

**LAW OF GEORGIA**  
**ON PUBLIC PROCUREMENT**  
**Chapter I**  
**General Provisions**

**Article 1 – Scope and purpose of the Law**

1. This Law shall establish general legal, organisational and economic principles for public procurement, the procedure for carrying out public procurement in the area of security and defence, the powers of the Public Procurement-related Dispute Resolution Council and the procedure for reviewing disputes.

2. The purpose of this Law shall be to:

- a) ensure the spending of financial resources efficiently, reasonably, transparently and in accordance with the requirements of the law, by establishing the rules to be observed by any contracting authority and economic operator, as well as any other person involved in activities related to public procurement;
- b) ensure the good practice and accountability of persons involved in activities related to public procurement by establishing requirements which ensure that the decisions and actions of these persons, including the factual and legal grounds thereof, are independent of any political, material and personal interest, are transparent, compliant with this Law, impartial and non-discriminatory, including in terms of gender or other grounds;
- c) promote the creation of an institutional environment based on good faith, professionalism and cooperation between contracting authorities and economic operators;
- d) promote sustainable development during the implementation of public procurement, taking environmental, social and economic aspects into account.

**Article 2 - Principles of public procurement**

1. Public procurement shall be based on the following principles:

- a) the efficient and reasonable spending of financial resources intended for public procurement;
- b) openness and transparency;
- c) non-discrimination and equal treatment;
- d) proportionality;
- e) the implementation of public procurement through the Unified Electronic System of Public Procurement;
- f) the achievement of sustainable development goals when carrying out public procurement in the cases determined by an ordinance of the Government of Georgia.

2. A contracting authority shall be obliged to carry out public procurement by observing the principles provided for by paragraph 1 of this article.

**Article 3 – Definition of terms**

1. The terms used in this Law shall have the following meanings:

- a) public procurement – procurement of goods, construction works ('works') or services by a contracting authority in accordance with the procedure established by this Law irrespective of the goal of the procurement of these goods, work or services;
- b) Unified Electronic System of Public Procurement (the Electronic System) – <https://eprocurement.gov.ge> - the only official portal intended for carrying out public procurement and activities related to public procurement;
- c) contracting authority – a person/body carrying out public procurement (except for a political party, a trade union or a religious organisation) as provided for by this sub-paragraph:
  - c.a) a state body, a body of an autonomous republic or a municipal body;
  - c.b) a legal entity under public law (except for a membership-based legal entity under public law which does not comply with the conditions provided for by point (c.c.b) of this article);
  - c.c) a person (except for an enterprise) or a body which:
    - c.c.a) has been created (established) by a contracting authority to achieve a public goal and which does not have an entrepreneurial (commercial) nature;
    - c.c.b) complies with one of the following conditions:
      - c.c.b.a) receives more than half of its funding from the state budget, the budget of an autonomous republic, a municipal budget, or another contracting authority;
      - c.c.b.b) is subject to the control of a contracting authority;
      - c.c.b.c) has a management body or a supervisory board more than half whose members are appointed by a contracting authority;
    - c.c.d) an enterprise significantly affected by a contracting authority. One of the following shall be considered as a significant effect:
      - c.d.a) a contracting authority holds more than half of the capital in this enterprise;



- c.d.b) a contracting authority holds more than half of the total number of votes in this enterprise;
- c.d.c) more than half of the members of a management body or supervisory board of this enterprise are appointed by a contracting authority;
- d) economic operator – any natural person, legal person, association of persons, or other organisational entity offering the delivery of goods, the performance of works or the provision of services on the market. In addition, according to the appropriate stage of public procurement, an economic operator may be:
- d.a) a candidate – an economic operator that filed an application requesting to participate or was invited to participate in a limited procedure, a competitive dialogue, a negotiation procedure with preliminary publication, a negotiation procedure without preliminary publication, an innovative partnership or a competition;
- d.b) a bidder – an economic operator submitting a proposal in the process of a public procurement;
- d.c) a provider – an economic operator entering into a public procurement contract with a contracting authority;
- e) a subcontractor – an economic operator to which the main economic operator (a provider) transfers for implementation a part of a public procurement contract in accordance with the procedure established by this Law;
- f) other economic operator, the competences of which an economic operator relies on – an economic operator on the competences of which the main economic operator relies in accordance with Article 63 of this Law;
- g) a public procurement contract ('a procurement contract') – a contract concluded in writing between one or several contracting authorities and an economic operator. A procurement contract may be concluded on:
- g.a) the delivery of goods if the object of public procurement falls within the CPV codes 03000000 to 45000000. A procurement contract for the delivery of goods may also include their installation and/or disposition and/or a service accompanying the delivery of goods provided that the value of that installation/disposition/service does not exceed the value of the goods;
- g.b) the performance of work if the object of public procurement falls within the CPV codes 45000000 to 48000000. A procurement agreement for the performance of work may include both the performance of work only or the planning of the design and performance of work simultaneously;
- g.c) the provision of services if the object of public procurement falls within the CPV codes 48000000 to 98910000;
- h) CPV – the Common Procurement Vocabulary provided for by a relevant legal act of the European Union which establishes a unified nomenclature to be used for the implementation of public procurements and which is reflected in a normative act of the Chairperson of the Legal Entity under Public Law called the Public Procurement Agency;
- i) CPV code – a code provided for by the CPV consisting of various hierarchical levels, describing goods, work or services, and determining an object of public procurement;
- j) public procurement object ('procurement object') – goods, works and services to be procured applying the procedure of public procurement;
- k) similar procurement objects – procurement objects falling within one division of the CPV codes (under the first 3 digits);
- l) artificial division of a public procurement – the procurement of similar procurement objects in an artificially reduced quantity and/or volume by a contracting authority or other action aiming to avoid the monetary thresholds determined by this Law;
- m) estimated value of a public procurement ('estimated value of a procurement') – the maximum amount to be paid for the delivery of the procurement object (in addition to the value-added tax ('VAT')) as determined by the conditions for the public procurement within which an economic operator shall offer the price of the proposal to a contracting authority in accordance with this Law. In a negotiation procedure without preliminary publication, the estimated value of the procurement contract shall be deemed the estimated value of a procurement;
- n) conditions for a public procurement ('conditions for a procurement') – documents drawn up or determined by a contracting authority which describe or establish the elements of the procedure for a public procurement. Such documents shall be: a procurement application, procurement documentation (including specifications, requirements for economic operators, terms of the procurement contract, formats for submitting applications and proposals, and other additional information), an invitation to submit proposals/participate in a dialogue or negotiation;
- o) annual public procurement plan ('annual plan') – a plan developed by a contracting authority and approved in accordance with this Law according to which the contracting authority carries out public procurement throughout the year;
- p) military and dual-use goods – military and dual-use goods as determined by the Law of Georgia on the Control of Military and Dual-Use Goods;
- q) urgent necessity – a situation that poses a real threat to the functioning of a contracting authority and that could not have been foreseen, and/or the occurrence of which is not a result of an action of a contracting authority, or which may cause significant damage to the state and/or public interests of Georgia or the property of a contracting authority;
- r) Agency – the Legal Entity under Public Law called the Public Procurement Agency;
- s) Council – the Public Procurement-related Dispute Resolution Council;
- t) legal act of the European Union – for the purposes of this Law, the directives and regulations of the European Union and other decisions of an authorised body applicable to the field of public procurement;
- u) life cycle – all successive and interconnected stages covering, inter alia, a study to be conducted, production, trade and



its conditions, transportation, use and maintenance, the entire period of existence of goods, the performance of works or provision of services from the purchase of raw materials or the generation of available resources to obtaining a permit, providing services and usage;

v) life cycle expenditure – expenses incurred during a life cycle related to the delivery of goods, the performance of works or provision of services covering inter alia the expenditure related to expenses arising from a procurement, use, consumption of energy and other resources, maintenance, processing, as well as the damage inflicted on the environment (if the inflicted damage can be determined in the form of a monetary obligation).

2. If this Law or a subordinate normative act adopted/issued on its basis does not directly indicate the words ‘working day’ the word ‘day’ shall refer to a calendar day.

#### **Article 4 – Language**

1. Any information related to public procurement shall be prepared and published in the official language of Georgia.

2. By a decision of a contracting authority, a procurement application and procurement documentation may also be published in the Electronic System in English. When resolving a disputed matter/matters related to a procurement application and procurement documentation, in the case of non-compliance between the text of the procurement application and the procurement documentation drawn up in the official language of Georgia and its English translation, the text of the application and documentation drawn up in the official language of Georgia shall be given preference.

3. When the estimated value of a procurement is equal to or above the monetary thresholds established by legal acts of the European Union, an advance notice, a procurement application, as well as an invitation to submit proposals/participate in a dialogue or negotiation, shall be published in the Electronic System in English too.

4. To participate in the process of a public procurement, a candidate/bidder shall submit a proposal and other documents in the official language of Georgia. If a proposal and other documents are not drawn up in the official language of Georgia, the candidate/bidder shall submit their notarised translations. In the case of non-compliance, the original of the respective document shall be given preference.

#### **Article 5 – Electronic System**

1. The Electronic System is the only official portal of public procurement, an information system which creates an open, transparent and competitive environment for implementing public procurements and carrying out activities related to public procurements.

2. The Electronic System shall meet the following criteria:

a) it shall be publicly available;

b) it shall comply with the requirements established for modern information technology systems;

c) it shall use the electronic identification of users;

d) the data related to a public procurement shall be publicly available for any interested party, except for the cases directly provided for by this Law and/or an order of the Chairperson of the Agency when data are hidden due to the characteristics of the public procurement procedure, the characteristics of the public procurement instrument, the specific nature of the Electronic System, and have a legitimate purpose.

3. The Agency shall develop the Electronic System and ensure its functioning.

4. The procedure for using the Electronic System shall be established by an order of the Chairperson of the Agency.

5. Any person using the Electronic System shall automatically agree with the procedure established for its use.

6. Any person (private organisation) other than a contracting authority provided for by this Law may also carry out procurement via the Electronic System. The procedure for conducting procurement by that person via the Electronic System shall be established by an order of the Chairperson of the Agency.

7. A contracting authority shall be authorised to carry out, via the Electronic System, procurement to which this Law does not apply, in order to ensure maximum openness, transparency and competition. Carrying out the said procurement via the Electronic System shall not subordinate it to this Law. The procedure for carrying out such procurement via the Electronic System shall be determined by an order of the Chairperson of the Agency.

#### **Article 6 – Nomenclature**

1. All nomenclature to be used for conducting public procurement by this Law and any subordinate normative act adopted/issued on its basis shall be determined according to CPV codes.

2. On the basis of a relevant legal act of the European Union, CPV codes shall be approved by an order of the Chairperson of the Agency.

#### **Article 7 – Monetary thresholds**

1. A monetary threshold is a financial limit set in accordance with the established procedure determining the public procurement procedures, time limits and requirements to be applied in conducting public procurements.

2. Monetary thresholds shall be determined by the relevant legal acts of the European Union according to which these thresholds shall be included in an order of the Chairperson of the Agency.

3. When the estimated value of a procurement is below the monetary thresholds established by the legal acts of the



European Union, the monetary thresholds determined by Articles 33 and 54 of this Law shall be applied.

4. It shall be inadmissible to artificially divide a public procurement in order to avoid the public procurement procedures and time limits relevant to monetary thresholds and the fulfilment of other requirements determined by the Law.

## Chapter II Exceptions

### Article 8 – General provisions related to exceptions

When carrying out a public procurement, a contracting authority shall be guided by the exceptions determined by this Law only. Making any other exception or failure to apply this Law for any other reasons shall be prohibited.

### Article 9 – General exceptions

This Law shall not apply to:

a) procurements, if a contracting authority:

a.a) is obliged to use procurement procedures other than those determined by this Law and:

a.a.a) are established by an international organisation, international donor organisation, international financial institution and/or foreign national financial institution;

a.a.b) are determined by an international treaty and/or loan/financing/partnership agreement concluded in accordance with the universally recognised principles and norms of international law and/or a document (protocol, memorandum, etc.) of relevant negotiations conducted for adopting the text of such agreement if that agreement/document (protocol, memorandum, etc.) aims at the joint implementation of the project provided for by the above agreement/document (protocol, memorandum, etc.) by the parties thereto;

a.b) is authorised to apply, upon the decision of the Government of Georgia, procurement procedures other than those determined by this Law, established by the organisation and/or institution provided for by point (a.a.a) of this article;

a.c) performs the obligations determined by a loan/financing/partnership agreement concluded with the organisation and/or institution provided for by point (a.a.a) of this article;

b) procurements regulated by the procedure established by an international organisation, international donor organisation, international financial institution and/or foreign national financial institution and fully financed by that organisation or institution. In the case of co-financing, where most of procurement is financed by the organisation or institution provided for by this paragraph, the parties shall agree upon the procedures to be used during the procurement;

c) procurements of an immovable thing or its receipt with the right to use;

d) when a broadcaster, determined by the law of Georgia on Broadcasting:

d.a) procures, develops, produces or co-produces TV and radio products, products designated for websites and social networks (programmes, telecasts, films, performances, serials, reports, cultural events, video clips, sports events, situational comedies, documentaries, children's entertainment programmes, dramas) and/or services necessary for their creation, as well as an agreement concluded with a broadcaster in relation to the airtime or dissemination of programmes;

d.b) procures services related to the dissemination and/or reception of TV and radio products through a satellite (except for the procurement of goods/works/services necessary for producing TV and radio products and/or for broadcasting);

e) arbitration and mediation services;

f) the following legal services:

f.a) the protection of the interests of a client by a lawyer/law firm:

f.a.a) in arbitration proceedings, mediation or the application of other mechanisms of dispute resolution in Georgia or a foreign country, as well as in international arbitration, mediation or other mechanism of dispute resolution;

f.a.b) in a court, or administrative or law enforcement body of Georgia or a foreign country, as well as in an international court, tribunal or institution;

f.b) legal advice if related to the preparation of any process provided for by sub-paragraph (f.a) of this article, or if it is obvious and highly probable that the matter of legal advice will become the subject of discussion in accordance with the same sub-paragraph;

f.c) the notarial attestation and endorsement of a document, as well as the certification by an apostille or legalisation of a document;

f.d) legal services provided by a representative and a guardian appointed by a court or the law, aiming at performing special tasks under the supervision of the court or an authorised body determined law;

f.e) other legal services related to the implementation of public law powers;

g) financial, banking, rating, advisory and brokerage services and other related services connected to the issuance, registration, sale, acquisition or disposal of securities or other financial instruments and other actions, as well as the procurement of sovereign credit rating services and the credit rating services related to government securities and the compensation of expenses accompanying the credit rating services of the above service provider;

h) loans, credits, deposits and services related to them, irrespective of whether these services are connected to the issuance, sale, acquisition or disposal of securities or other financial instruments;

i) procurements conducted by the National Bank of Georgia:

i.a) related to the implementation of the monetary and foreign exchange policy and securing the economy by means of



- cash;
- i.b) except for procurements based on the budget of administrative and capital expenditure of the National Bank of Georgia approved by the Board of the National Bank of Georgia;
- i.c) related to intangible assets, bars of gold, GEL banknotes and coins intended for collections and/or other purposes, as well as the reproduction of GEL banknotes and coins;
- i.d) such as the public procurement of services of audit firms to conduct an external audit of accounts of the National Bank of Georgia;
- j) procurements related to the performance of investment activities by the Legal Entity under Public Law called the Pension Fund of Georgia, as well as the services of an audit firm by the Pension Fund of Georgia as provided for by the Law of Georgia on Funded Pensions to conduct an independent audit of accounts of a specialised depository (including in the cases related to the specialised depository provided for by Article 26(12) of the Law of Georgia on Funded Pensions), an asset management company and the Pension Fund of Georgia;
- k) the procurement of services of persons employed under an agreement under public law and an employment contract and services of interns of public institutions provided for in the budget classification of Georgia under the article 'Goods and Services';
- l) passenger transport services by metro and by railway;
- m) the procurement of electric power, guaranteed capacity and water supply, as well as the selection of a public service railway operator as determined by the Railway Code of Georgia and a public service contract to be concluded with that operator;
- n) the procurement by a contracting authority of the exclusive services from another contracting authority, the right to provision of which the latter has been granted by law or in accordance with the law;
- o) the procurement of a service provided for by Article 41(5) of this Law from a Central Purchasing Body;
- p) services related to scientific and research activities, except for services falling within the CPV codes 73000000 to 73120000, 73300000, 73420000 and 73430000, if the following conditions have been met simultaneously:
- p.a) the received benefit belongs exclusively to a contracting authority which uses it for its activities;
- p.b) the service is fully financed by a contracting authority;
- q) the procurement of goods, work or services within the framework of public-private partnership projects provided for by the Law of Georgia on Public-Private Partnerships, except for the selection of a contractor on the basis of the same Law, which is carried out for a public procurement in accordance with the procedure determined by this Law. On the basis of the Law of Georgia on Public-Private Partnerships, a contractor shall be selected in accordance with the public procurement procedure as determined by this Law provided that Articles 43-48 and Chapters IV, X and XIII of this Law shall not apply to the selection process of a contractor on the basis of the Law of Georgia on Public-Private Partnerships;
- r) the procurement of services the value of which is determined by a normative act;
- s) procurements to be carried out during a business trip;
- t) procurements related to transferring to Georgia the remains of a citizen of Georgia deceased abroad as provided for by an ordinance of the Government of Georgia;
- u) the procurement of motor vehicles for Georgia's diplomatic missions and consular offices abroad, for defence attaché, the representatives of the Ministries of Defence and Internal Affairs of Georgia, the State Security Service of Georgia and the Prosecutor's Office of Georgia abroad;
- v) the public procurement of goods and services entered in the Unified Laboratory System, the list of which shall be determined by an ordinance of the Government of Georgia according to the Agreement Between the Government of Georgia and the Government of the United States of America Concerning the Transition of Sustainment Costs and Responsibilities Over the Unified Laboratory System for Detection, Epidemiological Surveillance and Response to Especially Dangerous Pathogens, and the Richard G. Lugar Centre for Public Health Research in Georgia;
- w) procurements related to the publication in a local/international newspaper/edition/internet resource for exercising powers granted by the legislation of Georgia, as well as the publication of a scientific paper in a local/international scientific journal/edition/internet resource;
- x) procurements to be carried out regarding the qualifications upgrade of employees abroad, the provision of training and certification;
- y) procurements for organising meetings and visits of the President of Georgia, the Chairperson of the Parliament of Georgia, the Prime Minister of Georgia, the State Minister of Georgia and/or the Mayor of Tbilisi Municipality, for organising the reception of delegations at the Parliament of Georgia and the visits of delegations of the Parliament of Georgia abroad, for organising the reception of delegations at the Ministry of Foreign Affairs of Georgia and visits of delegations of the Ministry of Foreign Affairs of Georgia abroad, as well as procurements to be carried out with funds allocated from the reserve funds of the President of Georgia, the Government of Georgia and the City Hall of Tbilisi Municipality;
- z) procurements to be performed to ensure the availability of educational and scientific, library and other education resources, electronic services, literature (printed literature, or literature held on electronic or audiovisual carriers) and electronic subscriptions. This sub-paragraph shall not apply to the procurement of textbooks of general educational institutions as determined by the Law of Georgia on General Education;



- z<sub>1</sub>) procurements related to state secrets determined by the Law of Georgia on State Secrets. A list of procurement objects related to state secrets determined by the Law of Georgia on State Secrets and the procurement procedure shall be approved by the Government of Georgia;
  - z<sub>2</sub>) the cases provided for by Article 19<sup>1</sup> of the Product Safety and Free Movement Code and Article 9(9) and (10) of the Law of Georgia on Energy Labelling, as well as covert/control procurement to be carried out by another authorised body for the performance of functions granted by the legislation of Georgia;
  - z<sub>3</sub>) the procurement of services to obtain international accreditation/authorisation/external assessment by a legal entity under public law being a higher educational institution from a non-resident institution/international organisation;
  - z<sub>4</sub>) the financing of relevant education, health and social protection services/goods through a voucher, including the procurement of medical services or personal insurance through a voucher, as well as voucher redemption and transactions related to voucher redemption;
  - z<sub>5</sub>) public procurements relating to the dissemination of public service advertisements through mass media (including through websites and social networks) (except for public procurement relating to the purchase of TV and radio broadcasting time under this Law and the conditions determined by Article 66(2)<sup>1</sup> of the Law of Georgia on Broadcasting);
  - z<sub>6</sub>) procurements related to the payment of membership/registration fees to join international organisations and participating in international events;
  - z<sub>7</sub>) the public procurement of expert services, provided these services are procured under Articles 144-147 of the Criminal Procedure Code of Georgia;
  - z<sub>8</sub>) the procurement of a scientific, literary and/or artistic work performed by a performer for an honorarium (reimbursement);
  - z<sub>9</sub>) procurements related to the participation of witnesses, experts and/or interpreters in arbitration proceedings, mediation or the application of other mechanisms of dispute resolution to protect the interests of a contracting authority in a foreign country, as well as in courts of foreign countries, administrative or law enforcement bodies, international courts, tribunals or institutions;
  - z<sub>10</sub>) the procurement of crude oil, petroleum products and/or chemical industry products carried out to earn profit from their further refinement, as well as the procurement of services related to the refinement and/or shipment/transportation of crude oil, petroleum products and/or chemical industry products for the same purpose;
  - z<sub>11</sub>) the procurement of natural gas and/or operations performed/to be performed by derivatives of natural gas, as well as the procurement of services related thereto;
  - z<sub>12</sub>) procurements to be performed to earn profit from economic activities carried out abroad by branches, representations or subsidiaries established abroad by a contracting authority;
  - z<sub>13</sub>) the procurement of services of an audit firm (external auditor) for conducting financial audits by the State Audit Office as determined by Article 35 of the Law of Georgia on State Audit Office.
- Law of Georgia No 4242 of 30 May 2024 - website, 13.6.2024*

*Law of Georgia No 4320 of 27 June 2024 - website, 12.7.2024*

## **Article 10 – Exceptions related to the conclusion of a procurement contract in the public sector**

1. This Law shall not apply to a procurement contract concluded by a contracting authority with a legal entity under private or public law, provided that the following conditions are met simultaneously:

- a) the contracting authority, independently or jointly with another contracting authority, has complete control of that legal entity. Complete control means critical influence on both the strategic goals and significant decisions of the above legal entity, including state control over a legal entity under public law, which means supervision over the lawfulness, expediency and efficiency of its activities and financial and economic activities. Such control may be also exercised by another legal entity similarly controlled by the contracting authority/authorities;
- b) more than 80% of the activities carried out by such legal entity are tasks assigned by the contracting authority/authorities or another legal entity/entities controlled by such contracting authority/authorities. A body/bodies authorised to determine a percentage provided for by this sub-paragraph shall be determined by a legal act of the Government of Georgia;
- c) direct collaboration in private equity does not take place in the activities of that legal entity.

2. Paragraph 1 of this article shall also apply where a controlled legal entity provided for by the same paragraph, which is a contracting authority, concludes a procurement contract with its controlling contracting authority or another legal



entity completely controlled by the same contracting authority, provided that direct collaboration in private equity does not take place in the activities of the legal entity with which the procurement contract is concluded.

3. This Law shall not apply to a procurement contract concluded between two or more contracting authorities, if the following conditions are met simultaneously:

- a) cooperation is being developed or takes place between the participating contracting authorities for exercising public authority by them simultaneously;
- b) public interest is the only guiding principle during the cooperation provided for by sub-paragraph (a) of this paragraph;
- c) the share of activities carried out by the participating contracting authorities within the framework of cooperation is less than 20% on an open market. A body/bodies authorised to determine that share shall be determined by a legal act of the Government of Georgia.

#### **Article 11 – Voluntary subordination**

Irrespective of the exceptions established by this Chapter, a contracting authority shall be entitled to voluntarily subordinate a procurement provided for by this Chapter to this Law. In this case, the requirements of this Law shall fully apply to the above procurement.

### **Chapter III Participants in Public Procurements**

#### **Article 12 – General rights and obligations of participants in public procurements**

1. A contracting authority shall be authorised to:
  - a) perform public procurements, select an economic operator and conclude a procurement contract/framework agreement with it in accordance with the procedure established by this Law and relevant normative acts;
  - b) select an appropriate public procurement procedure and the method for its implementation to perform public procurements in accordance with the procedure established by this Law and relevant normative acts;
  - c) request the protection of rights granted thereto by this Law and relevant normative acts;
  - d) request from an economic operator the performance of obligations assumed under a procurement contract/framework agreement;
  - e) terminate a procurement contract if becoming aware of the existence of a ground/case provided for by Article 21(2)(b) of this Law, as well as other cases provided for by the legislation of Georgia;
  - f) request from an economic operator the protection of social, environmental and labour legal norms to achieve a sustainable development goal.
2. A contracting authority shall be obliged to:
  - a) comply with the procedure established by this Law and relevant normative acts;
  - b) fulfil the obligations assumed under a procurement contract/framework agreement.
3. A contracting authority shall be fully responsible for the efficient and reasonable implementation of a public procurement in compliance with the procedures established by this Law and relevant normative acts.
4. An economic operator shall have a right to:
  - a) freely participate in a public procurement procedure in accordance with the procedure established by this Law;
  - b) request the protection of rights conferred on him/her under this Law and relevant normative acts;
  - c) require the contracting authority to fulfil the obligations assumed under the procurement contract/framework agreement.
5. An economic operator shall be obliged to:
  - a) comply with the procedures established by this Law and relevant normative acts;
  - b) fulfil the obligations assumed under a procurement contract/framework agreement;
  - c) protect the social, environmental and labour legal norms established under the legislation of Georgia (including the international Treaties of Georgia) when carrying out a procurement contract.

#### **Article 13 – Conflict of interest**

1. A contracting authority shall be obliged to take all measures necessary for the efficient prevention, identification and elimination of conflicts of interest during the conduct of public procurement.
2. A conflict of interest shall cover any case where a person employed in a contracting authority and/or an economic operator, which participates in a public procurement, acts on behalf of the contracting authority and/or may influence the consequences of procurement procedures, has direct or indirect, financial or other personal interests which may pose a threat to its impartiality and independence when carrying out a public procurement.
3. A member of a Procurement Committee/jury and/or a member of its Office, an expert, an adviser, a person in charge of control of the implementation of a procurement contract and other responsible persons of a contracting authority involved in the activities related to a public procurement, may also give rise to a conflict of interest if one or more of the following circumstances exist:
  - a) he/she or his/her relative is or was during the last 2 years a manager, shareholder, member of the management body or



- supervisory board of an economic operator;
- b) he/she is a relative of a manager, shareholder, member of the management body or supervisory board of an economic operator;
- c) he/she or his/her relative is a representative of a manager, shareholder, member of the management body or supervisory board of an economic operator;
- d) he/she is a relative of a representative of a manager, shareholder, member of the management body or supervisory board of an economic operator;
- e) he/she, together with the economic operator, his/her/its representative, manager, shareholder, member of the management body or supervisory board, is a shareholder, member of the management body or supervisory board of another economic operator;
- f) he/she, together with the economic operator, his/her/its representative, manager, shareholder, member of the management body or supervisory board, directly or indirectly controls another economic operator;
- g) according to his/her position, he/she is subordinate to a manager, shareholder, member of the management body or supervisory board of an economic operator, their representatives, or this person/these persons is(are) subordinated to him/her according to his/her position;
- h) except for the cases provided for by this paragraph, he/she directly or indirectly controls an economic operator by other means;
- i) he/she, as a legal person, is a bidder/candidate himself/herself in a public procurement procedure.
4. For the purposes of this article, 'a relative' shall be a person determined by Article 19(3) and (4) of the Tax Code of Georgia and 'control' shall be defined in accordance with Article 19(5) of the Tax Code of Georgia.
5. The conditions of a conflict of interest shall apply to both an economic operator and a subcontractor and another economic operator, the competences of which serve as a basis for the main economic operator in accordance with Article 63 of this Law.
6. During the conduct of a public procurement, a contracting authority shall be obliged to publish information in the Electronic System, in accordance with the procedure established by an order of the Chairperson of the Agency, regarding a member of a Procurement Committee/jury and/or a member of its Office, an expert, an adviser, a person in charge of controlling the implementation of the procurement contract and other authorised persons of the contracting authority involved in activities related to the public procurement. A person provided for by paragraphs 2 to 5 of this article shall be obliged to confirm the absence of a conflict of interest by a signed acknowledgement. Both a contracting authority and an economic operator shall publish/upload the acknowledgement in the Electronic System in accordance with the procedure established by an order of the Chairperson of the Agency.
7. A person employed in a contracting authority, as provided for by paragraphs 2 and 3 of this article, a member of a Procurement Committee/jury and/or a member of its Office, an expert, a person in charge of controlling the implementation of a procurement contract and/or other authorised persons of the contracting authority involved in activities related to a public procurement, which forms a conflict of interest, shall be obliged to immediately declare self-recusal and not participate in the public procurement in question.
8. An economic operator shall be entitled to raise the issue of the recusal of the person provided for by this article if he/she forms a conflict of interest. Issues regarding the recusal of a member of the Procurement Committee (without the participation of the person in question), an entire composition of the Procurement Committee/jury or a member of its Office, an expert and an adviser involved in the operation of the Procurement Committee, shall be decided by the Procurement Committee/jury. Issues regarding the recusal of an expert or an advisor invited by the contracting authority who is not involved in the activity of a Procurement Committee/jury, a person in charge of controlling the implementation of the procurement contract, or other authorised persons of the contracting authority involved in activities related to a public procurement, shall be decided by the head of a contracting authority or another person authorised by him/her.
9. In the case of the recusal or self-recusal of the entire composition of the Procurement Committee/jury or the number of members of the committee/jury that renders the committee/jury unauthorised to make a decision, a new Procurement Committee/jury shall be established. In the case of the recusal or self-recusal of only or all members of the Office of the Procurement Committee/jury, a new Office of the Procurement Committee/jury shall be established. In the case of the recusal or self-recusal of an expert, an adviser, a person in charge of controlling the implementation of a procurement contract, or other authorised persons of the contracting authority involved in activities related to a public procurement, a relevant new person shall be determined.
10. Detailed rules and conditions for the detection of a conflict of interest, as well as the identification and elimination of conflicts of interest by a contracting authority, shall be determined by an order of the Chairperson of the Agency.

## **Article 14 – Procurement Committee**

1. By a decision of the head of a contracting authority, taking into account the particularities of the procurement object, a public procurement (except for the competition and a negotiation procedure without preliminary publication) may be carried out both by and without the Procurement Committee, except when the estimated value of goods and/or services is equal to or above GEL 100,000 or the procurement object is a work. If the estimated value of goods and/or services is





equal to or above GEL 100,000 or the procurement object is a work, a public procurement may not be carried out without the Procurement Committee. The Procurement Committee shall act on behalf of the contracting authority.

2. If the head of the contracting authority makes a decision on carrying out a public procurement by the Procurement Committee, it shall set up the Procurement Committee. The Procurement Committee may be set up for the conduct of a public procurement for a term of conduct of a specific procurement or a specific type of procurement or, generally, for a definite or indefinite period. Preference shall be given to establishing the Procurement Committee for a specific procurement or a specific type of procurement, taking into account the specialisations of the members of the committee.

3. The number of the members of the committee shall be odd. The Procurement Committee shall be composed of not less than 3 and not more than 9 members. The Procurement Committee may include the head of a contracting authority, his/her deputy and/or the head of a structural unit of the contracting authority and/or his/her deputy. Other employees of a contracting authority may be admitted into the composition of the Procurement Committee if the number of persons provided for by this paragraph is not sufficient.

4. By a decision of the Procurement Committee, specialists in relevant fields may be engaged as experts and advisers.

5. The Procurement Committee shall be chaired by the head of the contracting authority or a person appointed by him/her.

6. The Procurement Committee shall make a decision by a majority of its members on the list and document it in the minutes of a meeting signed by all members of the committee participating in the decision-making process. In the case of a tie vote, the vote of the Chairperson of the Procurement Committee shall be decisive. A decision of the Procurement Committee shall be reflected in the respective minutes of the meeting. In the process of a public procurement, a contracting authority/Procurement Committee may not rely on a decision not indicated in the minutes of a meeting of the committee. A member of the Procurement Committee who disagrees with a decision made by the Committee shall offer his/her dissenting position in writing which shall be attached to the minutes of the meeting.

7. The minutes of a meeting shall include:

- a) the name of the Procurement Committee;
- b) the date and place of the meeting;
- c) the identity of the chairperson and members of the Procurement Committee (including reference to any member not attending the meeting);
- d) the subject of discussion;
- e) the discourse of the Procurement Committee;
- f) the opinions of engaged experts and advisers;
- g) the legislative or subordinate normative act and its respective norm which served as a basis for the Procurement Committee;
- h) the results of voting;
- i) decisions made in the meeting.

8. Upon signing, the minutes of a meeting of the Procurement Committee shall be published in the Electronic System in accordance with the procedure established by an order of the Chairperson of the Agency. The minutes of a meeting on the approval of the procurement conditions together with the conditions for procurement shall be published in the Electronic System. The publication of the minutes of a meeting in the Electronic System shall be deemed as its official notification.

9. For the organisational promotion of the activities of the Procurement Committee, the Office of the Procurement Committee shall be established along with the Procurement Committee which, as a rule, is composed of a person/persons employed in the structural unit or an official position provided for by Article 15 of this Law. In addition, at least one member of the Office of the Procurement Committee shall be a person employed in the structural unit or in an official position as provided for by this paragraph. The Office of the Procurement Committee shall be chaired by the chairperson of the committee.

10. If, by a decision of the head of the contracting authority, a public procurement is not conducted by the Procurement Committee, the public procurement procedures shall be carried out, in accordance with the procedure established by this Law, by a structural unit/person authorised to carry out activities related to the public procurements of a contracting authority and any decision shall be made by the head of the contracting authority or the deputy head of the contracting authority determined by him/her. In this case, the public procurement procedures shall be carried out and any decisions made in accordance with this Law, taking into account the procedure determined for the Procurement Committee under this article.

#### **Article 15 – Structural unit/person authorised to carry out activities related to public procurements**

A contracting authority shall be obliged to determine in its structure/staff list a structural unit/person authorised to carry out activities related to public procurements.

#### **Article 16 – Certification of the public procurement specialists**

1. A person employed in a structural unit provided for by Article 15 of this Law directly involved in activities related to public procurements, shall have a certificate of a public procurement specialist ('certificate').



2. A certificate shall be issued by the Agency on the basis of certification. Certification shall be conducted in the official language of Georgia, at least twice a year.
3. A legally competent citizen of Georgia with higher education shall be eligible for certification, except when:
  - a) his/her certificate has been revoked due to the violation of the Code of Ethics of Contracting Authorities and less than one year has elapsed since the revocation;
  - b) he/she has been convicted of a crime as provided for by Article 21(2)(a) of this Law.
4. A certification fee for public procurement specialists shall be established. The amount of the fee and the procedure for its payment shall be determined by an order of the Chairperson of the Agency. The above amount shall not exceed GEL 300.
5. The Agency shall be authorised to conduct a training course (carry out a certification programme) to promote certification. A fee for attending the certification programme shall be established for public procurement specialists. The amount of the fee and the procedure for its payment shall be determined by an order of the Chairperson of the Agency. It shall not be mandatory to attend the certification programme to obtain the certificate.
6. The certificate shall have no time limit if a person is employed in a position as determined by paragraph 1 of this article. A certificate shall be revoked if the holder of a certificate:
  - a) is not employed in a position as determined by paragraph 1 of this article for three years after obtaining the certificate;
  - b) is dismissed from a position as determined by paragraph 1 of this article and does not return to that position for three years;
  - c) is found guilty of a crime as provided for by Article 21(2)(a) of this Law under a legally effective judgement of conviction;
  - d) systematically or grossly violates the Code of Ethics of Contracting Authorities.
7. The registry of the holders of a certificate shall be kept by the Agency.
8. A contracting authority shall be obliged to immediately notify the Agency of the appointment of a holder of a certificate or the dismissal of him/her from a position or structural unit as determined by paragraph 1 of this article and also notify the Agency of the origination of grounds for the revocation of a certificate that has become known to him/her/it.
9. The Agency shall be authorised to request from an authorised body provided for by the legislation of Georgia the information about the holder of a certificate which is necessary to establish the grounds for revocation of the certificate, including information containing personal data (including special categories of data).
10. In the cases provided for by sub-paragraphs 6(a), (b) or (c) of this article, a certificate shall be automatically revoked upon the confirmation of the occurrence of the relevant circumstance in accordance with the procedure established by the legislation of Georgia. In the case provided for by sub-paragraph 6(d) of this article, the decision on the revocation of the certificate shall be made by the Agency. Before the decision is made, the Agency shall ensure the participation of the holder of the certificate in administrative proceedings. The revocation of the certificate may be appealed in a court in accordance with the procedure established by the legislation of Georgia.
11. The procedure for keeping the registry of the holders of a certificate, conducting certification, and carrying out the certification programme, as well as the procedure for issuing and revoking the certificate, shall be determined by an order of the Chairperson of the Agency.
12. This article shall not apply to Georgia's diplomatic missions and consular offices abroad, branches, representations, subsidiaries established abroad by a contracting authority, the defence attaché, the representatives of the Ministries of Defence and Internal Affairs of Georgia, the State Security Service of Georgia, the Georgian Intelligence Service and the Prosecutor's Office of Georgia abroad.

#### **Article 17 – Code of Ethics of Contracting Authorities**

1. A person employed in a structural unit or appointed to the position provided for by Article 15 of this Law or other authorised persons of a contracting authority involved in activities related to public procurement, shall follow the Code of Ethics of Contracting Authorities ('the Code of Ethics').
2. The Code of Ethics shall be approved by an order of the Chairperson of the Agency.
3. Any violation of the Code of Ethics shall result in the imposition of disciplinary liability in accordance with the procedure determined by the legislation of Georgia.
4. A systematic or gross violation of the code of ethics shall result in the revocation of the certificate of a procurement specialist in accordance with the procedure established by an order of the Chairperson of the Agency.

#### **Article 18 – Conducting training and seminars in the field of public procurement**

1. The Agency shall be authorised to conduct training and seminars for contracting authorities, economic operators and other interested persons in the field of public procurement.
2. In the case provided for by paragraph 1 of this article, the Agency shall be authorised to establish a participation fee for training and seminars in the field of public procurement.
3. The amount of participation fee for training and seminars in the field of public procurement shall be determined by an order of the Chairperson of the Agency.

#### **Article 19 – General conditions for the relationship with an economic operator**



1. A contracting authority shall not be authorised to reject a proposal of an economic operator on the pretext that it does not have a legal form as provided for by the legislation of Georgia, if it can deliver goods, perform works or provide services in accordance with the legislation of its country of residence. In addition, a contracting authority may not limit participation in public procurement to the territory of Georgia or a part thereof.
2. A contracting authority may request from an economic operator only the information or documents required by the conditions for procurement to identify a winner and to make a selection and evaluation for concluding a procurement contract/framework agreement.
3. An application/proposal may be submitted by both an economic operator and a group of economic operators. A contracting authority may not determine that a group of economic operators organise itself in a specific legal form to submit an application/proposal. In addition, this group shall meet the requirements determined by an order of the Chairperson of the Agency. In the case of success, a group of economic operators may be requested to organise itself in a specific legal form in accordance with the procedure determined by an order of the Chairperson of the Agency, if necessary for the proper implementation of a procurement contract, which shall be substantiated in the conditions for procurement. Failure to fulfil this obligation shall result in the disqualification of the group of economic operators in accordance with the procedure determined by an order of the Chairperson of the Agency.
4. If an economic operator, an employee thereof or a person referred to in the application/proposal, participated in any previous stage of public procurement or in the development of the conditions for procurement, the economic operator shall not be allowed to participate in the following stages if the economic operator is given preference over other economic operators due to these conditions, thus limiting competition.
5. A contracting authority shall take appropriate measures, immediately after the circumstance provided for by paragraph 4 of this article is detected, to prevent the restriction of competition due to the participation of the economic operator determined by the same paragraph in public procurement. These measures include the exchange of information received by that economic operator due to his/her participation in the process of preparing for a public procurement with other economic operators, as well as the establishment of an adequate time limit for the admittance of applications/proposals. The economic operator provided for by paragraph 4 of this article shall be disqualified from the public procurement procedure only if there are no other ways of ensuring the principle of equal treatment.
6. In the case provided for by paragraph 5 of this article, prior to disqualification, a contracting authority shall allow the economic operator to provide evidence confirming that he/she has no advantage in the public procurement procedure provided for by the same paragraph, which would have affected the principle of equal treatment.

## **Article 20 – Subcontractor**

1. If an economic operator intends to use a subcontractor/subcontractors, he/she shall be obliged to inform the contracting authority thereof at the stage of submitting an application/proposal if the subcontractor/subcontractors fulfil(s):
  - a) at least 10% of the total value of the procurement contract;
  - b) a specific/significant part of the obligations assumed under the procurement contract, if the contracting authority has included such a specific/significant part in the conditions for procurement.
2. In the case provided for by paragraph 1 of this article, a contracting authority shall examine the grounds for disqualifying a subcontractor/subcontractors. In the case of the disqualification of the initially submitted subcontractor/subcontractors, the economic operator shall be obliged to present (an)other subcontractor/subcontractors within the time limits established by the contracting authority in accordance with the procedure determined by an order of the Chairperson of the Agency, and when the contracting authority requests clarification of information regarding the subcontractor/subcontractors, provide updated information. Where information about a subcontractor/subcontractors is not clarified (including clarified incompletely), or a subcontractor/subcontractors is/are disqualified after the clarification, the failure to submit (an)other subcontractor/subcontractors and/or the disqualification thereof after the submission of (an)other subcontractor/subcontractors, the contracting authority shall disqualify the economic operator in accordance with the procedure established by an order of the Chairperson of the Agency.
3. The use of subcontractor/subcontractors shall not release the provider from the responsibility to implement the procurement contract. The provider shall be personally responsible before the contracting authority.
4. If the economic operator relies on the competences of the subcontractor/subcontractors, Article 63 of this Law shall also apply.
5. The contracting authority may request that obligations of critical importance be fulfilled by the economic operator alone, which shall be substantiated in the conditions for procurement.
6. The economic operator shall be obliged to provide the contracting authority with the mandatory information regarding the change and/or addition of a subcontractor as provided for by this Law, a relevant normative act and/or the conditions for procurement.
7. The detailed procedure for using a subcontractor shall be determined by an order of the Chairperson of the Agency.

## **Article 21 – Black List**

1. The Black List is an official registry maintained electronically by the Agency and the economic operators registered therein shall be prohibited from participating in public procurement procedures for the period and under the conditions



determined by this article. The Black List and its data (except for personal data which should not be published according to the legislation of Georgia) shall be publicly available.

2. An economic operator shall be included in the Black List on one or more following grounds:

a) the economic operator or a person who is a member of its management body or supervisory board, a trustee or a person entitled to represent the economic operator in the activities of subsidiary undertakings, is convicted of one of the following crimes:

a.a) bribe-taking, bribe-giving, influence peddling, accepting a gift prohibited by law, commercial bribery;

a.b) fraud, misappropriation or embezzlement, legalisation of illicit income (money laundering);

a.c) tax evasion;

a.d) a terrorist act, the financing of terrorism, other financial support or provision of resources to terrorist activities, open support of terrorist activities and/or terrorist organisations or public incitement to terrorism, the threat of terrorism, conducting training and providing instructions for carrying out terrorist activities;

a.e) human trafficking, child trafficking, acceptance of services of victims of human trafficking;

a.f) other crimes against the state not provided for by sub-paragraphs (a.a) to (a.d) of this paragraph;

b) a legally effective judgement of conviction of a court or other authorised body confirms the violation of labour rights by the economic operator, in particular:

b.a) the employment of a minor when prohibited;

b.b) the employment of one or more persons who are not citizens of Georgia or their country of residence, if illegally residing in the territory of Georgia or their country of residence;

b.c) the employment of a person without concluding an employment agreement in a written form where the obligation to conclude an employment agreement in a written form has been established by the legislation, as well as the failure to submit a relevant declaration regarding that person within the period determined by the legislation, which has to be submitted if the person starts activities;

c) by the judgement of a court or another authorised body not subject to appeal (the judgement is final and/or the time limit for appealing has expired), the economic operator has been considered a violator of competition rules (the violation was manifested in concluding an agreement, making a decision, or being involved in the agreed action restricting competition). This provision shall not apply if the economic operator pays a fine, or the authorised body, after the violation has been detected, releases the economic operator from the obligation to pay the fine or reduces the amount of the fine within the programme for the promotion of cooperation, and moreover, the economic operator took appropriate measures to prevent the violation of competition rules;

d) a properly substantiated decision of the contracting authority confirms that the economic operator has committed mala fide actions when participating in public procurement, in particular:

d.a) negotiating with another economic operator to influence a public procurement procedure and/or make financial profit;

d.b) making false statements intentionally or negligently in the course of procurement procedures to meet the requirements determined by this Law, a relevant normative act or the conditions for procurement;

d.c) obstructing the process of the decision-making of a contracting authority to obtain information which would give him/her an unjustified advantage in the public procurement procedure;

d.d) failing to provide information as determined by this Law, a relevant normative act and/or the conditions of procurement regarding the persons provided for by Articles 20, 63 and 68 of this Law, the provision of which is mandatory (except for the case provided for by Article 20(2) of this Law), and/or providing false information;

e) failure to fulfil or the improper fulfilment of obligations assumed under the procurement contract by the economic operator. In addition, it is mandatory that the period of validity of the procurement contract has expired or the contract has been terminated early.

3. Paragraph 2 of this article shall also apply to:

a) a member of an economic operator if the economic operator is an association of persons;

b) another economic operator on the competences of which the economic operator relies in accordance with Article 63 of this Law, if the implementation of the procurement contract in accordance with the above article provides for joint and several liability.

4. If an economic operator is a foreign enterprise/permanent establishment/subsidiary (representation), the decision regarding the Black List shall be made in relation to the parent enterprise, as well as all permanent establishments/subsidiaries (representations) thereof registered in Georgia at the time of the decision-making and registered in the Black List during the period of registration or the notice period for the remaining period of registration in the Black List or the notice period. Participation in public procurements shall also be prohibited for all economic operators in which the natural persons provided for by paragraph 2(a) of this article take positions determined by the same sub-paragraph, and for those economic operators which are established and/or whose shares are held by an economic operator registered in the Black List.

5. A respective economic operator shall be registered in the Black List:

a) for a term of 3 years – in the case provided for by paragraph 2(a) of this article, if a court judgement does not determine a longer prohibition period for participation in public procurements;



b) for a term of 2 years – in the cases provided for by paragraphs 2(b), (c) or (d) of this article;

c) for a term of 1 year – in the case provided for by paragraph 2(e) of this article.

6. In the case provided for by paragraph 2(e) of this article, prior to being registered on the Black List, the economic operator may be given notice which shall be effective for 1 year. The notice shall be applied only once if the registration of the economic operator in the Black List violates the principle of equal treatment. The notice shall not be applied if the economic operator has violated several procurement contracts or has already received a notice. A notice, the period of validity of which has expired, shall not be taken into account when deciding on the registration of the economic operator in the Black List.

7. An economic operator shall:

a) not be registered in the Black List if his/her/its registration significantly violates principles of protection of competition in the market and the proportionality of public and private interests;

b) not be registered in the Black List or be removed early from the Black List if he/she/it is able to confirm that despite the existence of the relevant grounds for his/her/its registration in the Black List, he/she/it has taken appropriate measures, based on the grounds for registration in the black list, to confirm his/her/its reliability, in particular:

b.a) has paid compensation for committing a crime or administrative offence or has assumed the obligation to pay compensation;

b.b) has provided information/a certificate issued by an authorised body about submitting comprehensive information/explanation, facts and circumstances within the frameworks of cooperation with the relevant investigative authority;

b.c) has taken efficient measures (including carrying out proper technical, organisational and human resources management measures) to prevent a crime or offence.

8. If an economic operator has been prohibited by a legally effective court decision/judgement to participate in a state procurement procedure, he/she/it shall not be entitled to exercise the opportunities provided for by paragraph 7 of this article during the prohibition period established by the court. In addition, the economic operator shall not be entitled to exercise the opportunities provided for by paragraph 7 of this article if a legally effective court decision/judgement as provided for by paragraph 2(a) of this article serves as a ground for his/her/its registration in the Black List.

9. The Agency shall be authorised to request from an authorised body determined by the legislation of Georgia information containing a tax secret or personal data (including special categories of data) regarding an economic operator or another person, or any other information required to identify the existence of grounds for their registration in the Black List.

10. If the grounds provided for by paragraph 2 of this article exist, the Agency shall initiate the administrative maintenance of the Black List on the basis of an application of a contracting authority and/or an authorised body determined by the legislation of Georgia. A detailed procedure for maintaining the Black List shall be determined by an order of the Chairperson of the Agency.

## **Article 22 – White List**

1. The White List is an official registry maintained electronically by the Agency and an economic operator registered therein shall benefit from simplified procedures when participating in public procurements for the period and under the conditions determined by this article. The White List and its data shall be publicly available.

2. In any public procurement procedure, an economic operator registered in the White List shall:

a) in accordance with the procedure determined by an order of the Chairperson of the Agency, be released from the obligation to provide a contracting authority with a document/documents containing registration/legal data as determined by an order of the Chairperson of the Agency;

b) provide half of the amount of a bank guarantee required for the implementation of the procurement contract. In addition, a contracting authority shall be authorised to fully release the economic operator registered in the White List from the obligation to provide a bank guarantee;

c) in the case of advance payment, provide a bank guarantee in half the amount of the sum to be paid in advance.

3. An economic operator shall be registered in the White List for a term of 1 year. Repeated registration in the White List (if the term of registration in the White List expires), as well as the extension of the term of registration in the White List (if the term of registration in the White List has not expired) shall be allowed.

4. Any economic operator meeting the requirements established for registration in the White List may submit an application for registration in the White List. An economic operator registered in the Black List or having a notice, or against which one or more ground(s) provided for by Article 21(2)(a)-(d) of this Law exist, may not be registered in the White List.

5. It shall be inadmissible to determine for an economic operator a precondition for being registered in the White List to participate in public procurements.

6. Requirements to be met for registering an economic operator in the White List/extending the term of registration, conditions for submitting and reviewing an application for registering in the White List/extending the term of registration, the procedure and grounds for revoking registration in the White List, as well as the procedure for making a decision on registering/extending the term of registration of an economic operator in the White List, shall be determined



by an order of the Chairperson of the Agency.

7. The Agency shall be authorised to request from an authorised body determined by the legislation of Georgia information containing a tax secret or personal data (including special categories of data – information on criminal records) regarding the economic operator or another person provided for by this article, or any other information required for reviewing an application for registration/extension of the term of registration in the White List and/or identifying the grounds for revoking registration from the White List.

## **Chapter IV**

### **The Agency**

#### **Article 23 – Authorised body**

1. A body authorised to control the compliance with and the fulfilment of the requirements of this Law is the Agency, which is an independent legal entity under public law established on the basis of law.

2. The legal grounds for the operation of the Agency shall be: the Constitution of Georgia, the international treaties of Georgia, this Law, the statute of the Agency, and other normative acts.

3. The basic functions of the Agency shall be:

a) the development of subordinate normative acts required for the implementation of this Law and their publication in accordance with the determined procedure, and work towards improving the legislation regulating public procurement and its adaptation to best international practice;

b) the systematic study and analysis of the current situation in the field of public procurement and the elimination of identified deficiencies, and if the resolution of an issue is beyond its competence, the submittal of an appropriate proposal to the Government of Georgia;

c) the development of policy regulating the process of public procurement, and supervision over the lawfulness of the process of a public procurement (except for a classified public procurement);

d) the detection of administrative offences committed in the field of public procurement and responding to them in accordance with the procedure established by the legislation of Georgia;

e) maintaining a Black List and a White List;

f) in the cases provided for by this Law, giving consent to a contracting authority to implement a negotiation procedure without preliminary publication;

g) the improvement of the Electronic System and support of its functioning, and the development of a manual/manuals for users of the Electronic System;

h) the preparation of special education programmes in the field of public procurement, conducting training and seminars for economic operators and other interested persons, holding workshops;

i) the certification of public procurement specialists, the issuance and revocation of certificates of public procurement specialists;

j) the development of methodological instructions and recommendations to improve public procurement practice;

k) exercising other functions determined by the legislation of Georgia and the statute of the Agency.

4. The structure of the Agency, its powers and the rules of operation, shall be determined by the statute of the Agency as approved by the Government of Georgia.

5. The Agency shall be accountable to the Prime Minister of Georgia.

6. The Agency shall draw up an annual report on its activities, which shall be submitted to the Prime Minister of Georgia by 1 June of each successive year. The report shall be published on the website of the Agency.

7. The Agency shall be entitled to process (including receive, store, publish and/or issue) any information and/or document, and/or personal information (including special categories data/information) for the purpose of exercising its powers, ensuring the operation of the Electronic System and ensuring electronic document turnover in the process of exercising its powers, the operation of the Electronic System and conducting public procurement. For the same purpose, the Agency shall be authorised to request from a tax authority the provision of information containing tax secrets.

8. The requirements of the General Administrative Code of Georgia for the entry into force of an individual administrative act, its publishing, and making it public and officially accessible, shall apply to an electronic individual administrative act of the Agency. The publication of an individual administrative act on the website of the Agency shall be deemed as making it officially accessible to an interested party.

#### **Article 24 – Chairperson of the Agency**

1. The Agency shall be headed by the Chairperson of the Agency who shall be appointed by the Prime Minister of Georgia for a term of 5 years.

2. The Chairperson of the Agency shall be a citizen of Georgia without a criminal record and with:

a) a Master's degree in law/international law, finance, economics or business administration, or an equivalent academic degree;

b) at least 5 years of work experience in the field of law/international law, finance, economics or business administration.

3. The authority of the Chairperson of the Agency shall be terminated in the cases and in accordance with the procedure



provided for by the Law of Georgia on Legal Entities under Public Law.

4. The Chairperson of the Agency shall:

- a) issue a subordinate normative act – an order, in the cases and within the scope determined by a legislative act of Georgia;
- b) issue an individual administrative act – a decree, in accordance with the legislation of Georgia;
- c) resolve issues falling within the competence of the Agency;
- d) appoint and dismiss employees of the Agency and conclude employment agreements;
- e) approve the internal regulations of the Agency, and develop job descriptions for positions within the Agency, and the additional qualifications requirements for the employees of the Agency;
- f) make decisions on giving incentives to and applying measures of disciplinary liability against the employees of the Agency;
- g) approve the procedure for an internship at the Agency;
- h) dispose of the allocations of the Agency;
- i) represent the Agency before state authorities, local and international organisations and third parties;
- j) exercise other powers determined by the legislation of Georgia and the statute of the Agency.

5. The Chairperson of the Agency shall be responsible for the activities of the Agency in accordance with the procedure established by law.

#### **Article 25 – Financing of the Agency**

1. The sources of financing of the Agency shall be:

- a) funds allocated from the State Budget of Georgia;
- b) publication fees for procurement conditions and fees for submitting an application/proposal;
- c) guarantees provided for securing an application/proposal;
- d) income received from the provision of services provided for by Article 5(6) and (7) of this Law;
- e) certification fees for public procurement specialists and fees established for public procurement specialists for attending certification programmes;
- f) fees for participation in training and seminars in the field of public procurement;
- g) other revenue permitted by the legislation of Georgia.

2. The Agency shall have an account with the State Treasury. In addition, the Agency shall also be authorised to have an account with a commercial bank in the cases provided for by the legislation of Georgia.

### **Chapter V Public Procurement Procedures**

#### **Article 26 – Public procurement procedures**

1. Public procurements may be carried out by applying the following procedures:

- a) an open procedure;
- b) a limited procedure;
- c) a competitive dialogue;
- d) an innovative partnership;
- e) a competition;
- f) a negotiation procedure with preliminary publication;
- g) a negotiation procedure without preliminary publication;
- h) public procurement procedures for procuring services in social and other specific areas.

2. Public procurement procedures, except for a negotiation procedure without preliminary publication, shall be carried out through the Electronic System. In addition, information on a negotiation procedure without preliminary publication shall be published in the Electronic System.

3. A detailed procedure for carrying out public procurement procedures, taking into account the requirements of this Law and the relevant legal acts of the European Union, shall be established by an order of the Chairperson of the Agency.

4. A contracting authority shall be authorised to select a public procurement procedure at its own discretion and in compliance with the requirements of this Law if several preconditions for grounds for using public procurement procedures as determined by this Chapter exist simultaneously, except when it is mandatory to use a specific public procurement procedure.

#### **Article 27 – Open procedure**

1. An open procedure is a one-stage procedure.
2. A contracting authority shall announce a public procurement and publish comprehensive procurement conditions containing complete information related to public procurement.
3. A proposal may be submitted by any economic operator. In accordance with Article 60 of this Law, a contracting authority may not reduce the number of bidders.
4. It shall be inadmissible to hold negotiations during the implementation of an open procedure.



## **Article 28 – Limited procedure**

1. A limited procedure is a two-stage procedure.
2. A contracting authority shall announce a public procurement, invite any economic operator to submit an application and determine a list of information to be submitted.
3. According to the submitted applications, a contracting authority shall determine whether or not the economic operators have the appropriate qualifications and meet the minimum requirements determined by the procurement conditions, and shall invite selected candidates to submit proposals. A contracting authority may reduce the number of candidates in accordance with Article 60 of this Law.
4. It shall be inadmissible to hold negotiations during the implementation of a limited procedure.

## **Article 29 – Competitive dialogue**

1. A competitive dialogue is a two-stage procedure.
2. A competitive dialogue may be applied:
  - a) to purchase goods, work or services, if one or more of the following conditions are met:
    - a.a) the needs of the contracting authority cannot be met without adapting the solutions available on the market;
    - a.b) the public procurement in question includes a design or an innovative solution;
    - a.c) a procurement contract cannot be concluded without preliminary negotiations due to its nature, complexity, or legal and financial structure or risks;
    - a.d) a contracting authority cannot clearly determine specifications by reference to a relevant standard;
  - b) if an open or limited procedure announced for procuring goods, work or services fails or has negative results.
3. A contracting authority shall determine the needs and requirements in the conditions for procurement, as well as establish the criteria and time limits for identifying the best proposal. The use of the criterion of the best price-quality ratio shall be mandatory.
4. An application may be submitted by any interested economic operator.
5. According to submitted applications, a contracting authority shall determine whether or not the economic operators have the appropriate qualifications and meet the minimum requirements determined by the procurement conditions, and shall invite selected candidates to participate in a competitive dialogue. A contracting authority may reduce the number of candidates in accordance with Article 60 of this Law.
6. A contracting authority shall hold a competitive dialogue with selected economic operators which aims at identifying/determining the best option for meeting the needs of the contracting authority. During this dialogue, all aspects (issues) relating to the public procurement may be examined.
7. During the dialogue, the contracting authority shall ensure the equal treatment of all participants. It may not provide information to participants in different forms in order not to give an advantage to some of them in comparison to others. A contracting authority may not disclose a solution suggested by a candidate or other confidential information to another candidate without his/her consent. Such consent shall not be general and shall contain reference to specific information.
8. A competitive dialogue may comprise several consecutive stages aiming at reducing the number of suggested solutions through the application of criteria determined by the procurement conditions for identifying the best proposal. The gradual reduction of the number of suggested solutions shall be permitted if such opportunity is provided for by the procurement conditions in advance.
9. A contracting authority shall continue the dialogue until it identifies the means to meet its needs.
10. Once the contracting authority declares the dialogue completed and notifies selected economic operators thereof, it shall request that final proposals be submitted on the basis of the means to meet its needs detected and identified/determined during this dialogue. These proposals shall include all the required elements necessary for carrying out the relevant project. The above proposals may be specified or improved upon the request of the contracting authority. In addition, the specification or improvement may not apply to the essential part of the proposal or the public procurement, including the needs and requirements determined by the procurement conditions, if these changes may result in the restriction of competition or discrimination.
11. The contracting authority shall evaluate the proposals using the criteria determined by the procurement conditions for the identification of the best proposal.
12. At the request of the contracting authority, the best bidder may be invited in for the purpose of determining the final conditions of the procurement contract to confirm financial liabilities and other conditions referred to in the proposal, provided that this does not result in a change of any essential aspects of the proposal or the procurement conditions (including the needs and requirements determined by the procurement conditions) and the restriction of competition or discrimination.

## **Article 30 – Innovative partnership**

1. An innovative partnership is a two-stage procedure.
2. A contracting authority shall be obliged to indicate the need for innovative (including new or significantly improved) goods, work and/or services (including research and development) in the procurement conditions, which cannot be met





by purchasing goods, work and/or services available in Georgian or international markets. It shall also refer to the element of the procurement object, which shall determine the minimum requirements to be met by all proposals. This information shall be clearly indicated to allow economic operators to determine the nature, content and scope of the public procurement and accordingly decide whether or not to submit an application to participate in the public procurement procedure. In the case of an innovative partnership, the use of the criteria of the best price-quality ratio shall be mandatory.

3. An application may be submitted by any interested economic operator.

4. According to submitted applications, the contracting authority shall determine whether or not the economic operators have the appropriate qualifications and meet the minimum requirements determined by the procurement conditions, and shall invite selected candidates to participate in the innovative partnership. A contracting authority may reduce the number of candidates in accordance with Article 60 of this Law.

5. A contracting authority may start an innovative partnership with one or more partners which carry out research and development activities separately. Consequently, the contracting authority may conclude an individual agreement/individual agreements on an innovative partnership.

6. The innovative partnership aims at the development/improvement of innovative goods, work and/or services and the purchase of such goods, work and/or services, provided that they meet the quality and maximum value criteria agreed upon between the contracting authority and the participants.

7. An innovative partnership shall be planned in consecutive stages which follow the process of research and may include the production of goods, performance of work or provision of services. In the case of carrying out an innovative partnership, interim goals to be achieved by the partners shall be determined, and based on these goals the compensation for the relevant part shall be determined. A contracting authority may terminate an innovative partnership after any stage, and if the innovative partnership involves several partners, it may reduce the number of partners by terminating the individual agreement/individual agreements on the innovative partnership, if such opportunity and the procedure of its application is provided for by the procurement conditions in advance

8. Unless otherwise provided for by this article, a contracting authority shall hold negotiations only regarding the primary and modified proposals for their further improvement, except for the final proposal. The minimum requirements and criteria for identifying the best proposal may not be the subject of negotiations.

9. During negotiations, a contracting authority shall ensure the equal treatment of all bidders. It may not provide information to bidders in different forms, so as not to give an advantage to some of them in comparison to others. A contracting authority shall notify in writing all bidders of any changes made to the procurement conditions, except for the bidders selected in accordance with paragraph 10 of this article. The minimum requirements may not be changed. After making changes to the procurement conditions, the contracting authority shall give the bidders reasonable time for the modification and resubmission of their bids.

10. Negotiations may comprise several consecutive stages aiming at reducing the number of proposals regarding which negotiations are to be held, through the application of criteria determined by the procurement conditions for identifying the best proposal. The gradual reduction of the number of proposals shall be permitted if such opportunity is provided for by the procurement conditions in advance.

11. When selecting candidates, a contracting authority shall use the criteria related to the competences of the candidates in the area of research and development, and the elaboration and introduction of innovative solutions. Only the economic operators invited by a contracting authority as a result of the evaluation may submit a project on research and innovation aiming at meeting the needs determined by the contracting authority, which cannot be met by the available solutions.

12. A contracting authority shall determine in the procurement conditions issues related to intellectual property. If an innovative partnership includes several partners, a contracting authority may not disclose a solution suggested by a partner or other confidential information to another partner without his/her/its consent. Such consent shall not be general and shall contain reference to specific information.

13. A contracting authority shall ensure that the structure of an innovative partnership, in particular the duration of its stages and the cost, reflects the quality of the innovativeness of the suggested solution, as well as the results of any study of innovative solutions and other activities not yet available on the market. The estimated value of procurement shall be proportionate to the investment necessary for receiving/developing innovative results.

## **Article 31 – Competition**

1. A competition is a public procurement procedure enabling a contracting authority to purchase a plan or a design, including the planning of cities and other populated areas, architecture and engineering, or data processing.

2. A contracting authority shall be authorised to limit the number of participants in a competition in accordance with the clear and non-discriminatory selection criteria determined by the procurement conditions in advance. The number of invited candidates shall be sufficient to ensure healthy competition.

3. A competition shall be held by a special jury composed of persons who are independent of the participants in the competition. The jury shall act on behalf of the contracting authority. If the contracting authority determines a professional qualification is required for the participants of the competition, one-third of the jury shall be composed of persons with that or equivalent qualification.



4. The head of the contracting authority shall set up the jury. Where appropriate, the head of the contracting authority shall also be entitled to set up an office for the jury to ensure the organisational support of the jury's activities. Unless otherwise provided for by this article, the procedure established by Article 14 of this Law for the Procurement Committee shall apply to the jury.
5. The jury shall make decisions independently. It shall examine the plans and projects submitted by the candidates only on the basis of the criteria established by the procurement conditions.
6. The jury shall draw up a report indicating the ranking of projects based on their value, as well as the notes and issues to be verified. The report shall be signed by the members of the jury. Before the jury makes a decision, anonymity shall be ensured.
7. The jury is authorised to invite candidates to answer the questions. The jury shall be obliged to keep minutes of meetings.

### **Article 32 – Negotiation procedure with preliminary publication**

A negotiation procedure with preliminary publication is a two-stage procedure. This procedure shall enable a contracting authority to conduct negotiations with selected economic operations in accordance with the needs and requirements determined by the procurement conditions after the preliminary publication thereof, as well as in accordance with the criteria determined by the contracting authority for identifying the best proposal. The negotiation procedure with preliminary publication may be applied:

- a) to purchase goods, work or services, if one or more of the following conditions are met:
  - a.a) the needs of the contracting authority cannot be met without adapting the solutions available on the market;
  - a.b) the public procurement includes a design or an innovative solution;
  - a.c) a procurement contract cannot be concluded without preliminary negotiations due to its nature, complexity, or legal and financial structure or risks;
  - a.d) a contracting authority cannot clearly determine specifications by reference to a relevant standard;
- b) if an open or limited procedure announced for procuring goods, work or services fails or has negative results.

### **Article 33 – Negotiation procedure without preliminary publication**

1. A negotiation procedure without preliminary publication shall enable a contracting authority to conduct negotiations with an economic operator/economic operators about concluding a procurement agreement without announcing a public procurement. A negotiation procedure without preliminary publication may be applied only when:

- a) an open or limited procedure has failed or had negative results for reasons beyond the control of the contracting authority and there is not sufficient time to announce a repeated procedure. This sub-paragraph shall apply only when the needs and requirements of a contracting authority determined by the procurement conditions of an open or a limited procedure do not change essentially;
- b) only one economic operator is able to supply goods, perform work or provide services due to one of the following circumstances:
  - b.a) the purpose of the procurement is to create or purchase a unique work of art or work of fiction;
  - b.b) there is no competition due to the technical circumstances (including the technical characteristics of the procurement object);
  - b.c) it is required to protect exclusive rights (including intellectual property rights);
- c) another state procurement procedure cannot be used due to the urgency caused by reasons beyond the control of a contracting authority and unknown in advance to it. This sub-paragraph may not be used if a contracting authority has deliberately induced the matter of urgency;
- d) the goods are being produced only to perform scientific and research activities, conduct experiments or surveys, or support development. Within the scope of this sub-paragraph, it shall be inadmissible to conclude a procurement contract aiming at the serial production of goods, the achievement of commercial cost-effectiveness, or the compensation of expenses for the activities provided for by the same sub-paragraph;
- e) the procurement of an additional procurement object from an initial provider or a subcontractor provided for by a procurement contract concluded with the same provider aims at the partial substitution of the initially purchased procurement object or a component thereof or the addition of that procurement object or a component thereof, where the purchase of the procurement object from another provider shall result in a deterioration in quality of the initially purchased procurement object, including the purchase of a procurement object with different technical parameters resulting in incompatibility or creating disproportionate technical difficulties during the utilization or maintenance of the procurement object. The duration of such a procurement contract shall not exceed 3 years and its value shall not exceed the value of the initial procurement contract;
- f) a new work has to be performed or a new service is to be provided which is identical to the work or service purchased from an initial provider. The above work or service shall correspond to the main work or service for the purchase of which the initial procurement contract has been concluded. The conditions for purchasing the main work or service shall provide for the possibility of performing additional work or service, as well as the rules in accordance with which this possibility will be applied. A contracting authority shall provide for the possibility of performing the additional work or



- service when determining the estimated value of the initial procurement to determine the monetary thresholds correctly. This sub-paragraph can be applied for 3 years after the conclusion of the initial procurement contract, provided that the value of the additional work or service does not exceed the value of the initial procurement contract;
- g) a public procurement related to representative expenses is being conducted;
- h) the Electoral Administration of Georgia and/or the Legal Entity under Public Law called the Reforms and Training Centre conducts a public procurement during the period of elections/referenda to conduct elections smoothly;
- i) legal entities under public law - state theatres, state orchestras, music centres, arts educational institutions and/or ensembles, purchase goods and services necessary for staging and creative activities;
- j) laboratory services are purchased from a non-resident economic operator only if a laboratory with appropriate accreditation is not available in the Georgian market, or an existing laboratory cannot provide the laboratory services for objective reasons.
2. Paragraphs 1(b.b) and (b.c) of this article may apply only if there are no other appropriate alternatives and a contracting authority has not deliberately induced the absence of competition.
3. In the cases provided for by paragraph 1(b), (e) or (f) of this article, a contracting authority shall need the consent of the Agency to implement a negotiation procedure without preliminary publication. In accordance with the procedure determined by a subordinate normative act, a contracting authority shall need the consent of the Agency to implement a negotiation procedure without preliminary publication in the cases provided for by paragraph 1(a) or (c) of this article as well if the cost of goods/work/services to be purchased in accordance with the same sub-paragraph is below the monetary thresholds determined by the legal acts of the European Union. The process of agreement with the Agency shall be determined by an order of the Chairperson of the Agency and shall be conducted through the Electronic System. The application of a contracting authority is public and interested parties are allowed to express their opinions in relation to it. When making a decision, the Agency considers both the application of the contracting authority and the opinions of interested parties regarding that application. After the Agency issues its consent, in the cases determined by the Chairperson of the Agency, the changes to be made to the conditions for the negotiation procedure without preliminary publication shall be agreed with the Agency in accordance with the same procedure.
4. A negotiation procedure without preliminary publication, except when on the grounds provided for by paragraph 1 of this article, may also be applied in the following cases if the total value of the homogeneous procurement objects to be purchased from a single source of financing during one budget year:
- a) is less than GEL 10,000 in the case of goods or services, and less than GEL 20,000 in the case of work;
- b) is below the monetary thresholds determined by the legislative acts of the European Union in the case of public procurement carried out by Georgia's diplomatic missions and consular offices abroad, as well as the branches, representations or subsidiaries established abroad by a contracting authority;
- c) is less than GEL 20,000 in the case of the procurement of goods or services related to defence, state security and public order by contracting authorities under the Ministry of Internal Affairs of Georgia, the Ministry of Defence of Georgia and the State Security Service of Georgia, as well as the Intelligence Service of Georgia and the Special State Protection Service of Georgia.

#### **Article 34 – Public procurement procedures for procuring services in social and other specific areas**

1. Different public procurement procedures may be applied to procure services in social and other specific areas. These procedures shall be determined by an order of the Chairperson of the Agency.
2. Public procurement procedures may be determined in accordance with paragraph 1 of this article only for the services falling within the following CPV codes:
- a) healthcare, social and other related services – 75200000; 75231200; 75231240; 79611000; 79622000; 79624000 and 79625000; 85000000 to 85323000; 98133000, 98133100; 98200000; 98500000 and 98513000 to 98514000;
- b) administration of social, educational, healthcare and cultural services:
- b.a) 85321000 and 85322000, 75000000, 75121000, 75122000, 75124000; 79995000 to 79995200; 80000000 to 80660000; 92000000 to 92700000;
- b.b) 79950000, 79951000, 79952000, 79952100, 79953000, 79954000, 79955000, 79956000;
- c) mandatory social security service – 75300000;
- d) allowance – 75310000, 75311000, 75312000, 75313000, 75313100, 75314000, 75320000, 75330000, 75340000;
- e) other public, social and personal services, including services provided by trade unions, political parties, youth associations and other membership-based organisations – 98000000; 98120000; 98132000; 98130000 and 98133110;
- f) religious services – 98131000;
- g) hotel and restaurant services:
- g.a) 55100000 to 55410000; 55521000 to 55521200 (55521000, 55521100, 55521200);
- g.b) 55520000, 55522000, 55523000, 55524000;
- g.c) 55510000, 55511000, 55512000, 55523100;
- h) legal services (not excluded from the scope of this Law in accordance with Article 9(f) of this Law) – 79100000 to 79140000; 75231100;
- i) other administrative and public services – 75100000 to 75120000; 75123000; 75125000 to 75131000;



- j) public services – 75200000 to 75231000;
- k) services related to prisons, public safety and rescue operations – 75231210 to 75231230; 75240000 to 75252000; 794300000; 98113100;
- l) investigative and security services – 79700000 to 79721000, 79722000, 79723000;
- m) international services – 98900000; 98910000;
- n) postal services – 64000000, 64100000, 64110000, 64111000, 64112000, 64113000, 64114000, 64115000, 64116000, 64122000;
- o) miscellaneous services – 50116510, 71550000.

3. When determining public procurement procedures in accordance with paragraph 1 of this article, the following conditions shall be met:

- a) a public procurement procedure shall ensure that the principles provided for by Article 2 of this Law are observed;
- b) it shall be inadmissible to use a negotiation procedure without preliminary publication on the grounds and in accordance with a procedure other than determined by Article 33 of this Law;
- c) a public procurement procedure shall be announced, the procurement conditions (containing information provided for by this Law) shall be published in the Electronic System, and the public procurement procedure shall also be implemented through the Electronic System. In addition, the results of a public procurement and a procurement contract/framework agreement shall be published in accordance with the procedure determined by this Law;
- d) when determining procurement conditions, a contracting authority may take into account the following issues: the quality, continuity, availability and comprehensiveness of services, the needs of the customers of different categories (including persons with disabilities and members of vulnerable groups), the involvement and encouragement of users, and innovation. Procurement conditions may also determine that a service provider has to be selected based on the criterion of the best price-quality ratio, taking into account the criteria for the quality and sustainability of social services.

### **Article 35 – Reservation of the public procurement procedure**

1. A contracting authority shall be authorised to announce a public procurement procedure in compliance with the conditions established by this article for the economic operator whose main goal is the social and professional integration of persons with disabilities and members of vulnerable groups (including persons of the less represented sex). In this case, at least 30% of the employees of the economic operator shall be persons with disabilities or members of other vulnerable groups. A public procurement procedure may be announced in accordance with this article if the above economic operator cannot compete with other economic operators in normal conditions.

2. A contracting authority shall be authorised to announce a public procurement procedure in accordance with the procedure determined by paragraph 1 of this article for procuring healthcare, social or cultural services for those economic operators only who meet the conditions determined by paragraphs 1 and 3 of this article if the service falls within the following CPV codes: 75121000, 75122000, 75123000, 79622000, 79624000, 79625000, 80110000, 80300000, 80420000, 80430000, 80511000, 80520000, 80590000, 85000000 to 85323000, 92500000, 92600000, 98133000, 98133110. To announce a public procurement procedure in accordance with paragraph 1 of this article, a contracting authority will need the consent of the Government of Georgia, which is valid for one budget year. The Government of Georgia shall, according to an annual plan, determine the threshold volume for the above contracting authority within the scope of CPV codes provided for by this paragraph, within which it may reserve a public procurement procedure in accordance with a classification system code/classification system codes of the procurement object provided for by the same paragraph. It shall be inadmissible to reserve the full volume of public procurement.

3. An economic operator shall enjoy the right to participate in a public procurement procedure announced in accordance with this article if the following conditions are met simultaneously:

- a) he/she/it is a non-entrepreneurial (non-commercial) legal entity and/or carries out his/her/its activities for non-entrepreneurial purposes;
- b) his/her/its activities aim at providing the service referred to in paragraph 2 of this article;
- c) no procurement contract has been concluded with him/her/it in the previous 3 years, applying the public procurement procedure provided for by this article.

4. The validity period of a procurement contract concluded applying the public procurement procedure provided for by this article shall not exceed 3 years.

## **Chapter VI**

### **Public Procurement Instruments and Aggregated Public Procurement**

#### **Article 36 – Public procurement instruments and aggregated public procurement**

1. When implementing public procurement procedures, a contracting authority shall be authorised to apply public procurement instruments and carry out aggregated public procurement.

2. Public procurement instruments are:

- a) a framework agreement;
- b) a dynamic procurement system;



c) an electronic reverse auction;

d) an electronic catalogue.

3. Aggregated public procurement is:

a) a centralised procurement;

b) a joint procurement.

4. The detailed procedure for applying public procurement instruments and carrying out aggregated public procurement, taking into account the requirements of this Law and the relevant legal acts of the European Union, shall be determined by an order of the Chairperson of the Agency.

#### **Article 37 – Framework agreement**

1. A framework agreement shall be concluded between one or more contracting authorities and one or more economic operators, aiming at determining the terms of the procurement contracts to be concluded within this agreement, in particular regarding the estimated price and, if appropriate, the quantity of the procurement object. A framework agreement may be used when the exact quantity of the procurement objects and/or a specific time limit of supply is unknown/not determined in advance. A procurement contract may be concluded within the framework agreement only between the contracting authority/authorities determined by the procurement conditions of the framework agreement and the economic operator/economic operators that are party to the framework agreement.

2. The term of validity of the framework agreement shall not exceed 4 years, except for properly justified cases based on the subject of the framework agreement.

3. If the framework agreement is concluded with one economic operator, a procurement contract shall be concluded in accordance with the terms of the framework agreement. In this case, the contracting authority shall be authorised to address the economic operator in writing with a request to include an additional condition in its proposal. It shall be inadmissible to include the additional condition which would result in an essential change of the terms of the framework agreement.

4. If the framework agreement is concluded with several economic operators, a procurement contract shall be concluded:

a) between economic operators participating in the framework agreement without conducting a competition if the framework agreement includes all conditions for supplying goods, performing work or providing services, and objective procedures for selecting economic operators. These procedures shall be included in the procurement conditions;

b) between economic operators participating in the framework agreement by conducting a competition if the framework agreement does not include all conditions for supplying goods, performing work or providing services, and objective procedures for selecting economic operators;

c) by conducting a partial competition between the economic operators participating in the framework agreement if the framework agreement includes the approaches determined by sub-paragraphs (a) and (b) of this paragraph. This sub-paragraph may be applied if such an opportunity has been provided for by the procurement conditions. The choice regarding which goods, work and/or services will be purchased with or without conducting a competition shall be based on the objective conditions determined by the procurement conditions. The procurement conditions shall also indicate the terms of the framework agreement on which the competition may be conducted.

5. In the cases provided for by paragraph 4(b) or (c) of this article, the following conditions shall be met simultaneously:

a) before concluding a procurement contract, a contracting authority shall address the economic operators in writing;

b) a contracting authority shall establish a reasonable time limit for economic operators to submit proposals taking into account the complexity of the subject of the procurement contract and the term required for submitting proposals;

c) proposals shall be submitted in writing and these proposals shall not be publicly available until the time limit for submission expires;

d) a procurement contract shall be concluded with the economic operator that submits the best proposal which shall be identified on the basis of the criteria determined by the procurement conditions.

6. A contracting authority shall be authorised not to purchase the total amount of the procurement object determined by a framework agreement if it is indicated in the terms of the framework agreement.

#### **Article 38 – Dynamic procurement system**

1. The dynamic procurement system shall be applied only through electronic means and for purchasing procurement objects widely spread and universally available on the market when the characteristics of that procurement object meet the requirements of the contracting authority. The dynamic procurement system shall not be applied for the purchase of an individually determined procurement object.

2. A contracting authority shall be authorised to divide a procurement object into categories based on the characteristics of public procurement, which shall be substantiated. These characteristics may be related to the maximum authorised capacity of the procurement agreement or the geographical area where the procurement agreement will be concluded.

3. When applying a dynamic procurement system, a contracting authority shall rely on the procedure to be used when implementing a limited procedure (except for Article 54(3) and (4) of this Law) taking into account the contents of this article. All candidates complying with the selection criteria shall be admitted to a dynamic procurement system. In this case, it shall be inadmissible to reduce the number of candidates. If a contracting authority divides a procurement object into categories in accordance with paragraph 2 of this article, it shall determine evaluation criteria for each category.



4. To conclude a procurement contract within the dynamic procurement system, a contracting authority shall publish the procurement conditions in an electronic form where at least the following shall be indicated:
  - a) the use of a dynamic procurement system;
  - b) the nature of the procurement and the estimated quantity/volume of the procurement object;
  - c) the division of the procurement objects into categories (if any);
  - d) the term of validity of the dynamic procurement system;
  - e) other required information related to the dynamic procurement system.
5. A contracting authority shall invite all participants admitted to the dynamic procurement system in an electronic form to submit their proposals. If a procurement object is divided into categories in the dynamic procurement system, all participants having access to a respective category of procurement object in a dynamic system shall be invited to submit their proposals. A procurement contract shall be concluded on the basis of the criteria established by the procurement conditions. Where appropriate, these criteria may be additionally determined in detail in the invitation to submit proposals.
6. At any stage of the operation of the dynamic procurement system, a contracting authority shall be authorised to electronically request from the participants that they submit an updated application/document within 5 working days.
7. The dynamic procurement system shall be open to any economic operator that meets the selection criteria for the entire period of its operation. An economic operator shall submit an application to a contracting authority to request admission to the dynamic procurement system, which shall be reviewed within 10 working days. In exceptional cases, this term may be extended for not more than 15 working days when additional documents which are absolutely necessary to determine whether or not the application meets the selection criteria are to be reviewed.
8. It shall be inadmissible to establish another additional fee for participating in the dynamic procurement system except the fee for submitting an application/proposal provided for by Article 55 of this Law.

### **Article 39 – Electronic reverse auction**

1. An electronic reverse auction is a repeated electronic process organised after the complete evaluation of the proposals, ensuring the automated determination of their order using an algorithm incorporated in the Electronic System, on the basis of the low price, economic effectiveness or the criterion of the best price-quality ratio.
2. The electronic reverse auction may be used in:
  - a) an open procedure;
  - b) a limited procedure;
  - c) a negotiation procedure with preliminary publication;
  - d) a competitive dialogue;
  - e) a framework agreement, when conducting a competition between the participants of the framework agreement;
  - f) a dynamic procurement system, between the participants admitted to a dynamic procurement system.
3. The electronic reverse auction may be applied only when the procurement conditions determine countable evaluation criteria and an algorithm may automatically determine the order of proposals based on these criteria. The electronic reverse auction shall not be applied when there are uncountable evaluation criteria.
4. The application of the electronic reverse auction shall be indicated in the procurement conditions.

### **Article 40 – Electronic catalogue**

1. An electronic catalogue is the means for submitting proposals ensuring the submission of proposals by an economic operator in accordance with the procedure determined by the procurement conditions. When implementing a public procurement procedure through the Electronic System, an aggregated public procurement or a public procurement using the public procurement instruments provided for by this article, a contracting authority may request the submission of a proposal in the form of an electronic catalogue determined by the procurement conditions. A proposal submitted in the form of an electronic catalogue may be accompanied by other supplementing documents.
2. To participate in a public procurement, an economic operator shall draw up an electronic catalogue according to the form and specifications determined by the procurement conditions. An order of the Chairperson of the Agency may determine a procurement object/procurement objects for which the proposals shall be submitted in the form of an electronic catalogue.
3. To submit a proposal in the form of an electronic catalogue, a contracting authority shall:
  - a) indicate it in the procurement conditions;
  - b) in the procurement conditions, indicate all necessary information relating to the electronic catalogue (including the form and specifications the electronic catalogue shall comply with).
4. If the framework agreement is concluded with several economic operators via electronic catalogues, a contracting authority may request that a competition be organised among the parties to the framework agreement on the basis of the updated electronic catalogues. In this case, the contracting authority shall apply one of the following methods:
  - a) invite bidders to submit updated electronic catalogues adapted to the requirements of the procurement contract;
  - b) notify bidders of its intention to collect necessary information from the submitted electronic catalogues to prepare proposals adapted to the procurement contract. This opportunity may be used if so indicated in the terms of the



framework agreement.

5. If a contracting authority enjoys the opportunity provided for by paragraph 4(b) of this article, it shall notify the bidders of the day and hour it intends to collect information and allow them to refuse the collection of information. A contracting authority shall determine a reasonable time limit. Before concluding a procurement contract, a contracting authority shall submit collected information to bidders and allow them to verify that the proposal in this form does not contain errors, or to object to such errors.

6. A contracting authority may request some proposals within the dynamic procurement system intended for procurement contracts to be submitted in electronic form. A contracting authority may conclude a procurement contract within the framework of an electronic catalogue in accordance with paragraph 4(b) and paragraph 5 of this article provided that an application submitted for participation in the dynamic procurement system has been accompanied by an electronic catalogue drawn up in the form requested and in compliance with the specifications determined by the contracting authority. The candidates shall fill in the catalogue once the contracting authority informs them about its intention to conclude a procurement contract by applying a method provided for by paragraph 4(b) of this article.

#### **Article 41 – Centralised procurement**

1. Centralised procurement is to carry out activities related to a centralised procurement by a central contracting authority, which may include:

a) the procurement of consumer goods/staple goods and/or services determined by the Government of Georgia and intended for a contracting authority;

b) concluding a procurement contract or a framework agreement on consumer goods/staple goods, work and/or services intended for contracting authorities.

2. Except for the exception provided for by paragraph 5 of this article, centralised procurements shall be applied in the cases determined by the Government of Georgia when a contracting authority provided for by a legal act of the Government of Georgia and the procurement conditions is obliged to purchase goods, work or services within the scope of a centralised procurement.

3. A contracting authority may purchase goods, work and/or services through a central purchasing body:

a) through a concluded procurement contract;

b) through a concluded framework agreement;

c) through the administered dynamic procurement system.

4. In the cases provided for by paragraph 3(b) or (c) of this article, a contracting authority shall conclude a procurement contract in accordance with the procedure established by Articles 37 or 38 of this Law.

5. Except for the case provided for by paragraph 2 of this article, a contracting authority shall carry out the activities related to a centralised procurement on the basis of the application of the contracting authority, with or without appropriate compensation, the amount of which shall be determined by a central purchasing body. In addition to the activities related to a centralised procurement, a supporting procurement activity may be carried out which might include:

a) providing consultations concerning the planning or implementation of the procurement procedures;

b) the planning and implementation of the procurement procedures in favour of and at the expense of the relevant contracting authority.

6. In accordance with Article 9(o) of this Law, this Law shall not apply to the procurement of a service provided for by paragraph 5 of this article by a central purchasing body.

7. A central purchasing body shall be a legal entity under public law established on the basis of an ordinance of the Government of Georgia, the state control of which shall be exercised by the Government of Georgia, which approves its statute as well.

8. A central purchasing body shall act as a contracting authority when carrying out activities. It shall be limited by the rights and obligations determined for a contracting authority by this Law and a relevant normative act.

9. By a decision of the Government of Georgia, another contracting authority may be additionally granted a right to carry out the activities related to a centralised procurement in a specific segment. Despite the above, paragraph 2 of this article shall apply to a contracting authority acting in that segment.

#### **Article 42 – Joint procurement**

1. Two or more contracting authorities may agree on the joint conduct of a public procurement.

2. The agreement between the contracting authorities shall be concluded in writing. The agreement shall be signed by the heads of the respective contracting authorities or persons duly authorised by them. The agreement shall determine the rights and obligations of the contracting authorities.

3. When a joint procurement is carried out by contracting authorities operating within one system, a decision on the joint procurement shall be made by a superior official or a duly authorised person on the basis of an individual administrative act.



### Article 43 – Annual plan

1. A contracting authority shall carry out a public procurement in accordance with the annual plan prepared in advance. The procedure for developing, approving, and submitting that plan shall be established by an order of the Chairperson of the Agency. A public procurement may not be conducted if it is not indicated in the annual plan, except for the cases provided for by Article 33(1)(a) and (c) of this Law which shall be included in the annual plan.

2. When developing the annual plan, the following shall be taken into account:

- a) the necessity of carrying out a public procurement;
- b) the uniformity of the procurement objects;
- c) experience in carrying out similar public procurements;
- d) the determination of the procurement object (goods, work, services);
- e) the results of market research carried out to identify potential economic operators and determine the conditions of the procurement contract acceptable for a contracting authority;
- f) applicable public procurement procedures and estimated time limits for their implementation;
- g) the quantity of goods to be supplied and the volume of work to be performed or services to be provided, taking into account existing supplies;
- h) the estimated value of the procurement object, including a VAT;
- i) the expenses related to carrying out the public procurement, taking into account taxes determined by the legislation of Georgia;
- j) the financial liabilities for the current year provided for by long-term procurement contracts or the procurement contracts concluded during the previous year;
- k) the estimated time limits for implementing a procurement contract to be concluded;
- l) other circumstances related to the public procurement.

3. A contracting authority shall submit to the Agency the approved annual plan for the next year through an Electronic System not later than 1 November of the current year. After that, the contracting authority shall be authorised to start implementing the public procurement procedures necessary for the next year/years.

4. Before the entry into force of a respective normative act on the State Budget of Georgia, the budget of an autonomous republic or a municipal budget, an annual plan of the authority carrying out public procurement using funds determined by Article 44(3) of this Law shall comply with a draft budget submitted to the appropriate representative body at the moment of the submittal of the plan.

5. If the entry into force of the relevant normative act provided for by paragraph 4 of this article necessitates ensuring the compliance of the annual plan submitted to the Agency with this normative act, the authority carrying out a public procurement using funds determined by Article 44(3) of this Law shall make appropriate changes to the annual plan within the period of 10 days from the entry into force of the normative act and submit the plan to the Agency in accordance with the established procedure.

6. If a contracting authority is formed (established) or receives additional financing from the funds determined by Article 44(3) of this Law, the annual plan shall be approved and submitted to the Agency in accordance with this Law not later than the last day of the following month of forming (establishing) the contracting authority or receiving additional financing.

7. It shall be admissible to make amendments to the annual plan. When making amendments to the annual plan, a contracting authority shall observe the procedure established for approving the annual plan and submit the amended annual plan to the Agency in accordance with the procedure established by paragraph 1 of this article. Amendments to the annual plan shall be substantiated.

### Article 44 – Multi-annual public procurement

1. Generally, the duration of a public procurement is one year. A one-year public procurement shall be reimbursed from allocations intended for the current budget year. Based on the needs of a contracting authority and the characteristics of the public procurement, the procurement may be multi-annual.

2. If a public procurement is not deemed annual in accordance with paragraph 1 of this article, it shall be multi-annual. A public procurement is also multi-annual if it is reimbursed from allocations intended for two or more budget years.

3. A contracting authority shall agree on the multi-annual public procurement with the Ministry of Finance of Georgia, the ministry responsible for finances of a relevant autonomous republic, or a relevant municipal financial body, and publish the received consent in the Electronic System in accordance with the procedure established by an order of the Chairperson of the Agency if that public procurement is financed by:

- a) funds from the State Budget of Georgia, the budget of an autonomous republic, or a municipal budget;
- b) funds from organisations and institutions, financed from the State Budget of Georgia, the budget of an autonomous republic or a municipal budget.

4. It is not required to publish a multi-annual public procurement contract and the obtained consent in the Electronic System if the public procurement concerned is reimbursed by 1 February of the following year and the supply of goods,





- performance of work, and/or provision of services provided for by the procurement contract will be conducted by 31 December of the current budget year.
5. The National Bank of Georgia carries out public procurements without an agreement with the Ministry of Finance of Georgia.
6. Multi-annual public procurements shall be reflected in the annual plan every year.

#### **Article 45 – Mixed procurement**

1. A procurement shall be mixed if a procurement contract covers various procurement objects organically related to each other and/or is regulated by various legal regimes.
2. A contracting authority shall be obliged to divide a mixed procurement and conclude procurement contracts separately, except for the exceptions provided for by this article when a contracting authority is authorised to conclude a mixed procurement contract.
3. Various procurement objects may be purchased under a single procurement contract after a negotiation procedure without preliminary publication. These procurement objects must be clearly separated in the procurement contract. In this case, a contracting authority must meet the requirements established by this Law in relation to monetary thresholds and other issues for each procurement object.
4. Except for the cases provided for by paragraph 3 of this article, a mixed procurement contract may also be concluded if it is genuinely impossible to divide the procurement, which shall be substantiated. In this case, the contracting authority shall be guided by the procedure established by paragraphs 5 to 9 of this article.
5. A procurement contract, the subject of which are various procurement objects, shall be concluded in accordance with the procedure regulating the primary subject of the procurement contract. The primary subject of the procurement contract shall be the procurement object with the highest estimated value.
6. A procurement contract covering both the services determined by Article 34 of this Law and other types of services, shall be concluded in accordance with the procedure regulating the part of the procurement contract providing for a procurement object with a higher estimated value.
7. A procurement contract covering both the public procurement provided for by this Law and the procurements to which this Law does not apply, shall be concluded in accordance with the procedure established by this Law irrespective of the primary subject of the procurement contract. If a contracting authority decides to conclude procurement contracts separately in accordance with this article, the legal regime regulating each procurement contract shall be determined based on its nature.
8. A procurement contract covering both the public procurement provided for by Chapter XI of this Law and another public procurement provided for by the same Law, shall be concluded in accordance with the procedure determined by the same Chapter.
9. If a procurement contract covers goods that may be used for both public safety and defence and safety purposes, the procedure for concluding procurement contracts shall be determined based on the primary purpose of the goods.

#### **Article 46 – Market research**

1. A contracting authority shall conduct market research to prepare public procurement. For this purpose, a contracting authority shall be authorised to apply to an individual expert, organisation, and/or economic operator, and collect the necessary information. A contracting authority shall ensure that the principles provided for by Article 2 of this Law are not violated by following the advice and information received during the market research.
2. A contracting authority shall also be obliged to conduct primary market research to prepare an annual plan.
3. The procedure for conducting market research shall be determined by an order of the Chairperson of the Agency.

#### **Article 47 – Determining the estimated value of procurement**

1. When determining the estimated value of a procurement, a contracting authority shall take into account all expenses related to carrying out the public procurement within the scope of the public procurement at the time of the announcement of the public procurement, the estimated term of validity of the public procurement, as well as the amount payable for the delivery of a procurement object, excluding VAT.
2. In the case of a framework agreement and a dynamic procurement system, the estimated value of a procurement shall be the total value of the procurement contracts to be concluded during the term of validity of the framework agreement and the dynamic procurement system, excluding VAT.
3. When a public procurement is carried out in lots and, accordingly, the procurement contract is concluded by dividing homogeneous procurement objects into lots, the estimated value of the procurement shall be the estimated total value of lots, excluding VAT.
4. When dividing a mixed procurement and concluding procurement contracts separately, the estimated value of the procurement shall be the total value of the procurement contracts to be concluded, excluding VAT.
5. It shall be impermissible to calculate the estimated value of a procurement with the intention that a contracting authority avoids fulfilling obligations stemming from the monetary thresholds determined by this Law.
6. A detailed procedure for calculating the estimated value of a procurement shall be determined by an order of the



#### **Article 48 – Conducting a public procurement in lots**

1. Given its own needs, a contracting authority shall be authorised to conduct a public procurement in lots for purchasing homogeneous procurement objects in accordance with the requirements of this article. The division of homogeneous procurement objects into lots shall be based on technical or economic aspects. If the annual value of homogeneous procurement objects is equal to or above the monetary thresholds determined by the legal acts of the European Union, a contracting authority shall be obliged to substantiate in the procurement conditions the impossibility of dividing the homogeneous procurement objects into lots and conducting the public procurement in this manner.

2. In the case of dividing homogeneous procurement objects into lots and conducting a public procurement in this manner, the total value of the public procurement procedures carried out/to be carried out shall be taken into account for each lot when calculating monetary thresholds. For the purposes of Article 33(4) of this Law, the public procurement of homogeneous procurement objects to be procured from one source of financing within one budget year shall be deemed as one procurement. In such a case, the public procurement procedures may be carried out separately given the needs of the contracting authority; however, the total value of the public procurement procedures carried out/to be carried out shall be taken into account when calculating monetary thresholds.

3. Except for the case provided for by paragraph 2 of this article, the public procurement of homogeneous procurement objects within one budget year shall also be considered as one procurement carried out for achieving a common goal and/or receiving uniform results. In this case, a contracting authority usually implements public procurement procedures in lots. When public procurement procedures cannot be implemented separately and the total value of the homogeneous procurement objects is equal to or above the monetary thresholds determined by the legal acts of the European Union, a contracting authority shall be obliged to substantiate in the procurement conditions the impossibility of dividing the homogeneous procurement objects into lots. In the case of carrying out a public procurement in lots, the total estimated value of lots carried out/to be carried out shall be taken into account when calculating monetary thresholds.

4. When a public procurement is carried out in lots, a contracting authority shall determine in the procurement conditions the number of lots where an application/proposal may be submitted by one economic operator. When one economic operator has a right to submit an application/proposal in several or all lots, a contracting authority can establish the maximum number of lots where a procurement contract can be concluded with one economic operator. A contracting authority shall determine and substantiate in the procurement conditions the objective and non-discriminatory criteria or rules; according to the above criteria and procedures, it determines the lots within the scope of which a procurement contract can be concluded with an economic operator if it submits more applications/proposals than permitted.

5. It shall be inadmissible to divide a public procurement artificially to avoid monetary thresholds. None of the following cases shall be considered as the artificial division of a public procurement:

- a) the implementation of the public procurement procedures separately is caused by objective conditions unable to be foreseen by a contracting authority, which should be substantiated;
- b) the separate implementation of public procurement procedures is justified by the reasonable spending of funds, which should be substantiated;
- c) the implementation of the public procurement procedures separately is a case determined by an order of the Chairperson of the Agency where the costs of the public procurement carried out/to be carried out may not be totalled up given the nature of the public procurement and related objective circumstances.

6. The procedure for dividing homogeneous procurement objects into lots and carrying out a public procurement, as well as the methodology for avoiding the artificial division of a public procurement and the detection thereof, shall be determined by an order of the Chairperson of the Agency.

#### **Article 49 – Specifications of procurement objects**

1. A contracting authority shall determine the specifications in the procurement conditions describing the characteristics of goods, work or services to be purchased.

2. When a public procurement is intended for natural persons or the general public, the environmental and social aspects, as well as the interests of all categories of consumers (including people with disabilities) shall be taken into account when developing specifications, except in properly substantiated cases.

3. The procurement conditions may include the condition on whether or not it is required to transfer the intellectual property related to a procurement object.

4. Specifications shall enable equally the participation of economic operators in the public procurement procedures and shall not deliberately create obstacles. In the case provided for by paragraph 2 of this article, technical specifications may also apply to any stage of the life cycle of a procurement object even when these specifications are not related to the essential part of the procurement object or other physical characteristics thereof provided that the above requirement arises from the characteristics of the subject of the procurement contract and is proportionate to the objective of that contract.

5. Specifications may be developed according to one of the following methods:

- a) in the form of performance specifications and/or functional specifications, including by reference to environmental



characteristics and criteria;

b) in the form of technical specifications where the textual materials and other indicators used for the description thereof shall comply with a relevant standard in the following sequence: international standards, and where there are none: regional standards, and in the absence of regional standards: interstate standards applicable in Georgia on the basis of the international treaties of Georgia, and where there are none: the standards of Georgia. Each reference to standards shall contain a clause 'or equivalent';

c) in the form of performance specifications and/or functional specifications by reference to technical specifications, aiming at examining the compliance of performance specifications and/or functional specifications;

d) in the mixed form of performance, functional and technical specifications.

6. The priority shall be given to the general description of performance and functional specifications.

7. The description of specifications shall not be vague. The direct or indirect indication of a specific trademark, patent, model, separate processes, source of origin or manufacturer shall be inadmissible, except for the properly justified case where, due to the characteristics of a procurement object, there is no other definite way for its description. In this case, the description shall be accompanied by the clause 'or equivalent'.

8. A contracting authority may not reject a proposal on the ground that the suggested goods, work or services do not comply with the specifications provided for by the procurement conditions if a bidder substantiates in accordance with paragraph 14 of this article that the proposal is equivalent to the requirements determined by the contracting authority in the procurement conditions in the form of technical specifications.

9. If a contracting authority intends to take into account environmental, social or other similar characteristics in the description of a procurement object, it may indicate in the specifications that a specific label ('eco', 'bio', 'organic', etc.) is required to confirm the compliance of the suggested goods, work or services with the characteristics determined by this paragraph. In this case, the label shall meet the following requirements simultaneously:

a) the label shall only apply to the criteria related to a procurement object and shall be used as an established method for determining the characteristics of that procurement object;

b) requirements established for obtaining a label shall be based on non-discriminatory criteria which may be objectively verified;

c) the label shall be approved through a process where all interested parties, including administrative bodies, consumers, entrepreneurs and manufacturers may participate;

d) the label may be obtained by any interested party;

e) requirements for obtaining the label shall be established by a third party which cannot be influenced by an economic operator striving to obtain a label.

10. If a contracting authority does not require that the procurement object should meet all requirements related to a label, it shall indicate which of the requirements should be met.

11. If a contracting authority indicates a specific label, it shall be obliged to obtain any label confirming that a procurement object meets the equivalent requirements.

12. If an economic operator confirms that, for reasons beyond its control, it cannot obtain a label determined by a contracting authority or its equivalent label, the contracting authority shall receive other proper evidence, including an official document issued by a manufacturer, confirming that a procurement object suggested by the economic operator fully meets the requirements related to the label indicated by the contracting authority.

13. If a label meets the requirements determined by paragraphs 9(b) to (e) of this article but other requirements not related to a procurement object are present, a contracting authority may not request such a label. In this case, it shall describe the specifications of a procurement object.

14. To identify the compliance of a proposal with the specifications, an economic operator may be requested by a contracting authority to provide:

a) a description, a document issued by a manufacturer, a photo or a sample, as well as the confirmation of its authenticity;

b) an expert opinion, an inspection report or an opinion of another assessing person/body, a report or other similar documents. In this case, it shall be inadmissible to indicate a specific person/body issuing the opinion, report or other similar documents.

15. A detailed procedure for determining the specifications of a procurement object and recognising the equivalence of standards provided for by this article shall be established by an order of the Chairperson of the Agency.

*Law of Georgia No 420 of 2 April 2025 - website, 3.4.2025*

## **Article 50 – Selection criteria for an economic operator**

1. The selection criteria for an economic operator may apply to:

a) the compliance of the professional activities thereof;

b) the economic and financial performance thereof;

c) the technical and professional compliance thereof.

2. The selection criteria for economic operators shall only aim at verifying whether or not an economic operator has the legal, financial, technical and professional opportunities necessary for carrying out a procurement contract to be



- concluded. Any requirement determined by the procurement conditions shall be related to a procurement object and shall be proportionate.
3. In relation to the compliance of professional activities, a contracting authority may request from an economic operator under the procurement conditions to be registered, accredited, authorised, licensed or certified in accordance with the procedure determined by the legislation of its country of residence or to be a member of a relevant organisation or association if the legislation of the respective country determines this precondition for the delivery of a procurement object. It shall be inadmissible to establish a minimum time limit which should elapse from the registration, accreditation, authorisation, licensing, certification or membership.
4. In relation to economic and financial performance, a contracting authority may determine the minimum amount of annual turnover to be required of an economic operator, including the minimum amount of annual turnover required in the area related to a procurement object. The minimum annual turnover shall not exceed double the amount of the estimated value of a procurement, except for a duly justified case arising from risks related to the specifics of the procurement object, including the date of delivery of the procurement object. When a procurement contract is concluded through a competition within the framework agreement, the required amount of annual turnover shall be calculated according to the maximum estimated value of the procurement contract to be concluded, and when such value is unknown, it shall be calculated according to the estimated value of the framework agreement. In the case of a dynamic procurement system, the maximum amount of the annual turnover shall be calculated through that system according to the maximum estimated value of the procurement contract to be concluded. A contracting authority may determine requirements regarding the balance between the assets and liabilities of an economic operator.
5. In relation to technical and professional compliance, a contracting authority may request from an economic operator that he/she/it have sufficient human and technical resources, as well as experience.
6. A detailed procedure for describing the selection criteria for economic operators shall be determined by an order of the Chairperson of the Agency.

#### **Article 51 – Criteria for identifying the best proposal**

1. In the procurement conditions, a contracting authority shall determine the criteria for identifying the best proposal which ensures the identification of the most economically profitable proposal.
2. The criteria for identifying the best proposal may be based on:
- a) a low price;
  - b) economic efficiency such as the expenditure for the life cycle which covers the expenditure of the life cycle stage of goods, work or services, or the total expenses, in particular:
    - b.a) expenses borne by a contracting authority or another consumer, including:
      - b.a.a) expenses related to the procurement;
      - b.a.b) expenses related to consumption and use of energy and other resources;
      - b.a.c) expenses related to maintenance;
      - b.a.d) expenses related to the termination of viability such as collection and processing expenses;
    - b.b) expenses originated from external environmental factors related to goods, work or services during the entire life cycle, including expenses originating from damage inflicted on the environment (when the inflicted damage may be expressed in the form of pecuniary obligation). Such expenses may include the emission of greenhouse gases or other pollution, as well as expenses for reducing the consequences of climate change;
  - c) the best price-quality ratio. In this case, the qualitative, environmental or social aspects related to a procurement object shall be taken into account, which may cover:
    - c.a) the quality, including the technical, aesthetic and functional characteristics, the availability, and adaptability to all consumers, social, environmental and innovative characteristics, as well as trade and its conditions;
    - c.b) organisational structure, the qualifications and experience of personnel designated to fulfil the terms of the procurement contract if their qualifications and experience may have a significant impact on the fulfilment of obligations;
    - c.c) the provision of services and technical maintenance after the procurement, as well as the conditions for delivery (date, period, process of delivery or the completion thereof).
3. An order of the Chairperson of the Agency may determine cases when it shall be permitted or prohibited to determine only a low price criterion. In the cases provided for by Articles 29 to 31 of this Law, the use of the criteria of the best price-quality ratio shall be mandatory.
4. The criteria for identifying the best proposal shall be deemed to be related to a procurement object when these criteria apply to the delivery of goods, the performance of work or the provision of services determined by a procurement contract at any stage of its life cycle and in any form, including by taking into account the following factors:
- a) a specific process of delivering goods, performing work or providing services;
  - b) a specific process of another stage of its life cycle.
5. The processes provided for by paragraph 4 of this article shall be taken into account even when not an essential part or physical characteristics of the production of goods, performance of work or provision of services.
6. The criteria for identifying the best proposal determined by a contracting authority shall promote healthy competition. These criteria shall be described in the specifications of the procurement object to properly evaluate compliance with the



criteria for selecting information submitted by economic operators. In the case of uncertainty, a contracting authority shall efficiently verify the accuracy of the information and the relevant supporting materials submitted by economic operators.

7. Except for the case where a criterion for identifying the best proposal is only a low price, a contracting authority shall determine in the procurement conditions the unit weight of each criterion. If, for objective reasons, the unit weight of a criterion cannot be determined, the contracting authority shall indicate the sequence of criteria in decreasing order.

8. If a contracting authority calculates the expenses of a public procurement through the method of life cycle expenditure, it shall indicate in the procurement conditions the data which should be submitted by economic operators and the method to be applied to determine the life cycle expenditure on the basis of these data. A method for estimating expenses arising from external environmental factors should meet the following conditions simultaneously:

a) it shall be based on non-discriminatory criteria which may be objectively verified. In particular, when the method is not intended for repeated or continuous use, it shall not grant unjustified advantage to an economic operator or put him/her/it in an unfavourable condition;

b) it shall be equally available for all parties;

c) any economic operator, including an economic operator of a foreign country, shall be able to submit the requested information using reasonable efforts.

9. A detailed procedure for describing the criteria for identifying the best proposal shall be determined by an order of the Chairperson of the Agency.

## **Chapter VIII**

### **Announcement of a Public Procurement. Submission of Applications and Proposals**

#### **Article 52 – Advance notice**

1. A contracting authority shall be authorised to disseminate its intention concerning the conduct of a public procurement by publishing an advance notice in the Electronic System.

2. An advance notice disseminated in accordance with the established procedure shall entitle a contracting authority to shorten the minimum time limit determined for familiarisation with the procurement conditions in accordance with Article 54(3) of this Law.

3. The form and procedure for publishing an advance notice, taking into account the requirements of this Law and the relevant legal acts of the European Union, shall be determined by an order of the Chairperson of the Agency.

#### **Article 53 – Procurement conditions**

1. To announce a public procurement (except for the negotiation procedure without publication), a contracting authority shall publish an application on procurement.

2. An application on procurement shall be accompanied by procurement documentation.

3. By publishing an invitation, a contracting authority shall invite candidates to submit proposals in a limited procedure, a negotiation procedure with preliminary publication, a competitive dialogue or an innovative partnership, as well as to participate in a dialogue/negotiations.

4. The procurement conditions shall be published in the Electronic System.

5. The form and the procedure for publishing the procurement conditions, taking into account the requirements of this Law and the relevant legal acts of the European Union, shall be determined by an order of the Chairperson of the Agency.

6. A contracting authority shall be authorised to make changes to the procurement conditions before the expiry of the time limit determined for familiarising with them. After the expiry of that time limit, any changes to the procurement conditions may be made only on the basis of a dialogue/negotiations where the procurement conditions provide for such possibility. It shall be inadmissible to change a public procurement procedure/public procurement instrument/aggregated public procurement or a procurement object and to make changes prohibited by this Law or other essential changes. When making changes to the procurement conditions before the expiry of the time limit determined for the familiarisation with the procurement conditions, this time limit shall be automatically extended for the period elapsed from the publication of the procurement conditions to the publication of the relevant changes.

7. A contracting authority shall be authorised to make changes to the procurement conditions to extend the time limit determined for familiarisation with the procurement conditions. The final sentence of paragraph 6 of this article shall not apply to such case.

8. Changes shall be made to the procurement conditions before the expiry of the time limit determined for familiarisation with the procurement conditions and these changes shall be published in accordance with the procedure established for approving and publishing the procurement conditions. Changes shall be made to the procurement conditions on the basis of dialogue/negotiations in accordance with the procedure established by an order of the Chairperson of the Agency.

9. A contracting authority shall pay a publication fee to the account of the Agency to publish the procurement conditions in the Electronic System. Its amount and the procedure for its payment and refund shall be determined by an order of the Chairperson of the Agency. The amount of the fee shall not exceed GEL 100. This fee shall be non-refundable, except for the case of the malfunction of the Electronic System or excess payment by mistake.



10. A contracting authority shall also be authorised to disseminate the procurement conditions through supplementary means.
11. A contracting authority shall be authorised to determine under the procurement conditions whether or not it is permitted to submit options of the proposals in a public procurement procedure, and the type of options of proposals that may be submitted by an economic operator. When the procurement conditions do not clearly indicate the possibility of submitting options of the proposals, the submission thereof shall be inadmissible.
12. When the submission of options of the proposals is permitted, a contracting authority shall determine in the procurement conditions the minimum requirements and establish criteria for identifying the best proposal to be met by the options of the proposals submitted by an economic operator.
13. A detailed procedure for submitting options of the proposals and applying the possibility of their submission shall be determined by an order of the Chairperson of the Agency.
14. In the cases determined by an ordinance of the Government of Georgia, a contracting authority shall be obliged to consider in the procurement conditions the characteristics required for sustainable development. To ensure sustainable development when carrying out a public procurement, the CPV codes of the procurement object (goods, work, service) during the procurement of which it is mandatory to take account of the characteristics required for sustainable development, as well as the procedure for the reference to these characteristics in a public procurement procedure and the methodology, including cost-effectiveness, economic expediency, wide range of sustainability, technical compliance and proper competition, shall be determined by an ordinance of the Government of Georgia.

#### **Article 54 – Time limits for familiarisation with the procurement conditions and submitting applications/proposals**

1. To become familiar with the procurement conditions and submit proposals in an open procedure and a competition, the following time limits shall be determined:
  - a) when the estimated value of a procurement is equal to or above the monetary thresholds determined by the legal acts of the European Union, not less than 25 days shall be established for becoming familiar with the procurement conditions and the following 5 days shall be determined for submitting proposals;
  - b) when the estimated value of a procurement is below the monetary thresholds determined by the legal acts of the European Union:
    - b.a) not less than 5 days shall be established for becoming familiar with the procurement conditions and the following 2 days shall be determined for submitting a proposal if the estimated value of goods or service is less than GEL 150,000;
    - b.b) not less than 7 days shall be established for becoming familiar with the procurement conditions and the following 3 days shall be determined for submitting a proposal if the estimated value of goods or service equals to or exceeds GEL 150,000;
    - b.c) not less than 7 days shall be established for becoming familiar with the procurement conditions and the following 3 days shall be determined for submitting a proposal if the estimated value of work is less than GEL 300,000;
    - b.d) not less than 15 days shall be established for becoming familiar with the procurement conditions and the following 5 days shall be determined for submitting a proposal if the estimated value of work equals to or exceeds GEL 300,000.
2. The time limits for submitting an application for a procurement in a limited procedure, a negotiation procedure with preliminary publication, a competitive dialogue and an innovative partnership and for becoming familiar with the procurement documentation and submitting applications shall be established in accordance with paragraph 1 of this article. The time limits for becoming familiar with an invitation to submit a proposal in a limited procedure and a negotiation procedure with preliminary publication and for submitting proposals shall be established in accordance with paragraph 1 of this article. The time limits for becoming familiar with an invitation to submit proposals/participate in a competitive dialogue and an innovative partnership, as well as time limits for becoming familiar with an invitation to participate in a negotiation procedure with preliminary publication, shall be established by an order of the Chairperson of the Agency. The total time limit for becoming familiar with an invitation to submit proposals to a dynamic procurement system and for submitting proposals shall not be less than 10 days if the estimated value of procurement is equal to or above monetary thresholds established by the legal acts of the European Union, and not less than 5 days if the estimated value of procurement is below the monetary thresholds established by the legal acts of the European Union.
3. If a contracting authority has published an advance notice in accordance with an established procedure not earlier than 12 months and not later than 35 days before the announcement of a procurement, which, in turn, was not intended for inviting to submit proposals, the time limit for becoming familiar with the procurement conditions which, in accordance with paragraph 1(a) or (b.d) of this article, taking into account relevant monetary thresholds, should have been not less than 25 or 15 days, in the case of an open procedure may be not less than 10 days and in the case of a limited procedure, not less than 5 days. The time limits for submitting an application/proposal shall not change.
4. If a substantiated decision of a contracting authority determines the existence of an emergency situation but its volume/scale is not so extensive that the contracting authority has to apply a negotiation procedure without preliminary publication in accordance with Article 33 of this Law, the following time limits shall be determined for becoming familiar with the procurement conditions and submitting proposals in an open procedure:
  - a) when the estimated value of procurement is equal to or above the monetary thresholds determined by the legal acts of the European Union, not less than 10 days shall be established for becoming familiar with the procurement conditions



- and not less than following 5 days for submitting proposals;
- b) when the estimated value of procurement is less than the monetary thresholds determined by the legal acts of the European Union:
- b.a) not less than 5 days shall be established for becoming familiar with the procurement conditions and the following 2 days for submitting a proposal if the estimated value of the goods or services equals or exceeds GEL 150,000;
- b.b) not less than 7 days shall be established for becoming familiar with the procurement conditions and the following 3 days for submitting a proposal if the estimated value of work equals or exceeds GEL 300,000.
5. In the cases provided for by paragraph 4 of this article, the time limits for becoming familiar with an application for a procurement and the procurement documentation in a limited procedure and for submitting an application, as well as for becoming familiar with an invitation to submit proposals and time limits for submitting proposals shall be determined in accordance with the same paragraph.
6. If a contracting authority determines a longer time limit for becoming familiar with the procurement conditions than the minimum time limit established by this article, it shall be inadmissible to reduce it after the announcement of the public procurement.
7. When establishing the time limit for submitting an application/proposal, the requirement determined by Article 19(5) of this Law for determining an adequate time limit shall be taken into account.
8. The time limit determined by this article shall be calculated from the day following publication in the Electronic System.

### **Article 55 – Submission of applications and proposals**

1. Applications and proposals may be submitted only through the Electronic System in accordance with the procedure established by this Law, an order of the Chairperson of the Agency and the procurement conditions.
2. To submit an application/proposal to the account of the Agency, an economic operator shall pay a fee for submitting an application and, in the case of its absence, a proposal through the Electronic System. Its amount and the procedure for payment and refund shall be determined by an order of the Chairperson of the Agency. The amount of this fee shall not exceed GEL 100. This fee shall be non-refundable, except in the case of the malfunction of the Electronic System or excess payment by mistake.
3. In the case of a centralised procurement, a successful bidder, except for the fee for submitting an application/proposal provided for by paragraph 2 of this article, shall pay an amount not exceeding 1% of the value of the procurement contract to be concluded to the account of the central purchasing body.
4. The amount of money provided for by paragraph 3 of this article and the procedure for payment and refund shall be determined by a legal act of the head of the central purchasing body.
5. To secure an application/proposal, an economic operator shall submit a guarantee to secure the application/proposal in the amount of 1% of the estimated value of the procurement, except for the case provided for by paragraph 6 of this article. In addition, where a public procurement is carried out in lots, the estimated value of each lot shall be taken into account when calculating the amount of guarantee to secure the application/proposal. To secure an application/proposal, the procedure for submitting a guarantee for securing the application/proposal, its entry into force and its refund shall be determined by an order of the Chairperson of the Agency.
6. In the case of a centralised procurement, the mandatory nature of submitting a guarantee to secure the application/proposal, as well as the amount of the guarantee and the procedure for its submission, entry into force and refund, shall be determined by an order of the Chairperson of the Agency. If in the case of a centralised procurement, the submission of a guarantee to secure the application/proposal is not required, an order of the Chairperson of the Agency may determine other means of securing the procurement contract.

### **Article 56 – Right to request and obtain information/explanation**

1. An economic operator shall have a right to request and obtain from a contracting authority information/explanation regarding the procurement conditions and the course of a public procurement.
2. Requesting information/explanation from a contracting authority shall be possible both through the contact person of the contracting authority as determined by the procurement conditions and the Electronic System.
3. To request information/explanation from a contracting authority, a question-and-answer module shall be created in the Electronic System. The procedure for applying this module and for requesting information/explanation from a contracting authority shall be determined by an order of the Chairperson of the Agency.

## **Chapter IX Selection and Evaluation**

### **Article 57 – General procedure**

1. A contracting authority shall evaluate candidates/bidders according to the specifications and evaluation criteria determined by the procurement conditions in accordance with the procedure established by this Law and an order of the Chairperson of the Agency.



2. If the requested information is not fully provided or is omitted in an application/proposal and there are no direct grounds for disqualifying a candidate/bidder, a contracting authority shall request that the application/proposal be updated within a reasonable time limit and in accordance with the procedure established by an order of the Chairperson of the Agency. When updating the application/proposal, the principles of transparency and equal treatment shall not be violated. The failure to update or the incomplete update of an application/proposal within the established time limit shall be the basis for disqualifying a candidate/bidder.
3. A candidate/bidder may not be requested to submit information not provided for by the procurement conditions, except when the obligation to submit the requested information by a person is directly provided for by the legislation of Georgia. A circumstance not provided for by the procurement conditions may not be considered a deficiency for a candidate/bidder, except when considering it as deficiency is directly provided for by the legislation of Georgia.

## **Article 58 – Disqualification**

1. A contracting authority shall disqualify a candidate/bidder if:
- a) the candidate/bidder is registered in the Black List;
  - b) one or more grounds provided for by Article 21(2)(a)–(d) of this Law exist;
  - c) insolvency proceedings have been initiated against the candidate/bidder, its activities have been terminated or suspended, a liquidation process has started, or he/she/it has been liquidated or he/she has died (if the candidate/bidder is a natural person);
  - d) the candidate/bidder has tax arrears, except for the cases provided for by paragraph 4 of this article;
  - e) a conflict of interest as determined by Article 13 of this Law exists against the candidate/bidder, which is impossible to avoid even by taking all possible measures provided for by the same article;
  - f) there are grounds for disqualifying an economic operator as provided for by Article 19(3)–(5) of this Law and it is not possible to avoid disqualification in any other less restrictive ways;
  - g) an application/proposal does not comply with the procurement conditions and it is not subject to update in accordance with this Law and an order of the Chairperson of the Agency, or if an update is possible, it cannot be updated within the established time limit or cannot be completely updated;
  - h) the adequacy of the price formation cannot be substantiated in accordance with Article 64 of this Law;
  - i) a candidate/bidder refuses to conclude a relevant contract or otherwise expresses a refusal to conclude a contract;
  - j) a candidate/bidder waives the application/proposal.
2. The grounds for disqualification provided for by paragraph 1 of this article shall also apply to:
- a) a member of an economic operator if the economic operator is an association of persons;
  - b) a subcontractor in the case provided for by Article 20 of this Law;
  - c) other economic operators on the competences of which the economic operator relies in accordance with Article 63 of this Law.
3. Taking into account the potential economic risks and the characteristics of the subject of a procurement contract, a contracting authority may not apply the ground provided for by paragraph 1(c) of this article if rehabilitation proceedings are in progress against the candidate/bidder and the contracting authority may conclude that an economic operator is able to implement the procurement contract.
4. A candidate/bidder may not be disqualified on the ground provided for by paragraph 1(d) of this article if one of the following circumstances exist:
- a) the tax arrears of the candidate/bidder is less than GEL 1,000;
  - b) the candidate/proposer has concluded a tax agreement or has undertaken an obligation to pay the tax arrears by concluding an agreement with an authorised body.
5. A contracting authority may disqualify a candidate/bidder at any stage of a public procurement if grounds for the disqualification of the candidate/bidder have been detected. A contracting authority shall be obliged to substantiate a decision on disqualification.
6. A detailed disqualification procedure shall be determined by an order of the Chairperson of the Agency.
7. A contracting authority shall be entitled to request from an authorised body determined by the legislation of Georgia any information about an economic operator or other person provided for by this article, in accordance with a determined procedure, who is required to identify the existence/absence of grounds for its disqualification, including to request information containing a tax secret in the case of written/electronic permission of the economic operator or another person provided for by this article, as well as information containing personal data (including special categories of data).

## **Article 59 – Verification of the absence of grounds for disqualification and the fulfilment of selection criteria**

1. A contracting authority shall determine in the procurement conditions the documents to be requested from an economic operator to verify the absence of grounds for disqualification and the fulfilment of selection criteria.
2. The absence of grounds for disqualification provided for by Article 58(1)(b) to (d) may also be verified by an official document/certificate issued by an authorised judicial or administrative body of a respective country.
3. The compliance of professional activities may be verified by an official document/certificate confirming the





registration, accreditation, authorisation, licensing, certification or membership of an association.

4. The compliance with the requirements related to economic and financial performance may be verified with an official document/certificate issued by an authorised tax authority or a financial institution of a respective country, a financial or annual report of an economic operator, or an extract from that report. Concerning the annual turnover, information may be requested for not more than the previous 3 financial years, taking into account the date of establishment of an economic operator or the starting of activities by him/her/it. If the economic operator confirms that he/she/it cannot submit a document requested by a contracting authority, it may confirm its economic and financial performance with another document considered acceptable by the contracting authority in compliance with the principles provided for by this Law.

5. The technical and professional compliance determined by the procurement conditions may be verified:

a) with information on goods delivered or services provided for not more than the previous 3 years. This information shall contain data on the cost of the goods/services, the date of delivery of goods or provision of services, and the recipient. It shall be accompanied by documentation certifying the due fulfilment of obligations. If an adequate competition level is to be achieved, a contracting authority may take account of the delivery of goods/provision of services performed earlier than determined by this sub-paragraph;

b) with information on work performed for not more than the previous 5 years. This information shall contain data on the cost of the work, the date of performance, and the recipient. It shall be accompanied by documentation certifying the due fulfilment of obligations. If an adequate competition level is to be achieved, a contracting authority may take account of work performed earlier than determined by this sub-paragraph;

c) with information regarding technical personnel and structural units, irrespective of their affiliation with an enterprise of an economic operator, in particular the personnel/structural unit responsible for the quality or the performance of work;

d) with documents certifying the qualifications and experience of a manager or technical personnel;

e) with a description of technical equipment and resources to be used for quality assurance;

f) with a description of a delivery and monitoring management system to be used for fulfilling obligations;

g) with a description of environmental measures related to the fulfilment of obligations;

h) by referring to the part of the procurement contract which has to be implemented by a subcontractor;

i) through an inspection conducted by a contracting authority or a competent authority on its behalf if a procurement object is complex or has a special purpose. The inspection shall apply to the production capacity or technical competences of an economic operator and, where appropriate, measures to be taken to ensure quality control.

6. An economic operator shall not be requested to submit the information/documents provided for by this article if data can be verified in the Electronic System or any other open/public database in accordance with the procedure determined by an order of the Chairperson of the Agency.

## **Article 60 – Reduction of the number of candidates**

1. In a limited procedure, a negotiation procedure with preliminary publication, a competitive dialogue and an innovative partnership, a contracting authority may reduce the number of candidates who meet the selection criteria and will be invited to submit proposals or to participate in a dialogue/negotiations, provided that their number is not less than determined by this article.

2. A contracting authority shall determine objective and non-discriminatory criteria in the procurement conditions, according to which it will invite candidates, and determine the minimum and, where appropriate, maximum number of candidates to be invited. The number of candidates shall be determined to ensure healthy competition. When determining their number, a contracting authority shall take into account the characteristics of a procurement object and the relevant market, including competition in that market.

3. The minimum number of candidates in a limited procedure shall be 5, and in a negotiation procedure with preliminary publication, a competitive dialogue, and an innovative partnership, shall be 3.

4. A contracting authority shall invite at least the minimum number of candidates to submit proposals or to participate in a dialogue/negotiations. If the number of candidates who meet the selection criteria is less than the minimum number, a contracting authority may invite other candidates who meet the minimum requirements. In this case, a contracting authority may not invite to a public procurement an economic operator that has not submitted an application and/or does not meet the minimum requirements.

5. If a contracting authority enjoys the right to gradually reduce a suggested solution/solutions as provided for by Article 29(8) of this Law, this right shall be exercised in accordance with the procedure established by the procurement conditions. The number of bidders and suggested solutions shall be sufficient to ensure healthy competition. For this purpose, a contracting authority shall take into account the characteristics of a procurement object and a relevant market, including competition on that market.

## **Article 61 – European Single Procurement Document**

1. The European Single Procurement Document ('ESPD') is an initial document certifying the absence of grounds for disqualifying an economic operator, its compliance with the selection criteria and with the conditions determined in



accordance with Article 60 of this Law. It shall be mandatory for a contracting authority to adopt the ESPD. If an economic operator makes a decision on the submission of the ESPD, it shall also submit it regarding the following persons (if any):

- a) a member of an economic operator if the economic operator is an association of persons;
- b) a subcontractor in the case provided for by Article 20 of this Law;
- c) another economic operator on the competences of which a subcontractor relies in accordance with Article 63 of this Law.

2. The ESPD shall contain the formal consent of an economic operator that there are no grounds for disqualification and that the selection criteria of economic operators and/or conditions determined in accordance with Article 60 of this Law are met. An authorised body or a third person responsible for the issuance of a relevant certifying document and the readiness of an economic operator to immediately submit these documents upon request shall also be indicated in the ESPD.

3. An economic operator shall be authorised to submit to a contracting authority an ESPD already submitted in another state procurement procedure. In this case, an economic operator shall prove that the information referred to in this ESPD is still valid.

4. A contracting authority shall be authorised to request from a candidate/bidder, at any stage of the public procurement procedure, the submittal of documentation certifying the absence of grounds for disqualification, and compliance with the selection criteria and with the conditions determined by Article 60 of this Law. Before concluding a procurement contract, except for the case provided for by Article 37(4)(a) of this Law, a contracting authority shall request from an economic operator the procurement agreement is to be concluded with that he/she/it submit the updated documents in accordance with Article 59 and, where appropriate, Article 62 of this Law. A contracting authority may allow an economic operator to update the submitted documents in accordance with a procedure determined by an order of the Chairperson of the Agency. A contracting authority may not request the information it already possesses or is available in the Electronic System or any other open/public database.

5. A detailed procedure for using the ESPD shall be determined by an order of the Chairperson of the Agency.

#### **Article 62 – Standards for quality assurance and environmental management**

1. If a contracting authority requires in the procurement conditions the examination of the quality system of an economic operator, it shall apply to the quality assurance systems which meet the specific certification standards of a relevant country and are certified by accredited organisations in accordance with a procedure determined by law. A contracting authority shall accept a certificate issued by an organisation accredited in accordance with the procedure determined by the legislation of a relevant country, as well as other relevant documents submitted by an economic operator to certify the equivalent quality assurance.

2. The capability of an economic operator to implement the measures provided for by Article 59(5)(g) of this Law may be confirmed in one of the following ways:

- a) by registration in the Eco-Management and Audit Scheme (EMAS);
- b) by a certificate issued by an accredited body in compliance with the procedure determined by the legislation of Georgia or the legislation of a relevant country, certifying compliance with European or international standards of environmental protection;
- c) by an equivalent assessment of the compliance of the activities with the requirements, which in Georgia complies with the environmental management system/standard provided for by sub-paragraphs (a) or (b) of this paragraph.

#### **Article 63 – Relying on the competences of another economic operator**

1. An economic operator (main economic operator) shall be entitled to rely on the competences of another economic operator where appropriate, irrespective of legal relations between them, to meet the economic and financial performance criteria and technical and professional compliance criteria.

2. An economic operator may rely on the experience of another economic operator, or the qualifications and experience of its personnel, if another economic operator performs works and/or provides services under the procurement contract which require those specific qualifications and experience. This paragraph shall only apply to subcontractors.

3. If an economic operator relies on the resources of another economic operator, it shall confirm the availability and usability of these resources. This may be confirmed by an agreement concluded with the economic operator or otherwise.

4. When an economic operator relies on the competences of another economic operator to meet the economic and financial performance criteria, a contracting authority may request joint and several liability in the implementation of a procurement contract.

5. When an economic operator is an association of persons, it may rely on the competences of both its members and another economic operator.

6. In the cases provided for by this article, a contracting authority shall also evaluate another economic operator on the competences of which the economic operator relies. Both the grounds for disqualification and the selection criteria shall be examined. If the grounds for disqualifying another economic operator exist, or another economic operator does not meet the selection criteria, a contracting authority shall request from an economic operator that he/she/it replace the



other economic operator in accordance with the procedure established by an order of the Chairperson of the Agency. In this case, a contracting authority shall be guided by Article 20(2) of this Law.

7. A contracting authority may request in the procurement conditions that critically important obligations be fulfilled by only a major economic operator.

8. A detailed procedure for using the competences of another economic operator, as well as for using the competences of the members of an association by the association of persons, shall be determined by an order of the Chairperson of the Agency.

#### **Article 64 – Proposals of inadequately low price**

1. If a proposal has an inadequately low price, a contracting authority shall request a bidder to substantiate the adequacy of the price formation. In the procurement conditions, a contracting authority shall preliminarily determine the case when a proposal is deemed of inadequately low price, and the documents, which shall substantiate the adequacy of price formation.

2. The adequacy of price formation due to an inadequately low price may be substantiated by:

- a) the expenses of a production process, construction method or service provision;
- b) a technical solution selected for the supply of goods, performance of work or provision of services, or special conditions available for an economic operator;
- c) the unique character of goods, work or services suggested by an economic operator;
- d) the fulfilment of obligations by an economic operator, taking into account the obligations assumed in the areas of environmental, social and labour legislation;
- e) the use of a subcontractor;
- f) the possibility for an economic operator to receive state aid.

3. A contracting authority shall evaluate a document confirming the adequacy of price formation. If not able to justify the adequacy of the price of the proposal, a bidder shall be disqualified considering the circumstances determined by paragraph 2 of this article. If the low price of a proposal is conditioned by the receipt of state aid by a bidder, a contracting authority shall disqualify the bidder only if he/she/it cannot justify the lawfulness of such state aid within the period determined by the contracting authority.

4. The conditions according to which a proposal is considered of inadequately low price, as well as a detailed procedure for confirming the adequacy of price formation, shall be determined by an order of the Chairperson of the Agency.

#### **Article 65 – Unsuccessful completion or termination of public procurement**

1. A public procurement where not one application/proposal has been submitted shall be considered failed.

2. A public procurement where all candidates/bidders have been disqualified or a contracting authority has failed to select a sufficient number of candidates, shall be considered unsuccessful.

3. A contracting authority may terminate the course of a public procurement at any time before concluding a procurement contract/framework agreement if this becomes necessary for unforeseen objective reasons beyond its control, or based on state interests and/or the public interests of Georgia, which shall be substantiated.

### **Chapter X**

#### **Conclusion of a Procurement Contract/Framework Agreement, Introducing Changes, and Implementation**

#### **Article 66 – Conclusion of a procurement contract/framework agreement**

1. A procurement contract/framework agreement shall be concluded in writing.

2. It shall not be mandatory to conclude a procurement contract in writing if it is concluded as a result of a negotiation procedure without preliminary publication in the following cases:

- a) in the cases provided for by a subordinate normative act of Georgia's diplomatic missions and consular offices abroad, branches, representations or subsidiaries established abroad by a contracting authority, defence attaché, representatives of the Ministries of Defence and Internal Affairs of Georgia, the State Security Service of Georgia, Georgian Intelligence Service and the Prosecutor's Office of Georgia abroad;
- b) when carrying out public procurement through online ordering, as well as posting information through a social network or ensuring the availability of a website and software or purchasing a licence/permit;
- c) when carrying out a public procurement related to representation expenses;
- d) when purchasing laboratory services from a non-resident economic operator, only if a laboratory with the appropriate accreditation is not available in the Georgian market or an existing laboratory is unable to provide the laboratory services for objective reasons.

3. In the cases provided for by paragraph 2 of this article, a procurement contract shall be substituted by a document confirming the conclusion of the contract. The document shall be determined by an order of the Chairperson of the Agency. Paragraph 9 of this article shall apply to the above document.

4. A procurement contract/framework agreement may be concluded in both the Georgian and a foreign language. In the



case of concluding a procurement contract/framework agreement in a foreign language, it shall be translated into Georgian in accordance with the procedure established by the legislation of Georgia. In the case of non-compliance, preference shall be given to the original. It shall not be required to translate a procurement contract/framework agreement concluded in a foreign language if it is concluded as one document containing parallel texts in Georgian and a foreign language. If in such case non-compliance is detected, preference shall be given to Georgian.

5. A procurement contract/framework agreement shall be concluded with a successful bidder/bidders according to the procurement conditions and the proposals submitted, in accordance with the procedure and conditions determined by an order of the Chairperson of the Agency. If a procurement contract is concluded as a result of a negotiation procedure without preliminary publication, conditions other than those determined by paragraph 1 of this article may be established for the relevant public procurement (procurement contract/framework agreement) by a decision of the Government of Georgia. A procurement contract/framework agreement as a result of a negotiation procedure without preliminary publication shall be concluded in accordance with an agreement reached between a contracting authority and an economic operator. If a procurement contract/framework agreement as a result of a negotiation procedure without preliminary publication has been concluded with the consent of the Agency, the conditions agreed with the Agency shall also be met.

6. After a decision on the invitation to conclude a procurement contract/framework agreement/negotiation procedure without preliminary publication is published/uploaded in the Electronic System, it shall be inadmissible to conclude a procurement contract/framework agreement within:

- a) the term of 10 days if the estimated value of procurement is equal to or above the monetary thresholds determined by the legal acts of the European Union;
- b) the term of 5 days if the estimated value of procurement is below the monetary thresholds established by the legal acts of the European Union.

7. Paragraph 6 of this article shall not apply to the following cases:

- a) a procurement contract/framework agreement concluded on the grounds provided for by Article 33(1)(a) and (c) of this Law as a result of a negotiation procedure without preliminary publication and the value of the procurement contract/framework agreement to be concluded as a result of a negotiation procedure without preliminary publication is below the monetary thresholds established by the legal acts of the European Union;
- b) the right to conclude a procurement contract/framework agreement has been obtained by one bidder only and there are no other candidates/bidders who may appeal the decision/action of the contracting authority. This sub-paragraph shall not apply if, in the cases directly provided for by this Law and an order of the Chairperson of the Agency, and based on the essence of the public procurement procedure and/or public procurement instrument, information on the identity and number of participants and the proposals of public procurement is covered;
- c) a procurement contract is concluded within a framework agreement or a dynamic procurement system.

8. The terms of a procurement contract/framework agreement shall be determined by an order of the Chairperson of the Agency. The Chairperson of the Agency shall be authorised to approve a standard form/forms of a procurement contract/framework agreement which may be incorporated into the Electronic System in accordance with the procedure established by an order of the Chairperson of the Agency.

9. A contracting authority shall publish a procurement contract/framework agreement, as well as a document provided for by paragraph 3 of this article (including a document containing information determined by a subordinate normative act certifying the payment of the cost of procurement object) in the Electronic System in accordance with the procedure established by an order of the Chairperson of the Agency, within 3 working days after concluding the procurement contract/framework agreement. This paragraph shall not apply to Georgia's diplomatic missions and consular offices abroad, as well as branches, representations, subsidiaries established abroad by a contracting authority, the defence attaché, the representatives of the Ministries of Defence and Internal Affairs of Georgia, the State Security Service of Georgia, the Georgian Intelligence Service and the Prosecutor's Office of Georgia abroad who are obliged to publish a procurement contract/framework agreement, a document containing information determined by a subordinate normative act certifying the payment of the cost of a procurement object in the Electronic System, within 10 days after concluding the procurement contract/framework agreement, in accordance with the procedure established by an order of the Chairperson of the Agency.

10. If a procurement object is a petroleum product (fuel), the price of which, due to its specific nature, depends on a variable price on an international commodity exchange and/or the official exchange rate of the national currency, an economic operator shall submit to a contracting authority the unit price of goods to be delivered, calculated in accordance with the procedure established by a subordinate normative act, before concluding a procurement contract/framework agreement. This requirement shall not apply to the procurement of petroleum products by Georgia's diplomatic missions and consular offices abroad, as well as branches, representations, subsidiaries established abroad by a contracting authority, a defence attaché, representatives of the Ministries of Defence and Internal Affairs of Georgia, the State Security Service of Georgia, the Georgian Intelligence Service and the Prosecutor's Office of Georgia abroad.

## **Article 67 – Introducing changes into a procurement contract/framework agreement**

1. The introduction of changes into a procurement contract/framework agreement without a new public procurement



procedure shall be allowed in one or more following cases:

a) when it is necessary to deliver complementary goods, perform work or provide services, and to replace the initial provider simultaneously;

a.a) is impossible for economic or technical reasons, in particular its replacement renders it impossible to meet the requirements for interchangeability and functional compatibility related to equipment, installations or services purchased during the initial procurement;

a.b) will create significant difficulties or increase the expenses of a contracting authority by at least twice the amount;

b) when the following circumstances occur simultaneously:

b.a) the introduction of changes into a procurement contract/framework agreement is rendered necessary due to factors that could not be determined in advance by a contracting authority and/or due to changed circumstances as determined by Article 398 of the Civil Code of Georgia;

b.b) the introduction of changes into a procurement contract/framework agreement is not deemed essential according to paragraph 3 of this article;

c) when an initial provider is replaced due to full or partial legal succession caused by organisational changes, including reorganisation, merger or insolvency, if the successive provider meets the initially determined selection criteria and the change does not result in other essential changes;

d) when the introduction of changes into a procurement contract/framework agreement, irrespective of the cost of the procurement contract/framework agreement, is not deemed essential according to paragraph 3 of this article;

e) when information on the introduction of changes into a procurement contract/framework agreement, irrespective of the cost of the procurement contract/framework agreement, is not clearly indicated in the procurement conditions and the changes are not essential.

2. In the case provided for by paragraph 1(a) or (b) of this article, it shall be inadmissible to increase the cost of the procurement contract/framework agreement by more than 10%. This paragraph shall not apply to a public procurement of petroleum products (fuels).

3. Change to a procurement contract/framework agreement shall be deemed essential when:

a) if provided for by the procurement conditions from the very beginning, it would have enabled other economic operators to participate in the public procurement, or would not have caused the disqualification of economic operators/reduction of the number of economic operators participating in the public procurement;

b) it changes the economic balance in a procurement contract/framework agreement in favour of an economic operator, as was not provided for by the procurement contract/framework agreement from the beginning;

c) it extends or narrows down the scope of a procurement contract/framework agreement more than within reason;

d) it causes the replacement of the initial provider via a method other than provided for by paragraph 1(c) of this article.

4. If it is necessary to introduce a change other than one provided for by paragraphs 1 and 2 of this article into a procurement contract/framework agreement, a contracting authority shall be obliged to implement a new public procurement procedure.

5. The introduction of changes into a procurement contract/framework agreement shall be substantiated by a contracting authority. Where changes are introduced into a procurement contract/framework agreement, the responsibility for compliance with the requirements of this Law shall rest with the contracting authority.

6. A change to a procurement contract/framework agreement shall be introduced in the same form as the procurement contract/framework agreement had been concluded. This change shall be posted in the Electronic System not later than 3 working days after its introduction into the procurement contract/framework agreement.

7. The procedure and conditions for changing the value of a procurement contract/framework agreement shall be determined by an order of the Chairperson of the Agency.

## **Article 68 – Replacement/addition of personnel involved in the process of implementing a procurement contract, a subcontractor and other economic operator**

1. A provider shall be authorised to replace personnel involved in the process of implementing a procurement contract, a subcontractor/subcontractors and other economic operator/operators provided for by Article 20(1) of this Law on the competences of which it relied in accordance with Article 63 of this Law, as well as add personnel, a subcontractor/subcontractors and other economic operator/operators without agreeing with the contracting authority, except for the cases provided for by paragraphs 2 and 4 of this article.

2. After concluding a procurement contract, an employee of a provider involved in the process of implementing a procurement contract, the information regarding whom has been given to a contracting authority by a bidder, and whose qualification has been evaluated by a contracting authority, a subcontractor provided for by Article 20(1) of this Law or other economic operator on the competences of which an economic operator relied, shall be replaced/added to confirm the compliance of its qualifications with the requirements determined by the procurement conditions only where the contracting authority gives written consent in accordance with the procedure established by paragraph 3 of this article.

3. An employee of a provider, a subcontractor or other economic operator as provided for by paragraph 2 of this article may not be replaced/added if one of the following circumstances exists:

a) an employee, a subcontractor or other economic operator submitted by a provider, on the competences of which the



- provider relied, does not meet the requirements determined by the procurement conditions for an employee of a provider, a subcontractor or another economic operator;
- b) a subcontractor or another economic operator, on the competences of which an economic operator relied for a public procurement procedure to confirm the compliance of its qualifications with the requirements determined by the procurement conditions has been replaced and the suggested subcontractor or other economic operator does not have the qualifications the provider was relying on.
4. The grounds for disqualification provided for by Article 58 of this Law shall not apply to a subcontractor and other economic operator suggested in accordance with this article.
5. A contracting authority shall agree to or reject the replacement/addition of personnel, a subcontractor or other economic operator involved in the process of implementing a procurement contract in accordance with the procedure established by an order of the Chairperson of the Agency.

#### **Article 69 – Control of the implementation of a procurement contract**

1. A contracting authority shall control the implementation of a procurement contract.
2. A contracting authority shall be authorised to assign, in accordance with the procedure established by the legislation of Georgia, the control of compliance with the terms of a procurement contract to an employee or a group of employees of the contracting authority, or any other person.
3. The conditions for control of the implementation of a procurement contract shall be determined by an order of the Chairperson of the Agency.
4. A contracting authority shall post information regarding the implementation/failure of implementation of a procurement contract in the Electronic System, in accordance with the procedure established by an order of the Chairperson of the Agency.

#### **Article 70 – Means of securing the implementation of a procurement contract**

1. To secure a procurement contract, a contracting authority shall be authorised to take into account a penalty and/or request a bank guarantee.
2. It shall be mandatory to request a bank guarantee if the value of a procurement contract equals or exceeds GEL 200,000.
3. If the value of a procurement contract is less than GEL 200,000, requesting a bank guarantee shall be permitted only in exceptional cases, based on the characteristics of the public procurement, which shall be substantiated.
4. In the case of a negotiation procedure without preliminary publication, based on the substantiated application of a contracting authority and by a decision of the Government of Georgia, an economic operator may be released from the obligation to submit a bank guarantee.
5. In the case of a centralised procurement, the mandatory nature of requesting a bank guarantee, as well as its higher limit if required, shall be determined by an order of the Chairperson of the Agency.
6. An economic operator registered in the White List shall submit a bank guarantee in accordance with the procedure established by Article 22(2)(b) of this Law.
7. A detailed procedure for requesting and submitting a bank guarantee shall be determined by an order of the Chairperson of the Agency.

#### **Article 71 – Terms of payment**

1. The terms of a procurement shall be determined by the procurement conditions and a procurement contract/framework agreement.
2. In the case of an advance payment, a provider shall be obliged to provide to a contracting authority with a bank guarantee in the amount identical to the sum payable in advance, except for the cases determined by an order of the Chairperson of the Agency.
3. In the case of a negotiation procedure without preliminary publication, based on the substantiated application of a contracting authority and by a decision of the Government of Georgia, an economic operator may be released from the obligation to provide a bank guarantee in the amount identical to the sum payable in advance.
4. An economic operator registered in the White List shall provide a bank guarantee of half of the amount payable in advance.
5. A provider shall be obliged to use the amount received from an advance payment only to fulfil obligations related to a procurement contract. He/she/it shall be liable for the misuse of funds.
6. A detailed procedure for requesting and providing a bank guarantee identical to the sum payable in advance shall be determined by an order of the Chairperson of the Agency.

### **Chapter XI**

#### **Carrying out Public Procurement in the Area of Defence and Security**

#### **Article 72 – General provisions related to carrying out public procurement in the area of defence and security**

1. This Chapter shall apply to a procurement contract concluded/to be concluded in the area of defence and security



- aiming at:
- a) delivering military and dual-use products (including the parts and/or components thereof);
  - b) delivering goods, performing work and providing services related to the products provided for by sub-paragraph (a) of this article and any element of their life cycle;
  - c) performing work and/or providing services intended for military or defence and security purposes (related to the area of defence and security).
2. A list of products provided for by paragraph 1(a) of this article shall be determined by an ordinance of the Government of Georgia.
3. When carrying out a public procurement in the area of defence and security, a contracting authority shall apply the provisions of this Law, unless otherwise provided for by this Chapter.
4. When carrying out a public procurement in the area of defence and security, a contracting authority shall be authorised to use a standard public procurement procedure determined by this Law based on objective criteria or apply the exception provided for by Article 73 of this Law. In the case of using a standard public procurement procedure, the provisions of this Chapter shall not apply to public procurement. Where the exception provided for by Article 73 of this Law is applied, a contracting authority shall substantiate that its choice does not aim at intentionally avoiding the application of this Law and is based on objective criteria.
5. When goods, work and services related to the area of defence and security are purchased during a state of emergency or martial law, this Law shall not apply.
6. Article 61 of this Law shall not apply to a public procurement carried out in the area of defence and security.

### **Article 73 – Additional exceptions**

1. The provisions of this Law, other than the exceptions determined by Articles 9 and 10 of this Law, shall not apply if:
- a) their application will disclose information containing state secrets;
  - b) a procurement contract is intended for the defence forces of Georgia deployed abroad and, due to operational needs, they need to conclude it with an economic operator in a relevant territory;
  - c) the Government of Georgia concludes a procurement contract with the government of a foreign country concerning one or more of the following cases:
    - c.a) the supply of military and dual-use goods;
    - c.b) work or services directly related to military and dual-use goods provided for by sub-paragraph (c.a) of this paragraph;
    - c.c) work or services specifically intended for military purposes, as well as secret work or services.
2. In the case provided for by paragraph 1(a) of this article, the procedure for carrying out a classified public procurement shall be determined by an ordinance of the Government of Georgia. In the case provided for by this paragraph, the intention to carry out a classified public procurement containing general unclassified information regarding the classified public procurement shall be published in the Electronic System, if possible. When establishing the procedure for carrying out classified public procurement, the Government of Georgia shall be guided by the public procurement procedures provided for by this Law and shall determine the characteristics of their application to the classified public procurement.

### **Article 74 – Participation of economic operators of a foreign country in public procurement**

An ordinance of the Government of Georgia shall determine a list of countries whose economic operators shall be entitled to participate in a public procurement carried out in the area of defence and security as major economic operators, independently or along with the economic operators registered in Georgia, and also as subcontractors.

### **Article 75 – Protection of classified information**

1. When a procurement contract contains information deemed a state secret, a contracting authority shall determine in the procurement conditions the requirements to be met to protect such information, in accordance with the legislation of Georgia.
2. In the case provided for by paragraph 1 of this article, an economic operator, as well as a subcontractor and another economic operator, if any, on the competences of which the economic operator relies in accordance with Article 63 of this Law, shall have appropriate access to information deemed a state secret as determined by the legislation of Georgia.

### **Article 76 – Ensuring the supply of a procurement object**

1. To ensure the supply of a procurement object, a contracting authority shall determine in the procurement conditions the relevant requirements, including:
- a) submitting certificates and documents (including from the country of residence of an economic operator) intended to demonstrate to the contracting authority that the economic operator is able to fulfil obligations related to the export, shipment and transit of goods related to the procurement contract;
  - b) referring to any restriction imposed on the contracting authority concerning the disclosure of goods or services or the consequences of their supply, transfer or use, and which might stem from export control or safety measures;
  - c) submitting certificates and documents confirming that the supply chain of an economic operator is organised so that the requirements determined by the procurement conditions to ensure the supply of a procurement object are met, as



- well as the obligation that the introduction of changes into this chain does not have a negative effect on the fulfilment of the above requirements is assumed;
- d) the obligation of an economic operator to find ways in a crisis situation to meet the additional needs of a contracting authority in accordance with the agreed conditions;
- e) obtaining information from the authorised bodies of the country of residence of the economic operator on meeting the additional needs of the contracting authority by the economic operator in a crisis situation;
- f) the obligation of the economic operator to supply, modernise and modify goods as provided for by a procurement contract;
- g) the obligation of the economic operator to notify the contracting authority within a reasonable period of any changes made to its organisational structure, supply chain or industrial strategy which may affect the fulfilment of assumed obligations;
- h) the obligation of the economic operator to supply the contracting authority with all means required to manufacture spare parts, components and testing equipment of goods (including technical drawings, licenses and instructions of use) in accordance with the agreed conditions if the supply of these goods is no longer possible.
2. For the purposes of this article, an armed conflict and/or war shall be considered a crisis situation, as well as a situation where the extent of a detrimental event occurring in the country explicitly exceeds the extent of detrimental events occurring in daily life and jeopardises or restricts life and health of people, or has an essential impact on the value of immovable or movable property, or requires the supply of basic consumer goods to the population. A crisis situation shall be considered to occur when the above detrimental event is deemed inevitable.

### **Article 77 – Additional grounds for disqualification**

1. A contracting authority, except for the grounds for disqualification provided for by Article 58 of this Law, shall disqualify a candidate/bidder when there is information about an authorised law enforcement body/court that the candidate/bidder or a member of the management body or supervisory board thereof, or a trustee or a person entitled to represent the economic operator in the activities of subsidiary undertakings, is convicted of a crime against the state.
2. The grounds for disqualification provided for by paragraph 1 of this article shall also apply to:
- a) a member of an economic operator if the economic operator is an association of persons;
- b) a subcontractor in the case provided for by Article 20 of this Law;
- c) another economic operator on the competences of which the economic operator relies in accordance with Article 63 of this Law.
3. In the case provided for by paragraph 1 of this article, the procedure for requesting and receiving information from an authorised law enforcement body/court shall be established by an order of the Chairperson of the Agency. This information shall also be available to the Agency.

### **Article 78 – Characteristics of public procurement procedures**

1. In the area of defence and security, a contracting authority shall apply a limited procedure, a competitive dialogue, a negotiation procedure with preliminary publication or a negotiation procedure without preliminary publication. A contracting authority shall be authorised to apply an open procedure only if a public procurement does not contain information considered a state secret and all technical, legal and financial aspects of the procurement contract are known in advance.
2. A contracting authority shall be authorised to apply a negotiation procedure without preliminary publication as well where, except for the grounds provided for by Article 33 of this Law, a procurement contract applies to the movement of the defence forces of Georgia deployed or to be deployed abroad by air or sea and the contracting authority has to purchase the above services from an economic operator which gives such a short-term guarantee for the fulfilment of obligation that the time limits determined by this Law for familiarisation with the procurement conditions and the submittal of an application/proposal, including the time limits reduced in accordance with Article 54(4) of this Law, cannot be observed.

### **Article 79 – Subcontract**

1. A provider shall be authorised to freely select a subcontractor, without the restrictions provided for by Article 20 of this Law.
2. A contracting authority shall request from an economic operator:
- a) that he/she/it indicate in the application/proposal whether he/she/it intends to transfer a part of the subject of a procurement contract for implementation to a subcontractor and if so, that he/she/it also indicate the subcontractor and the subject of the subcontract;
- b) that he/she/it notify the contracting authority of any changes made in relation to a subcontractor introduced during the implementation of the procurement contract.
3. A contracting authority shall be authorised to include in the procurement conditions the obligation of an economic operator to transfer a part of the subject of the procurement contract for implementation to a subcontractor. In this case, the contracting authority shall determine the minimum and maximum percentage of the part of the subject of the





procurement contract to be transferred to the subcontractor. The maximum percentage shall not exceed 30% of the value of the procurement contract and/or total liabilities provided for by the procurement contract. A percentage range determined by this paragraph shall be adequate. For this purpose, the contracting authority shall take into account the characteristics of a procurement object and the relevant market, including the competition in this market and the technical competences thereof.

4. In an application/proposal, a candidate/bidder shall refer to the part of the subject of procurement contract he/she/it transfers for implementation to a subcontractor.

#### **Article 80 – Characteristics of the review of a dispute**

1. A public procurement carried out in the area of defence and security may be appealed to the Council or a court in accordance with an established procedure. The appeal shall be reviewed by a court in accordance with the procedure determined by this Law, taking into account the characteristics of this article.

2. Appealing a public procurement to the Council shall not entail the automatic suspension of the public procurement procedure. Within 3 working days after recognising the appeal as admissible, the Council, on the basis of the substantiation provided in the appeal, shall make a decision on suspending or refusing the suspension of the public procurement procedure.

3. In accordance with paragraph 2 of this article, where making a decision on the suspension of a public procurement procedure, a contracting authority shall not make a decision or perform an action within the period of review of the appeal related to the public procurement procedure. Where refusing the suspension of the public procurement procedure, a contracting authority shall be authorised to continue the procurement procedure, however it shall be prohibited from concluding a procurement contract until the Council makes its decision.

4. A classified public procurement may not be appealed to the Council. It may be appealed to a court in accordance with the procedure established by the legislation of Georgia.

## **Chapter XII**

### **Dispute Resolution Bodies and the Review of Disputes**

#### **Article 81 – Dispute resolution bodies**

1. Disputes related to public procurement and disputes related to the selection process provided for by the Law of Georgia on Public-Private Partnerships ('selection process') may be reviewed by the Council or a court.

2. This Chapter establishes the procedures for the review of disputes related to public procurement and the selection process by the Council.

#### **Article 82 – Right to appeal a decision/an action to the Council**

1. An economic operator may appeal the decision/action of a contracting authority related to a public procurement to the Council in accordance with the procedure established by this Law.

2. An economic operator may appeal the decision/action of a contracting authority related to a negotiation procedure without preliminary publication to the Council only if the value of the public procurement is equal to or above the monetary thresholds established by the legal acts of the European Union.

3. A person interested in participating in the selection process or a participant of a selection process shall be authorised to appeal to the Council, in accordance with the procedure established by this Law, the decision/action of an authorised body/selection commission provided for by the Law of Georgia on Public-Private Partnership (the authorised body/selection commission) determined by the rules of procedure of the Council.

#### **Article 83 – The Council**

1. The Council shall be an impartial and independent body set up on the basis of this Law, which aims at the timely, efficient and fair resolution of disputes.

2. The Council shall be separated from every other body/person, it shall be independent in its activities and shall comply with the law only. It shall be inadmissible to influence the Council or a member of the Council to affect a decision-making process.

3. In its activities, the Council shall be guided by the Constitution of Georgia, the international treaties of Georgia, this Law, the Rules of Procedure of the Council and other normative acts.

4. The Rules of Procedure of the Council shall be approved by an ordinance of the Government of Georgia.

5. Not later than 1 March of each year, the Chairperson of the Council shall submit to the Parliament of Georgia, the Prime Minister of Georgia and the Agency, information about the activities of the previous year. It shall include statistical data and analysis, main trends, and relevant opinions regarding the improvement of the legislation regulating public procurement, where appropriate. This information shall be published on the website of the Council.

#### **Article 84 – Appointment of the members of the Council and termination of their powers**

1. The Council shall be composed of 5 members appointed by the Prime Minister of Georgia for a term of 5 years. The same person can be appointed as a member of the Council only twice.



2. A citizen of Georgia with no criminal record, who has higher education in law/higher education in economics, with a master's or equivalent academic degree, and has work experience of at least 5 years in a speciality, may be appointed as a member of the Council. Moreover, at least half of the members of the Council shall have an education in law as determined by this paragraph.
3. A member of the Council may not:
- a) be employed at another public and/or private institution;
  - b) perform other paid activities, except for academic activities, teaching activities and/or creative activities;
  - c) provide consultations to a contracting authority, an economic operator, a person interested in participating in a selection process or a participant in a selection process;
  - d) be a member of a political party and/or participate in political activities.
4. To select candidates for membership of the Council, the Prime Minister of Georgia shall set up a selection commission which, inter alia, shall include the Chairpersons of the Sector Economy and Economic Policy Committee and the Budget and Finance Committee of the Parliament of Georgia. The statute of the selection commission shall be determined by a legal act of the Government of Georgia.
5. To select candidates for membership of the Council in an open, transparent and competitive environment, the selection commission shall announce a public competition on the website administered by the administration of the Government of Georgia. Any interested person may participate in the competition. To submit an application for participation in the competition, a candidate for membership of the Council shall have not less than 10 days from the announcement of the competition.
6. After the acceptance of the application, in not later than 20 days, the selection commission shall select two times the number of candidates than the vacant positions in the Council from the persons that comply with the qualifications requirements established by this Law for membership of the Council. In the process of the selection of the candidates for membership of the Council, the selection commission shall be guided by the principles of objectivity and impartiality. The selection commission shall make a decision by a majority of votes of the members of the selection commission attending the meeting. The evaluation of the candidates for membership of the Council shall be based on their reputation, professional knowledge, activity and work experience.
7. If the selection commission is not able to select candidates for membership of the Council, in not more than 5 days it will re-announce the competition in accordance with paragraph 5 of this article.
8. The selection commission shall present candidates selected for membership of the Council to the Prime Minister of Georgia for appointment. The Prime Minister of Georgia shall appoint or refuse the appointment of a member/members of the Council within 10 days. In the case of the refusal of the Prime Minister to appoint a member/members of the Council, the selection commission shall, in not more than 5 days, re-announce the competition in accordance with paragraph 5 of this article.
9. A member of the Council shall resign from an incompatible position as determined by paragraph 3 of this article or terminate incompatible activities as determined by the same paragraph from the day he/she starts exercising his/her powers.
10. The powers of a member of the Council shall be terminated upon the expiry of his/her term unless he/she is reappointed to the position so that the continuity of his/her powers is maintained. The early termination of the powers of a member of the Council shall be inadmissible except in the following cases:
- a) the submittal of a personal application;
  - b) death;
  - c) a declaration as missing or dead by a court;
  - d) a declaration as a person with limited legal capacity or a beneficiary of support by a court unless otherwise determined by the court decision;
  - e) the termination of Georgian citizenship;
  - f) the entry into legal force of a court judgement of conviction;
  - g) holding an incompatible position as provided for by paragraph 3 of this article or carrying out incompatible activities as determined by the same paragraph;
  - h) the failure to exercise his/her powers for more than 4 months in the previous 12 months and the absence of a medical opinion confirming that the member of the Council is no longer capable of exercising his/her powers.
11. The powers of a member of the Council shall be terminated early:
- a) in the case provided for by paragraph 10(a) of this article, upon the submission of an application to the chairperson of the Council. The power of the chairperson of the Council shall be terminated upon the submission of an application to the Council.
  - b) in the cases provided for by paragraph 10(b-f) of this article from the moment when the occurrence of relevant circumstances is confirmed by the procedure established by the legislation of Georgia;
  - c) in the cases provided for by paragraph 10(g) or (h) of this article, from the moment when a legal act of the Prime Minister of Georgia regarding the termination of powers of a member of the Council is issued.
12. The chairperson of the Council shall be obliged to immediately inform the Prime Minister of Georgia on the termination of powers of a member of the Council or the origination of the ground/grounds for the termination thereof. If



the powers of the chairperson of the Council are terminated or the ground/grounds for the termination thereof arise, the Prime Minister of Georgia shall be informed by the deputy chairperson of the Council.

13. A person whose powers as a member of the Council have been terminated may appeal to a court in accordance with the procedure established by the legislation of Georgia.

14. A procedure for the selection process of a member of the Council shall start not earlier than 60 days and not later than 40 days before the expiry of the powers of the respective member of the Council, and in the case of early termination of the powers of the respective member of the Council, not later than 10 days after the termination of those powers. A newly appointed member of the Council shall start exercising his/her powers upon the termination of the powers of the preceding member of the Council. If the powers of the preceding member of the Council have already been terminated, a newly appointed member of the Council shall start exercising his/her powers upon appointment.

*Law of Georgia No 321 of 20 February 2025 - website, 21.2.2025*

## **Article 85 – The chairperson of the Council and the deputy chairperson of the Council**

1. The Council shall have a chairperson. The chairperson of the Council shall:

- a) schedule, open, chair and conduct meetings of the Council;
- b) represent the Council in relations with state authorities, other local and international organisations, and third parties;
- c) sign the correspondence of the Council;
- d) provide general management of the office of the Council;
- e) file motions to the Chairperson of the Legal Entity under Public Law called Georgian Competition and Consumer Agency ('the Competition and Consumer Agency') on giving incentives to employees and applying measures of disciplinary liability against the employees of the office of the Council;
- f) exercise other powers as determined by the legislation of Georgia, the Rules of Procedure of the Council and the statute of the office of the Council.

2. The chairperson of the Council shall have a deputy chairperson. A deputy chairperson of the Council shall perform the duties of the chairperson of the Council in his/her absence or where his/her powers have been terminated. When both the chairperson of the Council and the deputy chairperson of the Council are absent, the duties of the chairperson of the Council shall be performed by one of its members upon the assignment of the chairperson of the Council.

3. A chairperson of the Council and the deputy chairperson of the Council shall be elected from the composition of the Council. Not less than two members of the Council may nominate a relevant candidate. A candidate shall be considered elected if supported by not less than half of the total membership of the Council in a secret ballot. The same person may be appointed as a chairperson of the Council only once. Only a member of the Council who has an education in law as determined by Article 84(2) of this Law may be elected as a chairperson of the Council or a deputy chairperson of the Council.

4. A chairperson of the Council, and a deputy chairperson of the Council, shall be considered elected to the position for his/her term of office as a member of the Council. Upon the expiry of this term, the powers of a chairperson of the Council and a deputy chairperson of the Council shall be terminated for the member of the Council, whether or not he/she is reappointed as a member of the Council.

5. The powers of the chairperson of the Council and the deputy chairperson of the Council shall be terminated early by his/her personal application, upon submitting an application to the Council.

6. The election of a new chairperson of the Council or a deputy chairperson of the Council shall be held not later than 5 days before the expiry of the powers of the current chairperson of the Council or deputy chairperson of the Council, respectively, and in the case of early termination of powers, not later than 5 days from the termination of powers.

*Law of Georgia No 3756 of 29 November 2023 - website, 11.12.2023*

*Law of Georgia No 329 of 20 February 2025 - website, 20.2.2025*

## **Article 86 – Provision of organisational and financial support for the activities of the Council**

1. A member of the Council shall be given remuneration. The official salary of a chairperson of the Council shall be determined in an amount equal to the official salary of a chairperson of a district (city) court, and the official salary of a deputy chairperson of the Council shall be an amount equal to the official salary of a chairperson of the panel of a district (city) court, and the official salary of other members of the Council shall be an amount equal to the official salary of a judge of a district (city) court.

2. The Council shall be financed from the State Budget of Georgia, from budget allocations intended for the Competition and Consumer Agency, in an amount sufficient to ensure the performance of the functions of the Council and its independence.

3. To enable the activities of the Council, the Council shall have an office. The quantity and labour remuneration of the employees of the office of the Council shall be determined by the Chairperson of the Competition and Consumer Agency. The statute and the structure of the office of the Council shall be determined through legal acts by the Government of



Georgia upon the recommendation of the Chairperson of the Competition and Consumer Agency. The office of the Council is a structural unit of the Competition and Consumer Agency.

4. The office of the Council shall:

- a) manage the intra-agency procedures for the preparation of dispute resolution;
- b) organise the meetings of the Council;
- c) draw up the minutes of meetings of the Council;
- d) maintain the correspondence and intra-agency documentation of the Council;
- e) perform other functions determined by this Law, the Rules of Procedure of the Council and the statute of the office of the Council.

5. The office of the Council shall be accountable to the chairperson of the Council/the Council. For the lawful use of the material and technical means of the Competition and Consumer Agency, the office of the Council shall also be accountable to the Chairperson of the Competition and Consumer Agency.

6. The employees of the office of the Council shall be selected through competition, in accordance with the procedure established by the legislation of Georgia. Members of the Council shall also be included in the competition commission established for conducting a competition.

7. Disciplinary liability shall be applied against an employee of the office of the Council in accordance with the procedure determined by the internal regulations of the Competition and Consumer Agency. Disciplinary liability may be applied against the employees of the office of the Council only with the consent of the chairperson of the Council.

8. The Competition and Consumer Agency shall provide the Council and the office of the Council with the material and technical means necessary for their operation.

*Law of Georgia No 3756 of 29 November 2023 - website, 11.12.2023*

*Law of Georgia No 329 of 20 February 2025 - website, 20.2.2025*

#### **Article 87 – Special electronic module designated for the Council**

1. To carry out the activities of the Council efficiently and publicly, a special electronic module designated for the Council ('an electronic module') shall operate within the Electronic System.

2. Complaints submitted to the Council, documents attached thereto, decisions made by the Council in relation to the complaints, other materials related to the review of complaints, as well as other information determined by this Law and the Rules of Procedure of the Council, shall be published on the electronic module.

3. Any notice/information related to the review of a complaint shall be transferred by the Council/office of the Council through the electronic module, which shall be considered as delivery of the notice/information to a respective person.

4. The Council/office of Council shall also be authorised to use other means of communication (post office, e-mail, telephone (including, Short Message Service (SMS)) to send the notice/information provided for by paragraph 3 of this article through other communication means (post, email, phone (including Short Message Service (SMS))). Such notice/information shall be considered as officially sent.

5. The information on the electronic module shall be public, except for personal data which were not subject to publication in accordance with the legislation of Georgia.

6. The electronic module is a part of the Electronic System. The operation of the electronic module shall be ensured by the Agency. The Agency shall ensure that the members of the Council/relevant employees of the office of the Council have uninterrupted access to the above system to carry out the activities provided for by this article. The Agency shall develop the electronic module and make appropriate changes thereto based on the application or consent of the Council. Before its submission to the Government of Georgia, the Council shall be obliged to agree with the Council the part of the Rules of Procedure of the Council or the draft of the amendment to be made therein, the adoption of which requires appropriate changes to be made to the Electronic System/electronic module.

#### **Article 88 – Appealing a decision/action to the Council**

1. Except for the cases provided for by paragraphs 2 and 3 of this article, a decision/action of a contracting authority may be appealed within 10 days after becoming familiar with a decision/performing an action.

2. A decision/action of a contracting authority may not be appealed if a procurement contract has already been concluded, except to appeal to the Council a decision related to the conclusion of a procurement contract based on a negotiation procedure without preliminary publication on the grounds provided for by Article 33(1)(a) or (c) of this Law, as well as a relevant decision/action related to the conclusion of a procurement contract within the scope of a dynamic procurement system or a framework agreement.

3. The procurement conditions, procurement application and/or procurement documentation may be appealed within the time limit determined for familiarisation with them, and the invitation to submit proposals may be appealed within the time limit established for submitting a proposal.

4. A decision/action of a contracting authority may be appealed by:



- a) any economic operator, if a complaint applies to a decision/action related to the procurement conditions, an advance notice, a procurement application or procurement documentation;
- b) a candidate, if a complaint applies to a decision made/action performed from the stage of submittal of an application to the stage of submittal of proposals;
- c) a bidder, if a complaint applies to a decision made/action performed from the stage of submittal of proposals;
- d) a participant in a framework agreement, if a procurement contract is concluded within the scope of the framework agreement;
- e) a participant in the dynamic procurement system, if a procurement contract is concluded within the dynamic procurement system;
- f) in other cases, an economic operator, if a complaint applies to a decision/action which causes direct and immediate (individual) damage to its legitimate rights or interests, or unlawfully limits its rights.

5. A complaint shall be submitted to the Council electronically, through the Electronic System. The form of the complaint and the procedures for its submission shall be determined by the Rules of Procedure of the Council.

6. Within 2 days of the submission of a complaint, the Council shall review the matter of the admissibility of the complaint. The Council shall recognise the complaint inadmissible if:

- a) it was submitted by an unauthorised person;
- b) the deadline for its submission has expired;
- c) it does not relate to a decision/action of a contracting authority/authorised body/selection commission;
- d) in accordance with this Law, the respective decision/action of a contracting authority/authorised body/selection commission is not subject to appeal to the Council in accordance with this Law;
- e) a matter of dispute does not exist;
- f) a case between the same parties regarding the same subject and on the same grounds is pending in the Council;
- g) a decision of the Council between the same parties regarding the same subject and on the same grounds exists;
- h) the issue it refers to is under the jurisdiction of a court;
- i) a case between the same parties regarding the same subject and on the same grounds is pending in the court;
- j) its content does not have the appropriate form of a complaint as determined by the Rules of Procedure of the Council;
- k) by the time of the review of its admissibility, a procurement contract has already been concluded, except where a decision/action may be appealed after the conclusion of a procurement contract.

7. If a complaint does not comply with the requirements provided for by this Law and the Rules of Procedure of the Council, but no grounds for recognising the complaint as inadmissible as provided for by paragraph 6 of this article exist, the Council shall give the applicant 1 working day to verify the complaint. If the applicant fails to verify the complaint, it will automatically be recognised as inadmissible in the Electronic System (which is equivalent to making a decision on recognising the complaint inadmissible). If the applicant submits the verified complaint, the Council shall review the matter of the admissibility of the verified complaint not later than the next working day after the submittal of the complaint. If the applicant verifies the complaint incompletely, it shall be recognised inadmissible.

8. The Council shall recognise a complaint as admissible or inadmissible by a decision, except for the case provided for by paragraph 7 of this article when the complaint is automatically recognised as inadmissible in the Electronic System (which is equivalent to making a decision on recognising the complaint as inadmissible). Even when the grounds for recognising the complaint as inadmissible are established after it is recognised as admissible, the Council shall still recognise the complaint as inadmissible.

9. Information regarding the recognition of a complaint as admissible or inadmissible shall be immediately published in the electronic module in accordance with the procedure established by the Rules of Procedure of the Council.

10. Except for the case provided for by Article 80 of this Law, the procedures for an appealed public procurement/selection process shall be automatically suspended once the complaint is recognised as admissible, except for the time limits for familiarisation with a procurement application and procurement documentation as well as the time limits for submitting application/proposal. After recognising a complaint as admissible, a contracting authority/authorised body/selection commission may not make a decision or perform an action within the time limits review of the complaint related to procedures for the appealed public procurement/selection process. The contracting authority/authorised body/selection commission may not also announce repeated procedures for public procurement/selection process regarding the same issue or shall suspend an announced procedure (if any). In the case of an emergency, a contracting authority may conduct public procurement in accordance with the procedure established by this Law when there are grounds provided for by Article 33(1)(a) or (c). In the cases provided for by this paragraph, the procedures for public procurement/selection process shall be suspended as well for economic operators/persons interested in participating in a selection process/participants of a selection process. The appeal of a decision related to the implementation of a negotiation procedure without preliminary publication shall result in the suspension of the negotiation procedure without preliminary publication, except when this procedure is carried out on the basis of Article 33(1)(a) or (c). Appealing a decision/action related to the conclusion of a procurement contract within a dynamic procurement system or a framework agreement shall not result in the suspension of the public procurement procedures.

11. An applicant shall have a right to withdraw in writing a complaint at any time before the Council makes a decision. In this case, the complaint will no longer be reviewed. The information on the withdrawal of a complaint by an applicant



shall be published on the electronic module in accordance with the procedure established by the Rules of Procedure of the Council not later than the next working day.

### **Article 89 – Filing fee**

1. To submit a complaint to the Council, a filing fee shall be established. The amount of the filing fee shall be:
  - a) in the case of a complaint related to a public procurement (except for the exception provided for by paragraph 2 of this article) – 2% of the estimated value of procurement; and in the case of a negotiation procedure without preliminary publication – 2% of the value of public procurement but not less than GEL 100 and not more than GEL 500. In addition, when a public procurement is carried out in lots, the estimated value of each lot shall be taken into account when calculating the amount of the filing fee;
  - b) in the case of complaints related to a public-private partnership project – 0.15% of the estimated value of that project but not less than GEL 22,000 and not more than GEL 150,000.
2. The filing fee shall not be paid if the complaint applies to:
  - a) a decision/action related to procurement conditions;
  - b) a decision/action other than the decision/action provided for by sub-paragraph (a) of this paragraph and made/carried out before the application/proposal was received;
  - c) a decision by which a decision provided for by sub-paragraphs (a) or (b) of this paragraph was revised on the basis of a decision of the Council.
3. The filing fee shall be refunded, except when the complaint is not satisfied.
4. If an applicant withdraws a complaint, the filing fee shall be refunded:
  - a) fully, if the withdrawal of the complaint takes place before the meeting of the Council is held;
  - b) partially, if the withdrawal of the complaint takes place at the meeting of the Council or after it is held.
5. The procedure for the payment and withdrawal of the filing fee shall be determined by the Rules of Procedure of the Council.

### **Article 90 – Review of a complaint by the Council**

1. The Council shall review a complaint and make a decision within 10 working days of recognising the complaint as admissible.
2. If the circumstances important for the case cannot be established within the time limits determined by paragraph 1 of this article, this time limit may be extended by not longer than 10 working days by a decision of the Council.
3. The Council shall review a complaint at an open meeting, except for the cases provided for by the legislation of Georgia. At a meeting of the Council, an oral hearing is held where the Council hears the parties and interested persons (if any).
4. A date and time of review of a complaint at a meeting of the Council shall be appointed by the chairperson of the Council upon the recommendation of the office of the Council. This information shall be notified to the parties and interested persons (if any) through the electronic module. The non-appearance of parties and interested persons summoned in accordance with the established rules on the meeting of the Council shall not preclude the review of the complaint.
5. The chairperson of the Council shall open, manage and close the meeting of the Council. The meeting of the Council shall be chaired by the chairperson of the Council. In the absence of the chairperson of the Council at the meeting of the Council, his/her duties shall be performed by the deputy chairperson of the Council. In case of the absence of both the chairperson of the Council and the deputy chairperson of the Council at the meeting of the Council, the duties of the chairperson of the Council shall be performed by one of its members upon the assignment of the chairperson of the Council.
6. The meeting of the Council shall be duly constituted if attended by not less than half of its members.
7. A member of the Council may not participate in the review of a complaint and decision-making if the grounds (circumstances) provided for by Article 92 of the General Administrative Code of Georgia apply. In this case, the member of the Council shall be obliged to announce self-recusal. Moreover, when there are grounds for the recusal of a member of the Council, a party and an interested person may, before the completion of the meeting of the Council, file a motion in writing regarding the recusal of a member of the Council. The decision on the issue of recusing a member of the Council shall be made in his/her absence by the majority of votes of other members of the Council. In the case of a tie vote of other members of the Council, the member of the Council shall be deemed recused.
8. The course of the meeting of the Council shall be documented in the minutes of the meeting of the Council which shall be signed by the chairperson of the Council and a secretary of the meeting of the Council.
9. The procedure for the review of a complaint shall be determined by the Rules of Procedure of the Council.

### **Article 91 – Decision of the Council**

1. The Council shall review a complaint and make a decision within the time limits determined by Article 90(1) or (2) of this Law.
2. After a meeting of the Council, a discussion shall be held to make a decision, where the members of the Council



- participate. A decision shall be made by the majority of votes of the members of the Council who attend the meeting of the Council. In the case of a tie vote, the vote of the chairperson of the Council shall be decisive.
3. A member of the Council shall have no right to refrain from voting. A member of the Council objecting to the decision made by the Council shall have the right to formulate their dissenting opinion in writing which will be attached to that decision.
4. The decision of the Council shall be signed by all members of the Council who participated in the meeting of the Council and the decision-making, including the member with a dissenting opinion.
5. If a member of the Council participating in the meeting of the Council does not participate in the decision-making, this shall be indicated in the decision.
6. A member of the Council shall evaluate the presented evidence according to his/her inner convictions which should be based on a comprehensive, complete and impartial review thereof.
7. The Council shall review a complaint within the requirements indicated therein. During decision-making, the Council shall be authorised to discuss a violation committed during the appealed decision-making/conduct of an action, which are not included in the complaint.
8. After detailed study of the complaint and the related circumstances, the Council shall be authorised to:
- fully satisfy the complaint;
  - partially satisfy the complaint;
  - dismiss the appeal.
9. In the case of granting the complaint fully or partially, the Council shall be authorised to:
- refer to the wrongful action of a contracting authority and request it to implement procurement procedures in accordance with the legislation of Georgia;
  - request from a contracting authority that they review or cancel the decision;
  - in the case of a violation of the requirement of the law by a participant of the procurement, raise the issue of his/her/its liability before the relevant bodies determined by the legislation of Georgia.
10. A decision of the Council shall be substantiated and shall consist of introductory, descriptive, reasoning and operative parts.
11. A decision of the Council, once made, shall be published on the electronic module immediately. It shall be public and shall be considered delivered to a party and an interested person (if any).
12. A decision of the Council is binding. The failure to comply with it shall result in the imposition of liability as established by law.
13. Any interested person shall have a right to inform the Agency in the case of a public procurement, and the Legal Entity under Public Law called the Public-Private Partnership Agency in the case of a selection process, about a failure to comply with a decision made by the Council or a delay in compliance therewith.
14. The Council shall be authorised to raise the issue of the liability of a participant/authorised body of public procurement/selection process before the authorised bodies determined by the legislation of Georgia if, during the review of a complaint, it is discovered that he/she violated the requirements of the legislation of Georgia and committed misconduct.
15. The Council shall be authorised to request from an authorised body determined by the legislation of Georgia information containing a tax secret or personal data (including special categories of data), or any other information required for the review of a complaint and decision-making.

## **Article 92 – Right to appeal a decision/an action to a court**

1. An economic operator, a person interested in participating in a selection process, or a participant of the selection process, shall have a right to appeal a decision/an action of a contracting authority/ authorised body/selection commission in a court respectively.
2. An interested person may appeal to a court a decision of the Council related to its complaint. Appealing the decision shall not suspend its effect.
3. In accordance with the procedure established by the legislation of Georgia, a decision of the Council may also be appealed to a court by the Agency if, as a body authorised to ensure the protection and fulfilment of the requirements provided for by this Law, it considers that the Council essentially misinterpreted the legislation regulating public procurement. In this case, the appeal of the Agency shall be aimed at establishing the correct interpretation of the legislation regulating public procurement and not the review and evaluation of the circumstances of a case related to a specific dispute. Appealing a decision of the Council shall not suspend its effect.
4. An interested person shall have a right to appeal to a court a decision/an action of the Agency. Appealing a decision of the Agency shall not suspend its effect if the decision is related to the keeping of a Black List or White List or agreeing with the Agency about a decision made by a contracting authority regarding the implementation of a negotiation procedure without preliminary publication.



### **Article 93 – Conducting monitoring by the Agency**

1. To report to the Agency on the course of a public procurement in accordance with the procedure established by this Law and an order of the Chairperson of the Agency, a contracting authority shall submit information/documents on the course of a public procurement as determined by this Law and an order of the Chairperson of the Agency.
2. If the information/documents on the course of a public procurement as determined by this Law and an order of the Chairperson of the Agency is to be posted on the Electronic System, the posting of the information/documents by a contracting authority on the Electronic System in accordance with this Law and an order of the Chairperson of the Agency shall be considered as its/their submission.
3. The Ministry of Finance of Georgia shall provide the Agency with information annually on the funds legitimately allocated to budget organisations and establishments, as well as information on changes introduced therein upon the request of the Agency.
4. To supervise the lawfulness of the process of a public procurement, the Agency shall monitor the public procurement procedures and other activities carried out by a contracting authority in relation to a public procurement (except for a classified public procurement), observing the following principles: openness and transparency, impartiality and objectivity, a thorough implementation of established procedures and reporting, ensuring open and effective competition, and the possibility of reasonable and free choice.
5. The Agency shall be authorised to request from a contracting authority or an economic operator any document/information related to a public procurement (including information related to the implementation of the procurement contract) at any stage of the public procurement, as well as after its completion. A contracting authority or an economic operator shall be obliged to submit to the Agency that document/information.
6. The procedure for reporting for a contracting authority shall be established by an order of the Chairperson of the Agency.

### **Article 94 – Inspection of public procurement by the State Audit Office of Georgia**

1. The State Audit Office of Georgia shall inspect a public procurement in accordance with the procedure established by the legislation of Georgia, by auditing a contracting authority.
2. Upon the request of the State Audit Office of Georgia, a contracting authority shall be obliged to provide any document/information related to a public procurement.
3. Upon the request of a contracting authority, an economic operator shall be obliged to provide any document/information related to a public procurement which is necessary for the contracting authority to fulfil the obligation provided for by paragraph 2 of this article.

### **Article 95 – Submitting information to the Parliament of Georgia**

Relevant entities determined by the Rules of Procedure of the Parliament of Georgia shall submit to the Parliament of Georgia detailed information on any non-classified public procurement to be carried out in accordance with the Rules of Procedure of the Parliament of Georgia, and at least once a year they shall submit a report on performed and current non-classified activities related to public procurement.

### **Article 96 – General procedure for imposing administrative liability**

1. Administrative liability for violation of this Law, as well as the procedure for imposing administrative liability, shall be determined by this article and the Administrative Offences Code of Georgia.
2. The term for imposing an administrative penalty for committing an administrative offence in the area of public procurement shall not exceed 6 months after detecting the administrative offence, but the term shall not last longer than 3 years after the committing of an offence.
3. In the case of a minor administrative offence, a person authorised to draw up an administrative offence report shall have the option to not draw up the administrative offence report and send a written warning to the offender. A person authorised to draw up an administrative offence report shall draw up an administrative offence report if the offender commits the same act within 1 year after the person authorised to draw up an administrative offence report applies a written warning on the basis of this paragraph.
4. The following persons shall be considered liable for the purposes of administrative offences in the area of public procurement:
  - a) a natural person who made a relevant decision/performed a relevant action;
  - b) a member of a collegiate body who supported a relevant decision/action if the decision/action was made/performed jointly.

## **Chapter XIV**

### **Transitional and Final Provisions**

*Law of Georgia No 4397 of 5 September 2024 - website, 23.9.2024*





### **Article 97 – Invalid normative acts**

The Law of Georgia of 20 April 2005 on Public Procurement (the Legislative Herald of Georgia No22, 18.5.2005, Article 151) and subordinate normative acts adopted/issued on its bases shall be declared invalid from 1 January 2027. The above Law and subordinate normative acts adopted/issued on its basis shall be effective until 1 January 2027 within the emerged legal relations, before they are ended, unless otherwise provided for by this Law.

*Law of Georgia No 4397 of 5 September 2024 - website, 23.9.2024*

### **Article 98 – Measures to be taken for entry into force of this Law**

1. From 1 January 2027, the Legal Entity under Public Law called the State Procurement Agency shall be called the Legal Entity under Public Law - the Public Procurement Agency. Before that date, the Government of Georgia shall ensure the approval of the statute of the Legal Entity under Public Law called the Public Procurement Agency.

2. From 1 January 2027, the State Procurement-related Dispute Resolution Council shall be called the Public Procurement-related Dispute Resolution Council. Before that date, the Government of Georgia shall ensure the approval of the Rules of Procedure of the Public Procurement-related Dispute Resolution Council. The entry into force of this Law shall not result in the early termination of the authority of a member/members of the Public Procurement-related Dispute Resolution Council elected on the basis of the Law of Georgia on Government Procurement.

3. Before 1 January 2027, the Government of Georgia shall:

- a) adopt subordinate normative acts provided for by Article 53(14), Article 72(2), Article 73(2) and Article 74 of this Law;
- b) determine by a legal act an authorised body/authorised bodies provided for by Article 10(1)(b) and 10(3)(c) of this Law;
- c) before 1 January 2027, establish the Legal Entity under Public Law called the Central Purchasing Body provided for by Article 41(7) of this Law, approve its statute and appoint its chairperson.

4. Before 1 January 2027, the Chairperson of the Legal Entity under Public Law called the State Procurement Agency shall issue a subordinate normative act/acts related to articles of this Law referred to in Article 100(2) of this Law. In addition, before 1 January 2027, the Legal Entity under Public Law called the Public Procurement Agency shall establish the Electronic System adapted to the requirements of this Law and the subordinate normative acts adopted/issued on its basis.

5. Before 1 January 2027, a contracting authority shall, in accordance with Article 15 of this Law, implement appropriate measures for determining an authorised person/structural unit implementing activities related to public procurement in its structure/staff list.

*Law of Georgia No 4397 of 5 September 2024 - website, 23.9.2024*

### **Article 99 – Procurements carried out/to be carried out before the entry into force of this Law**

1. This Law shall apply to public procurements announced from 1 January 2027.

2. Public procurements announced before 1 January 2027 shall be carried out and completed in accordance with the legislation in force before 1 January 2027.

3. A contracting authority shall, not later than 1 November 2026, submit to a relevant system the annual plan prepared in accordance with the norms referred to in Article 100(2) of this Law. This plan shall include public procurements to be announced from 1 January 2027, as well as information on state procurements to be announced in November and December of 2026 under the Law of Georgia on State Procurement which are provided for by a public procurement plan of 2027.

*Law of Georgia No 4397 of 5 September 2024 - website, 23.9.2024*

### **Article 100 – Entry into force of the Law**

1. This Law, except for Articles 1-96 of this Law, shall enter into force upon its promulgation.

2. Articles 1 to 15, Article 16(2-11) and 17 to 96 of this Law shall enter into force from 1 January 2027.

3. Article 16(1) to (12) of this Law shall enter into force from 1 January 2029.

*Law of Georgia No 4397 of 5 September 2024 - website, 23.9.2024*

President of Georgia

Salome Zourabichvili

Tbilisi,

9 February 2023

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