



HRVATSKA BANKA ZA OBNOVU I RAZVITAK

PUBLIC PROCUREMENT ORDINANCE

December 2021

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Pursuant to Article 13 of the By-Laws of the Croatian Bank for Reconstruction and Development (hereinafter: HBOR), the Management Board of HBOR, on its 62nd meeting held on 10 December 2021 adopted the following

PUBLIC PROCUREMENT ORDINANCE

PART ONE

CHAPTER I. INTRODUCTORY PROVISIONS

Subject matter of regulation and basis for conducting the public procurement procedure

Article 1

(1) The Public Procurement Ordinance (hereinafter: the Ordinance) regulates the procedures for the procurement of goods, services and works, the estimated value of which is HRK 200,000.00 and more, for goods and services, or HRK 500,000.00 and more, for works, for HBOR's business purposes.

(2) Procurement of goods, services and works for the needs of HBOR is performed by the Legal Affairs and Procurement Division, Procurement Department (hereinafter: Procurement Department), based on the adopted Plan for Procurement of Goods, Services and Works (hereinafter: Procurement Plan) for the business year.

(3) Procurement procedures with an estimated value of HRK 200,000.00 and more, for goods and services, or HRK 500,000.00 and more, for works, are carried out in accordance with the provisions of the current Public Procurement Act (hereinafter: PPA) and secondary legislation (regulations, ordinances, etc.) to this Ordinance.

CHAPTER II. PRINCIPLES OF PUBLIC PROCUREMENT

Article 2

(1) When implementing public procurement procedures in relation to all economic operators, HBOR shall respect the principle of free movement of goods, the principle of freedom of establishment and the principle of freedom to provide services as well as the principles resulting from it, such as the principle of competition, the principle of equal treatment, the principle of non-discrimination, the principle of mutual recognition, the principle of proportionality and the principle of transparency (hereinafter: the principles of public procurement).

(2) Public procurement must not be designed with the intention of avoiding the application of the PPA or avoiding the rules on public procurement of lesser or high value or with the intention of unjustifiably giving advantage to, or putting at a disadvantage, certain economic operators.

(3) HBOR shall apply the provisions of the PPA in a way that enables efficient public procurement and economical and purposeful spending of public funds.

CHAPTER III. PUBLIC PROCUREMENT PROCEDURES

Article 3

HBOR shall apply the following public procurement procedures for procurement of goods, services and works for the procurement of individual or collective estimated values equal to, or greater than, HRK 200,000.00, for goods and services, or equal to, or greater than, HRK 500,000.00, for works:

1. Open procedure,
2. Restricted procedure,
3. Competitive negotiated procedure,
4. Competitive dialogue,
5. Innovation partnership,
6. Negotiated procedure without prior publication of a contract notice,

in accordance with the PPA and secondary legislation adopted on the basis of the PPA.

CHAPTER IV. ESTIMATED VALUE OF PROCUREMENT

Article 4

(1) The estimated value of procurement must be properly determined at the time of the start of the public procurement procedure.

(2) The estimated value of procurement, pursuant to the provisions of the PPA, represents the total value of procurement stated without value added tax (hereinafter: VAT), including all options and possible renewals of the Public Procurement Contract.

(3) For the purposes of HBOR's Budget, the estimated values of procurement in the Procurement Plan shall be increased by corresponding VAT rate and constitute the planned value of procurement.

(4) The method of calculating the estimated value of procurement must not be used with the intention of avoiding the application of the PPA or the provisions of the PPA that apply to the procurement of lesser or high value.

(5) Value thresholds for the procurement of high value are determined for each year by European regulations adopted by the European Commission. Public procurements of high value are published in the Official Journal of the European Union.

(6) Procurement may not be divided with the intention of avoiding the application of the PPA or the provisions of the PPA that apply to the procurement of lesser or high value, respectively.

(7) The Procurement Department, at the request of the internal contracting authority, provides professional assistance in the activities carried out by the internal contracting authority in accordance with this Article.

PART TWO

TITLE I.

CHAPTER I. PLANNING OF PROCUREMENT

Article 5

(1) Pursuant to the Ordinance on Business Planning of HBOR and the HBOR Group, the Procurement Department proposes the HBOR Procurement Plan, which is adopted by the Management Board of HBOR for each business year, and for a multi-year period. The Procurement Department is obliged to submit the adopted HBOR Procurement Plan for the following year to the Management Accounting Department by 15 November of the current year at the latest.

(2) The Procurement Department prepares the Procurement Plan based on the proposal of needs for goods, services and works of all HBOR organisational units / internal contracting authorities (hereinafter: the Procurement Plan proposal), previously harmonised with the Member of the Management Board in charge and implemented public procurement procedures in the previous period.

(3) HBOR's organisational units as internal contracting authorities (hereinafter: internal contracting authorities) are obliged to submit their proposals of the Procurement Plan to the Procurement Department within the deadline set by the Procurement Department each year, but not later than 15 October of the current year. The Procurement Department shall invite internal contracting authorities to submit their proposals at least 30 (thirty) days before the expiry of the specified deadline. In case of delay, internal contracting authorities shall submit a written explanation to the Procurement Department.

(4) For the purpose of preparing the procurement, defining the subject matter and value of procurement, as well as informing the economic operators about their plans and requirements related to the procurement, internal contracting authorities shall conduct a market analysis. Market analysis includes the collection of information on the subject matter of procurement, economic operators participating in the market as well as other circumstances affecting the conditions of procurement.

(5) Internal contracting authorities shall, at the latest in the Request for Initiation of Public Procurement, provide data on market analysis, taking into account that information is collected and interpreted in a manner that does not distort competition or violate the principles of non-discrimination and transparency.

(6) The Procurement Department, at the request of the internal contracting authority, shall provide professional assistance in the activities carried out by the internal contracting authority in accordance with this Article.

(7) During the preliminary market analysis, the rules of conduct, which are not regulated by this Ordinance, will be regulated in more detail by a separate internal document (Instruction / Methodology)

on the manner of conducting market analysis, which will be adopted within 90 (ninety) days of entry into force of this Ordinance.

(8) HBOR's Procurement Plan, in accordance with the PPA and secondary legislation, contains the following information:

1. Procurement record number,
2. Subject matter of procurement,
3. The code number of the procurement from the Common Procurement Vocabulary (CPV),
4. Estimated value of procurement without VAT,
5. Type of procedure (including special procurement regimes and simple procurement),
6. Information whether a Public Procurement Contract or a Framework Agreement is concluded,
7. Information whether the subject matter is planned to be divided into groups,
8. Planned start of procedure,
9. Planned duration of the Public Procurement Contract or Framework Agreement,
10. Note, if necessary.

(9) After the adoption of the Procurement Plan, in case of change in the existing needs for goods / works or services / new needs for goods, works or services, internal contracting authorities submit to the Procurement Department proposals for changes and/or amendments to the Procurement Plan, which are adopted through the same procedure as the Procurement Plan.

(10) The Procurement Department shall submit changes and amendments to the Procurement Plan made during the year to the Management Accounting Department within 3 (three) working days from their adoption and shall submit the adopted final changes and amendments to the Procurement Plan for goods, services and works for the current year until 15 October of the current year. The Procurement Department shall, at least 30 (thirty) days before the expiry of the specified deadline, invite internal contracting authorities to submit their proposals for final changes and amendments to the Procurement Plan within a maximum of 15 (fifteen) days.

(11) Exceptionally, after the expiry of the deadline for submission of proposals for final changes and amendments to the Procurement Plan, internal contracting authorities may submit to the Procurement Department a new proposal for changes and/or amendments to the Procurement Plan with an explanation in writing, only in case of justified business need for procurement, which could not have been foreseen earlier.

(12) The Procurement Department shall publish the Procurement Plan together with the corresponding changes and amendments on HBOR's website and on the location and within the deadlines pursuant to the applicable Ordinance on the Procurement Plan, Register of Contracts, Prior Consultation and Market Analysis in Public Procurement (hereinafter: Procurement Plan Ordinance).

(13) All changes and amendments to the Procurement Plan must be visibly indicated in terms of the basic Procurement Plan.

(14) The published Procurement Plan and all its changes and amendments for the current year must be available at least by 30 June of the following year in accordance with the Public Procurement Ordinance.

CHAPTER II. MONITORING THE REALISATION OF THE PROCUREMENT PLAN

Article 6

(1) Financial monitoring of the implementation of HBOR's Procurement Plan is performed in the Procurement Department, about which a report for the previous business year is prepared, no later than

until 15 June of the current year. The report contains data on the total realisation of the Procurement Plan, realisation by types of procedures and realisation by organisational units.

(2) The Procurement Department monitors the implementation of the Procurement Plan on the basis of concluded Public Procurement Contracts, input invoices of suppliers and bookkeeping records through application support.

(3) Monitoring of the implementation of the Procurement Plan is performed annually (in one business year) and cumulatively from the day of conclusion of the Public Procurement Contract until the end of the last business year in case of multi-annual Public Procurement Contracts, or when the duration of the Public Procurement Contract does not match the business year.

CHAPTER III. REGISTER OF PUBLIC PROCUREMENT CONTRACTS AND FRAMEWORK AGREEMENTS

Article 7

(1) The Procurement Department is obliged to establish the Register of Public Procurement Contracts and Framework Agreements (hereinafter: Register of Public Procurement Contracts) for procurement items, the value of which excluding VAT is equal or higher than HRK 20,000.00, within 30 (thirty) days from the day of conclusion of the first Public Procurement Contract or Framework Agreement.

(2) The Procurement Department is obliged to publish the Register of Public Procurement Contracts and all its subsequent changes in a standardised form in the Electronic Public Procurement Classifieds of the Republic of Croatia (hereinafter: EPPC RC) within 8 (eight) days from the date of establishment or changes, with the link for EPPC RC being published on the HBOR website.

(3) The Procurement Department is obliged to update the Register of Public Procurement Contracts as needed, but at least once every six months.

(4) The Register of Public Procurement Contracts shall contain the following information:

1. Procurement record number,
2. Subject matter of procurement,
3. The code number of the procurement from the Common Procurement Vocabulary (CPV),
4. Number of the publication from EPPC RC, if any,
5. Type of procedure (including special procurement regimes and simple procurement),
6. Name and OIB (PIN) of the contractor,
7. Name and OIB (PIN) of subcontractors, if any,
8. Date of conclusion of the Public Procurement Contract or Framework Agreement in writing, including Contracts based on the Framework Agreement,
9. The term for which the Public Procurement Contract or the Framework Agreement has been concluded, including the Public Procurement Contract based on the Framework Agreement,
10. The amount without VAT, for which the Public Procurement Contract or the Framework Agreement has been concluded, including the Public Procurement Contract, based on the Framework Agreement,
11. Amount of VAT,

12. The total amount VAT included, on which the Public Procurement Contract or the Framework Agreement has been concluded, including the Public Procurement Contract based on the Framework Agreement,
13. The date on which the Public Procurement Contract or the Framework Agreement, including the Public Procurement Contract based on the Framework Agreement was performed in full or the information that the Public Procurement Contract or the Framework Agreement was terminated before the expiry of the term for which it was concluded,
14. The total amount paid to the contractor, VAT included, on the basis of the concluded Public Procurement Contract or the Framework Agreement, including the Public Procurement Contract based on the Framework Agreement,
15. Justification in case when the amount paid to the contractor is higher than the amount for which the Public Procurement Contract or the Framework Agreement was concluded, including the Public Procurement Contract based on the Framework Agreement, or the reasons why the Public Procurement Contract or the Framework Agreement was terminated before the expiry of its term,
16. Note, if necessary.

(5) If the subject matter of procurement is divided into groups, the data referred to in paragraph 4 of this Article shall be elaborated and entered for each individual group of procurement items.

TITLE II.

CHAPTER I. INITIATION OF THE PUBLIC PROCUREMENT PROCEDURE

Article 8

- (1) The request for initiation of public procurement shall be submitted by internal contracting authority to the Procurement Department in electronic form, via an application for conducting the procurement procedure, at least 90 (ninety) days before the need for delivery of certain goods, services or works planned in the Procurement Plan, or before the expiry of the Public Procurement Contract that is renewed in this subject matter of procurement.
- (2) The request for initiation of public procurement in the application for conducting procurement procedure shall be approved by the executive director or the managing director of internal contracting authority, thus confirming that he/she has established the basis for conducting the public procurement procedure and checked the data collected by a previous market analysis.
- (3) Notice on the expiry of the Public Procurement Contract shall be submitted to the internal contracting authority via the application for conducting of procurement procedures within 30 (thirty) days before the deadline for initiating a new procurement procedure, or 120 (one hundred and twenty) days before the expiry of the Public Procurement Contract, respectively.
- (4) The request for initiating public procurement must contain at least:
 1. Name of internal contracting authority that initiates public procurement in accordance with the planned subject matter of procurement from the Procurement Plan,
 2. Name and description of the procurement subject matter, the item and estimated value from the Procurement Plan,
 3. Name and description of the group of procurement items, if applicable (group of procurement items are determined on the basis of objective criteria, for example: by type; properties, purpose, place and/or time of fulfilment etc.),

4. Criteria and rules for awarding certain groups of procurement items in case of limitation of the number of groups that can be assigned to a certain tenderer when participation is limited to only one or several groups,
5. Data collected from previous market analysis,
6. Explanation of the business need for procurement (for outsourced services, indicate that it is a procurement of outsourced services in accordance with the Outsourcing Risk Management Policy and the Outsourcing Risk Management Ordinance, conduct procedures and draft a Proposal for outsourcing of activities),
7. Place and time of delivery of goods, performance of services or performance of works,
8. List of expenses, quantity of the procurement items and/or technical specification, (attached to the application), equivalence criteria, if applicable,
9. Criteria for selection of economic operator (condition of ability: technical and professional ability)
10. Criteria / sub-criteria making the most economically advantageous tender (hereinafter: EMAT) together with the corresponding formula and points / weights for each specific criterion or the order of the EMAT criteria from the most important to the least important ones,
11. Norms,
12. Terms of payment,
13. Essential provisions of the Public Procurement Contract related to the subject matter of procurement and all specific features arising from it (quality, quantity and description of goods / performance of services, manner of delivery of goods / performance of services, laws and secondary legislation by which economic operators must adhere to when performing the Public Procurement Contract, the amount of contractual penalty etc.),
14. Special conditions for the performance of the Public Procurement Contract or the Framework Agreement,
15. Conditions and requirements in accordance with special regulations or professional rules,
16. Consequences and risks of delayed or non-conducted public procurement, if applicable,
17. Written explanation of the reasons in case the Request for Initiation of Public Procurement has not been submitted within the deadline referred to in paragraph 1 above,
18. Name and surname of the authorised representative of the internal contracting authority for a member of the Expert Commission for Public Procurement,
19. Name and surname of the person in charge of coordinating and monitoring the performance of the Public Procurement Contract,
20. Date of compilation,
21. Approval of internal contracting authority.

(5) The Request for Initiation of Public Procurement, in addition to the above, may also contain the objectives and scope of procurement and the expected benefits of procurement.

(6) The internal contracting authority shall be responsible for professional and legal determining of elements of the Request for Initiation of Public Procurement referred to in paragraph 4 of this Article, which must be in accordance with the current situation on the market of goods, works and services based on the implemented prior market analysis and the PPA as well as the public procurement principles.

(7) In case of doubt, the internal contracting authority may request the Procurement Department to verify the practice of the State Commission for the Control of the Public Procurement Procedures and the High Administrative Court of the Republic of Croatia, regarding the application of individual criteria.

(8) Unclear, incorrect or incomplete Request for Initiation of Public Procurement shall be returned to the internal contracting authority by the Procurement Department with instructions on eliminating deficiencies within 2 (two) working days.

(9) The internal contracting authority shall be responsible for the timely submission of the Request for Initiation of Public Procurement in accordance with paragraph 1 of this Article. The explanation of the reasons for the untimely submission of the Request for Initiation of Public Procurement will be stated in the proposal to the Management Board proposing the approval of initiating the public procurement procedure.

(10) The decision on approval of initiating a public procurement procedure and approval of prior consultations (if it is an open or restricted public procurement procedure of high value of goods and services or open or restricted public procurement procedure for works, respectively) is made by the Management Board of HBOR, at the proposal of the Procurement Department, and agreed with the internal contracting authority.

(11) The Procurement Department, at the request of the internal contracting authority, shall provide professional assistance in the activities carried out by the internal contracting authority in accordance with this Article.

CHAPTER II. IMPLEMENTATION OF THE PUBLIC PROCUREMENT PROCEDURE

Public Procurement Expert Committee

Article 9

(1) Public procurement procedures shall be prepared and implemented by the Public Procurement Expert Committee (hereinafter: Expert Committee), which shall be responsible for the legal and professional implementation of public procurement procedures in the manner specified in this Ordinance. The Expert Committee is appointed by a decision of the Management Board of HBOR on the approval of initiating a public procurement procedure, whereby at least 1 (one) member must have a valid certificate in the field of public procurement confirming the knowledge and skills in the field of public procurement.

(2) The Expert Committee has at least 3 (three) members, and in case of their being prevented from acting, their deputies shall also be appointed in the decision of HBOR Management Board on the approval of initiating a public procurement procedure. One member is a representative of the Procurement Department who also has a valid certificate in the field of public procurement, the other member is a representative of the Department for Legal Support in Lending and Information Providing or the Department for Legal Support in Special Finance and Receivables Collection, and the third member is a representative of the internal contracting authority, at whose request the procurement is conducted. This is also valid for their deputies.

(3) The Expert Committee:

- Prepares procurement documentation (hereinafter: PD),
- Conducts public opening of tenders,
- Reviews and evaluates received tenders and proposes the selection of the most economically advantageous tender / annulment of the public procurement procedure and,
- In case of an appeal procedure before the State Commission for the Control of Public Procurement Procedures (hereinafter: SC) prepares a response to the appeal.

(4) The Expert Committee shall be assisted in its work by other employees of the internal contracting authority, as well as other employees of HBOR who have expert knowledge related to the subject matter of the procurement. In particularly complex cases, the help of external experts can be used, if necessary.

Preparation of procurement documentation

Article 10

(1) Members of the Expert Committee shall prepare PD and shall be responsible for its preparation and compliance with the Request for Initiation of Public Procurement, each in its own part of competence, as described in this Article.

(2) Members of the Expert Committee, who are representatives of the internal contracting authority are in charge and responsible for the preparation of the following elements of PD:

1. Data on the subject matter of procurement (name and description of the subject matter of procurement / group of items of procurement, estimated value of procurement, criteria and rules of awarding certain groups of procurement items in case of restriction of the number of groups that can be assigned to a particular tenderer / when participation is restricted to only one or several groups),
2. List of expenses (quantity of procurement items, technical specifications, equivalence criteria),
3. Place and time of delivery of goods, performance of services or performance of works,
4. Criteria for selection of economic operator (conditions of technical and professional ability and their minimum levels),
5. Criteria for selection of tenders and the relative weight of the criteria or order from the most important to the least important ones,
6. Other provisions (norms, special conditions for the performance of contract or framework agreement, payment conditions, conditions and requirements in accordance with special regulations or professional rules).

(3) Members of the Expert Committee who are representatives of the internal contracting authority are responsible for the content of elements of PD referred to in paragraph 2 of this Article, i.e. that they are determined in accordance with the PPA and this Ordinance and are not determined to favour a particular tenderer, discriminate tenderers or distort competition.

(4) In case of doubt, members of the Expert Committee who are representatives of the internal contracting authority may request members of the Expert Committee who are representatives of the Procurement Department to verify the practice of the State Commission for the Control of the Public Procurement Procedures and the High Administrative Court of the Republic of Croatia regarding the application of a particular criterion.

(5) Members of the Expert Committee, who are representatives of the Procurement Department are in charge and responsible for the preparation of the following elements that the PD must include:

1. General information (about HBOR and the contact person, procurement record number, list of economic operators with which HBOR has conflict of interest or an indication that such entities do not exist at the time of publication of PD, type of procedure and the Public Procurement Contract as well as the estimated value of procurement, the provisions relating to the dynamic purchasing system and the electronic auction, the website on which the

- report on the consultation with interested economic operators was published),
2. Basis for exclusion of an economic operator (obligatory and other, accompanying evidence),
 3. Criteria for selection of economic operator (legal and business, economic and financial with minimum levels and accompanying evidence, conditions of competence in the case of group of economic operators),
 4. European Single Procurement Document (mandatory delivery and instructions for completion),
 5. Data on tender (content and method of preparation / delivery and variants of the tender, method of determining the price of the tender and currency, language and letter of tender, validity period),
 6. Other provisions (intention to use the option of conducting the procedure in several stages, number of tenderers who will be the parties to the framework agreement, duration of the framework agreement with explanation, provisions relating to the conclusion of the Public Procurement Contract based on the framework agreement, provisions relating to: implementation of electronic auction, group of economic operators, subcontractors, guarantees, public opening of tenders, deadline for making a selection decision and filing an appeal regarding the PD and the name and address of the appeal authority).

(6) Members of the Expert Committee, who are representatives of the Procurement Department are responsible for the lawful implementation of the public procurement procedure, in a way that they are obliged to ensure that all actions in the public procurement procedure are carried out in accordance with legal and/or internal deadlines, that there are no material and/or procedural shortcomings in the procedure implementation, and that the PD contains all the elements prescribed by the current Procurement Documentation Ordinance and the tender in the public procurement procedures (hereinafter: Procurement Documentation Ordinance).

(7) Members of the Expert Committee, who are representatives of the Department for Legal Support in Lending and Information Providing or the Department for Legal Support in Special Finance and Receivables Collection are in charge of and responsible for monitoring the compliance of the PD with the Request for Initiation of Public Procurement and the decision of HBOR's Management Board on the approval of initiating a public procurement procedure.

(8) If necessary, HBOR may entrust the preparation of the PD or part thereof to professionals who are not employed in HBOR, whereby the procurement procedures referred to in this Ordinance or the Simple Procurement Ordinance shall apply to the procurement of services of the PD preparation, depending on value.

(9) If needed, especially in particularly complex cases, in case of doubts about the interpretation of regulations, expertise of an external consultant may be requested.

(10) The Procurement Department, at the request of internal contracting authority, shall provide expert assistance in the activities carried out by the internal contracting authority in accordance with this Article.

(11) The provisions of the PPA and of the Procurement Documentation Ordinance shall apply accordingly to all issues not regulated by this Ordinance that relate to the preparation of the PD.

Implementation of controls by the Procurement Department

Article 11

(1) Within its business domain, relevant expertise and in accordance with the rules of the profession, the Procurement Department will check the prescribed criteria and conditions for the selection of tenderers and tenders as well as the technical specification of the subject matter of procurement, which are stated in the request for initiating public procurement (including the data collected through market analysis) and the PD.

(2) If the Procurement Department, pursuant to paragraph 1 of this Article notices certain irregularities, or deviations from or inconsistencies with, the PPA or this Ordinance (hereinafter: the Irregularities), it is obliged to notify the internal contracting authority within 2 (two) working days via e-mail of the internal contracting authority, with instructions on how to change the noticed Irregularities (hereinafter: the Instruction).

(3) The internal contracting authority shall correct the Irregularities within 2 (two) working days from the day of receipt of the Instruction.

(4) For the purposes of drafting the Instruction, the Procurement Department is authorised to request clarification of the disputed parts by the internal contracting authority.

(5) The verification referred to in paragraph 1 of this Article shall not affect the liability of the internal contracting authority referred to in Article 8 paragraph 6 and Article 10 paragraph 3 of this Ordinance.

Public opening of tenders

Article 12

(1) Members of the Expert Committee begin the public opening of tenders at the place and at the time specified in the PD immediately after the expiry of the deadline for the submission of tenders.

(2) Members of the Expert Committee shall prepare and sign the minutes on the public opening of tenders on the conducted public opening of tenders.

(3) Any issues not regulated by this Ordinance that relate to the public opening of tenders shall be accordingly regulated by the provisions of the Public Procurement Act and the Procurement Documentation Ordinance.

Examination and evaluation of tenders

Article 13

(1) Members of the Expert Committee shall examine and evaluate the received tenders and shall suggest the selection of the economically most advantageous tender or annulment of the procedure generally within 30 (thirty) days from the date of the public opening of tenders, however no later than within 30 (thirty) days before the expiry of the deadline for the making of the Decision on the Selection determined in the Procurement Documentation for every individual procedure.

(2) Members of the Expert Committee, who are representatives of the internal contracting authority, shall particularly verify whether received individual tenders meet the terms and conditions specified in Article 10, paragraph 2 of this Ordinance and shall immediately without delay and in writing inform the members of the Expert Committee, who are representatives of the Procurement Department, of the observed discrepancies between the individual tenders and certain terms and conditions.

(3) The Procurement Department shall, immediately without delay, act on the observed discrepancies or deficiencies referred to in paragraph 2 of this Article and shall request the necessary clarifications from the tenderer in accordance with the Public Procurement Act.

(4) The Procurement Department shall submit the received explanations of tenders relating to terms and conditions of Article 10, paragraph 2 of this Ordinance for consideration to the member of the Expert Committee who is the representative of the internal contracting authority.

(5) Members of the Expert Committee, who are representatives of the internal contracting authority, shall immediately without delay, however no later than within 5 (five) working days, submit a written comment on the received explanations of tenders relating to terms and conditions of Article 10, paragraph 2 of this Ordinance.

(6) Members of the Expert Committee, who are representatives of the Procurement Department, shall verify whether received individual tenders meet the terms and conditions specified in Article 10, paragraph 6 of this Ordinance, shall act on the observed discrepancies between the individual tenders and certain terms and conditions and shall request the necessary clarifications from the tenderer.

(7) Members of the Expert Committee, who are representatives of the Department for Legal Support in Lending and Information Providing or the Department for Legal Support in Special Finance and Receivables Collection, are in charge of and responsible for the verification of compliance of the tender with the Procurement Documentation.

(8) After having conducted the procedure of examination and evaluation of tenders, the members of the Procurement Expert Committee shall prepare and sign the minutes on the examination and evaluation of tenders.

(9) The member of the Expert Committee, who is of the opinion that the proposal of the selection of the economically most advantageous tender referred to in paragraph 1 of this Article / the proposal of the annulment of the public procurement procedure would represent the misapplication or violation of regulations or that it has been proposed on the basis of erroneously established facts, may submit a separate opinion in addition to the minutes on the examination and evaluation of tenders. Such a separate opinion shall be enclosed by the Procurement Department with the proposal to the Management Board containing the proposal for the making of the decision of the selection of tender or the annulment of procedure.

(10) Any issues not regulated by this Ordinance that relate to the examination and evaluation of tenders shall be accordingly regulated by the provisions of the Public Procurement Act and the Procurement Documentation Ordinance.

Decision on selection or annulment

Article 14

After the examination and evaluation of tenders have been completed, the Procurement Department shall prepare the proposal to the Management Board of HBOR containing the proposal for the making of the decision on the selection of tender and/or the annulment of procedure that shall be signed by the Procurement Department Managing Director with the consent of the internal contracting authority.

Appeal procedure before the State Commission for the Control of Public Procurement Procedures

Article 15

(1) Members of the Expert Committee shall immediately, however no later than within 5 (five) days from the receipt of an appeal, submit a response to the appeal to the State Commission for the Control of Public Procurement Procedures.

(2) Members of the Expert Committee shall respond to the complaints, each in its own area of competence, as described in Article 10 of this Ordinance.

(3) The response to the appeal shall be signed by the Procurement Department Managing Director and the director of the internal contracting authority.

(4) The appeal procedure shall be conducted in accordance with the provisions of the Public Procurement Act, the Ordinance on Electronic Complaints in Public Procurement and the General Administrative Procedure Act.

(5) The appeal procedure shall be based on the principles of public procurement and administrative procedure.

(6) The appeal procedure decides on the legality of procedures, actions, omissions and decisions made in public procurement procedures as well as on the legality of public procurement contracts and framework agreements concluded without the carrying out of public procurement procedures.

(7) Any agreements among the parties that affect or could affect the outcome of the appeal procedure are prohibited.

(8) Any agreement concluded contrary to the provisions of paragraph 7 of this Article is null and void.

CHAPTER III. PUBLIC PROCUREMENT CONTRACT AND FRAMEWORK AGREEMENT

Article 16

(1) A public procurement contract or a framework agreement is concluded with a selected tenderer in writing no later than within 30 (thirty) days from the enforceability date of the selection decision.

(2) A public procurement contract is prepared by the Procurement Department in cooperation with internal contracting authority.

(3) A public procurement contract shall contain the following elements:

1. Heading of public procurement contract,
2. Subject matter of public procurement contract,
3. Rights and obligations of selected tenderer,
4. Rights and obligations of HBOR,
5. Name and surname of the person in charge of coordinating and monitoring the performance of public procurement contract on the part of HBOR,
6. Name and surname of the person in charge of coordinating and monitoring the performance of public procurement contract on the part of the selected tenderer,
7. Price and method of payment,
8. Term of delivery,
9. Contractual penalty,
10. Warranty, if applicable,
11. Provisions on business secrets,
12. Supervision clause and provisions to prevent the risk of outsourcing, if applicable,
13. Terms and conditions and requirements that must be met in accordance with special regulations or professional rules, if necessary,
14. Provisions on force majeure,
15. Duration and termination / cancellation of public procurement contract,
16. Settlement of disputes,
17. Final provisions,
18. Date, signature and number of public procurement contract,
19. Schedules to public procurement contract.

(4) Contractual penalty is determined in every individual public procurement procedure, as a rule 0.5% per day, up to a maximum of 10% of the value of the public procurement contract, excluding VAT. As an exception, due to objectively justified reasons, and in accordance with current practice, market conditions and principles, it is possible to agree on a different level of contractual penalty, in which case the internal contracting authority is obliged to prepare an explanation in the request for initiation of public procurement that will be stated in the proposal to the Management Board of HBOR for the approval of initiating public procurement.

(5) Other provisions of public procurement contract are determined in accordance with the special terms and conditions and the specific features of an individual subject matter of procurement.

(6) In the case of a procurement of an outsourced service, the public procurement contract shall also contain the elements prescribed by the Outsourcing Risk Management Policy and the Outsourcing Risk Management Ordinance, if they are not covered pursuant to paragraph 3 of this Article.

(7) A public procurement contract based on a framework agreement shall be concluded in writing, and the same effect may have a purchase order, order, contract note, requisition note, etc., if it contains all essential elements of public procurement contract.

(8) The Procurement Department, in cooperation with the internal contracting authority, shall prepare a proposal of the public procurement contract no later than within 10 (ten) days from the enforceability date of the selection decision, which shall then be submitted to the selected tenderer for harmonisation.

(9) The Procurement Department is responsible for the legality of the public procurement contract or the framework agreement and for the compliance with the entire Procurement Documentation and the selected tender.

(10) The internal contracting authority is in charge of timely verification of the contractual provisions

arising from the Request for Initiation of Public Procurement, the Procurement Documentation and tender as well as the provisions relating to the performance of the subject matter of procurement and arising from the specific features of the subject matter of procurement, and it is obliged to take all necessary actions on its part so that the Public Procurement Contract can be signed within the legally prescribed deadline. The procedure of examining, certifying and signing the Public Procurement Contract is carried out in accordance with the provisions of HBOR's Ordinance on Signing and Certifying Documents.

(11) The Procurement Department manages the process of signing and certifying, it is responsible for signing the Public Procurement Contract within the legal deadline, it checks whether the Procurement Contract has been drawn up/concluded in accordance with the terms and conditions specified in the Request, the Procurement Documentation and the selected tender.

(12) The original copy of the Public Procurement Contract shall be stored in the Procurement Department.

(13) Any issues not regulated by this Ordinance that relate to the conclusion of the Public Procurement Contract shall be accordingly regulated by the provisions of the Public Procurement Act and the Civil Obligations Act.

CHAPTER IV. PERFORMANCE OF PUBLIC PROCUREMENT CONTRACT

Article 17

(1) The Parties to the Contract shall perform the Public Procurement Contract in accordance with the terms and conditions determined in the Procurement Documentation and the selected tender.

(2) The internal contracting authority under the Public Procurement Contract shall appoint a person/persons in charge of coordinating and monitoring the performance of the Public Procurement Contract.

(3) Monitoring the performance of the Public Procurement Contracts and the framework agreements includes:

- Checking of invoices and ensuring compliance with payment terms and conditions (amount, deadline and manner of payment),
- Determining of the delivery deadline, in the case of the Public Procurement of Goods Contract,
- Determining of the timely performance of the Public Procurement of Goods, Services or Works Contract,
- Determining of the compliance of the delivered product with qualitative and quantitative requirements under the Public Procurement of Goods Contract,
- Determining of the quality of the performed services (e.g. completeness, practicality, accessibility, reliability, functionality, compliance with legal regulations, etc.), in the case of the Public Procurement of Services Contract,
- Determining of the quality of materials on the basis of technical specifications of the detailed design, in the case of the Public Procurement of Works Contract,
- Determining of the compliance of works with the detailed design, in the case of the Public Procurement of Works Contract;
- Monitoring of the progress of the performance of the Public Procurement Contract,
- Monitoring of the contractor in order to check whether the Public Procurement Contract is performed in accordance with the contracted terms and conditions,
- Accepting and taking over of the subject matter of procurement,

- Applying of penalties in case of delay,
- Ensuring of effective communication between the parties involved.

(4) Internal contracting authorities shall monitor the quality of delivery of goods or performance of services and works in accordance with the terms and conditions determined in the Public Procurement Contract and inform the Procurement Department, by e-mail in writing without delay, of any discrepancies and any observations, proposals to terminate or cancel the Public Procurement Contract.

(5) The internal contracting authority shall submit to the Procurement Department, in writing or via an application for conducting procurement procedures, by the end of February of the current year, a report on monitoring the performance of all public procurement contracts concluded in the preceding year or in the previous years that were in force in the preceding year, with a note on the satisfaction with the suppliers (hereinafter: the Report).

(6) The Report shall be drawn up on the basis of the conclusions made by monitoring the performance of the elements referred to in paragraph 3 of this Article.

The Report contains at least the following information:

1. Data on the selected tenderer,
2. Numbers, marks and dates of execution of all public procurement contracts with the selected tenderer,
3. Timeliness and orderliness of delivery / performance of the subject matter of procurement,
4. Compliance of the actual performance of the subject matter of procurement with the contractual provisions,
5. Application of contractual penalty / guarantee,
6. Possible initiation of disputes before the competent court,
7. Evaluation of the selected tenderer,
8. Other information, as appropriate.

(7) The Procurement Department shall, no later than by 31 January of the current year, submit to the internal contracting authorities a reminder of the obligation to submit the Report for the preceding year.

(8) The competent associates from the Procurement Department shall, no later than by 31 March of the current year, check whether all necessary Reports for the preceding year have been submitted.

(9) On the basis of all Reports, the Procurement Department shall prepare a Conclusion on Fulfilment / Non-Fulfilment of contractual obligations by the selected tenderers. The Conclusion is an integral part of the Report on the overall implementation of the Procurement Plan.

(10) In the case of supervision of an outsourced service, supervision should include also the elements prescribed in the Outsourcing Risk Management Policy and the Outsourcing Risk Management Ordinance, if they are not covered in accordance with paragraph 3 of this Article.

(11) The provisions of the applicable Civil Obligations Act shall apply accordingly to the obligation of the Parties to the Contract to meet the liabilities under the Public Procurement Contract.

CHAPTER V. AMENDMENTS TO / TERMINATION / CANCELLATION OF PUBLIC PROCUREMENT CONTRACT AND FRAMEWORK AGREEMENT DURING THEIR LIFETIME

Article 18

- (1) HBOR may amend the Public Procurement Contract during its lifetime without conducting a new public procurement procedure only in accordance with the provisions of the Public Procurement Act.
- (2) Should, during the performance of the Public Procurement Contract, a need arise to amend the Public Procurement Contract, regardless of the reason, the internal contracting authority shall immediately without delay submit to the Procurement Department a Request to Amend the Public Procurement Contract. The Procurement Department checks whether this amendment to the Public Procurement Contract is in accordance with the provisions of the Public Procurement Act and responds to the internal contracting authority within 2 (two) working days.
- (3) Should, during the performance of the Public Procurement Contract, a need arise to terminate or cancel the Public Procurement Contract, the internal contracting authority shall immediately without delay submit to the Procurement Department a Request to Terminate or Cancel the Public Procurement Contract. The Procurement Department checks whether this termination or cancellation of the Public Procurement Contract is in accordance with the provisions of the Public Procurement Act and responds to the internal contracting authority within 2 (two) working days.
- (4) A proposal for the approval of termination / cancellation / amendment is prepared by the Procurement Department with the consent of the internal contracting authority, and the Decision on Termination / Cancellation of / Amendments to the Public Procurement Contract is made by HBOR's Management Board.
- (5) Amendments to the Public Procurement Contract shall be drawn up by the Procurement Department in cooperation with the internal contracting authority.

CHAPTER VI. GUARANTEES

Article 19

- (1) HBOR may require from the economic operator to submit guarantees specified in the Procurement Documentation in accordance with the Public Procurement Act.
- (2) The guarantees referred to in paragraph 1 of this Article shall be taken over by the Procurement Department that shall perform the control of correctness in cooperation with the internal contracting authority and the Fund Managing Division and shall store the guarantee in a safe deposit box at HBOR.
- (3) Generally, HBOR determines that the bank guarantee shall be the bid bond and the performance guarantee under the Public Procurement Contract.
- (4) In the event that the legal requirements are met, the members of the Expert Committee shall initiate an internal collection procedure under the bid bond.

(5) In the event of improper performance of the Public Procurement Contract, the Procurement Department shall, in cooperation with the internal contracting authority, initiate an internal collection procedure under the performance guarantee under the Public Procurement Contract.

(6) The Procurement Department shall be in charge of returning the guarantees to economic operators after the legal requirements have been met.

CHAPTER VII. CONFLICT OF INTEREST

Article 20

(1) Conflicts of interest between HBOR and an economic operator include situations where the representatives of HBOR or a service provider of the procurement unit acting on behalf of HBOR, who are involved in the implementation of a public procurement procedure or may affect the outcome of that procedure, have, directly or indirectly, financial, economic or any other personal interest that might be considered prejudicial to their impartiality and independence in the procedure, and in particular:

1. If the representative of HBOR performs management tasks in the economic operator at the same time, or

2. If the representative of HBOR is the owner of a business interest, shares or other rights on the basis of which he/she participates in the management or equity of that economic operator with more than 0.5%.

(2) For the purposes of this Article, the representative of HBOR is considered to be:

1. Member of the Management Board, Supervisory Board or Audit Committee of HBOR,

2. Member of the Public Procurement Expert Committee,

3. Any other person who is involved in the implementation of who may affect the decision-making at HBOR in the public procurement procedure, i.e. all persons who are the signatories of HBOR's documentation in any individual public procurement procedure,

4. Persons of the service provider referred to in subparagraphs 1, 2 and 3 of this paragraph who operate on behalf of HBOR.

(3) The economic operator referred to in paragraph 1 of this Article shall be considered to be the tenderer, a member of the group of tenderers and the subcontractor.

(4) The provision of paragraph 1 of this Article shall apply as appropriate to blood relatives in the lineal descent or in the collateral descent up to the fourth degree, to relatives by marriage up to the second degree, spouse or extramarital partner, regardless of whether the marriage has ended, and adoptive parents and adopted children (hereinafter: related persons) of members of the Management Board, Supervisory Board and Audit Committee of HBOR.

(5) As an exception, there is no conflict of interest if the related person of the representative of HBOR has acquired business interests, shares or other rights on the basis of which he/she participates in the management or equity of an economic operator with more than 0.5% in the period of at least two years before appointment or assumption of office of a member of the Management Board, the Supervisory

Board and the Audit Committee of HBOR with which it is related.

(6) The transfer of an ownership share to another person or a special body (commissioner) in accordance with special regulations on the prevention of conflicts of interest shall not affect conflicts of interest in terms of paragraphs 1, 2 and 3 of this Article.

(7) Notwithstanding the provisions of paragraphs 1, 2, 3, 4 and 5 of this Article, a conflict of interest shall not exist if the representative of HBOR referred to in paragraph 2, subparagraph 1 of this Article or a person related to it referred to in paragraph 4 of this Article performs management tasks in the economic operator ex officio, i.e. as an official representative of a contracting authority and not as a private person.

(8) HBOR shall take appropriate measures to effectively prevent, identify and eliminate conflicts of interest in connection with the public procurement procedure in order to avoid distortions of competition and ensure equal treatment of all economic operators.

(9) Representatives of HBOR referred to in paragraph 2 of this Article shall sign a statement on existence or non-existence of conflict of interest and update it without delay if changes occur. When initiating every individual public procurement procedure, the Procurement Department shall check the up-datedness of existing conflict of interest statements with the issuer of the statement referred to in paragraph 2, subparagraphs 2 and 3 of this Article and obtain new conflict of interest statements if necessary.

(10) The Procurement Department shall publish, on HBOR's website, the list of economic operators with whom the representatives of HBOR referred to in paragraph 2, subparagraph 1 of this Article or related persons have a conflict of interest or the notice that such operators do not exist. In the Procurement Documentation for an individual public procurement procedure, the Procurement Department shall state the list of economic operators with whom the representative of HBOR referred to in paragraph 2 of this Article has a conflict of interest or state that such operators do not exist.

(11) The Procurement Department shall store the scanned Conflict of Interest Statements for every individual subject matter of procurement in electronic form in a single file as well as in every individual procurement file.

(12) The representatives of HBOR, who are in conflict of interest in accordance with the Public Procurement Act, shall inform the Procurement Department without delay about the economic operators with whom they are in conflict of interest.

(13) The representative of HBOR referred to in paragraph 2, subparagraphs 2, 3 and 4 of this Article shall withdraw from the public procurement procedure immediately upon learning of the existence of a conflict of interest and shall inform the Managing Director of the Procurement Department and the Management Board of HBOR thereof.

(14) Economic operators with whom a member of the Supervisory Board of HBOR has a conflict of interest shall remain on the list for one year after the termination of the office of the member of the Supervisory Board of HBOR.

(15) A public procurement contract concluded contrary to the provisions of this Chapter shall be null and void.

(16) The assessment of the risk of conflict of interest in the procurement procedure shall be regulated in more detail by a separate internal document to be adopted within 90 (ninety) days from the coming into force of this Ordinance.

TITLE III.

CHAPTER I. PROFESSIONAL TASKS

Article 21

(1) Professional and administrative tasks for the purpose of preparing and implementing public procurement procedures shall be performed in the Procurement Department.

(2) Employees of the internal contracting authority, who have specific professional knowledge related to the subject matter of procurement, shall participate in the entire public procurement procedure and in the procedure before the competent authorities (e.g. the State Commission for Supervision of Public Procurement Procedures, the High Administrative Court of the Republic of Croatia).

(3) In case of doubts or disagreements regarding the interpretation of regulations related to public procurement procedures, the Procurement Department may request consultation with external consultants, especially in the case of complex procurement subject matters.

CHAPTER II. CONTENTS AND SAFEKEEPING OF PUBLIC PROCUREMENT FILES

Article 22

(1) For every procedure, the Procurement Department shall keep a public procurement file that is marked as follows and contains the following:

- The high-value public procurement file is marked with the code VV, ordinal number from 001 onwards and the year in which the public procurement procedure is initiated, for example: VV 001-19. In addition to the indicated mark, the current year and the name of the procurement subject matter shall be written on the cover of the file,
- The small-value public procurement file is marked with the code MV, ordinal number from 001 onwards and the year in which the public procurement procedure is initiated, for example: MV 001-19. In addition to the indicated mark, the current year and the name of the procurement subject matter shall be written on the cover of the file.

(2) Contents of a public procurement file:

1. Request for initiation of public procurement of an internal contracting authority,
2. Decision of the Management Board of HBOR on the approval of the initiation of public procurement procedure,
3. Procurement Documentation with all schedules and possible amendments,
4. Link to Electronic Public Procurement Classifieds of the Republic of Croatia in the respective case,
5. Minutes on the opening of tenders,
6. Minutes on the examination and evaluation of tenders,
7. All written communication of the Expert Committee (for example, on the invitation to pay the bid bond, etc.),

8. Proposal to the Management Board of HBOR proposing the adoption of a decision on the selection of the tender and / or annulment of the procedure and the Decision of the Management Board of HBOR on the acceptance of the tender or annulment of the procedure,
9. In case of an appeal against the Decision on Selection or Decision on Annulment, all documents of appeal procedure (appeal, response to appeal, all letters related to appeal procedure such as request for provisional measure, etc., resolutions and decisions of the State Commission for Supervision of Public Procurement Procedures),
10. Photocopy of the Public Procurement Contract,
11. Photocopy of the performance guarantee under the Public Procurement Contract and other guarantees,
12. Requests of the internal contracting authority for the permitted amendments to the Public Procurement Contract,
13. Proposal to the Management Board proposing amendments to the Public Procurement Contract and Decision of the Management Board approving the conclusion of an addendum to the Public Procurement Contract and a photocopy of the addendum to the Public Procurement Contract.

(3) A public procurement file shall be kept for at least 7 (seven) years from the day of concluding the public procurement contract or framework agreement in the manner determined in the Rules for Management of HBOR Documentary Material or longer in special cases.

(4) Members of the Expert Committee and other persons participating in the procurement procedure shall keep all data on the procurement procedure in which they participate as business secret.

Article 23

In accordance with the provisions of the Public Procurement Act and the secondary legislation adopted on the basis of that Act, records of public procurement procedures on the prescribed templates and other prescribed records are kept in the Procurement Department.

CHAPTER III. PROCUREMENTS EXEMPT FROM THE APPLICATION OF THE PUBLIC PROCUREMENT ACT

Article 24

(1) For procurements that constitute an exemption from public procurement in accordance with the Public Procurement Act and the secondary legislation adopted on the basis of that Act, procurement decisions are made by the competent bodies of HBOR in accordance with the powers contained in the By-Laws of HBOR at the proposal of the organisational unit within whose scope of work the public procurement tasks of the procurement subject matter are performed.

(2) The Procurement Department, at the request of the internal contracting authority, shall confirm whether the respective procurements are exempt from the application of the Public Procurement Act.

PART THREE
TRANSITIONAL AND FINAL PROVISIONS

Article 25

(1) Anything regulated by this Ordinance contrary to the mandatory provisions of the Public Procurement Act and the secondary legislation adopted on the basis of that Act shall be regulated by the provisions of those regulations until this Ordinance has been amended.

(2) The Procurement Department is in charge of construing and updating this Ordinance.

(3) This Ordinance shall come into force on 1 January 2022, and all employees shall be obliged to act in the manner prescribed by this Ordinance.

(4) Public procurement procedures initiated before the coming into force of this Ordinance shall be completed in accordance with the provisions of the Public Procurement Ordinance which came into force in April 2019.

(5) The internal documents referred to in Article 5, paragraph 7 and Article 20, paragraph 16 of this Ordinance shall be adopted within 90 (ninety) days from the coming into force of this Ordinance.

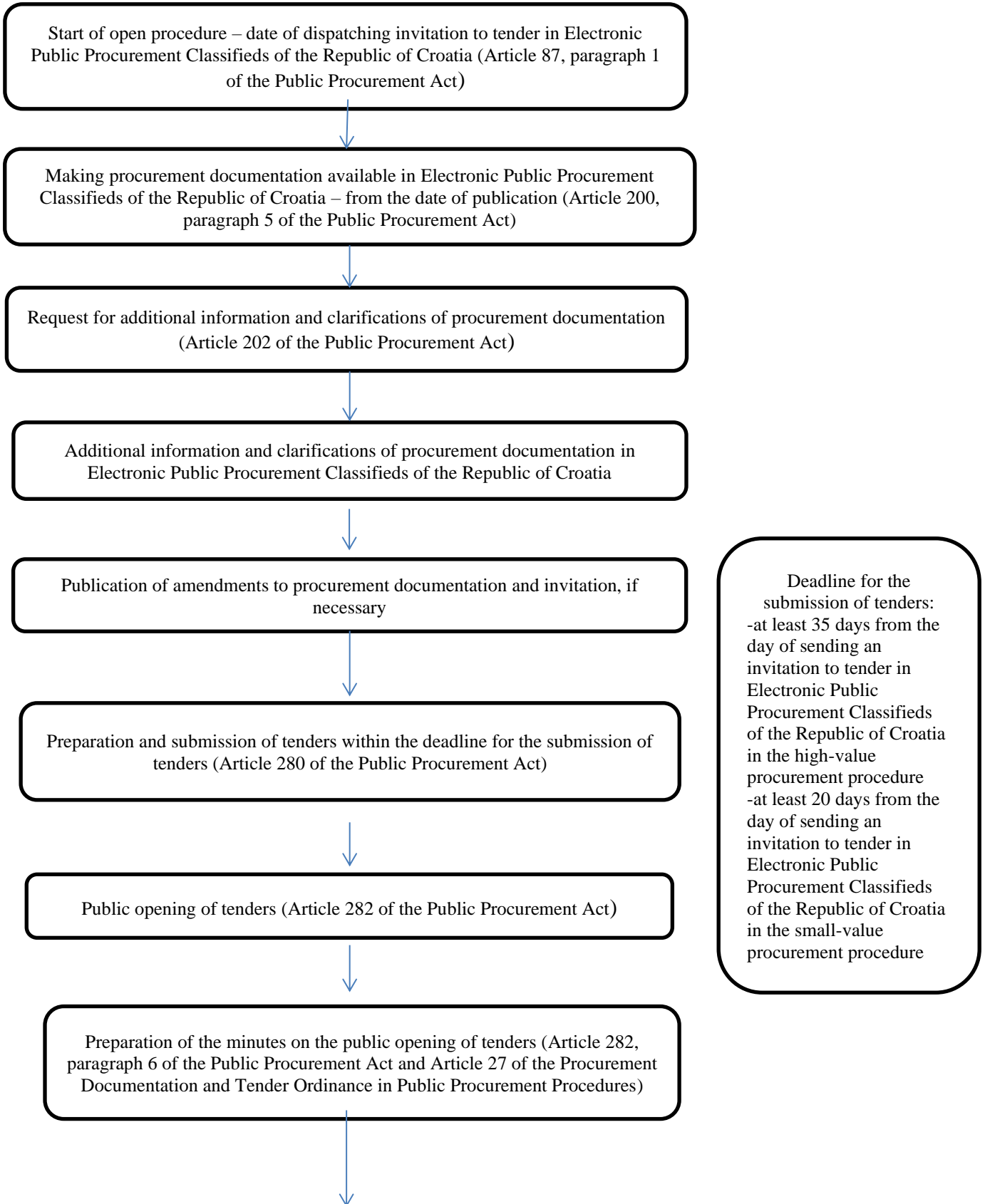
(6) On the day this Ordinance comes into force, the Public Procurement Ordinance, which was adopted and came into force on 30 April 2019, shall cease to be valid.

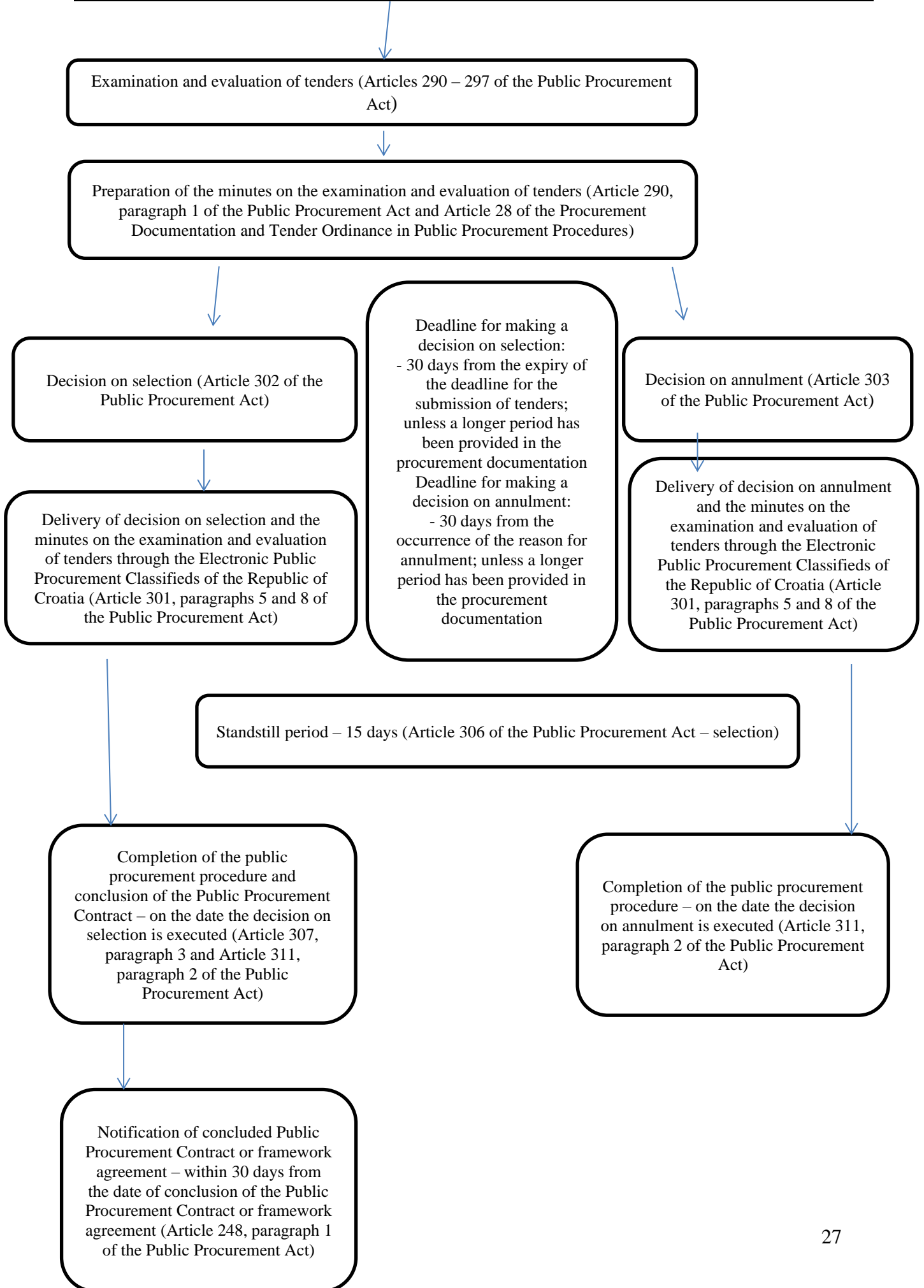
(7) This Ordinance shall be published on the following websites:

- <http://intranet>
- www.hbor.hr

SCHEDULE 1

Diagram of the course of the open public procurement procedure





SCHEDULE 2

Diagram of the course of the public procurement negotiated procedure without prior publication

