

The Law Of The Republic Of Azerbaijan On Public Procurements

Present Law determines economic, legal and organizational basis of public procurements in the

Republic of Azerbaijan, sets principles and rules of effective and economical use of state funds

during procurements, creation of equal competitive environment for all consignors (contractors) on the basis of competition and publicity.

CHAPTER I

General Provisions

Article 1. Law applicability area

Present Law extends to procurement of goods (works and services) performed in the Republic of Azerbaijan by state enterprises and organizations (administrations), enterprises and organizations, state share in charter fund of which is 30 and more percents at the account of state

funds, loans and grants obtained by state and received under state guarantee.

Article 2. Basic definitions

Definitions used in present Law shall have following meanings:

“procurement” – acquisition of goods (works and services) as established by present Law;

“procurement agency” – state enterprises and organizations (administrations), enterprises and organizations procuring goods (works and services), state share in charter fund of which is 30 and

more percents;

“tender” – competition held to select the most efficient procurement contract performance proposals submitted by tenderers in writing;

“goods” – product with certain quantitative and qualitative features, products in solid, fluid and

gaseous state, equipment, raw materials as well as electric energy;

“works” – projecting, construction, reconstruction, destruction, repair of building or object including preparation of construction site, installation of equipment, construction, assembling, finishing or ground works, as well as associated drilling, geodesic, scientific-construction, exploration, publishing and printing works, satellite survey works, seismic survey and other kind of

works under procurement contract;

“services” – any other subject of procurement except goods and works;

“consignor” (contractor) – potential or actual party to the procurement contract entered into with

procurement agency;

"tenderer" – legal or physical persons or union of legal persons which submitted proposal and paid tender participation fee under tender conditions;

"tender proposal guarantee" – guarantee for obligations on tender proposal taken by tenderer to

procurement agency. Such guarantee may be bank guarantee, letter of credit, securities, cash, deposits and other financial assets;

"tender commission" – temporary workgroup set up by procurement agency and performing tender procedures on its behalf;

"collection of basic tender conditions" – document submitted to tenderers and reflecting tender

conditions of procurement agency;

"procurement contract" – document concluded between procurement agency and tender winner

(winners) and setting obligations of the parties in connection with procurement of goods (works and services);

"procurement contract performance guarantee" – procurement contract performance guarantee provided by tender winner (winners) to procurement agency. Such guarantee may be bank guarantee, letter of credit, securities, cash, deposits and other financial assets;

"preferential correction" – benefit set by procurement agency in collection of basic tender conditions for local consignors (contractors);

"state funds" – funds of state budget of the Republic of Azerbaijan, loans, grants, foreign aid received under international agreement and contracts entered into by the state, means of out-of-budget

funds of organizations funded from budget and other means related by legislation to state funds;

"issuer" – financial institution ensuring tender proposal of consignor (contractor), obligations on

performance of procurement contract and other payment instruments;

"supposed price of goods (works and services)" – average market price of goods (works and services) set by procurement agency prior to announcement of tender in accordance with current regulations.

Article 3. Legislation of the Republic of Azerbaijan on public procurements

Relations associated with public procurements shall be governed by present Law, other laws and regulations of the Republic of Azerbaijan.

Article 4. Respective executive authority on public procurements

4.1. Respective executive authority on public procurements shall carry out state policy in the field of procurement of goods (works and services) at the account of state funds and perform the

following for this purpose:

4.1.1. take part in creation and improvement of legal base governing public procurements in the

Republic of Azerbaijan, work out rules, instructions, other documents on public procurements and

submit them to respective executive authorities for approval;

4.1.2. supervise over legality of procurement of goods (works and services) on competitive basis at the account of state funds and performance of contracts, consider disputes, suspend procurement procedures for up to 7 banking days in case of discovery of breach of law and if necessary raise the matter of cancellation of tender results to procurement agency;

4.1.3. consider disputes in public procurement procedures and in case of breach of law take measures in accordance with present law provisions;

4.1.4. provide procurement agencies with methodical and organizational assistance on organization and conducting of public procurements, give recommendations, set up specialists'

professional level improvement courses, hold seminars and conferences, prepare relevant study

and methodical materials;

4.1.5. set rules of production of reports on public procurements, ensure that regulations, documents and information governing public procurements are brought to public's attention;

4.1.6. produce and submit annual reports on public procurements to respective executive

authorities.

4.2. In case of failure by officials and other responsible employees of executive authority on public procurements to perform their service duties, they shall bear responsibility as per respective legislation.

Article 5. Coming of procurement contract into effect and public notification

5.1. Acceptance of tender proposal and coming of procurement contract into effect at application of tender procedures shall be made in accordance with article 40 of present Law.

5.2. If all other procurement methods are applied, consignors (contractors) shall be notified of rules of coming of procurement contract into effect at time when request relating to proposals, offers or quotations is received by procurement agency.

5.3. Information about procurement contract entered into as a result of tender shall be published within 5 banking days in organ of press where announcement about tender was published.

Article 6. Requirements to qualification of consignor (contractor)

6.1. This article applies to determine and assess by tender commission of consignors (contractors) qualification indices at any stage of procurement procedures.

6.2. In order to participate in procurement procedures, consignors (contractors) qualification indices shall meet the following criteria:

6.2.1. availability of professionalism, experience, technical and financial possibilities, workforce, competency in management, reliability in relevant field to ensure performance of procurement contract;

6.2.2. authority to enter into procurement contract;

6.2.3. possibility of free and unlimited use of its assets as well as solvency;

6.2.4. consignors (contractors) shall not declared bankrupt, their property shall not seized, mortgaged or otherwise charged, they shall not persons, which commercial activity has been suspended by court decision;

6.2.5. absence of tax and other mandatory payment obligations in the Republic of Azerbaijan which execution is overdue;

6.2.6. absence of previous conviction within 5 years preceding to commencement of procurement procedures for crime connected with their professional activity as well as professional

activity of their business-managers and employees or incorrect indication of their qualification

indices for conclusion of procurement contract or absence of court ban to deal with respective professional activity.

6.3. Procurement agency may in view of right of consignors (contractors) on protection of intellectual property or commercial secrets request from them documentary proofs or other information, confirming that they possess qualification indices in accordance with criteria indicated

in article 6.2 of present Law.

6.4. Requirements meeting this article shall be interpreted in qualification compliance determination documents (if qualification compliance determination procedure is held) or collection

of basic tender conditions or in other documents relating to attraction of proposals, offers or quotations and apply to all consignors (contractors) at the same extent. Procurement agency cannot set any other criteria, requirements or procedures relating to qualification indices of consignors (contractors), which are not provided for by this article.

6.5. Procurement agency shall assess qualification indices of consignors (contractors) on the

basis of criteria and qualification procedures interpreted in qualification compliance determination documents and in collection of basic tender conditions or in other documents, relating to attraction of proposals, offers or quotations.

6.6. In view of articles 8.1, 36.9, 44.2 of present Law, procurement agency shall not set criteria, requirements or procedures assuming discrimination between consignors (contractors).

6.7. If procurement agency discovers at any time that consignor (contractor) provided fictitious information about its qualification indices, it shall exclude such consignor (contractor) from tender.

6.8. If in view of essence insignificantly inaccurate and incomplete information provided by consignor (contractor) about its qualification indices, will upon request of procurement agency be immediately removed as provided by present Law, such consignor (contractor) cannot be excluded from tender.

6.9. Procurement agency may in course of procurement procedures request approval and legalization of documents reflecting tenderer's qualification indices as provided by legislation of the Republic of Azerbaijan.

Article 7. Determination of qualification compliance of consignors (contractors)

7.1. Procurement agency prior to submission of tender proposals or offers may hold consignors (contractors) qualification compliance determination procedures.

7.2. If procurement agency holds qualification compliance determination procedures, it shall give or send collection of documents relating to such procedures to consignor (contractor), which made an application and paid participation fee (if provided).

7.3. Collection of documents on qualification compliance determination procedures shall include:

7.3.1. instruction on production and submission of proposals on qualification compliance determination procedures;

7.3.2. summary of basic conditions of procurement contract to be entered into as a result of procurement procedures;

7.3.3. method, place and deadline for submission of documents for determination of qualification compliance with indication of specific day and hour of production and submission by

consignors (contractors) of their proposals;

7.3.4. in accordance with legislative acts on procurements – other requirements relating to submission of documents and preparation to conduct qualification compliance determination procedures by procurement agency;

7.3.5. information to be indicated in tender invitation in accordance with articles 26.1.1, 26.1.2,

26.1.7-26.1.10 and 26.1.13 of present Law;

7.3.6. information provided for by articles 42.1.1-42.1.3, 42.1.6, 42.1.14, 42.1.17 of present Law.

7.4. In order to give consignor (contractor) an opportunity to submit its proposal in provided term, procurement agency shall for the purpose of determination of qualification compliance

respond to its any request within 3 banking days. Response to any request shall be sent to consignors (contractors), which received qualification compliance determination documents without notification of requester.

7.5. When decision about qualification indices of consignor (contractor) which submitted proposal for qualification compliance determination is made, procurement agency shall be guided

by criteria set by present Law only.

7.6. Procurement agency shall inform consignor (contractor) about results of determination of qualification compliance. Successful consignors (contractors) shall be entitled to continue participation in tenders.

7.7. Procurement agency shall provide unsuccessful consignors (contractors) with justified information about it.

7.8. Procurement agency may request successful consignor (contractor) to reconfirm its qualification indices. Unsuccessful consignor (contractor) shall be excluded from tender. Each consignor (contractor), which received request to reconfirm its qualification indices and responded

to such request shall be immediately informed to what extent its qualification indices suit the procurement agency.

Article 8. Participation of consignors (contractors) in public procurements

8.1. Except the cases indicated in regulations governing public procurements, all resident and non-resident legal or physical persons or union of legal persons irrespective of state belonging shall be entitled to take part in public procurement procedures held in the Republic of Azerbaijan as tenderers.

8.2. If participation of consignors (contractors) in procurement procedures is limited because of state belonging, procurement agency shall interpret appropriate reasons in procurement procedures report.

8.3. In view of provisions of article 8.1 of present Law, if consignors (contractors) are invited by procurement agency to participate in procurement procedures, procurement agency cannot later exclude them from procurement procedures because of state belonging.

Article 9. Procurement procedures notification forms

9.1. Documents, notices, decisions and other information provided for by present Law, sent by

procurement agency and consignors (contractors) to each other shall be provided in writing.

9.2. Consignor (contractor) or procurement agency shall be entitled to transfer information provided for by articles 7.4, 7.6, 11.4, 28.4, 32.2, 33.3, 36.1, 36.2, 40.1, 41.3, 47.1 and 47.2 of present Law via communications, which do not allow for their content to be recorded. In such case

written confirmation of information shall be immediately informed to receiving party.

9.3. Irrespective of form, the documents, notices, decisions or other information were sent or received, procurement agency shall not allow for discrimination among consignors (contractors).

Article 10. Procurement procedures report

10.1. Procurement agency shall produce procurement procedures report with indication of the following information:

10.1.1. brief description of procured goods (works and services);

10.1.2. names and addresses of consignors (contractors) submitted tender proposals, offers or

quotations, name and address of consignor (contractor), which procurement contracts is entered

into with, value of such contract;

10.1.3. information about qualification indices of consignors (contractors) submitted tender proposals, offers or quotations or note on absence of such information;

10.1.4. supposed price of procured goods (works and services) or basis for its determination, brief summary of basic condition of each tender proposal, offer, quotation and procurement contract;

10.1.5. brief description of assessment and comparison of tender proposals, offers or quotations including application of any preferential correction in accordance with articles 36.9 and

44.2 of present Law;

10.1.6. if all tender proposals, offers or quotations are rejected, information about it with indication of appropriate reasons in accordance with article 11 of present Law;

10.1.7. if procurement contract is not concluded as a result of procurement procedures conducted with application of procurement methods except open tender - information about it with

indication of appropriate reasons;

10.1.8. if tender proposal, offer or quotation is rejected under articles 12 or 13 of present Law

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information about it;

10.1.9. if procurement method is used in accordance with articles 16.2 and 16.3 of present Law

– interpretation of circumstances taken by procurement agency as a basis for selection of used procurement method;

10.1.10. if participation of consignors (contractors) in procurement procedures is limited by procurement agency in accordance with article 8.2 of present Law because of state belonging

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interpretation of circumstances taken by procurement agency as a basis for application of such limitation;

10.1.11. summary of any request on explanation of qualification compliance documents or tender documents, responses to such requests as well as any change in such documents.

10.2. In view of article 35.2 of present Law, part of procurement procedures report indicated in

articles 10.1.1 and 10.1.2 after acceptance of tender proposal, offer or quotation as the case may

be or upon completion of procurement procedures, which have not resulted in conclusion of procurement contract, they can on the basis of request be transferred to concerned person.

10.3. In view of article 35.2 of present Law, part of procurement procedures report indicated in

articles 10.1.3 - 10.1.7 and 10.1.11, after acceptance of tender proposal, offer or quotation or upon

completion of procurement procedures, which have not resulted in conclusion of procurement contract, they shall on the basis of request be transferred to consignors (contractors) submitted tender proposal, offer or quotation or consignors (contractors), which submitted proposal for determination of qualification compliance. Except for cases provided by legislation, procurement

agency shall not disclose the following information:

10.3.1. information, disclosure of which does not meet state interests as well as damage commercial interests of the parties or prevent fair competition;

10.3.2. information relating to study, assessment and comparison of tender proposals, offer and

quotations, apart from summary of information provided for by article 10.1.5 of present Law.

Article 11. Failure of tender and refusal for its continuation

11.1. If number of tenderers submitted tender proposal to take part at the tender is less than three, procurement agency shall refuse to continue tender and publish relevant information in organ of press where announcement about tender was published within 5 banking days.

11.2. For the purpose of protection of state interests, procurement agency shall be entitled to make a decision to reject all tender proposals, offer and quotations before acceptance in following

cases:

- if bargain between tenderers with aim to increase the price is discovered at conducting of tender procedures;

- if tender proposals are not in compliance with collection of basic tender conditions;

- if financing of subject of tender is suspended.

Such decision shall be approved by respective executive authority. On the basis of request of consignor (contractor) submitted tender proposal, offer or quotation procurement agency shall notify him (her) of rejection of all tender proposals, offers or quotations.

11.3. Procurement agency shall bear no responsibility to consignors (contractors) submitted tender proposal, offer or quotation for application of articles 11.1 and 11.2 of present Law.

11.4. Notice on rejection of tender proposals, offers and quotations shall be immediately sent to

all consignors (contractors), which submitted them.

11.5. In case of refusal from continuation of tender or rejection of all tender proposals, offers and quotations, procurement agency shall be entitled to announce new tender to procure such goods (works and services) or with no change of essence divide them into parts, if it is allowed by

properties of procured goods (works and services) and conduct separate tender on each part.

Amount of divided parts cannot be less than amount fixed by respective executive authority.

Article 12. Cases of falsification at public procurements

If procurement agency determines that consignor (contractor) deals with falsification in order to

influence taking of any decision relating to procurement procedures and if it is approved by respective executive authority, it shall:

- reject tender proposals, offers and quotations submitted by such consignor (contractor);

- prohibit participation of consignor (contractor) in further procurement procedures for indefinite

term or for the term fixed by respective executive authority;

- submit information for investigation of falsification facts to respective competent bodies;

- indicate rejection of tender proposal, offer or quotation and reasons of rejection in procurement procedures report and immediately notify consignor (contractor) about it.

Article 13. Conflict of interests at public procurements

13.1. Participation of consignors (contractors) being in legal, financial or organizational dependence on procurement agency in procurement procedures held by such agency shall not be allowed.

13.2. At conducting of procurement procedures the following persons cannot be representative,

consultant of procurement agency or executor of other obligations relating to procurement,

13.2.1. persons who have direct related, custodial, trustee relationships or relationships

connected with adoption, constitution and dependence with representative or official of tenderer

participating in procurement procedures;

13.2.2. persons who during three years preceding to procurement procedures were employee or official of tenderer, taking part at procurement procedures.

13.3. Persons who are employees of consignor (contractor), head administration, which it subordinates to, or its branch (representative office), cannot be involved in preparation of documents on procurement procedures.

13.4. Rejection of tender proposal, offer or quotation due to reasons indicated in this article and

reason for rejection shall be indicated in procurement procedures report and shall be immediately

notified to consignor (contractor).

Article 14. Requirements relating to description of goods (works and services)

14.1. Any peculiar properties of goods (works and services), plans, drawings, sketches, requirements or descriptions shall be based on objective technical and qualitative indices of procured goods (works and services).

14.2. Any features, plans, drawings and sketches, requirements relating to tests and test methods, packaging, marking, labeling or certification as well as conventional signs and terms or

description of services, reflecting technical and qualitative indices of procured goods (works and

services) and preventing tenderer to participate in procurement procedures or limiting such participation, including assumption of discrimination because of state belonging, shall not be included into qualification compliance determination documents, collection of basic tender conditions or documents on attraction of proposals, offers or quotations and shall not be used.

Article 15. Language of legalization at public procurements

Collection of documents on determination of qualification compliance, collection of basic tender

conditions, documents on attraction of proposals, offers and quotations shall be produced on state

language of the Republic of Azerbaijan. If necessary, indicated documents can be translated into

one of languages widely used at international trading.

CHAPTER II

Procurement Methods Application Conditions

Article 16. Procurement methods

16.1 Public procurements of goods (works) and services in the Republic of Azerbaijan shall depending on conditions of application indicated in articles 17-21 of present Law be conducted by

methods of open tender, two-stage tender, tender with limited participation and closed tender, request for proposals, request for quotations and procurement from one source.

16.2. At procurement of goods (works), procurement agency shall apart from open tender procedures be entitled to use procurement methods only under conditions provided for by articles

18, 19, 20 and 21 of present Law.

16.3. At procurement of services, procurement agency shall use procurement method set in chapter V except following cases:

16.3.1. if detailed compilation of features is practically possible and conducting of open tender

procedures is most expedient because of technical nature of procured services;

16.3.2. at most expediency of use of procurement methods provided for by articles 18-21 of present Law as well as at implementation of conditions of their use.

16.4. If any procurement method in accordance with articles 16.2 and 16.3 of present Law is used, procurement agency shall include interpretation of circumstances taken as a basis for selection of such method into procurement procedures report.

Article 17. Open tender

17.1. If supposed price for goods (works and services) is higher than minimal price set by respective executive authority, they shall be procured through open tender.

17.2. If supposed price for goods (works and services) is less than amount provided for by article 17.1 of present Law, procurement agency shall use any procurement method.

Procurement

agency cannot for the purpose of removal of limitation of amount for application of this article

divide procurement of goods (works and services) into separate contracts (i.e. separate parts).

17.3. Realization of goods (works and services) supposed price for which is higher than amount

provided for by article 17.1 of present Law using other procurement methods can only be made

subject to approval by respective executive authority.

Article 18. Two-stage tender or request for proposals

18.1. Procurement agency may in course of procurement use two-stage tender procedures in accordance with article 46 of present Law or request for proposals in accordance with article 48 in

following cases:

18.1.1. if procurement agency cannot determine in details features of goods (works and services) in order to take the most suitable decision to provide its demand for procurements it shall:

- attract tender proposals, requests for proposals or offers in connection with different possible methods of provision of its demand;

- hold discussions with consignors (contractors) in connection with technical nature of goods (works) or features of services.

18.2. If procurement agency wishes to enter into agreement for the purpose of conducting studies, experiments, researches or development (except for cases if manufacturing of sufficient

goods to provide profit or reimbursement of costs incurred for studies and developments is provided for in the contract).

18.3. Along with above, procurement agency may additionally apply method of request for proposals in course of procurement in following case:

18.3.1. if an urgent demand for acquisition of goods (works and services) is arisen in conditions,

when arisen demand is not a result of intentional extension of procurement process by procurement agency and it is impossible to foresee occurrence of such situation, and at practical

inexpediency of application of open tender procedure or other procurement methods.

Article 19. Tender with limited participation and closed tender

19.1. Procurement agency shall conduct tender with limited participation or closed tender in accordance with article 47 of present Law.

19.2. Tender with limited participation shall be used in following cases:

19.2.1. when respective goods (works and services) because of its extraordinary difficulty or

possessing specific nature are available to potential consignors (contractors) in limited amount;

19.2.2. if time and costs required to review and assess numerous tender proposals is not proportional with value of procured goods (works and services).

19.3. If goods (works and services) are provided for defense and national security needs, procurement agency shall use closed tender. Procurement on clothes, foodstuffs, articles, inventory, medical equipment, medicines, service vehicles, repair and construction works for such needs shall be conducted by through open tender.

Article 20. Conditions of use of request for quotations

20.1. For procurement of goods (works and services) with current market, supposed price of which is less than minimal amount set by respective executive authority, procurement agency may

use request for quotations in accordance with article 49 of present Law.

20.2. Reference to article 20.1 of present Law cannot serve for procurement agency as a reason to divide procurements into separate contracts (i.e. division of goods, works and services into separate parts).

Article 21. Conditions of use of procurement method from one source

21.1. Procurement agency can subject to approval by respective executive authority in accordance with article 50 of present Law use procurement method from one source in following

cases:

21.1.1. if procured goods are only available to any specific consignor (contractor) or specific consignor (contractor) possess rights over such goods (works and services) and if their substitutes

or alternate are unavailable;

21.1.2. if urgent demand for goods (works and services) is arisen and conducting of tender procedures or use of any other procurement method is inexpedient; if impossible to foresee cases

which led to urgency of demand or if such cases are not result of delay of procurement agency;

21.1.3. if urgent demand for such goods (works and services) is arisen in connection with emergencies, if use of other procurement methods is inexpedient in view of time to be spent to

them;

21.1.4. if procurement agency after procurement of goods, equipment, technology or services from any consignor (contractor) arrives to decision to procure them from such consignor (contractor) in view of ensuring their compliance with standardization considerations of existing

goods, equipment, technology or services.

CHAPTER III

Organization of Procurements

Article 22. Stages of preparation of procurements

22.1. For organization of procurements, procurement agency shall:

- set up tender commission;

- prepare collection of basic tender conditions;

- publish announcement about tender or send personal invitation to consignors (contractors) for

participation in tender.

22.2. At lack of experience in field of public procurements, procurement agency shall be entitled to involve local and foreign experts or consulting companies for organization of tender as per present Law.

Article 23. Setting up of tender commission

23.1. Tender commission shall include experts of procurement agency and representatives of relevant organizations. Chairman of tender commission shall be appointed among procurement agency's officials (except manager). Composition of tender commission shall be approved by the manager of procurement agency (acting person).

23.2. If supposed price of tender subject exceeds 5 billion manat, and in organizations funded from the budget - 1,5 billion manat or equivalent sum in convertible currency, representatives of respective executive authority shall under its proxy be included to tender commission.

23.3. Experts can be involved to tender commission to prepare collection of basic tender conditions and review, assess and compare tender proposals.

Article 24. Collection of basic tender conditions

24.1. The following information shall be indicated in collection of basic tender conditions:

24.1.1. tender proposals preparation instructions;

24.1.2. assessment of qualification indices of consignors (contractors) in accordance with provisions of article 6 of present Law as well as procedures and criteria of reconfirmation of qualification indices under article 36.13 of present Law;

24.1.3. requirements relating to documents or other information confirming qualification indices of consignors (contractors);

24.1.4. in view of requirements of article 14 of present Law – necessary technical and qualitative features of goods (works and services) including plans, drawings and sketches, quantity

(volume) of goods, additional services, place and terms of shipping of goods (performance of works, provision of services);

24.1.5. criteria set to determine winning tender proposal in view of requirements of articles 36.7,

36.8 and 36.9 of present Law and their relative price;

24.1.6. conditions of division of subject of tender (subject to proof of its efficiency) between two

or more tenderers;

24.1.7. conditions of procurement contract and form of the contract to be signed by the parties;

24.1.8. if alternate of tender proposal is admitted – information about it, description of comparison and assessment method of such proposals;

24.1.9. if submission of tender proposal for part of goods is permitted (works and services) – description of such part (parts);

24.1.10. information on possibility of inclusion of other costs (costs relating to transport, insurance, taxes and duties) to the price of goods (works and services) except their cost, method

of calculation and expression of price of tender proposal;

24.1.11. currency (currencies), which price of tender proposal shall be calculated and expressed in;

24.1.12. language (languages), which tender proposals have been produced in;

- 24.1.13. forms, amount, issuer of tender proposal and guarantee of performance of procurement contract, confirming party (if required) and other conditions;
- 24.1.14. procedure, place and deadline for submission of tender proposals;
- 24.1.15. method of giving to tenderers explanation relating to collection of basic tender conditions as well as whether procurement agency intends to meet with tenderers at this stage;
- 24.1.16. tender proposals validity;
- 24.1.17. place, day and hour of opening of package of tender proposals;
- 24.1.18. currency to be used for assessment and comparison of tender proposals;
- 24.1.19. references to regulations on public procurements;
- 24.1.20. name and position of tender commission coordinator(s) to get information on organization of procurements;
- 24.1.21. right of consignor (contractor) to appeal decision of tender commission, actions (inaction) of its members;
- 24.1.22. note about right of tender commission to reject all tender proposals;
- 24.1.23. documents required the procurement contract to take effect after acceptance of tender proposal, and their preparation terms;
- 24.1.24. procedure and conditions of insurance of goods (works and services);
- 24.1.25. rules of settlement of disputes between procurement agency and winner or participants of tender;
- 24.1.26. rules of making changes into contractual price in accordance with requirements of articles 51.1 and 51.2 of present Law during implementation of procurement contract.

Article 25. Attraction of tender proposals

- 25.1. Announcement about conducting of open tender shall be published in state newspaper and internationally distributed republican mass media not later than 30 banking days, and second time – not later than 20 banking days before the day of opening of tender packages.
- 25.2. Announcement about two-stage tender shall be published in state newspapers and internationally distributed republican mass media not later than 60 banking days, and second time – not later than 40 banking days before the day of opening of tender packages.
- 25.3. Along with issuance of announcement about open tender, procurement agency may send personal invitation to consignors (contractors) for participation in tender.
- 25.4. In order to attract proposals, offers and quotations at other procurement methods, tender commission shall produce list of sufficient number (not less than three) of potential consignors (contractors) and send personal invitation to them.
- 25.5. Information indicated in article 26 of present Law shall be reflected in personal invitation.

Article 26. Content of tender announcement (invitation)

- 26.1. The following shall be indicated in announcement (invitation) about tender:
 - 26.1.1. information about organizer of tender;
 - 26.1.2. time and place of commencement of tender procedures;
 - 26.1.3. tax and duty benefits (if provided) relating to procurement contract;
 - 26.1.4. documents necessary to take part in tender;
 - 26.1.5. office telephone and fax number of coordinator to get additional information;
 - 26.1.6. conditions of tender proposal's guarantee;
 - 26.1.7. name, quantity (volume), place of delivery of goods, features and place of works performed, description and place of services provided;

26.1.8. required terms of shipping of goods and completion of works or schedule of provision of services;

26.1.9. criteria and procedures to which in accordance with article 6.2 of present Law shall be given preference in assessment and comparison of qualification indices of consignors (contractors);

26.1.10. conditions limiting participation of consignors (contractors) in procurement procedures because of state belonging;

26.1.11. amount of participation fee and its payment procedure;

26.1.12. language or languages which collection of basic tender conditions has been prepared in;

26.1.13. deadline and place of submission of tender proposals.

Article 27. Supposed price of goods (works and services)

27.1. Procurement agency prior to commencement of tender procedures shall set supposed price of goods (works and services) to be procured as per current legislation.

27.2. If necessary, procurement agency shall attract professional assessors to fix supposed price of goods (works and services) to be procured.

27.3. Procurement agency shall keep supposed price of goods (works and services) to be procured in secret until the day of opening of tender packages and shall use it to assess tender results.

27.4. If price of any tender proposal significantly differs from supposed price of relevant goods (works and services), procurement agency shall be entitled to reject such offer. This decision shall

be approved by respective executive authority.

CHAPTER IV

Tender Procedures

Article 28. Documents submitted by consignors (contractors) for tender

28.1. Consignor (contractor) willing to bid in tender as tenderer shall submit the following documents to procurement agency:

- application for participation in tender;
- bank document confirming that participation fee has been paid;
- tender proposal;
- required documents about consignor (contractor).

28.2. "Required documents about consignor (contractor)" shall mean:

- full name, legal status, country of incorporation and details of consignor (contractor);
- information about qualification indices (if necessary) of consignor (contractor);
- document about financial status of consignor (contractor) for last year issued by bank (if he (she) operates for less than a year – document for whole period of activity).

28.3. Consignor (contractor) shall produce its tender proposal as determined by present Law and submit it to organizer of tender not later than one banking day before commencement of tender procedure. Tender proposal, submitted after this term, shall be returned to consignor (contractor) without opening and its participation in tender shall not be allowed.

28.4. Documents indicated in article 28.1 of present Law (for exception of tender proposal) shall

be submitted to procurement agency not later than 7 banking days before commencement of tender procedure. If procurement agency arrives to conclusion that any one or some documents

are missing or any one or some documents needs amendments, it shall offer to consignor

(contractor) to produce missing document or make relevant amendment to such documents not later than 2 banking days after submission of documents. In such case consignor (contractor) shall submit to procurement agency full documents with appropriate changes not later than 3 banking days before commencement of tender procedure.

28.5. If documents indicated in this article are produced correctly and in timely manner, procurement agency shall register consignor (contractor) willing to bid as tenderer.

Article 29. Payment of tender participation fee and tender costs reimbursement

29.1. Total sum of tender participation fee shall be set by procurement agency provided that it does not exceed 0,5 percent of supposed price of tender subject and 1,5-times of tender costs.

All

costs related to conducting of tender including costs on announcement, advertisement, lease of

rooms for conducting of tender, funding tender of commission, preparation and delivery of tender

documents to tenderers as well as all other costs directly associated with conducting of tender, shall be reimbursed at the account of participation fee.

29.2. Consignor (contractor) shall pay to procurement agency tender participation fee to get collection of basic tender conditions and register as tenderer. Tender participation fee shall not be refunded.

29.3. If means accumulated from tender participation fees, exceed tender costs, difference shall

be given into disposal of procurement agency, if these means do not cover the costs, difference

shall be paid from account of procurement agency.

Article 30. Explanation on collection of basic tender conditions and its amending

30.1. Consignor (contractor) shall be entitled to send to tender commission a request relating to

explanation of collection of basic conditions. Request shall be sent not later than 7 banking days

before completion of tender proposals submission term. Procurement agency shall respond such

requests not later than 5 banking days before completion of tender proposals submission term.

This response shall be sent to all consignors (contractors), which received collection of basic tender conditions without indication of address of requester.

30.2. Procurement agency may before expiry of deadline of submission of tender proposals upon own initiative or as a response to request of any consignor (contractor) make changes and

additions to collection of basic tender conditions. Information about it shall be immediately sent to

all consignors (contractors), which received collection of basic tender conditions. Changes and

additions shall be binding on consignors (contractors).

30.3. Procurement agency can meet with consignors (contractors) to explain collection of basic

tender conditions. Results of this meeting shall be recorded in minutes and immediately sent to all

consignors (contractors), which received collection of basic tender conditions for their information.

Article 31. Submission of tender proposals

31.1. Legal and physical person may take part on each tender's subject as one tenderer and as tenderer shall be entitled to submit only one proposal.

31.2. Deadline, time and place of submission of tender proposals shall be set by tender commission in collection of basic tender conditions.

31.3. Tender proposal prepared signed and sealed by tenderer as provided by present Law shall be put into double envelope. Closed side of both envelopes shall be signed, sealed by tenderer and submitted to procurement agency.

31.4. All figures in tender proposal shall be written in words as well.

Article 32. Validity, changes and recall of tender proposals

32.1. Tender proposals validity shall be set in collection of basic tender conditions. Such term shall constitute not less than 30 banking days from the day of opening of tender packages.

32.2. Tender proposals' validity can be extended on the basis of offer of procurement agency with consent of consignors (contractors). Consignor (contractor) may refuse from such offer of

procurement agency without loss of its right for tender proposal's guarantee.

32.3. Consignors (contractors), which accepted offer on extension of tender proposals' validity

shall extend guarantee validity provided by them for their tender proposals or issue new guarantee

for extension.

32.4. Consignor (contractor) shall be entitled to change or recall its tender proposal without loss

of right for guarantee only before expiry of tender proposals submission term.

Article 33. Tender proposal guarantee

33.1. Procurement agency shall fix tender proposal guarantee in amount of 1 to 5 percents of total cost of tender proposal. Guarantee's validity shall exceed tender proposal's validity by 30

days.

33.2. Tender proposal's guarantee shall be immediately returned in following cases:

33.2.1. upon expiry of validity of tender proposals;

33.2.2. at cancellation of tender procedures;

33.2.3. to tenderers, which failed to take first third places in tender - after making decision about

results of tender;

33.2.4. to tenderers, which did not accept tender proposal validity extension offer – after expiry

of tender proposals validity;

33.2.5. to tender winner – after signing of procurement contract and providing guarantee for performance of the contract;

33.2.6. to tenderers, which took second and third places in tender – after procurement contract entered into with tender winner takes effect.

33.3. Tenderer prior to submission of tender proposal may send to procurement agency request

on confirmation (if required) of compliance of issuer or confirming party with guarantee of proposals. Procurement agency shall immediately respond to such request.

33.4. If issuer or confirming party, compliance of which has been confirmed, later become insolvent or losses reliability for some reason, procurement agency shall be entitled to reject

guarantee submitted by them.

33.5. Procurement agency shall indicate in collection of basic tender conditions any requirement with regard to issuer as well as type, form and other conditions of guarantee, required

for tender proposal. Procurement agency shall be entitled to apply any requirements to actions of

tenderers relating to guarantee of tender proposals only to following cases:

33.5.1. upon expiry of deadline of submission of tender proposals or at recall or change of tender proposal before expiry of tender proposal's validity;

33.5.2. if contract is not entered into, when procurement agency require to sign procurement contract;

33.5.3. if after acceptance of tender proposal, guarantee required for implementation of procurement contract is not provided or any other condition indicated in collection of basic tender

conditions is not met prior to execution of the contract.

Article 34. Type of currency

34.1. Prices in tender proposals shall be expressed in currency or currencies set by procurement agency in collection of basic tender conditions (not more than three types of currency).

34.2. Prices expressed in tender proposals in manat shall for comparison be expressed in convertible foreign currencies as well. In such case rate set by National Bank of the Republic of

Azerbaijan for last day of submission of tender proposals shall be taken as a basis.

Article 35. Tender procedures commencement procedure

35.1. Tender procedure shall be conducted by tender commission in established place and time

in accordance with procedures provided for in collection of basic tender conditions and tender proposals shall be opened in the same consistency as they have been received. Late tender proposals shall not be accepted by tender commission and shall be returned unopened.

35.2. Name, address of each tenderer, price of tender proposal, guarantee of tender proposal shall be provided to persons taking part at opening of tender procedure. Tenderers which submit

tender proposal but do not take part at opening of tender procedure shall upon their request be provided with information declared at tender procedure with respect to all tenderers' proposals.

35.3. Tenderer or person, authorized by tenderer under notarized document, shall take part at opening of tender procedures and confirm information announced with respect to tender proposals.

35.4. Absence of tenderer or its attorney at tender procedures shall not give procurement agency or tender commission a reason to exclude such tenderer from tender.

Article 36. Review, assessment and comparison of tender proposals

36.1. In order to simplify review, assessment and comparison of tender proposals, procurement

agency shall be entitled to request from consignors (contractors) explanation of their tender proposals. No request, proposal or authorization, which aim is to change essence of tender proposal, including change of prices and changes with aim to bring tender proposal which is out of

formal requirements into compliance with such requirements shall be allowed.

36.2. Irrespective of article 36.1 of present Law, procurement agency shall correct merely

arithmetic errors, discovered in course of review of tender proposals. Procurement agency shall

immediately notify consignor (contractor), which submitted tender proposal of each such correction.

36.3. In view of article 36.2 of present Law, procurement agency shall only be entitled to consider tender proposal as proposal meeting formal requirements if such proposal meets all requirements indicated in collection of basic tender conditions.

36.4. If tender proposal has insignificant errors, which do not change its essence or not significantly out of features, conditions and other requirements set in collection of basic tender

conditions or error and shortcomings, which can be removed with no damage to essence of tender

proposal, procurement agency shall be entitled to consider such proposal as proposal meeting tender requirements. Any such errors shall if possible be expressed quantitatively and shall be taken into account at assessment and comparison of tender proposals.

36.5. Procurement agency shall exclude tender proposal in the following cases:

36.5.1. if consignor (contractor), which submitted tender proposal is not in compliance with qualification requirements;

36.5.2. if consignor (contractor), which submitted tender proposal, disagree with correction of any arithmetic error in accordance with article 36.2 of present Law;

36.5.3. if tender proposal is not in compliance with formal requirements;

36.5.4. if cases provided for by articles 12 and 13 of present Law are present.

36.6. Procurement agency shall assess and compare accepted tender proposals in accordance with procedures and criteria indicated in collection of basic tender conditions In order to determine

the tender proposal, which became winner in accordance with article 36.7 of present Law.

Criteria

not indicated in collection of basic tender conditions of tender shall not be used.

36.7. The following tender proposal shall be considered as winning one:

36.7.1. tender proposal with lowest price, in view of any preferential correction applied in accordance with article 36.9 of present Law;

36.7.2. tender proposal, considered the best one under criteria indicated in collection of basic tender conditions and assessed by quantity or which equivalency of cost can be determined.

36.8. if tender proposal is assessed as the best one under article 36.7.2, only following shall be taken into account by procurement agency:

36.8.1. price of tender proposal in view of any preferential correction applied in accordance with

article 36.9 of present Law;

36.8.2. operating, repair and maintenance costs of goods (works), terms of shipping of goods, completion of works or provision of services, functional features of goods (works), payment conditions and conditions of guarantee for goods (works and services);

36.8.3. considerations on defense and national security.

36.9. When tender proposals are assessed and compared, procurement agency if provided for by collection of basic conditions of tender shall be entitled to apply preferential correction in favor

of tender proposals on local goods (works and services).

36.10. Volume and application procedure of benefits shall be set by respective executive authority and governed by the regulations.

36.11. Benefits applied shall be reflected in procurement procedures report.

36.12. If prices of tender proposals are expressed in two or more currencies, prices of all tender proposals for the purpose of assessment and comparison of tender proposals shall be expressed in accordance with article 24.1.18 of present Law in a single currency at rate indicated in collection of basic tender conditions.

36.13. Whether or not procurement agency conducts qualification compliance determination procedure, it shall be entitled to request from consignor (contractor), which tender proposal has won under article 36.7 of present Law, reconfirmation of its qualification indices in accordance with criteria indicated in article 6 of present Law. Criteria and requirements to be applied for such reconfirmation shall be indicated in collection of basic tender conditions.

36.14. At failure to perform by consignor (contractor), tender proposal of which has won, of requirement of procurement agency about reconfirmation of its qualification indices in accordance with article 36.13 of present Law, its tender proposal shall be rejected and procurement agency shall select tender proposal, which has won the tender, in accordance with article 36.7 of present Law among other tender proposals.

Article 37. Tender commission decision

37.1. Tender commission shall be independent and shall take its decision in accordance with present Law absolutely independently.

37.2. During tender procedures and when decision under results of tender is taken not less than three fourth of tender commission members shall present. Decision shall be signed by all tender commission members.

37.3. After assessment and comparison of tender proposals, tender commission shall take one of following decisions:

37.3.1. on determination of first, second and third places among tenderers;

37.3.2. on extension of tender's term, if more time is required to analyze and compare proposals;

37.3.3. on allocation of subject of tender between two or more tenderers, if none of tender proposal provides implementation of subject of tender in full;

37.3.4. about unacceptability of tender proposals.

37.4. Tender commission members disagreed with assessment and comparison of tender proposals, shall sign the minutes with submission of their specific opinion. Specific opinion can be

produced as common opinion or individual opinions of members left in minority.

37.5. Tender commission shall produce final protocol on tender results, which shall be signed by all commission members. Final protocol shall be taken as a basis for conclusion of procurement

contract. Copy of final protocol shall be submitted to respective executive authority within 3 banking days after its execution.

37.6. Sample of final protocol of tender commission on tender results shall be produced and approved by respective executive authority.

Article 38. Tender commission liability

38.1. When carrying out obligations set by present Law, chairman and members of tender commission shall remain fair and neutral.

38.2. If during performance of obligations set by present Law, tender commission shows partiality and supports any tenderer, any of tenderers may apply to respective executive authority

or the court. If commitment of breach of law during preparation and conducting of tender is confirmed by such agencies, tender results shall be canceled and procurement agency shall conduct new tender on this subject. In such case chairman and other commission members cannot within 3 years be chairman or members of any tender commission, except commission members, who provided specific opinion, differing from decision taken.

38.3. If as a result of illegal action of chairman or member (members) of tender commission material damage was caused to tenderer (tenderers) and it was confirmed by the court, procurement agency shall reimburse damage and inform it in organ of press where announcement

about tender was published. Material liability of chairman or member (members) of tender commission who was recognized guilty and damage reimbursement issues shall be settled in accordance with legislation.

Article 39. Prohibition of negotiations with consignors (contractors)

Holding of negotiations between procurement agency and consignor (contractor) taking part at

the tender regarding tender proposal submitted during tender procedures shall not be not allowed.

Article 40. Acceptance of tender proposals and coming of procurement contract into effect

40.1. Tender proposal, considered as winner in accordance with article 36.7 of present Law shall be accepted. Procurement agency shall send notice to consignor (contractor), which submitted such tender proposal within 3 banking days until expiry of proposal's validity.

40.2. Winner of tender shall sign procurement contract and submit contract performance guarantee within term set in collection of basic tender conditions.

40.3. If winner of tender fails to sign procurement contract or submit the contract performance guarantee within required term, it is shall be considered as inability to perform obligations and lead

to tender proposal's guarantee not to be returned.

40.4. Procurement contract shall take effect once it is signed by consignor (contractor) and procurement agency. Relations between the parties entered into procurement contract shall be governed by present Law, Civil Code of the Republic of Azerbaijan and other regulations.

40.5. Obligations charged to tender's winner by procurement contract cannot be increased at the account of provisions and conditions, not indicated in collection of basic tender conditions.

40.6. At entering into procurement contract, procurement agency may with consent of the respective executive authority increase or decrease volume of goods (works and services) up to

15 percents subject to remaining of prices and criteria of each unit of goods (works and services)

unchanged.

40.7. Contractors, which have won in tender shall be entitled with consent of procurement agency and provided that it is provided by collection of basic tender conditions, to enter into agreement with subcontractors for implementation of works. In all other cases performance of the

contract cannot be charged to subcontracting agencies without written authorization of

procurement agency.

40.8. If collection of basic tender conditions provides for procurement contract to be approved by higher management body, contract shall not take effect until its approval by such body. Approximate term required for such approval after sending of notice about acceptance of tender

proposal shall be indicated in collection of basic tender conditions.

40.9. After the procurement contract takes effect and after submission by consignor (contractor)

of the contract performance guarantee, notice about such contract shall be sent to other consignors (contractors). Notice shall include name, address of consignor (contractor), which signed the contract, and value of the contract.

40.10. Procurement contract shall indicate liability of the parties for non-performance or incomplete performance of undertaken obligations, penalties, guarantees, disputes settlement procedure (if provided by collection of basic tender conditions and regulations), circumstances

serving as a ground for extension of term of commencement and completion of works as well as

appropriate conditions.

40.11. Sample of procurement contract on goods (works and services) shall be produced and approved by respective executive authority.

CHAPTER V

Basic Service Procurement Method

Article 41. Attraction of service offers

41.1. At attraction of service offers including offers of consulting services or in appropriate cases – proposals for determination of qualification compliance, procurement agency shall publish

notice in state newspaper. Notice shall include name and address of procurement agency, brief description of procured services, methods of obtaining of request for proposals or qualification

compliance determination documents, relevant amount of fee (if fixed) paid and other information.

41.2. Notice shall also be published in internationally widely distributed organ of press and Internet, except cases when only local consignors (contractors) are involved into procurement or

when total value of procured services does not exceed the amount set by respective executive authority.

41.3. If direct attraction is necessary in view of economy and efficiency, procurement agency shall not apply provisions of articles 41.1 and 41.2 of present Law in following cases subject to

approval by respective executive authority:

41.3.1. if procured services are available to limited number of service providers subject to attraction of proposals from all persons;

41.3.2. if time and costs associated with consideration and assessment of numerous proposals are not proportional to cost of procured services provided that proposals of not less than 3 (three)

service providers are attracted to provide effective competition;

41.3.3. if direct attraction is sole way to provide confidentiality or is necessary in view of state

interests, provided that proposals of not less than 3 (three) service providers are attracted to provide effective competition.

41.4. Procurement agency shall send directly to service providers request for proposals or qualification compliance determination documents in accordance with procedures and requirements indicated in notice as well as at application of article 41.3 of present Law. In exchange for this, only costs for printing and delivery of request for proposals or qualification compliance determination documents to service providers shall be included by procurement agency to amount of relevant payment.

Article 42. Content of request for service offers

42.1. Request for service offers shall include minimum the following:

42.1.1. name and address of procurement agency;

42.1.2. language or languages, which proposals shall be produced in;

42.1.3. method, place and deadline for submission of proposals;

42.1.4. if procurement agency reserves the right to reject all proposals – appropriate statement application;

42.1.5. criteria and procedures for assessment of qualification indices of service providers and reconfirmation of qualification indices in accordance with article 6 of present Law;

42.1.6. requirements relating to documentary proofs or other information, which service providers shall provide for confirmation of their qualification indices;

42.1.7. description and necessary features of procured services depending on level of their awareness, including place where services shall be provided, terms within which provision of services is provided or required;

42.1.8. information of procurement agency on acceptance or rejection of proposals about different possible ways of provision of its demand;

42.1.9. if service providers are permitted to submit proposals just for part of procured services

– description of such part or parts of procured services;

42.1.10. currency or currencies, which price of proposal shall be calculated or expressed in except cases when price criteria is not taken into account;

42.1.11. method using which, price of proposal shall be calculated or expressed including information, whether or not other components (costs relating to transport, accommodation, insurance, utilization of equipment, payment of duties and taxes and other costs) along with value

of services are included into price, except cases when price criteria is not taken into account provided;

42.1.12. criteria to be used at determination of winning proposal including any preferential correction used in accordance with article 44.2 of present Law and relative price of such criteria;

42.1.13. currency to be used to assess and compare proposals, exchange rate to be used for transfer into currency of proposals' price or statement of use of exchange rate published by certain

financial organization on certain date;

42.1.14. if an alternate to provided services, contractual conditions or other requirements is admitted in request for proposals or other requirements – appropriate indication of assessment method and comparison of alternative proposals and its description;

42.1.15. last names, positions and addresses of several officials or employees of procurement agency, who are authorized to maintain direct communication with service providers without interference of mediators and get from them information about procurement procedures;

42.1.16. statement about method of obtaining by service providers in accordance with article 43

of present Law of explanation on request for proposals and intention of procurement agency to

meet with service providers at this stage;

42.1.17. conditions of procurement contract known to procurement agency and form of contract

to be entered into by the parties;

42.1.18. notice about right to appeal of illegal actions or decisions or procedures of procurement agency in accordance with article 55 of present Law;

42.1.19. any formality required after acceptance of proposal for procurement contract to take effect, including if necessary - time required to obtain confirmation after sending of notice of production of written procurement contract and its approval by respective executive authority, acceptance;

42.1.20. any other requirements on preparation and submission of proposals as well as other aspects of procurement procedures set by procurement agency in accordance with present Law

and other regulations on procurement.

Article 43. Explanation on request for service offers and its amending

43.1. Service providers shall be entitled to ask procurement agency to give explanation in connection with request for service offers. In order to give service providers an opportunity to submit their proposals in timely manner, procurement agency shall respond to their request to give

explanation regarding request for proposals prior to expiry of deadline of submission of proposal.

Such explanation shall be given to all service providers who procurement agency sent request for

proposals to without indication of requester.

43.2. Procurement agency may at any time prior to expiry of deadline of submission of offered

services for some reason or at own initiative or as a response to request of any service provider

make additions and changes in request for proposals. Such addition shall be immediately delivered to all service providers, who procurement agency submitted request for proposals to, and

shall be binding on them.

43.3. At meeting with service provider procurement agency shall produce protocol; requests, relating to request for proposals made in course of such meeting and responses to them shall be

entered into protocol without indication of requester. Protocol shall be immediately provided to all

service providers, taking part in tender procedures.

Article 44. Assessment and comparison of service offers

44.1. Procurement agency shall set criteria to be used for assessment of service offers, fix relative price of each such criteria and its application procedure in proposals assessment process.

Such criteria shall be informed in request for proposals to service providers and can only apply to:

44.1.1. qualification indices, experience, authority, reliability, professional and managerial competency of service providers and their work staff;

44.1.2. efficiency of proposal submitted by service provider in view of provision of needs of procurement agency;

44.1.3. price of proposal including any additional and applicable costs in view of preferential corrections applied in accordance with article 44.2 of present Law;

44.1.4. considerations on defense and national security.

44.2. When proposals for services are assessed and compared, procurement agency shall be entitled to apply preferential correction in favor of local service providers in accordance with regulations on procurement subject to its approval by respective executive authority. Such correction shall be reflected in procurement procedures report.

44.3. At comparison of proposals, procurement agency shall determine minimal level of requirements relating to their qualitative and technical aspects, and assess each proposal in accordance with price criteria indicated in request for proposals as well as relative price and such criteria application procedure.

44.4. In such case following proposals shall be considered as winning one:

44.4.1. proposal with the lowest price;

44.4.2. proposal with optimal aggregate price, qualitative and technical aspects and price indicated in article 44.3 of present Law taken as a basis.

Article 45. Confidentiality

Procurement agency shall review proposals for services in way preventing their content to become known to service providers competing with each other. Any negotiations held shall be confidential and no one of parties taking part in negotiations in view of article 10 of present Law

shall disclose any price, technical or other information relating to such negotiations without consent

of the other party.

CHAPTER VI

Other Procurement Methods

Article 46. Two-stage tender procedure

46.1. Provisions of chapters III and IV of present Law, except cases when this article assumes deviations from these provisions, shall also apply to two-stage tender procedures.

46.2. At first stage of two-stage tender procedures all consignors (contractors) shall be offered to submit initial tender proposal without indication of its price. In such case collection of basic

tender conditions can provide for requirements relating to technical, qualitative or other features of

goods (works and services), as well as conditions of procurement contract, and in appropriate cases – conditions relating to occupational and technical competency and qualification indices of

consignors (contractors).

46.3. At first stage procurement agency in accordance with articles 11, 12 or 36.5 of present Law may hold with any consignor (contractor) tender proposal of which is not rejected, negotiations about any aspect of its tender proposal.

46.4. At second stage of two-stage tender procedures, procurement agency shall offer to consignors (contractors) tender proposal of which is not rejected, to submit final tender proposals

about collection of peculiar properties of goods (works and services) with indication of prices.

46.5. At preparation of documents, reflecting features at first stage of tender procedures, procurement agency shall be entitled to exclude or change any aspect of technical or qualitative

characteristics of procured goods (works and services), any criteria for assessment, comparison of

tender proposals and determination of tender proposal, which has won in tender as well as add new characteristics and criteria in accordance with present Law. Information about any such

change or addition shall be provided to consignors (contractors) when invitation about submission of final tender proposal is sent.

46.6. Any consignor (contractor) unwilling to submit final tender proposal, may leave tender procedures without loss of right for guarantee of tender proposal (if such guarantee required).

46.7. Final tender proposals shall be assessed and compared to determine tender proposal, which has won in accordance with article 36.7 of present Law.

Article 47. Tender procedures with limited participation and closed tender procedures

47.1. If tender with limited participation is held on the basis indicated in article 19.2.1 of present

Law, procurement agency shall attract tender proposals from all consignors (contractors) possessing procured goods (works and services).

47.2. If tender with limited participation on the basis indicated in article 19.2.2 or closed tender

in accordance with article 19.3 of present Law is conducted, procurement agency shall attract consignors (contractors) in amount ensuring competition provided that their number shall not be

less than 3, and hold competition between them with no assumption of discrimination.

47.3. Provisions of chapters III and IV of present Law shall also extend to tender procedures with limited participation or closed tender procedures unless deviations from these provisions are

provided by this article.

47.4. If tender with limited participation is conducted, procurement agency shall publish notice

in state newspaper to draw attention of tenderers to such tender.

Article 48. Procedure of request for proposals

48.1. Procurement agency shall attract proposals of consignors (contractors) at practically expedient amount provided that number of proposals is not less than three.

48.2. In order to draw attention for submission of proposals, procurement agency shall publish notice in local and internationally widely distributed organ of press except cases when it considers

publication of notice inexpedient in view of economy and efficiency.

48.3. Procurement agency shall set criteria for assessment of proposals, relative price of each such criteria and its application procedure in proposals assessment process. Such criteria apply to:

48.3.1. managerial and technical competency of consignor (contractor);

48.3.2. efficiency of proposal of consignor (contractor) in view of provision of needs of procurement agency;

48.3.3. prices of goods (works), offered by consignor (contractor) and upcoming operating, service and repair (provision with spares) costs.

48.4. Request for proposals submitted by procurement agency to consignors (contractors), shall

minimum include:

48.4.1. name and address of procurement agency;

48.4.2. description of demand for procurement including technical and other parameters, which

proposal shall meet to, as well as at procurement of works – place where they shall be performed,

at procurement of services – place where they shall be provided;

48.4.3. if possible, criteria expressed quantitatively and criteria, which relative price is indicated

for assessment of proposals, as well as their application procedure at assessment of proposals;

48.4.4. provided forms and any instructions including any appropriate terms, which can apply in

connection with specific proposal.

48.5. Change or explanation in any way of request for proposals, including change of proposals

assessment criteria indicated in article 48.3 of present Law shall be notified to all consignors (contractors) taking part in procedures of request for proposals.

48.6. Procurement agency shall review proposals in way preventing their content to become known to consignors (contractors) competing with each other.

48.7. Procurement agency may hold with consignors (contractors) discussions on their proposals, propose or give permission to revise such proposals subject to following conditions:

48.7.1. any discussions between procurement agency and consignor (contractor) shall be confidential;

48.7.2. no one of negotiating parties in view of article 10 of present Law, shall disclose price, technical or other information on such discussions to other persons without consent of the other

party;

48.7.3. all consignors (contractors), which submitted proposal that has not been rejected, shall be provided with an opportunity to take part in discussions.

48.8. Upon completion of discussions, procurement agency shall ask all consignors (contractors) continuing participation in procedures to submit the best and last offer about all aspects of their proposals until certain date.

48.9. Procurement agency shall apply following methods at assessment of proposals:

48.9.1. only criteria provided for by article 48.3 of present Law and indicated in request for proposals shall be taken into account;

48.9.2. efficiency of proposal in view of provision of needs of procurement agency shall be considered separately from price of proposal;

48.9.3. procurement agency shall review price of proposal only after completion of technical assessment.

48.10 Procurement agency shall enter into procurement contract with consignor (contractor), which submitted proposal the most fully providing its demand set in accordance with criteria indicated in request for proposals for assessment of proposals as well as relative price of such criteria and their application procedure.

Article 49. Procedure of request for quotations

49.1. Procurement agency shall attract quotations from consignors (contractors) at practically expedient amount provided that number of quotations is not less than 3.

49.2. Procurement agency shall notify each consignor (contractor), request for quotations of which was submitted, whether any costs (costs relating to transport and insurance, customs duties, taxes etc.) except their own price, are included to value of goods (works and services).

49.3. Each consignor (contractor) can submit only one quotation of prices and it shall not be allowed to change its quotation. No negotiations shall be held between procurement agency and

consignor (contractor) about quotation submitted by such consignor (contractor).

49.4. Procurement contract shall be entered into with consignor (contractor), which submitted the lowest quotation of price providing demand of procurement agency.

Article 50. Procurement procedure from one (single) source

50.1. Subject to observance of conditions indicated in article 21 of present Law procurement agency may procure goods (works and services) from one (single) consignor (contractor) by attracting proposal and quotation of price.

50.2. In order to determine prices of goods (works and services) offered by consignor (contractor), procurement agency shall calculate their supposed price in accordance with article 27

of present Law.

CHAPTER VII

Additional Provisions

Article 51. Procurement contract price change

51.1. During implementation of procurement contract, rules of amending of contract price for reasons which do not depend on activity of procurement agency and tenderer, which won the tender, shall be provided for in collection of basic tender conditions and changes shall be made

only within such conditions.

51.2. Method of calculation of impact of changes to prices of goods (works and services) to procurement contract shall be determined by respective executive authority.

Article 52. Tender winner's bankruptcy

52.1. If tender winner go bankrupt, procurement contract shall be considered annulled.

52.2. If successor of bankrupted tender winner within 10 banking days after obtaining of succession right applies in writing to procurement agency about implementation of obligations

undertaken by tender winner on procurement contract, new contract on completion of procurement

of goods (works and services) with taking of conditions of such contract as a basis shall be concluded between procurement agency and tender winner's successor.

52.3. If successor of bankrupted tender winner within 10 banking days after obtaining of succession right fails to apply in writing to procurement agency about implementation of obligations undertaken by tender winner on procurement contract, all kind of debts of procurement

agency to tender's winner (if any) shall be considered cancelled. In such case procurement agency

may hold new tender on procurement of such goods (works and services).

Article 53. Insurance

53.1. Procurements carried out at the account of state means shall be insured as provided by legislative acts and regulations of the Republic of Azerbaijan.

53.2. If procurement agency considers that insurance is mandatory, it shall reflect it in collection

of basic tender conditions and procurement contract.

Article 54. Collection of procurement documents

54.1. Procurement agency shall prepare collection of documents on each procurement.

Collection of procurement documents shall include the following:

54.1.1. approved decision of procurement agency on conducting of procurement;

54.1.2. copies of newspapers and advertising and notifying materials (if any) where announcement about conducting of procurement was published;

54.1.3. collection of basic tender conditions or collection of documents on attraction of proposals, offers, quotations;

54.1.4. applications of all tenderers about participation in procurement procedures, bank documents about payment of participation fee, proposals submitted to tender;

54.1.5. final protocol of tender commission about results of procurement and other protocols

about tender procedures;

54.1.6. concluded procurement contracts;

54.1.7. if procurement contract is long-termed or performed stage-by-stage – constant information about its implementation course;

54.1.8. documents on performance of procurement contract between procurement agency and consignor (contractor) and settlement of disputes;

54.1.9. documents on reimbursement of tender costs;

54.1.10. joint act of procurement agency and consignor (contractor) about full implementation of procurement contract.

54.2. Collection of procurement documents starts to be collected from the day when decision to conduct procurement is taken and completes within 20 banking days after full implementation of procurement contract; this collection shall be stored in procurement agency for 5 years, after that it shall be given to archive as per regulations.

CHAPTER VIII

Making of Complaints

Article 55. Right of lodging of complaint

55.1. Consignor (contractor) stating that it suffers or will suffer losses or damage as a result of non-performance by procurement agency of obligations set by present Law shall be entitled to lodge a complaint as provided in legislation.

55.2. The following cannot be subject of complaint under present Law:

55.2.1. selection of procurement method;

55.2.2. limitation of procurement procedures because of state belonging;

55.2.3. decision of procurement agency about rejection of all tender proposals, offers or quotations.

Article 56. Complaint to procurement agency or confirming body

56.1. Complaint shall be lodged in writing to manager of procurement agency before procurement contract takes effect (if complaint is connected with any action, decision or procedure

of procurement agency and such action, decision or procedure is approved by any body in accordance with present Law, complaint is lodged to manager of such body).

56.2. If complaint is lodged on expiry of 15 banking days from the time when consignor (contractor) became or shall become aware of circumstances, which served as a reason for complaint, manager of procurement agency (or confirming body) shall not process it.

56.3. If complaint cannot be resolved by mutual agreement between consignor (contractor) submitted such complaint and procurement agency, manager of procurement agency (or confirming body) shall, within 20 banking days from the time when such complaint was lodged,

render written decision, justify reasons for such decision and if complaint is allowed in full or partially, shall indicate measures, which have to be taken to remedy the situation.

56.4. If manager of procurement agency (or confirming body) does not render decision within period indicated in article 56.3 of present Law, complained consignor (contractor or procurement

agency) shall immediately acquire right to lodge complaint in accordance with articles 57 or 60.

After such complaint is lodged, manager of procurement agency (or confirming body) shall lose

authority to process the complaint.

56.5. If complaint is not lodged in accordance with articles 57 or 60, decision of the manager of

procurement agency (or confirming body) shall be considered final.

Article 57. Making of complaint in administrative order

57.1. Consignor (contractor), which enjoys the right of lodging complaint in accordance with article 55 of present Law, may lodge complaints to respective executive authority in following cases:

57.1.1. if complaint cannot be lodged in accordance with article 56 due to coming of procurement contract into effect or cannot be processed in accordance with this article (provided

that complaint was lodged on expiry of 15 banking days from the day when consignor (contractor)

became aware or shall become aware of circumstances, which served as a reason for complaint);

57.1.2. if manager of procurement agency does not process complaint due to coming of procurement contract into effect (provided that complaint was lodged within 15 banking days after

rendering of decision about its processing);

57.1.3. in accordance with article 56.4 of present Law (provided that complaint was lodged within 15 banking days after expiry of term indicated in article 56.3);

57.1.4. if this consignor (contractor) claims that it suffered losses as a result of decision rendered by manager of procurement agency (or confirming body) in accordance with article 56 of

present Law (provided that complaint was lodged within 15 banking days after rendering of decision).

57.2. Upon receipt of complaint, respective executive authority shall immediately notify procurement agency (or confirming body) about it.

57.3. If respective executive authority does not reject complaint, it shall be entitled to recommend one or some of the following remedies:

57.3.1. set legal standards or principles, which govern issues relating to subject of complaint;

57.3.2. prohibit procurement agency to make illegal actions or take illegal decisions or apply illegal procedures;

57.3.3. obligate procurement agency, which made illegal actions or applied illegal procedures or

took illegal decisions, to make legal actions or apply legal procedures or take legal decision;

57.3.4. suspend illegal action of procurement agency or cancel its illegal decision in full or partially;

57.3.5. revise illegal decision of procurement agency or take own decision in its stead;

57.3.6. bring an action on reimbursement;

57.3.7. issue resolution on cancellation of procurement procedures.

57.4. Relative executive authority shall render written decision on processed complaint, justify

reasons for such decision and indicate offered remedies (if such remedies are offered) within 20

banking days.

57.5. If claim is not brought in accordance with article 60 of present Law, such decision shall be

considered final.

Article 58. Some standards applied at processing of complaints lodged in accordance

with articles 56 and 57 of present Law

58.1. Once complaint is lodged in accordance with articles 56 and 57 of present Law, manager of procurement agency (or confirming body) or respective executive authority shall send notice about lodging of complaint and its content to all consignors (contractors), participating in procurement procedures and having relation to such complaint.

58.2. Any consignor (contractor) or state agency, interests of which become or can be damaged as a result of complaint lodging procedures shall be entitled to lodge a complaint. Consignor (contractor), which did not lodge complaint, shall be deprived of right of application with the same requirement in future.

58.3. One copy of decision of manager of procurement agency (or confirming body) or respective executive authority shall be sent to consignor (contractor), which lodged the complaint, procurement agency and all other consignors (contractors), which took part in processing of complaint or state agency on expiry of 3 banking days after rendering of decision.

Article 59. Suspension of procurement procedures

59.1. If complaint lodged in time in accordance with articles 56 and 57 of present Law is valid, procurement procedure shall be suspended for 7 banking days to process the complaint. Compliant shall be processed during the period when procurement procedures are suspended.

59.2. If procurement takes effect, implementation of procurement contract shall be suspended for 7 banking days to examine claim on the basis of complaint lodged in time in accordance with articles 57 and 59.1.

59.3. In order to ensure rights of consignor (contractor), which lodged complaint or to commence complaint processing procedures, manager of procurement agency (or confirming body) may extend procurement procedures suspension term in accordance with article 59.1 of present Law, while manager of respective executive authority may extend suspension term in accordance with article 59.2 until completion of complaint lodging procedures but not more than for 15 banking days.

59.4. All procurement agency's decisions taken in accordance with this article, grounds and conditions of their adoption shall be included in procurement procedures report.

Article 60. Complaint in court order

Courts of the Republic of Azerbaijan shall be authorized to process in court order claims raised in accordance with article 55 of present Law, complaints lodged with regard to decisions of bodies processing complaint or decisions failed to be taken by such bodies in terms set by articles 56, 57 and 59 of present Law.

Article 61. Liability for breach of present Law

Persons or entities guilty in violation of present Law shall bear responsibility as provided by legislation of the Republic of Azerbaijan.

Article 62. Invalidity of the Law of the Republic of Azerbaijan "On tender"

Given that present Law takes effect, the Law of the Republic of Azerbaijan "On tender" shall be

considered null and void.

Article 63. Coming of law into effect

Present Law takes effect from the day of publication.

President

of The Republic of Azerbaijan Heydar Aliyev

Baku, 27 December 2001 N 245-IIQ