

Rules of Procedure of the National Review Commission

Pursuant to Article 7 of the Act on Reviewing of Public Procurement Procedures (Official Gazette of the Republic of Slovenia, No. 78/99, 90/99, 110/02 in 42/02; hereinafter: ARPPP) the National Review Commission for Reviewing Public Procurement Procedures, on the 5th General Session on March 18 2005, adopted the

RULES OF PROCEDURE

of the

National Review Commission for Reviewing Public Procurement Procedures
(unofficial version)

I. GENERAL PROVISIONS

Article 1

(Object of the Rules of Procedure)

(1) These Rules of Procedure regulate internal organization and methods of work of the National Review Commission for Reviewing Public Procurement Procedures (hereinafter: National Review Commission) which, in accordance with the provisions of the ARPPP, as a specific, autonomous and independent state authority provides legal protection of tenderers and public interest at all stages of the award of public contract.

(2) The abridged name shall be National Review Commission.

Article 2

(Terms of the Rules of Procedure)

(1) The terms Chairman of the National Review Commission, Member of the National Review Commission, President of a senate, Senior Adviser or Adviser of the National Review Commission, expert, independent professional and intern, used in these Rules of Procedure, written in masculine grammatical form, shall be used as neutral for women and men.

(2) The term Adviser of the National Review Commission, used in these Rules of Procedure, shall be used for Senior Advisers and Advisers of the National Review Commission.

(3) Provisions of these Rules of Procedure, which refer to Advisers of the National Review Commission, shall as well be used for interns, who are at the National Review Commission in training for a position of public official.

(4) The term case, used in these Rules of Procedure, shall signify the subject of deciding of the National Review Commission on the basis of review claims and appeals.

II. ORGANISATION AND MANNER OF WORK

Article 3

(Representation)

(1) The National Review Commission consists of a Chairman and four Members.

(2) The Chairman represents, conducts and organizes the work of the National Review Commission.

(3) At times of Chairman's absence, his duties shall be attended to by the Member, empowered by the General Session upon Chairman's proposal (hereinafter: Member acting in place of the Chairman).

(4) The Chairman may empower individual members to organize and conduct work in particular field. Every Member and President of the senate respectively may, in performing procedural acts in separate cases, represent the National Review Commission.

Article 4

(Operation of the National Review Commission)

The National Review Commission operates and decides in cases in accordance to the ARPPP at the National Review Commission's seat, but it may also perform particular procedural acts outside its seat.

Article 5

(Official language)

(1) The official language of the National Review Commission shall be Slovene.

(2) Persons belonging to Italian and Hungarian national minority may in proceedings before the National Review Commission use their language in accordance to the constitution and the law.

(3) The parties of the review procedure shall be obliged to present any documents issued in a foreign language deemed to be important for the ruling in a particular case to the National Review Commission in a certified translation into the Slovene language.

Article 6

(Safeguarding secrets)

(1) In performing their duties, all employed at the National Review Commission as well as independent professionals and experts appointed by the National Review Commission in a procedure of deciding a particular case shall safeguard personal data and data representing state, military, official or business secrets. Documents and instruments shall be handled in accordance to the security grading as determined by regulations on safeguarding personal or confidential data as the case may be.

(2) The Chairman of the National Review Commission shall, by means of a special internal act, more precisely determine measures and procedures for safeguarding personal data and data representing state, military, official or business secrets.

Article 7

(Openness of the work)

(1) The Chairman shall ensure the openness of work of the National Review Commission. The National Review Commission shall inform the public of its work and findings by means of a public presentation of an annual work report and press conferences.

(2) The Chairman of the National Review Commission as well as individual Members of the National Review Commission upon Chairman's authorization shall inform the public of the work of the National Review Commission.

(3) Presidents of the senates or individual members of the National Review Commission competent for deciding a case may, upon authorization by the Chairman of the National Review Commission, inform the public of a particular case and forward basic information on progress of the procedure.

(4) Every person shall have, in accordance to the law regulating the access to information of public character, the right to have an insight into decisions of the National Review Commission and appeals in a manner ensuring safeguard of state, military, official or business secrets or protection of privacy as the case may be.

(5) Decisions of the National Review Commission on review claims and appeals shall be, after receiving evidence showing that all parties have been served the decision, published on the National Review Commission's web page. Decisions of the National Review Commission shall be published in full text, unless certain parts of the decision contain personal data or data bound to be safeguarded as confidential.

(6) The National Review Commission shall publish on its web page a catalogue of information of public character in accordance with regulations on the access to information of public character.

Article 8

(Job positions)

The National Review Commission shall regulate, by means of a special act and in accordance with the ARPPP, law regulating position of public officials, and these Rules of Procedure, a detailed organization of the National Review Commission, number and titles of job positions, their descriptions and duties as well as the conditions for their implementation.

Article 7

(External relations)

(1) The National Review Commission shall co-operate with state authorities in a manner assuring independence and autonomy of the National Review Commission as a body of supervision over the legality of public contract award procedures.

(2) The National Review Commission shall establish contact and co-operate with comparable institutions in other countries and actively participate in appropriate international organizations.

Article 10

(The Chairman of the National Review Commission)

(1) The Chairman shall be responsible for work and organization of the National Review Commission and shall sign all acts and contracts that are issued and concluded by the National Review Commission respectively, except for the acts relating to conduct of proceedings and decisions issued in a case decided by an individual member or a senate.

(2) The Chairman of the National Review Commission shall:

1. Act for and represent the National Review Commission,
2. Manage operations and organize the work of the National Review Commission,
3. Adopt acts on organization and systemization of work and tasks of public officials and administrative workers of the National Review Commission,
4. Prepare annual financing plan of the National Review Commission and decide on the use of funds in accordance with the annual financing plan,
5. Communicate the annual report on the work of the National Review Commission to the National Assembly and communicate the information on considered cases to the Government of the Republic of Slovenia in accordance to the ARPPP,
6. Issue other by-laws and individual acts which rule the operation of the National Review Commission and other issues regarding internal organization, rights and duties of employees, their allocation, promotion, education, remuneration and disciplinary responsibility and internal clerical operation,
7. Appoint the President and members of a senate or the individual member of the National Review Commission respectively competent for deciding individual review claims,
8. Decide on appointment and dismissal of public officials of the National Review Commission in accordance to the law regulating position of public officials,
9. Inform the public of the work of the National Review Commission,
10. Convene and chair general session of the National Review Commission and the professional collegiate body,
11. Authorize members of the National Review Commission to organize and manage work in a specific area of work at the National Review Commission,
12. Ensure the exercising of contacts with other state authorities,
13. Decide on other matters, which, by the ARPPP or by these Rules of Procedure, lie within the scope of his responsibility.

(3) Acts on organization and systemization of work and tasks of public officials of the National Review Commission and other by-laws regulating operation of the National Review Commission and issues regarding internal organization, rights and duties of employees, their allocation, promotion, education, remuneration and disciplinary responsibility and internal

clerical operation, shall be announced on the notice board of the cabinet of the National Review Commission.

Article 11

(The General Session of the National Review Commission)

- (1) The General Session of the National Review Commission shall be composed of the Chairman and all Members of the National Review Commission.
- (2) The decisions at the General Session shall be adopted by open vote. A proposal put to vote shall be adopted if voted for by the majority of all members of the National Review Commission.
- (3) Sessions of the National Review Commission shall be convened and chaired by the Chairman of the National Review Commission, unless otherwise provided herein. The Chairman of the National Review Commission shall, at the demand of at least two Members of the National Review Commission to debate a particular professional or organizational question, convene a General Session within 15 days.
- (4) The Chairman shall convene a General Session by written notification communicated to the members of the National Review Commission, as a rule, at least 3 days prior to the Session.
- (5) A record shall be kept of the General Session of the National Review Commission, which shall be announced on the notice board of the cabinet of the National Review Commission.
- (6) Viewpoints of the General Session on important legal or professional matters must be published on the national Review Commission's web page.
- (7) The provisions of this Article with an exception of paragraph 4 shall be used for convening a correspondence session.

Article 12

(Competence of the General Session)

- (1) The General Session of the National Review Commission shall:
 1. Adopt the Rules of Procedure of the National Review Commission,
 2. Upon the proposal of the Chairman of the National Review Commission, adopt the annual report on the work of the National Review Commission,
 3. Upon the proposal of the Chairman of the National Review Commission, decide on conferring an authorization to deputize the Chairman at times of his absence (Article 3, paragraph 3 of these Rules of Procedure),
 4. Debate the proposal of the annual balance of the National Review Commission,
 5. Decide on measures proposed to the Government of the Republic of Slovenia for elimination of certain violations ascertained by the National Review Commission, and the proposal for adequate legislative alterations or issuing of by-laws,
 6. Debate and adopt standpoints on important legal and expert questions,
 7. Decide on other matters, which are by law or these Rules of Procedure within the scope of competence of the National Review Commission.
- (2) The adopted standpoints from the previous paragraph shall be taken into account at work of the National Review Commission and may be changed solely on another General Session.

Article 13

(Professional collegiate body)

- (1) In order to deal with particular questions relating to the work and organization of the National Review Commission, the Chairman may convene professional collegiate bodies of Members and Advisers of the National Review Commission. If necessary for the deliberation on certain issues, administrative workers of the National Review Commission may also attend the professional collegiate body.
- (2) As a rule, presidents of the senates, individual members and advisers of the National Review Commission shall present individual cases which demand examination of professionally exacting legal and factual matters or uniformity of

practice of the National Review Commission.

(3) Standpoints expressed on a professional collegiate body when debating individual cases shall not in any instance influence the decisions, adopted by an individual member or a senate or those put on vote on the General Session.

(4) An individual Member of the National Review Commission or an Adviser may suggest a certain question be discussed at the professional collegiate body.

(5) Issues connected to work and organization of the National Review Commission and accompanying circumstances shall also be presented and discussed at a professional collegiate body.

Article 14

(Independent specialists and experts)

The Chairman of the National Review Commission, the Senate or individual Members may assign independent specialists and experts to perform certain professional tasks in the procedure of deciding upon a case.

Article 15

(Report on the work and communication of data)

(1) Based on the proposal of the Chairman of the National Review Commission, the National Review Commission shall annually adopt a report on its work and present it to the National Assembly. The report on the work shall contain all the vital data on the work, use of funds, adopted standpoints and findings of the National Review Commission.

(2) The annual report shall be published on the National Review Commission's web page.

(3) The National Review Commission shall, in accordance to the ARPPP, communicate the data on handled cases to the Government of the Republic of Slovenia.

Article 16

(Proposing of measures)

If the National Review Commission, while doing its work, determines that certain measures should be adopted in order to prevent repeating violations of public tendering rules, it shall prepare a proposal for adoption of measures or an initiative for alteration of public procurement regulations and communicate it to the National Assembly and the Government of the Republic of Slovenia.

Article 17

(Procedure in cases of violation)

(1) If in the course of deciding a case, violations are found which constitute an offence according to the public procurement regulations, the National Review Commission shall, upon a proposal of an individual member or a president of a senate respectively, pass a suggestion for initiation of a procedure in case of a violation to the competent authorities or the court.

(2) The procedure from the previous paragraph shall be commenced as soon as violations, which constitute an offence according to the public procurement regulations, are found in the course of deciding a case.

Article 18

(Notifications to the authorities)

If in the course of deciding a case, irregularities, damages or misuses are found, if there is doubt as to the economical use of public funds, or if there is suspicion of commission of a crime, the Chairman of the National Review Commission shall, upon a proposal of an individual member or a president of a senate which was deciding in a case, inform the authorities responsible for control of public funds, supervisory authorities of the contracting authority, or other appropriate state authorities.

III. MANNER OF WORK AND APPOINTMENT OF SENATES

Article 19

(Assignment of cases)

- (1) Upon receiving a case, the Chairman of the National Review Commission shall, by issuing a decision, assign the case to an individual member of the National Review Commission or appoint a senate.
- (2) Senate shall consist of three Members, one of which is a President of a Senate. The president of the senate shall, in cooperation with an Adviser, run the procedure, issue acts of conduct of proceedings and prepare a proposal of decision in a case.
- (3) The Chairman of the National Review Commission shall appoint an individual member or a senate with respect to the difficulty of the case, taking into consideration the public contract value, extensiveness of the documentation and other circumstances relevant for judgment of difficulty of individual case. In procedures of awarding a public works contract the contract value, upon which it is determined whether the case is to be considered difficult insomuch that the appointment of a senate is obligatory, shall be regarded as the value, by which for a public service contract a publication in the Official Journal of the European Union is obligatory.
- (4) The Chairman of the National Review Commission shall appoint a Senate to decide upon a case if a public procurement, which the contracting authority is obliged to publish in the Official Journal of the European Union, is under review, or if it is so necessary with regard to the difficulty of the case.
- (5) The Chairman of the National Review Commission shall assign the case to an individual member of the National Review Commission, if a public procurement, which the contracting authority is not obliged to publish in the Official Journal of the European Union, is under review, or if it is not necessary to do so with regard to the difficulty of the case.

Article 20

(Participation of Advisers)

- (1) Chairman of the National Review Commission shall, by rotation, assign to individual members of the National Review Commission advisers for a certain period of time.
- (2) Upon assignment of a case an individual member or a president of a senate shall determine which adviser should participate in preparing a proposal of a decision in a case, taking into account their workload pertaining to cases and other tasks they may be carrying out at the National Review Commission.

Article 21

(Proposition for appointment of a Senate)

- (1) If an individual Member of the National Review Commission, who was assigned a case as an individual, discovers after having examined the documentation a case should be decided upon in a Senate, he shall propose to the Chairman of the National Review Commission to appoint a senate to decide the case.
- (2) Every member may request from the Chairman of the National Review Commission to appoint a Senate in a case that was assigned to an individual member, if the subject of deciding is a public procurement which the contracting authority is obliged to publish in the Official Journal of the European Union.

Article 22

(Order of assigning cases and appointing Senates)

- (1) Chairman of the National Review Commission shall assign cases to an individual member or a senate in accordance to Article 19 of these Rules of Procedure. By assigning a case to a senate the Chairman of the National Review Commission shall appoint a President and two Members of a Senate.

(2) As a rule, the cases received daily shall be assigned to the members of the National Review Commission in order of their receipt taking into account alphabetical order of the surname initials of the members of the National Review Commission. The alphabetical order shall be taken into account by assigning cases to an individual member as well as to a senate. In cases of senate decision-making the alphabetical order shall be taken into account also with respect to determining the member's role in a senate (president and member respectively). The alphabetical order shall not be taken into account in instances of deciding upon a similar case or a case which a particular Member of the National review Commission has already decided upon, or in an instance when a particular member of the National Review Commission possesses special expert knowledge important for deciding on a case.

(3) Cases, which are in accordance to the Article 19 of these Rules of Procedure decided upon by an individual, shall be assigned to the members of the National Review Commission. Cases, for deciding in which a senate is appointed in accordance to the Article 19 of these Rules of Procedure, shall be assigned on equal terms to the Members and the Chairman of the National Review Commission.

(4) A given composition of the senate shall not be permanent.

Article 23

(Independence of the Chairman and Members of the National Review Commission)

(1) Chairman and Members of the National Review Commission shall be independent in performing their functions. They shall be bound by the Constitution and the Law.

(2) Chairman and Members of the National Review Commission shall be prematurely relieved of their duty solely under the conditions, determined in the ARPPP.

Article 24

(Exclusion)

(1) Chairman or a Member of the National Review Commission must not decide on a case if he is, with the tenderer, his legal representative or mandatory, or with legal representatives, members of the administrative agency or the accountable persons of the contracting authority, related by business or directly by kin, or indirectly up to and including family members four times removed, in wedlock, even if it has ceased to be, in an out-of-wedlock communion, or related by marriage up to and including family members three times removed.

(2) Chairman or a Member of the National review Commission must not decide on a case had he been employed by the tenderer or the contracting authority, and two years have not yet passed since the termination of this employment.

(3) Considering the aforementioned and other reasons for exclusion, a Member of the National Review Commission must immediately notify the Chairman of the National Review Commission, who shall deliberate upon the exclusion.

(4) The exclusion of the Chairman of the National Review Commission shall be decided at a General Session of the National Review Commission, convened and chaired by the member acting in place of the Chairman.

(5) Same rules as for the exclusion of members of the National Review Commission apply for the exclusion of advisers. Their exclusion shall be decided upon by the Chairman of the National Review Commission.

Article 25

(Appointment of a substitute senate member)

In cases of longer absence of a senate member, the Chairman of the National Review Commission shall appoint a substitute senate member.

Article 26

(Manner of work of a senate)

(1) After appointment of a senate and examination of received documentation of a case the president of the senate shall

convene a session, at which he shall summarize statements of both parties and all relevant facts in the procedure, and all members of the senate shall present their opinion of the case. If possible, on the basis of existent documentation and submitted evidence, the members of the senate shall give oral suggestions for a decision on the case, and the president of the senate shall, in cooperation with an adviser, prepare a written proposal for a decision on the case.

(2) If it is not possible to reach a decision on the case on the basis of existent documentation and submitted evidence at a first session, the members of the senate shall settle which procedural acts to perform, what extra documentation to require and what evidence to carry out. When the entire documentation is acquired and all the necessary evidence carried out in the procedure, the president of the senate shall convene a session, at which the members of the senate, after having examined the entire documentation and evidence, shall give oral suggestions for a decision on the case, and the president of the senate shall, in cooperation with an adviser, prepare a written proposal for a decision on the case.

(3) When preparing the written proposal of a decision on the case, the president of the senate must sensibly take into account the oral suggestions of the senate members.

(4) When the written proposal of a decision on the case is prepared, the president of the senate shall mediate it to the other two members of the senate. After having received and examined the proposal of a decision, the president of a senate shall immediately convene a session, at which the senate shall deliberate upon the proposal for a decision on the case.

Article 27

(Manner of senate decision-making)

(1) The Senate shall decide upon a case at a closed session convened and chaired by the President of the Senate. Apart from the President and members of the Senate, only an adviser who participated in a case shall be present at a senate session.

(2) The Senate shall adopt decisions with the majority of votes of all members. The president of the senate and senate members must not abstain from voting.

(3) The adviser shall keep a record of Senate sessions, which also encompasses voting records of the president and members of the Senate and which shall be signed by all senate members.

Article 28

(Decision deadline)

(1) The Senate or an individual member of the National Review Commission must decide on a review claim and issue a ruling within 15 days from the receipt of the review claim and the entire documentation at the latest, or decide upon the appeal and issue a decision within 8 days from the receipt of the appeal at the latest.

(2) In well-grounded instances the senate or an individual member of the National Review Commission may extend the deadline by 20 days at the most. The president of the senate or an individual member of the National Review Commission must, before the expiration of the 15-day deadline, inform the Chairman of the National Review Commission of the extension of the deadline and the reasons thereof, and the Chairman of the National Review Commission shall notify all parties of the review procedure thereof.

(3) The National Review Commission must mail the written decision to the parties within 3 days from the issuing of a decision.

Article 29

(Decision on non-suspension of a procedure)

(1) The contracting authority's proposal that the lodged review claim doesn't suspend his further activities in the procedure of awarding a public contract, may be decided upon by the Chairman of the National Commission with a ruling. In an instance when the contracting authority's proposal is lodged together with a review claim or an appeal or if the case has already been assigned to an individual member or a senate, the contracting authority's proposal that the lodged review claim doesn't suspend his further activities in the procedure of awarding a public contract, may be decided upon by an individual member or a senate.

(2) If the Chairman of the National Review Commission has already issued a ruling, by which he has decided upon the contracting authority's proposal that the lodged review claim doesn't suspend his further activities in the procedure of awarding a public contract, an individual member or a senate may nevertheless after receiving the case change such a ruling, if they determine after examining the entire documentation that there are well-grounded reasons to do so.

Article 30

(The ruling)

(1) The National Review Commission shall decide upon a case in a form of a ruling.

(2) The ruling of the National Review Commission is equipped with a reference number, date, signature and a stamp of the National Review Commission.

(3) All copies of the ruling shall be signed by the president of the senate or an individual member of the National Review Commission. The applicant, contracting authority and the Ministry of Finance shall be served one copy each; in instances, when the review claim is lodged after the contracting authority's decision on award of contract, the successful tenderer shall also be served one copy. One copy of the ruling shall be kept in the archives of the National Review Commission. The archives copy of the ruling shall be signed by all senate members and the adviser.

Article 31

(Performing procedural acts)

(1) Procedural acts in the case must be performed in such a manner that, in accordance to the ARPPP, the entire documentation is acquired and all the facts, important for deciding upon a case, determined, and all the evidence, important for reaching a decision, are carried out.

(2) Acts of conduct of proceedings, in which the National Review Commission in a procedure of deciding on a case appoints preclusive deadlines, must contain an explicit warning of what the consequence of not obeying the deadline is.

(3) Acts of conduct of proceedings shall be signed by the President of a senate or a Member of the National Review Commission who was assigned the case, or by the Chairman of the National Review Commission.

Article 32

(Costs)

(1) Procedural costs are costs which occur during or because of the procedure.

(2) Procedural costs include a reward for the work of an attorney and other persons entitled to a reward by the law.

(3) When deciding which costs to refund, the senate or individual member of the National Review Commission shall take into account only those costs which were indispensable for the public procurement review procedure. The senate or individual member of the National Review Commission shall determine which costs were indispensable and their amount, upon a defined demand without hearing and after a careful judgment of all circumstances.

(4) If there is a prescribed tariff for costs, they shall be administered in accordance with the tariff.

(5) A refund of costs can be requested until the issuing of the ruling on a review claim.

(6) The Senate or an individual Member of the National Review Commission shall decide upon the procedural costs in the ruling with which it is decided in a procedure before the National Review Commission, or with a special ruling.

Article 33

(Costs for the elaboration of specialist or expert opinion)

(1) If a Senate or an individual Member of the National Review Commission in a procedure of deciding upon a case, either upon a proposal of the parties or by his official duty, orders the elaboration of a specialist or expert opinion, he shall impose the advance payment for the elaboration of such opinion to the parties of the procedure.

(2) If a Senate or an individual Member of the National Review Commission orders the elaboration of a specialist or expert opinion by his official duty, and the party does not execute an advanced payment in due time, the costs for the elaboration of such an opinion may be provided by the National Review Commission.

(3) The parties of the procedure shall carry the costs for the elaboration of a specialist or expert opinion in accordance to the ARPPP.

Article 34

(Record-keeping of reports on procedure execution)

(1) The National Review Commission shall keep a record of reports on the execution of a procedure and shall adopt appropriate measures in accordance to the ARPPP.

(2) Individual Member of the National Review Commission or the President of the Senate, who in a ruling of a case demanded from the contracting authority a report on the execution of a procedure, must, in case of discovering that the report does not show elimination of irregularities or consideration of the National Review Commission's instructions or that the report was not submitted in due time, pass his findings to the Chairman of the National Review Commission.

Article 35

(Archiving of documentation)

The National Review Commission shall keep the archives of all more important documentation of a given case, in accordance to the regulations on archives-keeping.

Article 36

(Keeping of copies of tenders)

The National Review Commission shall provide adequate conditions for receipt and keeping of the copies of tenders in accordance to the law regulating public procurement.

Article 37

(Register)

(1) A register shall be kept of the received cases, which shall also be published on the National Review Commission's web page.

(2) Chairman of the National Review Commission may by a special internal act determine the manner and running of the register.

IV. FINAL PROVISIONS

Article 38

(Expiry of validity)

With the day of enforcement of these Rules of Procedure, the Rules of Procedure of the National Auditing Commission for the Auditing of the Procedures on Offering Public Tenders, published in the Official Gazette of the Republic of Slovenia, no. 55/2000, cease to be in force.

Article 39

(Enforcement)

(1) These Rules of Procedure are adopted by the National Review Commission in consensus with the National Assembly

of the Republic of Slovenia. After having received the assent of the National Assembly of the Republic of Slovenia, these Rules of Procedure shall be published in the Official Gazette of the Republic of Slovenia.

(2) These Rules of Procedure shall enter into force the next day after publication in the Official Gazette of the Republic of Slovenia.

No. 037-12/05-1

Ljubljana, March 18th 2005

Chairman of the National Review Commission
Dr. Aleksij MUŽINA