

CROATIAN PARLIAMENT

Pursuant to Article 88 of the Constitution of the Republic of Croatia, I hereby issue the

DECISION

PROMULGATING THE ACT ON THE STATE COMMISSION FOR SUPERVISION OF PUBLIC PROCUREMENT PROCEDURE

I hereby promulgate the Act on the State Commission for Supervision of Public Procurement Procedure passed by the Croatian Parliament at its session on February 5, 2010.

Class: 011-01/1-01/14

Reg. No: 71-05-03/1-10-2

Zagreb, February 10, 2010

The President of the Republic of Croatia
Stjepan Mesić, m.p.

ACT

ON THE STATE COMMISSION FOR SUPERVISION OF PUBLIC PROCUREMENT PROCEDURE

GENERAL PROVISIONS

Article 1

This Act regulates jurisdiction of the State Commission for Supervision of Public Procurement Procedure (hereinafter referred to as: the State Commission), as well as other issues related with the State Commission's activities.

Article 2

- (1) The State Commission shall be an autonomous and independent state body having appellate jurisdiction over public procurement procedures, granting of concessions and selection of private partners in public-private partnership projects.
- (2) Within the scope of appellate proceedings, the State Commission shall decide on legality of procedures, actions or omissions, as well as legality of decisions, in terms of individual acts rendered in public procurement procedures and procedures for granting of concessions and selection of private partners in public-private partnership projects.
- (3) The State Commission shall also decide on other requests which are available to parties in legal protection procedures.
- (4) The State Commission shall submit accusatory motions in relation to misdemeanours set forth in this Act and in other regulations concerning the field of public procurement.

Article 3

- (1) The State Commission shall report to the Croatian Parliament on the work it performs.
- (2) The State Commission shall have its seat in Zagreb.

Article 4

- (1) It is prohibited to influence or attempt to influence decisions of the State Commission.
- (2) It is prohibited to use public authorities, means of public communication or public appearances in order to influence the course and the outcome of procedures conducted before the State Commission.

Article 5

- (1) The Statute of the State Commission shall regulate its internal structure, salaries and other issues relevant for the State Commission's work.
- (2) The Statute of the State Commission, as well as all amendments and additions of the same, shall be adopted by majority vote of all members of the State Commission, upon the proposal of the Chairperson of the State Commission.
- (3) The Statute of the State Commission shall be subject to approval by the Croatian Parliament.
- (4) The Statute of the State Commission shall be published in the Official Gazette "*Narodne novine*".

Article 6

Terms used in this Act referring to male gender shall be gender neutral and they shall apply to both male and female gender.

STRUCTURE OF THE STATE COMMISSION

Article 7

The State Commission shall have five members, one of whom shall act as the Chairperson and one as the Deputy Chairperson.

Article 8

- (1) The Chairperson of the State Commission shall represent the State Commission and manage its activities.
- (2) The Deputy Chairperson shall stand in for the Chairperson in those cases when the Chairperson is absent or not available.

APPOINTMENT OF MEMBERS AND TERM OF OFFICE

Article 9

- (1) Members of the State Commission shall be appointed by the Croatian Parliament, upon recommendation from the Government of the Republic of Croatia.
- (2) Competition for appointment to the State Commission shall be published in the Official Gazette "*Narodne novine*", as well as in at least three national daily newspapers, no later than 6 months prior to expiry of term of office of the State Commission's members.
- (3) Published competition shall list conditions set forth in this Act which need to be fulfilled by members of the State Commission and proof of fulfilment of those conditions, as well as information on term of office, time limit for submitting applications and time limit within which the candidates shall be notified of the selection.
- (4) The time limit for submitting applications for participation in the competition shall be 15 days as of the date of publication of the competition in the Official Gazette "*Narodne novine*".
- (5) The Government shall appoint a committee for preparation and implementation of the competition with the purpose of establishing a list of those candidates who applied to participate in the competition and who fulfil the conditions for appointment to the State Commission set forth in this Act.
- (6) The committee shall provide the Government of the Republic of Croatia with a list of candidates who were established to fulfil the conditions set forth in this Act, within a time limit of 15 days as of expiry of the time limit for submission of applications.
- (7) Among the candidates established to fulfil the conditions, the Government of the Republic of Croatia shall select those candidates to be recommended to the Croatian Parliament for appointment as Chairperson, Deputy Chairperson and members of the State Commission.
- (8) Recommendation of candidates for appointment shall contain arguments supporting fulfilment of conditions, as well as reasons for appointment. In addition to the recommendation of candidates for appointment, the Government of the Republic of Croatia shall provide the Croatian Parliament with information on other candidates who fulfil conditions for appointment to the State Commission, as set forth in this Act.
- (9) Members of the State Commission shall be appointed by decision of the Croatian Parliament.
- (10) The decision on appointment shall be published in the Official Gazette "*Narodne novine*" and it shall be delivered to all candidates who applied to participate in the competition, within a time limit of 15 days as of the date of issuance of the decision.
- (11) Candidates dissatisfied with the decision of the Croatian Parliament may file a law-suit before the Administrative Court of the Republic of Croatia against that decision, within a time limit of 30 days as of the day of receipt of the decision on appointment of members of the State Commission.

- (12) If no applications are filed or if none of the applicants fulfil the conditions, the competition shall be conducted again. Until appointment of a member of the State Commission through such subsequent competition, an acting member shall be appointed but only for a period not longer than six months. The acting member shall be appointed by the Croatian Parliament, upon recommendation from the Government of the Republic of Croatia. The acting member must fulfil those conditions prescribed in this Act for appointment of the member of the State Commission in whose place this acting member is being appointed.
- (13) Members of the State Commission shall be appointed for a term of five years and may be reappointed thereafter.

MEMBERS OF THE STATE COMMISSION

Article 10

- (1) The Chairperson of the State Commission shall be a person holding a university degree in law or a university level qualification and law graduate degree acquired in accordance with previous laws and regulations, who has completed bar examination and has had at least six years of work experience as a judge, state attorney, deputy state attorney, public notary or attorney-at-law, or 10 years of work experience in other positions in the legal profession, acquired after completing bar examination.
- (2) In addition to the Chairperson of the State Commission, at least two other members of the State Commission shall also hold a university degree in law or a university level qualification acquired in accordance with previous laws and regulations, one of whom shall be appointed as Deputy Chairperson, and shall have had at least 10 years of work experience in the profession.
- (3) Remaining members of the State Commission shall hold a university degree in economy, law or engineering or a university level qualification acquired in accordance with previous laws and regulations, and shall have had at least 10 years of work experience in the profession.

Article 11

- (1) Members of the State Commission shall protect their reputation, as well as the reputation of the State Commission, and they shall not act in a manner challenging impartiality and independence of their decisions or autonomy of the State Commission's work.
- (2) Members of the State Commission shall not perform such work or duties that might influence their independence and impartiality in performance of their activities.
- (3) Members of the State Commission shall not perform any economic, professional or other activity in the form of self-employment and they shall not own capital shares or business shares in commercial companies or have decision-making rights or voting rights in such companies, nor shall they act as members of management boards, supervisory boards or other such bodies thereof.
- (4) Members of the State Commission shall not be officials.

- (5) Members of the State Commission shall not be members of any political party and they shall not perform any duties in bodies of any political party or participate as members in any form of interest association which may lead to conflict of interest.

Article 12

- (1) Members of the State Commission shall continue their professional development.
- (2) Members of the State Commission may participate as lecturers or participants in professional development programs.
- (3) Members of the State Commission may write and publish expert and scientific papers and they may participate in the work of professional or scientific institutions, conventions or commissions.

DISMISSAL OF MEMBERS OF THE STATE COMMISSION

Article 13

- (1) The Croatian Parliament may dismiss a member of the State Commission prior to expiry of term of office, upon recommendation from the Government of the Republic of Croatia:
1. upon his or her own request,
 2. due to permanent loss of ability to perform his or her duties,
 3. if that member has committed a criminal offence against the Republic of Croatia, against property, against safety of the payments system and business operations or against official duty,
 4. if that member performs such work or duties or is a member of a political party or performs any duties in bodies of any political party or participates as member in any form of interest association, contrary to provisions of Article 11, paragraphs 2, 3 and 5 of this Act,
 5. in case of failure to perform his or her duty as the member of the State Commission without justified reason.
- (2) In the event of existence of reasons for dismissal of a member of the State Commission prior to expiry of term of office, the Chairperson of the State Commission shall notify the Government of the Republic of Croatia.
- (3) In the event of existence of reasons for dismissal of the Chairperson of the State Commission prior to expiry of term of office, the Deputy Chairperson of the State Commission shall notify the Government of the Republic of Croatia.
- (4) The Government shall publish the competition set forth in Article 9 of this Act simultaneously with submitting a proposal for dismissal to the Croatian Parliament.

- (5) In case of inability of the State Commission to perform its activities due to dismissal of its member, simultaneously with submitting the proposal for dismissal to the Croatian Parliament, the Government shall also recommend an acting member for the period up to the appointment of the member in question.

DECISION-MAKING PROCESS OF THE STATE COMMISSION

Article 14

- (1) In appellate procedures, the State Commission shall render its decisions in sessions, by majority of at least three votes, and members of the State Commission shall not abstain from voting.
- (2) Three members of the State Commission shall be necessary to achieve quorum for rendering decisions and in each session of the State Commission either the Chairperson or, in case of his or her absence, the Deputy Chairperson must be present.

APPEAL FEE (FEE FOR CONDUCTING THE APPELLATE PROCEDURE)

Article 15

- (1) Appeal fees for conducting appellate procedures before the State Commission in public procurement procedures, procedures for granting of concessions and selection of private partners in public-private partnership projects, shall be determined pursuant to the Public Procurement Act.
- (2) Along with the appeal, appellants shall submit evidence of payment of the appeal fee.
- (3) In case the appeal does not contain evidence of payment of the appeal fee, the appellant shall be invited by the State Commission to pay the fee within a time limit which shall not be longer than five days.
- (4) If the appellant fails to make the payment of the appeal fee or fails to submit evidence of payment of that fee in accordance with provisions of paragraphs 2 and 3 of this Article, the appeal shall be dismissed as inadmissible.

EMPLOYEES OF THE STATE COMMISSION

Article 16

- (1) Expert services and general services in the State Commission shall be performed by its employees.
- (2) The number of employees necessary for performance of expert services and general services, description of jobs and tasks, conditions and qualifications, duration and performance of internship and other issues related therewith shall be set forth in the Internal Rules.
- (3) The Internal Rules shall be adopted by the Chairperson of the State Commission.

Article 17

General labour legislation shall apply to all matters concerning employees and members of the State Commission not regulated by this Act.

FINANCING OF THE STATE COMMISSION'S WORK

Article 18

- (1) Resources for financing of activities of the State Commission shall be provided in the state budget.
- (2) Resources for financing of activities of the State Commission shall include funds for financing of its regular activities (funds for expenses concerning its employees, funds for material expenses and funds for capital investments in premises and technical equipment).
- (3) Income from fees for conducting the appellate procedure (appeal fees) and administrative fees in appellate procedures shall constitute revenue of the state budget.

REPORTING

Article 19

- (1) The State Commission shall submit to the Croatian Parliament annual reports on its work, no later than on March 31 for the previous calendar year.
- (2) If the Croatian Parliament should request so, the State Commission shall submit a report for a period shorter than one year.
- (3) Annual report shall include data and analyses concerning legal protection in public procurement procedures, granting of concessions and selection of private partners in public-private partnership projects. The report shall contain the following data:
 1. number of cases received,
 2. number of cases processed (appeals dismissed, appeals denied, appeals granted),
 3. number of annulled procurement procedures,
 4. number of pending cases,
 5. a list of those contracting authorities having a greater number of cases before the State Commission in which violation of legal provisions in public procurement procedures has been established,
 6. statistics significant for monitoring of occurrences in appellate procedures,
 7. evaluation of the situation in legal protection and public procurement in general.

PUBLIC CHARACTER OF THE STATE COMMISSION'S WORK

Article 20

- (1) Decision rendered in legal protection procedure before the State Commission following an appeal shall be published on the State Commission's Internet site.
- (2) The decision from paragraph 1 of this Article shall be published immediately upon receipt of information that at least one of the parties in the legal protection procedure had received a copy of that decision.

LIABILITY FOR DAMAGES

Article 21

- (1) In case of damages sustained by the party as a result of illegal or irregular work of the State Commission, the Republic of Croatia shall be liable for payment of those damages.
- (2) The Republic of Croatia shall request reimbursement of the amount paid for damages, within a time limit of 6 months as of the day of payment, but only in those cases where a member of the State Commission had caused damages intentionally or due to gross negligence.

MISDEMEANOUR PROVISIONS

Article 22

- (1) If any legal entity or local or regional self-government unit commits misdemeanour by acting contrary to the provisions of Article 4 of this Act, it shall be punished by a fine of not less than 50.000,00 HRK nor more than 1.000.000,00 HRK.
- (2) A fine of not less than 10.000,00 HRK nor more than 100.000,00 HRK shall also be imposed on the natural person, the responsible person in such legal entity and the responsible person in such local or regional self-government unit, for misdemeanour referred to in paragraph 1 of this Article.
- (3) Misdemeanour proceedings cannot be instituted after expiry of a period of two years from the day the misdemeanour was committed.
- (4) The absolute limitation period shall expire when a period of time twice as long as the period set forth in paragraph 3 of this Article passes from the day the misdemeanour was committed.

TRANSITIONAL AND FINAL PROVISIONS

Article 23

- (1) Members of the State Commission appointed in accordance with the provisions of the Act on the State Commission for Supervision of Public Procurement Procedure (Official Gazette "*Narodne novine*", No. 117/03) shall continue to perform their duties until the expiry of their term of office.

- (2) The State Commission shall submit its Statute for approval to the Croatian Parliament, within a time limit of 30 days as of the day of entry into force of this Act.
- (3) The Chairperson of the State Commission shall adopt Internal Rules within a time limit of 30 days as of the day of entry into force of this Act.

Article 24

On the day of entry into force of this Act, the Act on the State Commission for Supervision of Public Procurement Procedure (Official Gazette "*Narodne novine*", No. 117/03) shall cease to be in effect.

Article 25

This Act shall enter into force on the eighth day after the date of its publication in the Official Gazette "*Narodne novine*".

Class: 330-01/09-01/10
Zagreb, February 5, 2010

THE CROATIAN PARLIAMENT
President of the
Croatian Parliament
Luka Bebić, m.p.