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ACT
AMENDING THE LEGAL PROTECTION IN PUBLIC PROCUREMENT PROCEDURES
ACT (ZPVPJN-C)

Article 1

Indent one of paragraph two of Article 6 of the Legal Protection in Public Procurement Procedures Act (Official Gazette of the Republic of Slovenia [*Uradni list RS*], Nos 43/11, 60/11 – ZTP-D, 63/13, 90/14 – ZDU-1I and 60/17) shall be deleted. The current indents two, three and four shall become indents one, two and three.

Article 2

In Article 9 the words "or might have" shall be deleted.

Article 3

In Article 12 the word "annul" shall be replaced by the word "voidability" and the word "companies" shall be replaced by the words "trade secrets".

Article 4

After the first sentence in paragraph one of Article 13a, a new second sentence shall be added that reads as follows: "In order to provide uniform information on entities, the eRevizija portal automatically obtains public information from the business register on the basis of the entity's registration or tax identification number."

Paragraphs five and six shall be amended to read as follows:

"(5) Information and documents submitted or exchanged via the eRevizija portal shall be published on the eRevizija portal for at least seven years after the decision on the request for a review becomes final; however, the eRevizija portal does not replace the obligation to keep the documents as provided by the Act governing public procurement. On the eRevizija portal, persons may only access their information and documents and information and documents that have been published on the eRevizija portal and to which they have been granted access on the basis of their participation in the public procurement procedure, pre-review procedure, review procedure and appeal procedure and of the powers granted to them. Notwithstanding the preceding paragraph, when the legal protection procedure is concluded with a final decision, the National Review Commission can no longer access the documents concerning the public contract award procedure and documents concerning the pre-review procedure submitted by the contracting authority for the purposes of the legal protection procedure. For the purposes of minor offence and civil proceedings, administrative disputes conducted in relation to particular public contract award and legal protection procedures and for the

purposes of collaboration with other state authorities, the National Review Commission may subsequently request the contracting authority to allow the National Review Commission to re-access the documents submitted or exchanged via the eRevizija portal within seven days of receiving the request via the eRevizija portal but no later than seven years of the finality of the decision on the request for a review.

(6) If due to technical problems the eRevizija portal does not function before the expiry of a particular time limit, the information and documents may be submitted in writing directly to the addressee or by registered post with a form of acknowledgment of receipt no later than by the end of the business day following the expiry of the time limit. They may be also be submitted by electronic means within the same time limit, if the addressee has an information system enabling the receipt of electronic applications in accordance with the Act governing electronic commerce and electronic signatures. In such a case, the information or document shall be signed with a secure electronic signature authenticated with a qualified certificate. The time during which the eRevizija portal was not functioning shall be published on the portal. When the functioning of the portal is restored, the information or documents shall be resubmitted via the eRevizija portal, where the procedure is continued."

[does not concern the English language version]

After paragraph nine, a new paragraph ten shall be added that reads as follows:

"(10) The following personal information of registered users may be processed for the purposes of the operation of the eRevizija portal: name, contact information, user name and password, information on the entities on whose behalf the user performs actions on the eRevizija portal, information on the user rights of a user and their IP address. Personal information in the user profile shall be kept for no more than five years from the user's last login date. Personal information needed to meet the requirements of paragraph three of this Article and personal information contained in the documents exchanged via portal shall be kept for the period referred to in the first sentence in paragraph five of this Article."

Article 5

Paragraph one of Article 16 shall be amended to read as follows:

"(1) If the applicant has submitted a request for a review in a public contract award procedure and the request has been decided upon or withdrawn, in any subsequent requests submitted in the same or repeated public contract award procedure or when the contracting authority continues this procedure with a new procedure pursuant to point b) of paragraph one of Article 44 of the Public Procurement Act (Official Gazette of the Republic of Slovenia [*Uradni list RS*], Nos 91/15 and 14/18, hereinafter: ZJN-3), point b) of paragraph one of Article 42 of the ZJN-3 or points 1 and 2 of paragraph one of Article 22 of the Public Procurement in the Defence and Security Sector Act (Official Gazette of the Republic of Slovenia [*Uradni list RS*], Nos 90/12, 90/14 – ZDU-1I and 52/16), the applicant cannot allege the same infringements, or any other infringements from that stage of the public contract award procedure that were known or should have been known to the applicant upon the submission of the first request for a review, unless the contracting authority has failed to comply with the decision of the National Review Commission or commits the same infringement again."

In paragraph two the words "stating that they do not constitute an infringement" shall be deleted.

Article 6

In Article 16a the words "or might have" shall be deleted.

Article 7

In indent one of paragraph one of Article 28 the words "or cannot" shall be deleted.

In the second sentence in paragraph four the words "and the ministry responsible for public procurement" shall be deleted.

Article 8

The full stop at the end of the second sentence in paragraph one of Article 35 shall be replaced by a comma and the words "except when an oral hearing is proposed by the applicant and the contracting authority. In this case an oral hearing is obligatory." shall be added.

Article 9

In Article 37a the words "and in the procedure for the award of a contract with the estimated value of 10 million euros or more regardless of the source of financing" shall be added after the word "funds".

Article 10

In indent one of paragraph one of Article 39 the words "or cannot" shall be deleted.

Paragraph four shall be amended to read as follows:

"(4) There shall be no appeal against the decision of the National Review Commission."

Article 11

After Article 39, new Articles 39a and 39b shall be added that read as follows:

"Article 39a

(Administrative dispute)

(1) An administrative dispute shall be permitted against the decision of the National Review Commission referred to in the preceding Article.

(2) Notwithstanding the provisions of the Act governing administrative disputes, an action may only include a request to establish the illegality of the decision (declaratory action). The time limit to file an action is 30 days from the service of the decision of the National Review Commission.

(3) Notwithstanding the provisions of the Act governing administrative disputes, a suspension or temporary regulation shall not be permitted in this dispute.

(4) Notwithstanding paragraph one of this Article, an administrative dispute against decisions of the National Review Commission shall not be permitted in the following cases:

– if the public contract to which the decision refers is awarded under a low-value contract procedure or tendering procedure with prior publication of a contract notice,

– if a request for a review has been filed in relation to the content of a notice, an invitation to tender or tender documents.

(5) Notwithstanding the provisions of the Act governing administrative disputes, the plaintiff in such dispute may be the applicant who submitted the request for a review, the contracting authority or the successful tenderer, while the defendant is the National Review Commission.

(6) Administrative disputes shall be adjudicated by the Administrative Court in Ljubljana. The Administrative Court shall decide on the action within 90 days of its receipt.

(7) An appeal against a decision of the Administrative Court shall not be permitted.

(8) If the plaintiff in the administrative dispute made a claim for the compensation of damages, the Court, notwithstanding the provisions of the Act governing administrative disputes, shall not decide on the claim and shall refer the plaintiff to make their claim in civil proceedings in accordance with Article 49 of this Act.

(9) For the purposes of implementing the Act governing public procurement and the Act governing certain concession contracts, it shall be deemed that the contract award decision becomes final on the date of its adoption by the National Review Commission, notwithstanding any administrative disputes initiated.

Article 39b

(New decision of the contracting authority)

In cases referred to in indent two of paragraph one of Article 39 of this Act, if the request for a review concerns the contract award decision, the contracting authority shall adopt a new decision no later than 30 days of the receipt of the decision of the National Review Commission."

Article 12

In paragraph one of Article 61 the words "four members" shall be replaced by the words "six members".

Paragraphs three to seven shall be deleted.

Article 13

Article 61a shall be amended to read as follows:

"Article 61a

(General conditions for appointment)

- (1) The person appointed as the chairman or a member shall meet the following conditions:
- is a citizen of the Republic of Slovenia and has an active command of the Slovenian language;
 - has the capacity to contract and general health capacity;
 - is at least 35 years old;
 - no final indictment has been filed against them for a criminal offence which constitutes grounds for dismissal in accordance with Article 61h of this Act nor have they been convicted of such a criminal offence by a final judgment;
 - no sanction has been imposed on them for an offence under this Act, the Act governing public procurement or the Act governing certain concession contracts; and
 - has not been a member of a body of a political party in the last three years before the publication of the call for applications.

(2) Four members of the Commission shall hold a degree in law obtained in a second-cycle study programme or a degree that corresponds to a degree in law obtained in a second-cycle study programme and the other two members shall hold a degree obtained in a second-cycle study programme other than a degree in law or a degree that corresponds to such a degree obtained in a second-cycle study programme.

(3) The chairman shall hold a degree in law obtained in a second-cycle study programme or a degree that corresponds to a degree in law obtained in a second-cycle study programme and shall have passed the state legal exam."

Article 14

After Article 61a, new Articles 61b to 61j shall be added that read as follows:

"Article 61b

(Special conditions for appointment)

(1) The person appointed as the chairman or a member shall meet the following special conditions:

- has suitable personal qualities for holding such office; and
- has at least nine years of work experience in public procurement.

(2) A person shall be deemed not to have suitable personal qualities for holding the office of chairman or member if it is reasonable to expect, based on their previous work, actions and conduct, that they will not discharge tasks in a professional, honest or conscientious manner or that they will fail to safeguard the reputation and credibility of the National Review Commission and the impartiality and independence of its decision-making.

Article 61c

(Publication)

(1) The vacant position of chairman or member shall be published *ex officio* by the commission of the National Assembly of the Republic of Slovenia responsible for public office and elections no later than six months before the expiry of the term of office referred to in paragraph one of Article 61 of this Act or no later than 15 days of the termination of office referred to in indents one, two or three of paragraph one of Article 61g of this Act or no later than 15 days of the dismissal referred to in Article 61h of this Act.

(2) The call for applications shall be published in the Official Gazette of the Republic of Slovenia; the time limit for applications must not be less than 15 days.

Article 61č

(Application for the post)

Applicants must attach to the application evidence of the fulfilment of conditions referred to in Articles 61a and 61b of this Act and a curriculum vitae with a description of their professional activity and experience in public procurement.

Article 61d

(Candidate Suitability Assessment Commission)

(1) The Candidate Suitability Assessment Commission (hereinafter: the Commission) shall participate in procedures for appointing and dismissing the chairman and members.

(2) The Commission shall consist of a chairman and two members. The Judicial Council shall propose, from among its members, candidates for the chairman and members with the candidates' consent.

(3) The Commission shall be appointed by the National Assembly of the Republic of Slovenia for the period of five years. The term of office of the chairman or a member of the Commission shall not terminate if their elected term of office as member of the Judicial Council is terminated due to expiry.

(4) The Commission shall decide with a majority vote.

(5) The chairman and members of the Commission shall have the right to the reimbursement of travel expenses and to attendance fees in the amount equal to the amount of the fixed part of attendance fees for members of agencies established to perform regulatory tasks as determined by the Decree on attendance fees and reimbursement of expenses at public funds, public agencies, public institutes and public utilities. The attendance fees and travel expenses shall be paid and borne by the National Assembly of the Republic of Slovenia.

(6) Administrative and technical tasks for the Commission shall be performed by the services of the National Assembly of the Republic of Slovenia.

Article 61e

(Appointment procedure)

(1) The commission of the National Assembly of the Republic of Slovenia responsible for public office and elections shall send to the Commission referred to in Article 61d of this Act all applications submitted by the time limit and not dismissed due to non-compliance with the general conditions referred to in Article 61a of this Act no later than 30 days of the expiry of the time limit for the submission of applications. Late applications shall be dismissed.

(2) After receiving the applications, the Commission referred to in Article 61d of this Act examines them, conducts interviews with the candidates and delivers a reasoned opinion on compliance with the special conditions referred to in Article 61b of this Act and the suitability of candidates.

(3) The opinion referred to in the preceding paragraph shall be submitted to the commission of the National Assembly of the Republic of Slovenia responsible for public office and elections no later than 30 days of the receipt of applications. The candidate who will be proposed for a particular published vacancy shall be selected by the commission of the National Assembly of the Republic of Slovenia responsible for public office and elections from among the candidates who meet all the conditions.

(4) The chairman and members shall be appointed by the National Assembly of the Republic of Slovenia at the proposal of its commission responsible for public office and elections.

(5) An administrative dispute against the decision on application dismissal referred to in paragraph one of this Article may be initiated within eight days of the service of the decision.

(6) The court considers the administrative dispute referred to in the preceding paragraph as a priority.

Article 61f

(Assuming office as chairman and members)

(1) The newly appointed chairman and members of the National Review Commission shall assume office no later than three months after their appointment.

(2) If the term of office of the current chairman or member of the National Review Commission has not yet expired, the newly appointed chairman or member of the National Review Commission shall, notwithstanding the preceding paragraph, assume office on the day following the expiry of the term of office of the current chairman or member of the National Review Commission.

(3) If the term of office of the current chairman or member of the National Review Commission has expired and a new chairman or member of the National Review Commission has not yet been appointed, the current chairman or member of the National Review Commission shall discharge their duties until the appointment of the new chairman or member of the National Review Commission.

Article 61g

(Termination of office)

(1) The office of the chairman or a member shall terminate in the following cases:

- if they resign from office,
- if they lose their citizenship of the Republic of Slovenia,
- if they die or lose capacity to contract or health capacity for holding office, or
- upon the expiry of the term of office for which they were appointed.

(2) The office shall terminate for the reason referred to in indent one of the preceding paragraph on the 60th day following the receipt of the resignation by the National Assembly of the Republic of Slovenia.

(3) The reasons referred to in indents two and three of paragraph one of this Article, with the exception of death, shall be deemed to have commenced on the day of the finality of a decision of the competent authority, while the reason referred to in indent four of paragraph one of this Article shall be deemed to have commenced upon the expiry of the term of office for which they were appointed.

(4) The National Assembly of the Republic of Slovenia shall issue a decision on the termination of office referred to in indent one, two and three of paragraph one of this Article.

(5) An administrative dispute against the decision on the termination of office may be initiated within eight days of the service of the decision.

(6) The court considers the administrative dispute referred to in the preceding paragraph as a priority.

Article 61h

(Dismissal)

(1) The chairman or a member shall be dismissed in the following cases:

- if they are convicted by a final judgment of a criminal offence involving an abuse of their office,

– if they are convicted by a final judgment of a premeditated criminal offence and sentenced to imprisonment of more than six months, or

– if they do not meet the conditions for the appointment to the office, except in cases referred to in indents two and three of paragraph one of the preceding Article.

(2) The chairman or a member may also be dismissed if they are convicted of a criminal offence by a final judgment and sentenced to imprisonment of up to six months or non-prison sentence, if the criminal offence concerned is such that they are deemed not to have suitable personal qualities for holding the office.

Article 61i

(Dismissal procedure)

(1) The chairman or a member shall be dismissed by the National Assembly of the Republic of Slovenia.

(2) Prior to making a decision pursuant to paragraph two of the preceding Article, the commission of the National Assembly of the Republic of Slovenia responsible for public office and elections sends the proposal for dismissal to the Commission referred to in Article 61d of this Act. The Commission referred to in Article 61d of this Act shall conduct an interview with the chairman or member concerned, who shall be provided an opportunity to present their position. The Commission referred to in Article 61d of this Act shall immediately send the record of the interview and its opinion to the National Assembly of the Republic of Slovenia. The provisions of the Act regulating the general administrative procedure shall apply *mutatis mutandis* to this procedure.

(3) An administrative dispute against the decision on dismissal may be initiated within eight days of the service of the decision.

(4) The court considers the administrative dispute referred to in the preceding paragraph as a priority.

Article 61j

(Prohibition of standing as candidate)

A person dismissed under the provisions of Article 61h of this Act may not stand as a candidate for appointment to an office under this Act."

Article 15

Point 8 of paragraph one of Article 78 shall be amended to read as follows:

"8. commits an infringement due to which the contract or specific contract is not or should not be valid under points 1, 4, 5 or 9 of paragraph one or paragraph two of Article 44 of this Act;"

TRANSITIONAL AND FINAL PROVISIONS

Article 16

(Changed starting date for the use of eRevizija portal)

In paragraph two of Article 44 of the Act Amending the Legal Protection in Public Procurement Procedures Act (Official Gazette of the Republic of Slovenia [*Uradni list RS*], No. 60/17) the words "the ninetieth day following its establishment" shall be replaced by the words "1 January 2021".

Article 17

(Terms of office of the current chairman and members of the National Review Commission)

(1) The chairman and members of the National Review Commission who were appointed prior to the entry into force of this Act shall hold office until the expiry of their term of office.

(2) The National Assembly of the Republic of Slovenia shall publish a call for applications for two new members of the National Review Commission no later than 60 days after the entry into force of this Act.

Article 18

(Appointment of members of the Candidate Suitability Assessment Commission)

(1) Members of the Candidate Suitability Assessment Commission shall be proposed by the Judicial Council within 30 days of the entry into force of this Act.

(2) The Candidate Suitability Assessment Commission shall be appointed within 60 days of the entry into force of this Act.

Article 19

(Court fee)

Pending a suitable regulation in the Act governing court fees, the court fee for an administrative dispute under Article 39a of this Act shall be calculated according to table 6.1 of the fee tariff multiplied by 30, while the fee tariff for the procedure concerning the proposal for allowing a review shall be one-third of the fee for review procedure multiplied by 30. If the court allows a review, the fee paid for the procedure concerning the proposal for allowing a review shall be counted towards the fee for the review procedure.

Article 20

(Completion of procedures initiated under the hitherto applicable regulations)

A pre-review procedure that was initiated following the submission of a request for a review prior to the entry into force of this Act, and a review procedure that was initiated prior to the entry into force of this Act shall be completed pursuant to the hitherto applicable regulations. A review procedure that was initiated following a request for a review submitted prior to the entry into force of this Act shall be completed pursuant the hitherto applicable regulations.

Article 21

(Date of application)

(1) The provisions of Article 39a of this Act shall apply as of 1 January 2021.

(2) An administrative dispute against a decision of the National Review Commission served before the date of application of Article 39a of this Act shall not be permitted.

Article 22

(Entry into force)

This Act shall enter into force on the fifteenth day following its publication in the Official Gazette of the Republic of Slovenia.