The Law of Georgia on State Procurement

Chapter 1

General Provisions

Article 1. The Scope of the Law

1. The present Law sets forth general legal, organizational and economic principles for conducting state procurement.

2. The rules set forth in the present Law apply to all types of state procurement, except for the state procurement related to a state secret set forth in the law of Georgia on State Secret.

3. The list of the objects of state procurement related to state secret set forth in the Law of Georgia on State Secret and the rule for performing procurement thereof shall be developed by the National Security Council of Georgia and approved by the President of Georgia.

3^1. The present Law does not apply to the following state procurement:

a) state procurement related to performing money-and-credit and currency policy by the National Bank of Georgia pursuant to the Organic Law of Georgia on the National Bank of Georgia, except for the procurement under the administrative and capital expenditures budget approved by the board of the National Bank of Georgia, which shall be governed by the present Law;

b) state procurement to be effected with the funds of those legal entities of public law (LEPLs), which are regarded religious organizations under the legislation of Georgia;

c) state procurement of electricity, natural gas and water supply;

(c) state procurement of electricity, reserve capacity, natural gas and water supply (shall become effective from September 1, 2010);

d) state procurement of a motor vehicle for Georgia's diplomatic mission and a consular agency abroad, defense attaché, as well as for a representative of the Ministry of Defense of Georgia and Ministry of Interior of Georgia, except as stipulated in Article 10(3) (f) of the present Law; (shall be removed from December 1, 2010).

d^1 state procurement of a motor vehicle for Georgia's diplomatic mission and a consular agency abroad, defense attaché, as well as for a representative of the Ministry of Defense of Georgia and Ministry of Interior of Georgia, except as stipulated in Article 10^1(3) (e) of the present Law.

e) state procurement to support organizing meetings and visits of the President of Georgia, Chairman of the Parliament of Georgia, Prime Minister of Georgia, a minister of Georgia, state minister of Georgia, and/or mayor of Tbilisi, receptions for the delegations at the Parliament of Georgia and visits of Georgia's parliamentary delegations abroad, provide support with organizing receptions of delegations at the Ministry of Foreign Affairs of Georgia and visits of the Ministry of Foreign Affairs of Georgia delegations abroad, as well as state procurement to be effected using the funds allocated from reserve funds of the President of Georgia, Government of Georgia (GoG) and Tbilisi City Hall;

f) state procurement of services of non-staff workers stipulated in budget classification article "Goods and Services", as well as state procurement to be performed during a business trip;

g) has been removed;

h) state procurement of expert services, provided the procurement of the mentioned services is performed in accordance with Chapter XLIV of the Criminal Procedure Code of Georgia;

i) state procurement of immovable property, as well as that related to the obtaining the right to use immovable property.

j) funding of relevant services/goods of education, health and social protection through a voucher, as well as the transactions of cashing a voucher and those related to cashing thereof;

k) state procurements related to the purchase of TV/radio air time;

l) procurement of services related to distribution and/or receipt of TV/radio products (program, TV show, film, report, cultural event) and/or related services by a LEPL – Public Broadcaster from a non-resident person, as well as distribution and/or receipt of TV/radio products (program, TV show, film, report, cultural event) through a satellite.

m) procurement of sovereign credit rating services and credit rating services related to state securities, as well as the reimbursement to the supplier of the mentioned services of costs accompanying credit rating services;

4. Procurement procedures established by the World Bank (WB), United Nations Organization (UN), European Bank for Reconstruction and Development (EBRD), Asian Development Bank, German Reconstruction Credit Bank (KFW) and the European Investment Bank (EIB) may be applied when performing state procurement, provided these organizations are involved in legal relations related to the effecting of procurement. In case the mentioned organizations are not involved in legal relations related to the performance of procurement, the procedures of these, as well as other organizations may be used only subject to the Government of Georgia (GoG) decree.

5. Shall be removed.

Article 2. Purpose of the Law

The purpose of this law is as follows:

a) ensure rational expenditure of funds designated for state procurement;

b) promotion of healthy competition in the area of the production of goods, provision of services and the performance of construction works necessary for the state;

c) ensure fair and non-discriminatory approach towards the participants of procurements during the performance of public procurement;

d) ensure publicity of state procurement;

e) formation of an integrated electronic system of public procurement and building public confidence thereof.

Article 3. Definition of Terms used in the Law

1. The terms used in this law shall have the following meaning;

a) state procurement – procurement of any goods, services and construction works by a procuring organization in the cases set forth in the present Law, through electronic or other means, with the following funds:

a.a) funds of the State Budget of Georgia and those consolidated in the State Budget;

a.b) funds of the budgets of Autonomous Republics of Abkhazia and Adjara;

a.c) budget funds of a local self-government unit;

a.d) funds of the organizations and institutions funded under Georgia's State Budget, budgets of the Autonomous Republics of Abkhazia and Adjara and local self-government bodies;

a.e) funds received by budgetary organizations, LEPL's and the enterprises envisaged under sub-paragraph (a.h) of the present Paragraph performing state procurement under international agreements in the form of grant or credit from foreign states and international organizations, as well as the funds received from other states' residents in the form of grant and credit, except as stipulated in Article 1(4) of the present Law;

a.f) credit and investment funds received under the state guarantee;

a.g) funds of a LEPL (other than a membership-based LEPL), regardless of the source of origin of these funds, except as stipulated in Article 1 (3^1) (a) and (b) of this Law;

a.h) funds of an enterprise with more than 50% of stocks and shairs owned by the State or a local self-government body, except when the mentioned enterprise when procuring goods or services related to the specificity of its operations is guided by a special rule established by the Government of Georgia for the procurement of these goods or services, which validity may not be over 2 years. The Ministry of Economic Development of Georgia or the Ministry of Regional Development and Infrastructure of Georgia, on the basis of the suggestions by relevant enterprises and local self-government bodies shall develop and submit to the GoG for approval a special rule to be established by the GoG. If the Government of Georgia does not prescribe a special rule procurement shall be effected pursuant to the present Law;

b) procuring organization – an person effecting procurement using the funds set forth in Sub-paragraph (a) of the present Paragraph;

c) object of procurement – goods, services or construction work to be procured;

d) Homogeneous objects of procurement –objects of procurement that are identical, as well as those that are not identical, but have similar components, technical features (specifications) and/or functions. The homogeniosity of the objects of procurement in the cases of simplified procurement, simplified electronic tender and electronic tender shall be established through an international classifier recognized by an authorized body, pursuant to the rule set under a sub-legislative statutory act; (shall be removed from December 1, 2010).

d^1) homogeneous objects of procurement – objects of procurement that are identical, as well as those that are not identical, yet have similar components, technical features (specifications) and/or functions. The homogeniosity of the objects of procurement in the cases of competition, simplified procurement, simplified electronic tender and electronic tender shall be established through an international classifier recognized by an authorized body, pursuant to the rule set under a sub-legislative statutory act; (shall become effective from December 1, 2010).

e) lot – an object of procurement segregated under a single procurement which is not subject to further division. A bidder may submit a tender proposal (a participant in price quotation procedures – an application) for one or more lots, as desired, and a single winner shall be identified for each lot individually (shall be removed from December 1, 2010);

f) goods – property of any type and characteristics (other than immovable property) in solid, as well as liquid or gas condition, as well as services acompanying the supply of goods, provided the value of these services is not higher than the value of goods;

g) construction work (hereinafter “Works”) – any works related to construction, reconstruction, demolition, repair or renovation of a building, structure or another site (including the setting up of a construction site, excavation of earth, construction of a building or structure, installation of equipment, face-lifting and face-lifting works, communication networks set-up works related to construction), as well as the services accompanying construction, such as drilling, geodesic

works, satellite and aerial photography, seismic study and other similar services envisaged under the contract on state procurement, provided the value of such services is not higher than the value of construction work;

h) services – any object of procurement, other than goods and works;

h[1]) a party interested in participating in procurement – a person who is interested to take part in procurement procedures;

i) bidder – a person who has paid a charge and a tender fee (if applicable) in order to participate in state procurement procedure; (shall be removed from December 1, 2010;

i[1]) bidder – a person who has paid a charge in order to participate in state procurement procedure; (shall become effective from December 1, 2010.

j) supplier – a person who has concluded a contract on state procurement with the procuring organization;

k) urgent necessity – the situation that poses real threat to the operation of a procuring organization and which could not have been foreseen, and/or which occurrence is not a result of an action of a procuring organization, or which may cause significant damage to Georgia's state and/or public interests or the property of a procuring organization;

l) registry of black listed participants of the procurement process–maintained electronically by an authorized agency set forth in the present Law and posted on its official web page thereof. The registry shall reflect the information about those black listed persons, bidders and suppliers participating in procurement which are not authorized to participate in state procurement during 1 year from the entry into the Registry. The access to the Registry shall be open to public. The rule and conditions of maintaining the Registry shall be prescribed by a sub-legislative statutory act approved by the Chairman of an authorized body set forth under this law (hereinafter "Sub-legislative statutory act");

m) price quotation – simplified method for procuring goods, services and small-scale works, during which the price criterion is a determinant **(**shall be removed from December 1, 2010**)**.

n) charge – obligatory amount payable to the account of an authorized body set forth in the present Law in the amount as prescribed under the same Law for the submission of the tender proposal, which shall not be subject to return;

o) obligatory amount payable to an account of an authorized body set forth in the present Law in the amount prescribed under the same Law for the submission of a tender proposal or a competitive bid which shall not be subject to return (shall become effective from December 1, 2010)

p) electronic means – facilities that can be used for processing information (including digital processing), receipt and transmission, dissemination, and storing through cable, optical, broadcast and/or other electronic facilities;

q) electronic tender – method of state procurement of homogeneous objects of procurement with 200,000 GEL value and over, which comprises procedures for an electronic tender stipulated in the present Law and sub-legislative statutory act;

r) simplified electronic tender – method of state procurement for homogeneousobjects of procurement with value up to GEL 200,000, which comprises procedures for a simplified electronic tender stipulated in the present Law and the Sub-legislative statutory act. The timeframe of state procurement to be effected under simplified electronic tender shall be at least 3 days;

s) simplified procurement state procurement to be performed in the cases stipulated in Article 10^1 (3) of the present Law, or state procurement of homogeneous objects of procurement with value up to GEL 5,000 (in the cases of procurement of homogeneous objects of procurement with up to GEL 50,000 value by Georgia's diplomatic agency in a foreign state, as well as the procurement of homogeneous objects of procurement with value up to GEL 50,000 in the case of procurement by the Ministries of Georgia of Interior and Defense related to defense, security and the maintenance of public order) **(Shall be removed from December 1, 2011)**;

s^1) simplified procurement – state procurement to be performed in the cases stipulated in Article 10^1 (3) of the present Law, or state procurement of homogeneous objects of procurement with value up to GEL 5,000 (in the cases of procurement of homogeneous objects of procurement with up to GEL 20,000 value by Georgia's diplomatic agency in a foreign state, as well as the procurement of homogeneous objects of procurement with value up to GEL 20,000 in the case of procurement by the Ministries of Georgia of Interior and Defense related to defense, security and the maintenance of public order) (shall become effective from December 1, 2011);

t)Electronic reverse auction (electronic bargaining) – procedure under e-tender and simplified e-tender, during which within the timeframe set forth under the Georgian legislation a bidder may reduce the quoted price through an integrated e-system of state procurement in order to win in the procurement procedure;

u) Shall be removed;

v) consolidated tender – a procedure conducted by an authorized agency stipulated under the present Law in the case set forth by the Government of Georgia for the procurement of a homogeneous object of procurement, during which the best tender proposal is identified;

w) representational expenses – representational expenses stipulated in the Tax Code of Georgia, considering the specificity of the present Law;

x) alternative procurement – alternative procurement of communication services from a different supplier under a procuring entity's justified decision, to ensure stable and safe operation of relevant informational-technological system. In such case, the current supplier of communication services shall not be permitted to participate in procurement procedures. Additional conditions related to alternative procurement shall be prescribed under a sub-legislative statutory act;

y) competition – for the purposes of the present Law, alternative methods of state procurement of design services, which shall be applied subject to a procuring entity decision **(shall become effective from December 1, 2010);**

z) affidavit – for the purposes of the present Law, this is a written document, signatory to which confirms the authenticity of the information and facts provided in the document and is liable for the authenticity of mentioned information and facts according to the rule prescribed under the legislation of Georgia.

2. Has been removed.

3. For the purposes of the present Law, the term " person" means a natural or legal entity of Georgia or a foreign state or another organization stipulated in the legislation of Georgia or that of a relevant state.

4. For the purposes of the present Law, unless an explicit indication is made for a business day, a term "day" shall mean a calendar day.

Article 4. Authorized body

1. The President of Georgia shall determine a body authorized for the activities stipulated in the present Law. An authorized body is an independent LEPL (hereinafter "Agency") which chairman shall be appointed and dismissed by the Prime Minister of Georgia.

2. Legal basis for Agency operations is the Constitution of Georgia, International agreements and treaties, the present Law, and the Agency regulations developed in accordance thereof.

3. The Government of Georgia shall approve structure and regulations of the Agency.

3^1. The Agency shall be reorganized and liquidated under the President of Georgia decree.

4. Government of Georgia shall exercise state control over the Agency activities.

5. The Agency shall be funded from:

a) targeted funds allocated from the State Budget of Georgia;

b) charge paid by an person interested in participating in procurement;

c) other revenues allowable under the legislation of Georgia.

6. Main functions of the Agency shall be as follows:

a) develop and issue statutory acts and standard tender documents required for the operation of this Law, harmonization thereof with international standards;

b) on the basis of reports received from procuring organization perform study, analysis of situation in the field of procurement within the country on a regular basis and submission of suggestions to the Government of Georgia to inform the making of relevant decisions;

c) develop special training programs, training-methodological materials and standard forms of documentation, holding workshops and trainings for central authorities and local self-government bodies, mass media representatives and other interested entities;

d) develop, refine and exercise oversight over an integrated procurement information base;

e) provide advisory-counseling services to procuring organizations;

f) provide support with the introduction of modern information and communication technologies within the procurement system;

g) ensure availability of relevant statutory acts and special bulletin manual to ensure the publicity of procurement;

h) consideration of disputes arising during procurement;

i) conduct oversight over the legality of procurement procedures and establish the policy for regulation of procurement process;

j) maintain registry of black listed participants of the procurement process;

k) maintain a list of qualified suppliers which keeping rule and conditions shall be set forth under a sub-legislative statutory act.

l) in special cases, under a written request by a procuring entity, according to the rule established under a sub-legislative statutory act, determine the homogeny of an object of procurement;

7. To support the operation of an integrated electronic system of procurement and ensure electronic documents turnover throughout the procurement process, the Agency shall be authorized to:

a) keep an electronic copy of and issue any document created or stored thereof;

b) receive, publish or issue any information and/or document through unified automatic means of management;

8. Electronic copies and print-outs of documents stipulated in Paragraph 7 of the present Article shall have the legal force equal to that as these documents.

9. The Agency shall have a banking account. Amounts of interest charged to the banking account belong to the Agency and shall be used towards its goals and objectives.

Article 5. Rights and Obligations of a Chairman of the Agency

1. The Chairman of the Agency:

a) under the rule set forth in the legislation of Georgia issues statutory acts (decrees) which adherence shall be compulsory for procuring organizations and other entities participating in procurement;

b) issues orders related to internal organizational matters;

c) handles the issues assigned under the Agency administration;

d) keeps an eye on the performance of their duties by Agency structural sub-units, exercises control over employee performance according to the established rule;

e) within its competence appoints and dismisses agency employees;

f) administers Agency funds and controls use thereof;

g) according to the established rule submits to the GoG recommendations with regard to the matters assigned within the Agency administration for taking relevant decisions;

2. A chairman of the Agency shall be liable for Agency performance according to the Law-prescribed rule.

Article 6. Supervisory Board of the Agency

1. To ensure transparency of the state procurement system, publicity of the work of the Agency and towards administration according to democratic principles a supervisory board of 7 members (including the chairman of the supervisory board) shall be established ; the members shall be appointed by the GoG for a 4-year term. The statute of the SB of the Agency shall be approved by the GoG. The Supervisory board shall be staffed with the officials in the leadership and the controlling bodies (representatives of the Ministry of Economic Development, Ministries of

Finance and Justice), as well as the representatives of public organizations and mass media. Supervisory board shall operate on a pro bono basis.

2. The supervisory board of the Agency:

a) Has been removed

b) in conjunction with procurement takes into account basic directions of state policy and enables parties of state procurement to feely present their interests at its sittings;

c) draws up an annual performance report and submits to the GoG by April 1 of each following year. The report should be available for public access;

d) within its competence requires procuring organizations to provide any information related to procurements and verifies correctness thereof.

3. A sitting of the Agency supervisory board shall be open to public and its decisions shall be published under the rule set forth in the legislation of Georgia. The rule of protecting the information at the Supervisory board secret shall be prescribed by the legislation of Georgia.

4. Rule of operation of Agency supervisory board shall be set forth in the regulations of the supervisory board.

Article 7. Rights and obligations of a procuring organization

1. A procuring organization shall be authorized to:

a) in compliance with the rules set forth by the present Law and relevant statutory acts select a supplier and conclude contract on state procurement (hereinafter Contract) thereof;

b) undertake disqualification of bidders under the rule set forth by this Law;

c) suspend or terminate procurement procedure at any time prior to the conclusion of the Contract, provided this is necessitated due to the reasons beyond its control and objective reasons that could not have been foreseen, as well as based on Georgia's state and/or public interests **(shall be removed from December 1, 2010)**;

c^1) in cases of simplified procurement, simplified e-tender and e-tender terminate procurement procedure at any time before the conclusion of the Contract, provided this is necessitated due to the reasons beyond its control and objective reasons that could not have been foreseen, as well as based on Georgia's state and/or public interests;

d) exercise control and oversight over the fulfillment by the supplier of contract terms;

e) pursuant to the legislation of Georgia suspend or terminate the contract in case the qualification data submitted by the supplier appear to be false, as well in other cases envisaged by the legislation of Georgia.

2. Procuring organization shall:

a) conduct procurement in a rational manner and by respecting Georgia's state interests within the limits of allocations thereof, in compliance with the rules set forth in this law and relevant statutory acts;

b) Has been removed;

c) submit to the Agency reports on performed procurements pursuant to the rule set forth in Article 22 of the present Law;

d) reimburse a supplier for the value of goods, works, and services upon the supply of goods, performance of works and the provision of services, unless stipulated otherwise in the Contract;

d^1) suspend procurement procedure in case an action of a procuring organization is appealed under the rule prescribed by the present Law prior to the conclusion of a contract (shall be removed from December 1, 2010)

$d^{1.}$a) only after the completion of e-reverse auction – immediately upon receiving information on appealing;

$d^{1.}$b) in the case of a consolidated tender, in the cases envisaged under a sub-legislative statutory act – immediately upon receiving information on appealing;

d^2) suspend a procurement procedure in case an action of a procuring organization is appealed under the rule prescribed by the present Law prior to the conclusion of a contract;

d^2.a) only after the completion of e-reverse auction – immediately upon receiving information on appealing;

d^2.b) in the case of a consolidated procurement or competition, in cases envisaged under a sub-legislative statutory act – immediately upon receiving information on appealing; (shall become effective from December 1, 2010);

e) in case procurement procedure is suspended pursuant to Paragraph 1(c) of the present Article, it shall execute such procurement only through the resumption of the suspended one; **(shall be removed from December 1, 2010);**

f) when suspending or terminating procurement procedures in cases stipulated in the present Article, inform the Agency and all bidders about this decision and basis thereof within no later than 3 working days from the taking of such decision. Moreover, when terminating procurement

procedures a procuring organization shall not be obligated to present to the bidders specific evidence or detailed information on which it based this decision. When suspending or terminating procurement procedures a procuring organization shall not be obligated to reimburse costs related to the participation in procurement except for a tender fee.

(f) when suspending or terminating procurement procedures in cases stipulated in the present Article, inform the Agency and all bidders about this decision and basis thereof within no later than 3 working days from the taking of such decision. Moreover, when terminating procurement procedures a procuring organization shall not be obligated to present to the bidders specific evidence or detailed information on which it based this decision. When suspending or terminating procurement procedures a procuring organization shall not be obligated to reimburse costs related to the participation in procurement except for a tender fee. (Shall become effective from December 1, 2010.)

2^1. If following the suspension of a procurement procedure a procuring organization takes a decision to procure the same object it shall be obligated to perform the mentioned procurement (if it is processed using the same year's allocations) by way of resuming the suspended procedure. For this the procuring organization approaches all entities participating in suspended procurement to reconfirm qualification data, submit tender proposals and accompanying documents and a tender fee payment receipt.

(2^1. If following the suspension of a procurement procedure a procuring organization takes a decision to procure the same object, it shall be obligated to perform the mentioned procurement (if it is processed using the same year's allocations) by way of resuming the suspended procedure. For this the procuring organization approaches all entities participating in suspended procurement to reconfirm qualification data, submit tender proposals and accompanying documents. Shall become effective from December 1, 2010)

3. Responsibility for compliance with the rules and norms set forth in the present Law and relevant statutory acts, and rational performance of procurement fully rests with the procuring organization.

Article 8. Conditions for avoiding the conflict of interest (COI)

1. The conditions and rules for the avoidance of the COI apply to the following activities related to the performance of state procurement:

a) review, selection and evaluation of qualification data and tender proposals;

b) holding negotiations in cases envisaged under the present Law and the sub-legislative statutory act;

c) control and oversight over the performance of the contract;

d) selection of a supplier (in case of price quotation and sole source procurement) **(shall be removed from December 1, 2010)**;

e) selection of a supplier in case of a simplified procurement;

f) review of competitive bids and selection of a supplier through competition (shall become effective from December 1, 2010).

2. A person performing an activity set forth in Paragraph 1 of the present Article shall be in the conflict of interest with a bidder or a supplier in case they are related as stipulated under Article 23 of the Tax Code of Georgia.

3. It shall be inadmissible for a bidder or a supplier to exert a direct or indirect influence over a person performing activities set forth in Paragraph 1 of this Article towards the taking a decision favorable thereof.

4. After a person performing activities set forth in Paragraph 1 of the present Article learns about the identity of a bidder or supplier, he/she shall certify in writing that his involvement in the execution of this procurement does not cause the COI.

5. If a person performing activities stipulated in Paragraph 1 of this Article turns out to be in the COI, it should immediately declare on the above-mentioned and cease any involvement in the implementation of state procurement procedures.

Article 9. Planning procurement

1. A procuring organization shall perform procurement in accordance with a pre-established and approved annual plan, which format and the rule of development shall be stipulated in a sub-legislative statutory act. The case of performing a long-term procurement shall be notified to the Agency after the Ministry of Finance of Georgia and/or a finance unit of a relevant local self-government body approval is obtained. Long-term procurement shall be reflected in a procurement plan for a relevant budget year on an annual basis. Procurement shall not be regarded long-term if it is performed only using the allocations envisaged during the current budget year, while the supply is effected during the following budget year. The National Bank of Georgia effects long-term procurements without agreement with the MOF of Georgia.

2. Annual procurement plan may not be in contradiction with the Law of Georgia on State Budget for a relevant year.

3. Procurement of homogeneous goods, services or works during a budget (fiscal) year by a procuring organization shall be regarded one procurement if it is funded under a single source. It

shall be inadmissible to deliberately split procurement to avoid monetary thresholds which are set forth in the present Law.

4. Annual procurement plan shall be approved by the head of a procuring organization and submitted to the Agency within no later than 20 calendar days from the effective date of the State Budget of Georgia, budgets of Abkhazia and Adjara Autonomous Republics, relevant statutory act on the budget of a local self-government body, except for the entities performing procurement using the funds set forth under Article 3(1)(a.g.) and (a.h.) of the present Law, that shall submit an annual procurement plan to the Agency by no later than February 20.

5. If a procuring organization is established (founded) or receives an additional funding source from the funds stipulated in Article 3(1)(a.e.) and (a.f.) of this Law, head of a procuring organization shall approve annual procurement plan and submit thereof to the Agency by no later than the 20th of a month following the month of establishing (founding) or following the receipt of this additional funding.

6. The following shall be taken into account during the design of an annual procurement plan draft:

a) necessity to perform procurement;

b) homogeny of the objects of procurement and the possibility of breaking down thereof into lots;

(b) homogeny of the objects of procurement; shall become effective from December 1, 2010)

c) experience in conducting similar procurement;

d) specify the object of procurement (goods, works, services), their technical and qualitative features, such as quality, operation, safety, dimensions, packaging, labeling and marking, production methods and processes, symbols, terms, conformity requirements set by a procuring organization, etc;.) as well as the timeframes and place of delivery;

e) results of a market survey aimed at the identification of potential suppliers and defining the terms and conditions of a contract acceptable to a procuring organization;

e^1) object of procurement, if applicable, which procuring organization agrees to purchase under a consolidated tender;

f) basis for the selection of a method of procurement, estimated timeframe of procurement procedures;

g) quantity of goods to be supplied, volume of works to be performed or of services to be provided considering the existing supplies;

g) estimated value of objects of procurement;

h) costs associated with the performance of procurement;

i) current year's financial liabilities stipulated under long-term contracts or contracts concluded in a previous year;

j) estimated timeframe of discharge of the concerned contract;

k) other circumstances related to procurement.

7. The provisions of the present Article shall not apply to the cases stipulated in Article 1(4) of the the present Law.

Chapter 2

Methods of Procurement

Article 10. Methods of Procurement (shall be removed from December 1, 2010)

1. Unless otherwise envisaged under the present Article, procurement shall be effected through a tender.

2. At the decision of a head of a procuring organization price quotation may be used for the procurement of those goods or services, which estimated value is less than GEL 100,000, as well as for the procurement of works which estimated value is less than GEL 200,000.

3. Procurement may be effected through sole source, provided:

a) estimated value of goods or services to be acquired is not over GEL 50,000 and estimated value of works – not over GEL 100,000;

b) supply of goods, performance of works, or the provision of services is an exclusive right of just a single entity;

c) in case of urgent necessity, herewith, in such cases the quantity of goods, volume of works or services to be acquired should not go beyond the timeframes required for resolving the problems caused by urgent necessity;

d) to avoid the worsening of quality of an object purchased from a supplier and/or ensure its further operation it is necessary to procure from the same supplier, save the cases when estimated value of the object of procurement concerned is higher than the value of the initial supply;

e) performance of procurement has been set forth under the presidential and/or GoG statutory act in order to support unimpeded performance of the activities of state and public importance in limited timeframe.

f) one or more pieces of procured motor vehicles and computer equipment are being replaced by new motor vehicles and computer equipment that have the same or improved features; in such case the portion of the value of a new motor vehicle and computer equipment shall be reimbursed by way of returning motor vehicle and computer equipment procured earlier to the supplier or transfer thereof to another natural or legal person, who sells similar products (goods).

g) state procurement related to representational expences is conducted;

h) state procurement is conducted by way of payment of fees set forth under the statutory act of Georgia;

4. Head of a procuring organization or a person (persons) authorized thereof under the rule prescribed by the legislation of Georgia shall conduct the sole source and price quotation procedures.

5. Has been removed;

6. Has been removed;

Article 10^1. Methods of electronic state procurement

1. Electronic state procurement shall be effected through a simplified e-tender or e-tender.

2. At the decision of a procuring organization, simplified procurement may be performed electronically.

3. State procurement may be effected through simplified procurement, provided:

a) supply of goods, performance of work, or the provision of services is an exclusive right of just a single entity and a reasonable alternative to substitute the object of procurement is absent;

b) in case of urgent necessity; in such case the quantity of goods, volume of works or services to be procured should not go beyond the timeframes necessary for resolving the problems resulting from urgent necessity;

c) at the decision of a procuring organization, to avoid the worsening of quality of an object procured from a supplier and/or to ensure its further operation it is necessary to undertake procurement from the same supplier or a sub-contractor envisaged under an contract concluded with the same supplier, save the case when estimated value of an object of procurement concerned is higher than the value of an object procured originally;

d) performance of procurement has been set forth under the presidential and/or GoG legal act in order to support unimpeded performance of an activity of state and public importance in limited timeframes.

e) one or more procured motor vehicles and computer equipment are being replaced by new motor vehicles and computer equipment that have the same or improved features; in such case the portion of the value of a new motor vehicle and computer equipment shall be reimbursed by way of returning motor vehicle and computer equipment procured earlier to the supplier or transfer thereof to another natural or legal person that sells similar products (goods).

f) state procurement related to representational expenditures is conducted;

g) procurement is performed through the payment of duties set forth under a statutory act of Georgia;

4. It shall be inadmissible to deliberately break down procurement to avoid the monetary thresholds of methods of procurement set forth under the present Law.

5. At the decision of a procuring organization, the procurement of homogeneous objects of procurement may be effected in phases during a single budget (fiscal) year, by utilizing the methods of state procurement relevant to the monetary thresholds set forth under this law against the total value of the object of procurement.

6. At the decision of a procuring organization, simplified procurement may be effected-by using procedures established for simplified electronic tender or e-tender, and simplified e-tender may be performed by using procedures established for e-tender.

7. The provisions related to the lots stipulated in Article 9(6)(b) of the present Law do not apply to the methods of electronic state procurement stipulated in this Article (this paragraph shall be valid until December 1, 2010)

8. Procurement using the amounts remaining following the conclusion of procurement contract may be allowable subject to adherence to the limits set forth under the present law **(shall be removed).**

Article 10^2 Competitive selection

1. State procurement of design services, at the decision of a procuring entity, may be effected through a competitive selection, a method of state procurement different from simplified procurement, simplified e-tender and electronic tender.

2. The rule and terms of holding a competition are prescribed by a sub-legislative statutory act.

Chapter 3

Tender

(Electronic Tender

Shall become effective from December 1, 2010)

Article 11. Rule of forming and operation of a tender commission

1. Tender shall be conducted by a tender commission of at least 5 members, which shall be formed by a head of a procuring organization. In case the number of relevant candidates is not sufficient, commission may be comprised of 3 members (shall be removed from December 1, 2010).

1[1]. An electronic tender is conducted by a tender commission of at least ~~5~~3 members that is formed by a head of a procuring organization.

2. Head of a procuring organization and/or deputies thereof, heads of structural sub-units of this organization shall be designated as members of the tender commission. In case the number of relevant candidates is not sufficient other employees of the procuring organization may also be designated as members of the commission.

3. Tender commission shall be chaired by the head of a procuring organization or a person designated thereof.

4. Has been removed.

5. Under the tender commission decision relevant sectoral experts may be invited to the commission as experts and consultants and they will hold a consultative vote.

5[1]. Has been removed.

6. To provide technical and organizational support to the operation of the tender commission under the decision of a head of procuring organization an apparatus of the tender commission shall be set up from among the employees of this organization, which shall be headed by the chairman of the tender commission.

7. Tender commission shall take decision with the majority of the commission members on the list. A member of a tender commission who disagrees with the decision of the commission shall have the right to submit opinion thereof in writing, which shall be attached to the decision of the tender commission. In case the votes are distributed evenly, the vote of a tender commission chairman shall be decisive. In the case envisaged under Article 15(9) of the present Law – when

the scores are distributed evenly, the identification of a winning candidate from among the bidders with equal scores shall be done on the basis of a written decision by the chairman of the tender commission (shall be removed from December 1, 2010)

7^1. In case of a simplified e-tender or e-tender, a tender commission shall take decision with the majority of the commission members on the list. A member of a tender commission who disagrees with the decision of the commission shall have the right to submit opinion thereof in writing, which shall be attached to the decision of the tender commission. In case the votes are distributed evenly, the vote of a tender commission chairman shall be decisive. The tender commission shall take a decision on a winning bidder of a simplified e-tender and e-tender according to the rule prescribed by a sub-legislative statutory act.

8. The minutes shall be drawn up about tender commission sitting which shall be signed by members of the commission present at the sitting.

Article 12. Tender announcement (shall be removed from December 1, 2010)

1. When holding a tender a tender commission shall publish the tender announcement on behalf of the procuring organization:

a) an information medium stipulated in a sub-legislative statutory act approved by the chairman of the Agency;

b) in one of the languages accepted in international trade, in the periodic or special publications of foreign states that are widely disseminated internationally, and shall send this announcement to diplomatic and consular agencies of foreign states accredited in Georgia in case the estimated value of goods or services subject to procurement is over GEL 600,000, and if estimated value of works is over GEL 8,000,000.

2. Georgia's diplomatic agencies abroad shall publish tender announcement in periodic or specialized publications of foreign states that are widely disseminated internationally, and/or on Internet web site of the given diplomatic agency.

3. When holding a tender, if necessary, a tender commission shall use additional means for the dissemination of a tender announcement. Herewith, tender announcement shall first be published in an information medium designated under a sub-legislative statutory act approved by the Agency chairman. Respectively, the counting of the timeframes envisaged by the announcement shall commence from the date of announcement of tender in an information medium prescribed under the above-mentioned statutory act.

4. The tender announcement shall contain the following:

a) details of a procuring organization;

b) estimated value of an object of procurement (according to lots, if applicable).

c) type, quality of the object of procurement, timeframes place and form of performance of work or the provision of services. Quantity of goods, volume of works or services to be provided;

d) deadline, location and language of submission of qualification documents and tender proposals;

e) documents evidencing qualification data;

f) rule, deadline, location of picking up and the language of tender documents;

f^1) amount of tender proposal security guarantee (if applicable);

g) rates of tender fee and charge;

h) possibility to review tender documents at a procuring organization premises prior to the payment of tender fee;

i) Has been removed;

j) Alternative rule of submission of tender proposals by bidders and opening envelopes by a procuring organization (if applicable);

4^1. Along with the data stipulated in Paragraph 4 of this Article a tender announcement may also indicate other data which indication procuring organization will deem necessary to describe an object of procurement.

5. Tender announcement shall be approved by the tender commission.

6. Tender commission shall publish a tender announcement at least 20 days before launching the submission of qualification documents and tender proposals.

7. Tender commission shall be authorized to modify information indicated in a tender announcement (other than the object of procurement). These modifications shall be published in the same media as the tender announcement.

8. The modifications entered in the tender announcement shall be published no later than 5 days before the expiration of deadline for the submission of qualification documents and tender proposals.

Article 12^1. E-tender Announcement and tender documents

1. When holding e-tender tender commission shall publish e-tender announcement and tender documents on behalf of the procuring organization through an integrated electronic system, in Georgian. At the decision of a procuring organization, e-tender announcement may also be published in the English language. If estimated value of goods or services to be procured is over GEL 500,000, and estimated value of works is over GEL 1,000,000, publishing e-tender announcement in English shall be mandatory.

2. E-tender~~,~~ announcement and tender documents shall first be posted in an integrated electronic system. Hence, the counting of period envisaged under announcement shall commence from the date of posting the e-tender announcement and tender documents in the integrated electronic system. Further, tender commission shall publish e-tender announcement in newspaper 24 Hours.

(2. E-tender announcement and tender documents shall first be posted in the integrated electronic system. Hence, the counting of timeframe envisaged under announcement shall commence from the date of posting e-tender announcement and tender documents in the integrated electronic system. When holding e-tender, if necessary, tender commission shall use additional medium for disseminating e-tender announcement and tender documents. **Shall become effective from August 1, 2012)**.

3. E-tender announcement form, data to be indicated in the announcement, the rule of publishing and posting in the integrated electronic system shall be prescribed under the sub-legislative statutory act.

3^1. When conducting state procurement through the integrated electronic system it shall be obligatory to submit a tender proposal security guarantee to the Agency through the integrated electronic system. The rule and conditions of submission of the guarantee to the Agency, types and amount of guarantee shall be prescribed under the sub-legislative statutory act.

4. Tender commission shall approve tender documents.

5. Tender documents shall contain:

a) the qualification requirements a bidder is to meet;

b) Has been removed;

c) Has been removed;

d) quantity of goods, volume of works or services to be procured, timeframes, location and way of the supply of goods, performance of work or provision of services;

e) complete description of technical and qualitative features of an object of procurement, including relevant technical specifications, designs, drawings and sketches, as well as alternative

technical and qualitative features of an object of procurement, provided procuring organization allows this;

f) those mandatory provisions of the contract which the procuring organization is aware of in advance, as well as reference as to the format of the contract form and contract security guarantee (if applicable);

g) methods to be applied to calculate the value of a tender proposal indicating whether or not it should contain expenditures other than the value of goods, works or services (transportation, insurance, taxes, etc.);

h) reference to currency in which the value of tender proposal is to be calculated **(shall be removed)**;

i) means and procedures for requiring additional information and clarifications about tender documents;

j) names and contact details of a member or members of the apparatus of the tender commission that are authorized to issue information and clarifications about procurement procedures;

k) affidavit on independent bid determination, which format and rule of completion shall be prescribed under a sub-legislative statutory act;

l) alternative procurement of communication services, if applicable;

5^1. Tender documents shall be drawn up in accordance with a rule envisaged under a sub-legislative statutory act;

6. A procuring organization shall be obligated to ensure the conformity of narrative materials, technical specifications, designs, drawings, sketches and other materials used during the description of technical and qualitative features of an object of procurement with standards, technical indicators, terms and symbols recognized in Georgia and in international practice. Procuring organization shall make a reference to a relevant applied standard, if applicable. It shall be inadmissible to indicate trademark, patent, model, source of origin or producer in the description of an object of procurement.

7. The qualification documents may be submitted in Georgian, as well as in foreign languages, at the decision of a procuring organization. In case the documents are submitted in a foreign language translations thereof performed under the rule prescribed by Georgian legislation shall be attached. When resolving disputable matters related to documents the procuring organization shall take a decision on assigning priority to a foreign language document or its Georgian translation.

8. Tender commission shall post tender announcement and tender documents in the integrated electronic system at least 20 days prior to the expiration of the deadline for submission of tender proposals;

9. Tender commission shall be authorized to modify the information indicated in e-tender announcement and tender documents (other than object of procurement). These modifications shall be posted in the unified electronic system, no later than 5 days before the expiration of deadline for the submission of tender proposals.

10. Has been removed;

Article 13. Qualification data

A procuring organization shall set qualification details the bidders will be required to meet in order to be eligible to participate in procurement, for each specific procurement. The rule of selection of qualification data shall be established under the sub-legislative statutory act. Requirements for qualification data shall be fair and non-discriminatory and be conducive to the promotion of healthy competition.

Article 14. Tender documents (shall be removed from December 1, 2010)

1. Tender commission approves tender documents prior to publishing tender announcement.

2. After a person pays tender fee tender commission shall hand over tender documents upon request.

3. Tender documents shall contain:

a) requirements the bidders should meet for participating in procurement;

b) instructions on drawing up bidders' tender proposals;

c) rules and criteria for evaluation of bidders' tender proposals, indicating priority order of these criteria;

d) quantity of goods, volume of works or services to be procured, desirable or obligatory deadlines and place for the supply of goods, performance of works or the provision of services, as well as other data which indication the procuring organization may deem necessary in relation to the object of procurement;

e) complete description of technical and qualitative features of an object of procurement, including relevant technical specifications, designs, drawings and sketches, as well as alternative

technical and qualitative features of an object of procurement, provided procuring organization allows this;

f) those mandatory provisions of the contract which the procuring organization is aware of in advance, as well as reference as to the format of the contract;

g) methods to be applied to calculate the value of a tender proposal indicating whether or not it should contain expenditures other than the value of goods, works or services (transportation, insurance, taxes, etc.);

h) reference to a currency in which the value of tender proposal is to be calculated;

i) deadline, place and language for the submission of qualification documents and tender proposals;

j) methods and procedures of requiring additional information and clarifications as to tender documents, and in case of a two-phase tender also the possibility of holding negotiations with the bidders;

k) time, place and rule of opening of envelopes containing bidders' tender proposals;

k^1) date and location of reverse auction. Rule and conditions of holding reverse auction shall be prescribed by the sub-legislative statutory act;

l) names and contact details of a member or members of the apparatus of the tender commission that are authorized to issue information and clarifications about procurement procedures;

m) Has been removed;

n) an affidavit on independently determining tender proposal which format and rule of completion shall be prescribed under the sub-legislative statutory act.

4. Narrative materials, technical specifications, designs, drawings, sketches and other materials used during the description of technical and qualitative features of an object of procurement shall be in conformity with standards, technical indicators, terms and symbols recognized in Georgia and internationally. It shall be inadmissible to indicate trademark, patent, model, source of origin or producer in the description of an object of procurement.

5. Subject to a written request of a person interested in participating in procurement or a bidder, or at own initiative the tender commission shall clarify and/or specify information related to procurement procedures or an object indicated in tender documents, which shall be executed as an addendum to tender documents and sent simultaneously to all entities interested in participating in the procurement and bidders no later than 5 days before the expiration of the deadline for the submission of qualification documents and tender proposals. Addendum of tender documents shall not alter the content of these documents.

Article 15. Rule of submission and review of tender proposals by bidders (shall be removed from December 1, 2010)

1. Tender proposals shall be submitted to the tender commission in closed envelopes. Envelopes shall be opened jointly, in the presence of bidders, at a tender commission sitting, right upon the expiration of the deadline for the submission of tender proposals. Following the opening of envelopes the commission sets the deadlines for qualification selection, evaluation of tender proposals and taking final decision.

2. Bidders shall be authorized to at any time prior to the expiration of the deadline for the submission of qualification data and tender proposal require the withdrawal in writing or modify tender proposal.

3. Following the opening of envelopes selection shall take place, which is aimed at establishing the conformity of submitted qualification data, tender proposals and accompanying documents with tender documents and tender announcement requirements. If qualification data, tender proposal and/or supporting documents submitted by a bidder are not in conformity with the requirements of tender documents and/or tender announcement tender commission shall disqualify a bidder, considering Paragraph 4 and 4^1 of this Article.

4. Tender commission shall not disqualify a bidder:

a) if the documents submitted thereof from administrative bodies are not submitted in a complete manner and/or contain inaccuracies;

b) if qualification data and/or tender proposal and supporting documents contain such inaccuracies which specifying will not have an impact on the criteria of evaluation of tender proposals.

4^1. In cases envisaged under Paragraph 4 of this Article a procuring organization shall approach a bidder with request to specify the documents submitted thereof and/or submit the documents in full, for which it shall set a reasonable timeframe, not to exceed 3 business days. If a bidder fails to specify or submit the documents in full within the mentioned deadline tender commission shall disqualify a bidder.

5. Has been removed;

6. Tender proposals shall be evaluated considering criteria provided in tender documents and the priority thereof.

6^1. Tender commission shall invite to reverse auction those bidders who are admitted to evaluation after the completion of selection procedures. Moreover, during reverse auction it is allowable to only the change the price submitted under a tender proposal.

7. Tender commission shall take a decision as to a winning bidder of a tender through an evaluation procedure. Evaluation procedure and rule shall be established under a sub-legislative statutory act.

8. Has been removed;

9. A bidder shall be regarded winning if it receives maximum cumulative score on the basis of the conclusions of the majority of the tender commission members on the list. In case the scores are distributed evenly the winner from among the bidders with highest equal scores shall be identified under a written decision of tender commission chairman.

10. Tender commission decision as to a winning bidder shall be executed through a commission sitting minutes which shall be supported by the conclusions of commission members. The minutes shall indicate information about the persons participating in the review of tender proposals, as well as the bidders, and it shall also contain brief description of tender proposals submitted by bidders.

11. Has been removed;

12. Alternative rule of the submission of tender proposals and opening of envelopes stipulated in Article 12(4) (j) shall be prescribed by a sub-legislative statutory act.

Article 15^1. Rule of holding electronic tender

1. Electronic tender procedures to be effected from the submission of tender proposal until the conclusion of state procurement agreement with a winning bidder shall be set forth in the present Article and sub-legislative statutory act.

2. Bidders' tender proposals, their supporting documents and qualification data shall be submitted to the tender commission pursuant to the rule prescribed by the sub-legislative statutory act.

3. The timeframe for reviewing e-tender announcement and tender documents shall be at least 15 days from posting thereof in an integrated electronic system. Within 5 days from the expiration of this deadline a bidder shall be authorized to submit a tender proposal through the integrated electronic system and alter the price of submitted tender proposal through electronic reverse auction method.

4. Matters related to the access to information and documents posted by a bidder in the integrated electronic procurement system shall be set forth in the sub-legislative statutory act.

5. Has been removed**;**

6. Has been removed;

7. Has been removed;

8. Has been removed;

9. Has been removed;

10. Tender commission shall take a decision as to a winning bidder of a tender through an evaluation procedure set forth under the sub-legislative statutory act, on which a relevant minutes shall be drawn up.

11. Has been removed;

12. Has been removed;

13. Has been removed;

14. Tender commission shall publish through the integrated electronic system an contract concluded with the winning bidder and the documents related to e-tender determined under the sub-legislative statutory act no later than 5 days from the conclusion of an contract on state procurement.

Article 16. Concluding contract with a winning bidder (shall be removed from December 1, 2010)

1. On the basis of conditions stipulated in a winning bidder's tender proposal, an contract shall be concluded between a winning bidder and a procuring organization.

1^1. Has been removed;

2. Has been removed;

3. In case of procurement large volume of works, if a construction site is located on Georgian territory, additional conditions related to the contract may be prescribed under the President of Georgia decree.

4. If a winning bidder is disqualified or it refuses to conclude an contract the tender commission shall approach the remaining bidders of the tender to participate in repeated review of tender

proposals. If none of the bidders agree to participate in repeated review of tender proposals a new tender shall be conducted. If one or several bidders agree to participate in repeated review of tender proposals the repeated review and evaluation of tender proposals shall take place.

5. Has been removed;

Article 16[1]. Concluding contract with a winning bidder

1. On the basis of the conditions set forth in a tender proposal of a winning bidder an contract on state procurement shall be concluded between a winning bidder and a procuring organization.

2. At the decision of a procuring organization an contract may be concluded in Georgian as well as foreign languages. In case an contract is concluded in a foreign language it shall be translated into Georgian according to a rule prescribed by Georgian legislation.

3. Has been removed;

4. Has been removed;

5. In case a winning bidder is disqualified or it refuses to conclude an contract, procuring organization shall hold negotiations with a bidder next in position to negotiate contract terms and conditions, tender or terminates procurement procedure.

6. Has been removed;

7. In case of procurement of large volume of works, if a construction site is located on Georgian territory, additional terms and conditions related to the contract may be set forth under the President of Georgia decree.

8. Mandatory provisions of an contract to be concluded with a winning bidder in e-tender and simplified e-tender procedures and a supplier selected through simplified procurement shall be set forth under the sub-legislative statutory act.

(8. Mandatory provisions of an contract to be concluded with a winning bidder in e-tender and simplified e-tender procedures, a supplier selected through competition and simplified procurement shall be set forth under the sub-legislative statutory act. shall become effective from December 1, 2010)

Article 17. Has been removed;

Article 18. Inadmissibility of holding negotiations during the tender process (shall be removed from December 1, 2010)

Tender commission shall not be authorized to hold negotiations with a person interested in participation in a tender and a bidder, except as stipulated in the sub-legislative statutory act.

Article 18[1]. Inadmissibility to hold negotiations during the e-tender process

A tender commission shall not be authorized to hold negotiation with a person interested in participating or a bidder in an e-tender, except as stipulated under sub-legislative statutory act.

Article 19. Rates of tender fee and charge (shall be removed from December 1, 2010)

1. Tender fee in the amount of GEL 150 shall be set for the acceptance of tender documents, and for the submission of tender proposal a charge in the amount of GEL 50 shall be set.

2. A local tender fee may be established according to the rule prescribed by the legislation of Georgia for the acceptance of tender documents when performing procurement using the budgets of the Autonomous Republics of Abkhazia and Adjara, as well as the funds of local self-government bodies, as well as the organizations and institutions funded by budgets of the autonomous republics and local self-government bodies, which rate shall not be higher than the rate of a tender fee set forth under Paragraph 1 of this Article.

3. The rule of payment of a tender fee and charge shall be established under a sub-legislative statutory act.

4. In case of a consolidated tender a charge in the amount of GEL 5,000 shall be set for the submission of a tender proposal.

Article 19[1]. Rate of the charge (shall become effective from December 1, 2010)

1. A charge of GEL 50 shall be set for the submission of tender or competitive bids in the case of a competition or e-tender and simplified e-tender procedures, while in case of a consolidated tender procedures a charge of GEL 5,000 shall be set for the submission of a tender proposal.

2. The rule of the payment of a charge shall be established under the sub-legislative statutory act.

Article 20. A two-phase tender (shall be removed from December 1, 2010)

1. A two-phase tender may be carried out in case when due to the specificity of an object of procurement it is impossible to determine all economic and technical conditions in advance and a procuring organization deems it necessary to hold negotiations with bidders to specify technical parameters, economic and other data during the first phase of the tender.

2. Under the first phase of a two-phase tender bidders shall submit qualification documents and initial tender proposals without indicating value.

3. During the first phase of a two-phase tender tender commission shall be authorized to hold negotiations with bidders towards specifying any condition of an initial tender proposal and determining final requirements for tender documents.

4. Following the review of an initial tender proposal tender commission shall determine a final version of tender documents and transfer thereof to the bidder.

5. When holding a two-phase tender the rules set forth in Articles 11-19 of the Present Law shall be applicable considering the provisions of Paragraphs 1-4 of this Article.

6. Has been removed;

Article 20^1 Has been removed;

Article 20^2. Consolidated tender

1. At the decision of the GoG the holding of a consolidated tender may be determined for the procurement of homogeneous objects of procurement.

2. In the case envisaged under Paragraph 1 of the present Article on the basis of documents supplied by the GoG, the Agency shall provide for the holding a consolidated tender and the identification of the best tender proposal pursuant to the rule and conditions set forth under the sub-legislative statutory act

3. The Agency shall ensure that the data for the conducted consolidated tender stipulated in the sub-legislative statutory act are posted in the integrated electronic system.

4. A procuring organization may, and the procuring organization which, pursuant to Article 9(6)(e^1) of the present Law has indicated in the annual procurement plan on state procurement through a consolidated ~~electronic procurement~~ tender shall be obligated to conclude state procurement contract with a supplier identified pursuant to the rule set forth under the sub-legislative statutory act.

5. In the case envisaged under the present Article the composition of tender commission shall be determined by the GoG.

Chapter 4

Terms and Conditions of an Contract on State procurement and the rule of revision thereof

Article 21. Terms and Conditions of an contract on state procurement and the rule of revision thereof.

1. An contract on State procurement shall be concluded in writing, considering the conditions stipulated in the present Law and the sub-legislative statutory act. The conclusion of an contract shall not be mandatory (shall be removed from December 1, 2010)

a) state procurement effected through sole source procurement by Georgia's diplomatic agency and consulate in a foreign state, as well as defense attaché, a representative of the Ministry of Defense of Georgia and the Ministry of Interior of Georgia;

b) state procurement under sole source procurement through the ordering over the Internet;

c) state procurement related to representational expenses;

d) state procurement effected through the payment of duties set forth under Georgia's statutory act;

1^1. Contract on state procurement shall be concluded in writing, considering the conditions set forth under the present Law and the sub-legislative statutory act. The conclusion of state procurement contract shall not mandatory:

a) in the cases of procurement effected by Georgia's diplomatic agency and consulate in a foreign state, as well as defense attaché, a representative of the Ministry of Defense of Georgia and the Ministry of Interior of Georgia through simplified procurement, as well as those stipulated in the sub-legislative statutory act;

b) state procurement effected through simplified procurement through ordering over the Internet;

c) state procurement related to representational expenses;

d) state procurement effected through the payment of duties set forth under the statutory act of Georgia;

2. To secure the performance of an contract on state procurement, based on the specificity of the object of procurement, a guarantee of contract performance or security may be used, save the cases stipulated in Paragraph 3^1 of the present Article.

2^1. In case the object of procurement is oil product (fuel) which value due to its specificity is dependent on the variable price at the international stock market and/or official exchange rate of national currency, prior to the conclusion of an contract on state procurement the supplier shall provide to a procuring organization final unit price of goods to be supplied stated in a tender proposal or that set as a result of reverse auction, which has been calculated under the rule prescribed in the sub-legislative statutory act. This requirement does not apply to the procurement of oil product (fuel) by a representative of Georgia's diplomatic agency and

consulate in a foreign state, defense attaché, representative of the Ministry of Defense of Georgia and the Ministry of Interior of Georgia.

3. The requirement of state procurement contract performance guarantee or security shall be obligatory provided the total value of an contract in case of the procurement of goods or services is over GEL 200,000, and it is higher than GEL 1,000,000 in case of procurement of construction works (shall be removed from December 1, 2010).

3^1. State procurement contract performance guarantee or security shall be obligatory in case the total value of an contract on state procurement is equal to or is over GEL 200,000. At the decision of a procuring organization a bidder or potential supplier may be exempted from the submission of the guarantee stipulated under the present Paragraph considering its business reputation and the quality and reputation of goods, services and works produced thereof.

4. The mandatory conditions of an contract on state procurement and the rule of application of guarantee and security shall be set forth in the sub-legislative statutory act.

5. The terms and conditions of an contract concluded with the supplier may not be modified in case such modification increases the value of an contract for a procuring organization or the terms and conditions of the contract are rendered less favorable, save the cases stipulated in Article 398 of the Civil Code of Georgia.

5^1. The conditions for the modification of an contract on state procurement in accordance with Article 398 of the Civil Code of Georgia shall be set forth under the sub-legislative statutory act.

5^2. In cases envisaged under Paragraph (1) (a)-(d) of the present Article state procurement shall be effected on the basis of a document (e.g., cheque, or receipt) containing information proving the payment of the value of the object of procurement, envisaged under sub-legislative statutory act or contract (if applicable) **(shall be removed from December 1, 2010).**

5^3. In cases envisaged under Paragraph (1) (a)-(d) of the present Article state procurement shall be effected on the basis of a document (e.g., cheque, or receipt) containing information proving the payment of the value of the object of procurement, envisaged under the sub-legislative statutory act or contract (if applicable)**.**

6. Has been removed;

Chapter 5

Monitoring and Control over Procurement

Article 22. Procurement Report

1. Procurement process shall be reflected in the procurement report, the rule of drawing up, submission and keeping of which shall be set forth under the sub-legislative statutory act **(shall be removed from December 1, 2010)**

2. When a tender is conducted, the conclusions of experts and consultants involved in the tender (if applicable), minutes of tender commission sittings, as well as other documents stipulated in the sub-legislative normative act shall be attached to the procurement report (shall be removed from December 1, 2010)

2[1]. When an electronic tender is conducted, conclusions of experts and consultants (if applicable) involved in the tender, minutes of tender commission sittings, as well as other documents stipulated in the sub-legislative statutory act shall be attached to the procurement report.

3. Procurement report shall be submitted to the Agency within the following timeframes (shall be removed from December 1, 2010).

a) When effecting procurement through a tender – no later than 10 days from the conclusion of an contract;

b) when a procurement is effected through sole source procurement, if the value of goods or services is over GEL 100,000, and the value of procurement of works – over GEL 200,000, within no later than 10 ~~calendar~~ days from conclusion of an contract;

c) when procurement is effected through price quotation – on a quarterly basis, by no later than the 30th day of the first month of the following quarter;

d) report on the progress of performance of state procurement envisaged under the contract on state procurement and Article 21(1) of the present Law – on a quarterly basis, by no later than 30th day of the first month of the following quarter;

e) has been removed.

f) the provisions stipulated in this Article apply to the cases envisaged in Article 1(4) of this Law according to the rule set forth under the sub-legislative statutory act.

3[1]. Procuring organizations shall submit reports on the progress of performance of an contract following a simplified rule set forth under the sub-legislative statutory act, by no later than 30 January of the following year, provided the cumulative value of an annual plan is below GEL 50,000.

4. Procurement reports shall be made available to all interested parties upon request.

5. Procurement report for an object with value over GEL 2,000,000 shall be submitted to the GoG by the head of the procuring organization in writing, within 20 days period from the conclusion of an contract on state procurement. The provisions of this paragraph do not apply to the National Bank of Georgia, which, pursuant to the Organic Law of Georgia on the National Bank of Georgia shall submit a procurement report to the board of the National Bank of Georgia.

6. The Ministry of Finance of Georgia, Ministries of Autonomous Republics of Abkhazia and Adjara in Finance and the financial bodies of local self-government authorities shall be obligated to on a quarterly basis provide to the Agency information on the actual allocated funds to budgetary organizations and institutions.

7. The Agency shall be authorized to at any stage of implementation of procurement require procuring organizations and participants of procurement to provide any document and information related to procurement, including information about the performance of the contract.

8. To ensure transparency of the procurement process the Agency shall conduct monitoring of the adherence to the principle in the process of procurement such as publicity, fairness and non-discrimination, rigorous adherence to established procedures and reporting, ensuring open and efficient competition, possibility of rational and free choice.

9. A format of reports, rule of drawing up, submission and storing thereof, timeframe and conditions for the report on the progress of state procurement performance stipulated in a simplified procurement, simplified e-tender, e-tender and contracts on state procurement and in Article 21(1^1) of the present Law shall be set forth in a sub-legislative statutory act (shall be removed from December 1, 2010).

10. The format of reports, rule of drawing up, submission and storing thereof, timeframe and conditions for the report on the progress of performance of state procurement stipulated under simplified procurement, simplified e-tender, e-tender, competition and contracts on state procurement and in Article 21(1^1) of the present Law shall be set forth in the sub-legislative statutory act.

Article 22^1. Control of procurement by the Chamber of Control of Georgia

1. The Chamber of Control of Georgia shall control procurement through auditing procuring organization.

2. A procuring organization shall submit to the Chamber of Control of Georgia, upon request, any document and/or information related to procurement.

3. Participant of procurement shall provide to the procuring organization, subject to its request, relevant document and/or information related to procurement.

4. Has been removed.

Chapter 6

Procedure of Challenging an Action related to procurement and the Consideration of Disputes

Article 23. Rule of Apeal and Dispute Review

1. A person interested in taking part in procurement or a bidder prior to the conclusion of an contract on state procurement may appeal actions of a procuring organization or tender commission at a procuring organization or agency, if it regards that during the procurement the rules set forth in the present law and relevant statutory acts were violated and/or its rights were infringed upon.

2. A person interested in taking part in procurement, bidder or supplier at any stage may appeal actions of the procuring organization or tender commission in court if it regards that during procurement rules set forth under the present law and relevant statutory acts were violated and/or its rights were infringed upon.

2^1. If a person interested in participating in procurement or a bidder appeals an action of a procuring organization a procuring organization may not be required to suspend procurement procedures, save the following cases: (shall be removed from December 1, 2010)

a) period following the completion of electronic reverse auction;

b) consolidated procurement, in the cases set forth under sub-legislative statutory act.

2^2 . In case a person interested in participating in procurement or a bidder appeals action of a procuring organization a procuring organization may not be required to suspend procurement procedures, save the following cases: (shall become effective from December 1, 2010)

a) period following the completion of electronic reverse auction;

b) consolidated procurement or competition, in the cases established under the sub-legislative statutory act.”

3. Has been removed;

4. Has been removed;

4^1. A board for the consideration of procurement-related disputes shall be set up at the Agency, which composition shall include representatives of the Agency and the NGO sector under the

parity principle. The composition of the dispute consideration board and rule of operation thereof shall be prescribed by a sub-legislative statutory act.

5. A procuring organization or Agency shall deliver a justified written decision and inform the claimant thereof within no later than 10 days from the receiving a complaint. The publishing of a decision on Agency official web page shall be regarded the notification by the Agency of the decision.

6. Has been removed;

7. If the legitimacy of the complaint is confirmed as a result of thorough study of the complaint and related circumstances by the Agency, the Agency shall be authorized to:

a) indicate the procuring organization on wrong action and require the performance of procurement procedures in compliance with legislation;

b) require procuring organization to revise or cancel a taken decision;

c) in case of violation of the provisions of this Law bring forward before relevant bodies envisaged under Georgian legislation the responsibility of participants of procurement.

8. Has been removed;

9. An action shall not be subject to appealing, provided the claim is about:

a) selection of a method of procurement in compliance with the rules set forth under the present Law and relevant statutory acts;

b) decision of a procuring organization on the suspension or termination of procurement procedure, which has been taken pursuant to the rule set forth under the present Law and relevant statutory acts.

10. A compliant must have a legal basis. The form of a compliant to be submitted to the Agency, the rule for its completion and submission shall be set forth under a sub-legislative statutory act. The Agency shall not consider a complaint that has been submitted in violation of the provisions of this Paragraph.

11. If a compliant is filed at procuring organization or the Agency, the procuring organization shall suspend procurement according to the period of the complaint review procedures.

12. A person interested in participating in procurement procedures, a bidder or supplier may appeal in court the decisions taken by a procuring organization and Agency in conjunction with the complaint.

13. The losses which may be reimbursed to the plaintiff following the consideration stipulated in the present Article shall be limited to only the reimbursement of expenditures related to the participation in procurement and shall not envisage the reimbursement of estimated profit.

Chapter 7

Transitional and Final Provisions

Article 24. Activities to be taken for the bringing this Law into operation

1. Has been removed.

2. Within a 1 month period from the effective date of this Law the State Procurement Agency of Georgia pursuant to the legislation of Georgia shall approve the Regulations on the Rule of Performing State Procurement.

2^1. Has been removed.

2^2. Has been removed.

2^3. Has been removed.

3. Until January 1, 2008 this Law shall not apply to the procurement to be effected by electricity and natural gas enterprise for rehabilitation or repair of the property which is directly related to the production, transmission, dispatching, distribution of electricity, transportation, distribution of natural gas, as well as regulating electricity and natural gas metering.

4. The provisions of the present Law do not apply to the procurement of cellular telephone service until January 1, 2012.

5. To ensure the conformity with the Law of Georgia on Broadcasting and Article 1(3^1) (l) of this Law a LEPL – Public Broadcaster and the GoG jointly shall ensure the drafting of a relevant law and submission to the Parliament thereof before December 20, 2009.

6. From March 1, 2010 to December 1, 2010 procuring organizations shall effect state procurement at their own discretion, by way of or without e-procurement.

7. Towards establishing the homogeneous objects of procurement, the Agency shall ensure the introduction of a relevant classifier adopted by international organizations by December 1, 2010.

8. The identification of a winning bidder of the state procurement procedures that have commenced before December 1, 2010 and the conclusion of state procurement contract thereof shall be made according to a rule in effect prior to December 1, 2010.

9. When effecting state procurement of international telephone services and internet services, to promote state security defense activities, additional requirements related to the termination of telephone calls of international companies providing telecommunication services and the route of data exchange in a global internet network shall be set forth under a statutory act of the Minister of Interior of Georgia.

10. The State Procurement Agency shall ensure:

a) effecting relevant modifications in the sub-legislative statutory act before December 1, 2010;

b) approving the rule of holding simplified procurement, simplified e-tender and e-tender before December 1, 2010;

c) approval of rule of state procurement and conditions of design services through competition by December 1, 2010;

d) approving the rule and conditions for holding a consolidated tender by December 1, 2010.

Article 25. Abrogated statutory acts

The following shall be regarded abrogated upon effective date of this Law:

a) December 9, 1998 Law of Georgia on State Procurement (Georgia's Legislative Bulletin, 1998, Article 52);

b) Decree of the Chairman of the State Procurement Agency dated October 15, 2001 on Approving Regulations on the Rule of performing State Procurement.

Article 26. Effective Date of the Law

The present Law shall enter into force from January 1, 2006.

Mikheil Saakashvili,

President of Georgia,

April 20, 2005

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