

# REPUBLIC OF ARMENIA

## LAW

### ON PROCUREMENT

#### SECTION 1

#### GENERAL PROVISIONS

##### **Article 1: Subject regulated by the law**

This law regulates relations pertaining to the procurement of goods, works and services by clients, and establishes principal rights and responsibilities of parties thereto.

##### **Article 2: Main terms used in the law**

The following main terms are used in this law:

###### **1) Client:**

- a. State administration bodies and local self-governments, state and community agencies envisaged in the Republic of Armenia Constitution and laws;
- b. The Republic of Armenia Central Bank;
- c. State or community non-commercial (non-profit) organizations
- d. Entities with over fifty percent of government or community shareholding;
- e. Associations (unions) formed by the state or community or the Republic of Armenia Central Bank or state or community non-commercial (non-profit) organizations or entities with over fifty percent of government or community shareholding; f. Legal entities - recipients of funds donated by the government or community or the Republic of Armenia Central Bank or state or community non-commercial (non-profit) organizations or entities with over fifty percent of government or community shareholding – for procurements financed by donated funds;
- g. Public undertakings.

###### **2) Public undertakings:**

- a. Physical or legal entities operating in the regulated public services sector and included in the list approved by the Republic of Armenia Public Services Regulatory Commission;
- b. Other entities operating in the public services sector and carrying out one or more of the relevant activities stipulated by this Article, based on a special or exclusive right, if the procurement is conducted for the purpose of exercising such activities;
- c. Entities over which the government or community or a state or a community non-commercial (non-profit) organization or an entity with over fifty percent of government or community shareholding may exercise a dominant influence. The presumption of exerting the dominant influence is applied to all situations when the government or community or the state or community non-commercial (non-profit) organization or the entity with over fifty percent

of government or community shareholding may appoint more than fifty percent of members of the entity's administrative or management or supervisory body.

**3) Procurement** - purchase of tangible and non-tangible assets (values) - all types of goods, works and services - reimbursed by the Client. For the purposes of this law:

a. The rent and leasing regarded as a purchase of service;

b. The following are also considered as procurement:

- Purchase of goods, works and services by legal entities from the funds donated to such entities by the Client;

- Purchase of goods, works and services by barter;

- Public-private partnership transactions, including asset management and concession transactions.

**4) Contract** - a written transaction concluded for procurement purposes;

**5) Framework agreement** - a preliminary contract concluded for contract signing purposes;

**6) Bidder** - an entity participating in procurement processes for the purposes of concluding a contract (framework agreement) with the Client;

**7) Selected bidder** - bidder(s) offered a contract (framework agreement) by the Client;

**8) Invitation (Bidding documents)** - terms offered to the bidder for the purposes of contract (framework agreement) signing;

**9) Bid** - an offer submitted by the bidder based on the invitation;

**10) Bid security** - in cases stipulated in this law, a guarantee securing implementation of the obligations assumed in the bid by the bidder;

**11) Contract performance security** - in cases stipulated by this law, a guarantee securing implementation of the obligations being assumed under the contract (framework agreement) by the selected bidder;

**12) Electronic auction** - when carrying out the procurement, repetitive process involving electronic devices for presentation of new prices, revised downwards, and/or new non-price proposals, which occurs after an initial full evaluation of the bids, enabling to rank in descending order the bidders, who submitted the bids, using automatic evaluation methods (means);

**13) Electronic means** - the use of electronic equipment, including software and hardware for the processing and storage of data, which is transmitted, conveyed and received by wire, radio, optical means or by other electromagnetic means;

**14) Authorized Body** - a state body of the Republic of Armenia Executive responsible for the development and implementation of the Republic of Armenia Government policy in the area of public finance management.

**15) The Center for Procurement Support** - a legal entity carrying out competences stipulated in this Law;

**16) Bulletin** - the Electronic Procurement Bulletin published by the Authorized Body;

**17) Special or exclusive right** - the right that results from any form of authorization granted by a competent authority by the way of any legislative, regulatory or administrative provision, having as effect to limit the exercise of

certain activities (including in the field of public services) only to one or to a restricted number of entities, and which substantially affects the ability of other entities to carry out such activities;

**18) Subject of procurement** - any goods, works or services being purchased;

**19) Description of procurement subject** - technical specifications, procurement and payment terms and conditions of subject of procurement;

**20) Consulting services** - services, which render non-tangible assets (values) dispossessed of physical substance;

**21) Consultant** - an entity, which participates in the procurement process for the purposes of signing a consulting services' contract with the Client;

**22) Selected consultant** - a consultant(s) offered a consulting services' contract by the Client;

**23) Procurement base unit** - an amount equal to one million Armenian Drams;

**24) Relevant activities** - following activities in the field of public services to procurements carried out under which this law shall apply. They are:

a. The generation of electricity and heat (including their combined-cycle generation), the transmission (transport) and distribution of electricity, heat and natural gas, the provision of system operator services for power and natural gas systems, the construction of new or rehabilitation of electricity and heat generation capacities, the construction of transmission (transport) or distribution networks for electricity, heat or natural gas;

b. The supply of drinking, irrigation and industrial (technical) water, provision of wastewater and wastewater treatment services;

c. The operation of public electronic network in the field of electronic communication;

d. The provision of postal, railway transportation and mandatory motor vehicle technical inspection services subject to tariff regulation by the Republic of Armenia Public Services Regulatory Commission;

e. The provision or operation of networks intended (existing) to provide public services in the field of transport. A network for providing transport services is considered to exist, in the case when the operation conditions, including the condition on the routes to be served, the capacity to be made available or the frequency of the service are laid down by a competent government authority.

f. Exploitation of a geographical area:

- For the purpose of exploring for or extracting oil, gas, coal or other solid fuels;

- For the purpose of the provision of airports and other terminal facilities to carriers by air or waterways.

**25) Procurement process** - an entirety of actions aimed at execution of procedures, rights and responsibilities pertaining to carrying out procurement as stipulated by the Republic of Armenia legislation on procurement.

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

1. The purpose of this law is to ensure value-for-money in the procurement process, namely:

1) Purchase of goods, works and services requisite to carry out the powers delegated to the Client and adequate to the Client's needs;

2) Exchange of funds allocated for procurement for adequate goods, works and services;

3) Implementation of procurement process ensuring the efficiency, effectiveness and economy of procurement.

2. For the purposes of achieving the objective set out in the paragraph 1 of this Article, the procurement process shall be based on the following principles:

1) Administration of procurement process based on unified rules and principles of competition, transparency, openness and non-discrimination;

2) Expansion of bidders' circle and promotion of competition among them for the purposes of contract signing;

3) Prevalence of equal right for every person to participate in the procurement process regardless of being a foreign individual, entity or a stateless person.

3. The scope of this law covers the procurement carried out in the Republic of Armenia. The procurement is considered to be implemented outside the Republic of Armenia if the contract is concluded and works, goods or services thereto are purchased and used outside the Republic of Armenia's territory.

4. The scope of this law shall not cover the following types of transactions:

1) Purchase of arbitration (including mediation) services,

2) Labor contracts,

3) Purchase of services rendered by specific people foreseen in the decision of officials carrying out criminal, administrative or court proceedings in cases stipulated by law,

4) Purchase of share of the statutory capital of legal entities,

5) Purchase of securities and transactions related to trust management of securities.

#### **Article 4: The Republic of Armenia legislation on procurement**

1. The Republic of Armenia legislation on procurement is comprised of the Republic of Armenia Civil Code, this law and other legal acts.

2. In the event if an international agreement sets out provisions other than in this law, the provisions of the international agreement prevail.

3. The Republic of Armenia Government and the Authorized Body adopt other legal acts on procurement to ensure the accomplishment of the purpose and requirements of this law. Other legal acts on procurement are also being published in the Bulletin.

4. The Republic of Armenia Government approves:

1) The procedure for procurement outside of the Republic of Armenia;

2) The procedure for e-procurement;

3) The procedure for procurement planning, approval of procurement subject specifications, preliminary control and financing of procurement;

4) The types of public-private partnership transactions, specification requirements for such transactions as well as the procedure for development and approval of specifications;

5) The procedure for application of procurement procedures stipulated in this law;

6) The procedure for composition and activities of evaluation commission;

7) The main terms and conditions of the invitation and contract;

8) The procurement plan to be financed by the state budget;

9) For members of the Procurement Complaint Review Board envisaged in this law:

a. The procedure for assessment of knowledge of the Republic of Armenia procurement legislation;

b. The amount of and the procedure for remuneration.

5. The Authorized Body approves:

1) Standard forms of bidding documents, including the invitation and contract;

2) Standard forms of documents to be submitted to the Authorized Body pursuant to this law, including the reports, and the deadlines for their submission;

3) The list of procurements to be carried out under framework agreements.

#### **Article 5: Eligibility to participate in procurement process and qualification criteria**

1. Except for procurement to be carried out in accordance with the procedure set out in the Article 20(5) of this law, the following persons shall not have the right to participate in the procurement:

1) Have been ruled insolvent by court;

2) Have outstanding arrears against the Republic of Armenia tax and mandatory social insurance payments; or

3) Have a representative of the executive body, who during the preceding three year period has been convicted for offenses against economic activities or state service, except cases when such conviction has been lifted or nullified as stipulated by law;

4) Have been included in the list of bidders ineligible to participate in procurement procedure. The bidder is included in this list, if during the year preceding the bid submission:

a. Has repeatedly breached an obligation assumed under a contract or a procurement process leading to a unilateral termination of the contract by the Client or a suspension of that bidder from further participation in the procurement process;

b. Has submitted falsified data under the procurement process;

c. As a selected bidder, has repeatedly refused to sign the awarded contract;

d. In a manner prescribed by law, the bidder has been convicted by a decision for anti-competitive behavior during procurement process, such as collusion or abuse of dominant position.

e. When the condition foreseen in the item 3 of this paragraph is present.

2. The Authorized Body publishes the list stipulated under paragraph 1(4) of this Article. The Authorized Body formally initiates a procedure at the Procurement Complaint Review Board based on the information of the Client about an ineligible bidder. After hearing the opinion of the bidder concerned, the Procurement Complaint Review Board decides if the bidder has to be included in the list stipulated in this Article. An entity can be enlisted for a period from 6 months to 3 years depending on the gravity of the breach of the rules set out in the paragraph 1(4) of this Article.

3. The bidder must satisfy the qualification criteria set out in the invitation. The bidder shall meet the following criteria set out in the invitation and required to fulfill contractual obligations:

1) Compliance of professional activity to activities stipulated in the contract;

- 2) Professional experience;
- 3) Technical resources;
- 4) Financial resources;
- 5) Labor resources.

4. No other criteria related to bidder's eligibility and qualification for participation in the procurement can be established, if such criteria are:

- 1) Not stipulated in this Article;
- 2) Discriminatory and limit the competition by unduly complicating or simplifying potential participation in the procurement process;
- 3) Inadequate and not directly required for execution of contractual obligations

5. The procedure and criteria for evaluating the bidder's eligibility and qualification to participate in the given procurement as well as the requirements for documents (information) required thereto are set out in the invitation.

#### **Article 6: Equal participation in procurement**

1. Any entity, regardless of being a foreign natural person or a legal entity or a stateless person, has equal right for participation in the procurement process.

2. Participation of any entity in the procurement can be restricted only by the Republic of Armenia Government decision based on the national security or defense interests of the Republic of Armenia.

3. If the paragraph 2 of this Article is inapplicable, then the invitation includes a notice that any person regardless of being a foreign individual or an entity or a stateless person can submit the bid; furthermore, the notice is not subject to changes. If the paragraph 2 of this Article is applied, then the invitation includes a notice about such restriction.

4. Concurrent participation of entities founded by the same person(s) or entities with over fifty percent of shares owned by the same person(s) in the same procurement process is prohibited with the exception of:

- 1) Entities founded by the Government or communities;
- 2) Cases of participation stipulated under the Article 27, paragraph 6 of this law.

5. Legal entities with Client's (including government or community) shareholding participate in the procurement having equal rights with other bidders and the Client's shareholding does not lead to a preferential treatment or to setting out and applying any other favorable conditions for such entities.

#### **Article 7: Documents, their validity and e-procurement**

1. Recording and maintaining of procurement related information must be ensured through the development of relevant documents, including electronic documents.

2. If the invitation sets out a condition for the bidder to submit information, it also contains the validity terms for such information. In the framework of functions set out in this law, the communication can be carried out electronically, including:

- 1) Electronic provision of invitation;
- 2) Electronic submission of bids in cases and pursuant to the procedure stipulated in the invitation;

3. The tools to be used for communication by electronic means, as well as their technical characteristics, must be non-discriminatory, generally available to any potential bidder and interoperable with information and communication technologies means in general use.

4. The following rules are mandatorily applicable to means for the electronic transmission and receipt of bids:

1) The information regarding the specifications necessary for the electronic submission of bids, including encryption, shall be available to any interested bidders;

2) The electronic devices for electronic receipt of bids must guarantee the integrity and confidentiality of the received data, fulfilling at least the following conditions:

a. The exact time and date of the receipt of bids can be precisely determined;

b. Before the time limits laid down for the transmission of the data, no one can have access to the transmitted data;

c. In the case when the interdiction of access to the transmitted data has been breached, the unauthorized access can be clearly detectable;

d. Only authorized persons may set or modify the dates for opening data received;

e. During the different stages of procurement procedure, the access to received data is possible only by a simultaneous action of at least two authorized persons/systems and only after the date established according to provisions of subparagraph b) of this paragraph;

f. Data received and opened in accordance with the requirements of this paragraph must remain accessible only to persons authorized to acquaint themselves therewith.

3) The bidders, before the deadline laid down for submission of bids, shall submit certificates, declarations and other documents, in case these are not available in electronic format.

#### **Article 8: Minutes of procurement procedure and reports on procurement**

1. If the estimated price exceeds the procurement base unit, the Client drafts minutes of the procurement procedure. Based on the method of procurement, the minutes of the procurement procedure contain:

1) Name and location of Client;

2) Need for procurement and justification of procurement method selection;

3) Invitation and changes made therein;

4) Procurement related inquiries and explanations provided thereto;

5) Information about bidders: name, location or residence, contacts;

6) Prices offered in the bids;

7) Bid evaluation procedure and the results of evaluation;

8) If a bid is rejected, a justification of such decision;

9) The contract; if no contract is awarded as an outcome of the procurement process, then a justification of such decision;

10) If illegal actions were identified during the procurement process, a brief description of such actions and of measures undertaken thereto;

11) Complaints related to the procurement process and decisions made thereto;

12) Other necessary information.

2. Within seven calendar days of the signature of contract financed by the state budget or cancellation of the procurement process, the Client submits to the Authorized Body a report on procurement process.

3. If the procurement value does not exceed the Procurement base unit, the Client ensures that the relevant documents (or electronic documents) on activities implemented for procurement purposes and on their grounds exist and maintained.

4. The Client provides a copy of the procurement procedure minutes or its extract, except for procurements containing state, official or bank secrecy, to any person, within five calendar days after receipt of such request.

5. To prepare and publish the annual procurement report, the Clients shall furnish to the Authorized Body reports.

### **Article 9: Contract award decision, standstill period, contract signing and conditions**

1. In case of open bidding, prior to contract signature, the Client publishes an announcement on contract award decision. It can be announced:

1) At the meeting on finalization of bidding results through a public debriefing to which all the bidders in the procurement process have been invited; or

2) Such announcement can be sent to all bidders involved in the procurement process by electronic means, fax or registered mail; or

3) Such announcement can be posted at the website of the Authorized Body and, if possible, also at the website of the Client.

2. The contract award decision shall contain brief information on evaluation of bids and relevant reasons for the selection of this bidder and a statement on standstill period. The standstill period is the period from the day following the date on which the contract award decision is announced to the day of contract signature.

3. The standstill period:

a) Shall be at least 10 calendar days, in case of procurements exceeding the Procurement base unit by fifty times;

b) Shall be at least 5 calendar days, in case of procurements not exceeding the Procurement base unit by fifty times.

4. The standstill periods stipulated in the paragraph 3 of this Article do not apply, if:

1) This law does not require publication of a contract award notice;

2) There was only one bidder in the tender, who is awarded the contract.

5. The contract is signed, if no bidder complains against the award decision at the Procurement Complaint Review Board within the standstill period of paragraph 3 of this Article. A contract concluded before the expiry of the standstill period is null and void.

6. Relations between the procurement parties not regulated by the Republic of Armenia legislation on procurement are regulated under the contract.

### **Article 10: Contract award publication**

1. If the contract price exceeds the Procurement base unit, then the Client, within 7 calendar days of the contract signing, furnishes to the Authorized Body an announcement about the awarded contract to be published in the Bulletin, except for procurements containing state, official or bank secrecy.

2. The announcement about the awarded contract contains the following information:
  - 1) A brief description of the procurement subject;
  - 2) Client's name and address;
  - 3) The date of contract signing;
  - 4) Name and address of selected bidder(s);
  - 5) Price offers of bidders and the contract price;
  - 6) Information about announcements published in accordance with this law in order to attract bidders, if applicable;
  - 7) Procurement method used and justification of its selection.

#### **Article 11: Consequences of bidders' illegal actions**

If a bidder or a representative of its management body commits any illegal actions against economic activities or state service under the procurement process, then the Client, on the day when such grounds are identified, notifies about this the law enforcement bodies providing them and the bidder with the grounds for such decision.

#### **Article 12: Procurement subject description**

1. The description of procurement subject shall fully and clearly describe technical specifications of goods, works or services being procured as well as terms and conditions for their purchase and payment, ruling out any alternative interpretation. The description of the procurement subject is included in the contract.

2. The description of procurement subject:

- 1) Shall ensure equal competition conditions for potential bidders;
- 2) Must not have the effect of creating unjustified obstacles to the opening up of procurement to competition;
- 3) Shall be objectively justified and adequate to need for which the given procurement is carried out;
- 4) Shall include full and adequate description of specifications and technical data of the procurement object, while in case of works' procurement, it shall also include the bill of quantities, timetable and other non-price conditions.

3. Based on specific features of the procurement subject, its technical specifications, to the possible extent, include a clear description of requirements for quality, standard, safety, terminology, labeling, packing, unloading, dimension, design and other technical characteristics related to the goods, works or services being procured; the description are based on the international standards and existing Republic of Armenia normative-technical documents and standards or, if such documents and standards are missing, on temporary technical references.

4. The technical specifications can also be defined in terms of performance and/or functional requirements that have to be described sufficiently accurate in order to allow bidders and the Client to understand exactly the subject-matter of the contract.

5. Technical specifications shall not require or refer to any trademark, brand name, license, design or model, country of origin or a specific source or a manufacturer, except cases, when the description of the procurement subject is impossible without such requirement or reference. In the event if references are made, the technical specifications must contain the words "or equivalent".

### **Article 13: Official language of procurement procedure**

1. Procurement related documents are drafted and, in cases stipulated in this law, published in the Bulletin in Armenian, while advertisements related to an open bidding are also published in English and Russian.

2. In case of procurements exceeding the Procurement base unit by fifty times, if envisaged in the invitation, the bids, besides Armenian, can also be submitted in English and/or Russian.

### **Article 14: Procurement planning and financing**

1. The procurement plan to be funded from the state budget is approved on the basis of administrative and operational classification.

2. The procurement plan that contains a state or official secret includes goods, works and services required to provide military equipment, weapons, ammunition and armament.

3. In case of procurement funded from other sources, the Client approves the procurement plan.

4. The procurement plans are approved on the basis of procurement subject, quantity, total price, and procurement method. They are published in the Bulletin, except for procurement plans containing state, official or bank secrecy.

5. Funds for procurement of civil works are allocated on the basis of design estimates that have been approved and expert reviewed in accordance with the established procedure. Funds for procurement of civil works without design estimates cannot be allocated, unless otherwise stipulated by law.

6. If the estimated price exceeds the amount allocated for that procurement in the specified period, then, in case of contract signing, funds are earmarked for the period following this period:

- 1) To carry out the procurement stipulated under the procurement contract; or
- 2) To temporarily suspend this procurement, if funds are required for temporary suspension.

7. Pursuant to the procedure stipulated in this law a contract can be signed prior to the allocation of funds provided that the contract becomes effective, when the funds envisaged under the contract are allocated. The contract signed under this provision is terminated, if the funds for contract execution are not allocated during the year following the day of contract signing. This paragraph can be applied, if:

- 1) The Client is unable to envisage (calculate) initially the funds requisite for procurement; or
- 2) Supply of goods, implementation of works or provision of services shall begin within such a deadline calculated from the date of allocating funds for the given procurement, which makes the use of any competitive procurement methods impossible.

8. The Client assumes financial obligations under a contract, if financial allocations required to carry out that procurement have been earmarked and within the framework of those allocations.

9. Funds for procurement are planned under the corresponding budget line items of economic classification of budgetary expenses specified for purchase of works, goods and services. It is prohibited to plan funds under different budget line items of economic classification of budgetary expenses, if procurement is to be carried out at the cost of those funds.

## SECTION 2

### REGULATION AND COORDINATION OF PROCUREMENT PROCESS

#### Article 15: Regulation and coordination of procurement process

1. The Authorized Body carries out the regulation and coordination of the procurement process. The Authorized Body cannot be involved in procurement processes and be a contract party, except for procurement carried out for its own needs.

2. To facilitate activities for regulation and coordination of the procurement process, the Authorized Body:

1) Coordinates the efforts for development of draft legal acts on procurement and adopts or submits them for approval;

2) Carries out the methodological guidance of the procurement process and, within that scope, provides methodological assistance to clients in facilitation of procurement activities;

3) Ensures the existence of a system for professional education, continuous training and qualification assessment of clients' procurement specialists;

4) Facilitates publication of the Bulletin;

5) Coordinates the procurement related collaboration between international organizations, foreign states and the Republic of Armenia state bodies and local self-governments;

6) Registers procurement contracts to be funded by the state budget;

7) Publishes:

a. The annual public procurement report;

b. The list of qualified procurement specialists;

3. The head of the Client appoints an entity responsible for procurement (procurement coordinator), which:

1) Is responsible for the facilitation and coordination of the Client's procurement process;

2) Provides an opinion on procurement related documents approved by the Client's;

3) Implements the powers of the secretary of the evaluation commission;

4) Drafts the minutes of a given procurement and the procurement contract and submits them to the approval of the Client's head.

4. The following could be appointed as the procurement coordinator:

1) Relevant unit of the Client;

2) An official(s) of the Client;

3) An invited consultant(s).

5. The staff of the procurement unit, officials and invited consultants shall be included in the list of qualified procurement specialists published by the Authorized Body. The individuals are included in the

aforementioned list after successfully passing the examination assessing their knowledge of the Republic of Armenia legislation on procurement organized by the Authorized Body.

**Article 16: The Center for Procurement Support**

1. The Center for Procurement Support:
  - 1) Conducts professional education and continuous training for procurement specialists;
  - 2) Provides free professional advice to clients and paid professional advice to bidders and other entities;
  - 3) Evaluates the eligibility and the qualification of bidders to participate in procurement process, concludes framework agreements, compiles and publishes it in the Bulletin:
    - a. The list of bidders, who signed framework agreements;
    - b. The list of pre-qualified potential bidders.
  - 4) Implements the e-procurement system service and coordination functions;
  - 5) Compiles and publishes electronic newsletters on goods, works and services, analyzes procurement statistics and publishes opinions;
  - 6) Conducts a random assessment of technical specifications of procurement subject and bidder qualification criteria approved by a Client in order to ensure the compliance to the requirements for ensuring competition and nondiscrimination stipulated under this law. The results of assessment are submitted to the clients and the Authorized Body.
  - 7) Ensures the existence of a procurement support service (hotline) in order to register procurement related signals and promptly respond to the questions;
  - 8) Acts as the secretariat of the Procurement Complaint Review Board:
    - a. Organizes the Board activities,
    - b. Evaluates the completeness of received complaints (appeals) and provides an opinion on all complaints to the Board,
    - c. Publishes the Board decisions,
  - 9) Implements other powers set out by this law, the Republic of Armenia government and the Authorized Body.
2. The powers of the Center for Procurement Support are set out in the contract concluded between the Center and the Authorized Body.

**SECTION 3**

**PROCUREMENT METHODS AND APPLICATION CONDITIONS THEREOF**

**Article 17: Procurement methods**

1. The procurement methods are:
  - 1) Open procedure;

- 2) Competitive dialogue;
- 3) Restricted procedure;
- 4) Negotiations.

2. The open procedure is the preferable and basic procurement method. Only in cases stipulated in this law, other methods of procurement can be used.

3. The procurement procedure results in contract or framework agreement signing.

4. A framework agreement is concluded, if the subject of procurement is periodically used and is included in the list of procurements carried out under framework agreements stipulated in the Article 4, paragraph 5(3) of this law. Otherwise, a contract is concluded.

5. If goods, works or services of general use with standard (similar) technical specifications are purchased and their price does not exceed the Procurement base unit by twenty times, the procurement could be carried out by a simplified procedure.

6. Procurement can be carried out from commodity, labor or service exchanges.

#### **Article 18: Conditions for use of a competitive dialogue**

1. Prequalification procedure is arranged, if a competitive dialogue procedure is to be used. Any bidder can participate in prequalification procedure. The Client submits an invitation and invites for dialogue only prequalified bidders. The purpose of the dialogue is to develop one or more alternative descriptions of procurement subject that meet the Client's requirements. As a result of the dialogue, the Client issues a final invitation to prequalified bidders.

2. The competitive dialogue procedure could be used, if the Client:

1) Is not objectively able to specify the description of procurement subject in accordance with the provisions of this law and:

2) Gives the bidders an opportunity to propose possible alternative descriptions of procurement subject; or

3) There is a need to negotiate with the bidders to clarify some specific features of the procurement subject description.

2) In cases of concluding public-private partnership, including asset management and concession contracts.

#### **Article 19: Conditions for use of a restricted procedure**

1. Prequalification procedure is arranged, if a restricted procedure is to be used. Any bidder can participate in prequalification procedure. Only prequalified bidders, who have received an invitation from the Client, can submit bids.

2. In case of a restricted procedure:

1) No negotiations are held;

2) The deadline for submission of bids should be no less than 40 calendar days from the date of disclosing the list of prequalified bidders;

3. Restricted procedure is used, if the procurement process contains state, official or bank secrecy.

#### **Article 20: Conditions for use of a negotiation procedure**

1. In case of negotiation procedure the Client negotiates the terms and conditions of the contract with prequalified bidders and concludes the contract.

2. The negotiation procedure is arranged:
  - 1) By initially publishing a procurement announcement; or
  - 2) Without initially publishing a procurement announcement
3. Negotiation procedure with initially published procurement announcement could be arranged, if:
  - 1) Procurement is carried out to purchase specific non-tangible assets such as design of works, research, expertise, experimental or scientific activities;
  - 2) Due to emergency or other unforeseeable circumstances, there arise an urgent need for procurement and open or restricted procedure cannot be used due to time constraints, provided that such need was impossible to foresee;
4. In cases foreseen under paragraph 3 of this Article, the Client:
  - 1) Arranges prequalification procedure and negotiates with prequalified bidders their bids to select the best proposal;
  - 2) Ensures equal rights to all bidders;
  - 3) May arrange a negotiation procedure with consecutive stages applying criteria set out in the invitation.
5. Negotiation procedure without initially published procurement announcement could be arranged, if:
  - 1) Due to copyright or related rights, existence of special or exclusive right the goods, works or services can be obtained from a single source;
  - 2) There arise an urgent need for procurement and, due to emergency, another procurement procedure cannot be used due to time constraints, provided that such need was impossible to foresee;
  - 3) Additional quantities of products are being purchased, which are intended to replace or extend the equipments/installations initially supplied by a supplier, where a change of the original supplier would oblige the Client to acquire products having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance. This condition shall apply only during 3-year period following the signing of original contract;
  - 4) The Client, after carrying out procurement of works or services from an entity, decides that an additional procurement of works or services not included in the original contract, which due to unforeseen circumstances have become necessary for the performance of the original contract, shall be done from the same entity, provided that:
    - a. The additional works or services contract cannot be technically or economically separated from the original contract without significant inconvenience to the Client; and
    - b. Its price would not exceed twenty percent of the price of the original procurement contract. Under the provisions of this paragraph, an additional procurement from the same entity can be done only once.
  - 5) For the goods that can be purchased on particularly advantageous conditions for the Client from either an entity which definitively winds up its business activities, or the receivers or liquidators of a bankruptcy, an arrangement with creditors or a similar procedure;
  - 6) The price of procurement subject does not exceed the Procurement base unit.

**Article 21: Prequalification procedures**

1. In case of arranging prequalification procedure:
  - 1) A prequalification announcement is published;
  - 2) The deadline for submission of prequalification application cannot be less than 25 calendar days after publishing the announcement on prequalification
2. The prequalification announcement in Armenian, English and Russian is published in the Bulletin and contains the following information:
  - 1) Name and location of the Client;
  - 2) Code of the prequalification procedure;
  - 3) A notice on the right of applicants to participate in the prequalification procedure;
  - 4) Language(s), in which the prequalification application shall be submitted;
  - 5) A clear summary of the content of the contract and procurement subject descriptions;
  - 6) The procedure for preparation and submission of prequalification application, including the format and venue, the deadline for submission;
  - 7) The requirements set out for applicant's eligibility to bid and qualification and the procedure for their evaluation;
  - 8) Other necessary requirements related to the prequalification procedure.
3. The Client responds, within three calendar days, to the bidder's request for explanations about the prequalification, if such request had been received no later than five calendar days prior to the deadline for submission of prequalification bids. The Client meanwhile publishes in the Bulletin information about the request and provided explanations without disclosing the data of the inquirer. When providing information to a bidder, the Client shall ensure the accessibility of that information to all other potential bidders.
4. At least 5 calendar days prior to the deadline for submission of prequalification application changes can be made therein. If a change is made:
  - 1) Information about such changes shall be circulated in the same way as the initial prequalification announcement and prequalification application have been disseminated;
  - 2) Within 3 calendar days of making such changes an announcement about the changes made and the conditions for their provision shall be published in the Bulletin;
  - 3) The deadline for submission of prequalification application is calculated from the date of publishing an announcement about such changes in the Bulletin.
5. The eligibility of the bidder to bid and the bidder's qualification are evaluated in accordance with the procedure set out in the prequalification invitation, and a list of prequalified bidders is drafted.
6. Prequalified bidders are eligible to participate further in procurement process.
7. The minutes on results of the prequalification procedure, which constitute an integral part of the minutes of procurement procedure, are drafted and sent to participants of the prequalification procedure within five calendar days after finalizing the results of the bidder's prequalification procedure.
8. In the event if up to three bidders have submitted prequalification application, the evaluation commission may decide to:

- 1) Re-publish the prequalification announcement; or
- 2) Arrange new prequalification procedure; or
- 3) Cancel prequalification procedure.

**Article 22: Impermissibility of procurement packaging or slicing and of amending the procurement subject descriptions**

1. To avoid slicing of procurement procedure, it is prohibited:

- 1) To divide the procurement into separate lots with the purpose to avoid the use of open or restricted procedure;
- 2) To amend the descriptions of goods, works and services envisaged in the procurement contracts.

2. It is prohibited to combine procurement subjects with different descriptions into one lot, if they can be presented in separate lots.

## **SECTION 4**

### **IMPLEMENTATION OF OPEN PROCEDURE**

#### **CHAPTER 1: SOLICITATION OF BIDS**

**Article 23: Evaluation commission**

1. An evaluation commission composed of up to nine members is formed by a decree of the Client's head, which:

- 1) Approves the texts of announcement and invitation;
- 2) Makes amendments in the invitation;
- 3) Provides explanations about the procurement procedure;
- 4) Opens and evaluates the bids;
- 5) Select the winning tender(s).

2. The commission has a chairman and a secretary, who are appointed by the decree on establishment of the commission. The secretary is not a member of the commission and:

- 1) Facilitates the commission's activities;
- 2) Receives and registers bids;
- 3) Develops and submits to the commission draft documents subject to the commission's approval;
- 4) Provides the invitation;
- 5) Records and stenographs information on the commission's activities by developing appropriate documents and ensures the safety of those documents during the commission's operation;
- 6) Arranges provision of procurement procedure related explanations;
- 7) Bears responsibility for compliance of the commission's activities to the requirements of the Republic of Armenia legislation on procurement;
- 8) Implements other powers reserved to him/her.

3. The members and the secretary of the commission must - throughout the entire operation of the commission - keep the confidentiality of information disclosed in the bids that they personally learnt, except cases stipulated in this law.

**Article 24: Tender announcement and invitation**

1. Tender announcement and invitation are published in the Bulletin to attract bidders to an open procedure.

2. In case of open procedure, the deadline for bid submission shall be at least forty calendar days from the publication of the announcement and the invitation in the Bulletin.

3. The invitation contains the following information:

1) Name and location of Client;

2) Code of open procedure;

3) Brief and clear summary of the content of contract and procurement subject descriptions;

4) Announcement about the right of bidders to participate in the open procedure;

5) Conditions for obtaining a hard copy of the invitation, including charges and payment procedure thereof;

6) Language(s), in which the bids must be submitted;

7) Summary of bidder qualification criteria;

8) Criteria to be used for establishing the winning bidder;

9) Procedure, venue and deadline for bid submission;

10) Name and location of the body responsible for appeal and precise information concerning deadlines for lodging appeals;

11) Procedure, venue, date and time of bid opening;

12) Other information, if necessary.

4. An entity has the right to receive a hard copy of the invitation on the same day when, on the basis of the invitation, it submits that written request to the Client.

5. If the estimated price exceeds the fifty procurement base units, the bidder has the right to request also English and Russian copies of the invitation.

6. In case of providing a hard copy of the invitation for an open procedure a charge could be levied, which cannot exceed the costs for photocopying and delivering the invitation. The invitation specifies the procedure for issuance of English and Russian copies of the invitation, including the procedure for calculation of charges thereof is specified in the invitation.

7. Failure to receive the invitation as prescribed under this Article does not limit the right of the bidder to participate in the open procedure.

**Article 25: Content of invitation**

1. The invitation shall contain:

1) A reference to the published announcement, as a supplement to which the invitation is extended;

2) Instructions for bid preparation;

3) Qualification criteria, bidder eligibility criteria and procedure for their evaluation;

4) The descriptions of procurement subject;

- 5) Procedure for bid evaluation and selection of a winning bidder;
- 6) A draft contract;
- 7) If the procurement is carried out in lots and bidders are allowed to submit bids for a part of goods, works or services tendered, the terms and conditions thereof;
- 8) Procedure for calculation of price offered in the bid;
- 9) A note that the offered price, besides the value of goods, works and services, includes also the costs for transportation, insurance, duties, taxes and other charges and cannot be less than their cost price calculated and presented in the bid;
- 10) Requirements related to bid security and contract performance security;
- 11) Conditions for submission of bids, including the form, venue, deadline and the language of bid, as well as the bid validity deadline;
- 12) Procedure for receiving explanations on procurement procedure, information on meetings to be arranged with the bidders as well as the name of the evaluation commission's secretary;
- 14) Procedure, venue, date and time of bid opening;
- 15) References made to the provisions of this law and other legal acts in relation to this procurement;
- 16) Conditions for proposing a contract award;
- 17) The right of the bidder to appeal against the procurement process related activities (standstill) and/or the adopted decisions and the procedure thereof;
- 18) The bases for bid rejection;
- 19) Procedure for publishing the announcement about the decision to award the contract
- 20) Other information necessary for preparation, submission, opening and evaluation of the bid as well as other procurement related information.

2. The tender invitation also envisages that the bidder:

1) Submits in the bid a statement verified by himself/herself justifying the eligibility to participate in the procurement and the compliance to qualification criteria specified in the invitation, provided that, in cases and in manner prescribed in this law, the bidder assumes an obligation to submit the documents (information) specified in the invitation justifying the statement.

2) Submits in the bid a statement verified by himself/herself about the absence of abuse of dominant position and collusion

#### **Article 26: Clarification of invitation and amendments therein**

1. The bidder has the right to request a clarification about the invitation at least five calendar days prior to the deadline for submission of bids. The clarification to the inquirer is provided within three calendar days of receiving such request.

2. On the day following the date when the clarification is provided to the inquirer, an announcement on the content of request and of provided clarification is published in the Bulletin, without disclosing the data on the inquirer.

3. A clarification is not issued, if the request is submitted with a violation of the deadline set out in this Article as well as if the request is out of the invitation's scope.

4. Amendments in the invitation can be made at least five calendar days prior to the deadline for submission of bids. In case of an open procedure, an announcement about the amendments made and the conditions for their issuance are published in the Bulletin within three calendar days after the day such amendments are made; in case of a restricted procedure, the amendments are provided to those bidders, who received an invitation.

5. In case of amendments in the invitation for an open procedure, the deadline for submission of bids is calculated from the day of publishing in the Bulletin an announcement about the amendments; in case of a restricted procedure - from the day when the amendments made in the invitation are provided to the bidders. In this case, the bidders must extend the validity period of their bid securities or provide new bid securities.

6. Minutes of the activities carried out under this Article and their results are drafted and attached to the minutes of the procurement procedure.

## **CHAPTER 2: BIDS**

### **Article 27: Submission of bids**

1. The bidder submits the bid following the procedure specified in the invitation. The invitation includes the following items verified by the bidder:

- 1) The statement on compliance of the bidder's data to the requirements specified in the invitation;
- 2) Price proposal;
- 3) Bid security;
- 4) Non-price proposal (technical proposal), if stipulated by the invitation;
- 5) Other documents specified in the invitation.

2. If the bid is submitted in a hard copy format, the bidder's proposals and related documents are put into an envelope, which is glued and sealed (if applicable) by the submitting party. The documents placed into the envelope consist of the original documents and the number of copies indicated in the invitation. The packages of documents are marked with the words "original" and "copy" respectively. The envelope and the documents envisaged in the invitation and prepared by the bidder are signed by the person submitting them or a person authorized by the latter (hereinafter referred to as "agent"). If the bid is submitted by the agent, a document verifying such authority of the latter is included in the bid.

3. On the envelope aforementioned in the paragraph 2 of this Article, in the language of the bid, are indicated:

- 1) The name of Client and the venue (address) of bid submission;
- 2) The code of open procedure;
- 3) The words "do not open until the bid opening meeting";
- 4) The name, location and telephone number of the bidder.

4. The secretary enters the bids into the register in order of receipt by indicating on the envelope the registration number, date and time. At the request of the bidder, a receipt thereof is issued.

5. The bids, which do not satisfy the requirements of this Article, are rejected by the evaluation commission at the bid opening meeting and returned to the submitters unaltered.

6. The bidders can participate in the procurement process as a consortium. In such cases:

- 1) The bid also includes an agreement on joint venture;

2) When evaluating the bid, the unified qualifications of all parties to the agreement on joint venture are taken into account;

3) The bidders bear joint and several liability.

The invitation specifies the requirements for participation in the procurement process as consortium.

#### **Article 28: Validity period of the bid, its withdrawal and amendments therein**

1. The bid is valid until the contract (framework agreement) signature, the withdrawal of the bid by the bidder, the bid rejection or the cancellation of the procurement procedure under this law.

2. The bidder can amend or withdraw the bid until the deadline for the submission of bids.

3. If the bid is submitted in a hard copy format, the notification about changes in the bid is sent in an envelope prepared as stipulated under the Article 27(2) of this law by adding on it the word "amendment". In case of bid withdrawal, the bidder, prior to the bid opening, submits a written notice thereof.

#### **Article 29: Bid security**

1. The bidder provides with the bid a bid security as prescribed in the invitation, and determines the amount of bid security, which cannot be less than two percent of the price offered in the bid. The bidder submits the bid security as a validated unilateral statement - fine. The standard form of the fine is set out by the Authorized Body.

2. The bid security - the penalty - is paid by the bidder, if that bidder:

1) Is announced a selected bidder but will refuse or be deprived of the right to conclude contract;

2) Breaches an obligation assumed under the procurement process leading to the termination of that bidder's further participation in the process;

3) Refrains from further participation in the procurement process after the bid opening.

3. In case of concluding framework agreements, the amount of bid security is equivalent to the procurement base unit.

### **CHAPTER 3: OPENING AND EVALUATION OF BIDS**

#### **Article 30: Opening of bids**

1. The bids are opened at the time indicated in the invitation, at the bid opening meeting. The date and the time of the bid opening shall coincide with the deadline for their submission. The bids for a restricted procedure, upon a written consent of all bidders that received an invitation, can be opened prior to the deadline indicated in the invitation.

2. At the bid opening meeting the following are disclosed:

1) The name of each bidder;

2) Information on preparation and submission of envelopes containing the bids in terms of compliance to the invitation requirements;

3) Information on availability of documents required in the invitation in each of the opened bids;

4) Information on compliance of documents submitted by each bidder to the validity terms specified in the invitation;

5) The price, in letters and numbers, offered by each bidder;

6) Information on withdrawal of or amendments in the bids.

3. After the bid opening, minutes are drafted and attached to the minutes of procurement procedure. The minutes are signed by the members of evaluation commission present at the meeting. The minutes contain:

1) Information on venue, date and time of bid opening;

2) The names and addresses of bidders, who have submitted bids;

3) Data on preparation and submission of envelopes in terms of compliance to the invitation requirements;

4) Data on availability of documents required in the invitation in each of the opened envelopes;

5) Data on compliance of documents submitted by each bidder to the conditions set out in the invitation;

6) The price offered by each bidder;

7) Information on the bidder ranked the first and other bidders ranked in descending order;

8) If the bidding is canceled, the grounds for such cancellation;

9) Information on bid related inquiries and answers provided thereto;

10) The venue, date and time of the commission's next meeting;

11) The names of commission members present at the meeting;

4. If a member of the evaluation commission and(or) a bidder want to express an opinion (special opinion) on bid opening that has not been recorded in the bid opening minutes, it is submitted in writing and attached to the minutes specified under the paragraph 3 of this Article.

5. Bidders and their representatives can be present at the evaluation commission's meetings. Bidders or their representatives can require copies of the minutes of the evaluation commission's meetings, which are provided within one calendar day. The Client shall ensure the protection of the information which the bidders have indicated as confidential and shall bear responsibility stipulated by the Republic of Armenia legislation for damages caused to the bidders as a result of disclosing such information, unless such information is subject to mandatory disclosure under this Law.

6. Immediately after the bid opening meeting, a member of the commission, who has a conflict of interests related to the given procurement procedure, renounces the participation in that procedure; otherwise, the chairperson of the commission dismisses such a member. If the chairperson of the commission has a conflict of interests related to the given procurement procedure then he/she renounces the participation in that procedure and is substituted in that procedure by another member of the commission. Members of the commission sign a statement about the absence of conflict of interests,

7. On the calendar day following the bid opening meeting, a copy of the minutes of the bid opening meeting are provided to the bidders, who or whose representatives did not participate in that meeting.

### **Article 31: Bid evaluation**

1. The bids are evaluated following the procedure specified in the invitation. The bids compliant to the conditions specified in the invitation are rated as satisfactory; otherwise the bids are rated unsatisfactory and rejected.

2. The winning bidder is determined:

1) From the bids rated satisfactory by a method that gives preference to the bid with the least price proposed; or

2) By choosing the bidder, whose price proposal and non-price criteria have scored the highest sum total. When using this method, during the bid evaluation, in addition to the offered price, other non-price criteria measurable in monetary terms are taken into account in cases and following the procedure specified in the invitation. The non-price criteria must be link with the subject-matter of the contract and their relative weighting shall be disclosed in the invitation.

3. If there is an inconsistency in the bid between the amounts in letters and in numbers, then the amount in letters is taken as the basis. If the prices are offered in two or more currencies, they are compared in Armenian Drams at the exchange rate specified in the invitation.

4. In cases specified in the invitation and following the procedure set out therein and in this Law, an electronic auction is arranged.

5. After determining the bidder ranked the first and other bidders ranked in descending order, within the deadline specified in the invitation:

1) The bidder ranked the first submits to the commission documents (information) specified in the invitation justifying the right to participate in procurement and the compliance to qualification criteria set out in the invitation;

2) The commission evaluates the compliance of the documents (information) submitted under the item 1 of this paragraph to the requirements specified in the tender invitation and, in cases and in accordance with the procedure set out in the invitation, evaluates the reasonableness of price and non-price (technical) proposals of that bidder.

6. The bid are rated satisfactory, if the documents specified under the paragraph 5 of this Article satisfy the requirement set out in the invitation. In this case, the bidder is declared a selected bidder.

7. If, as a result of evaluation under the paragraph 6 of this Article, the bid is rated unsatisfactory, the commission requires the bidder ranked next to submit the documents;

8. Based on the bid evaluation results, the minutes of the bid evaluation meeting are drafted and attached to the minutes of the procurement procedure. Members of the evaluation commission present at the meeting sign the minutes.

### **Article 32: Contract performance security**

1. Pursuant to the request for submission of a contract performance security and within five calendar days after receiving such request, the selected bidder must submit the contract security. The selected bidder is awarded the contract, if he/she provides a contract security.

2. The amount of contract performance security shall be no less than five percent and shall not exceed ten percent of the contract price. The selected bidder submits the contract performance security as a validated unilateral statement - fine

3. If the Client requires an advanced payment under the contract, the selected bidder provides an advance payment guarantee in the amount of the advance payment. The contract specifies the repayment procedure for the advance payment.

4. Unless otherwise stipulated in the contract, the contract performance security and (or) advance payment guarantee are returned to the submitter no later than five calendar days after the contract execution completion.

### **Article 33: Signing of procurement contract**

1. The Client signs a contract based on a decision of the evaluation commission.
2. The Client, within two calendar days after the selected bidder was announced, notifies the selected bidder offering to sign a contract and providing a draft contract.
3. If, after receiving the notice on contract award and the draft contract, the selected bidder fails to sign the contract within the deadline set out in the invitation and to submit to the Client a contract performance security as well as an advance payment guarantee, if an advanced payment is stipulated under the contract, then the selected bidder is deprived of the right to sign the contract.
4. Prior to the deadline stipulated in the paragraph 3 of this Article and upon the consent of the parties, the draft contract could be amended, however such amendments cannot lead to the changes in the specifications of procurement subject or to an increase of the price offered by the selected bidder.

### **Article 34: Finalization of results**

1. The meeting on finalization of bidding results, where the latter are announced, is convened on the next calendar day after the contract signing with the selected bidder or on the next business day after it becomes apparent that, as a result of an open procedure, no contract is awarded.
2. Minutes of the meeting on finalization of results are drafted and attached to the minutes of the procurement procedure. Members of the evaluation commission present at the meeting sign the minutes.
3. If a member of the evaluation commission and(or) a bidder want to express an opinion (special opinion) on finalization of bidding results that has not been recorded in the minutes on finalization of results, it is submitted in writing and attached to the minutes specified under the paragraph 2 of this Article.

### **Article 35: Declaring a procurement procedure ineffective**

1. The bidding is declared ineffective, if:
  - 1) None of the bids complies with the invitation conditions;
  - 2) The need for procurement ceased to exist;
  - 3) No bid has been submitted;
  - 4) A contract is not awarded.
2. After the bidding is declared ineffective, the opening of unopened bids is prohibited and they are returned to the bidders.
3. In order to publish in the Bulletin, within five calendar days after the procurement procedure is declared ineffective, the Client furnishes to the Authorized Body an announcement indicating the grounds for declaring the bidding ineffective. No announcement is published for procurements containing state, official or bank secrecy.

### **Article 36: Inadmissibility of negotiations with bidders, detection and prevention of cases related to restriction of economic competition**

1. Negotiations between the evaluation commission, the Client and the bidders are prohibited, except:
  - 1) If there was one bidder, who participated in the open procedure and submitted a bid compliant to the requirements of the invitation, or there was only one bid evaluated – as a result of bid evaluation - as compliant to

the requirements of the invitation. The negotiations under this paragraph can lead only to the offered price reduction and/or changes payment conditions;

2) Other cases specified in this law.

2. The Authorized Body cooperates with other relevant bodies in order to identify cases of infringement of legislation on protection of economic competition in the procurement process, including collusion and abuse of dominant position.

3. If the fact of a bidder's involvement in collusion or abuse of dominant position under the procurement process is proven as stipulated by the Republic of Armenia law, such bidder is included in the list specified under the Article 5, paragraph 1(4) of this law.

#### **Article 37: Calculation of contract price**

1. Calculation of the contract price includes all payments (costs) to be incurred by the selected bidder to secure the contract execution and specified in the bid of the selected bidder, including taxes, duties, transportation and insurance costs, bonus payments and profit.

2. The contract price can be variable, if the contract price varies as a result of changing conditions (factors) stipulated under the contract. Otherwise, the contract price is fixed and the parties must fully execute their contractual obligations in the framework of the contract price.

### **CHAPTER 4: ELECTRONIC AUCTIONS**

#### **Article 38: Conditions for conducting an electronic auction**

1. If specified in the invitation, the award of the contract shall be preceded by an electronic auction.

2. The electronic auction shall be based:

1) Either, solely on prices when the contract is awarded to the lowest price;

2) Or, on prices and/or on non-price criteria (proposals) indicated in the invitation, when the contract is awarded according to criteria which, in addition to the offered price, include also non-price criteria.

#### **Article 39: Limitations for conducting an electronic auction**

1. The Client may not have improper recourse to electronic auction nor may use it in such a way as:

1) To prevent, restrict or distort the competition; or

2) To change the requirements set out in the tender announcement and invitation.

2. The procurement of consulting services cannot be subject of the electronic auctions.

3. When the Client intends to apply an electronic auction, the invitation shall also include the following details:

1) The conditions (features) for conducting an electronic auction, taking into account that the proposal, which is subject to auctioning, is quantifiable and can be expressed in figures or percentages;

2) Any limits on the proposals, which may be submitted, as they result from the specification of procurement subject;

- 3) The information which will be made available to bidders in the course of the electronic auction and the moment when this information will appropriately be made available to them;
- 4) The essential information concerning the electronic auction process;
- 5) The conditions for bid submission by the bidders and, in particular, the minimum differences which will, if applicable, be required when bidding;
- 6) Information concerning the electronic equipment used and the arrangements and technical specifications for connection.

**Article 40: The procedure for conducting an electronic auction**

1. Before proceeding with an electronic auction, the Client shall make a full initial evaluation of the bids in accordance with the criteria set out in the invitation.
2. To all the bidders which have submitted satisfactory bids shall be simultaneously sent a request to submit by electronic means new (revised) prices and/or, by case, new (revised) non-price proposals.
3. The request shall also include information on the starting date and time of the electronic auction and all relevant data concerning individual connection to the electronic equipment being used.
4. The electronic auction may take place in a number of successive rounds.
5. The electronic auction may not start sooner than two calendar days after the date on which the request is sent out.
6. In cases when other features than the prices will be subject of an electronic auction (bidding), the request provided for in paragraph 3 of this Article shall also contain information regarding:
  - 1) The outcome of a full evaluation of the relevant bidder;
  - 2) The mathematical formula to be used in the electronic auction to determine automatic re-rankings on the basis of the new prices and/or on the new non-price proposals submitted. That mathematical formula shall incorporate the weighting of the criteria fixed to determine the winner bid, as indicated in the invitation.
7. Throughout each round of the electronic auction, the Client shall instantaneously (online) communicate to all bidders at least sufficient information to enable them to ascertain their relative ranking at any moment.
8. During the performance of the rounds of electronic auction, the Client shall not disclose the new prices or the new non-price proposals or the identity of the bidders submitting them.

**Article 41: Completion of an electronic auction**

1. The electronic auction shall be completed (closed) by one, or by a combination of the following conditions:
  - 1) At a certain moment set out in the invitation;
  - 2) The number of auction rounds, fixed in the invitation, has been completed;
  - 3) No more new prices and/or new non-price proposals have been submitted. In that event, the Client shall indicate in the invitation to participate in the auction the time, which shall be allowed to elapse after receiving the last submission before closing the electronic auction.
2. The Client shall, following the procedure specified in this law, award the contract on the basis of the results of the electronic auction to the bidder, which submitted the best proposal.

**SECTION 5**

## **PARTICULARITIES OF PROCUREMENT OF CONSULTING SERVICES**

### **Article 42: List of consultants**

1. Unless otherwise stipulated in this law, the procurement of consulting services is done through an open or restricted procedure in accordance with the procedure specified in this law.

2. In the event of procurement of consulting services through an open or a restricted procedure, a prequalification procedure for listing of consultants is arranged in accordance with the procedure stipulated under the Article 21 of this law. Bidders that have passed the prequalification are eligible to participate further in the procurement process.

### **Article 43: Procedure for determining the selected consultant**

1. The selected bidder is determined from the submitted bids by the following selection methods specified in the invitation:

- 1) Evaluated the highest by non-price conditions; or
- 2) Compliant to the minimum non-price conditions and offered the lowest price; or
- 3) A non-price proposal evaluated the highest under the price ceiling;

2. The selected bidder can also be determined by a method of selecting the consultant, whose scores for offered price and experience, staff, proposed mode of service provision and(or) other non-price condition(s) have the highest sum total as rated under the procedure set out in the invitation.

3. The invitation specifies the procedure for selection of consultants, including conditions for applying consultant selection method stipulated under this Article.

### **Article 44: Negotiations**

1. The provisions of draft procurement contract can be negotiated with the selected consultant; however, they cannot result in amending the descriptions of the procurement subject.

2. The negotiations with the consultant selected under the paragraph 1(1) of the Article 43 of this law, who received the highest score for non-price conditions, can result in decreasing the offered price and/or changes in payment conditions.

## **SECTION 6**

### **APPEALING THE PROCUREMENT PROCESS**

#### **Article 45: Right to appeal**

1. Any person has the right to file a complaint against the actions (inaction) and decisions of the Client, the evaluation commission and the Procurement Complaint Review Board.

2. Relations pertaining to procurement, including complaints, are not administrative relations and are regulated by the Republic of Armenia civil legislation.

3. As stipulated in this law, any person has the right:

1) To lodge a complaint against the decisions of the Client and the evaluation commission to the Procurement Complaint Review Board before the conclusion of the contract;

2) To appeal the decisions of the Procurement Complaint Review Board, the Client and the evaluation commission in court.

4. Any person having an interest in concluding a particular transaction and who has been harmed by an infringement of the Client, the evaluation commission or the Procurement Complaint Review Board has the right to sue for damages at the court.

**Article 46: Procurement complaint review board**

1. The Authorized Body shall publish the list of members of the Procurement Complaint Review Board (hereinafter referred to as the Board). The members of the Board must be Armenian citizens. The members of the Board:

- 1) Shall not be convicted for a crime linked to economic activities or against the state service, except cases when such conviction has been lifted or nullified as stipulated by law;
- 2) Shall possess sufficient knowledge of the Republic of Armenia legislation on procurement.

2. The Board is a unit implementing unprejudiced and independent review, which does not have any interests in the outcomes of the given procurement process, and the members of the Board, when implementing their rights and responsibilities, are protected from external influence. The members of the Board shall review the appeals with due care, diligence and in an impartial way. The Board and the members of the Board, when implementing the competences stipulated in this law, are independent from the participants of the procurement process, including the Clients, as well as from the state bodies and local self-governments and officials. When reviewing a complaint, they are neither representatives of any participant in the proceedings nor of the nominating organization and they are only obliged to apply and follow the law.

3. The Board shall include one representative of:

- 1) The public administration bodies envisaged in the Republic of Armenia Constitution and laws;
- 2) The Republic of Armenia urban communities;
- 3) The Republic of Armenia Central Bank;
- 3) Non-Governmental Organizations (Unions) registered in the Republic of Armenia, which have submitted a written request to the Authorized Body.

4. The individuals are appointed as members of the Board for a period of 5 years. The mandate of the Board member can be renewed for a period of up to 5 years in the same way as for the appointment to the Board.

5. The competences of a Board member can be revoked in the following cases:

- 1) Upon request of the Board member;
- 2) Court sentence about legal incapacity or limited legal capacity of the Board member;
- 3) Upon renouncement of Armenian citizenship;
- 4) A legally binding court sentence upon the Board member;
- 5) Death of the Board member;
- 6) Undertaking practice as judge, prosecutor, associate judge or prosecutor;
- 7) Court sentence recognizing the Board member as dead or missing person;
- 8) An infringement by the Board member of his duties. The infringement shall mean:

a. The performance of the Board member's functions in an impartial manner, including one-sided protection of interests of participants in appeal proceedings; or

b. Failure to submit a request to be excluded from the proceedings due to the circumstances which render it impossible for the Board member to fulfill his duties.

#### **Article 47: Operation of the Board**

1. A commission of the Board composed of three people is formed to review an individual procurement complaint received. For each individual case, the members of the Commission are randomly selected by rotation.

2. The chairperson of the Commission must be a qualified lawyer with at least 5 years of professional work experience. The members of the Commission must have tertiary education and at least 3 years of professional work experience.

3. The Commission reviews the complaint and adopts a decision on behalf of the Board according to this law and other legal acts. The decisions of the Commission are adopted by a majority vote of its members; all its members, including the chairperson have one vote. Members of the Board who have a conflict of interest in a specific procedure have to exclude themselves from that procedure; otherwise the chairperson of the Commission has to exclude them. Should the chairperson of the Commission have a conflict of interest in a certain procedure, he or she has to withdraw from the specific procedure and another member of the Board has to take over for this specific procedure. Members of the Commission sign a statement on the absence of the conflict of interests.

4. Unless otherwise stipulated by the Republic of Armenia legislation, the members of the Commission receive allowances.

5. Based on this law and for the purposes of implementing its requirements, the Board approves a procedure for its operation by a majority vote of its members.

#### **Article 48: Procedure for lodging a complaint to the Board**

1. A complaint to the Board shall be lodged in writing, shall be signed and shall contain:

- 1) The name and the address of the applicant;
- 2) The name and the address of the Client;
- 3) The code and the subject matter of the appealed procurement procedure;
- 4) The subject-matter of the dispute and the request of the appellant;
- 5) The factual and legal grounds of the complaint, the evidence;
- 6) Document verifying the payment of appeal fee;
- 6) Other requisite information.

2. If the applicant appeals against the award decision, he or she can only lodge his or her complaint within the standstill period of the Article 9 of this law.

3. If the complaint does not meet the requirements under this paragraph, the Center for Procurement Support has to inform the applicant on behalf of the Board and give him or her a five-day period to correct his or her application.

4. The decision on a complaint is taken following a procedure in which the applicant, the Client and all parties involved have the right to be present at the Board meetings and express their opinions.

5. A written decision on the complaint, including justification for the decision, shall be taken and published no later than twenty calendar days after the receipt of the complaint. The Board decision is legally binding.

6. The Board has the right to adopt the following decisions:

1) Take by way of interlocutory procedure, interim measures with the aim of correcting the alleged infringement or preventing further damage to the interests concerned, including measures to suspend the procurement procedure or the implementation of any decision taken by the Client or the evaluation commission;

2) Set aside individual decisions, including the contract award decision within the standstill period of Art 9, taken by the Client or the evaluation commission in the course of a procurement procedure;

3) Declare an awarded contract ineffective:

A) If the Client has awarded a contract without prior publication of a contract notice according to this law;

b) In case of infringement of Article 9 or Article 49 (3) of this law, if this infringement has deprived the bidder concerned of the opportunity to institute a legal remedy before the conclusion of the contract and if this infringement is combined with the infringement of other provisions of the Republic of Armenia legislation on public procurement and if this latter infringement has affected the chances of the bidder concerned to get the contract.

4) Notwithstanding the provisions of paragraph 3 of this Article, if the Commission considers, after examining all relevant aspects, that overriding reasons of general interest impose the maintaining of the effects of the contract, it will order, instead, alternative sanctions, as follows:

a) The limitation of the contract performance, through the reduction of its execution deadline; and/or

b) The application of a fine to the Client, of a maximum of 10 % of the value of the contract.

5) In all the cases in which the sanction of ineffectiveness provided for in paragraph 6 (3) of this Article cannot have retroactive effect, because the elimination of executed contractual obligations is impossible, the Commission will apply, in addition, the sanction provided for in paragraph 6(4)(a) of this Article.

6) State about the lawfulness or unlawfulness of a procurement procedure of a Client after the conclusion of the contract. That decision shall be the basis for damage claims in court;

7) Decide, if a bidder has to be included in the list of ineligible bidders.

7. If the Board decides in favor of the applicant, the Client is liable for recompensing to the applicant the damage caused and justified in accordance with the established procedure.

8. The oral hearing of complaint is open to the public and an announcement on the complaint is published in the Bulletin within three calendar days after its receipt. In case of complaints lodged against the procurement processes containing state, official or bank secrecy, the announcement is sent to all potential bidders.

9. Any person, whose interests have suffered or can suffer due to actions served as the ground for lodging a complaint are entitled to participate in the review procedure by submitting, prior to the deadline for decision on the complaint, a similar complaint to the procurement complaint review board. The person, who did not participate in the review procedure in accordance with this Article, is deprived of the right to submit to the Board a similar complaint.

10. The decision of the Procurement Complaint Review Board has to be published within five calendar days after its adoption in the Bulletin and has to be sent to the Client, the Authorized Body and the parties involved in the review procedure.

#### **Article 49: Suspension of procurement procedure**

1. The Board shall grant an interim measure required by an applicant as long as it is appropriate and necessary to prevent the pending damage until a final decision on the complaint is made.

2. The Board has to take the probable consequences of the interim measure for all interests likely to be harmed, including the public interest, into account and may decide not to grant such measures where their negative consequences could exceed their benefits. A decision not to grant interim measures shall not prejudice any other claim of the person seeking such measures.

3. The application shall not automatically suspend the contract award procedure; however, until the Board adopts a decision stipulated under the paragraph 1 or 2 of this Article, the Client does not have the right to conclude the contract.

## **SECTION 7**

### **PECULIARITIES OF PROCUREMENT**

#### **Article 50: General peculiarities of procurement for public undertakings**

1. For procurement carried out by public undertakings in the Republic of Armenia:

- 1) Procurement related relations are regulated by procurement procedures adopted by those undertakings;
- 2) Procurement procedures, advertisements of procurement processes, invitations, announcements on signed contracts exceeding the Procurement base unit are published also in the Bulletin;
- 3) Review of procurement is carried out in accordance with the procedure stipulated in the Section 6 of this law.

2. The procurement procedures specified in the paragraph 1 of this Article cannot contradict to the objectives and principles set out in the Article 3 of this law, while in case of public undertakings included in the list approved by the Republic of Armenia Public Services Regulatory Commission they should not contradict also to additional requirements set out by the Public Services Regulatory Commission; the latter carries out monitoring over the implementation of such additional requirements based on the procedure it has set out.

#### **Article 51: Specific exclusions in case of procurement for public undertakings**

1. The provisions of this law are not applicable in cases when a public undertaking intends to procure:

- 1) Products that will be resold or leased to third parties, provided that the undertaking concerned enjoys no special or exclusive right to sell or to lease the subject of such contracts, and other undertakings are free to sell or to lease similar products;
- 2) Goods, services or works for the purpose to perform relevant activities in a third country, under conditions not involving their use within the Republic of Armenia.
- 3) Goods, services or works for the purpose to perform other activities than relevant activities. In cases when the contract is intended to cover several activities and among them at least one is a relevant activity, but it is objectively impossible to determine for which activity the contract is principally intended, the procurement shall be made according with the provisions of this law.

#### **Article 52: Procurement for the Central Bank of the Republic of Armenia**

1. In case of procurement for the Central Bank of the Republic of Armenia:

- 1) The provisions of this law are inapplicable to procurement under the operational expenses of the Central Bank of the Republic of Armenia;

2) The competences reserved to the Republic of Armenia Government and the Authorized Body under this law are implemented by the Board of the Central Bank of the Republic of Armenia;

3) The procedure for disclosing information subject to disclosure pursuant to this law is specified by the Board of the Central Bank of the Republic of Armenia;

4) This law shall not apply to procurements of entities founded by the Central Bank of the Republic of Armenia or with participation of the Central Bank of the Republic of Armenia;

5) In terms of this law:

a. The requirements set out for the Procurement Support Center as well as those specified in the Article 15, paragraph 5 of this law shall not apply;

b. Review of procurement is carried out in accordance with the procedure stipulated in the Section 6 of this law;

c. The Procurement Support Center renders services to the Central Bank of the Republic of Armenia in the cases determined by the decision of the Board of the Central Bank of the Republic of Armenia.

**Article 53: Peculiarities of procurement for state or community non-commercial (non-profit) organizations and entities with over fifty percent of government or community shareholding**

Unless otherwise stipulated by the Republic of Armenia laws, the provisions of this law are inapplicable in case of procurement for state or community non-commercial (non-profit) organizations and entities with over fifty percent of government or community shareholding.

## **SECTION 8**

### **FINAL AND TRANSITIONAL PROVISIONS**

**Article 54: Effectiveness of law**

This law comes into force on January 1, 2011.

**Article 55: Transitional provisions**

1. The provisions of this law do not apply to procurement contracts originated and not terminated prior to the effectiveness of this law as well as to signed and ongoing procurement contracts; while the relations thereof are regulated by legal acts effective at the time of concluding those transactions.

2. The Republic of Armenia "Law on Procurement" AL-160-N, dated December 6, 2004 is regarded as null and void from the moment of the entry of this law into force.

3. The legal acts and legal norms adopted in accordance with or pursuant to the Republic of Armenia "Law on Procurement" AL-160-N, dated December 6, 2004 continue to be effective to the extent that they do not contradict to this law.

4. The provisions of Article 15, paragraph 5 of this law shall come into force on January 1, 2012.

**Article 56: Final provisions**

1. Tender announcements envisaged in this law:

1) In addition to publishing in the Bulletin, are also published by the Client in the printed media until January 1, 2013;

- 2) The Authorized Body shall disseminate (advertise) information on published announcements in the mass media.

**PRESIDENT OF  
THE REPUBLIC OF ARMENIA**

**S. SARGSYAN**