

***Official Gazette No. 131 of 30 October 2013 - shall enter into force on 7 November 2013***

Pursuant to the provisions of Article 69, Paragraph 1, Subparagraph 7 and Article 73, Paragraph 3 of the Electronic Media Act (Official Gazette , No. 153/09, 84/11 and 94/13), with respect to the provision of Article 39 of the Act on Amendments to Electronic Media Act (Official Gazette , No. 94/13), the Electronic Media Council adopts the

**ORDINANCE  
ON THE CONTENT AND PROCEDURE OF THE NOTICE OF INTENT ON GRANTING CONCESSIONS  
FOR THE PROVISION OF TELEVISION AND RADIO MEDIA SERVICES**

**GENERAL PROVISIONS**

**Article 1**

This Ordinance stipulates the procedure for granting a concession and the content of the notice of intent on awarding concessions for the provision of television and radio media services published by the Electronic Media Council (hereinafter: the Council) in accordance with the Electronic Media Act and the Concessions Act.

**Article 2**

(1) The Council shall publish a notice of intent on awarding concessions for the provision of television services and radio (hereinafter referred to as the notice) on the technical basis established by the Croatian Post and Electronic Communications Agency in accordance with the regulations on electronic communications.

(2) The notice referred to in Paragraph 1 of this Article is published for the available radio frequency or multiple radio frequencies that make up a single concession or for digital radio and television for available transmission capacity for a particular radio or television programme within the multiplex.

(3) Prior to publishing the notice, preparatory works for awarding the concession will be conducted, in particular the valuation of a concession and the compilation of a feasibility study for granting the concession or analysis of granting the concession in accordance with Articles 10 - 18 of the Concessions Act.

(4) The Council shall upon making a decision on publishing the notice referred to in Paragraph 1 of this Article determine the type of programme (general or specialised) for which the notice is published.

**Article 3**

- a) The criteria for granting concessions for the provision of television and radio media services are:
  - a) Programme requirements subject to the Electronic Media Act
  - b) Time of broadcasting
  - c) Quality of audiovisual and/or radio programmes ,
  - d) Diversity of audiovisual and/or radio programmes relating to exercising the right to public information and the right to informing all Croatian citizens, members of the Croatian minority communities and abroad, and exercising the rights of national

minorities in Croatia, exercising human rights and political rights of citizens and advancing the legal and social status of the country and civil society, children and the youth or are intended for children and the youth, people with disabilities and special needs, achieving equality between men and women, the preservation of the Croatian national and cultural identity, encouraging cultural and artistic creativity, the culture of public dialogue, development of education, science, art and sport,

e) Special technical, spatial, financial (amount of funds and financial guarantees) and staffing requirements

f) Adherence to the provisions of the Electronic Media Act and the regulations governing tax and other obligations of legal entities and individuals towards the state budget and budgets of local (regional) self-government units including the legal entities in their ownership.

#### Article 4

(1) A concession is granted for a time that may not be longer than fifteen nor less than eight years.

(2) Concessions for the provision of television media services are given for a period based on area coverage:

|                         |            |
|-------------------------|------------|
| - more than 1.5 million | 15 years , |
| - 750,000 - 1,499,999   | 13 years,  |
| - 500,000 - 749,999     | 12 years,  |
| - up to 499,999         | 10 years.  |

(3) Concessions for the provision of radio media services are granted for a period based on area coverage:

|                         |            |
|-------------------------|------------|
| - more than 1.5 million | 15 years , |
| - 750,000 - 1,499,999   | 14 years,  |
| - 500,000 - 749,999     | 13 years   |
| - 300,000 - 499,999     | 12 years   |
| - 100,000 - 299,999     | 11 years,  |
| - 50,000 - 199,999      | 10 years,  |
| - up to 49,999          | 9 years.   |

#### Article 5

(1) The Council shall publish the notice in the Official Gazette .

(2) The notice referred to in Paragraph 1 of this Article is published on the website of the Agency for Electronic Media, and may be published in the domestic or foreign print media, and in any other appropriate manner .

### CONTENTS OF THE NOTICE OF INTENT ON GRANTING A CONCESSION

#### Article 6

(1) The notice must contain:

1. Name, address, telephone number, fax number and e-mail address of the concession provider
2. Type and subject of concession - available radio frequencies or multiple radio frequencies that make a single concession, or for digital radio and television available transmission capacity for individual radio or television programme channels within a multiplex

3. Specific technical, physical, financial and personnel requirements stipulated by particular regulations,
4. Concession area,
5. Duration of the concession,
6. Amount and method of payment for the:
  - a. Concession ,
  - b. Tender documentation
  - c. Submission of tenders ,
7. General and programme requirements that the bid must contain and references to by-laws where they are treated in detail,
8. Conditions of legal and business, financial, technical and professional competencies in accordance with bylaws,
9. Reasons for excluding offers,
10. Criteria and the process of evaluating bids
11. Deadline for lodging a request for submission of tender documentation which may not exceed 30 days from the date of publishing the notice in the Official Gazette,
12. Deadline for submission of bids which may not exceed sixty (60) days from the date of publishing the notice in the Official Gazette,
13. A note that the bid be submitted in eight (8) copies of which one (1) - the original with the signature of the authorised representative (the original, which must be identical to the hardcopy version, shall be submitted in electronic form on an appropriate CD or DVD medium), all in a sealed envelope with the designation of the full name and headquarters of bidder and marked " Do not open - Bid for awarding a concession for the provision of television and radio media services",
14. A note that the submitted bids and fees will not be returned,
15. A note that within 10 days from the bid submission deadline the Council will inform all participants in the tender procedure of the day, time and place of holding a session of the Council where the public opening of bids received within the tender deadline will take place,
16. Final deadline which may not exceed 30 days from the date of publically opening the bids, whereby the Council must pass a Decision on Granting a Concession which is the subject of the notice.

#### Article 7

- (1) The tender documentation is drawn up in the Croatian language, and if the notice is published in the foreign print, it must be written in English.
- (2) In the event of a dispute, the authoritative text for the tender documentation is the text in the Croatian language.

#### Article 8

The tender documents must comply with the notice.

#### Article 9

The tender documents must contain the following:

1. General information (name and headquarters of the concession grantor, VAT number, telephone number, fax number, web address, e-mail address , person or office responsible for liaison, list of of economic operators with whom the concession grantor

- in a conflict of interest under the provisions of law governing public procurement, estimated the value of the concession, type of concessions),
2. Details of the concession (description of the subject of concession, technical specifications, estimated duration of the concession agreement)
  3. Information about the bid (the method of determining the concession fee, the currency of the bid if the price is not expressed in Croatian kuna, selection criteria, validity period)
  4. Information on the method of preparing and the content of the bid,
  5. Terms and conditions of legal and business, financial, technical and professional competencies in accordance with the bylaws,
  6. Reasons for excluding offers ,
  7. Detailed criteria and the bid evaluation process
  8. Questionnaire on general information concerning the broadcaster,
  9. Information on the time and place of submitting bids as referred to in Article 6, Paragraph 1 Item 13 ,
  10. Information on the time and manner by which the Council submits decisions,
  11. A form stating that granting the concession does not result in impermissible concentration in terms of Article 54 to 56 and Article 60 of the Electronic Media Act,
  12. Information on technical parameters established by the Croatian Agency for post and electronic Communications,
  13. Type, means, conditions and deadline for the submission of guarantees and/or surety, if required, and which are adapted to the scope and value of the concession agreement and the subject of the concession and of which the collection of payment is certain,
  14. Draft concession agreement ,
  15. Reference to possible amendments and options in the concession agreement.

## THE PROCEDURE FOR GRANTING A CONCESSION

### Article 10

- (1) The Council shall submit the tender documentation (hereinafter: Documentation) to any person who has submitted a request for the documentation within and deadline and has enclosed proof of payment of the fees stipulated in Article 6, item 6.b. of this Ordinance.
- (2) A bid for the tender may be submitted by any legal or natural person that is registered in the appropriate register of the Republic of Croatia in accordance with the Electronic Media Act and special regulation, and that has taken possession of the documentation pursuant to this Ordinance.
- (3) The offer is made in the Croatian language .

### Article 11

- (1) The name, address and other information on the bid applicant is confidential until the time of opening the bid.
- (2) Until the decision is made in the procedure for granting the concession for the provision of television and/or radio media services, bids are deemed classified information and are marked CONFIDENTIAL.

### Article 12

- (1) If the tenderer has designated certain information in the bid as a trade secret, the tenderer is also obliged to provide the legal basis for which such information is to be deemed confidential.
- (2) The tenderer may not designate data relating to the programme plan as secret.

### Article 13

Each written request for an explanation of the documentation that the participants in the tender submit to the Council no later than 10 days before the expiration of the tender period, imposes an obligation on the Council to respond within seven days of having received such a request. The Council shall also publish a statement on its website without specifying details of the applicant making such a request.

#### Article 14

- (1) If the Council before the expiration of the deadline makes amendments to the conditions in the notice, it shall publish it the same manner as the original notice.
- (2) The amendments referred to in Paragraph 1 of this Article are forwarded to all tender process participants who have taken possession of the documentation.
- (3) The deadline for submitting bids shall be extended if the amended conditions significantly affect preparing the bid, or if more than half of the deadline for submission of bids has passed.

#### Article 15

- (1) The Council may, before the expiry of the deadline for submission of bids, at its discretion or upon written request for an explanation as referred in Article 13 of this Ordinance, make amendments to the documentation in the form of a appendix.
- (2) The appendix on amendments to the documentation will be submitted by the Council free of charge to all participants in the process, which have taken possession of the documentation, no later than ten days before the deadline for the submission of bids.
- (3) The Council may, for the purpose of making amendments to the documentation, extend the deadline for submission of bids. A deadline extension notice will be forwarded by the to all participants in the process and will be published in the same manner as the original notice.

#### Article 16

The bid must contain:

1. Evidence that the conditions stipulated by the public tender have been fulfilled,
2. The programme plan that must include the programme schedule on the basis of which the programme plan is determined

a) For a general television or radio programme channel:

- Types of audiovisual or radio programmes, and their classification into particular groups,
- Planned quantitative ratio of particular content groups,
- Planned maximum scope of advertising content (only when a bid is submitted for a television programme channel)
- Planned scope of proprietary and share of Croatian audio and audiovisual works,
- The time of broadcasting,
- The share of European works and audiovisual works by independent producers.

b) For a specialized television or radio programme channel:

- Types of audiovisual or radio programmes, of which more than 70% must be the same type of programmes,
- Planned quantitative ratio of particular content groups,

- Planned maximum scope of advertising content (only when a bid is submitted for a television programme channel)
  - Planned scope of proprietary and share of Croatian audio and audiovisual works,
  - The share of European works and audiovisual works by independent producers.
  - The time of broadcasting,
3. Information on the ownership structure of the legal person submitting the bid,
  4. Detailed information on the company and headquarters, or name and surname including residence of persons who directly or indirectly through other legal persons hold shares or stakes in that legal person, as well as information on the percentage of the such shares or stakes,
  5. An excerpt from the court register or other stipulated register in the Republic of Croatia,
  6. Extract from criminal records or a notarized statement that the applicant and the person authorized by law for representation has not received a final conviction for one or more of the following offenses: association to commit crimes, receiving bribes in business transactions, giving bribes in business transactions, abuse of office and authority, abuse of public office, illegal mediation, receiving bribes, giving bribes, fraud, computer fraud, fraud in business operations and concealment of illegally obtained money,
  7. A certificate from the Tax Administration indicating no debt related to tax liabilities or to pension and health insurance liabilities,
  8. A statement from the Finance Agency that a petition to initiate pre-bankruptcy settlement proceedings has not been lodged,
  9. A statement from the Finance Agency that pre-bankruptcy settlement proceedings have not been initiated,
  10. Other documents stipulated by the public tender and/or the tender documentation.

#### Article 17

The Council receives and retains all bids that are submitted within the bid submission deadline. On each envelope the date and time of receipt is marked.

#### Article 18

- (1) The Council conducts the procedure of publicly opening the bids submitted within the deadline.
- (2) During the public opening of the submitted bids, each Council member takes possession of one copy of each bid.
- (3) The Council will open bids that arrive after expiration of the deadline.

#### Article 19

The Council shall keep minutes of the public opening of bids.

#### Article 20

- (1) In the reviewing and assessment process, the Council may also invite bidders to submit, within not less than five nor more than 10 days, a clarification of certain elements of the bid with respect to sections relating to the programme. The clarification may not result in amendments to the bid.
- (2) Actions by the Council stipulated by Paragraph 1 of this Article must not have the effect of discrimination, unequal treatment of tenderers or the favouring of a particular tenderer during the process and must be transparent and published on the website .

(3) The process of determining fulfilment of the conditions for granting a concession is carried out by the Council through an examination, comparison and evaluation of all the opened bids and the Council may organise a public presentation of the bid, which must be specified in the notice, and detailed in the tender documentation.

#### Article 21

(1) The Council may, at the request of television and/or radio broadcaster make a decision on re-granting concessions for the coming period, subject to the publication of the notice, if the television and/or radio broadcaster provides services in accordance with the Electronic Media Act, other regulations and the concession agreement .

(2) An application for re-granting a concession to a television and/or radio broadcaster must be submitted to the Council at least six months prior to the expiration of the concession .

#### Article 22

(1) After completing the procedure for granting a concessions and establishing the conditions for granting a concession, the Council shall adopted a Decision on Granting a Concession which is the subject of the tender.

(2) In its decision on granting a concession, the Council shall determine a deadline for the tenderer within which the tenderer is obliged to submit a request to the Croatian Post and Electronic Communications Agency to conduct a technical inspection in order to determine the conditions of the premises and technical conditions .

(3) If the tenderer within the deadline referred to in Paragraph 3 of this Article does not lodge a request as referred to in Paragraph 3, it shall be deemed that the tenderer has forfeited the granted concession.

(4) In case of forfeiting the granted concession, the Council shall cancel the tender.

(5) The Croatian Post and Electronic Communications Agency shall perform a technical inspection in accordance with Paragraph 3 of this Article within thirty days of having received the request, and if that is not possible, it shall notify the Council.

#### Article 23

The Decision on Granting a Concessions shall contain:

- Name of the concession grantor,
- Decision number and date,
- Name of the selected most favourable bidder,
- Basic rights and obligations between the concession grantor and the concessionaire,
- Concessionaire's obligation to commence working on all assigned radio frequencies no later than halfway through the deadline given by the concession,
- Type and subject of the concession,
- Nature and scope including place or where the concession activities are to be conducted,
- Period for which the concession is granted,
- Special conditions which for the duration of the concession the selected most favourable tenderer must meet,
- Amount of the concession fee or the basis for determining the concession fee which the concessionaire is to pay,
- Deadline within which the selected most favourable tenderer is to enter into a concession agreement with the concession grantor, and the consequences of not adhering with the deadline for signing the concession agreement,

- Explanation of the reasons for selecting the most favourable tenderer,
- Instructions on legal remedy ,
- Signature and seal of the concession grantor.

#### Article 24

The Council shall decide to cancel a tender or parts thereof under the the following circumstances:

- If not a single acceptable bid based on the conditions in the notice has been submitted,
- If prior to the expiration of the deadline it is established that the documentation must be significantly altered.

#### Article 25

(1) The right to conduct radio and/or television operations is acquired on the basis of the Decision on Granting a Concession and the concluded concession agreement in accordance with Article 74 of the Electronic Media Act.

(2) Pursuant to the Decision on Granting a Concession as referred to Paragraph 1 of this Article, the Council shall sign a concession agreement with the selected most favourable tenderer.

(3) If within the deadline specified in the decision on granting a concession the concession agreement is not signed, the Council will cancel the decision on granting a concession, and the tender shall not be entitled to compensation.

#### Article 26

(1) The Decision on Granting a Concession shall be published in the Official Gazette, and it may also be published in any other appropriate manner .

(2) The Decision on Granting a Concession shall be sent with a return receipt to all submitters of bids.

#### Article 27

An appeal against the Council's Decision on Granting a Concession is not permitted, but an administrative dispute before the competent administrative court may be initiated.

#### Article 28

(1) On the date of this Ordinance entering into force, the Ordinance on the Content and the Procedure of the Public Tender for Granting Concessions for the Provision of Television and Radio Media Services ceases to be valid (Official Gazette, No. 46 /10 and 113/10).

(2) This Ordinance shall enter into force on the eighth day of its publication in the Official Gazette .

**ELECTRONIC MEDIA COUNCIL  
COUNCIL PRESIDENT**



Zdenko Ljevak, BE

**CLASS: 612-12/13-01/0145**

**REGNO: 567-02/01-13-01**

**Zagreb, 18 October 2013**