals for direct dealing;
 - deciding on complaints;
 - collect, record, process and analyze procurement data;
 - etc.
- Result: possible conflict of interest!
- **Key question** - How to improve institutional set-up and ensure proper level of competition?





Where is SC in Croatia?

A joint initiative of the OECD and the European Union,
principally financed by the EU





State Commission for the Supervision of Public Procurement Procedure (SC)

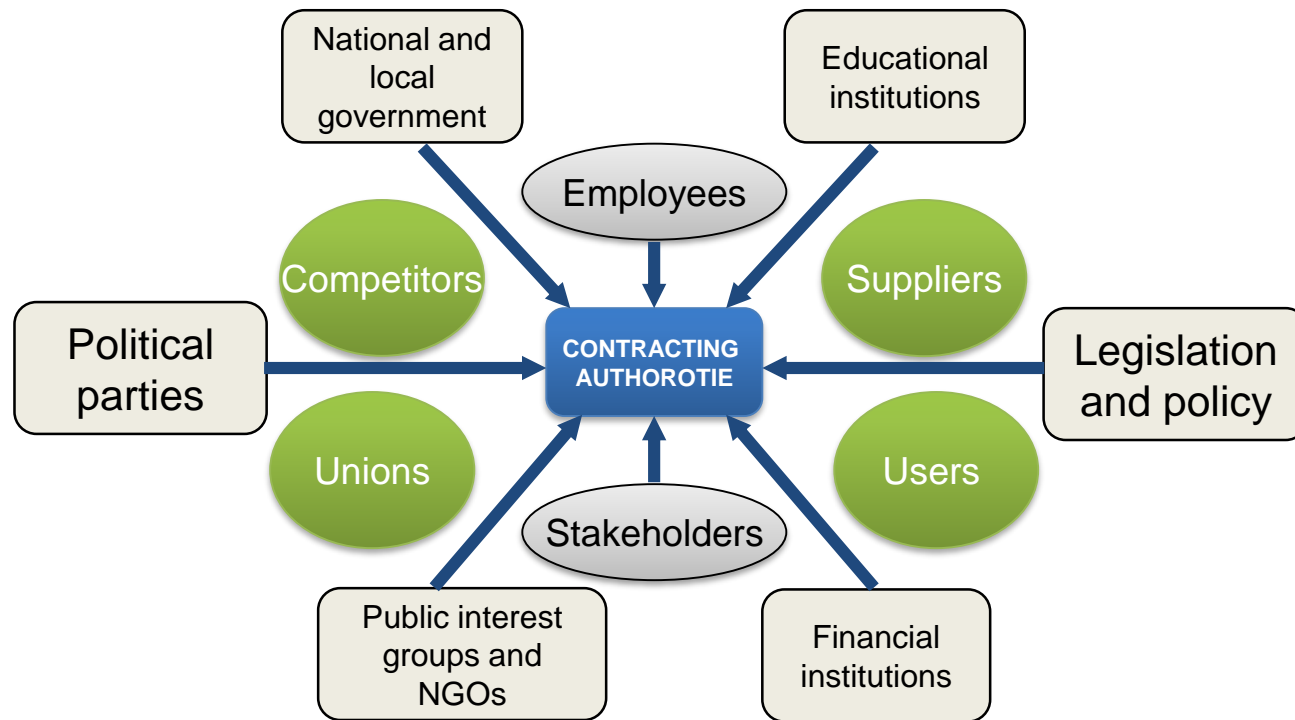
- November 2003. - SC is established with the purpose of coordinating the Croatian public procurement system with the legal tradition of the European Union.
- Members are elected by the Parliament on 4 years mandate, and have possibility for re-election.
- February 2010 – New Act on SC – stronger independents, new jurisdiction in filed of concession and PPP's.
- SC is autonomous and independent national body of second instance which exercises its jurisdiction by deciding on complaints concerning public procurement procedure.





External impact on contracting authorities (legal/illegal)

A joint initiative of the OECD and the European Union,
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How to ensure transparent and efficient work of SC?

- Fair and transparent process of the election of the members of the SC is just first step towards independent instituting.
- Second step – sufficient budget, financial independents!!!
- Third step – every days work...
- Business relationship with contracting authorities and private sector
- Business relationship with the executive government
- Visibility of the SC work: publication of all SC decisions on web page, participation on conferences and workshops, preparation of manuals etc.
- More information about the institution are available at www.dkom.hr





PUBLIC ANNOUNCEMENT OF DECISIONS

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Search the register Search the content of decisions

All the years ▾ Client The appellant All items ▾

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Date of publication of the judgment

CANCEL

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Remark

Class	Client	The appellant	Case	Species	Received	Status	Decision	Court decision
UP / II-034-02 / 20-01 / 768	City of Zagreb, Zagreb	Bindjo doo, Ivanic Grad	arranging the yard of kindergartens in the City of Zagreb	Works	10/05/2020		10/28/2020	Court decision
UP / II-034-02 / 20-01 / 767	INA-Industrija nafte dd, Zagreb	Elektrocentar Petek doo, Ivanic-Grad	Valtek control valves spares	Goods	10/05/2020	10/26/2020		Court decision
UP / II-034-02 / 20-01 / 766	Municipality of Vidovec, Vidovec	Školski servis doo, Zagreb	equipping a kindergarten in Vidovac	Goods	10/05/2020		10/21/2020	
UP / II-034-02 / 20-01 / 765	Clinic for Children's Diseases Zagreb, Zagreb	Medical Intertrade doo, Sveta Nedelja	laboratory reagents (group II)	Goods	10/02/2020		11/6/2020	
UP / II-034-02 / 20-01 / 764	HEP-Distribution System Operator doo, Zagreb	Service Center Ltd., Rijeka	cleaning of business premises of Elektra Karlovac	Services	09/30/2020		11/11/2020	
UP / II-034-02 / 20-01 / 763	Vodovod Brac doo, Supetar	ZP Elementa laborum standard doo, Dobranje and Peović and	providing professional supervision services and services of the II protection coordinator at work on the execution of works for the	Services	09/30/2020		10/19/2020	





SC: 2004-2008

- December 2003. – 6 employees (5 members appointed by the Parliament and one Secretary General)
- December, 2004. – 11 employees / 761 complaints
- December, 2006. – 20 employees / 696 complaints
- December, 2008. – 21 employees / 637 complaints
- December, 2009. – 21 employees / 1422 complaints

SC budget per year	700.000,00 EUR
Average value of appeal cases 2004 – 2008 (per year)	800.000.000,00 EUR

Lessons learned – Institutional independence is one of the key reasons of success during the first mandate.



Statistical information's 2004 - 2008

- SC is controlling thru complaint's about **7%** of all public procurement procedures published in Republic of Croatia
- SC is controlling **17.17%** of all value spent in public procurement market in Republic of Croatia
- Average **710** complaints per year
- **50%** of all complaints is accepted
- **30** day's – duration of complaint procedure in front of State Commission in 2007.
- *From 2008 completely new story - in 2009 and 2012, continuous increase of the number of appeals because of the changes in the PPL and financial crises from 2008.*

Lessons learned – SC has important role in fighting the corruption in public sector.





Major challenges 2009 – 2013

- Important legislative changes – alignments with EU directives
- Lack of staff in SC (*Government of Croatia have forbidden additional employment in civil service*).
- Changes in the legislation – introduced possibility to file an appeal in every stage of the procurement procedure.
- High number of appeals (up to 2000 per year).
- Prolongation of time decisions making (up to 63 and more days)
- Corruption affairs in public procurement. Arrests in more than 15 major contracting authorities for misuse of public funds.
- Croatia joins EU – 1 July 2013.

Lesson learned – financial independence is as important as institutional independence.





New challenges 2014 – 2017.

- Transfer of knowledge from public institutions to contracting authorities and private sector.
- New PPL on power from 2017. Increased number of articles in the new PPL, 452 articles in comparison to 188 articles in the PPL from 2011.
- SC has 9 members: 3 panels + 21 legal advisor and 4 administrative clerks.
- 1.170 appeals in 2018; 18.112 published procurement procedures with the total value of 4.879.532.423,00 EUR.
- Public Procurement Office over the years lost a lot of capacities which continues until present day.
- New PPL / new problems / no amendments.

Lesson learned – PP system have to be maintained and upgraded.





Current problems 2018 – 2021.

- Governance of the e-public procurement system and e-appeals system.
- Perception of the public procurement is negative in most of the „new” EU members and candidate countries.
- New generation of the civil servants – difference between the knowledge and experience.
- Different opinions of the state authorities about the same issues.
- Increased distrust between the private and public sector.

Lessons learned – If not properly managed distrust between the public and the private sector will increase and become dysfunctional.





Lessons learned in the last 15 years

- Transparent and efficient review system is a precondition for development of public procurement system.
- Education of the public and private sector about public procurement, integrity and ethical behavior.
- Important role of media, NGO's and journalist.
- Transparency and independence of the PRB is the corner stone to fight corruption in public procurement.





Time for....

Questions and comments ???



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