

THE CROATIAN PARLIAMENT

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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 PROCEDURES

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

Class: 011-01/1-01/14

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

Zagreb, 10 February 2010

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

ACT

ON THE STATE COMMISSION FOR SUPERVISION OF PUBLIC PROCUREMENT PROCEDURES

GENERAL PROVISIONS

Article 1

This Act regulates the competence of the State Commission for Supervision of Public Procurement Procedures (hereinafter: the State Commission), and other issues related to the operations of the State Commission.

Article 2

(1) The State Commission shall be an autonomous and independent state body competent for deciding on appeals in public procurement procedures, the award of concessions and selection of the private partner in public private partnership projects.

(2) In the appeals procedure, the State Commission shall decide on the legality of procedures, actions, failure to take actions and decisions as individual acts passed in public procurement procedures, the award of concessions and selection of the private partner in public private

partnership projects.

(3) The State Commission shall also decide on other claims that parties are entitled to lodge in the legal protection procedure.

(4) The State Commission shall file accusatory motions for misdemeanours that are specified in this Act, and other regulations governing the area of public procurement.

Article 3

(1) The State Commission shall be accountable for its work to the Croatian Parliament.

(2) The State Commission shall have its seat in Zagreb.

Article 4

(1) Any attempted influence or influence on the State Commission's decisions shall be prohibited.

(2) Any use of public authorities, mass media or public appearances for the purpose of influencing the course and outcome of procedures before the State Commission shall be prohibited.

Article 5

(1) The Statute of the State Commission shall regulate the internal organisation, salaries and other issues related to the operations of the State Commission.

(2) The Statute of the State Commission and amendments thereto shall be passed at the proposal of the head of the State Commission by majority vote of all members of the State Commission.

(3) The Statute of the State Commission shall be confirmed by the Croatian Parliament.

(4) The Statute of the State Commission shall be published in the Official Gazette.

Article 6

Any expression in the male gender used in this Act shall be neutral in meaning and include both male and female persons.

COMPOSITION OF THE STATE COMMISSION

Article 7

The State Commission shall consist of five members of whom one shall be the head and one deputy head.

Article 8

(1) The head of the State Commission shall represent the State Commission and manage its operations.

(2) The head of the State Commission shall be replaced by the deputy head in the case of being prevented from performing his duties or in the case of absence.

APPOINTMENT PROCEDURE AND TERM OF OFFICE

Article 9

(1) Members of the State Commission shall be appointed by the Croatian Parliament at the proposal of the Government of the Republic of Croatia.

(2) The call for applications for appointment of the State Commission members shall be published in the Official Gazette and in at least three daily newspapers with circulation at national level, not later than 6 months before the expiry of the term of office of members of the State Commission.

(3) The call for applications shall contain the requirements specified in this Act for members of the State Commission as well as evidence of compliance with the requirements, term of appointment, the time limit for the receipt of applications and the time limit in which the candidates shall be informed about the selection.

(4) The time limit for the submission of applications shall be 15 days from the day of publication of the call for applications in the Official Gazette.

(5) The Government shall appoint a committee for the preparation and implementation of the call for applications that shall compile a shortlist of candidates who applied and who fulfil the requirements for members of the State Commission laid down in this Act.

(6) The committee shall submit to the Government of the Republic of Croatia the shortlist of candidates who fulfil the requirements specified in this Act within the period of 15 days from the expiry of the time limit for the submission of applications.

(7) Among the applicants who are found to fulfil the requirements, the Government of the Republic of Croatia shall select the candidates and propose them to the Croatian Parliament for duties of the head, deputy head and members of the State Commission.

(8) The proposal of candidates for appointment shall include an explanation of compliance with the requirements and reasons for appointment. Together with the proposal for the appointment of candidates, the Government of the Republic of Croatia shall submit to the Croatian Parliament the information about other candidates who fulfil the requirements for members of the State Commission specified in this Act.

(9) Members of the State Commission shall be appointed by the decision of the Croatian Parliament.

(10) The decision on the appointment shall be published in the Official Gazette and sent to all the candidates who submitted the application within 15 days from the day of issuing the decision.

(11) An unsuccessful candidate may bring legal action against the decision of the Croatian Parliament before the Administrative Court of the Republic of Croatia within 30 days from the receipt of the decision on the appointment of members of the State Commission.

(12) If no one applies to the call for applications or none of the applicants fulfil the requirements, the call for applications shall be repeated. Until the appointment of a member of the State Commission based on the repeated call for applications, an acting member shall be appointed for a period which is not longer than six months. An acting member shall be appointed by the Croatian Parliament at the proposal of the Government of the Republic of Croatia. An acting member appointed in place of another member shall fulfil the requirements specified in this Act for members of the State Commission.

(13) Members of the State Commission shall be appointed for a period of 5 years with the possibility of reappointment.

MEMBERS OF THE STATE COMMISSION

Article 10

(1) The head of the State Commission shall be a person who is a law graduate, or with university qualifications, awarded the title of graduate lawyer, obtained under the previously valid regulations, who passed the bar examination, and who has at least six year of experience working as a judge, state attorney, deputy state attorney, notary public or lawyer, or who has 10 years of work experience on other legal jobs after having passed the bar examination.

(2) Apart from the head of the State Commission, at least two members of the State Commission shall be law graduates or have university qualifications obtained under the previously valid regulations, of whom one shall be appointed deputy head, and they shall have at least 10 years of work experience in the relevant profession.

(3) Other member of the State Commission shall be university graduates from the study of the economy, law or technical studies, or have university qualifications obtained under the previously valid regulations, and who have at least 10 years of work experience in the relevant profession.

Article 11

(1) Members of the State Commission shall uphold their reputation and the reputation of the State Commission, they shall not cast doubt on their objectivity and independence in their decision-making or autonomy in the operations of the State Commission.

(2) Members of the State Commission shall not provide services or pursue jobs that could affect their independence and objectivity in work.

(3) Members of the State Commission shall not be self-employed in any economic, professional or other activity, or possess shares or holdings in a company, or have decision-making rights, voting rights or be members of the management board, supervisory boards or other bodies.

(4) Members of the State Commission are not officials.

(5) Members of the State Commission shall not be members of any political party, they shall not perform functions in the bodies of political parties, nor be members of any form of interest groupings that could lead to conflict of interest.

Article 12

(1) Members of the State Commission shall be committed to ongoing professional training.

(2) Members of the State Commission may participate as lecturers or attendees in professional training programmes.

(3) Members of the State Commission are entitled to write and publish professional and scientific papers and to participate in the work of professional and scientific institutions, meetings and commissions.

DISMISSAL OF MEMBERS OF THE STATE COMMISSION

Article 13

(1) The Croatian Parliament, at the proposal of the Government of the Republic of Croatia, may dismiss from duty a member of the State Commission prior to the expiry of the term office if:

1. Dismissal is requested by the member,
2. He permanently loses the capacity to carry out the work,
3. He commits a criminal offence against the Republic of Croatia, against property, security of payment transactions and operations, and against official duty,
4. He is engaged in the service or work, or if he is a member of a political party, holds office in bodies of the political party or is a member of any type of interest grouping contrary to the provisions of Article 11, paragraphs 2, 3 and 5 of this Act,
5. He fails to perform the duty of a member of the State Commission without justified cause.

(2) The head of the State Commission shall inform the Government of the Republic of Croatia of the reasons for a member's dismissal prior to the expiry of his term of office.

(3) The deputy head of the State Commission shall inform the Government of the Republic of Croatia of the reasons for the dismissal of the head of the State Commission prior to the expiry of his term of office.

(4) Together with submitting the proposal for dismissal to the Croatian Parliament, the Government shall publish the call for applications referred to in Article 9 of this Act.

(5) If the State Commission cannot perform its tasks due to dismissal of a member, together with the proposal for dismissal the Government shall suggest to the Croatian Parliament an acting member until another member is appointed.

DECISION-MAKING OF THE STATE COMMISSION

Article 14

- (1) The State Commission shall pass decisions on the appeal at a session by a majority of at least three votes, where the members of the State Commission shall not be allowed to abstain from voting.
- (2) Three members of the State Commission shall constitute a quorum necessary to pass decisions, where the head of the State Commission must be present at each session, or the deputy head in the case of his absence.

APPELLATE PROCEDURE COSTS

Article 15

- (1) Costs of an appellate procedure before the State Commission concerning public procurement procedures, the award of concessions and selection of the private partner in public private partnership projects shall be specified pursuant to the Public Procurement Act.
- (2) Together with the appeal, the appellant shall enclose proof of payment of costs of the appellate procedure.
- (3) Where the lodged appeal does not contain the required proof of payment of costs, the State Commission shall invite the appellant to present the proof of payment and set a time limit for its submission which cannot exceed five days
- (4) Where the appellant fails to pay the costs of the appellate procedure or fails to submit proof of payment of the costs of the appellate procedure pursuant to paragraphs 2 and 3 of this Article, the appeal shall be dismissed as impermissible.

EMPLOYEES OF THE STATE COMMISSION

Article 16

- (1) Professional and general tasks in the State Commission shall be performed by the employees of the State Commission.
- (2) The number of employees to perform professional and general tasks, job specification and description of tasks, requirements and qualifications, duration of and working on probation period, and other issues related thereto, shall be specified in the Ordinance on the internal order.
- (3) The Ordinance on the internal order shall be issued by the head of the State Commission.

Article 17

General labour regulations shall apply to all issues concerning the employees and members of the State Commission that are not regulated by this Act.

FINANCING OF OPERATION

Article 18

- (1) Funding for the operation of the State Commission shall be provided in the State budget.
- (2) Funding for the operation of the State Commission shall include the funds for performing regular activities (compensation of employees, material expenditure and capital investments in buildings and technical equipment).
- (3) Income collected from the fees for costs of the appellate procedure and administrative fees in the appellate procedure shall be budgetary revenue of the Republic of Croatia.

REPORTING

Article 19

- (1) The State Commission shall submit to the Croatian Parliament the annual report on its work for the previous calendar year not later than by 31 March.
- (2) Should the Croatian Parliament require so, the State Commission shall submit a report on periods less than one year.
- (3) The Annual report shall include the data and analyses of legal protection in public procurement procedures, the award of concessions and selection of the private partner in public private partnerships. The report shall contain the following information:
 1. Number of cases received,
 2. Number of cases solved (rejected, refused, founded appeals),
 3. Number of cancelled procurement procedures,
 4. Number of outstanding cases,
 5. List of contracting authorities that have the highest number of cases before the State Commission in which it was found that legal provisions were violated in the procurement procedures,
 6. Statistics relevant for monitoring of facts in appeal cases,
 7. Evaluation of the situation in legal protection and public procurement in general.

PUBLICITY OF WORK

Article 20

- (1) Any decision passed on the appeal in the legal protection procedure before the State Commission shall be made public on the State Commission's website.

(2) The decision referred to in paragraph 1 of this Article shall be published immediately after learning that the decision has been received by at least one party in the legal protection procedure.

LIABILITY FOR DAMAGES

Article 21

(1) Any damage sustained by a party due to illicit or irregular work of the State Commission shall be compensated by the Republic of Croatia.

(2) The Republic of Croatia shall file a claim for reimbursement of compensation within a period of 6 months from the date of payment only when a member of the State Commission incurred damage intentionally or due to gross negligence.

PROVISIONS CONCERNING MISDEMEANOUR OFFENCES

Article 22

(1) Any legal person or unit of local and regional self-government shall be fined in an amount from HRK 50,000.00 to HRK 1,000,000.00 due to the action taken contrary to the provisions of Article 4 of this Act.

(2) Any natural person, responsible person in the legal person or responsible person in the state body or in the unit of local and regional self-government shall be fined for the misdemeanour referred to in paragraph 1 of this Article in an amount from HRK 10,000.00 to HRK 100,000.00.

(3) The misdemeanour proceedings may not be instituted after the expiry of two years from the date on which the misdemeanour was committed.

(4) The statute of limitations shall take effect upon the expiry of a period twice as long as the period after the date on which misdemeanour was committed, as referred to in paragraph 3 of this Article.

TRANSITIONAL AND FINAL PROVISIONS

Article 23

(1) Members of the State Commission appointed under the provisions of the Act on the State Commission for Supervision of Public Procurement Procedures (Official Gazette 117/03) shall continue to carry out their duties until the expiry of their term of office.

(2) The State Commission shall submit the Statute for approval to the Croatian Parliament within 30 days from the day of entry into force of this Act.

(3) The head of the State Commission shall issue the Ordinance on the internal order within 30 days from the day of entry into force of this Act.

Article 24

The Act on the State Commission for Supervision of Public Procurement Procedure (Official Gazette 117/03) shall cease to have effect by virtue of entry into force of this Act.

Article 25

This Act shall enter into force on the eighth day after the day of its publication in the Official Gazette.

Class: 330-01/09-01/10

Zagreb, 5 February 2010

THE CROATIAN PARLIAMENT

The President of the Croatian Parliament

Luka Bebić, m.p.