

**The Law of the Republic of Kazakhstan No. 303-III  
“On Government Procurement” of 21 July 2007**

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**Article 1. General Definitions Used in This Law**

- 1) auction step – amount of money, for which reduces the price of the auction item;
- 2) auction commission - a collegial body created by the organizer of the government procurement procedures for government procurement by auction method provided by this Law;
- 3) auction documentation - the documentation provided by the potential supplier to prepare an application for participation in the auction, which contains the requirements for participation application in the auction, the terms and procedure of government procurement by auction method;
- 4) potential supplier — a physical person carrying out business activities, a legal entity (except for state agencies, unless it is established otherwise by laws of the Republic of Kazakhstan), a temporary association of legal entities (consortium) intending to conclude a government procurement contract. The physical person, who is not a subject of business activities, may be a potential supplier in the case stipulated by subparagraph 5) of paragraph 3 of Article 41 of this Law;
- 5) affiliated person of the potential supplier — any physical person or legal entity, which has the right to determine decisions and (or) to exert an influence upon decisions passed by the said potential supplier, in particular in virtue of a deal made in the written form, as well as any physical person or legal entity in relation to which the said potential supplier has such a right;
- 6) uniform goods, work, services — goods, work, services which are not identical, have similar characteristics and consist of similar components, that allows them to perform same functions and to be interchangeable;
- 7) affiliated entities of legal entities, fifty and more per cent of voting shares (share of participation in authorized capital) in which is owned by the state, — legal entities, in which fifty and more per cent of voting shares (share of participation in authorized capital) are directly or indirectly owned by legal entities, fifty and more per cent of voting shares (share of participation in authorized capital) in which is owned by the state. Indirect holding means the holding by each next affiliated entity of fifty and more per cent of voting shares (share of participation in authorized capital) in another legal entity;
- 8) dumping price — a price offered by a participant in the tender in relation to work, services, which is deliberately low in comparison with prices valid in relation to analogous work, services, for the purposes of concluding a government procurement contract;

9) local content – a percentage of labour costs of citizens of the Republic of Kazakhstan engaged in fulfilment of government procurement contracts from the total salary fund under the contract and/or value of share (shares) of Kazakhstan origin, established in goods in accordance with the criteria of sufficient processing or full production by the residents of the Republic of Kazakhstan from the total value of goods under an contract of government procurement;

10) work — activities related to construction, to arrangement of raw material fields, having a material result, as well as other activities recognised as work in accordance with laws of the Republic of Kazakhstan;

11) domestic suppliers of work, services — physical and (or) legal persons that are residents of the Republic of Kazakhstan using not less than ninety-five per cent of local labour resources of the Republic of Kazakhstan when performing work, rendering services;

12) tender commission — a collective body formed by the organiser of government procurement to perform the procedure for conducting of government procurement by the tender method as stipulated by this Law;

13) tender documents — documents presented to a potential supplier to prepare a bid for participation in the tender, which contains terms of and the procedure for conducting of government procurement by the tender method;

14) services — activities directed to satisfaction of needs of the customer which has no material result;

15) residents of the Republic of Kazakhstan – citizens of the Republic of Kazakhstan, in particular those who stay temporarily abroad or who are in the state service abroad, except for citizens who have documents for the right of permanent residence in a foreign state issued in accordance with legislation of this state;

Foreigners and stateless persons who have a document for permanent residence in the Republic of Kazakhstan;

all legal persons organised in accordance with the legislation of the Republic of Kazakhstan with the place of location within its territory, and also their branches and representations with the place of location in the Republic of Kazakhstan and abroad;

diplomatic, trade and other official representations of the Republic of Kazakhstan that are located abroad;

16) resolution — an act which is passed by the authority for external state financial supervision determined by the Budget Code of the Republic of Kazakhstan which confirms results of supervision and comprises decisions binding upon all the subjects of the government procurement system to which it applies;

17) affiliated entities of state enterprises — subsidiary state enterprises;

18) government procurement — purchases made by customers of goods and services essential for their operation, performance of State functions or customer's statutory activity, conducted in accordance with this law and civil legislation of the Republic of Kazakhstan, except for the services purchased from natural persons under employment contracts or from natural persons not involved in entrepreneurial activity, on the base of paid services contracts, in the framework of fulfilment of State tasks and contributions, including contributions to the capital stock of newly established juridical persons.

19) web-portal for government procurement — a state information system which provides for a common point of access to electronic services of government procurement;

20) authorised body for government procurement (henceforth — the authorised body) — a state body performing regulation of the government procurement system;

21) government procurement system — a totality of subjects of the government procurement system and their relations determined by the unity and interconnection, in the process of carrying out by them of activities in the sphere of government procurement;

22) subjects of the government procurement system — physical persons and legal entities carrying out activities in the sphere of government procurement;

23) activities in the sphere of government procurement — elaboration and approval of an annual government procurement plan, organisation and conducting of government procurement, fulfilment of government procurement contracts, rendering of services for preparation and (or) improvement of professional skills of specialists in the sphere of government procurement, consulting, information services to subjects of the government procurement system to be implemented in accordance with this Law, as well as civil legislation of the Republic of Kazakhstan;

24) government procurement contract — a civil law contract concluded between the customer and the supplier in accordance with this Law, as well as civil legislation of the Republic of Kazakhstan, in relation to supply of goods, performance of work, rendering of services to ensure functioning, as well as performance of state functions or statutory activities of the customer;

25) organiser of government procurement — a legal person or structural unit acting on behalf of the legal person formed it which carries out organisation and conducting of government procurement;

26) procedure for organisation and conducting of government procurement — a complex of mutually connected sequential measures to be implemented by the organiser of government procurement, appropriate commission in accordance with this Law, for the purposes of concluding with a potential supplier a government procurement contract;

27) domestic businessmen — potential suppliers who are residents of the Republic of Kazakhstan and who carry out business activity;

28) domestic manufacturers that are potential suppliers (henceforth — domestic manufacturers) — physical and (or) legal persons which are residents of the Republic of Kazakhstan and which produce:

goods entirely manufactured in the Republic of Kazakhstan, in accordance with the customs legislation of the Customs Union and (or) of the Republic of Kazakhstan;

goods exposed to sufficient processing in the Republic of Kazakhstan in accordance with the criteria of sufficient processing, in accordance with the customs legislation of the Customs Union and (or) of the Republic of Kazakhstan;

29) supplier — a physical person carrying out business activities, a legal entity (except for state agencies, unless it is established otherwise by laws of the Republic of Kazakhstan), a temporary association of legal entities (consortium) being a counter agent to the customer in the government procurement contract concluded with it. The physical person, who is not a subject of business activities, may be a supplier in the case stipulated by subparagraph 5) of paragraph 3 of Article 41 of this Law;

30) expert commission — a collective body to be formed by the organiser of government procurement, to be attracted to participate in elaboration of a technical task and (or) technical specification to goods, work, services to be purchased, and (or) to prepare an expert's conclusion

in relation to the consistency of offers of potential suppliers with the technical specification of goods, work, services to be purchased;

31) expert — a physical person determined by the organiser of government procurement, to be attracted to participate in elaboration of a technical task and (or) technical specification to goods, work, services to be purchased, and (or) to prepare an expert's conclusion in relation to the conformity of offers of potential suppliers with the technical specification of goods, work, services to be purchased;

32) customers — state bodies, state agencies, as well as state enterprises, legal entities, fifty and more per cent of voting shares (share of participation in authorized capital) in which is owned by the state, and legal entities affiliated with them conducting purchases of goods, work, services in accordance with this Law, as well as civil legislation of the Republic of Kazakhstan, except for national operating holdings, national holdings, national operating companies, national companies and their affiliated entities;

33) goods — items (things), in particular semi-finished products or raw products in the solid, liquid or gaseous state, electric and thermal power, embodied results of creative intellectual activities, as well as property rights, in which purchase-sale deals may be made in accordance with laws of the Republic of Kazakhstan;

34) presentation — a binding act of the authorised body, body of state financial supervision which is delivered to items of supervision to remove exposed violations of the legislation of the Republic of Kazakhstan concerning government procurement and (or) causes and conditions that lead them, and also to apply measures of responsibility provided for by the laws of the Republic of Kazakhstan to persons committed those violations;

35) conditional price — a price to be calculated with respect to the application of unit weights of the criteria stipulated in the tender documents to the tender price offer of a participant in the tender, and to be used exclusively in evaluation and comparison of tender price offers for the purpose of determining a winner of the tender;

36) electronic auction (hereinafter - the auction) - the way of electronic government procurement, in which goods, works and services, which being purchased by customer, are complied with the auction documentation and potential supplier who offered the lowest price for them, which is determined in the process of its lowering, meets the qualification requirements;

37) electronic document - a document in which information is provided in electronic form and authenticated by digital signature;

38) electronic government procurement — government procurement which is carried out with the use of information systems and electronic information resources;

39) common operator in the sphere of electronic government procurement — a legal person which is formed under a decision of the Government of the Republic of Kazakhstan the sole holder of shares (participatory interest) in which is the state or a national holding, which performs implementation of the single technical policy in the sphere of electronic government procurement.

## **Article 2. The Legislation of the Republic of Kazakhstan on Government procurement**

1. The legislation of the Republic of Kazakhstan on government procurement is based on the Constitution of the Republic of Kazakhstan and consists of rules of the Civil Code

of the Republic of Kazakhstan, this Law and other regulatory legal acts of the Republic of Kazakhstan.

2. Where an international contract ratified by the Republic of Kazakhstan establishes other rules than those, which are stipulated by this Law, then rules of the international contract shall be applied.

### **Article 3. Principles of Legal Regulation of Government procurement**

The legislation of the Republic of Kazakhstan concerning government procurement shall be based on the principles of:

- 1) optimal and effective expenditure of cash assets used for government procurement;
- 2) giving to potential suppliers of equal possibilities to participate in the procedure for conducting of government procurement, except for the cases stipulated by this Law;
- 3) fair competition among potential suppliers;
- 4) publicity and transparency of the process of government procurement;
- 5) support of domestic businessmen.

**Article 4. Government procurement Conducted Without Application of the Rules of This Law Regulating Selection of a Supplier and Conclusion of a Government procurement Contract with It**

1. Government procurement shall be conducted without application of the rules of this Law regulating selection of a supplier and conclusion of a government procurement contract with it in cases of:

1) purchases of goods, work, services, where the total annual amount stipulated by the annual government procurement plan does not exceed two thousand fold amount of the monthly assessment index established by the law concerning the republic's budget for the appropriate financial year;

2) purchases of goods, work, services at prices, tariffs, charges and payments established by the legislation of the Republic of Kazakhstan;

3) purchases to perform operative-search activities, as well as investigation actions by bodies authorised to conduct them in accordance with the legislation of Republic of Kazakhstan:

of services of persons expressed the consent to render confidential assistance to bodies conducting operative-search activities;

of service premises, transport and other technical means, property;

of goods, work, services to form secret organisations;

of services of officials and specialists having necessary scientific-technical or other special knowledge;

4) purchases of the right of nature use;

5) purchases of goods being a raw resource for strategically important productions, which are not mined in the territory of the Republic of Kazakhstan and purchased abroad, according to the list approved by the Government of the Republic of Kazakhstan;

6) purchases by state enterprises, legal entities, fifty and more per cent of voting shares (share of participation in authorized capital) in which is owned by the state, and legal entities affiliated with them, of goods for the purposes of their further processing, according to the list approved by the Government of the Republic of Kazakhstan;

7) purchases of goods, services related to representative expenses;

8) purchases of materials of exhibitions, seminars, conferences, meetings, forums, symposia, training, as well as payment for participation in these events;

9) purchase of periodical printed editions on paper and (or) electronic carriers, services associated with placement of information in foreign mass media, and also services related to providing of information placed on Internet resources, sound books published on various magnetic carriers, books published with the raised dot type, typhloequipment to serve disabled with disorders of the sight;

9-1) purchases of services for information layout in the foreign mass media, as well as services for the information posted on the Internet resources;

10) purchases of services for training, re-training and improvement of professional skills of employees abroad;

11) purchases of services of rating agencies, financial services, in field of services provision for crediting wages to the accounts of beneficiaries (individuals), if an individual determined credit (banking) organization by himself, as well as in field of operations in cash of individuals;

12) purchases of services of specialised libraries;

13) purchases of goods for further transfer of them in leases where leasing activities are carried out;

14) purchases of securities, share in the authorised capital of legal entities;

15) purchases of services stipulated by the legislation of the Republic of Kazakhstan on elections;

16) purchases of services of manufacture of state and departmental awards and documents to them, of a breast symbol of a deputy of the Parliament of the Republic of Kazakhstan and a document to it, state verification marks, passports (including official and diplomatic), identity cards of citizens of the Republic of Kazakhstan, a residence permit of the foreigner in the Republic of Kazakhstan, an identity card of the person without nationality, certificates of registration of acts of the civil status, as well as purchases from suppliers determined by the Government of the Republic of Kazakhstan of printed products requiring a special protection degree, according to the list approved by the Government of the Republic of Kazakhstan;

17) purchases of goods, work, services to be conducted in accordance with international contracts of the Republic of Kazakhstan, according to the list approved by the Government of the Republic of Kazakhstan, as well as within the framework of implementation of investment projects financed by international organisations, in which the Republic of Kazakhstan is a member;

18) excluded in accordance with the Law of 05.07.12 № 30-V.

19) purchases of goods, work, services related to the use of money of grants given to the Government of the Republic of Kazakhstan on the unpaid base by states, governments of states, international and state organisations, foreign non-government public organisations and funds, whose activities have the charity and international nature, as well as money allocated for co-financing of these grants in cases if contracts stipulate other procedures for purchases of goods, work, services;

20) purchases of services related to the state educational order for individuals (if individual has chosen organization of education by himself);

21) Excluded in accordance with the Law of 28.06.12 № 22-V

21-1) procurement of services related to obligatory medical examination of workers engaged at hard work, work with harmful (especially harmful) and (or) dangerous working conditions, and also at work related to high danger, machinery and mechanisms;

21-2) procurement of medical preparations to render the guaranteed volume of unpaid medical aid, treatment and prevention of epidemiological diseases;

22) purchases of services for treatment of citizens of the Republic of Kazakhstan abroad, as well as services for their transportation and accompanying;

23) purchases of services related to incurring of travel expenses;

24) purchases of goods being cultural values, in particular museum items and museum collections, as well as rare and valuable editions, manuscripts, archives documents, including copies, which have a historic, art or another cultural importance, which are taken by the state under protection as monuments of history and culture and designated for re-filling of the museum, library, archives stock, cinema, photographic stock and other analogous stock;

25) purchases of goods, services being intellectual property items from a person having exclusive rights in relation to goods, services to be purchased;

26) purchases of regulated goods, work, services from entities of natural monopoly;

27) purchases of goods, work, services from an entity of state monopoly in relation to the principle scope of its activities;

28) purchases of goods, work, services to localize and (or) to liquidate consequences of emergency situations, for measures carried out in epizootic pestholes and adverse points for the purposes of liquidating and preventing the propagation of particularly dangerous animal and bird diseases, to liquidated accidents at electric energy items, communication systems of life support, items of railway, air, motor road, marine transport, purification facilities, petroleum pipelines, gas pipelines, as well as in occurrence of breakdowns, failure of communications, mechanisms, sets, spare parts and materials on the way, which require immediate repair;

29) purchases of goods, work, services by institutions of the Republic of Kazakhstan located abroad, as well as by separated subdivisions of customers, acting on their behalf, to support their activities in the territory of a foreign state;

30) purchases of services of presentation of information by international information organisations;

31) purchase by a state body of goods, work, services from joint-stock companies and business partnerships one hundred per cent of voting shares (stakes) in which is held by the state and in relation to which the said body exercises the rights of possession and use, according to a list that is determined by the Government of the Republic of Kazakhstan, and also from state enterprises in relation to which the said state body exercises functions of an administration body, in respect of the basic scope of activity of such state enterprises;

31-1) purchases of goods, works and services from state enterprises by state authority, for which it administers in accordance with the legislation of the Republic of Kazakhstan on state property, on activities of state enterprises established by legislation of the Republic of Kazakhstan;

32) purchases of goods, work, services necessary to carry out monetary activities, as well as activities for management of the National Fund of the Republic of Kazakhstan;

33) purchases of goods, work, services necessary to ensure guarding and security of the President of the Republic of Kazakhstan, other guarded persons and items designated for

staying of guarded persons, as well as services for formation of video archives and information services to activities of the President of the Republic of Kazakhstan;

33-1) purchases of goods, works and services required to support the activities of the President of the Republic of Kazakhstan and other protected persons, maintenance, servicing and operation of state residences, vehicles and aircraft, designed to serve the President of the Republic of Kazakhstan and other protected persons, as well as purchases of goods, works and services required for events involving the President of the Republic of Kazakhstan and other protected persons, in accordance with the legislation of the Republic of Kazakhstan;

34) purchases of consulting and law services for defence and representation of interests of the state or customers at international commercial arbitration or foreign judicial bodies;

35) purchases of services of property trust management from a person determined by the legislation of the Republic of Kazakhstan;

36) purchases of goods, work, services from a person determined by laws of the Republic of Kazakhstan;

37) payment of remuneration to members of the board of directors of joint-stock companies, to members of the supervisory council of limited and additional liability partnerships;

38) purchases by a specialised organisation (agent) of foodstuffs from home producers of that produce, as well as services of their storage, processing, carriage. The list of specialised organisations (agents) shall be approved by the Government of the Republic of Kazakhstan;

39) purchases of services of processing of data of statistical monitoring;

40) purchases of property (assets) sold at bidding (auctions):

by law enforcement officers in accordance with the legislation of the Republic of Kazakhstan concerning executive proceedings;

conducted in accordance with the legislation of the Republic of Kazakhstan concerning bankruptcy;

conducted in accordance with the land legislation of the Republic of Kazakhstan; in case of privatisation of state property;

41) purchases of services rendered by advocates to persons, who are released from payment for it in accordance with laws of the Republic of Kazakhstan;

42) purchases of goods, work, services manufactured, performed, rendered by state enterprises of corrective labour institutions. The list and volumes of goods, work, services, as well as the list of state enterprises of corrective labour institutions, from which such goods, work, services are purchased, shall be approved by the Government of the Republic of Kazakhstan;

43) purchases of goods, work and services of military and dual designation (application), being in the state defence order, from domestic manufacturers and domestic suppliers of work, services and (or) authorised organisations determined by the Government of the Republic of Kazakhstan;

44) is deleted in accordance with the Law of RK dated 29.12.09, № 233-IV;

45) is deleted in accordance with the Law of RK dated 20.11.08, № 87-IV;

46) procurement of electric power;

47) is deleted in accordance with the Law of RK dated 20.11.08, № 87-IV;

48) purchases of natural gas, uranium and its compounds by legal entities, fifty and more per cent of voting shares (share of participation in authorized capital) in which is owned by the state, and legal entities affiliated with them;

49) procurement of goods for the state material reserve to exert the regulating influence upon the market;

50) procurement of services relating to storage of material values of the mobilization reserve at organisations that fulfil mobilization orders;

51) procurement of aircraft fuel by entities of state and civil aviation of the Republic of Kazakhstan directly from domestic petroleum processing enterprises;

52) procurement by domestic manufacturers that are performers of the state defence order of goods, work, services associated with manufacture of products that are in the state defence order determined by the Law of the Republic of Kazakhstan On State Defence Order’;

53) procurement of goods, work, services by state enterprises, legal persons fifty and more per cent of voting shares (share of participation in authorized capital) in which is held by the state, and legal persons affiliated with them that are determined as suppliers in respect of state purchases which are necessary to fulfil their own contract obligations established within the framework of concluded government procurement contracts;

54) procurement of services relating to training of cosmonauts and organisation of conducting flights of cosmonauts to space;

55) purchase of goods by state enterprises, legal persons fifty and more per cent of voting shares (share of participation in authorized capital) in which is held by the state, and legal persons affiliated with them under long-term five-year contracts from domestic manufacturers which provide for manufacture of trial industrial samples and organisation of series production of goods in the Republic of Kazakhstan according to technical conditions of customers where procurement of such goods within the last three years was performed beyond the boundaries of the Republic of Kazakhstan;

56) procurement of fuel-lubricant materials for the state material reserve from domestic manufacturers;

57) procurement of services related to repair of aircraft at specialised aircraft repair enterprises;

58) procurement of goods, work, services at the expense of money allocated from the reserve of the Government of the Republic of Kazakhstan for emergency expenses where situations occur which threaten political, economic and social stability of the Republic of Kazakhstan or its administrative territorial unit;

59) procurement of work, services relating to the performance of scientific researches, that are carried out based on funds of grant, target program financing at the expense of the state budget.

60) procurement of similar goods, works and services, is the annual volume of such similar goods, works and services in monetary terms is not more than hundred monthly calculation indices established for the respective fiscal year by the law on the national budget;

61) placement of an order to visit the zoo, theatre, cinema, concert, circus, museums, exhibitions and sporting events;

62) procurement of services for supervision of the development of project documentation of capital construction projects, supervision of construction, reconstruction and overhaul of capital construction respective authors;

63) procurement of services for technical and architectural supervision of works to preserve a cultural heritage (monuments of history and culture) of people of the Republic of Kazakhstan;

64) procurement of goods and services by the theatre for stage performances and public performance of works of art.

2. In the cases stipulated by paragraph 1 of this Article government procurement shall be conducted in accordance with the civil legislation of the Republic of Kazakhstan in compliance with the government procurement legal regulation principle stipulated by subparagraphs 1) and 5) of Article 3 of this Law.

3. The provisions of subparagraphs 5), 6), 9-1), 13), 21-1), 21-2), 33-1), 37) 38) 48) 53) 55) and 64) of paragraph 1 shall not apply to government procurement by state authorities and state agencies.

#### Article 5. The Process of Government procurement

1. The process of government procurement shall comprise as follows:

- 1) is deleted in accordance with the Law of RK dated 20.11.08, № 87-IV;
- 2) elaboration and approval of an annual government procurement plan;
- 3) selection of a supplier and conclusion of a government procurement contract

with it;

- 4) fulfilment of the government procurement contract.

The provision of this paragraph shall not apply to government procurement the conduction of which is stipulated in Article 41-1 of this Law.

2. is deleted in accordance with the Law of RK dated 20.11.08, № 87-IV.

3. On the basis of appropriate budget (business plan, estimate of income and expenses) the customer shall elaborate and approve an annual government procurement plan in accordance with the procedure and in the form determined by the government procurement rules.

The annual government procurement plan shall be approved by the customer within ten working days from the day of approval of the appropriate budget (business plan, estimate of income and expenses), and it must contain the following information:

- 1) the nomenclature of goods, work, services, including amounts allocated to conduct government procurement;
- 2) the method, except for the cases stipulated by Article 4 of this Law, and dates of conducting of government procurement;
- 3) planned dates and place of delivery of goods, performance of work, rendering of services;
- 4) planned terms for supply of goods, performance of work, rendering of services in accordance with the schedule and by years within allocated and planned amounts for each financial year in cases provided for by Article 37 of this Law.

Information on government procurement as specified in subparagraphs 1), 2), 3) and 4) of this paragraph, and also in the cases stipulated by subparagraph 2-1) of the second part of paragraph 2 of Article 79 of the Budget Code of the Republic of Kazakhstan, shall be approved by the customer in the annual plan of government procurement. The annual plan of government procurement shall be approved by the customer within ten working days from the date of implementing paragraph 2 of Article 154 of the Budget Code of the Republic of Kazakhstan.

4. Within five working days from the day of approval of the annual government procurement plan the customer shall either deliver or present it to the authorised body.

Customers shall have the right to introduce amendments and (or) additions to annual government procurement plans. Customer within five working days from the date of the decision on making amendments and (or) in the annual procurement plan shall publish the

amendments on the web portal of government procurement except for information constituting state secrets in accordance with the laws of the Republic Kazakhstan on state secrets, and (or) information containing inside information of limited distribution, defined by the Government of the Republic of Kazakhstan, which shall be submitted to the authorized body without the use of the web portal of government procurement.

6. Information on state purchases to be conducted in accordance with subparagraphs 3), 28), 32) and 33-1 of paragraph 1 of Article 4 of this Law shall not be entered in the annual government procurement plan.

7. The decision on conducting of government procurement shall be passed by the customer on the base of the annual government procurement plan approved or determined more precisely.

Customers shall have the right to pass a decision on conducting of government procurement before the approval of the appropriate budget only in cases stipulated by the government procurement rules.

8. It shall not be allowed to purchase goods, work, services not stipulated by the annual government procurement plan approved (annual government procurement plan determined more precisely), except for subparagraphs 3), 28), 32) and 33-1 of paragraph 1 of article 4 of this Law.

9. Selection of a supplier of goods, work, services, as well as conclusion of a government procurement contract with it shall be made in accordance with the procedure determined by this Law, except for the cases stipulated by paragraph 1 of Article 4 of this Law.

For the purposes of ensuring of smooth activities of the customer the latter shall have the right to prolong for the first quarter of the next year the government procurement contract in relation to goods, work, services of daily or weekly needs under the list approved by the Government of the Republic of Kazakhstan, in the volume not exceeding the volume of state purchases of such goods, work, services under the said contract in the first quarter of the current year.

10. The customer shall have the right to refuse conducting of government procurement in cases of:

1) reduction of expenses for purchases of goods, work, services stipulated in the annual government procurement plan approved (annual government procurement plan determined more precisely), in accordance with the legislation of the Republic of Kazakhstan;

2) introduction of amendments and additions to the strategic plan of the state body, budget (business plan, estimate of income and expenses) of the customer, which exclude the necessity of purchases of goods, work, services as stipulated in the annual government procurement plan approved (annual government procurement plan determined more precisely), in accordance with the legislation of the Republic of Kazakhstan.

Within five working days from the day of passing by the customer of such a decision, the customer or organiser of government procurement shall be obliged:

1) to inform persons participating in the state purchase on the passed decision;  
2) to refund placed collateral of bids for participation in the tender and (or) collateral of fulfilment of government procurement contracts.

#### Article 6. Restrictions Related to Participation in Government procurement

1. The potential supplier shall have no right to participate in government procurement conducted, where:

1) close relatives, husband (wife) or persons in connection with chief executives of the said potential supplier and (or) authorised representative of the said potential supplier have the right to pass a decision concerning selection of a supplier, or they are representatives of the customer or organiser of government procurement in state purchases being conducted;

2) the potential supplier and (or) its employee rendered to the customer or organiser of government procurement expert, consulting and (or) other services for preparation of state purchases being conducted, participated as a general designer or sub-designer in elaboration of the feasibility study and (or) project (project-estimate) documents for construction of the item being a subject-matter of state purchases being conducted, except for participation of the developer of the feasibility study in the state purchase of project elaboration (project-estimate) documents;

3) chief executives of the potential supplier, which intends to participate in government procurement, had relations connected with control, organisation, participation in authorised capital of legal entities entered in the register of unfair participants in government procurement;

3-1) chief executives of the potential supplier, which intends to participate in government procurement is an individual engaged in business activities included in the register of unfair participants of government procurement;

3-2) a potential supplier, who is an individual engaged in business activities, applying for participation in government procurement, is the chief executives of a potential supplier, who is included in the register of unfair participants of government procurement;

4) the potential supplier is entered in the register of unfair participants in government procurement;

5) the arrest is applied to property of the potential supplier and (or) sub-contractor (co-performer) attracted by it, the balance cost of which exceeds ten per cent of the value of appropriate main assets;

5-1) the potential supplier and (or) subcontractor (co-performer) attracted by him have non-fulfilled liabilities under executive documents and they are entered by the authorised body in the sphere of ensuring of the implementation of executive documents in the appropriate register of debtors;

6) financial-business activities of the potential supplier and (or) sub-contractor (co-performer) attracted by it are suspended in accordance with the legislation of the Republic of Kazakhstan or legislation of the state of the non-resident potential supplier of the Republic of Kazakhstan.

7) potential supplier and (or) his subcontractor (co executor), and (or) their chief executor, the founders (shareholders) are included in the list of organizations and persons connected with the financing of terrorism and extremism in accordance with the laws of the Republic of Kazakhstan.

2. The potential supplier and affiliated person of the potential supplier shall have no right to participate in the same tender (lot).

3. The customer, in whose interests the state purchase is being conducted, shall have no right to participate in such a purchase as a potential supplier.

4. The potential supplier or the supplier committed violation of requirements of this Article shall be entered in the register of unfair participants in government procurement in accordance with the procedure established by this Law.

Article 7. The Procedure for Determination of an Organiser of Government procurement

1. To perform procedures for organisation and conducting of government procurement the customer shall determine an organiser of government procurement, as well as an official of the customer representing interests of the latter in the coming state purchase, except for the cases where the customer and organiser of government procurement are the same person.

2. The customer itself directly or duly represented by its structural subdivision in charge for performance of the procedures for organisation and conducting of government procurement may act as an organiser of government procurement.

The customer shall have the right to determine a customer's subordinated state agency or a customer's affiliated entity as an organiser of government procurement.

3. In the cases stipulated by the second part of paragraph 2 of this Article the organiser of government procurement must meet the following requirements:

1) it must have a structural subdivision in charge for performance of the procedures for organisation and conducting of government procurement;

2) the profile of activities of the organiser of government procurement must match the specifics of goods, work, services to be purchased for the customer.

4. The budget program administrator shall have the right to act as an organiser of government procurement for a state agency subordinated to it, legal entity, in relation to which it acts as a state administration body, or an entity affiliated with the legal entity, in relation to which the budget program administrator acts as a state administration body.

The state enterprise shall have the right to act as an organiser of government procurement for entities affiliated with it.

The legal entity, fifty and more per cent of voting shares (share of participation in authorized capital) in which is owned by the state, shall have the right to act as an organiser of government procurement for entities affiliated with it.

5. For the purposes of conducting of common government procurement:

1) the Government of the Republic of Kazakhstan shall have the right to determine for several customers a common organiser of government procurement out of them;

2) the akim of the appropriate administrative-territorial unit shall have the right to determine for several customers a common organiser of government procurement out of them;

3) the customer shall have the right to act as a common organiser of government procurement for several state agencies subordinated to the customer or entities affiliated with it;

4) for several state agencies subordinated to the customer or entities affiliated with it the customer shall have the right to determine a common organiser of government procurement out of them;

This paragraph does not apply to electronic government procurement by auction.

6. Determination of an organiser of government procurement (common organiser of government procurement) in the cases stipulated by subparagraphs 1), 2) and 4) of paragraph 5 of this Article shall be allowed provided that the requirements established by paragraph 3 of this Article are observed.

7. The organiser of government procurement shall be obliged to determine an official representing it in relationships with the customer, potential suppliers, appropriate commissions and expert, except for cases where the customer and the organiser of government procurement are the same person. The representative of the organiser of government procurement must be determined out of the employees of the structural subdivision in charge for performance of the procedures for organisation and conducting of government procurement.

## Article 8. Qualification Requirements Made to a Potential Supplier

1. General and special qualification requirements shall be made to potential suppliers.
2. The potential supplier must meet the general qualification requirements as follows:
  - 1) it must have the legal capacity (for legal entities), civil capacity (for physical persons);
  - 2) it must be solvent, have no tax arrears for a period exceeding three months;
  - 3) it must not be liable to the bankruptcy or liquidation procedure.

The requirements of subparagraphs 2) of this paragraph shall not apply to potential suppliers who undergo the rehabilitation procedures as well as to potential suppliers that are participants of state support measures for which the use of accelerated rehabilitation procedure is mandatory.

3. The potential supplier of goods, work, services, except for the general qualification requirements established by paragraph 2 of this Article, must be consistent with the special qualification requirement in respect of holding material, financial and labour resources which are sufficient to fulfil obligations under the government procurement contract.

4. In confirmation of its consistency with the qualification requirements established by this Article the potential supplier shall present to the organiser of government procurement appropriate documents stipulated by the government procurement rules.

5. In confirmation of its consistency with the qualification requirements established by this Article the non-resident potential supplier of the Republic of Kazakhstan shall present the same documents like residents of the Republic of Kazakhstan or documents containing analogous information on the qualification of the non-resident potential supplier of the Republic of Kazakhstan.

6. The potential supplier shall have the right to confirm the consistency with the general qualification requirements by presentation of one of the following documents:

- 1) a document confirming that an international rating organisation gave the potential supplier a rating;
- 2) an excerpt from a stock exchange that the potential supplier is officially listed at the exchange;
- 3) is deleted in accordance with the Law of RK dated 20.02.09, № 138-IV;

The legal capability of the potential supplier carrying out types of activity liable to licensing shall be confirmed by confirmed by means of state information system in accordance with the laws of the Republic of Kazakhstan on Informatization.

In case of absence of information in state information system the potential supplier presents the notarized copy of a license issued in accordance with the laws of the Republic of Kazakhstan on licensing.

7. The qualification requirements established by paragraphs 2 and 3 of this Article shall also apply to physical persons and legal entities which the potential supplier plans to attract as subcontractors for performance of work or co-performers to render services that are a subject-matter of government procurement conducted.

The potential supplier that plans to attract subcontractors (co-performers) of work or services must submit to the organiser of government procurement documents confirming the consistency of attracted subcontractors (co-performers) of work or services with the qualification requirements established by paragraphs 2 and 3 of this Article.

Maximal volumes of work and services which may be transferred to subcontractors (co-performers) to perform work or to render services shall be established by the rules of conducting of government procurement.

8. The potential supplier shall have the right to confirm the consistency with the general qualification requirement to solvency by furnishing of collateral of fulfilment of the contract in the form of a bank guarantee of one or several resident banks of the Republic of Kazakhstan in the volume equal to one hundred per cent of the amount of the state purchase being conducted:

1) together with the bid for participation in the tender in case of conducting of government procurement by the tender. Collateral of fulfilment of the government procurement contract shall be furnished by the potential supplier for the period established in the tender documents for complete fulfilment of obligations under the government procurement contract;

2) on the stage of determination of its consistency with the qualification requirements where government procurement is conducted by the one source method for a period sufficient for the complete fulfilment of obligations under the government procurement contract.

9. The qualification requirements established by paragraphs 2 and 3 of this Article shall not cover the cases of conducting of government procurement as stipulated by paragraph 1 of Article 4, Articles 30, 31, subparagraph 4) of Article 32 and 36 of this Law.

10. It shall not be allowed to establish qualification requirements not stipulated by paragraphs 2 and 3 of this Article, except for conducting of government procurement with the application of the particular and special procedures for conducting of government procurement by the tender as stipulated by Articles 41 and 42 of this Law.

#### Article 9. Bases for Recognition of a Potential Supplier as Inconsistent with the Qualification Requirements

1. The potential supplier must be recognised as inconsistent with the qualification requirements on one of the bases as follows:

1) the non-presentation or presentation of the improperly formulated document (documents) to confirm the consistency of the potential supplier and (or) sub-contractor (co-performer) of work or services to be attracted by it with the qualification requirements;

2) the establishment of the fact of the inconsistency with the qualification requirements on the base of information contained in the documents presented by the potential supplier to confirm its consistency, as well as consistency of the sub-contractor (co-performer) of work of services to be attracted by it with the qualification requirements;

3) the establishment of the fact of the presentation of unreliable information on the qualification requirements.

2. It shall not be allowed to recognise the potential supplier and (or) sub-contractor (co-performer) of work or services to be attracted by it as inconsistent with the qualification requirements on bases, which are not stipulated by paragraph 1 of this Article.

#### Article 10. Consequences of Presentation by a Potential Supplier of Unreliable Information on the Qualification Requirements

1. Potential suppliers presented unreliable information on the qualification requirements shall be entered in the register of unfair participants in government procurement in accordance with the procedure established by this Law.

2. Reliability of information on the qualification requirements presented by the potential supplier may be established by the customer, organiser of government procurement, authorised body or bodies of state financial control on any stage of conducting of government procurement.

3. The persons established the fact that the potential supplier has presented unreliable information on the qualification requirements shall be obliged:

1) not later than in three working days from the day of establishment of such a fact, to notify the customer and authorised body concerning it with attachment to the notice of copy documents confirming the said facts;

2) not later than in five working days from the day of establishment of such a fact, to bring a claim to the court concerning recognition of the potential supplier, which presented unreliable information on the qualification requirements, as an unfair participant in government procurement.

The requirement of subparagraph 2) of this paragraph shall not apply to the Accounting Committee for Supervision of Fulfilment of the Republic's Budget and auditing commissions of the provinces, Republican significance cities, the capital, except for the cases where they act as customers (organisers) of government procurement.

#### Article 11. Registers to Be Formed in the Sphere of Government procurement

1. The authorised body shall perform forming and maintaining the following general republic's registers in the sphere of government procurement (henceforth — the registers):

- 1) of customers;
- 2) of government procurement contracts;
- 3) of unfair participants in government procurement.

2. The register of customers shall constitute a list of legal entities obliged to conduct purchases of goods, work, services necessary for them to support the functioning, as well as performance of state functions or statutory activities in accordance with this Law, as well as civil legislation of the Republic of Kazakhstan.

3. The register of government procurement contracts shall constitute a list of government procurement contracts concluded by customers in the appropriate financial year, which contains information on the subject-matter, quantitative and value indicators of the government procurement contract, on results of fulfilment by the parties of the contracted obligations.

Government procurement contracts containing information on state secrets and other information protected by law shall be entered in a certain register of government procurement contracts, the procedure for maintenance of which is determined by the authorised body in coordination with the authorised body for protection of state secrets. Access to such information shall be made in accordance with the legislation of the Republic of Kazakhstan concerning state secrets.

Information on contracts concluded on results of state purchases as stipulated by subparagraphs 3), 23) of paragraph 1 of Article 4 of this Law shall not be entered in the register of government procurement contracts.

4. The register of unfair participants in government procurement shall constitute a list of:

- 1) potential suppliers presented unreliable information on the qualification requirements;
- 2) potential suppliers committed violation of requirements of Article 6 of this Law;
- 3) potential suppliers avoided conclusion of a government procurement contract;
- 4) suppliers which did not fulfil or fulfilled improperly their obligations under government procurement contracts concluded with them.

The register of unfair participants in government procurement shall be formed on the base of the court decision entered in legal force.

Potential suppliers entered in the register of unfair participants in government procurement on the base stipulated by this subparagraph shall not be admitted to participate in government procurement within twenty four months from the day of entry in legal force of the court decision concerning recognition of them as unfair participants in government procurement. In the case stipulated by subparagraph 2) of paragraph 2) of Article 38 of this Law the government procurement contract may be concluded with the potential supplier entered in the register of unfair participants in state purchases.

Information contained in the register of unfair participants in government procurement shall be excluded from the said register not later than in one working day from the day of the end of the term established by this Law.

The decision concerning the entry of the potential supplier or the supplier in the register of unfair participants in government procurement may be appealed by them in accordance with the judicial procedure.

The customer in cases provided for by subparagraphs 2) and 5) of this paragraph shall be obliged not later than in ten working days from the day the customer became aware of the fact that the potential supplier violated the legislation of the Republic of Kazakhstan concerning government procurement, to deliver to the authorised body information on such a potential supplier and bring a claim to the court concerning recognition of such a potential supplier as an unfair participant in government procurement.

5. Information contained in the registers, except for information constituting state secrets and another law protected secret, shall be placed on the web-portal for government procurement, and it must be available for concerned persons to be acquainted with free of charge.

## Article 12. Methods of Conducting of Government procurement

1. Government procurement, except for the cases stipulated by paragraph 1 of Article 4 of this Law, shall be conducted by one of the following methods:

- 1) tender. Tender may be conducted with the use of two-stage procedures;
- 2) price quotation requests;
- 3) from one source;
- 4) at auction;
- 5) through commodity exchanges.

2. The method of conducting of government procurement shall be selected by the customer in accordance with this Law without coordination with the authorised body.

3. The customer shall have the right to determine the method of conducting of government procurement basing on yearly volumes of goods, work, services necessary to

support activities of its branch (representative office) provided that such government procurement is conducted on behalf of the customer directly by the customer's branch (representative office).

4. Government procurement conducted by the methods stipulated by subparagraphs 1) and 3) of paragraph 1 of this Article may be implemented by electronic government procurement in accordance with the procedure determined by the Government of the Republic of Kazakhstan.

5. Government procurement which is carried out by the method provided for by subparagraph 2) of paragraph 1 of this Article shall be conducted by electronic government procurement in accordance with the procedure determined by the Government of the Republic of Kazakhstan.

6. is abolished from 1 July 2012 in accordance with Article 47-1 of the Law.

7. Government procurement by the means provided in subparagraphs 1) and 4) of paragraph 1 of this Article shall be conducted by electronic government procurement in the manner specified by rules on electronic government procurement. This requirement shall not apply to the government procurement by the way of tender in accordance with Articles 41 and 42 of this Law.

## **CHAPTER 2. STATE REGULATION OF THE GOVERNMENT PROCUREMENT SYSTEM**

Article 13. The Scope of the Government of the Republic of Kazakhstan in the Sphere of Government procurement

The Government of the Republic of Kazakhstan shall:

- 1) elaborate guidelines of the state policy in the sphere of government procurement;
- 2) is deleted in accordance with the Law of RK dated 20.11.08, № 87-IV;
- 3) approve a list of goods, work, services of daily and weekly needs to be purchased by customers to support smooth activities;
- 4) approve lists of stock and commodity exchanges, necessary to apply rules of this Law, as well as establish requirements to the form and contents of the documents stipulated by paragraph 6 of Article 8 of this Law;
- 5) approve a list of goods to be purchased by state enterprises, legal entities, fifty and more per cent of voting shares (share of participation in authorized capital) in which is owned by the state, and legal entities affiliated with them, for the purpose of their further processing;
- 6) approve a list of goods, work, services to be purchased in accordance with international contracts of the Republic of Kazakhstan;
- 7) approve a list of goods being a raw resource for strategically important productions, which are not mined in the territory of the Republic of Kazakhstan and purchased abroad;
- 8) is deleted in accordance with the Law of RK dated 13.01.12, № 543-IV (entered into force after the expiration of thirty calendar days after its first official publication).
- 9) determine measures for state promotion of the categories of domestic potential suppliers as determined by this Law;
- 10) approve the government procurement rules;

- 11) determine a particular procedure for conducting of government procurement by the bidding method;
- 12) establish model requirements to the special procedure for conducting of government procurement by the tender method;
- 13) determine the procedure for formation and maintenance of the registers in the sphere of government procurement;
- 14) determine the procedure for conducting of electronic government procurement;
- 15) determine the procedure for re-training and improvement of professional skills of specialists in the sphere of government procurement;
- 16) determine suppliers of printed products requiring a special protection degree, as well as approve a list of such products to be purchased from them in accordance with subparagraph 16) of paragraph 1 of Article 4 of this Law;
- 17) approve a list of specialised organisations (agents) carrying out procurement operations and commodity interventions, as well as purchase of services associated with the storage, treatment, transportation of foodstuffs;
- 18) approve a list of state enterprises of corrective labour institutions, a list and volumes of goods, work, services manufactured, performed, rendered by them, which are purchased from them by customers in accordance with subparagraph 42) of paragraph 1 of Article 4 of this Law;
- 19) approve a list of organisations formed by public associations of disabled persons, a list and volumes of goods, work, services manufactured, performed, rendered by them, as well as determine a procedure for purchasing from them by customers of such goods, work, services;
- 20) determine a common operator in the sphere of electronic government procurement;
- 21) determine a special procedure for conducting of government procurement to ensure needs of the defence;
- 22) is deleted in accordance with the Law of RK dated 13.01.12, № 543-IV (entered into force after the expiration of thirty calendar days after its first official publication);
- 23) is deleted in accordance with the Law of RK dated 13.01.12, № 543-IV (entered into force after the expiration of thirty calendar days after its first official publication) (see the old. Ed.);
- 24) approve a list of food products procured from domestic manufacturers;
- 24-1) approve a list of goods and services that are the subject of government procurement carried out by auction;
- 24-2) approve a list of goods and services provided by the legislation of the Republic of Kazakhstan on Elections;
- 24-3) approve a list of goods and services of daily or weekly needs, customers purchased from the one source within the period up to announcement of results of competition and entry into force of the government procurement contract.
- 25) perform other functions imposed upon it by the Constitution, laws of the Republic of Kazakhstan and acts of the President of the Republic of Kazakhstan.

#### Article 14. The Scope of the Authorised Body

The authorised body shall perform in the sphere of government procurement the functions as follows:

- 1) it shall elaborate strategic program documents in the sphere of government procurement and in the field of international cooperation;
- 2) it shall implement inter-sector coordination and methodical guidance in the field of government procurement;
- 3) it shall elaborate and pass regulatory legal acts stipulated by this Law;
- 4) it shall perform forming and maintaining the registers in the sphere of government procurement;
- 5) is deleted in accordance with the Law of RK dated 20.11.08, № 87-IV;
- 6) determine the procedure for collection, generalisation and analysis of reports with regard for information on Kazakhstan's content in procurement of goods, work, services;
- 7) it shall interact with bodies of state financial control and law protecting bodies on issues of control over the compliance with the legislation of the Republic of Kazakhstan on government procurement;
- 8) it shall participate in elaboration, introduction and operation of the state information systems in the sphere of government procurement;
- 9) determine the procedure for rendering electronic services to subjects of the government procurement system and other concerned persons;
- 10) determine the procedure for storage of information placed on the web-portal for government procurement;
- 11) it shall perform control over the compliance with the legislation of the Republic of Kazakhstan concerning government procurement;  
when necessary, it shall check the verity of report data, materials and information presented by subjects of the government procurement system;
- 12) perform other powers provided for by this Law, other laws of the Republic of Kazakhstan, acts of the President of the Republic of Kazakhstan and Government of the Republic of Kazakhstan.

The authorised body shall have the right:

- 1) to request and to receive necessary information and materials from subjects of the government procurement system in accordance with the procedure determined by the government procurement rules;
- 2) to attract for conducting of expert examinations and consultations specialists of state bodies and other organisations.

#### Article 14-1. Powers of a Common Operator in the Sphere of Electronic Government procurement

The common operator in the sphere of electronic government procurement shall:

- 1) perform development, introduction, information-technical support and operation of state information systems in the sphere of government procurement;
- 2) ensure technical support to registers in the sphere of government procurement;
- 3) ensure creation, functioning and technical support to the web-portal for government procurement;
- 4) place on the web-portal for government procurement information on government procurement which is subject to obligatory publication in accordance with this Law, on the charge-free basis;

5) render electronic services to subjects of the government procurement system and other concerned persons with the application of information systems in accordance with the legislation of the Republic of Kazakhstan concerning computerisation, on the charge-free basis;

6) render consulting and practical assistance to subjects of the government procurement system in the sphere of electronic government procurement, on the charge-free basis;

7) perform functions of control of projects and technical support to electronic government procurement by state information systems;

8) ensure technical support to reporting in the sphere of government procurement, in particular reporting concerning quantities of Kazakhstan's content in case of procurement of goods, work, services;

9) interact with the national operator in the sphere of computerisation in respect of issues of integration and ensuring of security of state information systems and state electronic information resources.

#### Article 15. Control over the Compliance with the Legislation of the Republic of Kazakhstan Concerning Government procurement

1. Control over the compliance with the legislation of the Republic of Kazakhstan on government procurement shall be performed by conducting of plan and off-plan inspections of items of control by the bodies as follows:

1) bodies of state financial control within the scope established by the Budget Code of the Republic of Kazakhstan;

2) authorised body.

2. The items of control shall be:

1) the customer, organiser of government procurement, tender commission, auction commission, expert commission, expert;

2) the potential supplier, participant in the tender, auction, supplier, as well as persons attracted by them as sub-contractors for performance of work or co-performers for rendering of services;

3) is deleted in accordance with the Law of RK dated 13.01.12, № 543-IV;

4) persons participating in government procurement through commodity exchanges.

3. The items of control over the compliance with the legislation of the Republic of Kazakhstan on government procurement performed by bodies of state financial control shall comprise the persons indicated in paragraph 2 of this Article being at the same time items of state financial control.

4. In relation of items of control plan inspections shall be conducted not more than one time within a calendar year.

5. Off-plan inspections shall be carried out by the authorised body where one of the following cases has occurred:

1) the written petition of the potential supplier, participant in the tender, supplier or their authorised representative with a complaint against actions (omission), decision of the customer, organiser of government procurement or tender commission, expert commission, expert. Consideration of such a complaint shall be performed provided that the terms stipulated by Article 45 of this Law are observed;

- 2) reception of information on the making by items of control of actions (omission) containing signs of an administrative violation;
- 3) where resolutions of law protecting bodies are received;
- 4) according to results of collection, generalisation and analysis of government procurement;
- 5) is deleted in accordance with the Law of RK dated 20.11.08, № 87-IV;
6. When having exposed as a result of conducting of controlling measures that the item of control has violated the legislation of the Republic of Kazakhstan on government procurement the authorised body shall undertake the measures as follows:
  - 1) it shall deliver to the item of control presentation to be obligatory fulfilled;
  - 2) is deleted in accordance with the Law of RK dated 20.11.08, № 87-IV;
  - 3) it shall bring to the court a claim concerning recognition of government procurement contracts concluded with the violation of the legislation of the Republic of Kazakhstan concerning government procurement, which entered in force, as invalid.
7. When having exposed as a result of conducting of controlling measures that appropriate items of control have violated the legislation of the Republic of Kazakhstan on government procurement, bodies of state financial control shall undertake the measures as follows:
  - 1) they shall deliver to items of control resolutions, presentations obligatory for fulfilment;
  - 2) is deleted in accordance with the Law of RK dated 20.11.08, № 87-IV (see the old. Ed.)
8. When having exposed as a result of conducting of controlling measures a fact of commitment by the item of control of the action (omission) containing signs of an actus reus, bodies of state financial control shall be obliged to transfer to law protecting bodies information on the commitment of the said action (omission) and documents confirming such a fact within five working days from the day of exposure of such a fact.
9. Actions (omission), as well as decisions of bodies of state financial control may be appealed in accordance with the procedure established by the legislation of the Republic of Kazakhstan.

### **CHAPTER 3. GOVERNMENT PROCUREMENT BY TENDER**

#### Article 16. Conducting of Government procurement by the Tender

1. is deleted in accordance with the Law of RK dated 20.11.08, № 87-IV (see the old. Ed.)
2. is deleted in accordance with the Law of RK dated 20.11.08, № 87-IV (see the old. Ed.)
3. Where government procurement is conducted by the tender in respect to goods, work, services being not uniform, the organiser of government procurement shall have the right to organise and conduct common state purchases by the said method with the obligatory division of such goods, work, services in lots in the tender documents.

Where government procurement is conducted by the tender in relation to uniform goods, work, services, the organiser of government procurement shall be obliged to divide uniform goods, work, services in lots in the tender documents according to the place of their delivery (performance, rendering).

Where government procurement of several types of uniform goods, work, services is conducted by the tender, the organiser of government procurement shall be obliged to divide goods, work, services in lots in the tender documents by their uniform types and (or) according to the place of their delivery (performance, rendering).

In the cases stipulated by this paragraph consideration of bids for participation in the tender, evaluation and comparison of competitive price offers of participants in the tender, as well as determination of a winner of the tender shall be performed by each lot stipulated in the tender documents.

4. Potential suppliers, which are determined according to results of the consideration of the bids for participation in the tender as consistent with the qualification requirements and requirements of the tender documents and recognised by the tender commission as participants in the tender, shall participate in the tender.

Government procurement by the tender shall be recognised as invalid where one of the following cases has occurred:

1) the tender commission has recognised less than two potential suppliers as participants in the tender;

2) less than two competitive price offers of participants in the tender are to be evaluated and compared after the rejection of competitive price offers of participants in the tender in the cases stipulated by paragraph 4 of Article 26 of this Law;

3) the winner of the tender has avoided to conclude a government procurement contract.

#### Article 17. Tender Documents

1. The tender documents shall be elaborated by the organiser of government procurement in Kazakh and Russian languages on the base of the model tender documents determined by the government procurement rules with respect to requirements of the legislation of the Republic of Kazakhstan concerning state secrets.

2. Besides the general and special qualification requirements established by Article 8 of this Law, the tender documents must contain information as follows:

1) the name and place of location of the organiser of government procurement;

2) the description and required technical, quality and operating characteristics of goods, work, services to be purchased, including project-estimation documents approved in accordance with the established procedure, technical specifications, and, if any, with indication of regulatory-technical documents;

3) the quantity of goods, volumes of performed work, rendered services being a subject-matter of government procurement being conducted;

4) the place of delivery of goods, performance of work, rendering of services;

5) required dates of delivery of goods, performance of work, rendering of services, presentation of a warranty to the quality of offered goods, work, services;

6) terms of payment and draft government procurement contract with indication of essential terms;

7) the criteria, except for the price, on which base a winner of the tender will be determined, in particular the unit weight of each of such criteria, and technique for calculation of the conditional price;

8) requirements to the contents of the competitive price offer, in particular indication, besides the price of purchased goods, work, services, of the costs of their

transportation and insurance, payment of customs duties, taxes and levies, as well as other expenses stipulated by terms of delivery of goods, performance of work, rendering of services;

9) the currency or currencies, in which the competitive price offer of the participant in the tender must be expressed, and the rate, which will be applied to reduce the conditional price to the standard currency for the purposes of their comparison and evaluation;

10) requirements to the language of making and presentation of bids for participation in the tender, government procurement contract in accordance with the legislation of the Republic of Kazakhstan on languages;

11) terms of furnishing, contents and types of collateral of the bid for participation in the tender;

12) the indication to the right of the potential supplier to modify or to recall own bid for participation in the tender before the expiration of the deadline for presentation of them;

13) the procedure for, method, place and deadline of presentation of an envelope with the bid for participation in the tender and the required term of bids for participation in the tender;

14) methods by which potential suppliers may request explanations in relation to the contents of the tender documents, as well as place, date and time of conducting a meeting with potential suppliers for explanation of provisions of the tender documents;

15) the place, date and time of opening of envelopes with bids for participation in the tender;

16) description of the procedure for opening of envelopes with bids for participation in the tender, consideration of bids for participation in the tender, evaluation and comparison of competitive price offers;

17) information on representatives of the customer and organiser of government procurement authorised to represent them in the coming state purchase by the tender method;

18) terms, types, volume and method of furnishing of collateral of fulfilment of the government procurement contract;

19) information on amounts allocated to purchase goods, work, services being a subject-matter of the government procurement being conducted by the tender method.

The tender documents may comprise other additional information as well, which allows potential suppliers to obtain more comprehensive information on terms of the government procurement being conducted.

3. It shall not be allowed for tender documents to contain indications to trade marks, service marks, trade names, patents, useful models, industrial samples, name of the place of origin of goods and name of the manufacturer, as well as other characteristics, which determine that goods, work, services belong to a certain potential supplier, except for the following cases of conducting of government procurement:

1) for additional completion, modernisation and additional equipment of basic (installed) equipment;

2) for determination of a supplier of services for presentation of goods in leases and occurrence of the necessity of detailed description of the lease item.

4. To determine a participant in the tender offering goods, work, service and support of domestic business of highest quality the organiser of government procurement shall be obliged to stipulate in the tender documents the following criteria influencing upon the competitive price offer of participants in the tender:

1) potential supplier has the following:

- a) experience in the market of goods and services which was required for conducted government procurement;
  - b) document confirming performance of voluntary certification of goods by domestic producers in accordance with Kazakhstan legislation on technical regulation;
  - (c) certified system on management quality in accordance with State standards;
  - (d) a certified system on management of environmental control in accordance with the requirements of State standards and (or) the confirmation of compliance with standard of ecologically clean production in accordance with Kazakhstan legislation on technical regulation;
- 2) the functional, technical and qualitative characteristics of goods and services, and (or) the costs of operation, maintenance and repair of the purchased goods;
  - 3) Kazakhstan's content.

5. The tender documents must have indicated the electronic address of the Internet resource, on which it is planned to place information to be published in cases established by this Law (henceforth - the customer's Internet resource). The customer's Internet resource must be permanently functioning and be held by the person being a resident of the Republic of Kazakhstan.

This paragraph is not applied in the case of electronic government procurement by competition bid.

5-1. In cases and in accordance with the procedure provided for by the legislation of the Republic of Kazakhstan in the sphere of architectural, town building and constructing activity the tender documents shall be subject to expert examination.

6. The tender documents shall be approved by the first chief executive, or executive secretary, or other official person performing powers of an executive secretary, which is determined by the President of the Republic of Kazakhstan, of the customer or by the person fulfilling his duties.

The tender documents elaborated by the common organiser of government procurement shall be approved by the first chief executives, or executive secretaries, or other official persons performing functions of an executive secretary who are determined by the President of the Republic of Kazakhstan, of the customers or by persons fulfilling their duties.

7. Introduction of amendments and (or) additions to the tender documents shall be performed in accordance with paragraph 2 of Article 20 of this Law.

### **Article 18. Notification On Conducting of Government procurement by the Tender**

Not later than in three working days from the day of approval of the tender documents but not less than thirty calendar days before the final date for presentation of bids for participation in the tender by potential suppliers, the organiser of government procurement shall be obliged: 1) to place on the customer's website the text of the announcement on conducting the government procurement by tender, and the list of tender documents; 2) to place of the web-portal for government procurement the text of the announcement on conducting of government procurement by the tender method; 3) to ensure registration on the customer's internet resource according to the chronological sequence facts of presentation of the approved tender documents with indication of information on (on) the place of location, post and electronic addresses, as well as other information on persons which received the tender documents.

Where electronic government procurement by the tender method is conducted, the organiser of government procurement shall be obliged to publish on the web site the text of the government procurement announcement on the implementation of electronic government

procurement by the tender, not later than in three working days from the date of approval of tender documentation but not less than twenty calendar days before the final date for presentation of applications by potential suppliers to participate in the tender.

Where repeated government procurement by the tender method is conducted, the organiser of government procurement shall be obliged to fulfil the requirements provided for by subparagraphs 1), 2), 3) of this paragraph not later than in three working days from the day of approval of the tender documents but not less than fifteen calendar days before the final date for presentation of bids for participation in the tender.

Where repeated electronic government procurement by the tender method is conducted, the organiser of government procurement shall be obliged to publish on the web site the text of the government procurement announcement concerning the implementation of repeated electronic government procurement by the tender not later than in three working days from the day of approval of the tender documents but not less than fifteen calendar days before the final date for presentation of bids for participation in the tender.

#### Article 19. Presentation of Tender Documents

1. The tender documents shall be presented by the organiser of government procurement to concerned persons on paper (henceforth — copy tender documents) or by placement of the approved tender documents on the customer's Internet resource with respect to the requirements established by subparagraph 3) of Article 18 of this Law.

Where electronic government procurement by the tender method is conducted, the organizer of government procurement provides tender documentation to stakeholders through the publication of the approved tender documents on the web portal of government procurement.

The organiser of government procurement shall be obliged to present the copy tender documents to concerned persons on the day of their request to the organiser of government procurement for presentation of the copy tender documents.

Where the copy tender documents are presented on the paid base and an indication to that is contained in the appropriate notice, the organiser of government procurement shall present it to concerned persons on the day of their request, provided that they present to the organiser of government procurement a document confirming the making of the said payment.

The payment amount for presentation of the copy tender documents must not exceed expenses of the organiser of government procurement directly related to the making the copy tender documents.

2. Information on persons, to which the copy tender documents are presented by the organiser of government procurement, as well as information on persons, who obtained the approved tender documents from the customer's Internet resource, shall be entered by the organiser of government procurement in the journal of registration of persons who received the tender documents.

Information on persons who have received the copy tender documents on the web portal of government procurement, volunteer to participate in electronic government procurement by tender method are automatically registered on the web portal of government procurement.

3. It shall not be allowed to present the tender documents before the publication of the text of the announcement on conducting of the tender.

## Article 20. Explanation of Provisions of the Tender Documents

1. Persons, information on which is entered in the registration journal stipulated by paragraph 2 of Article 19 of this Law, shall have the right to bring a request to the organiser of government procurement in relation to explanation of provisions of the tender documents, but not later than ten calendar days before the expiration of the deadline for presentation of bids for participation in the tender. The request on explanation of provisions of the tender documents must be delivered to the organiser of government procurement by methods indicated in the tender documents.

Within three working days from the day of reception of the request the organiser of government procurement shall be obliged to reply to it, and without indication from whom the request is received:

1) deliver the explanation of provisions of the tender documents to the persons, information on which is entered in the registration journal stipulated by paragraph 2 of Article 19 of this Law;

2) publish the text of the explanation of provisions of the tender documents on the customer's Internet resource.

3) In the case of electronic government procurement by tender to publish the text of the explanation of provisions of the tender documents on the web portal of government procurement with automatic notification of potential suppliers who have received the bid documentation.

2. Not later than five calendar days before the expiration of the deadline for presentation of bids for participation in the tender the organiser of government procurement shall have the right to introduce under own initiative or in reply to the request of persons, information on which is entered in the registration journal stipulated by paragraph 2 of Article 19 of this Law, amendments and (or) additions to the tender documents. The introduction of amendments and (or) additions to the tender documents shall be approved in accordance with the procedure established by paragraph 6 of article 17 of this Law.

Not later than in one working day from the day of passing of the decision concerning the introduction of amendments and (or) additions to the tender documents the organiser of government procurement shall be obliged:

1) to deliver to persons, information on which is entered in the registration journal stipulated by paragraph 2 of Article 19 of this Law, the text of the introduced amendments and (or) additions on the unpaid base;

2) to publish on the customer's Internet resource the tender documents determined more precisely with indication of the introduced amendments.

3) In the case of electronic government procurement by tender way to send the text of the amendments via the web portal of government procurement to entities which automatically registered on the web portal of government procurement in accordance with paragraph 2 of Article 19 of this Law.

The deadline for presentation of bids for participation in the tender must be prolonged for a period of not less than ten calendar days.

3. The organiser of government procurement shall have the right to conduct a meeting with authorised representatives of persons, information on which is entered in the registration journal stipulated by paragraph 2 of Article 19 of this Law, to explain provisions of the tender documents in a certain place and at a certain time as indicated in the tender documents. Not later than one working day from the day of conducting of the meeting with concerned persons the organiser of government procurement shall formulate and sign a protocol,

which must comprise presented requests concerning explanation of provisions of the tender documents without indication of their sources, as well as replies to those requests.

Not later than one working day from the day of formulation and signature of the protocol of explanation of provisions of the tender documents the organiser of government procurement shall be obliged:

- 1) to deliver to the tender commission, as well as persons, information on which is entered in the registration journal stipulated by paragraph 2 of Article 19 of this Law, a copy said protocol;
- 2) publish the text of the mentioned protocol on the customer's Internet resource.

The requirements of this paragraph are not applied in case of conduction of electronic government procurement via tender.

#### Article 21. A Bid for Participation in the Tender

1. The bid for participation in the tender shall be a form of the expression of the consent of the potential supplier to make a supply of goods, to perform work, to render services in accordance with requirements and terms established by the tender documents.

2. The bid for participation in the tender must contain the confirmation of the potential supplier:

- 1) on absence of a violation of the restrictions stipulated by Article 6 of this Law;
- 2) on absence between it and the customer or organiser of government procurement of relations prohibited by this Law;
- 3) on consent for the government procurement contract to be terminated in accordance with the procedure established by laws of the Republic of Kazakhstan where the facts indicated in paragraph 10 of Article 37 of this Law are exposed.

Information, as well as documents, which must be contained in the bid for participation in the tender shall be determined by the government procurement rules or rules of electronic government procurement.

3. The term of the bid for participation in the tender must match the required term established by the tender documents.

#### Article 22. Presentation of a Bid for Participation in the Tender

1. The bid for participation in the tender shall be presented by the potential supplier to the organiser of government procurement in a sealed envelope before the expiration of the deadline for their presentation as indicated in the tender documents.

It shall not be allowed to present an envelope with the bid for participation in the tender or documents and (or) materials being an integral part of the bid for participation in the tender upon the expiration of the deadline for their presentation as indicated in the tender documents.

The envelope with the bid for participation in the tender presented after the expiration of the established deadline shall not be opened and be returned to the potential supplier.

Where electronic government procurement by tender method is conducted, an application for participation in the tender of the potential supplier is subject to automatic rejection of the web portal of government procurement in the following cases:

- 1) The potential provider previously submitted application for participation in this tender;

2) The application for participation in the tender came to a web portal for government procurement after the deadline for receiving applications for participation in this tender;

3) provided by subparagraphs 3), 3-1), 3-2) and 4) of paragraph 1 of Article 6 of this Law.

2. The organiser of government procurement shall enter in the registration journal of bids for participation in the tender according to the chronological sequence information on potential suppliers presented before the expiration of the established deadline envelopes with bids for participation in the tender.

Applications for participation in electronic government procurement by tender method supplied by potential suppliers are automatically registered on the web portal of government procurement in electronic registration journal of bids, provided the rules for conducting electronic government procurement.

3. Not later than the deadline for presentation of bids for participation in the tender the potential supplier shall have the right:

1) to modify and (or) append the presented bid for participation in the tender;

2) to recall its bid for participation in the tender having not lost the right to be refunded collateral of the bid for participation in the tender furnished by it.

It shall not be allowed to introduce amendments, as well as to recall the bid for participation in the tender upon the expiration of the deadline for presentation of the envelope with the bid for participation in the tender.

4. Not later than ten calendar days before the expiration of the term of bids for participation in the tender established by the tender documents, the organiser of government procurement shall have the right to request from potential suppliers to prolong their term for a concrete period of time. The potential supplier shall have the right to deny such a request having not lost its rights to:

1) participate in the government procurement being conducted by the tender method within the term of its bid for participation in the tender;

2) be refunded collateral of the bid for participation in the tender furnished by it, upon the expiration of the term of such a bid.

5. The potential supplier shall bear all costs related to its participation in government procurement by the tender method. The customer, organiser of government procurement, tender commission, expert commission, expert shall bear no responsibility for compensation of those costs irrespective of results of the state purchase by the tender method.

#### Article 23. Collateral of a Bid for Participation in the Tender

1. Collateral of the bid for participation in the tender shall be furnished by the potential supplier as a guarantee that it shall:

1) not recall, or not modify, and (or) not append its bids for participation in the tender upon the expiration of the deadline for presentation of such bids;

2) where it is recognised as participant in the tender, present by the established time and then not recall its competitive price offer;

3) where it is recognised a winner of the tender, conclude a government procurement contract and furnish collateral of fulfilment of the government procurement contract as stipulated by the tender documents.

2. Collateral of the bid for participation in the tender shall be furnished at the rate of one per cent of the amount allocated to purchase goods, work, services, in accordance with the procedure determined by the government procurement rules.

3. The potential supplier shall not furnish collateral of the bid for participation in the tender, where the said supplier participates:

1) in the first stage of government procurement by the tender method with the use of two-stage procedures;

2) in tender for government procurement of services provided for by the state social order.

4. The potential supplier shall have the right to select one of the following types of collateral of the bid for participation in the tender:

1) a guarantee money contribution which is to be placed on the bank account of the organiser of government procurement or on the account stipulated by the budget legislation of the Republic of Kazakhstan for organisers of government procurement being state bodies and state agencies;

2) a bank guarantee.

It shall not be allowed for the potential supplier to perform actions resulting in the emergence with third persons of a right of claim in whole or in a part to the placed guarantee money contribution before the expiration of the term of its bid for participation in the tender.

The organiser of government procurement shall not be allowed to use the guarantee money contribution placed by the potential supplier, except for the actions indicated in paragraphs 6 and 7 of this Article.

5. Collateral of the bid for participation in the tender shall not be refunded by the organiser of government procurement where one of the following cases occurs:

1) the potential supplier has recalled, or modified and (or) appended the bid for participation in the tender upon the expiration of the deadline for presentation of the bid for participation in the tender;

2) the potential supplier recognised a participant in the tender has not presented by the established time or has recalled its competitive price offer;

3) the potential supplier determined as a winner of the tender has avoided to conclude a government procurement contract;

4) the winner of the tender having concluded the government procurement contract has not fulfilled or has fulfilled not in due time the requirements established by the tender documents to the furnishing and (or) time of furnishing of collateral of fulfilment of the government procurement contract.

6. Where one of the cases stipulated by paragraph 5 of this Article has occurred, the amount of collateral of the bid for participation in the tender shall be transferred to the revenue of the appropriate budget, state enterprise, legal entity, fifty and more per cent of voting shares (share of participation in the authorised capital) in which is owned by the state, or legal entities affiliated with them.

7. The organiser of government procurement shall refund to the potential supplier collateral of the bid for participation in the tender furnished by it, within three working days from the day of occurrence of one of the following cases:

1) the recall by the said potential supplier of its bid for participation in the tender before the expiration of the deadline for presentation of bids for participation in the tender;

2) the signature of the protocol of admission to participate in the tender. The said case shall not cover potential suppliers recognised as participants in the tender;

3) the signature of the protocol of results of the state purchase by the tender method. The said case shall not cover the participant in the tender determined as a winner of the tender;

4) the entry in force of the government procurement contract and furnishing by the winner of the tender of collateral of fulfilment of the government procurement contract as stipulated by the tender documents;

5) the expiration of the term of the bid of the potential supplier for participation in the tender.

Article 23-1. Application security for participation in electronic government procurement by tender method

1. Application security for participation in electronic government procurement by tender method is introduced by a potential supplier to ensure that in the case of:

1) recognition him as participator of the tender present within the prescribed period, and subsequently doesn't withdraw his Bid price offer;

2) determine him as the winner of the tender will conclude the government procurement contract;

3) The government procurement contract in a timely and properly fulfill the requirements established by the tender documentation on the introduction and (or) the timing of enforcement of the government procurement contract.

2. Application security for participation in electronic government procurement by tender method is introduced at a rate of one percent of the amount allocated for the purchase of goods and services, as prescribed by the regulations for electronic government procurement.

3. Potential supplier has the right to choose one of the following types of software applications for participation in electronic government procurement by tender method:

1) guaranteed cash contribution, which is paid into a bank account of the organizer of government procurement, or to an account provided by the budget legislation of the Republic of Kazakhstan for the organizers of government procurement, non-governmental bodies and state agencies;

2) a bank guarantee.

Actions of a potential supplier that lead to the emergence of a third party the right to claim in whole or in part on the guaranteed cash contribution before the expiry of his enrollment in the way of electronic government procurement by the tender are not allowed.

Use of guaranteed cash contribution made by the potential supplier by the organizer of government procurement, except for the actions referred to in paragraphs 5 and 6 of this article is not allowed.

4. Application security for participation in electronic government procurement by the tender is not returned to the potential supplier by the organizer of government procurement in the following cases:

1) The potential supplier, recognized as participant of the tender, had not submitted within the prescribed period, or withdraws his Bid price offer;

2) The potential supplier, determined as the winner of the tender declined to sign the government procurement contract;

3) The winner of the tender signing a government procurement contract has not performed or inadequately performed, including the untimely performed the requirements established by the tender documentation, the introduction and (or) the timing of enforcement of the government procurement contract.

5. When one of the cases provided for in paragraph 4 of this Article is occurred, the amount of software applications for participation in electronic government procurement by the tender shall be credited the appropriate revenue budget, state enterprise, legal entity, fifty percent or more of the voting shares (share of participation in authorized capital) which are state or affiliated with these entities.

6. The organizer of government procurement returns to the potential supplier application security to participate in electronic government procurement by the tender method within three working days after the onset of one of the following cases:

1) Withdrawal of an application for participation in the tender made by the potential before the deadline for submission of applications for participation in the tender;

2) The signing of the protocol for admission to the tender. The above case does not apply to potential suppliers, recognized as bidders;

3) The signing of the protocol on the outcome of the government procurement by the tender method. The above case does not apply to the participant of the tender, determined as the winner of the tender;

4) The entry into force of the government procurement contract and submitting enforcement of the government procurement contract by the winner under the tender documentation.

#### Article 24. Opening of Envelopes with Bids for Participation in the Tender

1. The tender commission shall open envelopes with bids for participation in the tender on the date, at the time and in the place which are indicated in the tender documents.

When opening each envelope with the bid for participation in the tender the tender commission shall announce information on the list of documents and materials contained in the bid for participation in the tender.

The potential supplier presented the bid for participation in the tender and (or) its authorised representative shall have the right to attend the opening of envelopes with bids for participation in the tender with the right to perform audio recording or video recording.

Persons attending the meeting of the tender commission shall have no right to interfere in the activity of the tender commission.

2. Not later than one working day following the day of opening of envelopes with bids for participation in the tender the tender commission shall make an appropriate protocol.

The protocol of opening of envelopes with bids for participation in the tender shall be signed by the chairman and all the members of the tender commission attending the procedure for opening of envelopes, as well as by the secretary of the tender commission.

3. Not later than two working days following the day of opening of envelopes with bids for participation in the tender the organiser of government procurement shall be obliged:

1) to deliver or to present a copy protocol of opening of envelopes with bids for participation in the tender to potential suppliers or their authorised representatives attended the procedure for opening;

2) to publish on the customer's internet resource the text of the signed protocol of opening of envelopes with bids for participation in the tender. Information contained in the

protocol of opening of envelopes with bids for participation in the tender and placed on the customer's internet resource must be available for all concerned persons to acquainted with free of charge.

Potential suppliers, which did not attend the procedure for opening of envelopes with bids for participation in the tender, shall be presented a copy protocol of opening of envelopes under their written request or under a written request of their authorised representatives within the period of not more than two working days from the day of reception by the organiser of government procurement of such a request.

4. It shall not be allowed to change the date, time and place of opening of envelopes with bids for participation in the tender without introduction of said amendments to the tender documents.

#### **Article 24-1. Opening of bids for participation in electronic government procurement by the tender method**

1. Access of Secretary of Competitive Commission to opening of bids for participation in electronic government procurement by the tender method provided by the web portal of government procurement automatically after the date and time of the final submission of application specified by organizers of government procurement in the tender documentation.

2. Protocol of the bids opening for participation in electronic government procurement by the tender method published on the web portal of government procurement by the secretary of Competitive Commission in the day of opening. Web-portal of government procurement automatically send notification of the publication of the protocol of opening bids for participation in electronic government procurement by the tender method to the competition Commission members, potential suppliers, details of which are included in the registration journal referred to paragraph 2 of Article 22 of this Law.

#### **Article 25. Consideration of Bids for Participation in the Tender, Admission to Participate in the Tender**

1. Consideration of bids for participation in the tender shall be performed by the tender commission for the purposes of determining potential suppliers, which meet the qualification requirements and requirements of the tender documents, and recognition of them as participants in the tender.

2. Where it is necessary, the organiser of government procurement shall have the right to form an expert commission or to determine an expert to prepare an expert's conclusion in relation to the consistency of goods, work, services offered by potential suppliers with the technical specification being an integral part of the tender documents.

Where the organiser of government procurement has no specialists of the appropriate profile, it shall attract government employees or other specialists, whose specialization is consistent with goods, work, services to be purchased, to work as experts. Government employees shall be attracted as experts on the unpaid base, and other specialists shall be attracted both on the paid and unpaid base under contract of the parties.

Experts shall have no right of voting when the tender commission passes a decision.

Selection of persons to be attracted as experts on the paid base shall be made in accordance with this Law.

3. When considering bids for participation in the tender the tender commission shall have the right:

1) to request in the written form from potential suppliers materials and explanations in connection with their bids so that consideration, evaluation and comparison of bids for participation in the tender to be facilitated;

2) for the purposes of more precise determining information contained in bids for participation in the tender, to request in the written form necessary information from appropriate state bodies, physical persons and legal entities.

It shall not be allowed to deliver a request and other actions of the tender commission related to bringing the bid for participation in the tender in compliance with requirements of the tender documents, which include supplementing of the bid for participation in the tender with missing documents, replacement of documents presented in the bid for participation in the tender, bringing improperly formulated documents in the compliance.

The tender commission shall consider the bid for participation in the tender as consistent with requirements of the tender documents, if it contains grammar and arithmetic errors which can be corrected without an affect upon the point of the presented bid.

4. The potential supplier may not be admitted to participate in the tender (recognised as a participant in the tender) where:

1) it and (or) its sub-contractor or co-performer are determined as inconsistent with the qualification requirements;

2) it has violated requirements of Article 6 of this Law;

3) its bid for participation in the tender is determined as inconsistent with requirements of the tender documents.

5. Where the potential supplier is not admitted to participate in the tender on the bases stipulated by subparagraph 2) of paragraph 4 of this Article, then:

1) the bases of dismissal of the bid for participation in the tender of such a potential supplier shall be presented in the protocol of admission to participate in the tender;

2) information on the potential supplier violated requirements of Article 6 of this Law shall be entered in the register of unfair participants in government procurement.

6. According to results of consideration of bids for participation in the tender, the tender commission shall:

1) determine potential suppliers, which meet the qualification and other requirements of the tender documents, and recognise as participants in the tender;

2) apply to them unit weights of the criteria stipulated by paragraph 4 of Article 17 of this Law;

3) formulate a protocol of admission to participate in the tender.

Where the state purchase by the tender method consists of lots, then participants to the tender shall be indicated in the protocol of admission to participate in the tender by each lot. It shall be allowed to formulate a common protocol of admission to participate in the tender provided that participants in the tender are indicated in it by each lot.

7. The protocol of admission to participate in the tender shall be signed by the chairman of the commission and all the members of the tender commission attending the meeting, as well as by the secretary of the tender commission not later than in two working days from the day of passing of the decision concerning the admission of potential suppliers to participate in the tender (recognition as participants in the tender).

Not later than in one working day following the day of signature of the protocol of admission to participate in the tender, the organiser of government procurement shall be obliged to inform concerned persons of the passed decision of the tender commission by:

1) presentation or delivery of a copy protocol of admission to participate in the tender to the address of potential suppliers, information on which is entered in the registration journal provided by the Paragraph 2 of Article 22 of the Law;

2) placement of the text of the signed protocol on the customer's internet resource.

Where electronic government procurement by the tender method is conducted, protocol for admission to the competition is published by secretary of Competition Commission on the day the decision on admission to the Web site of government procurement with automatic e-mail notification of all potential suppliers, details of which were entered in the registration journal provided by paragraph 2 of Article 22 of this Law.

8. The decision of the tender commission concerning admission to participate in the tender may be appealed in accordance with the procedure established by Article 45 of this Law.

#### Article 26. Evaluation and Comparison of Competitive Price Offers

1. The meeting of the tender commission in relation to evaluation and comparison of competitive price offers shall be conducted on the day, at the time and in the place indicated in the protocol of admission to participate in the tender, but not earlier than in three working days from the day of notification of concerned persons by the methods stipulated in subparagraphs 1) and 2) of paragraph 7 of Article 25 of this Law.

Participants in the tender and (or) their authorised representatives shall have the right to attend the meeting of the tender commission for evaluation and comparison of competitive price offers, with the right to make audio recording and video recording.

2. Not later than on the date indicated in the protocol of admission to participate in the tender participants in the tender or their authorised representatives shall present to the tender commission envelopes with competitive price offers.

It shall not be allowed for the participant in the tender to present more than one competitive price offer, as well as to recall the competitive price offer or to introduce amendments and (or) additions to the presented competitive price offer.

The tender commission shall enter in the registration journal of competitive price offers according to the chronological sequence information on participants in the tender, which presented envelopes with competitive price offers before the expiration of the time established by the protocol of admission to participate in the tender.

3. The tender commission shall open envelopes with tender price offers in the presence of participants in the tender and (or) their authorised representatives and announce to them each competitive price offer.

Participants in the tender and (or) their authorised representatives shall have the right to be acquainted with the contents of envelopes with competitive price offers.

4. The tender commission shall dismiss tender price offers of participants in the tender in cases where:

1) the price of the competitive price offer is dumping. The procedure for calculation of the dumping price shall be determined by the government procurement rules;

2) the competitive price offer exceeds the amount allocated to purchase said goods, work, services.

5. The tender commission shall evaluate tender price offers, which are not dismissed, by application to them of the appropriate unit weight of criteria indicated in the protocol of admission to participate in the tender, and calculate the conditional price of each participant in the tender.

The tender commission shall compare conditional prices of participants in the tender and determine a winner of the tender on the base of the least conditional price.

Where conditional prices of the tender price offers are equal, a domestic manufacturer, domestic supplier of work, services shall be recognised as a winner. Where conditional prices of tender price offers of domestic manufacturers, domestic suppliers of work, services are equal, a domestic manufacturer, domestic supplier of work, services that have more work experience in the market of goods, work, services which are the subject-matter of the tender, shall be recognised as a winner.

On the day of conducting of the evaluation and comparison of tender price offers the tender commission shall announce to the attended persons the winner of the tender and give it a written notice to be signed by the chairman of the tender commission or person performing his functions.

Article 26-1. Evaluation and comparison of competitive price offers in the implementation of electronic government procurement by the tender method

1. Evaluation and comparison of competitive price offers of competitive commission is held on the day and time specified in the protocol for admission to the competition bidding.

2. Potential supplier, admitted to the competition bidding (bidder) shall provide competitive price offers on Web portal for government procurement not later than three working days from the date of publication of the admission protocol.

3. The information of competitive price offers of the bidders are automatically entered into electronic register of competitive price offers.

4. The competitive price offers bidder is subject to automatic rejection from the web portal of government procurement in the following cases:

1) The price of the competitive price offers is dumping. The procedure for calculating dumping rates determined by the rules of electronic government procurement;

2) competitive price offer exceeds the amount allocated for the purchase of these goods and services;

3) the bidder previously submitted price offers for this tender;

4) competitive price offer is received later than the period specified in paragraph 2 of this Article.

5. In the certain date and time established by protocol for admission to the competition, the web portal of government procurement make an automatic assessment of competitive quotations not rejected by applying to them the appropriate relative value of the criteria specified in the protocol for admission to the competition, and conditional price of each bidder is calculated.

Web portal of government procurement automatically compares conditional price of bidders and determines the winner based on the lowest conditional price.

In case of equality of conditional price of competitive price offers, winner is the domestic producers, the domestic supplier of works or services. In case of equality of conditional price of

competitive price offers of domestic producers, domestic suppliers of works, services, the winner is the domestic producers, the domestic supplier of works, services, having more experience in the market of goods, works and services that are the subject of the competition bidding.

#### Article 27. A Protocol of Results of Government procurement by the Tender Method

1. Not later than in two working days from the day of determination of the winner of the tender, the tender commission shall formulate a protocol of results of government procurement by the tender method, which is signed by the chairman and all the members of the tender commission attended the meeting, as well as by the secretary of the tender commission.

Where government procurement by the tender method consists of lots, the tender commission shall formulate and sign a common protocol of results of the government procurement by the tender method, in which winners of the tender shall be indicated by each lot.

2. Not later than in two working days from the day of signature of the protocol of results of the government procurement by the tender method, the organiser of government procurement shall be obliged:

- 1) to place the text of the protocol on the customer's internet resource;
- 2) is deleted in accordance with the Law of RK dated 20.11.08, № 87-IV;
- 3) place on the web-portal for government procurement information on the results of conducted government procurement by the tender.

Where electronic government procurement by the tender method is conducted, the protocol on the outcome of the government procurement by the tender method is automatically formed and published by web-portal of government procurement with e-mail notification of all members of the competition commission and all potential suppliers, details of which entered in the registration journal of competitive price offers.

3. Not later than in one working day from the day of reception of the written request from the potential supplier, information on which is entered in the registration journal of bids for participation in the tender, the organiser of government procurement shall be obliged to present to it on the unpaid base a copy protocol of results of the government procurement by the tender method.

4. Information contained in the protocol of results of the government procurement by the tender method and placed on the customer's internet resource must be available to all the concerned persons to be acquainted with free of charge.

#### Article 28. Consequences of Recognition of Government procurement by the Tender Method as Invalid

1. Where the state purchase by the tender method is recognised as invalid, the customer shall have the right to pass one of the following decisions:

- 1) concerning repeated conducting of government procurement by the tender method;
- 2) concerning modification of the tender documents and repeated conducting of government procurement by the tender method;
- 3) concerning conducting of government procurement by the one source method.

2. Where the state purchase by the tender method is recognised as invalid in connection with that just one potential supplier is admitted to participate in the tender, the customer shall have the right to pass a decision concerning conclusion with it of an contract of

government procurement from one source. The price of the concluded government procurement contract must not exceed the amount allocated for the state purchase by the tender method, which was recognised as invalid in virtue of admission of one potential supplier to participate in the tender.

3. Where the state purchase by the tender method is recognised as invalid because of dismissal in the cases stipulated by paragraph 4 of Article 26 of this Law, only one non-dismissed competitive price offer of the participant in the tender remained, the customer shall have the right to pass a decision concerning the conclusion with such a participant in the tender of an contract of government procurement from one source. The government procurement contract shall be concluded with it on terms stipulated by its bid for participation in the tender, and the price of the contract concluded with it must not exceed its competitive price offer.

#### Article 29. Special Considerations in Conducting of Government procurement by the Tender Method with the Use of Two-Staged Procedures

1. Government procurement by the tender method with the use of two-staged procedures may be conducted in cases where:

1) it is difficult to formulate detailed specifications of goods, work, services and to determined their technical and other characteristics, and (or) it is necessary to request offers from potential suppliers, or to conduct negotiations with them on arisen questions;

2) it is necessary to conduct researches, experiments, surveys or developments.

2. Government procurement by the tender method with the use of two-staged procedures shall constitute a totality of the following sequential stages:

1) on the first stage the following measures shall be implemented:

determination of an organiser of government procurement by the customer;

formation of an expert commission or determination of an expert by the organiser of government procurement;

on the base of the customer's needs formation by the expert commission or by the expert of a task to goods, work, services to be purchased;

identification of the customer's internet resource;

publication of an announcement on the internet resource for government procurement and on the customer's internet resource concerning conducting of government procurement by the tender method with the use of two-staged procedures;

presentation by the organiser of government procurement of the technical task to persons concerned in participation in the first stage of government procurement by the tender method with the use of two-staged procedures;

presentation by potential suppliers of technical proposals elaborated in accordance with the technical task;

consideration by the expert commission or expert of technical proposals of potential suppliers and discussion with them of issues pertaining to technical, quality and (or) the characteristics of goods, work, services to be purchased, contractual terms of their delivery (performance, rendering);

elaboration by the expert commission or expert of the technical specification of goods, work, services to be purchased;

elaboration by the organiser of government procurement of tender documents and approval of them by the first chief executive, or executive secretary, or other official person

performing the powers of an executive secretary who is determined by the President of the Republic of Kazakhstan, of the customer or by the person fulfilling his duties;

delivery by the organiser of government procurement to potential suppliers presented technical offers on the first stage, of an invitation to participate in the second stage of government procurement by the tender method with the use of two-staged procedures;

2) on the second stage measures shall be conducted as stipulated for conducting of government procurement by the tender method.

#### **CHAPTER 4. GOVERNMENT PROCUREMENT BY THE PRICE QUOTATION REQUEST METHOD**

Article 30. Bases for Conducting of Government procurement by the Price quotation request Method

1. Government procurement by the price quotation request method are conducted on similar goods, works and services, if the annual volumes of uniform goods, works and services in terms of value does not exceed four thousand monthly calculation index established for the respective fiscal year by the Law on the national budget, the price is the critical condition.

2. Where government procurement is conducted by the price quotation request method in respect of several types of uniform goods, work, services, the organiser of government procurement shall be obliged to divide uniform goods, work, services in lots according to the place of their delivery (performance, rendering).

Where government procurement is conducted by the price quotation request method in respect of uniform goods, work, services, the organiser of government procurement shall be obliged to divide goods, work, services in lots according to their uniform types and (or) place of their delivery (performance, rendering).

In the cases provided for by this paragraph determination of a winner of government procurement by the price quotation request method shall be made by each lot.

3. Division into parts of annual volume procurement of uniform goods and services during the fiscal year for the purpose to use the price quotation request method, where the size of one part is less than provided by paragraph 1 of this article is not allowed.

Article 31. Organisation and Conducting of Government procurement by the Price quotation request Method

1. Not later than five working days before the deadline for presentation of price offers the organiser of government procurement shall be obliged to place on the customer's internet resource or on any other internet resource ensuring the possibility of application of the said method of government procurement with the use of information technologies, the following information:

1) concerning the number of goods, concerning volumes of performed work, rendered services which are the subject-matter of conducted government procurement with indication of amounts allocated for government procurement;

2) brief description of goods (with indication of technical conditions), work, services to be purchased;

3) a place of delivery of goods, performance of work, rendering of services;

- 4) required timing for delivery of goods, performance of work, rendering of services;
- 5) on the date of the beginning and end of presentation by potential suppliers of price offers;
- 6) a draft government procurement contract with indication of essential terms.

The posted information under this paragraph shall not contain guidelines for trademarks, service marks, trade names, patents, utility models, industrial designs, appellations of origin and name of the manufacturer, as well as other characteristics that determine the identity of purchased goods, works, services to individual potential supplier, except for the following government procurement:

- 1) for resupply, upgrading and retrofitting the main (fixed) equipment;
- 2) to determine the service provider on providing goods on lease and need for a detailed description of the leasing subject.

2. The potential supplier shall have the right to present one price offer only, contain information stipulated by the rules of electronic government procurement, amendments and (or) additions to which is not allowed.

The presentation of the price offer by the potential supplier shall be recognised as a form of expression of its consent to carry out supplies of goods, performance of work, rendering of services in compliance with the essential terms stipulated in the draft government procurement contract.

3. Upon expiration of the deadline for Price quotation request, web portal of government procurement the automatic opens and sums up the government procurement by the price quotation request method.

The winner is the potential supplier that offered the lowest price quotation.

Where the least price offer is made by several potential suppliers, the potential supplier, whose price offer was received earlier than price offers of other potential suppliers, shall be recognised as a winner. A comparison of price proposals is carried out by web portal of government procurement automatically.

4. It shall not be allowed to conduct negotiations between the organiser of government procurement and the potential supplier in relation to its price offer, except for the cases stipulated by Article 39 of this Law.

5. Where within the term of presentation of price offers less than two envelopes with the price offer of potential suppliers is presented, the organiser of government procurement shall prolong the term of presentation of price offers for five working days. Not later than one working day from the day of the deadline for presentation of price offers, the organiser of government procurement shall conduct the measures stipulated by paragraphs 1 and 2 of this Article.

6. The price offer of the potential supplier shall be dismissed if:

- 1) it exceeds the amount allocated to purchase said goods, work, services;
  - 2) the potential supplier has presented more than one price offer for the lot.
- 3) as provided by subparagraphs 3), 3-1), 3-2) and 4) of paragraph 1 of Article 6 of this Law.

The dismissal of price offers on other bases shall not be allowed.

7. Where least than two price offers of potential suppliers remain after the dismissal of price offers on the bases stipulated by paragraph 6 of this Article, then such a state

purchase shall be recognised invalid, and the organiser of government procurement shall conduct repeated government procurement by the price quotation request method.

8. Results of government procurement by the price quotation request method are published on web portal of government procurement automatically after conducting.

9. Within five working days from the day of approval of results of the state purchase by the price quotation request method the customer shall sign and deliver to the potential supplier made the lowest price offer a draft government procurement contract. The draft government procurement contract must be signed by the potential supplier made the lowest price offer or determined as a winner in accordance with the third part of paragraph 3 of this Article, within seven working days from the day of presentation by the organiser of government procurement of the signed draft government procurement contract to it.

It shall not be allowed to introduce amendments and (or) additions to the essential terms of the draft government procurement contract, except for cases provided by paragraph 1 of Article 39 of this Law.

The potential supplier avoided the conclusion of a government procurement contract shall be entered in the register of unfair participants in government procurement in accordance with the procedure established by this Law.

10. Where the potential supplier has not presented to the customer by the established time the signed government procurement contract, the customer shall have the right:

1) to conclude a government procurement contract with the potential supplier made the same price offer, and, where there is no such a potential supplier, with the potential supplier, whose price offer is the lowest after the price offered by the potential supplier, who avoided the conclusion of a government procurement contract;

2) to conduct repeated government procurement by the price quotation request method.

## CHAPTER 5. GOVERNMENT PROCUREMENT BY THE ONE SOURCE METHOD

### Article 32. Bases for Conducting of Government procurement by the One Source Method

Government procurement by the one source method may be conducted in cases if:

1) the customer purchased goods, work, services from any supplier whatsoever has emerged a necessity to conduct other purchases from the same supplier for the purposes of unification, standardisation or ensuring of compatibility with already purchased goods, equipment, technology, work or services;

2) the state purchase by the tender method has been recognised invalid. This provision shall not cover cases, where government procurement by the tender method is recognised invalid in accordance with laws of the Republic of Kazakhstan;

3) there is a necessity to conduct state purchases of daily and (or) weekly needs for the period of summarising the results of the state purchase by the tender method and entry of the government procurement contract in force if such state purchases are made within the first month of the year according to a list approved by the Government of the Republic of Kazakhstan, in an amount not exceeding the amount of government procurement of goods and services needed to ensure the needs of the customer during the period of government procurement, but not more than two months;

4) measures provided for by paragraphs 5 and 7 of Article 31 of this Law that were undertaken by the organiser of government procurement did not result in conclusion of a government procurement contract.

5) measures provided for adopted by paragraph 10 of Article 35-6, paragraph 9 of Article 35-7 and paragraph 6 of Article 35-8 of this Law that were undertaken by the organiser of government procurement did not result in conclusion of the government procurement contract, and if government procurement by auction method is declared invalid on the grounds specified in subparagraph 1) of paragraph 1 of Article 35-9 of this Law.

#### Article 33. Conducting of Government procurement by the One Source Method

1. Where government procurement is conducted by the one source method, the organiser of government procurement shall deliver to the potential supplier a written invitation to participate in government procurement, which must contain the following information;

- 1) the name and place of location of the organiser of government procurement;
- 2) the description and required technical, quality and operating characteristics of goods, work, services to be purchased, including technical specifications, plans, drawings and sketches with indication of regulatory technical documents, if any;
- 3) the quantity of goods, volumes of performed work, rendered services being a subject-matter of the state purchase to be conducted;
- 4) the place of delivery of goods, performance of work, rendering of services;
- 5) required dates of delivery of goods, performance of work, rendering of services, presentation of a warranty to the quality of offered goods, work, services;
- 6) terms of payment and a draft government procurement contract with indication of essential terms;
- 7) terms, form, volume and method of furnishing of collateral of fulfilment of the government procurement contract in cases stipulated by the government procurement rules;
- 8) information on amounts allocated to purchase goods, work, services being a subject-matter of the state purchase to be conducted by the one source method;
- 9) a list of general and special qualification requirements stipulated by Article 8 of this Law, as well as a list of documents, which the potential supplier must present to confirm its consistency with the made qualification requirements, except when government procurement by the one source method are made pursuant to subparagraph 4) of Article 32 of this Law;
- 10) the place and date of presentation by the potential supplier of documents confirming its consistency with the made qualification requirements, except when government procurement by the one source method are made pursuant to subparagraph 4) of Article 32 of this Law, as well as information stipulated by paragraph 2 of this Article.

2. The potential supplier expressed the wish to conduct supplies of goods, performance of work, rendering of services being a subject-matter of the state purchase conducted by the one source method, must present to the organiser of government procurement by the established time the information as follows:

1) the description of goods, work, services offered by the potential supplier, with indication of entities, which the potential supplier intends to attract as sub-contractors (co-performers) of work or services;

2) documents confirming the potential supplier and entities, which it intends to attract as sub-contractors (co-performers) of work or services, meet the qualification requirements, except when government procurement by the one source method are made pursuant to subparagraph 4) of Article 32 of this Law;

3) a written note basing the price of offered goods, work, services.

3. Where government procurement is conducted by the one source method in the case stipulated by subparagraph 2) of Article 32 of this Law, the participant in the tender recognised as invalid, which is invited by the organiser of government procurement to participate in the state purchase by the one source method, shall have the right not to present repeatedly to the same organiser of government procurement documents confirming the consistency of the said participant in the tender with the qualification requirements.

4. The organiser of government procurement shall consider the documents presented by the potential supplier in relation to their consistency with the qualification requirements, except when government procurement by the one source method are made pursuant to subparagraph 4) of Article 32 of this Law, as well as requirements established by the government procurement rules or by the rules of conducting electronic government procurement.

#### Article 34. A Protocol of Results of Government procurement by the One Source Method

1. Where government procurement is conducted by the one source method, the organiser of government procurement shall be obliged to make an appropriate protocol, in which the following information must be contained:

1) the base of the application of government procurement by the one source method;

2) the brief description of goods, work, services to be purchased by the one source method;

3) concerning the consistency of the potential supplier with the qualification requirements except when government procurement by the one source method are made pursuant to subparagraph 4) of Article 32 of this Law;

4) the name and place of location of the supplier, with which the government procurement contract will be concluded and the price of such an contract.

2. Not later than two working days from the day of signature of the protocol of results of the state purchase by the one source method, the customer shall be obliged to place the text of the protocol on the customer's internet resource. The said requirement shall not cover government procurement by the one source method in relation to goods, work, services, information on which constitutes state secrets.

### **CHAPTER 6. GOVERNMENT PROCUREMENT AT ORGANISED ELECTRONIC AUCTIONS AND THROUGH COMMODITY EXCHANGES**

#### Article 35. Conducting of Government procurement at Auctions

1. Government procurement at auction is carried out in real time on the web portal of government procurement, conduct of which is provided by a unified operator in the field of electronic government procurement.

2. The auction was held on one lot, while the auction subject is the goods and services, the annual value of which exceeds four thousand monthly calculation index established for the respective fiscal year by the law on the national budget, according to a list approved by the Government of the Republic of Kazakhstan.

3. The potential suppliers participate in the auction identified on the basis of consideration of applications for participation in the auction, complying with the requirements of the auction documentation and recognized as bidder by auction commission.

### **Article 35-1. Auction documentation**

1. Auction documentation is formed by organizer of government procurement in Kazakh and Russian on the basis of e-auction forms of documentation, determined by rules of conducting electronic government procurement, taking into account the requirements of the legislation of the Republic of Kazakhstan on state secrets.

2. Auction documentation, in addition to general eligibility requirements established by Article 8 of this Act, includes the following information:

- 1) the name and address of the organizer of government procurement;
- 2) a description and the required technical, quality and performance characteristics of the goods and services, including approved as applicable construction documents, technical specifications, and if necessary, an indication of the normative and technical documentation;
- 3) the quantity, the volume of work performed, services rendered, which are the subject of government procurement conducted;
- 4) place of delivery of goods, works and services;
- 5) The required time for delivery of goods, works and services, providing guarantees on the quality of the offered goods, works and services;
- 6) The terms of payment and the draft of government procurement contract, indicating the essential conditions;
- 7) The requirements for language preparation and submission of applications for participation in the auction, the government procurement contract in accordance with the laws of the Republic of Kazakhstan on languages;
- 8) the conditions and amount of submitting application to participate in the auction;
- 9) An indication of the potential supplier's right to modify or withdraw his application for participation in the auction before the deadline for their submission;
- 10) the procedure for submitting application to participate in the auction, and the desired duration of the applications for participation in the auction;
- 11) the procedure of requests for clarification of the content of the auction documentation by potential providers;
- 12) the date and time of the deadline for submission of applications for participation in the auction;
- 13) the procedure of opening, reviewing applications for participation in the auction, reducing the initial (maximum) price of the auction;
- 14) conditions, the types, amount and method of making enforcement of the government procurement contract;
- 15) information on the amount allocated for the purchase of goods, works and services, that are the subject of government procurement at auction;
- 16) the value of reducing amount appropriated for the purchase of goods and services that are the subject of government procurement at auction (auction step in monetary terms);
- 17) the expiry date for consideration of applications for participation in the auction;
- 18) the date and time of the auction.

the auction documentation may contain other additional information to enable potential suppliers to obtain the most complete information about the conditions of government procurement at auction.

3. Indication trademarks, service marks, trade names, patents, utility models, industrial designs, appellations of origin and name of the manufacturer, as well as other characteristics that

determine the identity of purchased goods, works and services to individual potential supplier, with the exception of government procurement for resupply, upgrading and retrofitting the main (fixed) equipment are not permitted in the auction the documentation.

4. Auction documentation is approved by the first head of the executive secretary or other person exercising the powers of a responsible official of the Secretary, determined by the President of the Republic of Kazakhstan, the customer or a person acting as him.

5. Procedure for submission of the auction documentation to potential suppliers, as well as explanations of the provisions of the auction documentation is determined by this Law and the rules of the electronic government procurement.

6. The organizer of government procurement has the right to amend the auction documentation, not later than five calendar days prior to the final date for submission of applications for participation in the auction on its own initiative or in response to a request for clarification of those provisions. The subject of government procurement at auction is not allowed to change. Amendments to the auction documentation is approved in the manner prescribed by paragraph 4 of the Law.

The organizer of government procurement within one working day from the date of the decision on making amendments and (or) in the auction documentation shall:

- 1) at no cost to send the amendments text to persons, details of whom were entered in the registration journal of persons who have received auction documentation;
- 2) publish on the web portal of government procurement refined auction documentation with amendments.

The deadline for submitting applications to participate in the auction shall be extended for a period of not less than seven calendar days in case of amendments to the auction documentation.

#### **Article 35-2. Notification of government procurement at auction**

1. The organiser of government procurement shall place on a web portal of government procurement text of announcement on the implementation of government procurement at auction no later than three working days from the date of approval of the auction documentation, but not later than twenty calendar days before the final date for submission of applications to participate in the auction by potential suppliers.

2. If the amount allocated for the purchase of goods, works or services that are the subject of government procurement at auction, does not exceed twenty thousand monthly calculation index established for the respective fiscal year by the law on the national budget, the organizer of the government procurement shall place on web portal of government procurement text of announcement on the implementation of government procurement at auction not less than seven calendar days before the final date for submission of applications to participate in the auction by potential suppliers.

#### **Article 35-3. Auction approval note**

1. Auction approval note is a form of expressing the consent of a potential supplier to supply goods, perform work, to provide services in accordance with the requirements and conditions established by the auction documentation.

2. Auction approval note must include confirmation of a potential supplier:

- 1) on the absence of violations of the restrictions provided by Article 6 of this Law;

2) on the absence of relationships between him and the customer or the organizer of government procurement that are prohibited by this Law;

3) on consent to terminate the government procurement contract in case of the facts contained in paragraph 10 of Article 37 of this Law, in accordance with the laws of the Republic of Kazakhstan.

Information and documents to be contained in the auction approval note are determined by the rules of the electronic government procurement.

3. Validity of auction approval note must meet the required deadline set by the auction documentation.

#### **Article 35-4. Submission of an auction approval note**

1. Auction approval note, submitted to the organizer of government procurement by the potential supplier who expressed a desire to participate in the auction, is formed in the form of an electronic document on the web portal of government procurement and consists of two parts that contain electronic copies of paper documents and (or) electronic documents listed in the auction documentation.

2. The first part of the auction approval note shall contain:

1) in case of government procurement of goods, the description of the proposed technical, quality and performance characteristics of the goods (including the trademark, service mark, trade names, appellations of origin and name of the manufacturer, and if the auction documentation provides for the requirement to provide designs, drawings, blueprints, photographs and other images of the purchased goods, auction approval note shall contain such information), and if necessary, with an indication of the normative and technical documentation;

2) in case of government procurement of works, the consent of a potential supplier to perform the work, the provision of services in accordance with the requirements of the auction documentation;

3) an electronic copy of payment document confirming guaranteed cash contribution in case of the software auction approval note in the form of guaranteed cash contribution placed in a bank account of the organizer of government procurement or in the account established by the budget legislation of the Republic of Kazakhstan for the organizers of government procurement, non-governmental bodies and state agencies.

When auction approval note is introduced in the form of bank guarantee, its original is granted to the organizer of the government procurement up to the deadline for submission of auction approval note in the manner prescribed by the rules of the electronic government procurement.

3. The second part of the auction approval note must include proof of compliance of potential suppliers and subcontractors involved by them with the qualification requirements set forth in Article 8 of this Law.

The Submission of the auction approval note after the deadline for submission specified in the auction documentation is not allowed.

4. Potential suppliers who submitted before the deadline auction approval shall be registered on the web portal of government procurement in chronological order.

5. Potential supplier not later than the deadline for submission of auction approval note shall be entitled:

1) to amend the submitted auction approval note;

2) to withdraw his auction approval note, without losing the right to return the submission of auction approval note.

Amendments as well as a review of the auction approval note after the deadline for submission of auction approval note are not allowed.

6. Potential supplier shall bear all costs associated with its participation in government procurement at auction. The customer, an organizer of government procurement, auction commission, a commission of experts, expert, unified operator in the field of electronic government procurement do not have an obligation to reimburse those costs, regardless of the outcome of government procurement at auction.

#### **Article 35-5. Security of auction approval note**

1. Security of auction approval note is submitted by a potential supplier to ensure that he:

1) does not withdraw or amend or extend his auction approval note after the deadline for submission of bids;

2) in the case of determining him as the winner of the auction, will conclude an government procurement contract and make enforcement of the government procurement contract provided for in the auction documentation.

2. Security of auction approval note is submitted at a rate of one percent of the amount allocated for the auction for the purchase of goods and services as prescribed by the regulations for electronic government procurement.

3. Potential supplier has the right to choose one of the following types of security of auction approval note:

1) guarantees cash contribution, which is paid into a bank account of the organizer of government procurement, or to an account provided by the budget legislation of the Republic of Kazakhstan for the organizers of government procurement, non-governmental bodies and state agencies;

2) a bank guarantee.

Actions of the potential supplier that lead to the emergence of a third party the right to claim in whole or in part for made guaranteed cash contribution before the expiry of its Security of auction approval note are not allowed.

Use of guaranteed cash contribution made by the potential supplier, except for the actions referred to in paragraphs 5 and 6 of this article by the organizer of the government procurement is not allowed.

4. Security of auction approval note is not returned by an organizer of government procurement in the following cases:

1) the potential supplier determined as a winner of the tender has avoided to conclude a government procurement contract;

2) the winner of the tender having concluded the government procurement contract has not fulfilled or has fulfilled not in due time the requirements established by the tender documents to the furnishing and (or) time of furnishing of collateral of fulfilment of the government procurement contract.

3) none of the bidders within thirty minutes after the start of the auction has not submitted proposals for the price of goods, works or services that are the subject of ongoing auctions. In this case, the security of auction approval note is not returned by the organizer of government procurement to all bidders.

5. Where one of the cases stipulated by paragraph 4 of this Article has occurred, the amount of collateral of the bid for participation in the tender shall be transferred to the revenue of the appropriate budget, state enterprise, legal entity, fifty and more per cent of voting shares (share of participation in the authorised capital) in which is owned by the state, or legal entities affiliated with them.

6. The organiser of government procurement shall refund to the potential supplier collateral of the bid for participation in the tender furnished by it, within three working days from the day of occurrence of one of the following cases:

1) the recall by the said potential supplier of its bid for participation in the tender before the expiration of the deadline for presentation of bids for participation in the tender;

2) the signature of the protocol of admission to participate in the tender. The said case shall not cover potential suppliers recognised as participants in the tender;

3) the signature of the protocol of results of the state purchase by the tender method. The said case shall not cover the participant in the tender determined as a winner of the tender;

4) the entry in force of the government procurement contract and furnishing by the winner of the tender of collateral of fulfilment of the government procurement contract as stipulated by the tender documents;

#### **Article 35-6. Opening and review of the first parts of the auction approval note, admission to the auction**

1. Access of Secretary of Competitive Commission to opening of the first part of auction approval note provided by the web portal of government procurement automatically after the date and time of the final submission of auction approval note specified by organizers of government procurement in the tender documentation.

2. Web portal of government procurement automatically on the day of opening of the first part of the auction approval note shall send notification to members of the auction committee, potential suppliers, details of whom are included in an electronic registration journal of auction approval note, provided the rules for conducting electronic government procurement.

3. Consideration of the first part of auction approval note is carried out by the auction committee to identify potential suppliers who meet the requirements of the auction documentation and recognition them as the bidders.

4. The auction commission considers the first part of the auction approval note and makes the decision on the admission of potential suppliers to participate in the auction no later than within seven calendar days of the date and time of the deadline for submission of auction approval note.

5. Government procurement at auction is declared invalid if filed less than auction approval note are submitted.

6. If necessary, the organizer of government procurement has the right to form an expert commission or to identify an expert to prepare an expert opinion on the conformity of the goods, works or services offered by potential suppliers, with technical specifications, which is an integral part of the auction documentation.

If the organizer of government procurement does not have professionals of appropriate profile, he engages for work civil servants or other experts, who corresponds to the specialization of goods, works and services. Civil servants are engaged as experts on a grant basis, and other professionals are engaged in the paid and free of charge on request of the parties.

Experts do not have voting rights when auction commission makes decision.

The choice of the persons engaged as experts on a fee basis is carried out in accordance with this law.

7. The auction commission considers the first part of the auction approval note as meeting the requirements of the auction documentation, if it contains grammatical or arithmetic errors that not affecting the substance represented by the first part of the application.

8. Potential suppliers cannot be allowed to participate in the auction (recognized as bidder) if:

1) The first part of his auction approval note does not comply with the requirements defined by the auction documentation;

2) he does not submit auction approval note.

9. Protocol for the admission to participation in the auction shall be signed by the chairman and all members present at a meeting of the auction commission, and secretary of the auction commission on the day of the decision-making on the admission of potential suppliers to participate in the auction (recognized as bidders).

Protocol for the admission to participation in the auction is published by Secretary of the auction commission on the day of the decision-making on admission to the Web portal of government procurement with automatic e-mail notification of all potential suppliers, details of whom have been entered into an electronic registration journal of applications for participation in government procurement at auction, prescribed rules for electronic government procurement.

10. If auction Commission recognizes as bidders less than two potential suppliers, government procurement at auction is declared invalid.

11. The solution of the auction Commission for admission to the auction may be appealed in accordance with Article 45 of this Law.

#### **Article 35-7. Holding an auction**

1. The auction is held on the web portal of government procurement on the day and in time specified in the notification of government procurement at auction.

The day of holding of the auction is the working day following the expiration of two working days from the date of expiration of the consideration of auction approval note.

2. The potential suppliers, recognized as participants of the auction, participate in the auction.

3. The auction is held by reducing the current price proposal starting from the amount appropriated for the purchase of goods, works or services that are the subject of ongoing auction, for auction step.

Step auction is from one-half percent (0.5) up to five percent for the amount appropriated for the purchase of goods, works or services that are the subject of ongoing auctions.

4. During the auction bidders submit the price offer of goods, works or services that are the subject of ongoing auction, aimed at reducing the current minimum price offer within a step of the auction.

5. During the auction any bidder may submit the price offer for goods, works or services that are the subject of ongoing auctions, reducing the amount appropriated for the purchase of goods, works or services that are the subject of ongoing auction regardless of a step of the auction in case of absence of current minimum offer.

6. Bidder shall not be entitled to submit the price offer for goods, works or services that are the subject of ongoing auction lower than the current minimum offer price for the goods,

works or services that are the subject of ongoing auction, if such price offer for goods, works and services that are the subject of ongoing auctions is submitted by the same bidder.

7. Time for receipt of price offers of bidders for goods, works or services that are the subject of ongoing auction is thirty minutes from the start of the auction, as well as ten minutes after receiving the last price offer for goods, works or services that are the subject of ongoing auctions. If there are no offers of lower price for goods, works or services that are the subject of ongoing auction within that time, the auction ends.

If offer price of the goods, works or services that are the subject of ongoing auction is equal to the price offered by another bidder, the best price offer for goods, works or services that are the subject of ongoing auction is price offered earlier than other proposals.

9. If within thirty minutes after the start of the auction, none of the bidders submit the price offer for goods, works or services that are the subject held the auction in accordance with paragraph 4 of this Article, the auction is declared invalid.

10. Protocol of the results of the auction is automatically formed and posted on the web portal of government procurement in the last day of the auction.

### **Article 35-8. Review of the second parts of the auction approval note**

1. Access of Secretary of Competitive Commission to opening of the second part of auction approval note provided by the web portal of government procurement automatically after the date and time of the final submission of auction approval note specified by organizers of government procurement in the tender documentation.

2. The auction commission considers the second part of the auction approval note and makes the decision on the conformity or nonconformity of potential suppliers, recognized as the bidders, with the qualification requirements set by the auction documentation, no later than seven calendar days.

3. During review the second part of auction approval note the auction commission may:

1) request in writing and (or) in the form of an electronic document the potential suppliers, recognized as the bidders, materials and clarifications to facilitate the second part of the consideration of auction approval note;

2) request necessary information from relevant individuals or legal entities, state agencies to clarify the information contained in the second part of auction approval note in writing and (or) in the form of an electronic document.

The request of the other actions of the auction commission, related to bringing an auction approval note in accordance with the requirements of the auction documentation to add the auction approval note with the missing documents, to replace the documents submitted in the auction approval note, bringing into compliance improperly executed documents is not accepted.

The auction commission considers the second part of the auction approval note as meeting the requirements of the auction documentation, if it contains grammatical or arithmetic errors that not affecting the substance represented by the first part of the application.

4. Potential supplier is recognized as not qualified in the cases stipulated by this law and the rules of the electronic government procurement.

5. According to the results of review of the second part auction approval note, the auction commission determines the winner of the auction among potential suppliers, recognized as the bidders and complying with qualification requirements established by auction documentation for the lowest price offer and determines the applicants to conclude an government procurement contract among the potential suppliers recognized as the bidders and complying with

qualification requirements established by the auction documentation, if available, or recognizes an auction as not held in the case stipulated by paragraph 6 of this Article.

6. If none of the potential supplier, recognized as the bidder and submitted the price offer, meets the qualification requirements established by the auction documentation, government procurement at auction is declared invalid.

7. Protocol for the outcome of the auction shall be signed by the chairman and all members present at a meeting of the auction commission, and secretary of the auction commission on the day of the decision-making on the outcome of the auction.

Secretary of the auction commission on the day of signing the protocol on the outcome of the auction forms and places it on the web portal of government procurement.

8. Customer signs and sends the winner of the auction draft of the contract on government procurement within five working days from the date of approval of the protocol of the auction results.

9. The draft of government procurement contract should be signed by the winner of the auction or, in cases stipulated by paragraphs 10 and 11 of this Article, by the applicant for a government procurement contract within five working days from the date of submission of the draft of government procurement contract signed by the Customer.

It shall not be allowed to introduce amendments to the essential terms of the draft government procurement contract.

Winner of the auction avoided the conclusion of a government procurement contract shall be entered in the register of unfair participants in government procurement in accordance with the procedure established by this Law.

10. If the winner of the auction avoided the conclusion of a government procurement contract, the customer may conclude the government procurement contract with the applicant, whose price offer is the lowest price offer after the auction winner.

11. If the applicant does not provide signed government procurement contract in time provided by paragraph 9 of this Article, the customer may conclude the government procurement contract with the applicant, whose price offer is the lowest price offer after the applicant, who did not provide signed government procurement contract.

Applicants for the conclusion of government procurement contract, who did not submit signed government procurement contract within the time specified by paragraph 9 of this article is not entered in the register of unfair participants of government procurement stipulated in this Law, except for the winner of the auction.

12. The solution of the auction commission may be appealed in accordance with Article 45 of this Law.

### **Article 35-9. Reasons and consequences of recognition of government procurement at auction as invalid**

1. Auction is invalid:

1) if less than two applications for participation in government procurement at auction are submitted;

2) in cases provided by paragraph 10 of Article 35-6, paragraph 9 of Article 35-7 and paragraph 6 of Article 35-8 of this Law;

3) If the auction winner declined to sign the government procurement contract and the Customer did not exercise the right stipulated in Paragraphs 10 and 11 of Article 35-8 of this Law.

2. If government procurement at auction is declared invalid, the customer is entitled to take one of the following decisions:

- 1) re-conduct government procurement at auction;
- 2) to amend the auction documentation and re-conduct government procurement at auction;
- 3) the implementation of government procurement by the one source method, in the case provided by subparagraph 1) of paragraph 1 of this article.

#### Article 36. Conducting of Government procurement of Goods Through Commodity Exchanges

1. Government procurement of goods through commodity exchanges shall be conducted in accordance with the legislation of the Republic of Kazakhstan concerning commodity exchanges.

2. Where annual volumes of government procurement of goods, entered in the list of exchange goods, do not exceed minimal volume of lot, provided in the list of commodity exchange goods, the customer shall have the right to select another method for conducting of government procurement of goods.

### **CHAPTER 7. A GOVERNMENT PROCUREMENT CONTRACT**

#### Article 37. Conclusion of a Government procurement Contract

1. Within five working days from the day of signature of the protocol of the state purchase the customer shall sign and deliver to the potential supplier a draft government procurement contract to be made in accordance with the model contract determined by the government procurement rules.

Where results of the state purchase by the tender method are summarised, the customer shall deliver to the winner of the tender a copy protocol of its results and a draft government procurement contract to be made in accordance with the tender documents.

2. Where the government procurement contract is concluded with the non-resident of the Republic of Kazakhstan, it shall be allowed to formulate the government procurement contract in the form proposed by it subject to requirements of the legislation of the Republic of Kazakhstan.

3. The time of concluding a government procurement contract may not be more than thirty calendar days from the day of delivery to the potential supplier of the draft government procurement contract, except for the time of concluding government procurement contracts as provided for by paragraph 9 of Article 31 of this Law and paragraph 9 of Article 35-8.

4. The government procurement contract should include a penalty for failure to perform or improper performance of obligations under the government procurement contract, as well as the customer's responsibility to ensure the recovery of the penalty from the total amount of the government procurement contract.

5. In cases stipulated by the government procurement rules the supplier shall be obliged to furnish collateral of fulfilment of the government procurement contract within ten working days from the day of conclusion of the government procurement contract.

Collateral of fulfilment of the government procurement contract shall be furnished by the supplier as a guarantee that it will timely, completely and properly fulfil its obligations under the government procurement contract concluded with it.

The supplier shall have the right to choose one of the following types of collateral of fulfilment of the government procurement contract:

1) a guarantee money contribution, which is to be placed on the customer's bank account or on the account stipulated by the budget legislation of the Republic of Kazakhstan for customers being state bodies and state agencies;

2) a bank guarantee.

The supplier shall not be allowed to perform actions resulting in the emergence with third persons of the right of claim in the whole or in a part in relation to the placed guarantee money contribution, until the obligations under the contract are completely fulfilled.

The customer shall not be allowed to use the guarantee money contribution, which is placed by the supplier, for purposes not stipulated by this Law.

The requirement concerning furnishing of collateral of fulfilment of the government procurement contract shall not cover suppliers determined according to results of government procurement by the price quotation request method, through commodity exchanges, as well as suppliers presented it in the case stipulated by paragraph 8 of Article 8 of this Law.

6. State bodies, state agencies and state enterprises on the right of operative control may conclude a government procurement contract for a period of not more than one financial year in case of purchases of:

1) work with the term of its completion in the next (next) financial year (years) stipulated in the project-estimate documents;

2) assets and other goods, the duration of which technological manufacture time causes their delivery in the next (next) financial year (years);

3) services of organisation of catering to the staff of the Armed Forces and other military formations of the Republic of Kazakhstan. The term of such a government procurement contract must not exceed three years;

4) services for a period of over one financial year;

5) goods, work, services the term of performance (rendering, delivery) of which in connection with the duration of fulfilment is stipulated for the next (subsequent) financial year (years) established in the appropriate budget, development plan (business plan), financing plan, and also work and services on current repair and maintenance of motor roads of province and region significance. The term of validity of such a government procurement contract must not exceed three years.

7. State enterprises on the right of business authority, as well as legal entities, fifty and more per cent of voting shares (share in participation in the authorized capital) in which is owned by the state, and legal entities affiliated with them may conclude a long-term government procurement contract for goods, work, services necessary to conduct a measure with the term of completion in the next (next) financial year (years) established in the development plan (business plan) approved by the administration body or supreme body of said entities.

8. The government procurement contract for services of auditing of annual financial reports may be concluded for a period of not more than three years.

9. The conclusion of a government procurement contract for a term over one financial year in the cases stipulated by paragraphs 7 and 8 of this Article shall be allowed only with suppliers determined under results of government procurement conducted on the competitive base.

10. The government procurement contract must comprise a term concerning its termination on any stage in case of exposure of one of the following facts:

- 1) violation of restrictions stipulated by Article 6 of this Law;
- 2) rendering by the organiser of government procurement of assistance to the potential supplier not stipulated by this Law.

11. An contract on government procurement with domestic manufacturers and domestic suppliers of work and services shall contain a provision on advance payment and full payment for the supply of goods, performance of work or rendering of services, in this respect, the deadline for full payment shall not exceed thirty calendar days from the day of implementation of obligations under the given contract.

12. The government procurement contract shall be considered as fulfilled provided that the customer and the supplier have completely fulfilled the undertaken obligations under the said contract.

13. In case of failure or improper performance of obligations taken by the supplier under the government procurement contract, the Customer shall, within ten working days after the fiscal year take measures to recover the penalty in the income of the relevant budget, state enterprise, legal entity, fifty percent or more voting shares (share of participation in the authorized capital) in which is owned by the state, and legal entities affiliated with them.

#### Article 38. Avoidance of Conclusion of a Government procurement Contract

1. Where by the time established by this Law the potential supplier has not presented to the customer the signed government procurement contract, or having concluded the government procurement contract it has not furnished collateral of fulfilment of the government procurement contract in the cases stipulated by paragraph 4 of Article 37 of this Law, then such a potential supplier shall be recognised as avoided the conclusion of the government procurement contract.

2. Where the potential supplier is recognised as avoided the conclusion of the government procurement contract, the customer shall:

- 1) withhold his submitted security application for a position or at auction and appeal to the court for recognition of the potential supplier as unscrupulous member of government procurement;

- 2) apply to the court to compel a potential supplier to conclude the government procurement contract, as well as for damages caused by the deviation from the government procurement contract.

#### Article 39. Bases of Introduction of Amendments to a Draft Government procurement Contract or Concluded One

1. Introduction of amendments to the draft government procurement contract shall be allowed provided that the following interrelated terms are observed:

- 1) the introduction of an amendment to the draft government procurement contract is initiated by either of the parties not later than in five working days from the day of signature of the protocol of results of the state purchase by the tender method;

- 2) introduction of an amendment shall be allowed in relation to a decrease in the amount of the draft contract providing for the quality and other terms being the base for the selection of the supplier remain constant;

- 3) the decision concerning the introduction of an amendment in relation to the decrease in the amount of the contract has been passed under the mutual consent of the parties.

It shall not be allowed to introduce an amendment to the draft government procurement contract without compliance with the terms stipulated by this paragraph.

2. Provided that the quality and other terms being a base for the selection of the supplier remain constant, the introduction of an amendment to the concluded government procurement contract, shall be allowed:

1) under mutual consent of the parties in relation to a decrease in the price of goods, work, service and, accordingly, the amount of the contract;

2) in relation to the increase in the amount of the contract, where the project-estimate documents passed the state expert examination are introduced amendments, and a decision concerning the additional allotment of money for the amount of such an amendment is passed in accordance with the procedure determined by the budget and other legislation of the Republic of Kazakhstan;

3) in relation of the decrease or increase in the amount of the contract related to the decrease or increase in the needs in the volume of purchased goods, work, except for work indicated in subparagraph 2) of this paragraph, services, provided that the price of the unit of goods, work, service indicated in the concluded government procurement contract for said goods, work, services remains constant. Such a modification of the concluded government procurement contract for goods, work, services shall be allowed within the amounts stipulated in the annual government procurement plan for the purchase of said goods, work, services;

4) if during the process of fulfilment of the government procurement contract in relation to goods concluded with it the supplier proposes better quality and (or) technical characteristics or dates and (or) terms of delivery of goods being a subject-matter of the government procurement contract for goods concluded with it, providing for the price of the unit of goods remains constant;

5) in relation to the decrease or increase in the amount of the contract for performance of work with the term of completion in the next (next) year (years), which are caused by modification of legislation in the tax, customs and other legislation of the Republic of Kazakhstan.

6) in relation to the decrease or increase in the amount of the contract for performance of work with the term of completion in the next (next) year (years);

7) in relation to the appropriate change of the term of fulfilment of the contract, where the financing is changed by years funding from the state budget, in case of the same amount of the contract or reduce the estimated cost of works and amendments to design estimate documentation, later passed the state examination;

8) in relation to the appropriate change of the term of fulfilment of the contract works, in the case of criminal proceedings related to the performance of a contract against an official of the customer and (or) supplier.

3. It shall not be allowed to introduce to the draft government procurement contract or to the concluded one amendments, which can modify the content of the terms of the state purchase in progress (conducted) and (or) of the offer being the base for the selection of the supplier, on other bases not stipulated by paragraphs 1 and 2 of this Article.

#### Article 40. Entry of a Government procurement Contract in Force

1. The government procurement contract shall enter in force after the signature of it by the customer and the supplier, or the complete furnishing by the latter of collateral of fulfilment of the contract as stipulated by the tender documents. Where the government

procurement contract is to be registered, then it shall enter in force after the registration of it in accordance with the legislation of the Republic of Kazakhstan.

2. The government procurement contract to be registered in accordance with the legislation of the Republic of Kazakhstan shall be presented by the customer to the authorised body for registration of government procurement contracts not later than in five working days after its conclusion or complete furnishing by the supplier of collateral of fulfilment of the contract as stipulated by the tender documents or auction documents.

## **CHAPTER 8. SPECIAL PROVISIONS**

Article 41. The Particular Procedure for Conducting of Government procurement by the Tender Method

1. is deleted in accordance with the Law of RK dated 20.11.08, № 87-IV;

2. Government procurement with the application of the particular procedure shall be conducted in accordance with this Law, except for the rules establishing qualification requirements, as well as regulating procedures for and term of conducting of government procurement stipulated by this Law.

3. Government procurement with the application of the particular procedure shall be conducted in cases of purchases of:

1) goods, work, services to support law and order and national security, where it is required to establish a particular procedure for conducting of government procurement ensuring the compliance with the regime of secrecy, as well as guaranty of national security of the Republic of Kazakhstan;

2) services stipulated by the state social order;

3) is deleted in accordance with the Law of RK dated 20.11.08, № 87-IV;

4) is deleted in accordance with the Law of RK dated 18.02.11, № 408-IV;

5) housing held on the right of private ownership by a physical person, who is not a subject of business activities;

6) goods, services to conduct exhibitions, seminars, conferences, meetings, forums, symposia, training;

7) goods, work, services information on which constitutes state secrets;

8) special social services as provided for by the guaranteed volume of special social services and services associated with the evaluation and assessment of needs of special social services;

9) is deleted in accordance with the Law of RK dated 13.01.12, № 543-IV;

4. The particular procedure for conducting of government procurement by the tender method shall be determined by the Government of the Republic of Kazakhstan.

Article 41-1. The Special Procedure for Carrying Out Government procurement to Ensure Needs of the Defence

The special procedure for carrying out government procurement of arms, military machinery, ammunition, special means, and also work and services associated with repair of them and modernisation to ensure needs of the defence and military safety shall be determined by the Government of the Republic of Kazakhstan.

The special procedure shall not apply in the cases provided for by subparagraph 43) of paragraph 1 of Article 4 of this Law.

Article 42. The Special Procedure for Conducting of Government procurement by the Tender Method

1. The special procedure for conducting of government procurement by the tender method (henceforth — the special procedure) shall be applied by customers being state enterprises on the basis economic control rights, legal entities, fifty and more per cent of voting shares (stakes) in which is owned by the state, and legal entities affiliated with them.

2. Government procurement with the application of the special procedure shall be conducted in accordance with this Law, except for the rules establishing qualification requirements, as well as regulating procedures for and term of conducting of government procurement stipulated by this Law.

3. The special procedure shall be approved by administration bodies of the customers indicated in paragraph 1 of this Article, in accordance with the model requirements to the special procedure to be established by the Government of the Republic of Kazakhstan, including requirements to:

1) the procedure for conducting of a preliminary qualification selection of potential suppliers on the regular base;

2) the procedure for formation of a list of skilled potential suppliers;

3) procedures for and term of selection of a supplier on the base of requesting of price offers from potential suppliers passed the preliminary qualification selection in accordance with subparagraph 1) of this paragraph, and conclusion of a government procurement contract with it;

4) the procedure for rendering support to domestic manufacturers, domestic suppliers of work, services.

Article 43. Particular Terms of Participation in Government Procurement for Temporary Associations of Legal Entities (Consortium)

Special terms of participation of temporary associations of legal entities (consortium) in government procurement shall be determined by the government procurement rules.

Article 44. Support to Certain Categories of Potential Domestic Suppliers

1. State support in conducting of government procurement shall apply to domestic manufacturers, domestic suppliers of work, services, domestic businessmen. The most of measures of state support shall apply to domestic manufacturers.

2. Measures of state support of the entities specified in paragraph 1 of this Article shall be determined by the Government of the Republic of Kazakhstan.

3. Organizers of government procurement in conducting government procurement of certain types of goods, work, services shall conduct government procurement by the methods as provided for by the Law only from the organizations, indicated in a list to be approved by the Government of the Republic of Kazakhstan, which manufacture goods, perform work, and render services, and established by public associations of the disabled of the Republic of Kazakhstan.

4. The Government of the Republic of Kazakhstan shall determine a list, volumes, and the procedure for purchase of certain types of goods, work, and services procured from

organizations which manufacture goods, perform work, render services, established by the public associations of the disabled.

In this respect the named organizations of the public associations of the disabled shall comply with the term set forth in the second clause of subparagraph 13) of part one of Article 248 of the Code of the Republic of Kazakhstan «Concerning Taxes and Other Obligatory Payments to the Budget» (the Tax Code).

5. Organizers of government procurement in conducting government procurement of food products, indicated in the list to be approved by the Government of the Republic of Kazakhstan, shall conduct government procurement by the methods as provided for by the Law only from the domestic manufacturers.

In the case where government procurements of food products from domestic manufacturers are recognized as not held in accordance with this Law, the customer shall have the right to carry out government procurements by the methods as provided for, to which all the potential suppliers are admitted.

## **CHAPTER 9. CONCLUSIVE PROVISIONS**

Article 45. Appealing of Actions (Omission) of a Customer, Organiser of Government procurement, Commissions, Expert, Unified Operator in the field of government procurement

The potential supplier shall have the right to appeal actions (omission) of the customer, organiser of government procurement, commissions, expert, unified operator in the field of government procurement where their actions (omission) infringe upon rights and legal interests of the potential supplier. The following customer's decisions shall not be appealed to the state supervision bodies:

- 1) concerning the selection of the method of government procurement;
- 2) concerning the denial to conduct government procurement passed by the customer in accordance with paragraph 10 of Article 5 of this Law.

Article 46. Settlement of Disputes

All disputes arising in the process of government procurement shall be settled in accordance with the legislation of the Republic of Kazakhstan.

Article 47. Responsibility for Violation of the Legislation of the Republic of Kazakhstan On Government procurement

Violation of the legislation of the Republic of Kazakhstan concerning government procurement shall involve responsibility in accordance with laws of the Republic of Kazakhstan.

Article 47-1. Transitional Provisions

1. The provision of paragraph 6 of Article 12 shall be in effect till the 1st July 2012.

Article 48. The Procedure for Enactment of This Law

1. This Law shall be enacted from 1st January 2008.

2. The Law dated 16th May 2002 of the Republic of Kazakhstan ‘On Government procurement’ (The Bulletin of the Parliament of the Republic of Kazakhstan, 2002, №. 9, Art. 95; 2004, №. 14, Art. 83; №. 17, Art. 101; 2005, №. 6, Art. 7; №. 23, Art. 105; 2006, №. 10, Art. 52; №. 12, Art. 71; 2007, №. 2, Art. 14) shall be recognised invalid.

**President of  
the Republic of Kazakhstan  
N. NAZARBAEV**

Astana, Akorda, July 21, 2007  
LRK № 303-III