

THE LAW OF THE REPUBLIC TAJIKISTAN

“On Government Procurement of Goods, Works and Services”

The Present law establishes general legal and economical principles of the **government procurement** of goods, works and services by any juridical person, within the territory of the Republic Tajikistan.

CHAPTER I GENERAL PROVISIONS

Article 1 Definitions used in the present Law

The following definitions are used in the present Law :

- a) “government procurement ” - purchase of works, delivery of goods and supply of services, completely or partially through state means;
- b) “state means” – are the following financial resources :
 - provided by the state budget resources of all levels;
 - means, given as foreign support on the basis of international agreements, unless the international agreement foresees other ways of distribution of means;
 - guaranteed and provided credit means, as well as resources financed by the budget;
- c) “procurement agreement ” - agreement (contract) concluded between the buying organization and the supplier, concluded as the result of procurement;
- d) “procurement ” - purchasing of goods (works) or services from a supplier in any way specified in the present Law;
- e) “procuring organization” - a state body of the Republic Tajikistan, state enterprise, organization or institution, which has the status of juridical person that deal with the procurement of goods (works) and services;
- f) “offer” - proposal to conclude agreement (contract), containing essential terms;
- g) “guarantee of tender request” - a guarantee by a supplier (contractor) to a procuring organization of the complete fulfillment of any obligation, including bank guarantees, letters of credit, checks according to which a bank carries out a primary obligation, deposits in cash, promissory notes and bills of exchange and securities.
- h) “supplier” - depending on the context any potential or actual side to the procurement agreement with the procuring organization;
- i) “delivery” - all stages of the process of buying raw materials, complete production, equipment and other goods, delivered to the buying organization;
- j) “works” - any kind of work connected with projection, building, reconstruction, demolition, repair or renovation of a building, structure or object, including preparation of the building site, excavation of ground, erection, assembling of equipment or materials, trimming and works of decoration, as well as accompanying building services such as drilling, geodesic works, satellite survey, seismic investigations and other services, allowed in accordance with

- the purchase agreement , if the cost of these services does not exceed the cost of the building itself;
- k) “tender” - offer for delivery of goods, services, carrying out works in course of the auction;
 - l) “goods” - products of labor, of any kind and description including raw materials, makings, equipment and subjects in solid, liquid and gas condition, electric power as well as services accompanying delivery of goods, if the cost of services is not higher than the cost of goods themselves;
 - m) “services” - any object of the procurement, besides goods and works.

Article 2 Objects of the present Law

Objects of the Present Law are as follows:

- securing of maximum economy and effectiveness of state expenditures allocated for the government procurement ;
- respective fulfillment of social and economic needs and objectives;
- broadening of participation and development of competition between suppliers (contractors) in the process of procurement;
- securing of effective usage of state means, allocated for procuring of goods, works and services for state needs.

Article 3 The subject of the regulation

The present Law regulates the procurement of goods, works and services carried out partially or completely by the state means.

The present Law does not regulate the procurement related to the national defense and state security, protection of state secrets and natural disasters, principles of organization of which are defined by laws and legal acts of the Republic of Tajikistan.

Article 4 Conditions of protection of the domestic market

In case when there are enough candidates for delivery of goods, works and services on the territory of the Republic of Tajikistan, the procuring organization has the right to limit the participation of external suppliers in the process of procurement.

If the object of procurement is services or works, carried out on the territory of the Republic of Tajikistan, the procuring organization has the right to demand all the works to be carried out by local enterprises with the use of local raw materials and products.

In case of restriction on the basis of the nationality, the Government of the Republic Tajikistan abides by international obligations while defining:

- a) categories of supply (services or works) for which limitations on the basis of the nationality are applicable;
- b) criteria on the basis of which the authorized body of the Government of the Republic Tajikistan (hereinafter - the authorized body) establishes or abolishes a limitation based on the nationality;
- c) procedures of application of limitations on the basis of the nationality in course of the government procurement foreseen in parts 1 and 2 of the present article.

In case the decision is made on the imposition of limitations on the basis of the rules of origin all obligations, specified in the international agreements of the Republic Tajikistan shall be taken into account.

Local and foreign suppliers shall be accorded equal opportunities in relation to the participation in the government procurement in accordance with the provisions of the present Law.

Article 5 Conditions for excluding from participation in the government procurement

Decision on excluding the candidates from the participation in the government procurement is made in following cases:

- a) suppliers (contractors) did not fulfill appropriately at least one agreement on government procurement during the preceding three years;
- b) suppliers (contractors) are in the process of bankruptcy or have been declared bankrupts;
- c) suppliers (contractors) have tax debts, debts to the fund of social insurance, or debts in relation to other mandatory payments;

Article 6 Restrictions introduced by the present Law

State officials of the Republic Tajikistan are prohibited to act as suppliers in course of the government procurement regulated by the present law. Government procurement agreements cannot be concluded between such officials and institutions with which the respective officials cooperate or of which they are representatives or members of the managing board.

In the following cases it is prohibited to a person to represent a purchasing organization, fulfill other responsibilities with regard to the procurement or act as a consultant in connection with procurement procedures, if:

- a) a person is in the matrimonial or family relations with the supplier, his legal representative or his official persons;
- b) during the preceding three years was an employee or an official person of any supplier (contractor), involved in the procurement.

A purchasing organization cannot conclude government procurement agreements with a supplier (contractor), who is connected with the head company or branch, a consultant of which is responsible for preparing specifications or tender documents for the procurement agreement.

An interested supplier should be informed immediately about the rejection of the tender application, suggestion, offer or quotation in accordance with the present article and reasons of it must be reflected in the protocol of the purchasing procedures.

Article 7 Qualification requirements to the suppliers (contractors)

In order to participate in the government procurement procedures suppliers must satisfy qualification standards, in accordance with the following criteria:

- a) they must possess professional, legal and technical competence, experience and reputation, financial resources, equipment and other material means;

- b) they shall not be insolvent, bankrupt, their property shall not be under legal control, their commercial activity shall not be suspended, they shall not be under legal trial;
- c) their obligations on payment of taxes and other mandatory payments in the Republic Tajikistan must be fulfilled;
- d) they themselves and their managers or employees shall not be condemned for any criminal case connected with their professional activity, or related to the false information or perverting the facts and misleading regarding their qualification with the purpose to conclude the procurement agreement during 5 years preceding the procurement;
- e) they must be authorized to conclude the procurement agreements.

Considering the right of suppliers to protect their intellectual property or commercial secrets, the procuring organization may demand from suppliers, who participate in the procurement procedures, to present documentary proofs or other information to ensure, that suppliers possess the qualification corresponding to the criteria, specified in the first part of this article.

Qualification demands, established in accordance with the present article, are set in the pre-qualification documents (in case of pre-qualification procedures) as well as tender documentation and other documentation related to the proposals, offers and quotes.

Regulation about pre-qualification procedures shall be approved by the authorized body.

A purchasing organization shall not set criteria, requirements or procedures, which discriminate against suppliers (contractors) except cases, specified in the Article 4 of the present law.

A procuring organization, in coordination with the authorized body can dismiss suppliers (contractors) from participation in purchasing procedures in the following cases:

- a) presenting false information about their qualifications ;
- b) supplier (contractor) does not correspond to the qualification requirements ;

Article 8 Participants in the procurement

Main participants in the procurement procedures are:

- procuring organizations;
- tender commissions ;
- suppliers (contractors);

Procuring organization may be:

- a) budget organization, state organs and enterprises ;
- b) municipal organizations, which are financed from the means of a local budget;
- c) local governments and bodies of local self-governing;
- d) funds, created with the state means.

The Government of the Republic of Tajikistan has the right to define other bodies distributing the state means, for which the present law is applicable.

In case if several procuring organizations are planning procurement related to one specific product, the Government of the Republic Tajikistan can appoint a specific body of state administration for carrying out purchasing procedures and joint purchasing on behalf of the specified buying organizations.

Participants of purchasing procedures are obliged to abide by the principle of confidentiality of information made available and used, containing facts that constitute a commercial or other secret protected by law.

Article 9 Authorized agency for government procurement

The Government of the Republic of Tajikistan defines the authorized body for the procurement, which will implement the state policy for procurement of goods, works and services.

Main functions of the authorized body are:

- drafting of the legislative basis for functioning of the system of government procurement, including the order and procedure of requests, purchasing, concluding agreements and payments under the agreements;
- coordination and regulation of procuring of goods (services and works) through the state budget means, foreign credits in accordance with the legislation of the Republic Tajikistan;
- control of compliance with the legislation of the Republic Tajikistan in the sphere of the government procurement;
- assisting the state bodies in procuring the goods (works and services), including the training of staff with regard to the procurement procedures as well as providing the consultative support;
- approval of the model of the procurement procedure;
- other functions foreseen by the Law;

Article 10 The tender commission

In cases and in the order specified by the legislation the authorized body for the procurement together with the interested organizations constitute the commission on tendering.

The tender commission fulfills the following functions:

- holds preliminary qualification of candidates, organizes the devising and distribution of the tender documents and offers suggestions on changing these documents and procedures, makes candidates familiar with documents and gives necessary explanations;
- ensures collection, filing and evaluation of tender requests, offers and quotes;
- defines the winner or makes another decision on results of the purchasing procedures;
- publishes in the press reports about results of the auction;

The tender commission should consist not less than of 3 members.

The procuring organization or the organizer of the auction by the instruction of the procuring organization shall pay for the work of persons, involved in the activity of the tender commission on the basis of the concluded agreements in accordance with the legislation of the Republic Tajikistan.

Article 11 Candidate

A supplier (contractor) gets the status of candidate since the moment he applied to the commission on tendering with the requests to participate in the auction.

In the following cases the candidate's status relinquishes:

- at the wish of the candidate - on any preliminary stage;
 - as a consequence of not meeting preliminary qualification criteria;
 - in the case of the violation by the candidate of the present Law or terms of the tender;
- Candidate has the right to:
- obtain the information from the tender commission on tender terms and procedures for the government procurement;
 - apply to the procuring organization, organizer of the auction or the tender commission with the request to defer the presentation of the offer in the written form. The deferral decision is taken by the procuring organization.

For the participation in the auction the candidate has to present a request for the participation in the auction, a copy of the payment document, which confirms availability of the guarantee securing the tender request (in case, if it is specified in the tender documents).

Article 12 An offeror

Starting the registration of the offer a candidate gets the status of an offeror.

The winner of the auction has the right to conclude agreements with the procuring organization on terms, specified in his offer, which is drawn in accordance with tender documents.

Article 13 Methods of government procurement

The main method of the government procurement is the auction with limited and not-limited participation organized by the authorized body. The selection by the procuring organization of another method of procurement is made in coordination with the authorized body. The authorized body approves other methods of government procurement.

Article 14 Auction with limited and not-limited participation

In course of the auction with not-limited participation, suppliers (contractors) who wish to participate in procurement have the right to present tender requests without limitations.

Auctions with limited participation are held if:

- a) expenses due to the consideration and evaluation of numerous tender requests are not commensurable with the cost of procured goods (works) or services;
- b) only limited number of suppliers (contractors) can provide goods (works) or services of the technical complexity or the specific character.

In course of the auction with limited participation the procuring organization invites tender requests from all suppliers (contractors), who can provide the procured goods, works or services with the aim to attract their tender offers and selects sufficient number of suppliers (contractors) to secure the competition.

The order and content of tender documentation, as well as the realization of the works are established by the authorized body.

Article 15 Government procurement agreement

The authorized body establishes respective regulations that define the order of concluding, amendments, cancellation and the content of the agreements on state purchasing.

Article 16 The right of complaint

Participants in the auction procedures have the right to lodge a complaint to the tender commission with regard to the selection results before the decision of the tender commission is made.

Participants in procurement procedures can lodge a complaint to the procuring organization with respect to any decision of the tender commission during 10 days after publication of results of purchasing procedures. The procuring organization shall not consider complaints of suppliers (contractors) received after this term.

The subject of the complaint cannot relate to:

- selection of the method of the procurement ;
- selection of the procedure for the procurement;
- restriction of the procurement procedure on the basis of nationality, in accordance with the requirements of the present law.

A supplier (contractor) or any other state body, whose interests are violated or can be violated as the result of lodging a complaint has the right to participate in the appeal procedures. The supplier (contractor) who did not participate in such procedure has no right to lodge an identical complaint in the future.

Article 17 Actions of the procuring organization

A supplier (contractor) has the right to lodge a complaint in written form to the procuring organization with the notification of the reasons for the complaint before the agreement is signed. The procuring organization has no right to consider a complaint after the procurement agreement came into legal force.

A complaint can be made during 10 days since the day when the circumstances, which were the reason for the complaint, became known to the supplier (contractor).

The procuring organization considers a complaint within a 7 days period since the day it was filed.

The procuring organization, depending on the results of consideration of a complaint, issues a written decision with indication of:

- substantiation of reasons for taking the decision;
- measures aimed at satisfying the request in case of complete or partial satisfaction of a complaint.

In case the procuring organization has not issued a decision within the time period set forth in part 3 of the present article, or if the supplier (contractor) is not satisfied with the decision, the supplier (contractor) has the right to appeal the decision to the authorized body or a court. Since the moment of such an appeal the procuring organization is not authorized to consider the complaint.

The appropriate Regulation of the authorized body defines the order of considering an appeal.

Article 18 Suspending of the procurement procedures

Timely lodging of a complaint in accordance with the articles 16-17 of the present law suspends procurement procedures for 10 days if the complaint is well-grounded and contains the confirmation of the fact that the supplier (contractor) will suffer damage in case if procurement procedures are not suspended; if the decision about suspending will not cause essential damage to the procuring organization or to other suppliers (contractors), the complaint might be satisfied.

If the agreement is concluded, the timely lodging of a complaint in accordance with article 19 of the present law suspends the fulfillment of such agreement for 10 days, if the complaint meets the requirements specified in the part 1 of the present article.

The authorized body has the right to prolong the term of suspension, specified in the first and second parts of the present article, with the aim to secure rights of the supplier (contractor), who lodged a complaint or brought a suit, until the completion of the appeal procedures, if the total term of suspension does not exceed 30 days.

Suspension, specified in the present article, cannot be used if the procuring organization in coordination with the authorized body declares that public interests demand continuation of the procurement. A statement of the procuring organization, which contains a substantiation of demands to continue the procurement, shall be attached to the procurement protocol and shall be subject to the appeal in a court.

Any decision, made by the procuring organization in accordance with the present article and which contains its substantiation shall be attached to the protocol about procuring procedures.

Article 19 Legal appeal

Disagreements between suppliers (contractors) and the procuring organization, that arose in course of implementation of the procurement procedures, as well as decisions of procuring organization and the authorized body, taken in accordance with the articles 18-10 of the present law, can be appealed in the order, specified in the legislation of the Republic Tajikistan.

Article 20 International obligations of the Republic Tajikistan

If the rules of an international agreement of the Republic Tajikistan contradict to the rules of the present law or subordinate legislation the rules of international agreement shall prevail.

President of the
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12 December 1997
No. 511

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