

**REPUBLIC OF ARMENIA**  
**LAW**  
**ON**  
**PROCUREMENTS**

**SECTION 1**

**GENERAL PROVISIONS**

**Article 1. Subject regulated by the law**

This law regulates the relations envisaged by the RA Constitution and RA laws with respect to the procurement of goods and services by state governance bodies and local self-government bodies, state or community agencies, RA Central Bank, state or community non-profit organizations and entities with over 50% of shares owned by the state or communities, and prescribes the basic rights and duties of the parties in these relations.

**Article 2. Main concepts used in the law**

The following main concepts are used in this law:

**Procuring entity** , state governance bodies and local self-government bodies, state or community agencies, RA Central Bank, state or community non-profit organizations and entities with over fifty per cent of shares owned by the state or communities envisaged by the RA Constitution and RA laws.

**Procurement**, purchase of all types of goods, works and services compensated by the customer. In terms of this law, rent and lease are also considered purchase of services.

**Procurement contract**, an agreement signed for the purpose of purchase.

**Bidder**, a party to a procurement contract with the procuring entity for the purpose of purchase;

**Selected bidder**, a party (parties) to whom the procuring entity offers to sign a procurement contract.

**Invitation**, conditions offered to the bidder for the purpose of signing a procurement contract.

**Tender**, an offer made by the bidder based on the invitation.

**Tender security**, in cases envisaged in this law, means a pledge by the bidder to secure the fulfillment of its obligations under the tender.

**Procurement contract security**, in cases envisaged in this law, means a pledge by the selected bidder to secure the fulfillment of its obligations under the procurement contract.

**Authorized body**, a state body of the RA executive power that develops and enforces the RA government's policy in the sphere of state finance management.`

**State procurement agency**, a legal entity authorized by the RA government to perform the functions envisaged in this law.

**Newsletter**, the "Official Procurement Newsletter" published by the authorized body

**Procured item**, any commodity, work or service purchased by the procuring entity .

**Description of procured item**, technical features of the procured item, purchase and payment conditions thereof.

**Consulting services**, non-material services which do not result in a measurable physical outcome.

**Consultant**, a person participating in consulting services for the purpose of signing a procurement contract.

**Selected consultant**, consultant(s) to whom the procuring entity offered to sign a contract for the procurement of consulting services.

**Qualification criteria**, conditions and restrictions stipulated in article 5 of this law.

**Base unit of procurement currency**, a calculated amount equal to a thousand minimal salaries as expressed in the national currency of the RA.

### **Article 3. Purpose and scope of the law**

1. The purpose of the law is to ensure:

a) organization of competitive, efficient, transparent, open and indiscriminate procurement process;

b) formulation of unified rules for the procurement process and legal grounds for the supervision of application thereof;

c) regulation and cooperation of the procurement process;

d) equal rights for any person, regardless of his being a foreign physical person, organization or stateless person to participate in the procurement process, except cases prescribed by law.

e) broadening of the circle of participants and encouragement of competition between them for the purpose of signing a procurement contract.

2. The scope of this law extends to the procurements made in the RA by the procuring entity. The procurement procedure outside of the RA is formulated by the RA government.

### **Article 4. RA procurement legislation**

1. The RA procurement legislation consists of the RA Constitution, RA Civil Code, this law and other legal acts.

2. If the international agreement of the RA stipulate other norm, than in this Law, then the norms of international agreement take precedence.

3. To ensure the fulfillment of the purposes and requirements of this law, the RA government and the authorized body adopts other legal acts on procurement.
4. Other legal acts on procurement are also published in the newsletter.

#### **Article 5. Criteria for qualification of the supplier or contractor**

1. To participate in the procurement process, at any stage of procurement process the bidder must meet the criteria stipulated in the invitation.

2. The bidder:

a) must have the right required to fulfill obligations envisaged under procurement contract, professional qualifications, technical resources, financial resources and labor resources;

b) shall not be deemed bankrupt by court, shall not be under liquidation proceedings, shall not have arrested property that is submitted by tender for the fulfillment of the contract;

c) shall not have outstanding debts to the RA tax and social security as of the last day of reporting period prior to the day of tender submission;

d) or the representative of its management body at the moment of tender submission over the last three years shall not:

1) Have been convicted for offenses against economic activities or public service, except the cases when the conviction is lifted or invalidated as prescribed by law;

2) Submitted false data in order to sign a procurement contract;

3) Violated the obligations under procurement contract with his actions or inaction which caused unilateral termination of the contract by the procuring entity .

3. To assess the supplier's qualifications, the tender prescribes the list of documents or copies thereof which must be submitted by the supplier for the grounding of its compliance with the qualification criteria.

4. Other qualification criteria than prescribed in 2 paragraph of this article can not be prescribed.

5. The supplier is deemed not qualified, if the data on his qualification criteria disagree with the criteria prescribed in the tender.

6. The list of suppliers who do not meet the requirements of paragraph 2, "d" of this article is published by the authorized body in the newsletter based on the data obtained from the procurement entities and other bodies.

#### **Article 6. Prequalification procedure**

1. In the event envisaged in article 17, paragraph 3, "a", prequalification procedure of suppliers can be done. During prequalification, the conditions envisaged in article 5 of this law are applicable.

2. In case of prequalification, the newsletter publishes an announcement about

prequalification. In accordance with the procedure established by the prequalification announcement, the supplier is entitled to request from the procuring entity and receive in two work days the prequalification invitation. If the prequalification announcement envisages a fee for the prequalification invitation, then the prequalification invitation in the document form is given in the event of submission of a bank receipt or copy thereof certifying the payment of the fee. The fee can not exceed the cost of copying and delivery of the prequalification invitation.

3. If the object of procurement involves a state or official secret, the prequalification invitation is forwarded to all possible suppliers.

4. The announcement on the prequalification procedure contains the following information:

- a) name and address of the procuring entity ;
- b) the code of the prequalification procedure;
- c) the conditionalities for the receipt of the prequalification invitation, including the fee;
- e) the announcement on the suppliers' right to participate in the prequalification procedure;
- f) language or languages in which the prequalification requests must be made;
- g) the venue and deadline for submission of prequalification requests;
- h) other necessary data.

5. The prequalification invitation contains the following information:

a) procedure of preparation and submission of the prequalification request, including form and venue, submission deadline, which can not be less than fifteen work days after the publication of the prequalification announcement, or forwarding of the invitation, in case of procurement involving state or official secret.

b) brief description of the supplier's qualification criteria and procurement contract conditions;

c) procedure for the assessment of the supplier's qualifications;

d) other necessary requirements concerning the prequalification procedure.

6. The procuring entity must within three work days respond to the supplier's request about clarifications pertaining to the prequalification, provided it was received not later than five work days before the expiration date for the submission of prequalification requests. The information on the request and given clarifications is submitted at the same time by the procuring entity to those suppliers who prior to the receipt of clarifications submitted a request for a prequalification invitation or received a prequalification invitation, and the name of the supplier who requested the clarification is withheld.

7. During prequalification, the supplier's qualification is assessed as prescribed in the prequalification invitation.

8. The prequalification results are summarized not later than in twenty work days after the deadline for the submission of the prequalification requests.

9. A minutes is compiled on the the prequalification results which in three work days after summarization of the prequalification results is forwarded to the the participants of prequalification. Up to six suppliers who passed the the prequalification and scored the highest points are entitled to further participate in the procurement process. If more than six suppliers scored highest, then all suppliers with the highest scores are regarded as passed the prequalification.

10. The specifics of the prequalification procedure are stipulated by the RA government.

#### **Article 7. Equal participation in procurements**

1. The participation of a foreign person, organization or stateless person in the procurement can be restricted only by RA government resolution, if this is follows from the RA national security and defense interests.

2. If paragraph 1 of this artice is not applied, then the invitation includes an statement that tenders can be submitted by all persons, regardless of being a foreign person, organization or stateless person, and the statement is not subject to amendment. If paragraph 1 of this article is applied, the invitation contains a statement to that effect.

3. If for the fulfilment of the procurement contract, the RA legislation prescribes a special permit (license) or a requirement to meet certain criteria, but the legislation of the foreign country whose resident is the supplier does not prescribe that, then in cases established by the RA government, this supplier is entitled to participate in the procurement process without a special permit (license) meeting certain criteria.

The provisions of this paragraph are not applied if under the RA legislation such activities can be carried out only by RA legal entities.

4. The simultaneous participation in the procurement process of the organizations founded by the same person(s) or the organizations where the same person(s) own more than fifty per cent share is prohibited.

#### **Article 8. Documents, certification thereof and electronic procurements**

1. When compiling appropriate documents, the record of information pertaining to the procurement must be maintained.

2. In case of a requirement to submit information prescribed in the invitation, the supplier is provided with the model form for the submission of this information and its certification. If the certification is provided, but the information is submitted in another form, this is not a ground to reject the information.

3. Within the scope of functions stipulated in this law, communication can be maintained electronically in compliance with the provisions prescribed in this article.

4. Tender announcements or invitations can be disseminated electronically, provided they would be also given in hard copy, if requested.

5. If prescribed by the invitation, the tenders can be submitted electronically.

6. The provisions of this article pertaining to electronic communication or its resources, are applied to the extent that its user is authorized to use electronic means of communication.

7. The peculiarities of procedure for electronic procurements are stipulated by the RA government.

### **Article 9. Minutes of procurement procedure**

1. If the procurement price exceeds the base unit of procurement, then the procuring entity maintains minutes of procurement procedure. Minutes of procurement procedure contain the following, depending on the form of procurement:

- a) name and address of the procuring entity ;
- b) brief account of the need for procurement and description of the purchased item, justification of the choice of the form of procurement;
- c) copies of the invitation and amendments therein submitted to the suppliers;
- d) copies of procurement-related inquiries and explanations;
- e) data on suppliers who submitted tenders: name, address, means of communication;
- f) the prices submitted under tender;
- g) procedure for tender assessment and results thereof;
- h) in case of tender rejection, its justification;
- i) copy of procurement contract, and if the contract is not signed as a result of procurement procedure, its justification;
- j) if illegal activities are discovered during the procurement procedure, brief description of the former and of measures taken;
- k) copies of complaints about the procurement procedure and decisions made in this respect;
- l) other necessary information.

2. After signing the procurement contract or announcing the procurement contract invalid, within ten work days, the procuring entity submits to the authorized body the copy of the minutes of the procurement procedure, except in the event of procurement of goods, works or services produced by natural monopolies included in the list of approved by RA government.

3. If the price of the procurement contract does not exceed the base unit, then the procuring entity ensures relevant documents pertaining to the actions performed during procurement and grounds thereof.

4. The procuring entity must submit the information contained in the procurement

minutes, except classified information, to any person, within five work days after the receipt of the request.

#### **Article 10. Signing the procurement contract and its conditions**

1. The procurement contract is signed with the selected supplier, as prescribed in the procedure of this law.

2. The relations of procurement-related parties not regulated by RA procurement legislation are regulated by the procurement contract.

#### **Article 11. Publication of announcement on the signed procurement contract**

If the price of the procurement contract exceeds the base unit, then the procuring entity after signing the procurement contract publishes an announcement to that effect in the newsletter, except cases involving classified procurements.

#### **Article 12. Illegal acts of the suppliers**

If during procurement process, the supplier or its representative commits illegal acts against economic activity or public service, then the tender of this supplier is immediately rejected and the procuring entity advises to that effect the authorized body and the law enforcement bodies, providing the grounds for that decision to the latter and the supplier.

#### **Article 13. Description of the procured item**

1. The description of the technical properties of the procured commodity, work or service must be clear and comprehensive, procurement and payment conditions, ruling out alternative interpretation.

2. Based on the peculiarities of the procured item, its technical properties incorporate the description of the quality, standards, safety, markings, terminology, packageing, unloading, measure, design, and other clear description of other technical properties of the procured commodity, work or service, in compliance with the current RA norms, documents and standards, and in their absence, with international temporary technical conditions or international standards.

The technical requirements shall not demand or refer to any trade mark, brand name, license, design or model, country of origin or concrete source or producer, except the cases when it is impossible to describe the procurement item without them. In case of references, the description of technical properties must contain the words “or equal”.

3. The descriptions of the procurement item are incorporated into the

procurement contract.

4. The approval procedure of procurement item descriptions is prescribed by the RA government.

#### **Article 14. Official language of the procurement procedure**

Procurement documents are compiled and, in cases envisaged in this law, published in the newsletter in the Armenian language, and open tender announcements, also in English and Armenian.

#### **Article 15. Procurement planning and financing**

1. The list of procurements at the expense of the state budget, with agency and functional categorization of budget expenses is approved by the RA government together with separate appendix of quarterly state budget execution proportions, by procurement items, quantity and general price.

2. For the procurement of construction services, financial resources are envisaged in accordance with prescribed procedure, based on approved and expert-tested design and budget documentation.

No funds can be allocated for construction work without design and budget documentation.

3. If the purchase price exceeds the amount allocated at the period for this procurement, then in case of signing a procurement contract, in the period following this period financial resources are envisaged for perform procurement under the procurement contracto or temporarily suspend this procurement, if funds are required for the temporary suspension.

4. Prior to the earmarking of financial resources, a procurement contract can be signed, as prescribed in this law, provided that it is valid as long as funds are envisaged under the contract.

5. The procurement entity undertakes financial obligations under the procurement contract provided there are sufficient financial recources allocated for the fulfillment of the contract.

6. The financing procedure of procurement is defined by the RA government.

## **SECTION 2**

### **REGULATION AND COORDINATION OF PROCUREMENT PROCEDURE**

**Article 16.** Regulation and coordination of procurement procedure

1. Regulation and coordination of procurement procedure is done by the authorized body. The authorized body can not be a party to the procurement contracts, perform procurement on its own, except procurements done for the fulfillment of its own functions.

2. To organize regulation and coordination of procurement procedure, the authorized body:

- a) coordinates drafting of legal acts related to procurement and approves or submits the drafts for approval;
- b) organizes methodological management of procurement procedure;
- c) organizes professional training, qualification assessment and retraining system for the procurement coordinators of the procurement entities;
- d) approves the model document forms used in procurement procedure;
- e) provides methodological support to the procurement entities in the organization of procurements;
- f) approves the procedure of publication of information in the newsletter, including deadlines, and organizes the publication of the newsletter;
- g) coordinates the collaboration of international organizations, foreign states and RA state and local self-government bodies related to procurement;
- h) as prescribed by the RA government, inspects the procurement procedure minutes submitted to it;
- i) considers complaints filed against the procurement procedure and based on complaints organizes inspections and makes decisions mandatory for the procurement entities;
- j) supervises the observance of RA procurement legislation by the procurement entities and publishes conclusion to that effect in the newsletter.

3. To perform duties under “i” and “j”, paragraph 2 of this article, the authorized body incorporates a standing unit for consideration of complaints and procurement inspection which may engage representatives of the stakeholders who are not procurement entities and NGOs, on unpaid basis.

4. To coordinate the relations between the authorized body and the procuring entity , as well as to arrange procurements in the procurement bodies, the staff of the procurement body must include a procurement coordinator(s) or procurement section, which:

- a) is formed by decree of the procuring entity manager;
- b) is responsible for the arrangement of procurement in the procuring entity ;
- c) makes conclusions on the documents approved by the procuring entity in the sphere of procurement, including the drafts submitted to the authorized body;
- d) performs other functions.

5. The authorized body, at least once in three years, ensures the participation of procurement coordinators in training or retraining programs and evaluates their qualification.

### **SECTION 3**

#### **METHODS OF PROCUREMENT AND APPLICATION CONDITIONS THEREOF**

##### **Article 17. Methods of procurement**

1. The methods of procurement are as follows:
  - a) tender;
  - b) restricted tendering;
  - c) request for quotations;
  - d) competitive negotiations;
  - e) single-source procurement.

2Forms of tender are open and closed-end.

3Tender can be targeted or periodic. Tender is periodic if the procurement item is periodically used and is incorporated into the list approved by the authorized body, otherwise, the tender is targeted.

4. In cases prescribed in this law, the tender can be two-staged.
5. Procurement is done by open tender except cases stipulated in articles 19, 20, 21, 22 and 23 and Section 5.
6. The procurement of consulting services incorporated in the list established by the authorized body is done by procedure of Section 5.

##### **Article 18. Conditions for use of two-stage tendering**

Tender can be two-staged, if the procuring entity:

- 1) can not formulate the specifications for the procurement item, as prescribed in article 13 of this law, and
  - a) allows the suppliers to submit proposals for possible procurement item specifications, or
  - b) to clarify some peculiarities of procurement item specifications, there is a need to negotiate with the suppliers.
- 2) is going to sign a contract for the procurement of scientific services, including sociological or expert surveys.

### **Article 19. Conditions for closed-end tender**

If the procurement involves state or official secrets, then it is done by closed-end tender.

### **Article 20. Conditions for use of restricted tendering**

If the procurement item is not covered in the signed procurement contracts under periodic tenders, and due to the technical specifications of the procurement item, this procurement can be done from no more than three persons, the restricted tendering can be applied.

### **Article 21. Conditions for use of request for quotations**

If the procurement item is not covered in the signed procurement contracts under periodic tenders, and its price in case of the procurement of goods and services does not exceed five base procurement units, and in case of works, ten base procurement units, then the procurement can be held in the form of request of quotations.

### **Article 22. Conditions for use of competitive negotiation**

Procurement can be done in the form of competitive negotiation, if the procurement item is not covered in the periodic procurement contract, and

a) Owing to an emergency or contingency, there is an urgent need for procurement and, in terms of time, it is impossible to use a tender, provided this need was impossible to predict.

b) The price of the procurement item does not exceed the base procurement unit.

### **Article 23. Conditions for use of single-source procurement**

1. Procurement can be single-source, if:

a) the goods, works or services to be procured can be purchased only from one source, due to copyright and adjacent rights, lack of competition or license.

b) Owing to an emergency or contingency, there is an urgent need for procurement and, in terms of time, it is impossible to use another form of procurement, provided, this need was impossible to predict as well as, if the procurement item is not covered in signed periodic procurement contracts.

c) The procuring entity, having procured from a certain person, determines that that additional supplies must be procured from that supplier, provided, its price does not exceed twenty per cent of the initial procurement contract. Under provisions of this paragraph, additional procurement from the same supplier can be done only once.

2. The provisions of paragraph 1 of this article are applicable if there are documents

prescribed by the authorized body and(or) grounds.

**Article 24. Inadmissability of procurement separation or grouping and changes in procurement item specifications**

1. To avoid separate procurement procedure, it is prohibited to:
  - a) divide the procurement into lots;
  - b) change the specifications under the contract for procurement of goods, works and services.
2. It is prohibited to group procurements with separate specifications into one lot, if they can be presented in separate lots.

**SECTION 4**

**TENDERING PROCEEDINGS**

**CHAPTER 1. SOLICITATION OF TENDERS**

**Article 25. Publication of tender announcement**

1. To attract suppliers for the open tender, an announcement is published in the newsletter.

Unless otherwise prescribed in paragraph 2 of this article, the announcement is published at least 30 days prior to the deadline of the tender submission date.

2. If the procurement price exceeds ninety base procurement units, then the announcement is published 40 days prior to the deadline of tender submission.

3. The open tender announcement contains the following information

- a) name and address of the procuring entity;
- b) tender code;
- c) summary of procurement contract and specifications of procurement item;
- d) statement of the suppliers' right to participate in the tender ;
- e) conditions for receipt of invitation, including the invitation fee and payment procedure;
- f) language or languages in which the tender must be submitted;
- g) summary of qualification criteria for suppliers;
- h) place and deadline of tender submission;

when needed, other information.

## **Article 26. Invitation to tender**

1. Based on the announcement, the requesting person is entitled to receive the invitation in two work days.

2. If the procurement price exceeds ninety base procurement units, then the supplier is entitled to request the invitation in Armenian, Russian and English.

3. In case of open tender, for an invitation in the form of a document, a fee is collected which can not exceed the cost of copying and delivery of the invitation. The invitation is given after submission of bank receipt certifying the payment of the fee.

RA government establishes the calculation procedure for the invitation in Russian and English.

4. The failure to receive invitation as prescribed in this article does not restrict the right to participate in the tender.

## **Article 27. Content of invitation**

The invitation shall have the following content:

- a) reference to the tender announcement for which the invitation is expended;
- b) instructions for preparation of tenders;
- c) suppliers' qualification criteria and evaluation procedure thereof;
- d) requirements to the documents certifying the suppliers' qualifications or other requirements;
- e) specifications of procurement item;
- f) procedure of tender evaluation and selection of winner;
- g) draft procurement contract;
- h) if the suppliers are allowed to submit tenders for part of the procured goods and services, then the conditions and procedure thereof;
- i) calculation procedure for submitted tender price;
- j) note stating that the proposed price except the cost of goods and services incorporates transportation, insurance, duties, taxes, etc. and can not be less than their cost, whose calculation must be presented in the tender.
- k) Requirements to essence, for, quantity and other conditions for tender security and procurement contract execution security;
- l) Conditions for tender submission, including place, deadline, language.
- m) Procedure for clarification of tender documents, notification of suppliers on forthcoming meetings, as well as the name and surname of tender commission secretary;
- n) Place, day and time of tender opening;
- o) References to this law and other legal acts concerning this particular procurement;
- p) conditions for signing procurement contract;
- q) activities pertaining to the procurement proceedings and (or) decisions made, and the right and procedure for appealing;
- r) grounds for denial of tender;
- s) data needed for preparation of tender, submission, opening and evaluation, as well as other procurement related information.

## **Article 28. Tender clarification and changes therein**

1. Supplier is entitled at least five work days prior to expiration of tender submission deadline, to request a clarification of tender, which is provided within three work days after the receipt of request. All the suppliers who submitted tenders are notified in the written form about the content of the request and clarification, about the day of clarification, not mentioning the name of the supplier who made the request. Clarification is not provided if the request was made in violation of the timeframe specified in this paragraph, as well as if the request is beyond the scope of the tender.
2. Changes in the procurement item specifications can be made through amendments in the tender, at least five work days prior to expiration of the tender deadline. In case of open tender, an announcement is published within three work days in press with circulation no less than three thousand copies about changes and conditions thereof; in case of closed-end tender, the persons who received invitations are notified about changes. In case of changes in open tender, the tender deadline is calculated starting the day of publication of changes in press; in case of closed-end tender, since the day of submission of changes in the tender to the supplier. In this case, the suppliers must extend the validity of the tender security they submitted, or make a new security.
3. A record of actions and results thereof is compiled which is attached to the record of procurement proceedings.

## **CHAPTER 2. TENDERS**

### **Article 29. Submission of tenders**

1. Supplier submits the tender as prescribed in the invitation.
2. Supplier's proposals, and related documents are placed into an envelope, which is glued and sealed by the submitter. The documents in the envelope consist of originals and copies specified in the invitation. Words "original" and "copy" are marked, respectively, on the document packages. The envelope and the documents compiled by the supplier as specified in the invitation, are signed by the submitter (hereinafter, agent). If the tender is submitted by the agent, then the tender contains an appropriate document to that effect.
3. Indicated on the envelope mentioned in paragraph 2 of this article in the language of the tender are:
  - a) name of supplier and tender submission address;
  - b) tender code;
  - c) wording: "not to open until tender opening session";
  - d) supplier's data (name), address and telephone number.

4. The tenders are registered by the secretary in the log in the order of receipt, marking on the envelope the registration number, day and hour. At the supplier's request, a receipt to that effect is issued. The form and maintenance of the log is specified by the authorized body.
5. Tenders submitted in violation of this article are rejected and returned unopened.

### **Article 30. Period of effectiveness of tenders; modification and withdrawal of tenders**

1. Tender is effective until signing a procurement contract in accordance with this law, withdrawal of tender by supplier, denial of tender or declaring the tender invalid.
2. Prior to the submission deadline, the supplier can modify or withdraw the tender.
3. Notification on tender modification is sent in an envelope marked as prescribed in article 29, paragraph 2, indicating "modification" on it. In case of tender withdrawal, a written notification to that effect is submitted prior to tender opening.

### **Article 31. Tender securities**

1. Suppliers participating in tendering proceedings, as prescribed in tender invitation, post tender securities. Tender securities amount to two per cent of the proposed tender price. Tender invitation defines the tender security conditions .
2. Prior to submission of the tender, the supplier is entitled to demand the confirmation of acceptability of tender security, which should be made within three work days after the receipt of the demand.
3. The tender security in the form of cash is deposited on an on-demand account opened on the name of the authorized body as a treasury account.
4. Tender security is not returned, if the depositor has been declared a selected supplier, however, refuses or in accordance with article 39, paragraph 3, is deprived of the right to sign the procurement contract.
5. Except cases mentioned in paragraph 4 of this article, tender security is returned when signing the procurement contract or when the tender has been declared invalid or rejected, the tender security is returned to the depositor within five work days.
6. The authorized body determines the procedure of tender security posting for periodic tenders.

### **Article 32. Tender commission**

1. Prior to publication of tender announcement, the procuring entity forms a tender or proposal evaluation commission consisting of at least three members, which:
  - a) approves the texts of tender announcement and tender invitation;

- b) modifies the tender invitation;
  - c) makes clarifications on the tender;
  - d) opens and evaluates tenders;
  - e) determines the winner(s) of the tender;
2. The commission has a chairman and a secretary appointed by the act on the formation of the commission. The secretary is not a member of the commission, and:
- a) organizes the work of the commission;
  - b) is in charge of maintaining the tender registration log;
  - c) compiles and submits draft documents to be approved by the commission;
  - d) compiles procurement proceedings minutes and submits for approval by the procuring entity;
  - e) extends invitations as prescribed in this law;
  - f) when compiling documents, records information relevant to the commission and ensures the safe-keeping of these documents over the period of the commission's activities;
- g) provides clarifications about the tender;
  - h) performs other functions.
3. The procedure of tender commission formation and its activities is established by the RA government.

### **CHAPTER 3. EVALUATION AND COMPARISON OF TENDERS**

#### **Article 33. Opening of tenders**

1. Tenders are opened at the day indicated in the tender invitation, at the session of the tender commission and the day and hour of tender opening must coincide with the deadline of tender submission.

In case of written approval by all suppliers, the closed-end tenders can be opened at the tender commission session before the expiration of the submission deadline.

2. The following is announced at the tender opening session:

- a) title (name) of each supplier who submitted a tender;
- b) information on the compilation of envelopes containing tenders and submission thereof, in terms of compliance with the tender requirements;
- c) information on the availability of the documents required by tender invitation in each opened envelope;
- d) information on the compliance of each supplier's documents with the certification requirements in the tender invitation;
- e) each supplier's proposed price written in words and digits;
- f) information on modification or withdrawal of tenders.

3. After having opened the tenders, a minutes is compiled which is attached to the minutes of the procurement proceedings. The minutes are signed by the commission members present at the session of the commission. The minutes contain:

- a) information on the venue, day and time of tender opening;
- b) titles (names) of suppliers who submitted tenders and addresses thereof;
- c) data on envelope compilation and submission, in terms of compliance with tender requirements;
- d) data on the availability of documents required by tender invitation in each opened envelope;
- e) data on proper compilation of the documents submitted by each supplier, in compliance with the invitation;
- f) the price proposed by each supplier;
- g) in case of declaring the tender invalid, the grounds for that;
- h) information on inquiries and responses concerning the tender;
- i) the venue, day and time of the next session of the commission;
- j) names and surnames of present commissioners;
- k) other needed information.

4. If a tender commission member and(or) supplier wish to express an opinion (special opinion) on the tender opening that has not been recorded in the tender opening minutes, then it is submitted in the written form and attached to the minutes mentioned in paragraph 3 of this article.

5. Suppliers and representatives thereof can be present at the tender commission sessions. Suppliers or representatives thereof can demand the copies of minutes of the tender commission sessions which are provided within 1 work day.

6. The work day after the tender opening session, the copies of the minutes of the tender opening session are provided to the suppliers who or whose representatives did not participate in the session.

### **Article 34. Tender evaluation and comparison**

1. To evaluate tenders, the tender commission can request explanations from the suppliers. The explanations can not result in the modification of tenders, including, procurement item specifications.

2. Tender commission members evaluate the tenders as prescribed by the invitation. The tenders that meet the requirements of the invitation are deemed satisfactory, otherwise, the tenders are deemed unsatisfactory and rejected.

3. If there is a discrepancy in amounts indicated in words and digits in a tender, the amount written in words takes precedent.

4. Supplier's tender is rejected if:

- a) the supplier does not comply with the criteria specified in the invitation;
- b) the supplier disagrees with the application of the requirement in paragraph 3 of this article.

c) In other cases envisaged by law.

5. To determine the winner the satisfactory tenders are compared as prescribed in the invitation. The most highly evaluated proposal out of satisfactory ones is deemed the winner. When deeming the proposal most highly evaluated, in addition to the proposed price, non-price criteria specified by the RA government are taken into consideration.

6. If the selected supplier's price for the procurement of goods or works exceeds the allocated amount for this procurement, and the selected supplier's price is proposed per one unit of goods and works, then by proposal of the tender commission the procuring entity can reduce the quantity of procured goods or works, but not more than by fifteen per cent of the total quantity, except construction works procurement. This paragraph is applicable, if it is specified in the invitation.

7. If the proposed prices are presented in two or more currencies, then these are compared with the equivalent AMD amount specified in the invitation.

8. Regardless of using prequalification proceedings, under the procedure envisaged in the invitation, the selected supplier may be required to reconfirm one's qualifications.

The qualifications of the selected supplier are considered reconfirmed, if the latter, as prescribed by the invitation, submits a statement to that effect. If the selected supplier does not reconfirm one's qualifications, then his tender is rejected, and the tender security is not refunded. In this case, a minutes is compiled which indicates the grounds for rejection of the tender. The minutes is attached to the procurement proceedings minutes.

9. The features of evaluation procedure are specified by the RA government.

### **Article 35. Prohibition of negotiations with suppliers**

Negotiations between the procurement commission, procuring entity and a supplier concerning a tender submitted by the supplier are prohibited, except cases prescribed in this law.

### **Article 36. Contract execution security**

1. A procurement contract with the selected supplier is signed provided the latter posts a contract execution security, as prescribed in the invitation.

2. Based on the request to post a contract execution security, within five days after the receipt of the request, the selected supplier must post the contract execution security.

3. The amount of the contract execution security is specified in the invitation and can not be less than five per cent of the procurement contract price and can not exceed ten per cent of the procurement contract price. If the contract envisages a prepayment, the selected supplier must submit the prepayment instead of the contract execution security, in

the amount and procedure prescribed by RA government which can not be less than five per cent of the agreement price.

The amount of agreement security for periodic tender is defined by the authorized body.

4. The repayment procedure of the prepayment is specified in the procurement contract in compliance with the RA government conditions.

5. The contract execution security or prepayment submitted in the form of cash as an on demand deposit are kept on the treasury account opened on the name of the authorized body.

6. Unless otherwise prescribed in the procurement contract, then the contract execution security or prepayment is returned to the one who posted it, not later than within five work days after the execution of the contract.

### **Article 37. Final tender results**

1. Not later than in fifteen work days after the last day of tender submission, the final tender results session is convened, at which the selected supplier is announced or the tender declared invalid.

2. After having declared the selected, second and third supplier, the remaining tenders are rejected, a final minutes of the tender commission session is compiled and attached to the procurement proceedings minutes. The minutes is signed by the present members of the tender commission and selected supplier.

3. If a tender commission member and (or) supplier wish to express an opinion (special opinion) on the final tender results that has not been recorded in the minutes of final tender session, then it is submitted in the written form and attached to the minutes mentioned in paragraph 2 of this article.

4. The peculiarities of the procedure of finalization of periodic tender results that have not been specified in this law are defined by RA government.

### **Article 38. Nullification of tender**

1. Tender is announced invalid if :

- a) none of the tenders comply with the tender invitation;
- b) the need for procurement ceases to exist;
- c) no tender has been submitted;
- d) the price offered by the selected supplier exceeds the allocation for this procurement, unless the condition specified in article 34, paragraph 6 is applicable.
- e) A procurement agreement is not signed as a result of tender.

2. After nullification of the tender, it is prohibited to open the unopened tenders, which are returned to the suppliers.
3. After nullification of the tender, the newsletter publishes a notice mentioning the grounds for nullification of the tender, except cases when state or official secrets are involved.

### **Article 39. Signing the procurement contract**

1. Based on the decree of the tender commission, the procuring entity signs a procurement contract with the selected supplier.

2. After having announced the selected supplier, within three work days, the procuring entity notifies the selected supplier, making an offer to sign a procurement contract and submitting the draft procurement contract.

3. If the selected supplier, after the receipt of the offer to sign a procurement contract and draft procurement contract, does not sign the procurement contract within five work days and does not submit to the procuring entity the procurement contract execution security, and in case of prepayment stipulated by the procurement contract, the prepayment security, then the supplier is deprived of the right to sign the procurement contract. In this case, the procuring entity offers to sign the procurement contract to the second supplier, and if the latter refuses, then, the third supplier. The supplier who was offered to sign the contract, but refused to do so, is deprived of the right to get back the tender security.

4. Before expiration of the deadline mentioned in paragraph 3 of this law, by agreement of the parties, amendments can be made in the draft contract, however, they can not result in the change of specifications for the procurement item.

### **Article 40. Calculation of the procurement contract price**

Calculation of the procurement contract price must incorporate all payments (costs) incurred by the selected supplier to secure the procurement contract execution and specified in the tender of the selected supplier, including, taxes, duties, freight and insurance costs, premiums and profit.

## **SECTION 5**

### **PECULIARITIES OF PROCUREMENT OF CONSULTING SERVICES**

#### **Article 41 Prequalification proceedings**

1. The procurement of consulting services is done by tender as prescribed in this law, unless otherwise specified in this SECTION.

2. To procure consulting services by tender, in accordance with article 6 of this law, prequalification proceedings of consultants is held. Up to six consultants who passed the prequalification with the highest scores, are entitled to participate in further procurement proceedings. If more than six consultants have scored highest, then all consultants are regarded as passed the prequalification.

#### **Article 42. Tender evaluation criteria**

Tender evaluation criteria and evaluation thereof are established in tender invitation which includes also draft procurement agreement to be signed.

#### **Article 43. Procedure to determine the selected consultant in the tender**

1. Selected consultant is determined out of submitted tenders, as envisaged in the invitation:
  - a) evaluated the highest in non-price conditions, or
  - b) evaluated as conforming to the minimum non-price conditions and who proposed the lowest price, or
  - c) giving the priority to the highest proposal for non-price conditions within the maximum price.
2. The selected consultant can be also determined by giving preference to the consultant whose proposed price and work experience, staff, class of proposed services and (or) other non-price condition(s) under the invitation are the highest in the sum total.
3. Procedure of selection of the consultant is specified in the invitation and the procurement proceedings minutes indicate the grounds on which this procedure was applied.

#### **Article 44. Peculiarities of single-source procurement of consulting services**

In addition to the cases specified in this law, procurement of consulting services can be done from a single-source, if the provision of such services require a concrete person with exceptional qualifications or when provision thereof is possible only with the same person in case of extension of a previously signed contract or signing of a new contract.

#### **Article 45. Peculiarities of negotiations**

The provisions of draft procurement contract can be negotiated with the selected consultant, however, the negotiations can not result in the modification of specifications for the procurement item envisaged in the tender, while the negotiations with the selected consultant stipulated in article 43, paragraph 1, a) and article 44 can result in the decrease of price.

## **SECTION 6.**

### **PROCEDURES FOR ALTERNATIVE METHODS OF PROCUREMENT**

#### **Article 46. Two-stage tendering**

1. In case of two-stage tendering, an announcement to that effect is made in the event of open tender procurement, while in the event of closed-end tender, the announcement is made in the invitation.

2. The provisions of SECTION 4 of this law are applicable to two-stage tendering, unless otherwise stated in this article.

3. In the first stage of the two-stage tendering, the suppliers in accordance with this law, submit initial tenders containing their proposals without a tender price. In the first stage the initial tenders are evaluated and negotiations can be held with all suppliers. All suppliers who submitted tenders are advised in the written form about the negotiations.

4. In the second stage, the suppliers who passed the first one, receive an invitation to the second stage and are offered to submit final tenders, including the tender price.

5. The second-stage invitation can modify the conditions established in the first-stage invitation which fact is specified in the second-stage invitation. When evaluating and comparing the final tenders, negotiations are prohibited.

6. In case of two-stage tendering, tender security is posted at the second stage, in the final tender.

7. The supplier who passed the first stage of the tender, is entitled to refuse from participation in the second stage.

#### **Article 47. Closed-end tendering**

1. In case of closed-end tendering, no announcement is published in the newsletter, while the invitation is extended to all possible suppliers.

2. All possible suppliers entitled to participate in tenders involving state or official secrets are determined by procedure established by RA government.

3. The provisions of SECTION 4 of this law are applicable to closed-end tender, unless otherwise stated in this law.

#### **Article 48. Restricted tendering**

1. If restricted tendering is used, then to attract suppliers, invitations are sent to all possible suppliers.

2. During restricted tendering, the provisions of SECTION 4 of this law are applicable to closed-end tender, unless otherwise stated in this article.

#### **Article 49. Request for quotations**

1. In case of request for quotations, the request is sent to at least three persons. To determine these persons, a relevant announcement is published in print media with at least three thousand copies in circulation, if information on the procurement does not contain state or official secrets.

2. Request for proposals incorporates conditions pertaining to the suppliers' qualifications and procurement item's specifications, the procedure of submission of suppliers proposals, evaluation and comparison.

3. Each participant is entitled to submit one quote which later on can not be modified. Quotes are submitted within ten work days after publication of the request for proposals, and in case of tenders involving state or official secrets, within 10 work days after the submission of request, in an envelope complying with the requirements of article 29, paragraphs 2 and 3.

4. Negotiations with persons who submitted quotes are prohibited. When evaluating proposals, only the criteria indicated in the quotes are used.

5. During the request for quotations, provisions of SECTION 4 of this law are applicable to closed-end tender, unless otherwise stated in this article.

#### **Article 50. Competitive negotiation**

1. In the case envisaged in article 22, "a" of this law:

- a) the invitation for competitive negotiation is sent to at least two persons. To determine these persons, a relevant announcement is published in print media with at least three thousand copies in print, if the information pertaining to the procurement does not contain state or official secret..
- b) The supplier is entitled to require and receive in two work days the invitation to the competitive negotiation, as specified by procedure.
- c) Tenders to participate in competitive negotiation are submitted within ten work days after publication of the advertisement, and in case of procurements involving state or official secrets, within ten work days after the submission of the invitation.
- d) After the expiration of the tender submission deadline, within five work days, the proposals are evaluated and compared. Simultaneously, negotiations are held with the evaluated suppliers who meet the non-price requirements, with respect to reduction of proposed prices. All suppliers are involved into the negotiations and each supplier's current price proposal is published for other suppliers, and until the deadline for the negotiations, the supplier can review his price proposal.

e) The supplier whose price is the lowest when the deadline of the negotiations is over, is declared the winner, and a procurement contract is signed with him within three work days

2. In cases envisaged in article 22, “b“ of this law, negotiation can be held with one supplier and a procurement contract can be signed on the basis of this negotiation. In case a procurement agreement is signed under this paragraph, agreement security is not required.

3. In cases envisaged in paragraph 1 of this article, the provisions of SECTION 4 of this law are applicable, unless otherwise stated in this article.

### **Article 51. Single-source procurement**

1. In cases envisaged in this law, a procurement contract can be proposed to a single supplier.

2. In case a procurement is done from a single source, any provision in the tender of the supplier can be negotiated. In case of signing a procurement agreement under this paragraph, a security for its implementation may be not required.

## **SECTION 7.**

### **REVIEW**

#### **Article 52. Right to review**

1. Any person is entitled to seek review, if he claims to have suffered or can suffer from the actions of the procuring entity and (or) tender commission.

2. Any person is entitled to:

a) appeal against the actions of the procuring entity and (or) tender commission at the authorized body, in accordance with article 53 of this law;

b) appeal in court against the actions of the authorized body, actions of the procuring entity and (or) tender commission, in accordanced with article 56 of this law.

#### **Article 53. Apeal to authorized body**

1. The appeal to the authorized body is submitted in the writtent form. The appeals and procurement supervision group stipulated in article 16, paragraph 3, whose activities are established by the RA government, considers the appeal submitted to the authorized body and makes a motion to the chief of the authorized body.

2. Upon receipt of the appeal, within three work days, the authorized body notifies the supplier in the written form to that effect.

3. The authorized body is entitled to make the following decisions with respect to

the supplier and (or) the tender commission:

- a) to prohibit certain actions and decisions;
- b) to oblige to make certain decisions, except the decision to recind the contract;
- c) to reconsider the decisions.
- d) to terminate the procurement contract.

4. Based on the procurement legislation, the authorized body, not later than twenty days after the receipt of the appeal and not earlier than in ten work days, makes a decision with respect to the appeal. The decision of the authorized body is final, unless the court ruled otherwise.

5. In case the authorized body satisfied the appeal, the procuring entity is liable for the losses suffered by the appellant and for the compensation of the loss as prescribed.

#### **Article 54. Rules applicable to review**

1. Within three days after the receipt of the appeal makes an announcement to that effect in print media with circulation of at least three thousand copies, withholding personal data of the appellant.

2. Any person whose interests suffered or can suffer as a result of the reasons for the appeal are entitled to participate in the review proceedings, until the deadline for the decision on the review and submit a similar appeal to the authorized body. In accordance with this article, the person who did not participate in the review proceedings loses the right to file a similar appeal with the authorized body.

3. The decision of the authorized body on the appeal within five work days after its adoption is sent to the supplier and the persons who participated in the review proceedings.

#### **Article 55. Suspension of procurement proceedings**

1. The authorized body is entitled to suspend the procurement proceedings until the decision is made with respect to the appeal.

2. Suspension is not applicable if the procuring entity advises the authorized body in the written form that due to the defence and national security interests of the RA, the procurement proceedings must continue.

#### **Article 56. Judicial review**

The actions of the authorized body and (or) procuring entity and (or) tender commission can be appealed in court. If the procurement contract contains judicial dispute resolution provisions, then the review is done in accordance with these provisions.

### **SECTION 8**

#### **STATE PROCUREMENT AGENCY AND PROCUREMENT PECULIARITIES**

### **Article 57. State procurement agency**

1. If the procurement does not involve state or official secrets, then the procurements are organized in open tender by the state procurement agency as specified in articles 6, 20, 21 and 22, paragraph 1 of this law and signs the procurement contract on behalf of the procuring entity. The representatives of the state procurement agency are appointed as secretaries of commissions and can be members of the commission only for an open periodic tender:

2. State procurement agency carries out the organization of open periodic tenders, including the authorities reserved to the procurement entity in this law.

3. The specific features of activities of the state procurement agency are defined by RA government.

### **Article 58. Specific features of procurements for local self-government bodies and community institutions**

In case of procurement for local self-government bodies and community institutions,

a) the provisions of article 9, paragraph 2, article 16, paragraph 2, “h“, article 17, paragraph 5 and article 57 of this law are not valid and local self-government bodies and community institutions are not obliged to make procurements resulting from the procurement contracts signed by the state procurement agency in open periodic tender.

b) the functions specified in article 16, paragraph 2, “i“ and “j“ are performed by the community council.

### **Article 59. Specific features of procurements for the Central Bank of the Republic of Armenia**

In case of procurements for the CBA,

a) the provisions of this law are not valid for procurement of the CBA done under functional expenses;

b) provisions of article 9, paragraph 2, article 16, paragraph 2, “h“, article 17, paragraph 5 and article 57 are not valid and the CBA not obliged to make procurements resulting from the procurement contracts signed by the state procurement agency in open periodic tender.

c) functions under article 16 are implemented by the CBA Board or by delegation to another body.

d) functions under article 4, paragraph 3 are carried out by the CBA Board.

**Article 60. Peculiar features in the procurements of state  
or community non-profit entities and state or community entities  
with over fifty per cent share**

In case of procurements by state or community non-profit entities and state or community entities with over fifty per cent share:

- a) the provisions of this law are not valid, unless otherwise stated by RA legislation;
- b) the provisions of article 9, paragraph 2, article 16, paragraph 2, “h“, article 17, paragraph 5 and article 57 and state or community non-profit entities and state or community entities with over fifty per cent share are not to make procurements resulting from the procurement contracts signed by the state procurement agency in open periodic tender.
- c) the functions specified in article 16, paragraph 2, “i“ and “j“ are performed by the management body of the given organization.

**SECTION 9**

**FINAL AND TRANSITORY PROVISIONS**

**Article 61. Entrance of this law into force**

1. This law comes into force on January 1, 2005.

**Article 62 Transitory provisions**

1. The provisions of this law are not extended to procurement contracts that originated and have not expired until the entry of this law into force, as well as signed and acting procurement contracts, while the relations resulting from the latter are regulated by legal acts valid at the time of their operation.

2. The RA Law on Procurement (January 5, 2000, HO-62) to be considered null and void after entry of this law into force.

3. In accordance with RA Law on Procurement (January 5, 2000, HO-62) or legal acts and norms adopted under this law, continue to be valid as far as they do not disagree with this law.

**RA PRESIDENT**

**ROBERT KOCHARIAN**