

## On Public Procurement

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This Law establishes legal and economic principles of the procurement of supplies, works and services to meet the needs of the State and the local communities.

This Law aims to ensure efficient and transparent procurement, create a competitive environment in the field of public procurement, prevent corrupt practices in this field, and develop fair competition.

### Section I GENERAL PROVISIONS

#### Article 1. Terms and Definitions

1. The terms listed herein below shall have the following meaning in this Law:

1) “Authorized e-platform” means an information and telecommunication system authorized by the Authorized Agency, being a part of the e-procurement system, which offers the following functions: user registration, automatic posting, receipt and transfer of information and documents during procurement procedures, and services with automatic exchange of information accessed via the Internet. The procedure of e-platform authorization shall be established by the Cabinet of Ministers of Ukraine;

2) “Affiliated companies” mean contracting authority’s divisions, whose property and operations are registered in the contracting authority’s consolidated balance sheet, or economic operators that are controlled by the contracting authority or controlled, together with the contracting authority, by another economic operator;

3)  
“Authorized Agency’s Public Procurement Web Portal” (hereinafter referred to as the “Authorized Agency’s Web Portal”) means an information and telecommunication system that includes an e-auction facility and a database, being a part of the e-procurement system, which offers the following functions: generation, storage and publication of all procurement information, holding e-auctions, automatic exchange of information and documents, use of services with automatic exchange of information accessed via the Internet. Operation of the Authorized Agency’s Web Portal shall be ensured, *inter alia*, through granting authorized e-platforms paid access to the e-auction facility and the database. The procedure of granting such access and the fee shall be established by the Cabinet of Ministers of Ukraine;

4) “Activities in certain areas of economic activity” mean activities carried out in one or several of the following areas:

Providing for gas production, transportation, supply and storage;

Providing for heat generation, transportation and supply;

Providing for the production, transmission, distribution, sale and purchase, supply of electricity, centralised dispatcher (operating and technological) control over the unified energy system of Ukraine;

Providing for the production, transportation and supply of potable water, as well as district sewage system operation;

Providing services of granting access to public railway infrastructure; providing for the operation of municipal electric transport and maintenance of its facilities to provide transportation services;

Providing services of bus terminals, ports and airports; providing air navigation services for aircrafts;

Providing postal services; geological survey (including pilot development of deposits) of oil and gas bearing formations, deposits of coal and other types of solid fuel;

Providing for the operation and maintenance of public fixed telecommunication networks or providing public telecommunication services;

Providing for the transportation, storage and processing of crude oil and oil products;

Providing for the operation of the electricity market, the day-ahead electricity market, balancing market and ancillary services market, as well as providing services of system operator, accounting administrator, commercial metering administrator, market operator and guaranteed buyer in accordance with the Law of Ukraine “On the Principles of Functioning of the Electricity Market of Ukraine”; providing ancillary services in the ancillary services market, as well as competition improvement services in accordance with the Law of Ukraine “On the Principles of Functioning of the Electricity Market of Ukraine”;

Development, production, sale, repair, modernization and disposal of armament, military machines, weapons of war and ammunition; organization, coordination of supplies of goods, performance of works and provision of services ordered by state defence authorities, as well as direct supply of goods, performance of works and provision of services.

The following activities shall not be deemed to be activities in certain areas of economic activity:

Heat generation and supply to public networks where such generation comes as a result of the contracting authority’s other production activities, except for the activities carried out in the areas as referred to in this point, provided that heat is supplied only for the purposes of saving the contracting authority’s production capacities, and the income from these activities does not exceed 20 percent of the average annual income for the previous three years, including the current-year income;

Electricity generation, transmission and supply to public networks where such generation, transmission and supply are necessary for satisfying the contracting authority’s own needs for the purposes of carrying out other production activities, except for the activities carried out in the areas as referred to in this point, and the volume of electricity supplied by the contracting authority to public networks depends on its own consumption, provided that such own consumption amounts to at least 70 percent of the total volume of electricity generated by the contracting authority and calculated using the average annual output indicators for the previous three years, including the current-year indicators;

Production, transportation and supply of portable water to public networks where such production, transportation and supply are necessary for satisfying the contracting authority's own needs for the purposes of carrying out other production activities, except for the activities carried out in the areas as referred to in this point, and the volume of portable water supplied by the contracting authority for public purposes depends on its own consumption, provided that such own consumption amounts to at least 70 percent of the total volume of portable water produced by the contracting authority and calculated using the average annual output indicators for the previous three years, including the current-year indicators;

5) "Procurement contract" means a contract that is concluded between the contracting authority and the tenderer based on the results of the procurement procedure and provides for the provision of services, performance of works, or acquisition of the ownership of goods;

6) "E-procurement system" means information and telecommunication system that allows the implementation of procurement procedures, generation, posting, publishing and exchange of information and documents electronically, and comprises the Authorized Agency's Web Portal and authorized e-platforms linked by secured automatic exchange of information and documents;

7) "Procurement contract performance security" means securing the fulfilment of the tenderer's obligations to the contracting authority under the procurement contract;

8) "Tender security" means securing the fulfilment of the tenderer's obligations to the contracting authority resulting from the submission of the tender, which takes the form of a guarantee;

9) "Contracting authorities" refer to public authorities, local self-governing authorities and social insurance and welfare bodies established under the law, as well as legal entities (enterprises, institutions, organizations) and their associations that provide for satisfying the needs of the State or a local community, if such activities are carried out otherwise than on an industrial or commercial basis, and if they have any of the following characteristics:

the legal entity is a an administrator, recipient of budget funds;

public authorities or local self-governing authorities, or other contracting authorities have the majority of votes in the supreme governing body of the legal entity;

more than 50 percent of shares (interests, participatory interests) in the legal entity's authorized capital belong to the State or a local community.

Contracting authorities shall also include legal entities and/or economic operators operating in certain areas of economic activity and meeting at least one of the following criteria:

public authorities, authorities of the Autonomous Republic of Crimea, local self-governing authorities own a share of more than 50 per cent in the authorized capital of the economic operator, or such authorities have the majority of votes in the supreme governing body of the economic operator or the right to appoint more than a half of the members of the economic operator's executive or supervisory board;

enjoying special or exclusive rights;

10) "Information resource of the Authorised Agency" means the web-site administrated by the Authorised Agency for free-of-charge consultations on public procurements, accessed via the Internet;

11) "Procurement monitoring" means the analysis of a contracting authority's compliance with public procurement laws at all stages of the procurement process through systemic observation and analysis of information using the e-procurement system;

12) "The most economically advantageous proposal" means a tender recognized to be the best one as a result of tender evaluation in accordance with Article 28 of this Law;

13) “Announcement of a procurement procedure” means announcement of open procedure, or announcement of competitive dialogue;

14) “Complaint Review Authority” refers to the Antimonopoly Committee of Ukraine;

15) “Successful tenderer” refers to a tenderer whose tender meets all criteria and conditions set by tender documents and has been found the most economically advantageous, and who was informed of the contracting authority’s intent to enter into the contract, or a tenderer who was informed of the contracting authority’s intent to enter into the contract pursuant to the results of the negotiated procedure;

16) “a related person” shall be understood as a person that meets any of the following characteristics:

a legal entity that exercises control over, or is controlled by a tenderer, or is subject to joint control together with such tenderer;

a natural person or members of his/her family exercising control over a tenderer;

an officer (official) of a tenderer authorized to perform, on behalf of the tenderer, legal actions aimed at establishing, modifying or terminating civil-law relations, and family members of such officer (official);

natural persons members of a tender committee, the contracting authority’s manager and/or their family members that exercise control over tenderers or are authorized to perform, on behalf of the tenderer, legal actions aimed at establishing, modifying or terminating civil-law relations.

Control shall be understood as possibility to produce decisive influence or decisive influence on economic activities of the tenderer exercised either directly or via larger number of related natural persons or legal entities, in particular, through exercising the right to possession or use of all their assets or a significant portion thereof, the right to decisive influence on their composition, on voting results, and also through execution of transactions enabling to determine the conditions of economic activity, to give binding instructions or to serve as the managing body of the tenderer, or through the ownership of a share (participatory interest, block of shares) which accounts for at least 25 percent of the authorized capital of the tenderer.

For a natural person, the total shareholding in the authorized capital of a tenderer shall be determined based on the scope of equity held by such natural person, his/her family members and legal entities controlled by such natural person or his/her family members.

For the purposes of this Law, family members shall be deemed spouses, children, parents, siblings, grandparents, grandchildren, adoptive parents, adopted children, as well as other individuals, provided that they reside together with the related person on a permanent basis and maintain common household with the said person;

17) “Services” mean any procurement item, other than supplies and works, in particular, transportation services, mastering new technologies, scientific research, research and development activities, medical and public amenity services, leasing, rental, as well as financial and consultancy services, and minor repair;

18) “Procurement item” refers to supplies, works or services purchased by the contracting authority within a single procurement procedure, in respect of which tenderers are permitted to submit tenders or proposals for negotiation (in case where a negotiated procedure applies). A procurement item shall be defined by the contracting authority in accordance with the procedure established by the Authorized Agency;

19) “Discounted price” means a price indicated by the tenderer in its tender and adjusted taking account of values of other evaluation criteria using a mathematical formula set by the contracting authority in the tender documents;

20) “Public procurement” (hereinafter referred to as “procurement”) refers to the purchase of supplies, works and services by the contracting authority in accordance with the procedure as established by this Law;

21) “Framework agreement” means a transaction executed by one or several contracting authorities (central purchasing organizations) in accordance with the procedure as established by this Law with one or several tenderers for the purpose of laying down the essential terms and conditions of procurement for specific supplies and services in order to enter into relevant procurement contracts within the duration of the framework agreement;

22) “Works” refer to design, construction of new facilities, expansion, reconstruction, overhaul repair and restoration of existing facilities, as well as industrial and non-industrial facilities, the rate-setting activities in construction, geological survey, technical re-equipment of existing enterprises, as well as services related to works, including geodetic survey, drilling, seismic surveys, aerial photography and satellite imagery, and other services that are included in the estimated cost of the works, if the cost of such services does not exceed the cost of the relevant works;

23) “Cloud computing system” means a system that is based on the model for enabling on-demand network access to a shared pool of ubiquitous configurable computing resources (e.g., internal networks, servers, storage, applications and services) that can be rapidly provisioned and released through global data transmission networks with minimal management effort and/or minimal interaction with provider;

24) “Specialized purchasing organizations” refer to specialized funds, organizations and mechanisms of the United Nations Organization, the International Dispensary Association, Crown Agents, the Global Drug Facility, the Partnership for Supply Chain Management, NATO Support and Procurement Agency which provide governments and/or central public authorities with services related to the organization and holding of procurement procedures for the purchase of medicines, medical products and associated services, as well as goods, works and services aimed at ensuring defence capacity of the state under relevant agreements and pursuant to internal rules and procedures of such organizations;

25) “Special or exclusive rights” refer to the rights granted by a public authority or local self-governing authority within the scope of their powers pursuant to any regulation and/or individual legal act, which limit the number of operators in the areas referred in this Law to one or more entities, significantly affecting the ability of other entities to carry out activities in these areas. The rights granted as a result of contests (procurement procedures) announced in advance, provided that these rights have been granted based on objective criteria, shall not be deemed special or exclusive rights;

26) “Validity period of a tender” means the period specified by the contracting authority in the tender documents upon expiration of which the tender shall be deemed invalid;

27) “Complainant to the Complaint Review Authority” (hereinafter referred to as the “complainant”) refers to a natural person or legal entity that applied to the Complaint Review Authority seeking protection of its/his/her rights and legitimate interests with regard to a decision, an action or omission by the contracting authority which violate public procurement laws and which resulted in the infringement of a right or legitimate interest of such natural person/legal entity;

28) “Procurement procedure” means a competitive selection of tenderers for the purpose of determining the successful tenderer in accordance with the procedures established by this Law (except for the negotiated procedure);

29) “Tender documents” mean documents specifying the terms and conditions of public procurement as developed and approved by the contracting authority, and published for free access on the Authorized Agency’s Web Portal and authorized e-platforms. Tender documents shall not be subject to copyright and/or related rights;

30) “Tender” means a proposal in respect of the procurement item or a part thereof (a lot) submitted by a tenderer to the contracting authority pursuant to the requirements set in tender documents;

31) “Tender committee” refers to the officers (officials) or other employees of the contracting authority appointed to be in charge of organizing and holding procurement procedures hereunder;

32) “Supplies” refer to products, items of any type and intended for any use, including raw materials, products, equipment, technologies, objects in solid, liquid, or gas form, as well as services associated with the procurement of such supplies, provided that the cost of such services does not exceed the cost of the supplies;

33) “Authorized person(s)” refers to an officer (official) or other individual within the contracting authority appointed to be in charge of organizing and holding procurement procedures hereunder based on his/her own administrative decision or employment agreement (contract);

34) “Authorized Agency” means the central executive body in charge of the implementation of the state public procurement policy;

35) “Tenderer” refers to a natural person, including sole trader, a legal entity (both resident and non-resident) that submitted a tender or took part in the negotiations, in case when a negotiated procedure is applied;

36) “Central purchasing organizations” refer to legal entities designated by the Cabinet of Ministers of Ukraine, the Council of Ministers of the Autonomous Republic of Crimea, local self-governing authorities as contracting authorities responsible for organizing and holding procurement procedures and procurements under framework agreements on behalf of contracting authorities in accordance with this Law. Centralized purchasing organizations shall acquire all rights and obligations of contracting authorities as provided for by this Law, and shall bear responsibility under the laws of Ukraine. Specific aspects of establishing and functioning of central purchasing organizations shall be specified by the Cabinet of Ministers of Ukraine;

37) “Part of procurement item (lot)” refers to a part of supplies, works or services as determined by the contracting authority, in respect of which tenderers are permitted to submit their tenders or proposals for negotiations, in case when a negotiated procedure is applied.

## Article 2. Scope of the Law

### 1. This Law shall apply:

to contracting authorities, provided that the value of supplies or services to be procured equals to or exceeds UAH 200,000, and the value of works to be procured equals to or exceeds UAH 1,500,000;

to contracting authorities operating in certain areas of economic activity, provided that the value of supplies or services to be procured equals to or exceeds UAH 1,000,000, and the value of works to be procured equals to or exceeds UAH 5,000,000.

When procuring supplies, works and services, the value of which is lower than the value referred to in indents 2 and 3 of this paragraph, contracting authorities shall comply with the public procurement rules established by this Law and may use the e-procurement system for the purpose of selection of the supplier, provider and contractor.

In case of procurement of supplies, works and services without the use of the e-procurement system, provided that the value of such procurement equals to or exceeds UAH 50,000 and is lower than the value referred to in indents 2 and 3 of this paragraph, contracting authorities shall publish a report on awarded contracts within the e-procurement system in accordance with Article 10 of this Law.

2. The terms and conditions, rules and procedures for the procurement of supplies, works and services may be established or modified by this Law only, except for the events provided for in this Law. Provisions of this Law may be modified only by means of introduction of amendments to this Law.

3. This Law shall not apply to the following procurement items:

supplies and services related to design, production of security paper, banknotes, coins and state awards of Ukraine, their storage, transportation and record-keeping;

supplies, works and services purchased by foreign diplomatic missions;

supplies, works and services the procurement of which is classified as state secret in accordance with the Law of Ukraine “On State Secret”;

services required for the state borrowings, as well as for the state debt servicing and repayment;

supplies and services associated with transactions performed by the National Bank of Ukraine for the purpose of management of gold and foreign exchange reserves, their placement, purchase and sale in the secondary securities market, as well as for the purpose of making foreign exchange market interventions through purchase and sale of currency assets in foreign exchange markets;

acquisition, lease of land, buildings, other immovable property or title to land, buildings and other immovable property;

services of international arbitration courts, international commercial arbitrations related to consideration and settlement of disputes involving the contracting authority;

services of financial institutions, including international financial institutions, related to granting loans and guaranties, finance lease and ancillary financial services;

financial services associated with the issue, purchase and sale, transfer of securities or other financial instruments;

services purchased by banks for the purpose of rendering banking services and performing banking transactions in accordance with the Laws of Ukraine “On Banks and Banking” and “On the National Bank of Ukraine”;

services provided by the National Bank of Ukraine in accordance with the law;

blank forms of documents certifying identity and citizenship of Ukraine (passports), blank forms of documents certifying identity and special status, blank forms of other documents which, pursuant to the laws of Ukraine, must contain special security features, and excise labels,

manufactured by companies managed by the National Bank of Ukraine, as well as supplies, works and services required for their manufacture;

services related to scientific and scientific and technical activities and financed on a competitive basis according to the procedure established by Articles 49, 58 and 59 of the Law of Ukraine “On Scientific and Scientific and Technical Activities”;

supplies and services needed by the Deposit Guarantee Fund to provide for the performance of its functions and exercise of its powers specified in the Law of Ukraine “On Deposit Guarantee System” and related to withdrawal of insolvent banks from the market;

supplies and services to be purchased under procurement contracts between the Ukrainian central executive body in charge of the development and implementation of the state healthcare policy, and specialized purchasing organizations. Procurement of such supplies, works and services shall be made in accordance with the rules and procedures established by relevant specialized purchasing organizations, taking account of the procedure established by the Cabinet of Ministers of Ukraine;

supplies, works and services to be purchased under procurement contracts between the central executive body in charge of the development and implementation of the state national security, military, defence and military construction policies, and specialized purchasing organizations. Procurement of such supplies, works and services shall be made in accordance with the rules and procedures established by relevant specialized purchasing organizations.

4. With regard to contracting authorities operating in certain areas of economic activity, this Law shall not apply to the following procurement items:

1) supplies, works and services directly produced, performed or rendered by their affiliated undertakings with the only purpose to support the activities in certain areas of economic activity;

2) fuel and energy resources for electricity and heat generation and for geological survey of mineral deposits (including unirradiated fuel elements (fuel pins) for nuclear reactors);

3) supplies intended for resale to third parties, provided that the contracting authority does not occupy a monopolistic (dominant) position in the market of such supplies, and other economic operators are free to sell them under the same conditions as the contracting authority;

4) raw hydrocarbons, oil products for further processing and sale as well as related and required ancillary services, such as processing, production, transportation, freight, insurance, movement, cargo transportation, storage, loading/offloading, quality and quantity inspection, customs brokerage services, information and analysis services in respect of market prices and stock exchange quotations, financial services, services of stock exchanges, auctions and electronic tendering systems;

5) supplies, works and services if their prices (tariffs) are approved by collegial public authorities or other authorities within the scope of their powers or are determined in accordance with the procedure established by the aforementioned authorities, including where such prices are determined through auctions;

6) supplies, works and services specified in production sharing agreements executed in accordance with the Law of Ukraine “On Production Sharing Agreements”;

7) supplies and services in the day-ahead market, balancing market and ancillary services market in accordance with the Law of Ukraine “On the Principles of Functioning of the Electricity Market of Ukraine”;

8) electricity purchased and sold in the electricity market by the guaranteed buyer, market operator, system operator, balance responsible party within the balancing group, balance responsible party within the balancing group of producers at the “green” tariff;



9) services of the system operator, accounting administrator, commercial accounting administrator, market operator, guaranteed buyer in accordance with the Law of Ukraine “On the Principles of Functioning of the Electricity Market of Ukraine”;

10) competition improvement services in accordance with the Law of Ukraine “On the Principles of Functioning of the Electricity Market of Ukraine”.

5. Peculiarities of procurement procedures provided for in this Law shall be laid down in special laws with regard to the following supplies, works and services:

non-irradiated fuel elements (fuel pins) for nuclear reactors;

crude oil or oil products;

postal services, postage stamps and stamped envelopes;

telecommunication services, including transmission of radio and television signals (other than mobile services and services of Internet providers);

services related to training of professionals, academic and teaching staff and workers, advanced training and retraining (post-graduate education) as commissioned by the government;

supplies and services purchased under the programs of the Global Fund to Fight AIDS, Tuberculosis and Malaria in Ukraine as implemented in accordance with the law;

energy services.

Specific aspects of procuring supplies, works and services under this Law (other than supplies, works and services to be procured under contracts according to the procedure established by indent 17, paragraph 3 of this Article) by the Ministry of Defence of Ukraine and its intelligence body, the Ministry of Internal Affairs of Ukraine, the State Security Service of Ukraine, the National Guard of Ukraine, the State Border Service of Ukraine, the External Intelligence Service of Ukraine, the State Service for Special Communications and Information Protection of Ukraine, the State Emergency Service of Ukraine and other military formations and/or units during a special period shall be specified in a separate law.

6. Purchase of supplies, works and services and entering into contracts binding the contracting authority to pay for supplies, works and services before/without holding a procurement procedure prescribed by this Law shall be prohibited. Contracting authority shall not have the right to divide the procurement item into parts with the view to avoid an open procedure or application of this Law.

### Article 3. Procurement Rules

1. Procurement shall be based on the following principles:

fair competition among tenderers;

maximum cost saving and efficiency;

openness and transparency at all stages of the procurement process;

non-discrimination of tenderers;

objective and impartial evaluation of tenders;

prevention of corrupt practices and abuse.

### Article 4. Procurement Planning and Other Preconditions for Procurement Procedures

1. Procurements shall be made in accordance with the annual plan. The annual plan, the annex and amendments thereto shall be published free of charge on the Authorized Agency's Public Procurement Web Portal within five days following their approval.

#### Article 5. Non-Discrimination of Tenderers

1. Domestic and foreign tenderers, regardless of their form of ownership and business legal structure, shall participate in procurement procedures on equal conditions.

2. Contracting authorities shall grant free access to tenderers to procurement information provided for by this Law.

3. Contracting authority may not set any discriminatory requirements to tenderers.

#### Article 6. International Commitments of Ukraine in the Field of Procurement

1. If an international treaty to which Ukraine is a party and recognized by the Verkhovna Rada of Ukraine as binding, provides for the procurement rules other than those set out in this Law, the provisions of such international treaty shall prevail.

2. Procurement of supplies, works and services financed through credits and loans granted under international agreements of Ukraine by the International Bank for Reconstruction and Development, the International Finance Corporation, the Multilateral Investment Guarantee Agency, the International Development Association, the European Bank for Reconstruction and Development, the European Investment Bank, the Nordic Investment Bank as well as by other international financial institutions, shall be implemented in accordance with the rules and procedures established by the said institutions or, if such rules and procedures are not specified, in accordance with this Law.

Procurement of supplies, works and services co-financed within the framework of projects funded through credits and loans as referred to in sub-paragraph 1 of this paragraph shall be made in accordance with rules and procedures established by relevant institutions or, if such rules and procedures are not specified, in accordance with this Law.

### Section II.

#### STATE REGULATION AND CONTROL IN THE FIELD OF PROCUREMENT

#### Article 7. State Regulation and Control in the Field of Procurement

1. The Authorized Agency shall be responsible for the regulation and implementation of the state procurement policy within the scope of its powers established by this Law.

2. The central executive body in charge of the state policy in the field of treasury services shall:

before making payments under the procurement contract, verify the existence of the original procurement contract, the annual procurement plan and the report on the procurement procedure results confirming the fact of completion of the procurement procedure followed by the award of the procurement contract;

take measures to prevent payments from the contracting authority's account pursuant to the financial liabilities assumed under the procurement contract in the following cases:

when documents required pursuant to sub-paragraph 2 of this paragraph are missing or do not comply with the legislative requirements;

when the procurement procedure has been cancelled;

when a court decision invalidating the results of the procurement procedure has taken effect;

during the period for which the procurement procedure is suspended;

when there is a relevant decision of the Complaint Review Authority pursuant to Article 18 of this Law.

The existence of documents referred to in indent 2 of this paragraph shall be verified by the central executive body in charge of the implementation of the state policy in the field of treasury services that provides services to the contracting authority, through the review of documents uploaded in the e-procurement system.

For the purposes of authorizing payments under procurement contracts, banks, pursuant to the Law of Ukraine “On Banks and Banking”, shall verify whether reports on the procurement procedure results and other documents were uploaded in the e-procurement system. If these documents fail to meet the requirements set in this Law, the payment order shall be deemed improperly executed.

3. The Accounting Chamber, the Antimonopoly Committee of Ukraine, the central executive body in charge of the state policy in the field of state financial control shall exercise control in the field of public procurement within the scope of the powers vested in them by the Constitution and the laws of Ukraine.

Procurement monitoring shall be conducted by the central executive body in charge of the state policy in the field of state financial control and its territorial divisions.

The monitoring procedure shall be established by the central executive body in charge of the development and implementation of the state financial policy.

Bodies authorized to exercise control in the field of procurement shall not interfere with the procurement procedures.

4. The legal framework for the state regulation in the field of procurement shall be developed by the Authorized Agency.

#### Article 8. Authorized Agency and Complaint Review Authority

1. The key functions of the Authorized Agency shall be the following:

1) development and approval of regulations required for the implementation of this Law;

2) analysis of the public procurement system operation;

3) preparation and submission of the annual report on the results of the analysis of the public procurement system operation to the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine and the Accounting Chamber;

4) summarizing procurement practices, including international practices;

5) studying, summarizing and disseminating best international procurement practices;

6) ensuring operation of the Authorized Agency’s Web Portal and the Authorized Agency’s Information Resource;

7) managing content of the Authorized Agency’s Information Resource;

8) communication with the public with regard to improvement of the public procurement system;

9) organization of meetings and workshops dedicated to procurement matters;

10) international cooperation in the field of procurement;

11) development and approval of the following documents:

indicative tender documents;

indicative regulations on the tender committee or on the authorized person(s);

procedure of identifying the procurement item;

procedure for publication of public procurement information;

forms of the following documents:

annual procurement plan;

announcement of a procurement procedure (announcement of open procedure, announcement of competitive dialogue);

register of submitted tenders;

minutes on tender opening;

minutes on tender consideration;

notice of intent to award a contract;

report on the procurement procedure results;

notice of amendments to the contract;

report on the performance of the procurement contract;

report on the awarded contracts;

12) providing general recommendations on the enforcement of the public procurement legislation upon request;

13) providing free-of-charge advice on procurement-related matters through the Authorized Agency's Information Resource;

14) development of model training programs with regard to organizing and holding procurement procedures;

15) cooperation with public authorities and civil society organizations with regard to prevention of corrupt practices in the field of procurement;

16) communication of the public procurement policy and rules to the public;

17) authorization of e-platforms.

2. The Authorized Agency shall have the right to take actions and implement measures provided for by law in order to perform the functions vested in it.

3. In order to ensure unbiased and efficient protection of rights and legitimate interests of persons as related to their participation in public procurement procedures, the Antimonopoly Committee of Ukraine, acting as the Complaint Review Authority, shall establish the Permanent Administrative Board (the Board) for handling complaints against violation of the public procurement legislation. Decisions of the Permanent Administrative Board (the Board) shall be adopted in the name of the Antimonopoly Committee of Ukraine.

The Permanent Administrative Board (the Board) for handling complaints against violation of the public procurement legislation shall be composed of three State Commissioners of the Antimonopoly Committee of Ukraine. The Chairman of the Permanent Administrative Board under the Antimonopoly Committee of Ukraine must have an academic degree.

A member of the Permanent Administrative Board (the Board), being a related person to the complainant or to the relevant contracting authority, shall not take part in the review and decision-making process with regard to the complaint in question, and shall be replaced for the period of the review and decision-making with regard to the complaint in question by another State Commissioner of the Antimonopoly Committee of Ukraine to be designated by the Chairman of the Antimonopoly Committee of Ukraine.

The regulations on the Permanent Administrative Board (the Board) shall be established in accordance with the Law of Ukraine “On the Antimonopoly Committee of Ukraine”, unless otherwise is provided for by this Law.

#### Article 9. Civil Society Control in the Field of Public Procurement

1. Civil society control shall be ensured through granting free access to all public procurement information to be published in accordance with this Law, through analysis and monitoring of the information published within the e-procurement system as well as through reporting, via the e-procurement system or in writing, of detected violations of the public procurement legislation and deficiencies in the e-procurement system operation to the bodies authorized to exercise such control.

2. Contracting authorities, tenderers and the Authorized Agency shall facilitate involvement of the public in exercising control in the field of procurement in accordance with the Laws of Ukraine “On Civil Society Associations”, “On Public Appeals” and “On Information”.

3. Citizens, civil society organizations and their associations shall not interfere with the procurement process.

### Section III.

#### GENERAL CONDITIONS OF THE PROCUREMENT PROCESS

#### Article 10. Publication of Procurement Information

1. The contracting authority shall publish the following procurement information on the Authorized Agency’s Web Portal in accordance with the procedure established by the Authorized Agency and this Law, at its own discretion and on a free-of-charge basis via the authorized e-platforms:

announcement of a procuring procedure and tender documents — not later than 15 days prior to the tender opening procedure, provided that the contract value does not exceed the thresholds set out in paragraph 4 of this Article, and not later than 30 days where such thresholds are exceeded;

changes in the tender documents and explanations thereto (if any) — within one day of the date of the decision on such changes or explanations;

notice of a framework agreement concluded (in case procurement is made under framework agreements) — within seven days after signing the framework agreement;

minutes on tender consideration — within one day of their approval;

notice of intent to award a procurement contract — within one day of the date of the decision on selecting the successful tenderer;

information about rejection of a tender — within one day of the adoption of the relevant decision;

procurement contract — within two days of the date of its award;

notice of amendments to the procurement contract — within three days of the date when such amendments entered into force;

report on the performance of the contract — within three business days of the date of expiry or termination of the contract, or complete fulfilment of the parties' obligations thereunder;

report on the awarded contracts — within one day of the effective date thereof.

The chairman and secretary of the contracting authority's tender committee or authorized person(s) shall be liable for the completeness and accuracy of the information published on the Authorized Agency's Web Portal.

2. The information referred to in the first paragraph of this Article may be additionally published in other mass media, on the contracting authority's website (if any) or on the websites of relevant public authorities and local self-governing authorities.

3. No procurement procedure may be held before/without the publication of the announcement of the procurement procedure on the Authorized Agency's Web Portal in accordance with the first paragraph of this Article.

4. Announcements of a procurement procedure shall also be published in English on the Authorized Agency's Web Portal within the terms set out in the first paragraph of this Article, provided that the estimated contract value exceeds the amount equivalent to:

EUR 133,000 for supplies and services contracts;

EUR 5,150,000 for works contracts.

The applicable EUR exchange rate shall be the official exchange rate set by the National Bank of Ukraine as of the date when the announcement of the procurement procedure is submitted for its publication on the Authorized Agency's Web Portal.

5. Access of to the information published on the Authorized Agency's Web Portal is free and open. Procurement information specified in this Law shall be published on the Authorized Agency's Web Portal free of charge via the authorized e-platforms.

The Authorized Agency shall ensure that publication of procurement information specified in paragraph 1 of this Article complied with the requirements set by the Law of Ukraine "On Access to Public Information", including in the form of open data.

The Authorized Agency's Web Portal shall comply with the requirements of legislation on information protection.

#### Article 11. Tender Committee and Contracting Authority's Authorized Persons

1. A contracting authority shall create a tender committee(s) or appoint authorized person(s) for the purposes of organizing and holding procurement procedures.

A tender committee shall be guided by the principles of collegiality and impartiality.

Membership in a tender committee or appointment of an authorized person(s) must not cause conflict of interest between a contracting authority and a tenderer or between tenderers as

such conflict of interest may affect objectivity and impartiality of decision-making in selecting the successful tenderer. In organizing and holding a procurement procedure, an authorized person(s) shall ensure that the process of organizing and holding a procurement procedure is objective and impartial and to the best interest of the contracting authority.

2. Composition of the tender committee, as well as Regulations on the tender committee shall be subject to approval by the contracting authority. Activities of an authorized person(s) shall be regulated by the relevant employment agreement (contract) signed with the contracting authority or the relevant administrative decision of the contracting authority. An authorized person must have an academic degree.

Officers and representatives of tenderers, their family members, as well as people's deputies of Ukraine, deputies of the Supreme Council of the Autonomous Republic of Crimea and district/town/city/rayon/oblast councils may not be members of tender committees, nor may be appointed as authorized persons.

A tender committee shall consist of at least five members. Where a contracting authority's staff consists of fewer than five persons, the tender committee shall be composed of all officers (officials) of the contracting authority. Chairman of a tender committee shall manage the work of the committee. Chairman of a tender committee shall be appointed by the contracting authority, organize the work of the committee and shall be personally responsible for the performance of functions vested in the committee. Where a contracting authority appoints an authorized person(s), the latter shall organize his/her/their own working process under the terms and conditions set out in the relevant employment agreement (contract) or provisions.

Chairman, secretary and other members of the tender committee, as well as authorized persons may undergo training in organizing and holding procurement procedures.

3. Tender committee or authorized person(s) shall:

be in charge of procurement planning, drafting and approving of annual procurement plans;

choose a procurement procedure;

hold procurement procedures;

provide for equal treatment of all tenderers, as well as objective and fair selection of the successful tenderer;

make sure that necessary public procurement documents as specified by this Law are executed, approved and kept;

provide for the publication of public procurement information and reports in compliance with this Law;

exercise other powers provided for by this Law.

4. Decisions of a tender committee or the authorized person shall be executed in the form of minutes. Such decisions shall document the results of votes by members of the committee present at the meeting of the tender committee in respect of each particular matter on the agenda. The minutes shall be signed by all members of the committee present at the meeting, or by authorized persons. Refusal of a member of the tender committee or either authorized person to sign the minutes shall be documented in the minutes with the indication of the reasons for such refusal.

5. Standard Regulations on tender committee and authorized person(s) shall be approved by the Authorized Agency.

## Article 12. Procurement Procedures

1. Procurements may be arranged through one of the following procedures:

open procedure;

competitive dialogue;

negotiated procedure.

2. Contracting authority shall hold procurement procedures provided for in paragraph 1 of this Article through the e-procurement system.

3. E-procurement system shall be public, guarantee non-discrimination and equal rights of all interested parties in the process of registration, as well as equal access of all tenderers to information; exchange and storage of information and documents shall be arranged in a way that secures integrity of data on tenderers and their tenders during a procurement procedure, and confidentiality thereof before opening the tenders.

E-procurement system must allow precise registration of the exact time and date of the receipt of tenders and ensure that no one can have access to the received tenders (parts thereof) before the time and date of their submission and opening indicated by in the announcement of the procurement procedure.

Submission of tenders and evaluation thereof through the e-procurement system must be arranged in a way that ensures that creation and submission of documents and data comply with the requirements of the Law of Ukraine "On Electronic Documents and Electronic Document Management".

E-procurement system must allow storage and proper protection of all procurement information and access thereto by contracting authorities, tenderers, controlling bodies, Complaint Review Authority, Authorized Agency and other persons in accordance with the provisions of this Law, as well as provide for the following:

1) exchange of information via the Internet;

2) public telecommunication means that do not restrict participation in procurement procedures;

3) system of electronic exchange of documents using identification methods to which the requirements are established by the Cabinet of Ministers of Ukraine;

4) identification of tenderers and precise registration of the exact time and date of receipt of tenders (parts thereof), provided that no one can have access to such data before the expiry of the terms for the submission of tenders and the time and date of opening the tenders;

5) data storage system that stores all the documents received from contracting authorities, tenderers, the Complaint Review Authority and created in the process of tender evaluation for at least ten years, and allows automatic data backup and recovery;

6) continuous procurement process.

Proper information protection within the e-procurement system shall be deemed to be information protection within a cloud computing system to be confirmed by a valid certificate proving compliance of the information security management system used for the processing of information in the cloud computing system with the requirements of ISO/IEC 27001 or ДСТУ ISO/IEC 27001 standards or other standards that may replace them; such certificate must be issued by a domestic or foreign conformity assessment body or organization that is accredited by the national accreditation body of Ukraine or a foreign accreditation body party to the IAF (International Accreditation Forum) Multilateral Recognition Agreement and/or EA (European Cooperation for Accreditation) Multilateral Recognition Agreement pursuant to ISO/IEC 17021



or

ДСТУ ISO/IEC 17021 standards or other standards that may replace them.

Information in the e-procurement system shall be accessed and transmitted via the Internet with the use of TLS cryptographic protocol, version at least 1.2.

In the process of tender opening and evaluation, the e-system must allow online data input/output, execution of commands and display of their outputs in real time.

For the purposes of holding an e-auction, authorized e-platforms must secure equal and free access of all tenderers to such platforms, and allow all interested parties to follow the e-auction online in real time.

Additional requirements to the e-procurement system and e-services shall be established by the Cabinet of Ministers of Ukraine.

### Article 13. Procurement under Framework Agreements

1. Procurements under framework agreements shall be made according to the rules prescribed for the open procedure, subject to requirements of this Article, while framework agreements shall be concluded in accordance with the requirements of this Article.

2. Special aspects of signing and performance of framework agreements shall be determined by the Authorized Agency.

3. The following must be specified in the announcement of procurement procedure under a framework agreement:

- 1) duration of the agreement that may not exceed four years;
- 2) number of tenderers to become parties to the contract, unless a framework agreement is to be concluded;
- 3) name and location of contracting authority(ies) to procure under the agreement.

4. A framework agreement shall be concluded with several tenderers provided that at least three tenderers become parties thereto.

In case the number of received tenders is fewer than the stated number of tenderers, or in case of rejection of the received tenders on the grounds provided for in this Law, the contracting authority shall have the right to enter into a framework agreement with those tenderers whose tenders have not been rejected, if there are at least three such tenderers.

5. The contracting authority shall have the right to enter into a contract for the procurement of specific goods and services only with those tenderers that are parties to the framework agreement.

6. Framework agreements shall be implemented in conformity with the following requirements:

1) In case a framework agreement is concluded with one tenderer all essential terms and conditions of the procurement contract shall be specified in the framework agreement, and such contract shall be deemed to be concluded after the contracting authority sends an offer to a tenderer to fulfil the specified terms and conditions and receives the tenderer's written consent thereto;

2) In case a framework agreement is concluded with several tenderers:

if all essential terms and conditions of the procurement contract are specified in the framework agreement, the contracting authority shall have the right to enter into such contract in

compliance with the conditions laid down in the framework agreement in respect of the selection of tenderers parties to the relevant framework agreement;

if not all essential terms and conditions of the procurement contract are specified in the framework agreement, the contracting authority shall award such contract to the successful tenderer in a competitive selection procedure to be held by the contracting authority among the tenderers parties to the relevant framework agreement.

In order to select the successful tenderer in a competitive selection procedure to enter into a procurement contract with, the contracting authority shall send an invitation to tender to all tenderers parties to the framework agreement. The contracting authority shall establish the timeframe sufficient for the tenderers to prepare their tenders.

Evaluation of tenders and selection of the successful tenderer(s) shall comply with the criteria specified in the framework agreement, subject to specific requirements to the procurement item that may be established under the agreement. Such specific requirements shall be specified in the invitation to tender. Invitations to tenderers and their tenders may not provide for any material change in the terms and conditions of the procurement contract and specifications of the relevant procurement item as set forth by the relevant framework agreement.

Selection and competitive selection shall be based on the results of the e-auction to be held by the contracting authority in compliance with Article 29 of this Law.

7. One contracting authority may be a party to one or several framework agreements. The contracting authority shall submit a notice of the framework agreement concluded within seven days of the date of the relevant framework agreement, to be published in accordance with Article 10 of this Law.

#### Article 14. Submission of Information during Procurement Procedures

1. In the course of holding procurement procedures, information shall be submitted electronically via the e-procurement system.

2. All information submitted within the framework of a procurement procedure may be processed in the cloud computing system given proved proper information security within such system to comply with the requirements of Article 12, paragraph 3, indent 11 of this Law.

#### Article 15. Language Used in Procurement Procedures

1. All documents prepared by the contracting authority in the course of procurement procedures shall be executed in the Ukrainian language and, subject to the contracting authority's decision, may at the same time have their true translation into another language attached. The Ukrainian text shall prevail.

#### Article 16. Qualification Criteria

1. Contracting authority shall request the tenderers to submit documents confirming their compliance with the qualification criteria.

2. Contracting authority shall set one or several qualification criteria:

availability of equipment, resources and technology at the tenderer's disposal;

availability of staff with the relevant qualification and necessary knowledge and experience at the tenderer's disposal;

demonstrated experience in the performance of a similar contract.

3. Qualification criteria set by a contracting authority under this Article and the list of documents confirming the information submitted by tenderers to prove their compliance with such criteria shall be indicated in the tender documents and requested in the course of negotiations with a tenderer (in case of a negotiated procedure).

The contracting authority shall not set qualification criteria, nor shall it specify the list of documents to confirm the information submitted by tenderers concerning their compliance with the criteria, if the procurement item is crude oil and oil products, electric power, services of their transmission and distribution, district heat supply, district hot water supply, district heating, postal services, postage stamps and stamped envelopes, telecommunication services, including transmission of radio and television signals, services of centralized water supply and/or sewerage, public rail transportation services.

4. Documents that are not required by law for submission by tenderers — legal entities and individuals, including sole traders — shall not be submitted by them as part of their tenders, and shall not be requested in the course of negotiations with a tenderer (in case of a negotiated procedure).

Lack of documents that are not required by law for submission by tenderers — legal entities and individuals, including sole traders — as part of their tenders, shall not constitute grounds for rejecting a tender by the contracting authority.

#### Article 17. Rejecting a Tenderer

1. Contracting authority shall decide on rejecting a tenderer and shall reject any tender if:

1) there is indisputable evidence that the tenderer offers, gives or agreed to give a reward, directly or indirectly, to any officer of the contracting authority, of another public authority in any form (proposal of employment, valuables, a service, etc.) with the view to influence the decision on selecting the successful tenderer or on choosing a certain procurement procedure by the contracting authority.

2) information on legal entity that is a tenderer is included in the Unified State Register of Perpetrators of Corruption or Corruption-related Offences;

3) an officer (official) of a tenderer authorized by the tenderer to represent its interests during a procurement procedure, or an individual who is a tenderer has been hold liable by law for the commitment of a corruption offence in the field of procurement;

4) an economic operator (tenderer), during the last three years, has been hold liable for an infringement provided for in Article 6, paragraph 2, sub-paragraph 4, Article 50, point 1 of the Law of Ukraine “On Protection of Economic Competition” in the form of anticompetitive concerted actions related to bid rigging;

5) an individual tenderer has been convicted of an acquisitive crime, for which the conviction has not been lifted or cancelled in accordance with the procedure established by law;

6) an officer (official) of tenderer who signed the tender has been convicted of an acquisitive crime, for which the conviction has not been lifted or cancelled in accordance with the procedure established by law;

7) a tender is submitted by a tenderer that is a related person to other tenderers and/or to a member(s) of the tender committee, authorized person(s) of the contracting authority;

8) a tenderer has been declared bankrupt according to the procedure prescribed by law, and a liquidation procedure in respect of such tenderer has been underway;

9) the Unified State Register of Legal Entities and Sole Traders contains no information provided for by Article 9, paragraph 2, point 9 of the Law of Ukraine “On State Registration of Legal Entities, Sole Traders and Public Associations”;

10) a legal entity that is a tenderer has no anti-corruption program in place or no authorized officer in charge of the implementation of the anti-corruption program appointed, where the value of the contract for the procurement of supplies, services or works equals to or exceeds UAH 20 million.

2. Contracting authority may decide on rejecting a tenderer and may reject any tender if the tenderer has outstanding taxes and duties (statutory charges).

3. Contracting authority shall specify in its tender documents that information on lack of grounds indicated in paragraphs 1 and 2 of this Article shall be provided in an arbitrary form. Contracting authority shall specify the method of documentary proof of the lack of grounds provided for by sub-paragraphs 2, 3, 5, 6 and 8 of paragraph 1 and paragraph 2 of this Article, to be presented by the successful tenderer only. The contracting authority shall not require documentary confirmation of the information that is available in open and free unified state registers.

The successful tenderer shall submit documents to the contracting authority to confirm lack of grounds indicated in sub-paragraphs 2, 3, 5, 6 and 8 of paragraph 1 of this Article, within five days of the date of publication of notice of intent to award a procurement contract on the Authorized Agency’s Web Portal.

Contracting authority shall not request tenderers to submit documents to confirm lack of grounds indicated in sub-paragraphs 1 and 7 of paragraph 1 of this Article.

The Authorized Agency shall publish the list of open free unified state registers on its Web Portal by the 20<sup>th</sup> of each January or at any other time, as appropriate.

#### Article 18. Rules of Filing Complaints against Procurement Procedures

1. Complainant shall submit its complaint to the Complaint Review Authority in the form of electronic document via the e-procurement system. Upon filing a complaint by the complainant via the e-procurement system, the complaint shall be automatically included in the register of complaints, and a relevant registration card shall be generated. The complaint and its registration card shall be automatically published on the Authorized Agency’s Web Portal on the day it was filed by the complainant.

Complaint shall contain the following information:

date and time when the complaint was filed by the complainant via the e-procurement system;

number of the complaint within the e-procurement system assigned upon its filing;

number of the announcement of the procurement procedure published on the Authorized Agency’s Web Portal.

Complaint shall contain the following information:

name of the contracting authority whose decisions, actions or omissions are challenged;

name and location of the complainant;

grounds for the complaint, references to the procurement procedure violations or to the decisions, actions or omissions by the contracting authority, as well as facts that can confirm the aforesaid;

reasoning of infringement of rights and legitimate interests by a decision, an action or omission by the contracting authority which violate public procurement laws and resulted in violation of such person's right or legitimate interests;

the complainant's claims and their reasoning.

Complaint shall be accompanied with documents and materials filed in electronic format (including PDF files), confirming the violation of the procurement procedure or the unlawfulness of decisions, actions or omissions by the contracting authority, as well as the document confirming payment of the fee for the filing of complaint with the Complaint Review Authority.

Immediately upon its registration, a complaint with accompanying documents and its registration card shall be automatically sent to the Complaint Review Authority and to the contracting authority.

The filing fee shall be paid to submit a complaint to the Complaint Review Authority. The amount of the filing fee shall be established by the Cabinet of Ministers of Ukraine.

2. Complaints with regard to tender documents and/or decisions, actions or omissions by the contracting authority which took place before the expiration of the time limit established for the submission of tenders may be submitted to the Complaint Review Authority following the publication of the announcement of the procurement procedure, but not later than four days prior to the deadline established for the submission of tenders.

Complaints with regard to decisions, actions or omissions by the contracting authority which took place after the evaluation of tenders shall be submitted within 10 days following the publication of the notice of the intent to award the contract on the Authorized Agency's Web Portal, but before the date of the procurement contract.

Complaints with regard to decisions, actions or omissions by the contracting authority which took place after assessing compliance of tenders with the technical requirements set in tender documents and compliance of tenderers with the qualification criteria set in tender documents, shall be submitted within five days following the publication of the minutes on tenders consideration on the Authorized Agency's Web Portal.

In case when the contracting authority has introduced any changes in the tender documents after the expiry of the term set for the submission of tenders and specified in the relevant announcement of a procurement procedure, provisions of the tender documents that have not been changed shall not be subject to complaint.

If a complaint(s) was/were filed with the Complaint Review Authority with regard to the provisions of the tender documents, and the Complaint Review Authority adopted one or several relevant decisions on the merits, those provisions of the tender documents that have not been challenged prior to the expiry of the term set for the submission of tenders and specified in the relevant announcement of a procurement procedure, shall not be subject to complaint.

Upon expiry of the term set for the submission of tenders and specified in the relevant announcement of a procurement procedure, complaints may be filed only with regard to changes introduced by the contracting authority.

In the event of non-compliance with the time frames referred to in indents 1 through 3 of this paragraph, complaints shall be automatically rejected by the e-procurement system.

Complaints with regard to the awarded procurement contracts shall be considered in court.

3. The Complaint Review Authority shall, within three business days upon entering the complaint into the register of complaints, publish its decision on admission of the complaint within the e-procurement system, indicating the date, time and place of the complaint review, or a reasoned decision to dismiss the complaint without considering it, or a decision on

discontinuing consideration of the complaint. The e-procurement system shall automatically publish decisions adopted by the Complaint Review Authority on the Authorized Agency's Web Portal and send notices to the complainant and to the contracting authority.

4. The Complaint Review Authority shall reject a complaint without consideration in the following cases:

the complainant submitted a complaint with regard to the same violation within the same procurement procedure and on the same grounds which have already been reviewed by the Complaint Review Authority and in respect of which the Complaint Review Authority has already adopted a decision;

the complaint does not meet the requirements set in paragraph 1 or 2 of this Article;

the complainant failed to pay the filing fee as referred to in paragraph 1 of this Article;

the contracting authority, in accordance with this Law, has remedied the violations referred to in the complaint.

5. The Complaint Review Authority shall make a decision to discontinue consideration of a complaint in the following cases:

when circumstances referred to in indents 2 to 5 of paragraph 4 of this Article were found by the Complaint Review Authority after the admission of the complaint;

when the complaint has been withdrawn by the complainant;

the contracting authority has made a decision to cancel the procurement procedure or recognize it null and void, to cancel the negotiated procedure, unless either of these decisions has been challenged.

6. The start date of the complaint review proceedings shall be deemed the date of publication of the registration card of the complaint within the e-procurement system.

The Complaint Review Authority shall review the complaint within 15 business days following the start date of the complaint review proceedings.

The complainant and the contracting authority shall have the right to participate in the complaint review proceedings, including with the use of real-time telecommunication systems. The complaint review proceedings shall be open so that everyone interested may attend the proceedings. Those present at the proceedings may take photographs, videotape/audiotape it. The decision passed by the Complaint Review Authority shall be announced publicly.

7. When a complaint is admitted, the e-procurement system shall automatically suspend the start of e-auction and shall not publish the procurement contract and the report on the procurement procedure results.

The contracting authority shall not take any action or make any decision with regard to the procurement, except for the actions aimed at remedying violations against which the complaint was filed.

In case the contracting authority remedies violations against which the complaint was filed, the contracting authority shall, within one business day the violation is remedied, notify the Complaint Review Authority thereof and publish a relevant confirmation within the e-procurement system.

In any case, award of the procurement contract during the complaint review proceedings shall be prohibited.

8. The complaint review proceedings shall suspend the time limits set in paragraph 2, Article 32 and in indent 8, paragraph 3, Article 35 of this Law.

These time limits shall continue from the day following the day of adoption of a decision by the Complaint Review Authority as a result of the complaint review, a decision to discontinue the complaint or a decision to reject the complaint without considering it.

Once the Complaint Review Authority adopts a decision to dismiss the complaint as a result of its review, a decision to discontinue the complaint or a decision to reject the complaint without considering it, the e-procurement system shall automatically, not earlier than two days following the publication of the decision within the e-procurement system, set the time and date of e-auction and send notices to all persons who submitted their tenders.

9. Based on the results of the complaint review proceedings, the Complaint Review Authority shall have the right:

to decide whether the claimed violations of the procurement procedure did take place (including violation of the rules of publication or failure to publish the procurement information provided for by this Law) and to decide on remedies to be applied in order to remove such violations, in particular, it may bind the contracting authority to cancel its decisions in full or in part, to provide required documents and necessary explanations, to remove any discriminatory terms and conditions (including those set out in the technical specifications constituting a part of the tender documents), to bring the tender documents into compliance with legislative requirements, or, if removal of committed violations is impossible, to cancel the procurement procedure.

10. The Complaint Review Authority shall consider a complaint and pass a decision thereon on the basis of the information contained in the complaint and the information published within the e-procurement system. Decisions based on the results of review of the complaints shall be adopted by the Complaint Review Authority only at its meetings.

In order to obtain advice and expert opinion, the Complaint Review Authority may involve representatives of public authorities (in agreement with the management of the public authorities), experts and specialists, who may not be related persons and who have special knowledge needed for professional and impartial review of the complaint. The complainant and the contracting authority may submit opinions of experts and specialists with the relevant expertise. Opinions of such representatives of public authorities, experts and specialists shall be published in the e-procurement system and included in the file of the relevant case.

11. Based on the results of the complaint review proceedings, the Complaint Review Authority shall adopt a reasoned decision in which the following information shall be indicated:

conclusion made by the Complaint Review Authority as regards whether the claimed violation of procurement procedure did take place;

conclusion made by the Complaint Review Authority as to whether the complaint must be satisfied in full or in part or dismissed;

grounds for, and reasoning of the decision;

when a complaint is satisfied in full or in part, the obligation of the contracting authority to remedy the violation of the procurement procedure and/or to resume the procurement procedure since the date of a provisional legitimate decision or legitimate action of the contracting authority.

Decisions of the Complaint Review Authority shall contain the following information:

name of the Complaint Review Authority;

summary of the complaint;

findings;

operative part;

deadline for filing an appeal against the decision.

Within one business day of the date of the decision in respect of the complaint, the Complaint Review Authority shall publish information about the operative part of the decision within the e-procurement system, and publish the whole text of the decision within the e-procurement system within three business days of its adoption. Decisions in respect of complaints shall be automatically published on the Authorized Agency's Web Portal and sent to the complainant and the contracting authority involved once they are uploaded into the electronic system.

12. Decisions of the Complaint Review Authority shall come into force on the day of their adoption and shall be binding for the relevant contracting authorities and other persons concerned.

Complainant or contracting authority may appeal against the decision in court within 30 days of the date of publication of the decision within the e-procurement system.

#### Article 19. Report on the Results of Procurement Procedure

1. Report on the results of procurement procedure shall contain the following information:

name of the procurement item;

number of tenderers, as well as name and location of the tenderer to whom the procurement contract was awarded;

prices offered by the tenderers (prices offered during negotiations if a negotiated procedure applies), and the amount of the procurement contract;

date of publication of the notice of the framework agreement concluded under which the procurement contract was awarded (in case of procurement under framework agreements) on the Authorized Agency's Web Portal in accordance with Article 10 of this Law;

date of publication of the notice of intent to award a contract on the Authorized Agency's Web Portal in accordance with Article 10 of this Law;

date of publication of the announcement of procurement procedure on the Authorized Agency's Web Portal in accordance with Article 10 of this Law;

if no procurement contract has been awarded as a result of the procurement procedure — grounds for the decision on non-award of the procurement contract;

date of signing the procurement contract;

consolidated information about presenting or failure to present documents confirming the tenderers' compliance with the qualification criteria in accordance with Article 16 of this Law, and existence/lack of circumstances referred to in Article 17 of this Law;

in case of procurement of works and services — full name and location of each legal entity that is supposed to be engaged by the successful tenderer as sub-contractor for at least 20 per cent of the procurement contract value, if so provided for by the procurement contract.

2. Report on results of the procurement procedure shall be automatically generated by the e-procurement system and published on the Authorized Agency's Web Portal within one day of the publication of the procurement contract by the contracting authority.



Section IV.  
OPEN PROCEDURE

Article 20. Conditions of Applying an Open Procedure

1. Open procedure shall be the main procurement procedure.
2. All interested parties shall have the right to submit tenders in an open procedure. At least two tenders shall be received to hold a procurement procedure.

Article 21. Announcement of Open Procedure

1. Announcement of open procedure shall be published free of charge on the Authorized Agency's Web Portal in accordance with Article 10 hereof.

2. Announcement of open procedure shall contain the following information:

name and location of the contracting authority;

name of the procurement item;

quantity and place of delivery of supplies, or scope and place of the performance of works or the provision of services;

estimated value of the procurement contract for supplies, works or services specifying whether VAT and other taxes and duties are included in such estimated value;

deadline for the delivery of supplies, the performance of works, the provision of services;

deadline for submitting tenders;

amount, type and conditions of tender security (if requested by the contracting authority);

date and time of tender opening if the announcement of the procurement procedure is published according to the provisions of Article 10, paragraph 4 of this Law.

amount of minimum increment of price reduction during the e-auction expressed as percentage or monetary units, and the mathematical formula to be used during the e-auction to calculate the indicators of other evaluation criteria.

The announcement may contain additional information as prescribed by the contracting authority.

The date and time of tender opening, except as provided for in indent 10 of this paragraph, and the date and time of holding e-auction shall be assigned automatically by the e-procurement system on the day when the contracting authority publishes the relevant announcement on the Authorized Agency's Web Portal.

3. The term for submitting tenders shall be at least 15 days of the date of publication of the announcement of the open procedure on the Authorized Agency's Web Portal.

If the announcement of the procurement procedure is published according to the provisions of Article 10, paragraph 4 of this Law, the term for submitting tenders shall be at least 30 days of the date of such publication.

Article 22. Tender Documents

1. Tender documents shall be published free of charge on the Authorized Agency's Web Portal for public access.

2. Tender documents must contain the following information:

1) instructions for preparing tenders;

2) one or several qualification criteria for tenderers in accordance with Article 16, the requirements set forth in Article 17 of this Law, and information about the method of documentary confirmation of the tenderers' compliance with the established criteria and requirements of the legislation. The contracting authority shall not require documentary confirmation of compliance with the requirements of Article 17 if such information is available in open and free unified state registers;

3) information about the required technical, qualitative and quantitative characteristics of the procurement item, including relevant technical specifications (plans, drawings, figures or descriptions of the procurement item, as appropriate). In such case, technical specifications shall contain: a detail description of supplies, works, services to be procured, including their technical and qualitative characteristics; requirements to technical and functional characteristics of the procurement item if its description is impossible or if it is more reasonable to include such indicators; references to standard characteristics, requirements, markings and terminology related to the supplies, works or services to be procured, as prescribed by the existing international or national standards, norms and rules. Technical specifications shall not contain references to a specific trademark or a firm, patent, construction or a type of the procurement item, its origin or manufacturer. If such a reference is necessary, it shall be reasoned, and the wording "or equivalent" shall be added in the specifications. Technical and qualitative characteristics of the procurement item shall provide for necessary environmental protection measures;

4) quantity of supplies and place of their delivery;

5) location where the works shall be performed or where services shall be provided, and the scope thereof;

6) deadlines for the delivery of supplies, completion of works, provision of services;

7) draft procurement contract specifying the procedure of the introduction of amendments to its terms and conditions;

8) description of a particular part or parts of the procurement item (lot) for which tenders may be submitted, if tenderers are allowed to submit tenders for a part of the procurement item (lot);

9) list of evaluation criteria and the method of tender evaluation indicating the weight of each criterion. Description of the method of tender evaluation based on the "price" criterion must include information about whether the value-added tax (VAT) is applicable;

10) timeframe during which tenders shall be deemed valid, that may not be shorter than 90 days of the tender opening date;

11) currency to be used for the calculation and expression of the price offered in a tender;

12) language(s) to be used for preparing tenders;

13) deadline for submitting tenders;

14) amount, type and conditions of tender security (if requested by the contracting authority);

15) amount, type, terms and conditions for the provision, repayment or non-repayment of the procurement contract performance security (if required by the contracting authority);

16) full name, position and address of one or several officers of the contracting authority authorized to maintain communication with tenderers;

17) in case of procurement of works — requirement for tenderers to indicate information in their tenders (full name and location) on each economic operator that is supposed to be engaged by the successful tenderer as sub-contractor for at least 20 per cent of the procurement contract value.

3. Tender documents may also contain other information in accordance with the legislation that the contracting authority deems necessary.

Tender documents may contain description and examples of typical technical (unessential) errors that shall not result in rejecting a tender if detected therein.

Technical (unessential) errors shall mean errors related to the form of the tender that do not affect the tender's content, namely technical and typing errors.

4. Tender documents shall not contain requirements that restrict competition and result in the discrimination of tenderers.

#### Article 23. Providing Explanations Relating to Tender Documents and Changes therein

1. A natural person / legal entity, not later than 10 days before the expiry of the term for submitting tenders, shall have the right to request explanations from the contracting authority via the e-procurement system regarding the tender documents and/or request the contracting authority to remedy violations committed during the procurement procedure. All requests for explanations and remedying violations shall be automatically published within the e-procurement system without identifying the requester. The contracting authority shall provide explanations in response to such request within three business days of its publishing, and shall publish them on the Authorized Agency's Web Portal in accordance with Article 10 of this Law.

2. The contracting authority shall have the right at its own discretion or upon request or based on the decision of Complaint Review Authority to introduce changes in the tender documents. In case of introduction of changes in the tender documents, the terms for submitting tenders shall be extended by the e-procurement system so that the period from the introduction of changes in the tender documents till the expiry of term for submitting tenders shall be at least seven days.

Changes introduced by the contracting authority in the tender documents shall be registered and displayed in the e-procurement system as the new version of the tender documents additionally to the initial version of the tender documents. The contracting authority shall publish the list of changes to be introduced in a separate document, along with the changes in the tender documents as such. The modified provisions of the tender documents shall be displayed in form of crossed out data and shall be available for review after the introduction of changes in the tender documents.

In case of untimely provision of or failure to provide explanations regarding the content of the tender documents by the contracting authority, the term for submitting tenders shall be automatically extended by the e-system for at least seven days.

The information specified in this paragraph shall be published by the contracting authority in accordance with Article 10 of this Law.

#### Article 24. Tender Security

1. Contracting authority may indicate requirements for the provision of a tender security in the announcement of procurement procedure and in the tender documents.

If the contracting authority requires the provision of a tender security, the tender documents shall specify the terms and conditions for its provision, such as the type, amount, validity period and reservations regarding the non-repayment of the tender security to the tenderer. In this case, the tenderer shall provide its tender security simultaneously with the tender itself.

The amount of the tender security in monetary terms may not exceed 0.5 per cent of the expected value of the works procurement contract and 3 per cent of the expected value of the procurement contract for supplies or services on conditions specified in the tender documents.

2. If tenders are submitted with regard to a part of the procurement item (lot), the amount of the tender security shall be set by the contracting authority on the basis of the estimated value of the procurement item in respect of each particular part (lot) thereof.

3. The tender security shall not be returned in the event:

of withdrawal of the tender by the tenderer upon expiry of the term for submitting tenders but before the expiry of the period during which tenders are deemed valid;

the successful tenderer fails to sign the procurement contract;

the successful tenderer fails to provide documents confirming the lack of grounds provided for by Article 17 of this Law within the term specified in indent 2, paragraph 3, Article 17 of this Law;

the successful tenderer fails to provide the procurement contract performance security after the receipt of the notice of intent to award the contract, if provision of such security is provided for by the tender documents.

4. The tender security shall be returned to the tenderer within five banking days of the day when grounds for the return of the tender security occur, in the event:

of expiry of the period of validity of the tender security set in the tender documents;

the successful tenderer entered into the procurement contract;

the tender has been withdrawn before the deadline for submitting tenders;

the procurement procedure is terminated if no procurement contract is signed with either tenderer that submitted their tenders.

5. The funds provided as a tender security (in the event they are not subject to return to the tenderer) shall be transferred to the relevant budget, or, if procurement is made by legal entities (their associations) that receive no financing from the state budget, they shall be transferred to the account of the relevant entity (association).

## Article 25. Tender Submission Procedure

1. A tender shall be submitted electronically via the e-procurement system. Document constituting the tender shall be submitted electronically by means of completing an electronic form with separate boxes to be filled in with information about the price, other evaluation criteria (if established by the contracting authority), information from the tenderer about its compliance with the qualification criterion/criteria, requirements of Article 17 of this Law and the tender documents, and uploading the required documents specified by the contracting authority in the tender documents. Documents confirming that the tenderer complies with the qualification criteria/criterion, and documents containing technical description of the procurement item shall be provided in a separate file.

The e-procurement system shall automatically generate a notice of receipt of the tender and send it to the tenderer specifying the date and the time of receipt. The electronic system shall provide for a possibility for everyone to submit tenders on equal conditions.

Each tenderer may submit only one tender (also in respect of a part (lot) of the procurement item as defined in the tender documents). Received tenders shall be automatically registered in the register, the form of which shall be established by the Authorized Agency.

2. A tender shall contain confirmation of the provision of the tender security by the tenderer, if such security is required in the announcement of procurement procedure.

3. A tender submitted to the electronic system after the deadline for the submission of tenders shall not be accepted and shall be automatically returned to the tenderer.

4. Tenders shall be valid during the period specified in the tender documents. The contracting authority shall have the right to request the tenderers to extend the validity period of their tenders before the expiry of the said period.

Tenderer shall have the right to:

reject the said request; in such case the tender security provided by the tenderer shall not be forfeited;

satisfy the request and extend the validity period of the submitted tender and the provided tender security.

5. Tenderer shall have the right to amend or withdraw its tender before the deadline for submitting tenders without its tender security being forfeited. Such amendments or statement of tender withdrawal shall be taken into consideration, if received via the e-procurement system before the deadline for submitting tenders.

#### Article 26. Procurement Contract Performance Security

1. Contracting authority shall have the right to request the successful tenderer to provide the procurement contract performance security by the date of the procurement contract, if the tender documents require the provision of such security. Contracting authority shall return the procurement contract performance security after the successful tenderer completes the performance of the contract, as well as in case the results of the procurement procedure or the procurement contract have been recognized invalid in court in the events provided for in Article 37 of this Law, and in accordance with the terms and conditions laid down in the contract, within five banking days of the day when the said circumstances occur.

2. The amount of the procurement contract performance security shall not exceed 5 per cent of the contract value.

3. The funds provided as the procurement contract performance security (in the event they are not subject to return) shall be transferred to the relevant budget, or, if procurement is made by legal entities (their associations) that receive no financing from the budget, they shall be transferred to the account of the relevant entity (association).

#### Article 27. Tender Opening

1. Tenders with the information and documents confirming the tenderers' compliance with the qualification criteria and information and documents describing technical specifications of the procurement item shall be opened automatically by the e-procurement system immediately upon completion of the e- auction. Information about prices/discounted prices shall be opened automatically before the start of the e-auction.

If the announcement of a procurement procedure is published according to the provisions of paragraph 4 of Article 10 of this Law, on the date and at the time of expiry of the term for submitting tenders as specified in the announcement of the procurement procedure, the e-procurement system shall automatically open the part of the tender with information and documents confirming that the tenderer complies with the qualification criteria, and information and documents containing technical description of the procurement item.

2. While opening tenders, full information contained in the tenders shall be disclosed automatically, and the list of tenderers shall be created and sorted from minimum to maximum price/adjusted price. Information that is reasonably classified by the tenderer as confidential shall not be subject to disclosure. Confidential information shall not include information on proposed price, other evaluation criteria, technical conditions, technical specifications and documents confirming compliance with the qualification criteria under Article 16 and requirements established by Article 17 of this Law.

3. The minutes on tender opening shall be automatically generated and published by the e-procurement system on the day of the tender opening in the form prescribed by the Authorized Agency.

#### Article 28. Consideration and Evaluation of Tenders

1. Tenders shall be automatically evaluated by the e-procurement system based on the criteria and methods of evaluation specified by the contracting authority in the tender documents and by way of applying an e-auction.

If the announcement of a procurement procedure is published according to the provisions of paragraph 4 of Article 10 of this Law, only those tenders that were not rejected under this Law shall be subject to evaluation.

The evaluation criteria shall be the following:

when procurement of supplies, works and services that are manufactured, performed and provided otherwise than based on a particular specification (technical design document) and for which a continuous market exists — price;

in case of complex or specialized procurement items (including consultancy services, scientific research, experiments or design, research and development works) — price along with other evaluation criteria, such as: terms and conditions of payment, completion period, warranty maintenance, maintenance costs, transfer of technology and training of managerial, scientific and production staff.

2. Before the e-auction, information about price and the list of all prices proposed in the tenders sorted from minimum to maximum without specifying the names of and information on tenderers shall be automatically disclosed in the e-procurement system.

If other evaluation criteria are established to apply along with price, indicators of such other evaluation criteria and the discounted price shall be automatically identified by the e-procurement system before the e-auction according to the evaluation methods specified by the contracting authority in the tender documents, following which the information about the discounted price and the list of all discounted prices under the tenders shall be disclosed, sorted from minimum to maximum without specifying the name of and information on tenderers.

During an e-auction, prices proposed in the tenders and the adjusted prices shall be displayed in the electronic system.

3. If other evaluation criteria along with price apply for selecting the most economically advantageous tender, their value equivalent or relative weights in the total score of tender

evaluation shall be indicated in the tender documents. The relative weight of the price criterion shall not be less than 70 per cent, unless a competitive dialogue applies.

4. Once the evaluation of tenders is completed, the contracting authority shall consider the tenders in terms of their compliance with the requirements set in the tender documents, against the list of the tenderers starting from the tenderer whose tender has been recognized as the most economically advantageous based on the evaluation results. The period for considering the tender recognized as the most economically advantageous based on the results of the tender evaluation shall not exceed five business days of the date when it was recognised the most economically advantageous. The period for considering tenders may be reasonably extended by the contracting authority up to 20 business days. If the period for considering tenders is extended, the contracting authority shall publish a relevant notice in the e-procurement system.

In the event of rejecting the tender which is recognized as the most economically advantageous based on the tender evaluation results, the contracting authority shall consider the second most economically advantageous tender coming next in the list of the tenderers.

5. If the announcement of a procurement procedure is published according to the provisions of paragraph 4 of Article 10 of this Law, the contracting authority shall consider tenders in terms of their compliance with the technical requirements set in the tender documents and shall decide if the tenderers comply with the qualification criteria before the automatic evaluation of tender within the period not exceeding 20 business days.

Minutes on tender consideration shall be prepared based on the results of tender evaluation in the form established by the Authorized Agency, and published by the contracting authority on the Authorized Agency's Web Portal pursuant to Article 10 of this Law. When the contracting authority publishes the minutes on tender consideration, the e-procurement system shall automatically send relevant notices to all tenderers, and the list of tenderers whose tenders have not been rejected under this Law shall be published. The date and time of the e-auction shall be assigned by the electronic system automatically, but not earlier than five days after the publication of the minutes on tender consideration.

If, following the results of the tender consideration, tenders of less than two tenderers have been admitted for evaluation, the procurement procedure shall be cancelled.

Contracting authority and tenderers may not initiate any negotiations concerning changes in the text of the submitted tender or the proposed price.

6. Following the results of the evaluation and consideration of the tenders, the contracting authority shall select the successful tenderer and decide on awarding the contract under this Law.

7. Contracting authority shall have the right to request public authorities, enterprises, institutions and organizations to confirm the information provided by a tenderer within the scope of their competence. If there is verified information that a tenderer does not comply with the qualification criteria, or there are grounds specified in Article 17, paragraph 1 of this Law, or it is a fact that the tender of that tenderer contains false information, which is essential for the results of the procurement procedure, the contracting authority shall reject the tender of such tenderer.

#### Article 29. Electronic Auction

1. Electronic auction is a repeated process of lowering prices or adjusted prices taking account of the indicators of other evaluation criteria and based on the formula prescribed by the evaluation method, that has three stages and runs online in real time.

In order to hold an e-auction, prices/adjusted prices of all tenders shall be sorted in the e-procurement system from minimum to maximum without specifying the tenderers' names. The highest price/adjusted price shall be the starting price. Before each following stage of the

auction, the new starting price shall be set based on the results of the previous stage of the auction.

If tenderers proposed the same price/adjusted price, the latest submitted tender among those with the same price shall be the first to reduce the price in the e-auction.

A tenderer may reduce the price/adjusted price of its tender once during each stage of the auction by at least one increment below the previous price/adjusted price.

2. Information about the amount of minimum increment of price reduction during the e-auction shall be included in the announcement of the procurement procedures expressed as percentage or monetary units, and the mathematical formula to be used during the e-auction to calculate the indicators of other evaluation criteria.

3. During each stage of the e-auction, all the tenderers shall be provided access to the auction process, in particular, to the information about the position of their prices or adjusted prices in list sorted from maximum to minimum in the e-procurement system at each stage of the auction, and the information about the number of tenderers at the current stage of the e-auction without specifying their names.

#### Article 30. Rejection of Tenders

1. Contracting authority shall reject a tender if:

1) the tenderer:

fails to meet the qualification criterion/criteria set in Article 16 of this Law;

failed to provide a tender security, if so required by the contracting authority;

2) the successful tenderer:

refused to sign the procurement contract according to the requirements of the tender documents or the requirements to the procurement contract award;

failed to provide documents confirming the lack of grounds provided for by Article 17 of this Law;

3) there are grounds specified in Article 17 and Article 28, paragraph 7 of this Law;

4) the tender does not comply with the requirements set out in the tender documents.

2. Information about rejection of a tender shall be published in the e-procurement system within one day of the relevant decision, and a relevant notice shall be automatically send to the (successful) tenderer whose tender was rejected via the e-procurement system.

3. If the tenderer whose tender was rejected believes that the arguments indicated in the notice are not sufficient, such tenderer may once again request the contracting authority to provide additional information about the reasons of non-compliance of its tender with the requirements of the tender documents, in particular, with technical specifications, and/or its non-compliance with the qualification criteria, and the contracting authority shall provide such information to the tenderer within five days upon receipt of the request via the e-procurement system.

#### Article 31. Cancelling Procurement Procedures by the Contracting Authority or Recognizing a Procurement Procedure Void



1. Contracting authority shall cancel the procurement procedure if:  
there is no further need for the procurement of supplies, works and services;  
it is impossible to remedy violations caused by the detected infringements of the public procurement legislation;  
there is an infringement of the procedure of publication of the announcement of a procurement procedure, notice of intent to award a contract as prescribed by this Law;  
less than two tenders were submitted, or, in case of procurement under framework agreements from several tenderers — if less than three tenders were submitted;  
less than two tenders were admitted for the evaluation, or, in case of procurement under framework agreements with several tenderers — if less than three tenders were submitted;  
all tenders were rejected in accordance with this Law.

Cancellation of a procurement procedure on the above grounds shall be clearly provided for in the tender documents.

A procurement procedure may be cancelled partially (in respect of a particular lot).

2. Contracting authority shall have the right to declare a procurement procedure void if:  
the price of the most advantageous tender exceeds the amount envisaged by the contracting authority for financing the procurement operation;  
procurement has become impossible due to force majeure;  
budget allocations for the procurement of supplies, works and services were reduced.

Contracting authority shall have the right to declare a procurement procedure partially void (in respect of a particular lot).

3. Notice of cancelling the procurement procedure or recognizing it void shall be published by the contracting authority in the e-procurement system within one day of the date of the relevant decision and shall be automatically sent to all the tenderers via the e-procurement system.

#### Article 32. Making Decision on Intent to Award the Procurement Contract

1. Decision on intent to award the procurement contract shall be made by the contracting authority on the day of selecting the successful tenderer, and, within one day of the date of such decision, the contracting authority shall publish a notice of intent to award a contract on the Authorized Agency's Web Portal and send it to the successful tenderer. A notice indicating the name and location of the successful tenderer shall be automatically sent to all other tenderers via the e-procurement system.

Any tenderer other than the successful tenderer selected based on the results of tender evaluation and consideration, may request the contracting authority via the e-procurement system to provide information about the tender submitted by the successful tenderer, including about its advantages compared to the tender of the requester, and the contracting authority shall respond to such request within five days of the receipt of such request.

2. Contracting authority shall enter into a procurement contract with the successful tenderer within the period of validity of its tender, but not later than 20 days of the date of the decision on intent to award the procurement contract according to the requirements set out in the tender documents and tender of the successful tenderer. In order to secure the right to appeal against decisions of a contracting authority, a procurement contract may be concluded not earlier

than 10 days of the date of the publication of the notice of intent to award the procurement contract on the Authorized Agency's Web Portal.

3. In the event the successful tenderer refuses to sign the procurement contract in accordance with the requirements set out in the tender documents, or in the event of failure to conclude the procurement contract within the timeframe specified in this Law or the successful tenderer's failure to submit documents confirming the lack of grounds provided for by Article 17 of this Law, the contracting authority shall reject the tender of such tenderer and select the successful tenderer from among the tenderers whose tenders' validity period has not yet expired.

## Section V COMPETITIVE DIALOGUE

### Article 33. Conditions of Applying a Competitive Dialogue

1. Competitive dialogue may be applied by the contracting authority under the following circumstances:

the contracting authority fails to specify the required technical and qualitative characteristics (specifications) (of works) or the type of services, and negotiations with tenderers is needed in order to take an optimal decision concerning the procurement;

the procurement item is consultation, legal services, development of information systems, software, scientific research, experiments or technical developments, research and design, construction works, to which the requirements may be developed only through negotiations.

### Article 34. Competitive Dialogue Procedure

1. Information about the competitive dialogue procedure shall be published on the Authorized Agency's Web Portal in accordance with Article 10 of this Law in the form established by the Authorized Agency. Information necessary for the tenderers to take part in the procurement procedure shall be included by the contracting authority in the tender documents.

2. Competitive dialogue shall be held in two stages.

At the first stage, all tenderers shall be invited to submit a tender to provide information on their compliance with the qualification criteria, requirements established by the contracting authority in the tender documents, and description of the procurement solution without naming the price.

Information with the description of the procurement solution at the first stage of the competitive dialogue shall be submitted in a tender as a separate file.

The tender documents at the first stage shall include only evaluation criteria, qualification criteria to the tenderers according to Article 16, requirements established by Article 17 of this Law, and information about the method of documentary confirmation of the tenderers' compliance with the established criteria and requirements according to the legislation, proposals concerning technical, qualitative and other characteristics of the procurement item, terms and conditions of supply, time and place, at which the works will be performed or services will be provided.

The term for submitting tenders at the first stage of a competitive dialogue shall not be less than 30 days of the date of the publication of the notice on holding the competitive dialogue on the Authorized Agency's Web Portal under Article 10 hereof.

As a result of the tender opening procedure at the first stage of the competitive dialogue, all information included in the tenders shall be automatically disclosed, except for the description of procurement solution to be disclosed to the contracting authority only.

Following the tender opening procedure, the contracting authority shall consider the tenders in terms of their compliance with the requirements established in the tender documents in respect of the first stage. All tenderers whose tender were not rejected, if there are at least three such tenderers, shall be invited by the contracting authority to participate in the negotiations.

The contracting authority shall hold negotiations with each tenderer separately, and joint meetings with all tenderers may be held additionally. All aspects of procurement may be discussed during the negotiation for the purposes of identifying means and solutions in respect of the work or services to be procured. In the course of negotiations, the contracting authority shall not apply a discriminating approach to different tenderers, nor disclose the proposed solutions or other confidential information to other tenderers that was received from the tenderer participating in the negotiations, without the consent of the latter.

The contracting authority shall hold the dialogue before selecting the procurement solution. Following the dialogue, the contracting authority shall modify the tender documents in terms of the technical requirements and requirements to the quality of procurement item or shall set out new characteristics of the procurement item according to this Law, and invite all tenderers who participated in the dialogue to participate in the second stage.

At the second stage, the tenderers shall be required to submit their final tenders and propose their price. The term for submitting tenders at the second stage shall be at least 15 days of the receipt of invitation to participate in the second stage. Consideration and evaluation of tenders at the second stage shall comply with the requirements set out in Article 28 of this Law.

The contracting authority shall award the procurement contract to the successful tenderer according to the requirements of this Law.

## Section VI NEGOTIATED PROCEDURE

### Article 35. Conditions for Applying a Negotiated Procedure

1. Negotiated procedure is an exceptional procedure used by the contracting authority where the contracting authority awards a procurement contract after holding negotiations with one or several tenderers.

During the negotiations, the contracting authority shall request the tenderer to provide documentary confirmation of the tenderer's compliance with the qualification requirements in accordance to Article 16 of this Law.

2. The contracting authority shall apply the negotiated procedure, as an exception, in the following cases:

1) procurement of works of art, procurement related to the protection of intellectual property rights, or entering into a procurement contract with the winner of an architectural or artistic contest;

2) there is lack of competition (including for technical reasons) in the relevant market, and, as a result, the procurement contract may be concluded with only one supplier, provided that there is no alternative;

3) there is an urgent need for the procurement due to special economic or social circumstances that make it impossible for the contracting authorities to comply with the timeframes for the competitive procurement procedures, i.e. in cases related to the urgent elimination of consequences of emergencies, as well as provision of the humanitarian aid by Ukraine to other countries according to the established procedure. Negotiated procedure in such cases shall apply based on the relevant decision of the contracting authority in respect of each particular procedure;

4) the contracting authority has cancelled the procurement procedure twice due to the insufficient number of tenderers, therewith, the procurement item, its technical and qualitative characteristics, and the requirements to the tenderers shall not differ from the requirements established by the contracting authority in the tender documents;

5) there is a need for additional procurement from the same supplier in order to ensure unification, standardization or compatibility with the existing supplies, technologies, work or services, if replacement of the previous supplier (work contractor or service provider) can result in incompatibility or cause technical problems associated with operation and maintenance;

6) there is a need to perform additional construction works not included into the original project, but which turned out to be necessary for the completion of the project due to force majeure circumstances, provided that the contract will awarded to the previous contractor for the said works, if these works are technically or economically related to the master (original) contract; the total value of additional works will not exceed 50 per cent of the master (original) contract value;

7) procurement of legal services related to the protection of the rights and interests of Ukraine, including legal protection of national security and defence, in a dispute settlement procedure, representation in proceedings in foreign jurisdictions that involve a foreign entity and Ukraine based on the relevant decision of the Cabinet of Ministers of Ukraine or decisions of the National Security and Defence Council of Ukraine enforced pursuant to the law.

3. Based on the results of negotiations held with the tender(s), the contracting authority shall decide on its intent to award the contract. The notice of intent to award the contract shall be published free of charge on the Authorized Agency's Web Portal within one day of the date of the decision and shall contain:

name and location of the contracting authority;

name, quantity of supplies, place of their delivery, type of works and place of their performance, or type of service and place of its provision;

deadlines for the delivery of supplies, performance of works, or provision of services;

name, location and contact telephone numbers of the tender(s) with whom negotiations were held;

proposed price;

reasons for applying a negotiated procedure.

Contracting authority shall have the right to award a procurement contract based on the results of the negotiated procedure not earlier than 10 days (five days if the negotiated procedure applies on the grounds listed in sub-paragraph 3 of paragraph 2 of this Article, as well as in cases of procurement of crude oil and oil products, electric power, services of its transmission and distribution, district heat supply, district hot water supply, district heating, postal services, stamps and stamped envelopes, telecommunication services, including transmission of radio and television signals, district water supply and/or sewerage, public rail transportation services) following the date of publication of the notice of intent to award the contract based on the results of the applied negotiated procedure on the Authorized Agency's Web Portal.

4. Negotiated procedure shall be cancelled by the contracting authority in the following cases:

the contracting authority committed a violation that has affected the objective selection of the successful tenderer in the procurement procedure;

it is impossible to remedy violations caused by the detected infringements of the procurement legislation;

there is no further need for the procurement of supplies, works and services;

budget allocations for the procurement of supplies, works and services were reduced;

if the tenderer failed to sign the procurement contract within a period of 35 days (20 days if the negotiated procedure applies on the grounds listed in sub-paragraph 3 of paragraph 2 of this Article, as well as in cases of procurement of crude oil and oil products, electric power, services of its transmission and distribution, district heat supply, district hot water supply, postal services, stamps and stamped envelopes, telecommunication services, including transmission of radio and television signals, district water supply and/or sewerage, public rail transportation services) following the date of publication of the notice of intent to award the contract based on the results of the applied negotiated procedure on the Authorized Agency's Web Portal.

The negotiated procedure may be partially cancelled by the contracting authority (in respect of a particular lot).

## Section VII PROCUREMENT CONTRACT

### Article 36. Main Requirements to Procurement Contracts

1. A procurement contract shall be concluded in accordance with provisions of the Civil Code of Ukraine and the Commercial Code of Ukraine, subject to the specific rules established by this Law.

2. The successful tenderer, when entering into the contract, shall provide a permit or a license for a specific business activity, if the legislation requires such permit or license to be obtained to run the relevant business.

3. Contracts that provide for payments for supplies, works and services before/or without holding procurement procedures shall be prohibited, except for the cases specified in this Law.

4. The terms and conditions of the procurement contract shall not deviate from the tender submitted as a result of the auction (also in terms of the price for an item of supplies) by the successful tenderer, or the price offered by the tenderer in case of application of the negotiated procedure. The essential terms and conditions of the procurement contract may not be modified after signing it and until the parties thereto fulfil their obligations thereunder in full, unless:

1) the scope of procurement has reduced, particularly in view of the actual expenditures of the contracting authority;

2) the price for a unit of supplies changed by maximum 10 per cent in case of price fluctuations for such supplies in the market, and provided that such an adjustment does not increase the amount specified in the contract;

3) improvement of the quality of the procurement item, provided that such improvement will not result in the increase in the amount specified in the contract;

4) duration of the contract was prolonged, i.e. the term for the fulfilment of obligations related to the conveyance of supplies, the performance of works and the provision of services in

case of occurrence of documented objective circumstances that caused such prolongation, including the force-majeure, a delay in financing the contracting authority's expenditures, provided that such changes will not result in the increase in the amount specified in the contract;

5) a lower price was agreed on (for the same quantity (scope) and quality of supplies, works and services);

6) the price was changed due to the changed rates of taxes and duties, in proportion to such changed rates;

7) the consumer price index established by state statistics bodies under the law changed, or in case of change of the foreign currency exchange rate or Platts quotes and indicators, the regulated prices (tariffs) and rates applicable to the procurement contract if the procurement contract provides for a procedure of price adjustment;

8) the terms and conditions changed in connection with the application of provisions of paragraph 6 of this Article.

5. Duration of a procurement contract may be extended for a period sufficient to hold a procurement procedure at the beginning of the following year, provided that the amount of the procurement does not exceed 20 per cent of the amount specified in the original contract, which was concluded in the previous year, and that the expenses for the said purpose have been approved in accordance with the established procedure.

#### Article 37. Invalid Procurement Contract

1. Procurement contract shall be null and void in the following cases:

violation of the requirement to the award thereof established by Article 36, paragraph 4 of this Law;

it was concluded during the period when a complaint against the relevant procurement procedure was considered in court in accordance with Article 18 of this Law;

non-compliance with the timeframes provided for in Article 32, paragraph 2, Article 35, paragraph 3, indent 8 of this Law, unless such timeframes were suspended in connection with the review of a complaint against the relevant procurement procedure by the Complaint Review Authority in accordance with Article 18 of this Law.

### Section VIII

#### LIABILITY IN THE FIELD OF PUBLIC PROCUREMENT

#### Article 38. Liability for the Violation of Requirements of this Law

1. Members of the contracting authority's tender committee, authorized person(s), members of the Complaint Review Authority, officers (officials) of the Authorized Agency, officers (officials) of authorities in charge of the treasury services (servicing bank) shall be liable in accordance with the laws of Ukraine for the violation of requirements of this Law and regulations developed pursuant to this Law.

2. Members of the tender committee or authorized person(s) shall bear personal liability for the violation of the requirements set out in this Law in terms of the passed decisions, selection and application of procurement procedures.

Section IX  
FINAL AND TRANSITIONAL PROVISIONS

1. This Law shall enter into force on the day following the date of its publication, and shall become binding:

on 1 April 2016 for central executive bodies and contracting authorities operating in certain areas of economic activity;

on 1 August 2016 for the rest of contracting authorities.

2. Article 1, paragraph 1, sub-paragraph 24 and Article 2, paragraph 3, indents 16 and 17 of this Law shall remain in force until 31 March 2019.

3. It shall be established that the Law of Ukraine “On Public Procurement” shall not apply to central executive bodies and contracting authorities operating in certain areas of economic activity since 1 April 2016, but in any case not earlier than this Law comes into force.

4. Contracting authorities for which this Law shall become binding on 01 August 2017 shall be allowed to use the e-procurement system to select suppliers, providers and contractors to enter into procurement contracts with if the contract value is lower than the value established in Article 2, paragraph 1, indent 1 of the Law of Ukraine “On Public Procurement”.

5. The following provisions shall be repealed:

since 1 April 2016, but in any case not earlier than this Law comes into force:

the Law of Ukraine “On Peculiarities of Procurement in Specific Areas of Economic Activity” (Vidomosti of the Verkhovna Rada of Ukraine, 2013, issue no. 17, p. 148, No. 41, p. 551; 2014, No. 22, p. 781, No. 24, p. 883; 2015, No. 46, p. 414);

since 1 August 2016, but in any case not earlier than this Law comes into force:

The Law of Ukraine “On Public Procurement” (Vidomosti of the Verkhovna Rada of Ukraine, 2014, No. 24, p. 883, as amended).

6. Amendments shall be introduced into the following legislative acts of Ukraine:

1) in the Code of Administrative Offences of Ukraine (Vidomosti of the Verkhovna Rada of the Ukrainian SSR, 1984, Annex to the issue no. 51, p. 1122):

article 164<sup>14</sup> shall be reworded to read as follows:

“Article 164<sup>14</sup>. Violation of the Procurement Legislation

Procurement of supplies, works and services without applying the procedures prescribed by law; evaluation of tenders (qualification proposals) otherwise than based on the criteria and methods of evaluation for the selection of the most advantageous tender (qualification proposal) set in the tender documents (qualification documents); concluding a procurement contract with the successful tenderer at prices and for quantities/volumes which are not compliant with the requirements of the tender documents (qualification documents); failure to publish or violation of the procedure of publishing of procurement information according to the requirements of the legislation; failure to present information, documents and materials in cases provided for by law,

shall be punishable by a fine imposed on authorized officials (officers) of seven hundred to one thousand tax-free minimum incomes.

Same actions committed repeatedly by a person who was imposed an administrative fine for any of the infringements provided for in paragraph 1 of this Article within one year following the date of imposing such fine,

shall be punishable by a fine imposed on authorized officials (officers) of one thousand to one thousand five hundred tax-free minimum incomes”;

in sub-paragraph *bodies of the Antimonopoly Committee of Ukraine (Articles 164<sup>3</sup>, 164<sup>14</sup>, 166<sup>1</sup>–166<sup>4</sup>)* of Article 255, part 1, paragraph 1 the numbers "164<sup>14</sup>" shall be deleted;

2) paragraph 5 of Article 4 of the Economic Procedure Code of Ukraine (Vidomosti of the Verkhovna Rada of Ukraine, 1992, issue 6, p. 56) shall be deleted;

3) in the Economic Code of Ukraine (Vidomosti of the Verkhovna Rada of Ukraine, 2003, issues no. 18–22, p. 144):

Article 13, paragraph 3, indent 2 shall be deleted;

the words “of the Law of Ukraine “On implementation of Public Procurement” shall be replaced with the words “of the Law of Ukraine “On Public Procurement” in Article 75, paragraph 1, indent 3, Article 77, paragraph 2, indent 3, Article 78, paragraph 9, indent 3 and Article 79, paragraph 5, indent 3;

4) in the Economic Code of Ukraine (Vidomosti of the Verkhovna Rada of Ukraine, 2003, issues no. 40–44, p. 356):

Article 209, paragraph 1, second sentence shall be deleted;

Article 639, paragraph 4, second sentence shall be deleted;

5) Article 8, paragraph 7 of the Civil Procedure Code of Ukraine (Vidomosti of the Verkhovna Rada of Ukraine, 2004, issues no. 40–42, p. 492) shall be deleted;

6) Article 11, paragraph 2 of the Law of Ukraine “On the Principles of Social Welfare of People with Disabilities in Ukraine” (Vidomosti of the Verkhovna Rada of the Ukrainian SSR, 1991, No. 21, p. 252; Vidomosti of the Verkhovna Rada of Ukraine, 2006, No. 2–3, p. 35; 2010, No. 33, p. 471) shall be deleted;

7) Article 7, paragraph 1, sub-paragraphs 17<sup>1</sup> and 18, paragraph 3, sub-paragraph 19, Article 16, paragraph 1, sub-paragraph 20, Article 17, paragraph 1, sub-paragraph 20 of the Law of Ukraine “On the Antimonopoly Committee of Ukraine” (Vidomosti of the Verkhovna Rada of Ukraine, 1993, issue No. 50, p. 472, as amended) shall be supplemented with the words “and the Law of Ukraine “On Public Procurement”;

8) in the Law of Ukraine “On the State Material Reserve” (Vidomosti of the Verkhovna Rada of Ukraine, 1997, No. 13, p. 112; 1999, No. 40, p. 362; 2004, No. 33–34, p. 403; 2007, No. 9, p. 67; 2010, No. 33, p. 471):

in Article 8, point 1 the words “according to the procedure established by the Law of Ukraine “On Public Procurement” shall be deleted;

Article 9, point 2 shall be deleted;

9) Article 22<sup>1</sup> of the Fundamentals of Ukraine’s Legislation on General Compulsory State Social Insurance (Vidomosti of the Verkhovna Rada of Ukraine, 1998, No. 23, p. 121, as amended) shall be deleted;



10) in Article 15 of the Law of Ukraine “On the National Informatization Program” (Vidomosti of the Verkhovna Rada of Ukraine, 1998, No. 27–28, p. 181; 2002, No. 1, p. 3; 2010, No. 33, p. 471):

second sentence of paragraph 2 shall be deleted;

paragraph 3 shall be deleted;

11) Article 16, paragraph 6 of the Law of Ukraine “General Compulsory State Social Insurance against Unemployment” (Vidomosti of the Verkhovna Rada of Ukraine, 2000, No. 22, p. 171; 2013, No. 24, p. 243) shall be deleted;

12) in Article 51, paragraph 7 of the Law of Ukraine “On Banks and Banking” (Vidomosti of the Verkhovna Rada of Ukraine, 2001, No. 5–6, p. 30; 2006, No. 14, p. 118, 2010, No. 33, p. 471) the words “of the Law of Ukraine “On Public Procurement” (Закону України “Про здійснення державних закупівель”) shall be replaced with the words “of the Law of Ukraine “On Public Procurement” (Закону України “Про публічні закупівлі”);

13) in Article 2, paragraph 21 of the Law of Ukraine “On Insurance” (Vidomosti of the Verkhovna Rada of Ukraine, 2002, No. 7, p. 50; 2010, No. 33, p. 471) the words “holding an open procedure under the Law of Ukraine “On Public Procurement” and” shall be deleted;

14) Article 5, paragraph 4 of the Law of Ukraine “On State Support to Book Publishing Industry in Ukraine” (Vidomosti of the Verkhovna Rada of Ukraine, 2003, issue no. 24, p. 162, 2004, No. 14, p. 195; 2010, No. 33, p. 471; 2011, No. 45, p. 486) shall be deleted;

15) Article 25, paragraph 2, indent 2 of the Law of Ukraine “On Recreation and Health Improvement for Children” (Vidomosti of the Verkhovna Rada of Ukraine, 2008, No. 45, p. 313; 2010, No. 33, p. 471) shall be deleted;

16) Article 11, paragraph 4 of the Law of Ukraine “On General Compulsory State Social Insurance” (Vidomosti of the Verkhovna Rada of Ukraine, 2015, No. 11, p. 75) shall be deleted.

7. Procurement procedures for supplies, works and services commenced before this Law comes into force, shall be completed in accordance with the procedures effective before the date when this Law comes into force.

8. Within a one-month period after this Law enters into force, the Cabinet of Ministers of Ukraine shall:

bring its regulatory documents into compliance with this Law;

cause ministries and other central executive bodies to bring their regulatory documents into compliance with this Law;

cause regulatory documents required for the implementation of this Law to be adopted.

President of Ukraine

PETRO POROSHENKO

Kyiv  
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