

# Law of the Republic of Tajikistan on Public Procurement of Goods, Works and Services

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*This unofficial English translation of the new March 2006 Law on Public Procurement was obtained by the Consultant, who has made minor spelling and grammatical corrections. The Consultant does not accept responsibility for the accuracy of the translation.*

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## **LAW OF THE REPUBLIC OF TAJIKISTAN “ON PUBLIC PROCUREMENT OF GOODS, WORKS AND SERVICES”**

This Law defines common legal, economic and organizational principles of public procurement of goods, works and services, and establishes the common rules and procedures related to public procurement of goods, works and services carried out, in full or in part, through public funds of the Republic of Tajikistan.

This Law regulates the single economic area of the public procurement of goods, works and services, targeted use of state funds, extension of participants circle, extension of fair competition as well as improvement of executive bodies activity in the public procurement on works and services.

### **CHAPTER 1. GENERAL PROVISIONS**

#### **Article 1. Subject of the Law**

The present Law covers all public procurement, conducted on the territory of the Republic of Tajikistan, with the exception for public procurement aimed at ensuring national defense, national security, State secrets, precious metals and stones.

#### **Article 2. Goals of this Law**

The goals of this Law are:

- Ensuring maximum economy and efficiency in public procurement;
- Extension of participation and development of competition between suppliers (contractors) in the process of public procurement;
- Ensuring transparency and fairness in the procedures of public procurement;
- Improvement of activities of executive authorities, State enterprises (institutions) and other organizations in the sphere of public procurement; and
- Development of market-based relations in the sphere of public procurement.

#### **Article 3. Definition of Terms Used in This Law**

The terms used in this Law are defined in the following meanings:

1. **Public procurement** means purchase by a procuring entity of goods, works and services through any of methods established by this Law and financed fully or partially through public funds;
2. **Public funds** mean sources of financing for public procurement provided out of:
  - State budget resources of all levels;
  - Funds of State enterprises;
  - Funds of joint-stock companies and enterprises with foreign investments where the State share amounts to above 50 percent;
  - Funds of state banks using for local purchases
  - Earmarked State funds;
  - Borrowed funds guaranteed and secured by the State or State-owned enterprises, grants.
3. **Public needs** mean needs of the Republic of Tajikistan in goods, works and services, in the social, economic, cultural and political spheres satisfactorily completely or partially at the expense state funds.

**Public needs** are also including the lists of special financing programs, which are envisaged at the expense of state budget in the planned period within the Law of Tajikistan "On state budget".
4. **Procurement contract** means a contract concluded as a result of public procurement procedures on procurement of goods, works and services..
5. **Supplier (contractor)** means any legal or physical person engaging in a relationship with a procuring entity as a potential or actual party to a procurement contract.
6. **Affiliated person of a supplier (contractor)** means any physical or legal person, capable of directly influencing the economic activity of the potential supplier (contractor) due to control of its capital or due to being a member of its executive bodies.
7. **Internal suppliers (contractors)** mean physical and legal persons who are residents of the Republic of Tajikistan in accordance with the legislation of the Republic of Tajikistan.
8. **Goods** mean the product of activity (including works, services) for the exchange and market sales.
9. **Works** mean any activity associated with construction, reconstruction, demolition, repair, or renovation of a building, structure or other facility, including site preparation, excavation, erection, installation of equipment or materials, internal and external decoration and finishing, as well as services incidental to construction, such as drilling, survey works, satellite photography, seismic explorations and other services provided pursuant to a procurement contract, if the value of such services does not exceed that of the construction itself.
10. **Services** mean the results of intellectual activity and works not associated with the properties change of material benefits.
11. **Consultative services** mean services of intellectual nature performed by individual consultants or consulting firms having necessary specialized professional expertise, experience and relevant qualification.
12. **Tendering** means a completion among bidders to implement necessary works, delivery of special service, or supply of special goods using more rational and efficient way for the purpose of selection of one (several) out of them and giving the instruction to him (them) on the implementation of works or services

- 13. Bid** means a proposal to supply goods, perform works and render services during tendering proceedings.
- 14. Bidding documents** mean a package of documents, containing terms and conditions of, and describing procedures for tendering, provided by a procuring entity to a supplier (contractor) for the preparation of a bid.
- 15. Threshold amounts** mean allowed cost limits of procurement for every estimated cost, giving a procuring entity the right to select a method of public procurement, amounts of which are as follows:
- Minimum threshold amounts and maximum threshold amount of purchases are set up on annual basis by the Government of the Republic of Tajikistan.
- 16. Lot** means an indivisible item of procurement.
- 17. Public procurement proceeding** means a set of provisions determining the procedure of implementation and processing of public procurement.
- 18. Authorized Body on Public Procurement** means a body of executive authority formed by the Government of the Republic of Tajikistan to ensure the implementation of the State policy in the sphere of procurement of goods, works and services through State funds.
- 19. Qualification Commission** means a body formed by the Government of the Republic of Tajikistan to grant to procuring entities the status of “a qualified procuring entity”.

#### **Article 4. Legislation on Public Procurement**

The legislation of the Republic of Tajikistan on Public Procurement is based on the Constitution of the Republic of Tajikistan and comprises this Law, normative and legal acts of the Republic of Tajikistan, as well as international legal acts recognized by the Republic of Tajikistan.

#### **Article 5. Language Used in the Public Procurement Proceedings**

Public procurement proceedings shall be conducted in the State language. In case of need the mentioned above proceedings may be conducted in the Russian and English languages.

#### **Article 6. Form of Communications**

To observe the provisions of this Law while implementing public procurement procedures written applications and notifications shall be recognized valid. Use of facsimile and electronic communication shall be allowed on condition of providing a record of the content of the communication. . In case of using the facsimile way of communication a written confirmation of the information shall be provided, that will allow establishing for certain that the document is sent by the party, which filed an application or notification within the deadline established in the bidding documents.

#### **Article 7. Confidentiality**

1. Participants of the public procurement proceedings shall be obliged to observe the principle of confidentiality of submitted and used information representing State secrets by virtue of this Law, or commercial secrets.

2. The procuring entity shall not have the right to disclose:
  - Information if its disclosure does not comply with the state interests, damages commercial interests of the parties or the fair competition principles;
  - Information on examination, evaluation and comparison of submitted bids, and their contents until the completion of the tendering.
3. In the event of divulging of information representing State secrets or commercial secrets, guilty persons shall bear responsibility in accordance with the legislation of the Republic of Tajikistan.

#### **Article 8. Conflict of Interest**

1. The civil servants of the Republic of Tajikistan with the exception of civil servants authorized to represent purchasing organization shall be prohibited:
  - To influence in any way the public procurement procedure in the interests of any party of procurement;
  - Participate as a supplier (a contractor) or act as their legal representative in procurement regulated by this Law;
  - Participate in decision making on procurement procedures, if they are connected with any of the tendering participants by relation or otherwise, or if they are directly or indirectly interested in the results of the procurement being carried out.
2. In the event of violation of the provisions of paragraph 1 of this Article the civil servants shall bear responsibility in accordance with the legislation of the Republic of Tajikistan, and the procedure of public procurement shall be suspended and/or ceased by the decision of the procuring entity or the Authorized body.
3. A person may not represent a procuring entity, perform other responsibilities related to the public procurement proceedings or perform functions of a consultant on public procurement proceedings, if:
  - He/she is in a marital or direct birth relationship, adoption relationship, guardianship or trusteeship with the supplier (contractor)
  - He/she was an employee or an official of the supplier (contractor) participating in the public procurement proceeding during the two years preceding the public procurement procedure.
4. Rejection of a tender, proposal or quotation due to violation of this Article's requirements with indication of specific reasons shall be recorded in the record of procurement proceedings and shall be promptly communicated to the interested supplier (contractor).

### **CHAPTER 2. PARTICIPANTS OF PUBLIC PROCUREMENT**

#### **Article 9. Participants of Public Procurement**

1. Participants of public procurement regulated by this Law shall be:
  - Procuring entities;
  - Suppliers (contractors);
  - Authorized Body.
2. Procuring entities may be the following organizations complying with the qualification requirements provided in Article 10 of this Law:
  - Budgetary organizations, State bodies and State enterprises;

- Utilities financed by local budgets;
- Bodies of local self-governance;
- Targeted foundations established at the expense of state budget;
- Joint-stock companies and joint ventures, in which more than 50 percent of shares or of Collective investment fund belong to the State;
- Branches and (or) representations of the above-mentioned individuals and legal entities;
- State banks involved in the local purchases

## **Article 10. Qualification Requirements to Procuring Entities**

1. The procuring entity having the right to conduct all kinds of procurement independently by itself shall comply with the following qualification requirements:
  - Possess professional and technical competence, experience and reputation, financial resources, equipment and other material and technical facilities needed for the implementation of the procurement proceedings in accordance with this Law's requirements;
  - Have in its structure a special subdivision or qualified officials (hereinafter subdivision on procurement) responsible for conducting procurement proceedings;
  - Have qualified specialists on procurement sectors for formation of tender commissions for each tendering to be conducted;
  - Shall not be insolvent, bankrupt, its property shall not be under judicial control, its activities shall not be managed by the court or a person appointed by the court, its commercial activity shall not be suspended, and it is not at the stage of judicial proceedings;
  - Its obligations to pay taxes and other compulsory payments in the Republic of Tajikistan must be fulfilled;
  - It was not debarred from procurement proceedings, its name was not included in the Registry of unreliable (unfair) procuring entities of the Authorized body due to flagrant violations of the procurement procedures and causing damage to suppliers (contractors), as well as for untimely payments and other substantial mistakes in administration of procurement contracts;
  - Prior to the beginning of the procurement it must have documents from the Treasury and/or servicing bank certifying availability of funds, assigned for public procurement; and
  - It must have the legal capacity to conclude procurement contracts.
2. Upon request of the procuring entity the above mentioned in subpara i) of para 1 of this Article documents shall be submitted by the financial bodies and/or banks within three day period.
3. The status of a "Qualified procuring entity" shall be granted to the procuring entity by the Qualification commission, and it shall become effective from the moment of its inclusion in the Registry of procuring entities. The inclusion into, and maintenance of the Registry of procuring entities shall be performed by the Authorized body during one day from the moment of receiving notification of the Qualification commission in order established by them. The inclusion in the Registry and issuance of information on the status of the procuring entity from the Registry shall be made free of charge.

## **Article 11. Subdivision on Procurement**

1. The subdivision of the procuring entity on procurement shall comprise specialists, and at least one of them shall have the certificate of a specialist on procurement, issued by the Authorized body.
2. The head of the procuring entity shall not have the right to be a member of the subdivision on procurement.
3. The subdivision on procurement may not act as a party to the procurement contract.

## **Article 12. Functions of Subdivision on Procurement**

1. The subdivision on procurement within ten days after the coordination of cost estimate with financial bodies shall submit the public procurement plan for the next financial year to the Authorized body according to the forms approved by the Authorized body upon coordination with the higher echelon organization.
2. The subdivision on procurement shall perform the following functions:
  - Prepare annual expenditure programs on procurement;
  - Prepare schedule for conducting of every procurement;
  - Ensure compliance with the procurement procedures established by this Law;
  - Coordinate the selected procurement method with the Authorized body in cases provided by this Law;
  - Prepare bidding documents, using the standard bidding documents, developed by the Authorized body;
  - Arrange for publication of announcements on procurement proceedings, or send invitation letters to bid directly to potential suppliers (contractors);
  - Recommend to the head of the procuring entity on manning of the tender commission and nomination of the chairman;
  - Based on the recommendations of the tender commission make decision on contract awarding to the winner of tendering and submit the decision for approval to the head of the procuring entity;
  - Publish information on behalf of the procuring entity on results of the tendering in the mass media or in the Public Procurement Bulletin;
  - Provide collection and keeping of all documents related to the procurement procedures during three years;
  - Prepare reports on the conducted procurement proceedings and submit them quarterly to the head of the procuring entity and to the Authorized body in the established procedure.

## **Article 13. Tender Commission**

1. The tender commission shall be established by the head of the procuring entity upon presentation of the subdivision on procurement.
2. The tender commission shall comprise qualified specialists in the sphere complying with the procurement subject, procurement specialist and must comprise odd number of members, but at least three persons.
3. The head of the procuring entity shall not have the right to be included in the tender commission.
4. The tender commission of the procuring entity may not act as a party to the procurement contract.

## **Article 14. Functions of Tender Commission**

The tender commission of the procuring entity shall perform the following functions:

- Conduct opening of tenders at the deadline specified in the bidding documents, compile the corresponding minutes of bid opening;
- Conduct examination, evaluation and comparison of tenders using procedures and criteria stipulated by the bidding documents in accordance with this Law and prepare evaluation report on the results of the tendering; and
- Submit recommendations on determination of the winner or recommend to make any other decision on the results of the procurement proceedings.

## **Article 15. Bidder**

1. The supplier (contractor) shall acquire the status of a bidder from the moment of submission of the tender to the procuring entity.
2. The status of a bidder shall be forfeited in the following events:
  - At the request of the bidder at any preparatory stage;
  - Due to failure to pass the first stage of the two-stage tendering;
  - Failure to submit the required bid security upon submission of the tender, if this is stipulated by the bidding documents; and
  - Due to violation of this Law.
3. The bidder shall have the right to receive full information from the procuring entity on the terms and procedures of procurement proceedings.

## **Article 16. Qualification Requirements to Suppliers (Contractors)**

1. To acquire the status of a potential party to the procurement contract the supplier (contractor) must comply with the following qualification requirements:
  - Possess sufficient professional and technical competence, experience and reputation, financial resources, equipment and other material and technical facilities for implementation of their commitments on procurement contracts;
  - Shall not be insolvent or bankrupt, shall not be under liquidation, their business activities shall not be managed by judicial agencies or assigned persons, their commercial activities shall not be suspended or subject to judicial proceeding;
  - Shall not have tax arrears and other obligatory payments;
  - Heads of legal entities and individuals acting as suppliers (contractors) shall not be convicted by the court for criminal actions connected with their professional activities;
  - They shall not be debarred from procurement procedures, and their names shall not be included in the Registry of unreliable (unfair) suppliers (contractors) of the Authorized body for making of false statements or misrepresentations as to their qualifications for the purpose of concluding the public procurement contract; and
  - They should have the legal capacity to conclude procurement contracts.
2. The procuring entity shall have the right to claim from suppliers (contractors), involved in public procurement proceedings, to submit documentary evidence or other information confirming their compliance with the qualification requirements stipulated by paragraph 1 of this Article.

3. Any qualification requirements established pursuant to this Article shall be set forth in prequalification documents (in the event of using the prequalification proceeding) and in bidding documents. These qualification requirements shall apply to all suppliers (contractors) equally.
4. The procuring entity shall evaluate the qualifications of suppliers (contractors) in accordance with the qualification criteria set forth in the prequalification documents, in case of using the prequalification proceedings, and in the bidding documents.
5. The procuring entity shall not establish other criteria, procedures and qualification requirements, referred to the discrimination of suppliers (sub-contractors) in addition to those stipulated by this Article.

## **Article 17. Prequalification Proceedings**

1. Prior to public procurement proceedings the procuring entity shall have the right to conduct prequalification proceedings to identify suppliers (contractors) complying with the qualification requirements established by this Law.
2. The procurement entity shall be obliged to inform all potential suppliers (contractors) on using of prequalification proceedings not later than one month before the official announcement of the tendering proceedings through publication of information in the mass media and the Public Procurement Bulletin, and in international press if necessary.
3. The information on conducting prequalification proceedings shall include, at a minimum, the following data:
  - Name and address of the procuring entity;
  - Character and quantity of goods subject to delivery, and the deadline of their delivery;
  - Source of public procurement financing;
  - A declaration, which may not later be altered, that the internal and domestic suppliers (contractors) are not granted any preferences, or a declaration that the internal and domestic suppliers (contractors) are granted preferences pursuant to paragraphs 1, 2 and 3 of Article 18 of this Law.”
  - The manner and place for submission of applications to prequalify;
  - The means of obtaining the prequalification documents and the place from which they may be obtained; and
  - The amount, procedure and terms of payment charged by the procuring entity for the issuance of prequalification documents.
4. The procuring entity shall be obliged to submit prequalification documents to all interested suppliers (contractors) in three days after the official announcement of the prequalification proceedings and not later than ten days prior to the official announcement on the start of the tendering proceedings. The prequalification documents shall comprise the following:
  - Data provided by paragraph 3 of this Article;
  - Instruction on the preparation and submission of documents for participation in prequalification proceedings;
  - Description of criteria and evaluation procedures of the qualification information of suppliers (contractors);
  - List of documentary evidence confirming compliance of suppliers (contractors) with the qualification data set forth in paragraph 2 of Article 16 of this Law; and

- Names and positions of the employees of the procuring entity authorized to communicate with the suppliers (contractors) on prequalification procedure and ways of contacting them.
5. The procuring entity shall comply with any requests of the supplier (contractor) to give explanations on prequalification documentation received within the period of time established for submission of applications to participate in prequalification proceedings.
  6. The procuring entity shall be obliged to make decision on qualification data of each supplier (contractor), who applied for participation in the prequalification procedure. While taking a decision the procuring entity shall have the right to use only those criteria, which are set forth in the prequalification documentation.
  7. Only those suppliers (contractors), who passed the prequalification selection, shall be allowed to further participate in the public procurement proceedings.
  8. The procuring entity shall notify each supplier (contractor), who applied for participation in the prequalification procedure, on the results of the prequalification procedure not later than two working days from the date of making the decision on procedure of prequalification selection.
  9. The list of suppliers (contractors), who will be allowed to further participate in the public procurement proceedings in accordance with the results of the prequalification selection, shall be subject to publication in the mass media or in the Public Procurement Bulletin.

#### **Article 18. Preferences Granted to Internal and Domestic Suppliers (Contractors)**

1. When foreign suppliers (contractors) participate in public procurement the internal suppliers under other equal conditions may be granted preference in the amount of 20 percent while evaluating bids for goods, as well as 10 percent while evaluating bids for works, implemented by internal contractors.
2. If the subject of procurement is the works, to be performed on the territory of the Republic of Tajikistan, the preference provided by this Article shall be granted on a condition, that the works are performed with the usage of domestic labor resources and not less than 30 percent of domestic raw and construction materials.
3. The procuring entity, upon coordination with the Authorized body, may grant 10 percent of preference to domestic suppliers of consultative services, individual consultants and internal suppliers of consultative services on a condition that the internal consulting companies employ not less than 70 percent of their permanent staff from domestic specialists.
4. At taking a decision on granting preference to internal suppliers (contractors) the procuring entity and the Authorized body must observe international commitments in determination of:
  - The categories of goods supplying and work performance to which the preference to internal and domestic suppliers (contractors) shall be applied;
  - The procedures for the use of preference to internal and domestic suppliers (contractors) in conducting public procurement provided in paragraphs 1 and 2 this Article.
5. In implementing of public procurement all suppliers (contractors) shall enjoy equal rights except for the paragraphs 1-3 of this Article.
6. The procedure of granting preference to internal and domestic suppliers (contractors) shall be determined by the Authorized body.

## **Article 19. Debarment (Disqualification) of Suppliers (Contractors) from Participation in Public Procurement**

1. Suppliers (contractors) shall be debarred (disqualified) from participation in the public procurement proceedings by the decision of the procuring entity in the following cases:
  - Failure to meet their obligations on at least one public procurement contract during two years preceding the initiation of procurement procedures;
  - At announcing them bankrupt or being under the bankruptcy process;
  - Submitting of knowingly false information regarding its or his, or her qualifications; and
  - Submitting of materially inaccurate or materially incomplete information concerning its or his, or her qualifications.
2. In case of emergence of the situation specified in Paragraph 1 of this Article the procuring entity is required to apply to the Authorized body submitting confirming documents to consider the issue of entering the supplier (contractor) in the Registry of unreliable (unfair) suppliers (contractors).
3. The purchasing organization shall not be able to eliminate the supplier (sub-contractor) from the participation in the public procurement in case if the information provided by them related to the qualification data, which is not significantly accurate or not complete under the condition that the supplier (sub-contractor) immediately eliminates these shortcomings at the request of purchasing organization.
4. The fact of debarring of the supplier (contractor) from the procurement proceedings and the reasons therefore shall be recorded in the record of the procurement proceedings and promptly communicated to the supplier or contractor.

## **Article 20. Functions of Authorized body on Public Procurement**

1. The main functions of the Authorized body on Public Procurement shall be as follows:
  - Development of normative legal acts stipulated by this Law for functioning of the public procurement system, which includes procurement procedures and proceedings, awarding of contracts and payments according to them;
  - Coordination and regulation of the activities of the procuring entities on carrying out procurement of goods, works and services at the expense of government funds;
  - Monitoring compliance of the procuring entities with the legislation of the Republic of Tajikistan on public procurement;
  - Reviewing of complaints and protests on compliance with the legislation on public procurement, issuing decisions within its competence provided by paragraph 1 of Article 80 of this Article;
  - Development and publication of standard bidding documents, subject to mandatory use by all procuring entities in preparation of corresponding bidding documents for their actual procurement;
  - Consulting on application of the public procurement legislation;
  - Arranging of training and retraining of public procurement specialists;
  - Implementation of public procurement of goods works and services for the amount above the minimal threshold on behalf of the procuring entities, which do not meet qualification requirements provided by the present Law.

2. The normative legal acts of the Authorized body are subject to be published in the mass media and in the Bulletin of Public Procurement.
3. In the event of implementing public procurement on behalf of the procuring entity, which does not comply with the qualification requirements, the Authorized body on Public Procurement shall bear full responsibility for the whole procurement process. With this the majority of seats in the tender commission shall be given to the procuring entity.

#### **Article 21. Registry of Unreliable (Unfair) Suppliers (Contractors)**

1. The maintenance of the Registry of unreliable (unfair) suppliers (contractors) is entrusted to the Authorized body.
2. The Authorized body is required to consider the application of the procuring entity submitted along the lines specified in Para 2 of Article 19 of this Law, and if proves presented be sufficient, shall enter the name or title of the bidder at fault in the Registry of unreliable (unfair) suppliers (contractors).
3. The names and titles of bidders, reasons for their entry in the Registry and the time period for their debarring from participation in public procurement shall be published in the Public Procurement Bulletin and web-site of the Authorized body.
4. Exclusion of a bidder from the Registry of unreliable (unfair) suppliers (contractors) shall be effected based on the application of the interested bidder upon the expiration of the debarring through the order of the Head of the Authorized body.

#### **Article 22. Qualification Commission**

1. The Qualification Commission shall be formed by the Government of the Republic of Tajikistan comprising not less than nine members.
2. The members of the Qualification Commission shall carry out their functions on a non-remunerated basis.
3. The Qualification Commission shall consider the application of a procuring entity on granting it the status of a qualified procuring entity within ten days period and issue a written opinion on such decision.
4. The Qualification Commission's opinion shall constitute the basis for entering the procuring entity in the Registry of qualified procuring entities.

#### **Article 23. Conducting of Joint Centralized Bulk Procurement**

When several procuring entities are intended to conduct procurement related to the same or several procurement subjects of common use the Government of the Republic of Tajikistan may appoint a concrete State administrative body for implementation of procedures and conducting the joint centralized bulk procurement on behalf of the above-mentioned procuring entities.

### **CHAPTER 3. PUBLIC PROCUREMENT METHODS**

#### **Article 24. Public Procurement Methods**

1. Public procurement shall be conducted by the following methods:

- Tendering with unlimited participation;
  - Tendering with limited participation;
  - “Short-list” method (specific tendering with limited participation for procurement of Consultative services);
  - Request for quotations;
  - Single-source procurement;
  - Electronic procurement.
2. The main method of public procurement is the tendering with unlimited participation. This method must be used by procuring entities in all cases where this Law does not specifically permit the use of another method listed in this Law". While conducting the tendering for the amount equal or higher of the maximum threshold the selection of other procurement method shall be implemented only upon coordination with the Authorized Body.
  3. In public procurement of goods, works and services for the amount lower than the minimum threshold, the selection of the procurement method shall be implemented by the procuring entity without coordination with the Authorized body.
  4. The procuring entity shall implement selection of the single-source procurement method, the cost of which equals or exceeds the minimal threshold amount only upon coordination with the Authorized body.
  5. When the procurement is conducted for the amount equal or above the maximum threshold, the announcement on tendering shall be published in the mass media and in the Public Procurement Bulletin, if the procurement is conducted for the amount below the maximum threshold – in the Public Procurement Bulletin. The announcement shall not be published for the procurement below the minimal threshold.

#### **Article 25. Tendering with Unlimited Participation**

Tendering conducted with unlimited number of suppliers (contractors) invited to participate in the public procurement proceedings shall be considered as the tendering with unlimited participation.

#### **Article 26. Tendering with Limited Participation**

1. The tendering with limited participation shall be conducted in case if:
  - Expenses required to examine and evaluate a large quantity of bids would be disproportionate to the value of goods, works or services to be procured. At this the procuring entity shall solicit bids of the sufficient quantity of suppliers (contractors) to ensure competition, but at least three;
  - Goods, works or services owing to their technical complexity or specialized nature are available only from a limited number of suppliers (contractors). In this case the procuring entity shall solicit bids from all suppliers (contractors), from whom the goods, works and services of such kind are available.
2. The announcement on tendering with limited participation shall be published by the procuring entity in the Public Procurement Bulletin.

#### **Article 27. Request for Quotations**

1. The procuring entity shall use the method of a request for quotations for the procurement of readily available goods or services that are not specially produced or provided to the particular specifications of the procuring entity and for which there is an established market, so long as the estimated value of the procurement contract is less than the maximum threshold amount. In special cases, upon coordination with the Authorized body, the procuring entity may carry out procurement for the amount that does not exceed fivefold of maximum threshold.
2. The procuring entity shall request quotations from as many suppliers or contractors as practicable, but from at least three. Each supplier or contractor from whom a quotation is requested shall be informed whether any elements other than the charges for the goods or services themselves, such as any applicable transportation and insurance charges, customs duties and taxes, are to be included in the price.
3. Each supplier or contractor is permitted to give only one price quotation and is not permitted to change its quotation. No negotiations shall take place between the procuring entity and a supplier or contractor with respect to a quotation submitted by the supplier or contractor.
4. The procurement contract shall be awarded to the supplier or contractor that gave the lowest-priced quotation meeting the needs of the procuring entity.
5. It shall be prohibited to divide consignments of goods or service packages subject to procurement with the purpose to use the method of request for quotations through artificial undervaluing cost threshold provided by this Article.
6. The Authorized body may establish by its act the model form of request for quotations.

#### **Article 28. Single-Source Procurement**

1. The single-source procurement is a procedure of public procurement, at which the procuring entity shall sign a procurement contract after negotiations only with one supplier (contractor).
2. The procuring entity upon coordination with the Authorized body may make a decision on conducting the single-source procurement only in the following cases:
  - If it performs additional orders during 6 months from the moment of concluding a contract, not exceeding 15 percent of the cost of the previous procurement, and maintains the same norms, parameters and standards;
  - Signing of a contract while conducting research, experiments or preparation of a scientific opinion;
  - If these goods, works or services are available only from a particular supplier (contractor) or any supplier (contractor) possesses exclusive rights in relation to these goods, works or services;
  - At procurement for execution of creative works in the area of art or culture;
  - In case of an urgent need to conduct procurement due to circumstances, which the procuring entity couldn't foresee.

#### **Article 29. Simplified Public Procurement Proceedings**

1. With a view of providing effectiveness and efficient satisfaction of their demands the rural communities (jamoats) may carry out public procurement of goods, works and services in a simplified procedure for the estimate cost not exceeding the minimum threshold amount.
2. Proceedings to carry out public procurement in the simplified procedure shall be established by the Authorized body.

## **Article 30. Electronic Procurement**

1. Public procurement of goods, works and services may be carried out through using electronic data exchange between the procuring entity and the suppliers (contractors). Using of this public procurement method shall be allowed only on a condition of providing authenticity, reliability and confidentiality of information.
2. The method of electronic procurement shall be introduced into action along the lines determined by the Government of the Republic of Tajikistan.

## **CHAPTER 4. PUBLIC PROCUREMENT PROCEEDINGS**

### **Section 1. Tendering Proceedings**

## **Article 31. Invitation to Participate in Tendering**

The procuring entity shall express its intention to carry out public procurement through publication of invitations to participate in tendering in the national and/or international mass media and in the Public Procurement Bulletin.

## **Article 32. Contents of Invitation to Participate in Tendering**

1. An invitation to participate in tendering must contain, at a minimum, the following information:
  - The name and the address of the procuring entity;
  - Character, quantity and location for the goods subject to delivery, character and location of works subject to implementation, or the character of services and the place, where they shall be provided;
  - Desired or required time for delivery of goods, completion of works and provision of services;
  - Qualification requirement to suppliers (contractors);
  - A declaration, which may not later be altered, that the internal and domestic suppliers (contractors) are not granted any preferences, or a declaration that the internal and domestic suppliers (contractors) are granted preferences pursuant to paragraphs 1, 2 and 3 of Article 18 of this Law;
  - Timing, location and ways of obtaining bidding documentation;
  - The size of payment (if any) charged for providing bidding documents;
  - Place and deadline for submission of bids.
2. The procuring entity if necessary shall have the right to include additional information on the forthcoming tendering within the limits allowed by this Law.
3. By its resolution the Authorized body shall approve a standard form of invitation to participate in tendering.

## **Article 33. Provision of Bidding Documents**

1. The procuring entity shall provide the suppliers (contractors) willing to participate in tendering with a full package of bidding documents in no later than one week from the day the relevant request was received.
2. At conducting tendering with limited participation the bidding documents shall be sent simultaneously with the invitation to participate in tendering.
3. In case the two-stage tendering procedures bidding documents shall be provided to each supplier (contractor), who passed the first stage.
4. The procuring entity may charge a fee for provision of bidding documents in the amount covering the costs for preparation, distribution of bidding documents and publication of announcements in the mass media. The fee is not subject to reimbursement.

#### **Article 34. Contents of Bidding Documents**

1. The bidding documents shall consist of the following obligatory information:
  - Instructions for preparing bids , approved by the authorized body;
  - Criteria and methods of evaluating compliance of suppliers (contractors) with the qualification requirements in accordance with Article 16 of this Law;
  - Requirement as to documentary evidence or other information to be submitted by suppliers (contractors) to demonstrate their qualifications;
  - Description and required technical and quality characteristics of goods, works and services to be procured, including technical specifications, plans, drawings and designs; the quantity of goods; additional services to be provided in accordance with the contract; location where the works shall be implemented or services provided;
  - Desired or required time for implementation of the contract;
  - Description of all criteria other than price, which are used in evaluation of bids by the procuring entity, including the relative weight of the criteria, which must be expressed in monetary terms;
  - Provisions determined by the procuring entity as important ones to be included in the written contract;
  - Description of the part or parts of the goods to be procured, for which bids may be submitted, if the suppliers (contractors) are allowed to submit bids only for the part of goods, works or services to be procured;
  - The manner in which the tender price is to be formulated and expressed, including a statement as to whether the price is to include elements other than the cost of the goods, works or services to be procured (transportation and insurance charges, customs duties and taxes, etc.);
  - When the bids are submitted in foreign currency the way of comparing bid prices expressed in foreign currency;
  - Requirements concerning the form, amount and other principal terms of the bid security and the contract performance security, as well as the term of their validity;
  - Exact place and the deadline for submission of bids;
  - The description of the procedure for providing clarifications of the bidding documents sought by a supplier (contractor) and also a statement as to whether the procuring entity intends to convene a meeting of suppliers or contractors on the issue;

- The period of time, during which bids shall be effective;
  - Exact description of the place, date and time for opening the bids;
  - The procedures to be followed for opening and examining of tenders;
  - Language or languages, in which bids shall have to be prepared;
  - The name, the title, and address of one or several officials or employees of the procuring entity, who shall be authorized to maintain direct contacts with the suppliers (contractors), as well as ways to maintain such communications;
  - Notice of the right of the suppliers (contractors) to seek review of illegal actions or decisions of the procuring entity in the course of the procurement proceedings;
  - General terms and conditions of the procurement contract and the standard contract, if the procuring entity requires the supplier (contractor) to sign the contract.
2. For procurement of works or services the procuring entity shall have documents with the description of the procurement subject, the estimated cost and the bill of quantities.
  3. The Authorized Body may determine by its resolution additional information, which is to be included in the documents for certain categories of procurement, as well as establish a standard form of the bidding documents.

### **Article 35. Clarifications and Modification of Bidding Documents**

1. The supplier (contractor) has the right to request a clarification from the procuring entity on issues raised in connection with the use of bidding documents prior to the deadline for submission of bids.
2. The procuring entity shall be obliged to give written clarifications not later than three working days and send them to the requesting supplier (contractor), and without identifying the source of request to all suppliers (contractors), who received bidding documents.
3. The procuring entity may change bidding documents through issuing amendments to them in no later than three working days prior to the deadline for submission of bids on its initiative or in connection with the request to give clarifications. Amendments to the bidding documents shall be promptly communicated to the suppliers (contractors), to whom bidding documents are submitted, and shall be binding on them.
4. If the Procuring entity convenes a meeting of suppliers (contractors) to clarify any questions concerning the bidding documents, it shall prepare minutes containing all inquiries for clarification of the bidding documents submitted at the meeting and its responses to such inquiries without identifying their source. The minutes shall be provided promptly to all suppliers (contractors) who received the bidding documents.

### **Article 36. Submission of Bids**

1. Bids shall be prepared and submitted in a written form in a sealed envelope, or in any other form in accordance with the rules established in the bidding documents observing the conditions to ensure authenticity and confidentiality of the bid, and true identification of the person applying.
2. The procuring entity upon request of the supplier (contractor) shall issue an acknowledgement receipt with the date and time of the receipt of the bid.

### **Article 37. Deadline for Submission, Modifications and Withdrawal of Bids**

1. The procuring entity shall establish the exact date and time of the deadline for submission of bids.
2. At this the period of time for submission of bids must be:
  - In carrying out public procurement through tendering with unlimited participation not less than three weeks from the announcement of tendering;
  - In carrying out public procurement through tendering with limited participation not less than three weeks from the day the invitation to participate in tendering was sent.
3. When the procuring entity makes any clarification or introduces amendments to the bidding documents it may extend the deadline for submission of bids for ten working days from the date of submission of clarification or amendments to suppliers (contractors).
4. The notice on extension of the deadline for submission of bids shall be promptly sent to all suppliers (contractors), who received bidding documents.
5. In case of using the method of tendering with unlimited participation the procuring entity shall be entitled to reduce the bid submission period of time upon the consent of the Authorized body.
6. The bid submission period of time can not be less than ten days from the day of obtaining bidding documents
7. The supplier (contractor) shall be entitled to modify or withdraw the bid prior to the deadline for bid submission.

#### **Article 38. Period of Effectiveness of Tender**

1. Tenders shall be in effect during the period of time specified in the bidding documents.
2. Prior to the expiry of the period of effectiveness of tenders, the procuring entity may request suppliers or contractors to extend the period for an additional specified period of time. A supplier or contractor may refuse the request without forfeiting its tender security, and the effectiveness of its tender will terminate upon the expiry of the unextended period of effectiveness.
3. A supplier or contractor may modify or withdraw its tender prior to the deadline for the submission of tenders without forfeiting its tender security. The modification or notice of withdrawal is effective if it is received by the procuring entity prior to the deadline for the submission of tenders.

#### **Article 39. Bid Securities**

1. The suppliers (contractors) simultaneously with submission of a bid shall provide a bid security to the procuring entity.
2. The amount of the bid security shall be determined by the procuring entity in the bidding documents, but it shall not exceed three percent of the value of goods, works or services offered by the suppliers (contractors) in their bids.
3. The bid security may be provided in bonds, bank guarantees, bills, deposit certificates or shares accepted for public operations. The actual form of the bid security shall be determined by the procuring entity and shall be indicated in the bidding documents.
4. The bid security shall be returned to suppliers (contractors) in the following cases:
  - Expiration of the period of effectiveness of the bid security;

- Entry into force of the procurement contract, and the provision of the contract performance security, if provision of such security is stipulated by the bidding documents;
  - The withdrawal of the bid prior to the deadline for the submission of bids;
  - Termination of the procurement procedures by the procuring entity without concluding a procurement contract.
5. The supplier (contractor) forfeits its right to return the bid security only in cases of:
- Refusal to sign a procurement contract on the terms and conditions set forth in its bid;
  - Refusal to provide the security for the performance of the procurement contract if the provision of such security is stipulated by the bidding documents;
  - Withdrawal of the bid after the deadline of the bid submission.
  - Refusal to accept corrections of arithmetical errors

#### **Article 40. Prohibition of negotiations with suppliers (contractors)**

Conducting of negotiations between the procuring entity and the supplier (contractor) regarding the submitted bid is strictly prohibited, except as otherwise specifically permitted by this Law.

#### **Article 41. Opening of Bids**

1. Bids shall be opened at the time and place specified in the bidding documents. In the event of extension of the deadline for submission of bids, their opening shall be done on the corresponding day. The time and date for the opening of bids shall coincide with the deadline for submitting of bids.
2. All bidders or their representatives shall be allowed to be present at the opening of bids.
3. The name and the address of each bidder, whose bid was opened, as well as the price the bid, the form, the amount of the bid security shall be promptly announced to the persons attending the opening of bids and shall be registered in the minutes of bid opening. Each member of the tender commission shall initial each page of each bid. The minutes of the bid opening shall be signed by each member of the tender commission and by each bidder who is present at the bid opening. The copies of the minutes shall be distributed on the day of opening the bids to participants who are present and sent to suppliers (contractors), as well as to the Authorized body during one working day.

#### **Article 42. Examination, Evaluation and Comparison of Bids**

1. The tender commission may request the suppliers (contractors) to provide clarifications of their bids to facilitate the examination, evaluation and comparison of the bids. No change in a matter of substance in the tender, including changes in price and changes aimed at making an unresponsive tender responsive, shall be sought, offered or permitted. All inquiries for clarifications and clarifications themselves shall be made only in the written form.
2. The tender commission shall correct purely arithmetical errors discovered during the examination of tenders. The tender commission shall promptly communicate of any such corrections to the supplier (contractor), who submitted the bid.

3. To evaluate and compare bids if the bid prices are expressed in two or several currencies, prices of all bids shall be converted to one currency at the exchange rate indicated in the bidding documents.
4. The tender commission may consider a bid as compliant with the requirements of the bidding documents even if there are small deviations, which do not materially alter or depart from the characteristics, terms, conditions and other requirements set forth in the bidding documents, or if it contains errors or oversights that are capable of being corrected without touching on the substance of the tender. Any such deviations shall be quantified, to the extent possible, and appropriately taken account of in the evaluation and comparison of bids.
5. The tender commission shall examine and debar (disqualify) the supplier's (contractor's) bids, and the subdivision on procurement of the procuring entity within three working days shall submit the corresponding material to the Authorized body with the evidence, providing grounds to introduce the name of the supplier (contractor) to the Registry of unreliable (unfair) suppliers (contractors), if there are circumstances stipulated in Article 19 of this Law.
6. The tender commission shall examine and reject the bid in the following cases:
  - If the bidder has not submitted the bid security in the form, amount and on terms and conditions provided in the bidding documents;
  - Under circumstances provided in Article 8 of this Law;
  - If this bid does not comply with the qualification requirements established in Article 16 of this Law;
  - If the price of the bid exceeds the amount allocated for procurement of the subject;
  - If the bidder does not agree with the correction of arithmetical errors in his bid;
  - If this bid does not materially comply with the requirements of the bidding documents.
7. The tender commission shall evaluate and compare the remaining tenders (that have not been debarred or rejected) in order to ascertain the successful tender, as defined in subparagraph (b) of this paragraph, in accordance with the procedures and criteria set forth in the bidding documents. No criterion shall be used that has not been set forth in the bidding documents:
  - a) The successful tender shall be:
    - i) The tender with the lowest tender price subject to the margin of preference applied to internal suppliers (contractors) pursuant to Article 18 of the present Law; or
    - ii) If the procuring entity has so stipulated in the bidding documents, the lowest evaluated tender ascertained on the basis of criteria specified in the bidding documents, which criteria shall, to the extent practicable, be objective and quantifiable, and shall be expressed in monetary terms in the evaluation procedure;
  - b) In determining the lowest evaluated tender in accordance with subparagraph (b) (ii) of this paragraph, the procuring entity may consider only the following:
    - i) The tender price subject to the margin of preference applied to internal suppliers (contractors) pursuant to Article 18 of the present Law;
    - ii) The cost of operating, maintaining and repairing the goods or works;
    - iii) The time for delivery of the goods, completion of works or provision of the services;

- iv) The functional, technical and qualitative characteristics of the goods or works;
- v) The terms of payment;
- vi) The terms of guarantees in respect of the goods, works or services.

#### **Article 43. Post Qualification**

1. Prior to the written notification of the bid winner and/or the publication of the announcement on the selection, regardless of whether the procuring entity conducted prequalification proceedings in accordance with Article 17 of this Law, it may request the supplier (contractor), who submitted the bid, which was considered to be the winner, to reconfirm his or her qualification data in accordance with the criteria and procedures stipulated by this Law, as such criteria and procedures have been set forth in the bidding documents. No criterion or procedure other than those set forth in the bidding documents shall be used.
2. If a procuring entity requests the supplier (contractor), who submitted the winning bid, to reconfirm its qualification data in accordance with paragraph 1 of this Article, but the supplier doesn't do this, the procuring entity shall reject such a bid and announce the bid, which took the second place, to be the winner.

#### **Article 44. Cancellation of Tendering**

1. The procuring entity shall cancel the tendering upon agreement with the Authorized body when:
  - All bids were disqualified and/or rejected in accordance with paragraphs 5 and/or 6 of Article 42;
  - The lowest price of the bids exceeds the amount allocated by the procuring entity for the procurement;
  - Conducting of the procurement is no longer in the State's interests due to serious unforeseen changes of the situation.
2. In the notification on cancellation of the tendering the procuring entity shall state the grounds for such a cancellation, but is not required to justify those grounds.
3. The procuring entity shall promptly send notifications indicated in paragraph 2 of this Article to all bidders.
4. The procuring entity shall not bear any responsibility to the bidders in case when all bids are rejected.
5. In the event of tender cancellation for reasons specified in paragraph 1 of this article, the procuring entity must conduct re-tender with unlimited participation preliminarily having introduced corresponding amendments into the bidding documents.

#### **Article 45. Notice on Selection of Winner of Tendering**

1. The procuring entity no later than three days after the selection of the winner of the tendering shall send to the supplier (contractor), whose bid was accepted as the winning one, the notice thereof.
2. The procuring entity shall publish in the Public Procurement Bulletin the announcement on the winner of the tendering, identifying the name, address and the price of his bid.
3. When the selection is conducted in accordance with the provisions of this Law the procuring entity and the supplier (contractor), who won, shall have to sign the contract

taking into consideration provisions of para 2 of Article 77 after the expiration of 15 days from the date of the written notification to the winner or from the date of publication of the announcement on the results of the procurement procedures in accordance with paragraphs 1 and 2 of this Article; and no later than this bid's period of validity.

4. A procurement contract shall be signed with the supplier (contractor), whose bid won, in accordance with the conditions of the bid.
5. In the event the selected supplier (contractor) does not sign the contract or fails to provide the required contract performance security, the tender commission of the procuring entity shall select the winning bid, in accordance with paragraph 7 of Article 42 of this Law, from among the other remaining valid bids, subject to the right of the procuring entity, in accordance with Article 43 of this Law, to cancel the tendering.

#### **Article 46. Record of Procurement Proceedings**

1. While conducting procurement procedures the procuring entity shall compile the record of procurement proceedings, which shall include, at a minimum, the following information:
  - Description of the subject of procurement for each lot;
  - The names and the addresses of the suppliers (contractors), who submitted bids, proposals or quotations;
  - Requirements to the suppliers (contractors) while concluding procurement contracts;
  - Price and other main conditions of each bid, proposals;
  - Summary of the evaluation, comparison and grounds for selection of the submitted bids, proposals;
  - When all bids and proposals are rejected – grounds for such a rejection;
  - When in the result of procurement procedures the procurement contract is not concluded, the statement to that effect and the grounds therefore;
  - In cases of granting preferences to internal and domestic suppliers (contractors) in accordance with Article 18 of this Law, the basis for such a prerogative;
  - When using other procedures except for the tendering with unlimited participation and the grounds therefore;
  - Grounds for using prequalification proceedings of suppliers (contractors);
  - A summary of any request for clarification of the prequalification or bidding documents, the responses thereto;
  - Information on submitted complaints and claims and the way of their resolution;
  - Information on suspension of the procedures;
  - Information on involvement of experts;
  - Name of the supplier(s) (contractor(s)), who were announced as winner(s).
2. In procurements lower than the minimum threshold amount the record of procurement procedures shall not be compiled.
3. Information provided by the paragraphs 2-8, 12-14 of paragraph 1 of this Article shall be provided upon request of the suppliers (contractors), who submitted bids or quotations, after the selection of bids or quotations or after completion of the procurement procedures, which didn't result in concluding of a contract.
4. During the single-source procurement the simplified report containing the following information is to be prepared:

- Justification of applying of this procurement method;
  - Name of supplier (sub-contractor) with whom the contract signed;
  - Price and other basic terms of procurement;
  - Information on experts attraction.
5. The Authorized body shall have the right to issue a resolution establishing:
    - The model record of the procurement procedure;
    - Additional requirements of the record to procurement procedures.
  6. The record of procurement procedures shall be submitted to the Authorized body within three working days after the record was compiled.

## **Section 2. Two-Stage Tendering**

### **Article 47. Concept of Two-Stage Tendering**

1. The two-stage tendering proceedings consist of two consecutive tendering stages, when:
  - The bidding documents propose to the suppliers (contractors) to submit initial bids at the first stage with no price indication, but including information on technical, quality and other characteristics of the goods, works and services to be procured, terms of their delivery, as well as, if necessary, professional, technical competence and qualification data of the suppliers (contractors);
  - In the second stage the suppliers (contractors) are proposed to submit final bids based on the specifications, adjusted by the procuring entity in the course of the first stage, and these final bids shall contain the bid price indication.
2. In the first stage of the two-stage tendering procedure the procuring entity has the right to conduct negotiations with any suppliers (contractors), whose bids were not rejected.
3. In the first stage of the two-stage tendering procedure the bid security shall not be submitted.
4. The invitation to submit final bids at the second stage may be followed by exclusion or amendment of any initially established aspect of technical or quality characteristics of the procured goods, works and services, as well as any criteria of comparison and evaluation of bids and for ascertaining the successful tender, and may add new characteristics or criteria that conform with this Law. The procuring entity shall be obliged to indicate any such exclusion, amendment or addition of the bidding documents in the invitation to submit final bids, which shall be sent to the suppliers (contractors), whose bids were not rejected in the course of the first stage of the two-stage tendering procedure.
5. Unless otherwise stipulated by this Section, the same procedures shall be applied in the two-stage tendering, as provided by Section 1 of Chapter 4 of this Law.

### **Article 48. Conditions for Use of Two-Stage Tendering**

1. The two-stage tendering procedure shall be applied when:
  - The procuring entity can't identify in advance specific technical characteristics and quality features of the goods, works or services to be procured;
  - It is necessary to conduct negotiations with the suppliers (contractors) by virtue of the special nature of the goods, works or services to be procured;

- The subject of procurement is research, experiment, and preparation of a scientific opinion or provision of other specialized services.

#### **Article 49. Invitation to Participate in Two-Stage Tendering Proceedings**

1. The invitation to participate in the two-stage tendering in the first stage must, as a rule, comprise the following data:
  - The name and the legal address of the procuring entity;
  - Description of the procurement subject, and in the case of procurement of works – location and type of works;
  - Ways and place to obtain bidding documents, the price charged;
  - Place and deadlines for submission and opening of bids.
2. The invitation to participate in the second stage of the two-stage tendering shall include the following information:
  - The name and the legal address of the procuring entity;
  - Final requirements to suppliers (contractors), terms of procurement indicating the bid price, as well as all necessary characteristics of the goods, works and services to be procured;
  - The nature and quantity, and place of delivery of the goods to be supplied, the nature and location of the works to be effected, or the nature of the services and the location where they are to be provided;
  - The desired or required time for the supply of goods, completion of works or schedule of services;
  - The way and place to obtain the bidding documents;
  - The place and deadlines for opening of bids.

#### **Article 50. Deadline for Submission of Initial Bids**

1. The period of time for submitting initial bids shall be established in the bidding documents, but it may not be less than three weeks from the date of publication of the invitation to participate in the two-stage tendering.
2. In special urgent cases, upon agreement with the Authorized body, the procuring entity shall have the right to establish a shorter period for submitting initial bids compared to the terms of paragraph 1 of this Article, but no less than one week from the date of publication of the invitation to participate in the two-stage tendering.

#### **Article 51. Procedure for Single-source Procurement**

1. When using the method of single-source procurement the procuring entity shall send an invitation for conducting negotiations to one specific supplier (contractor).
2. Procurement Contract shall be concluded if the supplier (contractor)'s bid satisfies the conditions of the procuring entity.

### **CHAPTER 5. PROCUREMENT OF CONSULTATIVE SERVICES**

#### **Article 52. Rendering of Consultative Services**

1. Consultative services are rendered by legal and physical persons--residents and non-residents--having necessary professional qualification.
2. Consultative services may be provided by both individual consultants and consulting firms.

### **Article 53. Methods of Procurement of Consultative Services**

1. To conduct the procurement of consultative services, the tendering with limited participation (short list) shall be used, as well as the single-source procurement.
2. The short list method shall include the following steps:
  - Preparation of Terms of Reference;
  - Preparation of cost estimates;
  - Publishing of announcements (and) or advertisements;
  - Preparation of the short list of consultants;
  - Preparation and issuance of the Request for Proposals:
    - Letter of invitation;
    - Information to consultants;
    - Terms of Reference;
    - Proposed form of contract.
  - Receipt of proposals;
  - Selection of the optimal competitive proposal;
  - Conducting of negotiations and awarding of the contract.

### **Article 54. Methods of Selection of Competitive Proposals**

1. The procurement of Consultative services of firms shall be conducted through the following methods of selecting competitive proposals, which are the component part of the short list method at the g) step of paragraph 2 of Article 53 of this Law:
  - Quality-and Cost-Based Selection;
  - Quality-Based Selection;
  - Selection under a Fixed Budget;
  - Least-Price Selection;
  - Selection Based on the Consultants' Qualifications.

### **Article 55. Method of Quality-and-Cost-Based Selection**

1. The main method of the competitive proposals selection is the method of selection based on quality and cost, which consist of the following stages:
  - Evaluation of technical proposals;
  - Evaluation of financial proposals;
  - Final evaluation of quality and cost.

## **Article 56. Preparation of Terms of Reference**

1. The procuring entity shall compile and be responsible for the preparation of the Terms of Reference. The Terms of Reference shall define clearly the goals and objectives, scope of the assignment, description of requirements, schedule of submitting of reports, provide background information, including a list of existing relevant studies and basic data.
2. If the goal is to transfer knowledge or staff training, it should be specifically outlined along with the detailed information on the number of staff to be trained to enable consultants to estimate the required scope of services.
3. The Terms of Reference shall list services and surveys necessary for implementation of the assignment, expected final documents, as well as the responsibilities of the procuring entity and consultants shall be clearly defined.

## **Article 57. Preparation of Cost Estimate**

1. The procuring entity shall prepare the cost estimate, which includes the costs for implementation of the assignment: specific time, logistical support and physical inputs.
2. The cost estimate shall comprise three sections:
  - Fee or remuneration for services;
  - Reimbursables;
  - Costs of physical inputs.

## **Article 58. Announcement on Procurement of Consultative Services**

1. To obtain expressions of interest from potential consultants the procuring entity shall publish a list of expected consulting assignments in the mass media, the Public Procurement Bulletin, and in case of international tendering – in the international mass media.
2. To obtain expressions of interest from consultants the procuring entity shall establish the period of time, but no less than 14 days from the date of announcing in the mass media for the consultants shortlisting.

## **Article 59. Preparation of Short List of Consultants**

1. The procuring entity shall compile a short list of consultants, which will include consultants, who sent their expressions of interest and comply with the qualification requirements. The short list shall include from three to six consultants.
2. If the scope of the assignment is not big, and if there is a sufficient number of qualified firms (at least three) which are available at competitive costs, and if the competition with the participation of foreign consultants is not justified, the short list may include only national and internal consulting firms. However, if foreign firms express their interest they shall not be excluded from consideration.

## **Article 60. Request for Proposals**

The Request for Proposals shall include the following information:

- Letter of invitation, containing an intention of the procuring entity to conclude a contract on provision of Consultative services, source of financing, detailed information on the procuring entity, as well as the date, time and address for submission of proposals;
- Information for consultants;
- Terms of Reference;
- Text of the proposed contract.

## **Article 61. Information to Consultants**

1. Information to consultants shall contain the following data:

- Brief description of the assignment, standard forms of the technical and financial proposals;
- The names and contact information of the staff, to whom requests for clarifications shall be addressed by the representatives of consultants;
- Detailed description of the selection procedure to be applied, including: listing of the technical evaluation criteria, detailed description of the financial evaluation, minimum pass score for quality and information on the public opening of financial proposals;
- Estimated time to be spent by the key staff required for the consultants;
- Deadline for submission of proposals;
- Statement that the consultant and any of its affiliates shall not have the right to participate in the procurement procedures after concluding the service contract due to conflict of interest, in accordance with the Article 8 of this Law;
- The method to submit proposals, including the requirement to provide technical and financial proposals in separate sealed envelopes;
- A request to the invited consultants to confirm the receipt of the Request for Proposal and information of the procuring entity on whether or not it will submit the proposal;
- A statement that during the validity period of the proposal consultants shall not have the right to change the proposed key staff and keep the offered rates and the total price;
- The anticipated date, when the consultant shall start the implementation of the assignment;
- Detailed information on the services, facilities, equipment and staff to be provided by the procuring entity;
- Phasing of the assignment, if necessary, and likelihood to continue the assignment;
- Procedure to submit requests to clarify information submitted in the Request for Proposals;
- Conditions for subcontracting for a part of the assignment.

2. Upon coordination with the Authorized body the procuring entity may include additional information for certain categories of consultants.

## **Article 62. Submission and Opening of Proposals**

1. The procuring entity shall establish the exact date and time of the deadline for submission of proposals, but the time period shall not be less than four weeks from the date of sending the Request for Proposals.
2. 10 days prior to the deadline to submit proposals the consultant may request for clarification from the procuring entity on the information given in the Request for Proposals. The procuring entity shall reply to such a request within three working days and send copies of these clarifications to all consultants included in the short list. If necessary the procuring entity may extend the deadline for submission of proposals.
3. No amendments to the technical and financial proposals shall be accepted after the deadline. Technical and financial proposals shall be submitted simultaneously in separate sealed envelopes.
4. The envelopes with the technical proposals shall be opened by the tender commission of the procuring entity promptly after the deadline for submission of proposals, and all the main data shall be entered into the minutes of opening of proposals.
5. The financial proposals shall remain sealed and shall be given to the subdivision on procurement, where they shall be deposited in a safe deposit box until the moment of their public opening.
6. Proposals received after the closing time for submission of proposals shall not be opened and shall be returned to the consultant unopened.

#### **Article 63. Evaluation of Proposals: Quality and Cost Consideration**

1. The evaluation of proposals shall be made in two phases: first the evaluation of technical proposals shall be made with no access to financial proposals, then the financial proposals shall be evaluated.
2. In accordance with Article 62 of this Law after the evaluation of the technical proposals the tender commission of the procuring entity shall publicly open financial proposals, evaluation of which must be conducted in accordance with the provisions of the Request for Proposals.

#### **Article 64. Evaluation of Quality**

1. The tender commission of the procuring entity shall evaluate technical proposals of consultants according to the following criteria:
  - Consultant's experience relevant for the assignment;
  - The quality of the proposed methodology;
  - Qualifications of the key staff proposed;
  - Transfer of knowledge;
  - The extent of participation by the citizens of the Republic of Tajikistan among the key staff in performing of the assignment.
2. The tender commission of the procuring entity shall evaluate each proposal based on the compliance with the qualification requirements and the Terms of Reference. A proposal shall be rejected at this stage, if it does not comply with the qualification requirements and main requirements of the Terms of Reference, or fails to achieve a minimum pass score indicated in the Request for Proposals.
3. Upon completion of the technical evaluation process the tender commission of the procuring entity shall prepare an evaluation report on the quality of proposals.

## **Article 65. Evaluation of Cost**

1. According to the results of the quality evaluation the tender commission of the procuring entity shall return unopened financial proposals of the consultants, whose proposals failed to achieve the minimum pass score or do not comply with the qualification requirements, and main requirements of the Terms of Reference indicated in the Request for Proposal.
2. The procuring entity shall simultaneously notify consultants, who have secured the minimum qualifying score, and indicate the period of time (date and time) set for opening of financial proposals that shall not be less than one week from the notification date.
3. Financial proposals shall be opened publicly at a certain place and time, indicated in the notification of the procuring entity, in the presence of the consultants' representatives willing to attend the procedure of opening of proposals.
4. The name and the address of the consultant, the quality score, and the price of the proposal shall be read aloud and recorded in the minutes of financial proposals' opening. A copy of the minutes shall be promptly sent to the Authorized body.
5. The tender commission of the procuring entity shall examine financial proposals in terms of their completeness and presence of arithmetical errors, as well as for the purpose of comparing of proposals their prices shall be converted to a single currency indicated in the Request for Proposal.

## **Article 66. Combined Quality and Cost Evaluation**

1. To get the total score the procuring entity shall sum up the consultants' scores for technical and financial evaluation using the weightings of each proposal indicated in the Request for Proposal.
2. The consultant, who received the highest score, shall be invited for negotiations.

## **Article 67. Negotiations and Award of Contract**

1. Within three calendar days upon the completion of the evaluation process the procuring entity shall invite the consultant, who received the highest score, to negotiations to conclude a contract.
2. In the course of the negotiations the Terms of Reference, methodology, staffing, inputs of the procuring entity, and special conditions of the contract shall be discussed. The proposed price, as well as reimbursables shall not be subject to discussion.
3. Discussions shall not substantially alter the original Terms of Reference or the terms of the contract, lest the quality of services, their cost, and the relevance of the initial evaluation be affected. The final Terms of Reference and the agreed methodology shall be incorporated in the "Description of Services", which shall be a part of the contract.
4. In the course of negotiations before to the validity period of proposals is expired, the procuring entity may ask the consultant to extend the validity period for a certain period of time.
  - a. The consultant, who agreed to extend the validity period of his proposal, upon agreement with the procuring entity shall be entitled to substitute the key staff with the staff having equal qualifications.

5. When the substitution of the key staff does not comply in terms of the experience and qualification the consultant may be disqualified by the procuring entity upon agreement with the Authorized body, and the selection process shall be continued with a second ranked consultant, or a repeated consultant selection shall be conducted.
6. When in the course of negotiations the parties fail to agree on concluding a contract, the procuring entity upon coordination with the Authorized body shall terminate the negotiations and invite the next ranked consultant for negotiations, or a repeated consultant selection shall be conducted.
7. The contract shall be awarded to the consultant after the successful completion of negotiations; the procuring entity shall promptly notify other participants that their proposals were not selected.

#### **Article 68. Quality-Based Selection**

1. The quality-based selection shall be applied when it is necessary to implement:
  - Complex or highly specialized assignments, for which it is difficult to define precise Terms of Reference and the required input from the consultant;
  - Assignments that have a high downstream impact and in which the objective is to have the qualified experts.
  - Assignments, which can be carried out in different ways, which makes it impossible to compare proposals.
2. Under the quality based selection in the Request for Proposal the procuring entity may request consultants to submit only technical proposals (without financial proposals) or simultaneous submission of technical and financial proposals, but in different envelopes.
3. The Request for Proposals shall not provide the estimated budget, but it may provide the estimated number of key staff time, specifying that this information is given as an indication only, and that consultants shall have the right to propose their own estimates.
4. If only technical proposals are requested, the evaluation of the technical proposal shall be made in accordance with Article 63 of this Law, and the procuring entity shall ask the consultant with the highest ranked technical proposal to submit a detailed financial proposal, after that the procuring entity and the consultant shall negotiate the financial proposal and the contract.
5. When simultaneous submission of the technical and financial proposals is requested, evaluation of the technical proposals shall be made in accordance with Article 62.
6. If in the course of negotiations the parties fail to agree on concluding a contract, paragraph 5 of Article 65 of this Law shall be applied.

#### **Article 69. Selection under a Fixed Budget**

1. The method of selection under a fixed budget shall be used when the assignment is precisely defined and when the budget is fixed.
2. The Request for Proposal shall indicate the budget for the assignment, and the consultants shall be offered to submit technical and financial proposals in separate envelopes within the budget. The Terms of Reference shall be well prepared to guarantee sufficient budget for the performance of the tasks.

3. Evaluation of all technical proposals shall be carried out using the methodology of “evaluation of quality” in accordance with Article 64 of this Law. Then financial proposals shall be opened, and those exceeding the indicated budget shall be rejected.
4. The consultant, who submitted the highest ranked technical proposal, shall be invited to negotiate the contract.

#### **Article 70. Least-Price Selection**

1. The least-price selection shall be used for selection of consultants for assignments of standard or routine nature, where well-established practices and standards exist, and in which the contract amount is below the maximum threshold. The procuring entity shall establish the minimum qualifying score for the technical proposals and indicate it in the Request for Proposal.
2. The short listed consultants shall be requested to submit proposals in two envelopes. Technical proposals shall be opened and evaluated first. Technical proposals that failed to obtain minimum score shall be rejected. Then the remaining financial proposals shall be opened in public.
3. The consultant, whose technical proposal obtained the score higher than the minimum mark, and who proposed the lowest price in his financial proposal shall be selected and invited to negotiations.

#### **Article 71. Selection Based on Consultants’ Qualifications**

This method shall be used for very small assignments for which the need for preparing and evaluating competitive proposals is not justified. In such cases, the procuring entity shall prepare the Terms of Reference, request expressions of interest and information on the consultants' experience and competence relevant to the assignment. Then the selection procedure based on the short list shall be conducted. From the established short list the firm with the most appropriate qualifications and references shall be selected. The selected firm shall be asked to submit a combined technical-financial proposal and then be invited to negotiate the contract.

#### **Article 72. Single-Source Procurement Method**

1. Due to the fact that the single-source procurement method does not provide the benefits of competition in regard to quality and cost and lacks transparency in selection, and could encourage unacceptable practices, it shall be subject to use only in exclusive cases:
  - Implementation of the tasks, which are the natural continuation of the previous work conducted by the same firm;
  - Necessity to conduct selection during the short period of time (in implementation of works under the emergency situations);
  - When only one firm possesses required qualification or has experience of exceptional worth for the assignment.
2. In case of providing continuity (subparagraph “a”) of the paragraph 1 of this Article) the technical approach, acquired experience and professional responsibility of the consultant shall be taken into account on condition of the satisfactory implementation of the first assignment. In such circumstances the procuring entity shall ask the initially selected consultant to prepare technical and financial proposals based on the Terms of Reference prepared by the procuring entity, which shall then be negotiated.

3. If the initial assignment was not awarded on a competitive basis or was awarded under tied financing or reserved procurement or if the downstream assignment is substantially larger in value, the usual procedure of competitive tendering shall be applied, in which the consultant carrying out the initial work is not excluded from consideration and may participate in the tendering on a common basis.

### **Article 73. Selection of Individual Consultants**

1. Individual consultants shall be involved in implementation of assignments when:
  - Hiring of a team of specialists is not required;
  - No additional outside (home office) professional support is required;
  - Experience and qualifications of the individual are the paramount requirement.
2. No later than two weeks before the deadline for the submission of expressions of interest the procuring entity shall publish the invitation for individual consultants to perform the assignment in the mass media, as well as in international mass media, and in the Public Procurement Bulletin.
3. The letter of invitation with a sample format of the resume, a sample format of the professional fee and schedule of rates, the Terms of Reference and a sample of the contract to be used, shall be sent to short listed consultants. The letter of invitation shall also include criteria for evaluation of qualification and experience of the consultant on the basis of the resume in relation to the requirements of the Terms of Reference, and the deadline for submission of the expression of interest.
4. When the amount of the assignment is high and it may have significant downstream impact the letter of invitation shall request to send the expression of interest in the form of resume and the indication of professional fee and schedule of rates; and in the simple assignments the expression of interest shall be submitted in the form of a resume, which during evaluation shall be compared in accordance with the criteria, indicated in para 6 of this Article.
5. The expression of interest may be sent by fax, electronic or ordinary mail.
6. Selection of individual consultants shall be implemented with regard to their qualification acceptability for implementation of a specific assignment. The consultants shall be selected through comparison of qualification of the minimum three candidates among those, who expressed interest in implementation of the assignment, or among those, to whom the procuring entity applied. Their capacity shall be evaluated on the bases of their academic background, experience and the knowledge of the local conditions (ethnic language, culture, administrative system, and government organization).
7. The candidate who obtained the highest score in the evaluation of resumes shall be invited to negotiations on conclusion of a contract. Negotiations on contract may be conducted on the phone or by electronic mail. In case of delays in negotiations caused by the consultant, as well as in case of failure to reach an agreement on the contract, the procuring entity shall reserve the right to terminate the negotiations and start other negotiations with the next in score candidate in accordance with paragraph 6 of Article 66. The procuring entity shall also have the right to conduct an interview with the candidate before hiring him or her.
8. Permanent staff or associates of consulting firms may be attracted as individual consultants. In such cases the conflict of interest provisions described in Article 8 of this Law shall apply to the parent firms.
9. Upon agreement with the Authorized body the procuring entity may select individual consultants without competition (according to the method of single-source selection) only in the following cases:

- If the assignment is a continuation of the previous work of the consultant hired on the competitive basis;
- If the period of the assignment is less than three months;
- If the situation is of emergency nature due to the force majeure circumstances;
- If the individual is the only consultant with the required qualification and experience to implement this assignment.

## **CHAPTER 6. PUBLIC PROCUREMENT CONTRACT**

### **Article 74. Public Procurement Contract**

1. Public procurement contracts shall be concluded based on the results of tendering in compliance with the provisions of the Civil Code of the Republic of Tajikistan and this Law, as well as other normative and legal acts regulating public procurement procedures.
2. Public procurement contracts shall be concluded in the written form. Public procurement contract shall become effective from the moment of its signing by the parties.
3. Notice on conclusion of a public procurement contract specifying the name and the address of the supplier (contractor), with whom the contract is concluded, and the contract price shall be presented to all suppliers (contractors), who took part in the public procurement procedure, within three days from its conclusion.
4. The procuring entity shall submit information on the cost of the contract to the Authorized body in three days from the date of contract conclusion. When purchasing goods, works and services for the amount lower than the minimum threshold, the documents certifying the actual costs incurred by the procuring entity (payment orders, labor contracts, acts on procurements, etc.) shall be kept with the procuring entity and shall be submitted to the Authorized body upon request.

### **Article 75. Contract Performance Security**

1. The procuring entity may request the supplier (contractor) to provide security for the implementation of the procurement contract.
2. The contract performance security may be provided in the form of treasury bonds, bank guarantees, securities issued or guaranteed by the National Bank of Tajikistan, and with the permission of the procuring entity in the form of shares, deposit certificates, bills, guarantees and collateral issued by natural and legal persons in accordance with the current legislation.
3. The size of the contract performance security may not exceed the double size of the penalty stipulated by the contract, or be higher than ten percent of the contract cost.

### **Article 76. Prohibition to Modify Procurement Contract**

1. It is prohibited to introduce other or new terms and conditions in the procurement contract after signing the contract by the parties, if they entail the change of the content of the bid that was the basis for supplier's (contractor's) selection.
2. Amendments introduced by the parties to the procurement contract contradicting the provisions of paragraph 1 of this Article shall be considered invalid.

3. The Authorized body on public procurement may appeal in the judicial procedure the changes made by the parties to the signed contract.

#### **Article 77. Cancellation of Procurement Contract**

1. If there arises a substantial change in the circumstances which existed at the time the contract was concluded, and which was impossible to foresee at the time of conclusion of the contract, and which makes the performance of the contract contrary to the State interests, the procuring entity may cancel the contract upon the agreement with the Authorized body.
2. The procuring entity shall have the right to terminate the procurement contract no later than in one month from the moment the circumstances stipulated by paragraph 1 of this Article became known to it.
3. If a procurement contract is cancelled due to circumstances stipulated in paragraph 1 of this Article, the restoration of rights of parties is performed using the principle of bilateral restitution and compensation of the damages.

#### **Article 78. Claims under Procurement Contract**

1. In case of disputes and disagreements in connection with the implementation of the concluded contract the parties shall be obliged to observe the procedures established below.
2. The party that received a claim from the other party shall have to consider it and give a written answer within fifteen days from the date of the claim presentation.
3. In case of rejecting the claim or failure to give an answer within the established time provided by paragraph 2 of this Article the interested party shall have the right to apply to the economic court.

### **CHAPTER 7. REVIEW PROCEDURE**

#### **Article 79. Right to Review**

1. Participants of the tendering proceedings, prior to the decision of the procuring entity on the selection of the procurement winner, shall have the right to submit a complaint to the procuring entity. After the decision on selection is taken the revision of complaints shall no longer be the responsibility of the procuring entity, and complaints shall be directly submitted to the Authorized body.
2. With regard to paragraph 3 of this Article any other decision of the procuring entity may be appealed by the participants of the procurement proceedings to the procuring entity or to the Authorized body within 15 days after the procurement proceeding results were announced. Upon expiry of this time complaints submitted by the suppliers (contractors) shall not be reviewed by the procuring entity or by the Authorized body.
3. The following shall not be subject to appeal:
  - The selection of the procurement method;
  - The choice of a selection procedure for competitive proposals in accordance with the Articles of Chapter 6 (Procurement of Consultative services);
  - Granting preference to internal and domestic suppliers (contractors) in accordance with Article 18 of this Law;
  - A decision of the procuring entity in accordance with Article 42 of this Law.

4. The supplier (contractor) or any other State body, the interests of which were violated or may be violated as a result of the appeal shall have the right to participate in the appellate procedures. The supplier (contractor), who fails to participate in such a procedure, shall be deprived of the right to submit a similar appeal in accordance with paragraph 1 of the present Article.

#### **Article 80. Procedures of Review in Procuring Entity**

1. Prior to the decision on the selection the supplier (contractor) shall have the right to submit a written complaint to the procuring entity specifying reasons therefore.
2. The procuring entity shall review the complaint during three days from the date of submission, and upon coordination with the Authorized body the procurement proceedings shall be suspended for this period.
3. Based on the results of the complaint revision the procuring entity shall issue a written decision specifying:
  - Reasons for such a decision;
  - If the complaint is upheld in whole or in part, the corrective measures that are to be taken.
4. When the procuring entity fails to issue a decision within the period of time established by paragraph 2 of this Article or if the supplier (contractor) is not satisfied with the decision, he shall have the right to appeal to the Authorized body or to the economic court in accordance with Article 79 or 80 of this Law. The review of the dispute shall no longer be under the competence of the procuring entity from the moment such a complaint is filed.
5. Decision of the procuring entity shall be final, unless proceedings are instituted under Articles 80 and 81 of this Law.

#### **Article 81. Procedures for Complaint Review by Authorized Body**

1. Unless the complaint of the supplier (contractor) is rejected the Authorized body shall have the right to provide one or several of the following means of legal protection:
  - Illegal actions, illegal decisions or illegal procedures by the procuring entity shall be prohibited;
  - Annul in whole or in part an unlawful decision of the procuring entity, violating the terms and conditions of the procurement proceedings;
  - Make a decision to terminate a procurement proceeding.
2. The Authorized body shall promptly inform the procuring entity on receipt of the complaint.
3. When a complaint is received the Authorized body shall suspend the procurement procedure for up to ten days and during this period shall issue a written motivated decision. The decision shall include:
  - Reasons for the decision;
  - If the complaint is upheld in whole or in part, the corrective measures that are to be taken.
4. The decision on the complaint shall be considered obligatory for implementation by the procuring entity and final, if it was not appealed in the court in accordance with Article 80 of this Law.

5. The complaint shall not be subject to review by the Authorized body upon the expiry of the appellate period of time or the conclusion of the contract.

## **Article 82. Judicial Review**

1. Disputes between the suppliers (contractors) and the procuring entity arising from the procuring proceedings, as well as the decisions of the procuring entity and the Authorized body in accordance with the Articles 78 and 79 of this Law shall be appealed to the economic court according to the procedure provided by the legislation of the Republic of Tajikistan.
2. The provisions of this Article shall not be considered as limitation of the rights of suppliers (contractors) to seek judicial review without prior resolution of disputes in accordance with this Law.

## CHAPTER 8. FINAL PROVISIONS

### **Article 83. Responsibility for Violation of this Law**

Physical and legal persons shall bear responsibility for violation of this Law in accordance with the legislation of the Republic of Tajikistan.

### **Article 84. On recognition of the dead law of the Republic of Tajikistan “ On Public Procurement of goods, works and services”**

The Law of the Republic of Tajikistan dated by December 12, 1997 “ On Public Procurement of goods, production, works and services “ (Akhbori Majlisi Oli of the Republic of Tajikistan, 1997, № 23-24, article .344) shall be recognized as void.

### **Article 85. Procedures of Entry into Force of this Law**

This Law shall become effective from the date of its official publication.

**President**

**Republic of Tajikistan**

Dushanbe, March 3, 2006

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**E. Rakhmonov**