

GEORGIAN LAW ON STATE PROCUREMENT

As of 20.03.01

CHAPTER I. GENERAL PROVISIONS

Article 1. Scope of Application of Law

1. This Law states the general legislative and economic principles governing State procurement.

2. The regulations determined by the present Law apply to any State procurements except the State procurement related to State secrets as defined by the Georgian Law “on State Secrets”.

3. Regulations for implementation of State procurement connected to State secrets defined in the Georgia Law “on State Secrets” is developed by the National Security Council and approved by the President of Georgia.

Article 2. Purpose of the Law

The purpose of the Law is to:

- a) provide rational and economical expenditure of financial resources allocated for State procurement;
- b) develop sound competition between suppliers producing goods, works and services meeting State needs;
- c) provide just and non-discriminative approach towards participants of procurement proceedings;
- d) achieve transparency and publicity in the State procurement;
- e) create a single, integrate procurement system and promote public confidence in the mentioned system.

Article 3. Definition of Concepts and Terms Used in the Law

a) “State procurement” - acquisition of any goods, works or services in order to meet State needs and by utilizing funds from:

a.a) Georgian State budget and means consolidated in the State budget;

a.b) Budgets of the Abkhazian Autonomous Republic and the Adjarian Autonomous Republic;

a.c) Budgets of other Georgian local units determined by Georgian legislation.

a.d) by special funds of all those organizations and institutions which are funded out of the resources of the State Budget of Georgia, budgets of Autonomous Republics of Abkhazia and Adjara and local budgetary resources specified by law;

a.e) by funds extended by other countries and international organizations either as an international assistance or lending on the basis of international agreements (except the cases when the given Law is in conflict with the respective international agreement or if respective credit or grant agreements provide for internationally accepted procurement rules different from the rules established by this Law);

a.f) by loans extended under the government's guarantee;

a.g) by funds of public or private legal entities, (except of National Bank of Georgia) established on the basis of the State property, irrespective of sources of such funds.

b) Procuring agency – any executive governmental body of Georgia, or Autonomous Republics of Abkhazia and Adjara, budgetary agency or organization, local self-governance and governance bodies as well as any other institution or company that is procuring goods, works and services by the funds specified in paragraph a) of this Article.

c) “Object of Procurement” – particular types of goods, works, and services purchased by the procuring organization.

d) “Bidder” - any physical or legal body in Georgia or in foreign countries that passed through the qualification procedure.

e) “Supplier” - any physical or legal body in Georgia or a foreign country that concluded contract with a procuring organization on implementing State procurement.

f) For the purpose of the present Law, the term “construction works” means works that are carried out for construction of an entity or its parts, as well as repair, reconstruction, and rehabilitation of the entity (except design related activity).

g) For the purpose of the present Law, the term “preference” means the acceptable difference between the values of the bid submitted by the national bidder and that of the foreign bidder in which case upon the evaluation by price factor the preference will be given to the national bidder.

h) price quotation – a simplified method of procurement of goods, services, and minor works the estimated value of which is above 10000 GEL and below 25000GEL, and also of minor works at estimated value above 50000 GEL and below 120000GEL

i) procurement of intellectual services – a special type of procurement, of intellectual and other consulting services, scientific research works and experiments, construction designs, and government's orders in the education sphere;

j) goods – any types of goods (including raw materials, manufactured goods, equipment, buildings, etc.) being in solid, liquid or gas condition, also electrical power; this will also include services associated with the goods if the cost of these services is not higher than that of the goods;

k) services – any subject of procurement except goods and civil works.”

Article 4. Public Procurement Agency

1. With the purpose of coordinating and monitoring all public procurement activities, under the guidance of the Law on Public Legal Entities, a permanently-operating independent agency to be referred to as the Public Procurement Agency (hereinafter the “Agency”) shall

be established, the chairman of which, shall be appointed and dismissed by the President of Georgia at the proposal of the Ministry of Economy, Trade and Industry.

2. The Constitution of Georgia, international covenants and agreements, this Law and the Agency's charter to be adopted on the basis of the above-mentioned documents shall constitute a legal base of the Agency operations.
3. With the purpose of ensuring transparency in the public procurement system and publicity in the activities of the Agency, a Board of Supervisors shall be established with the Agency, which shall consist of 7 members (including Chairman of the Board of Supervisors), to be appointed by the President of Georgia. Charter of the Board of Supervisors shall be approved by the President of Georgia. The staff of the Board of the Supervisors: officials from ruling and controlling bodies (representatives of the Chamber of Control, Ministries of Finance, Justice and Economy, Industry and Trade); Representatives of Mass media and Public organizations. The Board of Supervisors work on the public basis.
4. The Charter and the structure of the Agency shall be based on this Law and shall be approved by the President of Georgia. A state body carrying out control of the activities of the Agency shall also be specified by the Charter of the Agency in compliance with the legislation of Georgia.
5. The Agency shall be funded:
 - a) funds earmarked from the State Budgets;
 - b) out of the revenues received for the work carried out on the basis of the agreement;
 - c) out of the revenues in consistent to the Georgian legislation.
6. The main functions of the Agency shall be as follows:
 - a) to develop and make public any normative acts required for the implementation of this Law and standard bidding documents and to harmonize them with international norms;
 - b) on the basis of reports received from procurement agencies, to implement systematical studies and analyses of situation existing in the country's procurement system and to provide recommendations to the President of Georgia to enable him to make appropriate decisions;
 - c) to develop model teaching programs and methodological materials and documentation, to hold seminars and training sessions for central and local governmental bodies, law-enforcement agencies, mass media and other interested parties;
 - d) to develop and improve an integrated public procurement data base;
 - e) to provide expertise, recommendations and consulting services to procurement agencies;
 - f) to maintain the register of suppliers
 - g) to support the establishing of modern informational and communications technologies in the public procurement system;
 - h) to make public any normative acts and reports for ensuring publicity of public procurement and to publish a special periodical newsletter;
 - i) on the basis of administrative procedures to adjudicate any disputes emerged in the course of public procurement activities;
 - h) to oversee the lawfulness of state procurement procedures and define the state policy regulating a procurement process.

New 4¹, and 4² articles shall be added to the Law to read as follows:

Article 4¹. Duties and Responsibilities of the Agency Chairman

1. The Agency Chairman shall:

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- a) in agreement with the Board of Supervisors established at the Agency issue normative acts – orders – specified in this Law and mandatory for all the agencies involved in the state procurement;
- b) make orders and instructions on internal organizational matters;
- c) regulate any issues which are within the Agency's jurisdiction;
- d) monitor the Agency's structural units to ensure that they perform their functions in proper manner; supervise the Agency staff according to the established procedures.
- e) within the limits of its competence appoint and dismiss the Agency staff;
- f) manage the Agency's funds and control the spending;
- g) make suggestions according to the established procedures on such decisions which should be made on any matter over which the Agency has jurisdiction;

2. The Chairman of the Agency is responsible for the Agency's activities in accordance with law.

Article 4². Duties, Responsibilities and Operational procedures of the Board of Supervisors

- 1. The Agency's Board of Supervisors shall
 - a) review at its meetings normative acts to be issued by the Chairman of the Agency, and the by-laws of the Agency's structural units and results of their activities;
 - b) in its operations the Agency's Board of Supervisors shall be guided by the key directions of the government's public procurement policy and at its meetings shall give the participants in the public procurement activities possibility to freely defend their respective interests;
- c) prepare annual reports about its activity and submit it to the President of Georgia. The reports should be open to public.
- 2. Agency's Board of Supervisors within the limits of its competence, shall have the right to request procurement agencies to provide it with any information related to the public procurement activities and to examine correctness of such data and information.
- 3. The meetings of the Agency's Board of Supervisors shall be open to public and all its decisions shall be published in accordance with the existing procedures. Confidentiality of any information considered by the Board of Supervisors shall be preserved in accordance of applicable law.

Article 5. Rights and Obligations of procuring organizations

- 1. A procuring organization has the right:
 - a) to select a supplier according to this Law and bylaws and conclude a contract with the supplier;
 - b) to disqualify a person according this Law;
 - c) to terminate procurement proceedings at any time before a contract is signed if such a decision stems from an objective necessity that is beyond the control of the procuring organization and can not be foreseen, also based on state or public interests;
 - d) to supervise and exercise control over the fulfillment of the contract;
 - e) according to the effective legislation suspend or terminate the realization of the contract if the supplier submits false qualification documents, also in other cases determined by the legislation.
- 2. A procuring organization is obliged:

- a) to carry out State procurement in a rational manner within the limits of the allocated assigned budget allocations and stemming from the country's interests and according to the rules stated by this Law and the by-laws;
- b) To keep confidential the information provided by bidders to the procuring organization before the contract on state procurement is signed.
- c) Submit to the Georgian Ministry of Economy reports on the realized State procurements according the format and within the terms set forth by the Article 24 of the present Law.
- d) Immediately submit to the Georgian State Department of Statistics statistical reports on the realized State procurements according the format developed and approved by the Georgian State Department of Statistics.
- e) Pay the supplier the cost of works and/or services immediately upon goods, works, and services are delivered, unless otherwise stated in the contract.
- f) In case if state procurement is canceled according to the Article 5 (2) (c) implement this procurement only by resuming the terminated procedures.
- g) In the cases provided by the Article 5 (2) (c) notify the Georgian Ministry of Economy and parties participating in the procurement process about its decision and the grounds for such a decision within the 3 (three) days upon the decision is made. Meanwhile, procuring organization is not obliged to provide the participants of the procurement process with the evidence or give the detailed information, that made basis for the above mentioned decision, as well as reimburse the bidders' costs related to the participation in the proceedings, except tender fees.

Article 5¹. Terms and Procedures for Avoiding Conflict of Interests

1. These procedures which are aimed at avoiding conflict of interests shall apply to the following activities related to public procurement:
 - a) conducting any operations required for preparing public procurement, including those aimed at identifying both characteristics and estimated costs of objects to be procured;
 - b) selecting members of tender committees and any other persons responsible for implementing public procurement;
 - c) preparing tender application forms, tender documents and other required materials;
 - d) reviewing and evaluating qualifications materials and bids;
 - e) under the conditions envisaged in this law, holding technical discussions and negotiations;
 - f) under the conditions of closed tender, selecting potential bidders;
 - g) overseeing and monitoring the implementation of the public procurement contracts;
 - h) conducting any other activities aimed at implementing public procurement.
2. No person willing to take part in the public procurement activities and/or actually participating in such activities shall have the right to apply any procuring agency (its managers or employees) or any governmental agency with a request to assist him, or by using all means and methods to put any direct or indirect pressure on such agencies in order to win the right to enter into any public procurement contract, which may be beneficial to such a person.
3. No procuring agency shall assign any person to the duty of organizing and managing the public procurement activities or overseeing such activities and no procuring agency shall invite any person as a consultant (or expert), if such a person:
 - a) is closely related to any managerial staff of a legal entity involved in the public procurement activities or to a direct party to such activities if the latter is an individual;
 - b) for the last three years has worked for any agency involved in the public procurement activities;

- c) has a personal or business relationship or has conducted negotiations with the purpose of establishing such relationship with any individual or legal entity that is involved in the public procurement activities.
- 4. No individuals and legal entities that had been involved in the public procurement preparatory operations shall have the right to take part in the public procurement activities.
- 5. All provisions prescribed in paragraphs 3 and 4 of this Article shall also apply
 - a) in cases of overseeing the implementation of public procurement contracts;
 - b) to all parties to any state procurement conducted through negotiations with one person.
- 6. In cases of open or closed tenders, immediately after the qualifications materials submission deadline, all members of the tender committee, all invited consultants (experts), and all those employees of the procuring agency that have anything to do with the public procurement activities, shall be required to certify in written that his or her involvement in this particular public procurement activity is not in conflict with any of the above requirements.
- 7. Whenever consulting services are to be procured, the following conditions shall be met:
 - a) no consultant or any affiliated person thereof (whether individual or entity) shall take part in any public procurement activity, which given the nature of such activity may be in conflict with any other responsibilities of such consultant;
 - b) all consultants (both individuals and entities) shall be required to give the procuring agency a professional, objective and unbiased advice based on the interests of the procuring agency.

Article 5². Public Procurement Planning

- 1. Any procurement agency shall implement public procurements in accordance with an annual procurement plan developed and approved in advance. In the case of multiple year procurement planning is conducted by a pertinent procuring body in compliance with the Georgian legislation. State procurement planning is regulated by the Decree of the Chairperson of the Agency.
- 2. Each annual procurement plan shall be developed in accordance with the procedures of developing and reviewing the drafts of appropriate (State or local) budgets, as set out in the laws on the Budgetary System and Budgetary Authorities and the Principles of the Georgia Economic and Social Development Indicative Planning.
- 3. Procurement of homogeneous goods, services and work conducted by a pertinent procurement agency during a year is considered as one procurement if it is financed out of one source.
- 4. Not later than 20 days following the approving of the State Budget, or those of the Autonomous Republics, or local budgets, the head of a pertinent procurement agency shall approve and provide to the Agency the revised procurement plan

CHAPTER II. METHODS OF STATE PROCUREMENT

Article 6. Methods of State Procurement

- 1. Methods of State procurement are as follows:
 - a) open tendering

- b) closed tendering
- c) single-source procurement

2. In cases justified by the present Law, open and close tenders can be carried put in two stages.

3. Principles for the use of procurement methods are determined by the present Law and by-laws adopted by the Georgian Ministry of Economy;

4. The quotation and the intellectual services procurement methods shall be defined in a special normative act.

CHAPTER III. TENDER

Article 7. Basic Principles Governing the Choice of Type of Tender

1. Open tender is held in cases when the estimated value of the subject to procurement exceeds the amount of 70.000 LARI, while in the case of procurements of construction works – 230.000 LARI.

2. Closed tender is held in the cases when the estimated value of the subject to procurement is less then the amount of 70.000 LARI (while in the case of procurements of construction works – 230.000 LARI), but exceeds the amount of 25.000 LARI (while in the case of procurements of construction works –120.000 LARI)

Article 8. Grounds for Establishing and Functioning of Tender Committee

1. Both, open and closed tenders are held by Tender Committee which is established by the Head of the procuring organization and consists of at least 5 members;

2. Head of procuring organizations and/or deputies, as well as heads of structural subdivisions of procuring organizations are appointed as members of Tender Committee;

3. It is prohibited for a close relative of the head of bidder (physical or legal body); a founder or member of bidding organization that has a status of legal body and exists as a Fund or a Union; or has a share in the bidder enterprise equity; to be a member of the Tender Committee;

4. Pursuant to the decision of the Tender Committee, specialists from corresponding fields and representatives of other treasury organizations can be invited to the Tender Committee as experts and consultants, with voting right;

5. The Tender Committee will be chaired by the head of the procuring organization or the person appointed by him (her);

6. Pursuant to the order of the Head of the procuring organization with the purpose of proving organizational-technical activities of the Tender Committee, there will be established apparatus, manned by the staff members of the procuring organization and headed by the Chairman of the Tender Committee;

7. The Tender Committee takes decisions by the simple majority of the Committee members. The member of the Committee, that disagrees with the decision of the Committee has

right to submit his own view-point, that should be attached to the decision of the Tender Committee. In the case of equal votes, the Chairman has the casting vote;

8. The minutes of meetings of the Tender Committee shall be signed by the members of the Committee.

Article 9. Tender announcement

1. In an open tender the Tender Committee on the behalf of a procuring organization:

- a) shall make an announcement about the tender via the Mass Media, defined in the by-laws;
- b) when the estimated value of the State procurement exceeds the amount of 600.000 LARI, while in the case of the construction work procurement – 8.000.000 LARI notification shall be also placed in an wide-spread international periodical or specialized printing organ, on one of the languages most accepted in the international trade practices. The notification shall also be sent to the foreign diplomatic and consular institutions based in Georgia;

2. If necessary shall define additional means, other than the ones defined in the sub-unit (a) and sub-unit (b) of the Unit, for tender announcement

3. In the case of closed tender the procuring organization sends to the bidders selected in advance subject to this Law (no less than five bidders) an official notification of holding the tender.

4. In the tender announcement there should be indicated:

- a) contact details of the procuring organization;
- b) the type, quality and quantity, the point and form of supply of the procured goods; the essence and the place of implementation of the work or service to be implemented; all other details, that the procuring organisation considers necessary as connected with the description of the objects to be procured;
- c) the desire to supply of the goods, to implement the work, to render the service to be procured, and the obligatory terms;
- d) criteria and rule for estimation of qualification data;
- e) the terms, place and language for submission of the qualification data;
- f) request for the documentation proving the qualification data;
- g) the rules, terms, place and language for submission of tender documents, also payment rate for acceptance of tender documents.

5. The Tender Committee approves the tender announcement.

6. The Tender Committee publishes and, correspondingly distributes tender announcements no later, than 15 calendar days before the collection of the qualification data starts. In the case of closed tender the Tender Committee should select the mean of distribution of tender announcement, that will enable the selected persons to receive the announcement in the shortest possible term.

7. The Tender Committee might amend the information mentioned in the announcement, notice of which shall be made through mass media, the same way the announcement had been published, and in the case of closed tender the notice should be distributed to all the persons, whom the Committee addressed initially.

8. Amendment of the announcement and the publication (distribution) of these amendments should occur no later, than 5 calendar days before end of the submission term.

Article 10. Qualification data

1. The qualification data of the legal entities bidding for State procurements should meet the following requirements:

- a) their property should not be arrested; no bankruptcy or sanation proceedings should be commenced against them, they should not be under re-organisation or liquidation process;
- b) within the last 5 years period their heads should not had been sentenced or no criminal proceedings, connected with their duties at job, should be instituted against them by the moment the State procurements start.

2. The qualification data of the physical person bidding for State procurements should meet the following requirements:

- a) they should be capable of functioning;
- b) no bankruptcy proceedings should be commenced against them;
- c) within the last 5 years period their heads should not had been sentenced for economic activities or activities connected with their duties at job, or no criminal proceedings should be instituted against them by the moment the State procurements start;

3. In case if supply of goods, implementation of works or rendering of service subject to the legislation requires license, certificate or other types of permission, the bidder for the State procurements should have such license, certificate or permission.

4. In case if the documentation submitted by person as proof for the qualification data is not valid or it does not meet the qualification requirements, the procuring organization can disqualify the person at any stage of procurement procedure, before entering the agreement on State procurement.

5. The disqualified person can sue the decision on disqualification;

6. In case if the documentation reflecting the qualification data is not correct or complete, or if it contains any technical mistake the procuring organization gives the bidder opportunity to correct the mistake or inconsistency, or to fill in the documentation with the necessary information. The process of correction or filling of the qualification documentation should be fulfilled before the end of the qualification selection.

7. The detailed rule for estimation of qualification data is defined by by-law.

Article 11. Qualification selection

1. The purpose of the qualification selection is to define the list of bidders, by comparing the submitted data with the qualification data.

2. The qualification selection should be ended no later, than in 10 days after the procedure for the submission of qualification data stops.

3. The results of the qualification selection shall be registered under the decision of the Tender Committee and it will reflect the reasons and basis for disqualification of corresponding person(s) and approves the list of bidders.

4. All the persons, that had submitted their qualification data on due time shall be informed about the decision of the Tender Committee on the qualification selection. In the case of disqualification they will also be informed about the basis for disqualification. The Tender Committee should choose the most efficient and quick way of delivery of the information.

Article 12. Tender documentation

1. The Tender Committee approves the tender documentation before publication (distribution) of the tender announcement.

2. After payment of the fees defined in this Article 19 of the Law, if there is such, the Tender Committee is obliged to issue tender documentation upon the request from the bidder.

3. The tender documentation should include:

- a) instructions for development of the bidders tender proposals;
- b) prioritized the procedures and criteria for estimation of the bidders' proposals;
- c) the quantity of the goods to be procured, obligatory or desirable terms and place for supply of goods, implementation of work and rendering of service, and other details, that the procurement organization will consider important in connection with the object to be procured;
- d) full description of the technical and qualitative data of the object to be procured, including relevant technical specifications, plans, schemes and sketches, also the reasonable alternative technical and qualitative specifications to the object of procurement, if permitted by the procuring organization;
- e) the necessary conditions for the agreement on State procurements, that are known to the procuring organizations in advance, including the instructions for the form of the agreement;
- f) the methodology for calculation of the price of tender proposal, also the information whether the price should include other elements, besides the goods, work or service (e.g. transportation, insurance, taxes, etc);
- g) instructions for the currency, that the amount for the tender proposal should be stated in;
- h) the term, place and language for submission of the tender proposal;
- I) description of the means and procedures for requirement of additional information or explanation, connected with the tender documentation by the bidder. While in case of two-stage tender – also the opportunity to hold direct negotiations with the bidders;
- j) time, place and rule of tender proposals disclosure;
- k) the names and contact details of the officers of the Tender Committee apparatus, that are entitled to have direct contact with the bidders and provide them with the information and explanations on the procurement procedures;

4. The textual materials, specifications, plans, schemes, sketches and other materials used for the technical and qualitative parameters of the object to be procured should correspond to the current standards of international and Georgian standards, technical specifications, terminology and conventional definitions. It is forbidden to include the trademark, patent, model, source and producer in the description of goods to be procured.

5. The Tender Committee, pursuant to the written request of bidder, or at its own discretion, shall explain or verify the information connected with the tender documentation, which shall be attached to the tender documentation in the form of appendices and shall be distributed to all the bidders 15 calendar days before the end of submission of tender proposals. The appendices or verification should not change the essence of the tender documentation.

Article 13. Preferences

In the case of participation of both local and foreign bidders 15 % preference is granted in respect of the tender proposal price, which should be submitted by the local bidder.

Article 14. Agreement on Intention

1. The procuring organization, prior to review of tender proposals enters agreement on intention with each bidder. Under the agreement:

a) in case of winning the tender the bidder undertakes the obligation to enter agreement with the procuring organization on goods supply or, correspondingly implementation of work, or rendering services;

b) except for the case envisaged in Article 5.2.(c) of the Law or the event of disqualification, the procuring organization undertakes obligation to enter agreement with the bidder on goods supply or, correspondingly implementation of work, or rendering services in case of winning the tender by the latter, on the terms defined in the tender proposal;

2. Agreement on intention shall include term of the agreement on State procurement, the term of validity of the bidders tender proposals, also the responsibilities of parties in the event of default on the liabilities assumed under the agreement on intention.

3. The rules for definition of the forms of responsibility for breaching the form and conditions of the agreement on intention are defined by by-laws.

Article 15. The procedure for submission and review of tender proposals

1. Tender proposals are submitted to the Tender Committee in sealed envelopes and the envelopes are opened at a Tender Committee meeting upon the expiration of their submission period and in the presence of the bidders. After opening the envelopes the committee determines the deadline for the reviewing of received proposals and taking a final decision.

2. Before the disclosure of the tender proposals bidders have right to withdraw or change the tender proposal any time;

3. The Tender Committee only reviews the proposals of the bidders, which entered the agreement, envisaged by the Article 14 of the Law with the procuring organization.

4. Tender proposals are assessed in accordance with the criteria and priorities defined in the tender documentation. In case if the tender proposal submitted by bidder is not consistent with the requirements of tender documentation, the Tender Committee, at its own discretion, takes decision on disqualification.

5. The Tender Committee does not disqualify tender proposal, in case it includes inconsistencies, that do not materially change or contradict the essence of the requirements stated in the tender documentation or correction of which does not affect the essence of the tender documentation.

6. In the case defined in unit 5 of this Article the Tender Committee addresses the corresponding bidder with the request to verify the tender proposal.

7. Tender winner is determined on the basis of written conclusions submitted by Tender Committee members, in accordance with the estimation criteria and prioritization stated in the tender documentation.

8. The conclusion of Tender Committee member there should indicate the name of the preferred bidder, and also the basis and arguments for such preference.

9. The absolute majority of conclusions of Tender Committee members decide winner. In the case of equal votes the chairman of Tender Committee has the casting vote.

10. The decision of Tender Committee, stated in unit 7 of the Article is registered in minutes, with the conclusions of Committee members attached to it. Minutes should include information on the persons participating in the review of tender proposals, on bidders and also summary of the submitted proposals.

11. Bidder can sue for any issues connected with the tender procedures.

Article 16. Signing a Letter of Agreement with the winner

1. Subject to the current law and on the basis of the agreement defined in the Article 14 of the law, as well as tender proposal conditions of the winner, agreement on State procurement is made between procuring organization and the winner.

2. The conditions of agreement are defined by by-laws.

3. In the case that construction works are procured, if the construction site is located in the Georgian territory, no less than 70 % of the engineering-technical personnel and laborers and other support staff engaged in the procured works shall be citizens of Georgia.

4. In the case of disqualification of the winner, or in case, if the winner refuses to enter the agreement the Tender Commission addresses other bidders for participation in the renewed review process of tender proposals, and if necessary, on prolongation of the term of the agreement on intention. In case, if non-of the bidders express desire to participate in the renewed review process new tender is held.

Article 17. Re-announcement of tender

1. In case if no winner was declare pursuant to tender process and renewed review-assessment of tender proposals, or despite tender announcement no tender proposals had been submitted or non of the submitted proposals was consistent with the conditions of Tender documentation, than Tender Committee elaborates new tender documentation and announces new tender.

2. Subject to the unit 1 of the Article the procuring organization can change the tender Committee, or appoint new members.

Article 18. Prohibition of negotiations with the bidders during the tender process

Tender Committee is not entitled to negotiate with the persons desiring to take part in tender and bidders, except of the event of two-stage tender.

Article 19. Tender fee

1. The following rates are set for tender fee in the case of State procurement from the State budget resources of Georgia, special funds of the organizations and agencies funded from the State budget, with funds received as assistance or credits from foreign countries and international organizations on the basis of international treaties, credits received with the state guarantee, with funds of legal public entities established with state property (except the National bank of Georgia):

a) in the case of open tender – 500 LARI.

b) in the case of closed tender – 150 LARI.

2. In the case of State procurement from Abkhazian, Adjarian or local budget resources, budgets of Autonomous Republics of Abkhazia and Ajara, special funds of organizations and agencies funded from the local budgets as defined by the legislation of Georgia, subject to the Law there can be set local tender fee, which should not exceed the amount defined in the unit 1 of the Article.

Article 20. Candidate selection during closed tender

1. In the case defined in the Article 7.2 of the Law tender announcement will be sent to the selected persons;

2. In case the closed tender is conducted the number of bidders shall not be less than 3, otherwise the procuring entity has the right either to continue the begun tender or terminate it and announce an open tender (after the agreement with the agency).

3. Besides the rules defined in the unit 1 and the unit 2 of the Article other rules determined for open tender are also used for closed tender.

Article 21. Two-stage tender

1. Two-stage tender is held if:

a) given the peculiarity of the object to be procured, it is impossible to determine all the technical and economic conditions of the object in advance and the procuring organization considers it necessary to hold negotiation with bidders at the first tender stage, in order to determine technical, economic and other aspects;

b) the object of State procurement is consultancy, scientific research, experimental, investigative or consultation-projecting works, and it is impossible to determine their results and price in advance;

2. At the first stage of two-stage tender the bidders shall submit their free Initial tender proposals, (“initial tender proposal”);

3. At the first stage Tender Committee can hold direct negotiations with bidders, with the purpose to verify any issues of the initial tender proposal, as well as define the final parameters for tender documentation;

4. Pursuant to review of the initial tender proposal the Tender Committee determines the final version of tender documentation, that shall be distributed among all the bidders in case of payment of tender fee.

5. Besides the rules defined in the units 2,3 and 4 of the Article, the rules for one-state tender are also applicable to the two-stage tender.

CHAPTER IV. THE METHOD OF HOLDING NEGOTIATION WITH ONE BIDDER

Article 22. The method of direct negotiation with a single person

1. The procuring organization may chose to use the method of holding direct negotiations on State procurement with a single person, in case:

- a) the estimated cost of the unit under procurement shall not exceed 10 000 GEL and in the case of procuring construction works – 50 000 GEL;
- b) supply or implementation of the State procurement object is the exclusive right of a single person;
- c) as a result of Force Majeure the State procurement can not be postponed;
- d) it is necessary to implement State procurement from the same supplier with the purpose of further application and prevention of deterioration of qualitative feature of goods, technology or equipment received from the supplier, except for the case when the initial supply cost exceeds the assumed amount of the State procurement to be implemented;

2. In the case of application of the method of holding direct negotiations on State procurements the head of the procuring organization or the authorized person appointed by him (her) subject to legislation.

CHAPTER V. REVIEW OF THE CONDITIONS OF AGREEMENT ON IMPLEMENTATION OF STATE PROCUREMENT

Article 23. Review of the conditions of agreement on Implementation of State procurement

1. It is not permitted to change the conditions of the agreement entered with the supplier if it causes increase in the price of the agreement and adversely affects the conditions of the agreement referring to the procuring organization, except for the case envisaged by the Article 398 of the Civil Code;

2. The procedures and rules for review of the conditions of agreement on implementation of State procurements are defined by the Georgian Legislation.

CHAPTER VI. CONTROL AND MONITORING OF STATE PROCUREMENTS

Article 24. State procurement account

1. The State procurement process is reflected in the State procurement account and the rule for its elaboration and keeping is defined by the by-law, adopted by the Ministry of Economy.

2. After tender is held minutes of Tender Committee meeting, decisions taken, conclusions of the experts and consultants participating in the tender, also other documents defined in the by-law referred to in the unit 1 of the Article should be attached to the account.

3. The State procurement accounts shall be submitted to the Ministry of Economy of Georgia within the following terms:

- a) in the case of tender no later, than 10 days after agreement is executed;
- b) in the case of holding negotiations with a single person, if the amount of State procurements exceed 25.000 LARI -no later, than 10 days after agreement is executed;
- c) in the case the amount of State procurements is less than 25.000 LARI - on quarterly basis, no later, than the 10th day of the first month of the following quarter;

4. All the interested persons shall have access to the State procurement accounts if requested, and their summary should be made public on regular basis through the State procurement bulletins, founded by the Ministry of Economy of Georgia.

5. If the volume of public procurements conducted through a tender exceeds 32 million GEL, the chairman of the tender committee shall report on the procurement process to the President of Georgia at the government meeting”.

6. The Ministry of Finance of Georgia, those of the Autonomous Republics of Abkhazia and Adjara, and local finance departments shall be obligated to regularly (on a monthly basis) provide the Agency with information about actual disbursements to the budgetary agencies.”

7. The Agency is authorized to request any documents and information on state procurement from procuring organizations and bidders at any stage of state procurement implementation, including the information on implementation of agreements.”

8. In order to ensure transparency of the procurement process the agency’s obliged to carry out monitoring of the protecting of such principles during the state procurement process as publicity, fairness, proper fulfillment of the determined procedures, reporting open and efficient competition, an opportunity of rational and free choice.

Chapter 6¹ – Adjudicating Disputes and Bringing Claims in Relation to Public Procurement

Article 24¹. Bringing of Claims

- 1. All persons willing to participate or actually participating in the public procurement activities, all bidders and suppliers, whether being individuals or entities, shall have the right to contest any action of procuring agencies (or tender committees), if they believe that in the course of the public procurement activities any rules or procedures, established by the Public Procurement Law or any other applicable legal act, and/or their rights have been violated.
- 2. If any claim emerges before the conclusion of a public procurement contract, the person who has such a claim may request directly the procuring agency to reconsider the decision of the relevant officer of the tender committee or procuring agency or to review the dispute.
- 3. In cases envisaged in paragraph 2 of this Article, any person who has a claim may apply to the procuring agency with this claim not later than 20 calendar days after the receipt of information about the conditions or the making of that decision which caused the emergence of such a claim or dispute. All such persons whose interests actually are or can be affected by such claim shall have the power to take part in the review of that claim.

4. Before a public procurement contract is made, any individual or legal entity that is willing to take part or is actually participating in the public procurement procedure, or is a bidder or supplier, may appeal to the Agency with a claim to review any dispute which may arise in relation to public procurement.
5. Any individual or legal entity that is willing to take part or is actually participating in the public procurement activities, or is a bidder or supplier, may appeal to the Agency also in case that such individual or entity is not satisfied with the decision of the procuring agency.
6. In cases envisaged in paragraphs 4 and 5 of this Article, the Agency, not later than 10 days after the receipt of a claim, shall make in written a reasonably justified decision which shall be communicated to those persons and the procuring agency that has submitted the claim.
7. If as a result of thorough scrutiny of the claim itself, as well as all related conditions, the Agency finds that the claim is reasonably justified, then the Agency shall have the power to:
 - a) warn the procuring agency that it has committed an incorrect action and call on it to implement the public procurement activities in accordance with the requirements of law;
 - b) require that the procuring agency review or cancel its decision(s);
 - c) in case that it finds that any participant in the public procurement activities has failed to comply with the provisions of this Law, to require the appropriate agencies to hold such a participant responsible for such a breach.
8. After the deadline specified in paragraph 3 of this Article, as well as after the public procurement contract has been entered into effect, all claims and appeals may be heard by courts only.
9. No claim may be considered if it refers to:
 - a) the selection of a public procurement method, if the same has already been selected in accordance with the procedures established by this law and other applicable legal acts;
 - b) the decision of the procuring agency on the cancellation of public procurement activities, if such a decision has been made in accordance with the procedures established by this law and other applicable legal acts.
10. Any claim or appeal shall be based on a reasonable ground and shall be supported by a reasonable evidence that in case of withholding the claim or appeal the person in question will suffer serious losses.
11. In case that any claim is submitted to the procuring agency, or the Agency, or court before the relevant public procurement contract has been effected, the procuring agency shall suspend all public procurement activities for the period of 10 days. By the decision of the manager of the procuring agency, or the Agency, or court the suspension period may be extended, provided that under no circumstances shall the whole suspension period exceed 30 days.
12. With the agreement of the Agency, the procuring agency may decide not to suspend the public procurement activities, if delay in public procurement is impossible or is not justified in view of national or public interests.
13. Any individual or legal entity that is willing to take part or is actually participating in the public procurement activities, or is a bidder or supplier, may take legal action against the decision of the procuring agency or the Agency with respect to the claim of such an individual or entity.
14. Any damages which as a result of reviews and hearings provided in this Article may be payable to the person that has initiated claims, shall be limited to those costs which have been incurred in relation to the participation of such a person in the public procurement activities and shall not include any indemnification for the expected revenues.

CHAPTER VII. TRANSITIONAL PROVISIONS

Article 25 Procurement rule for goods until January 1, 2000,
subject to the Presidential Ordinance N317,
dated June 20 1997.

The Law is not applicable to the goods envisaged by the Ordinance of the President of Georgia “ on Certain Urgent Measures for the Optimal Use of Budgetary Appropriations for the Country’s Law Enforcement Bodies and Some Urgent Measures Fostering the Operation of Local Enterprises at a Maximum Capacity” dated June 20, 1997.

Chapter VIII. FINAL PROVISIONS

Article 26. Establishment of State Procurement Department and adoption of by-laws.

1. The president of Georgia shall appoint the Chairman of the State Procurement Department prior to June 1 1999.

2. The Ministry of Economy of Georgia shall establish the State Procurement Department prior to June 1, 1999.

3. The Ministry of Economy of Georgia shall adopt the by-laws, necessary for enactment of the Law prior to June 1, 1999.

4. The State Department of Statistics of Georgia, in coordination with the Ministry of Economy of Georgia shall approve the form of the account, defined in the Article 5.1.(d) of the Law prior to June 1, 1999.

5. The expenses of the State Procurement Department of the Ministry of Economy of Georgia shall be included into the State budget of Georgia.

Article 26¹. Creation of an Agency for Public Procurement and Normative Acts to be issued in connection with the implementation of this Law

1. In relation to the reorganization of the Public Procurement Department of the Ministry of Economy, Industry and Trade into the Public Procurement Agency, by May 1, 2001 the following regulations shall be issued:

a) Decree of the President of Georgia on “Establishment of the State Procurement Agency and Transfer of State Property Thereto”;

b) Decree of the President of Georgia on “Approving the Charter of the Supervisory Board attached to the State Procurement Agency.”

2. The Agency shall start fulfillment of its functions and the Agency’s Supervisory Board in its initial composition shall be constituted as of May 1, 2001.

3. By June 1, 2001, the Parliament of Georgia, by making appropriate amendments to the Code of Administrative Offenses and the Criminal Code of Georgia, shall define the forms of responsibility for the violation of the legislation regulating public procurement.

4. By June 1, 2001 the Chairman of the Agency shall issue a Decree approving the Regulations on the Implementation of State Procurements.

5. By June 1, 2001 the President of Georgia shall approve the implementing regulations for confidential procurements as defined by Georgian Law on State Secrets.

6. By June 1, 2001 the Board of the national Bank of Georgia shall approve the implementing regulations for the National Bank.

Article 27. Annulled by-laws

1. The Presidential Ordinance #612, dated October 28, 1998 shall be considered invalid upon adoption of the Law.

2. Starting from June 1, 1999 the following shall be considered invalid:

a) the decree of the Cabinet of Ministers of Georgia #264 “On Supplying Production and Goods for the State Needs of the Georgian Republic”, dated March 30, 1993;

b) the Presidential decree # 244 “On Some Measures Ensuring Maximum Efficiency of the Country’s Industrial Potential in Material and Technical Support of Georgia’s Military Forces”, dated March 31, 1996;

c) the Law of Georgia “on State Orders in the Construction Sector” (06.02.98)

On January 1, 2000 the Ordinance of the President of Georgia “ on Certain Urgent Measures for the Optimal Use of Budgetary Appropriations for the Country’s Law Enforcement Bodies and Some Urgent Measures Fostering the Operation of Local Enterprises at a Maximum Capacity” dated June 20, 1997 will become invalid;

Article 28. Enactment of the Law.

Article VII and VIII of this Law shall enter into force immediately upon publication, while other Articles -only after July 1, 1999.

President of Georgia

Eduard Shevardnadze

Tbilisi

9 December 1998

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