

LAW OF THE KYRGYZ REPUBLIC

On state procurement of goods, construction and services

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This Law establishes the general legal and economic principles of procurement of goods, construction, and services for government purposes by enterprises and institutions located on the territory of the Kyrgyz Republic.

The goals of this Law are:

- maximizing economy and efficiency in procurement;
- broadening participation in the procurement process by suppliers (contractors) and developing competition among them;
- providing for fair treatment of all suppliers (contractors);
- providing for transparency in the procurement process.

CHAPTER 1

GENERAL PROVISIONS

Article 1. Basic Terms Used in this Law

This Law uses the following basic terms with the following meanings:

ACCEPTANCE - adoption of an offer. This is one of the steps towards conclusion of a Procurement Contract;

CURRENCY - monetary settlement unit of the Kyrgyz Republic - the Som, or the monetary settlement unit of another state;

STATE PROCUREMENT - purchase of construction, delivery of goods and performance of services, financed fully or partially with government funds;

GOVERNMENT FUNDS - the following sources of funds:

- funds from the state budget or the budgets of local selfgovernment units that are allocated for a specific activity and capital investment;

- funds as defined in the Law on the Budget as "extra-budgetary funds";

- funds provided as foreign aid under international agreements, if the agreement does not require other methods for using the funds;

- credits guaranteed or secured, and also funds, the value of which is financed by the state budget;

PROCUREMENT CONTRACT - a contract between a Procuring Entity and a supplier (contractor), entered into as a result of a procurement proceeding;

PROCUREMENT - acquisition by a Procuring Entity of goods, construction, or services from suppliers (contractors) in any of the ways established by this Law;

PROCURING ENTITY - any government or other state body of the Kyrgyz Republic which is a legal entity, a state enterprise, organization or foundation engaged in procurement of goods (construction) and services;

OFFER - a proposal to enter into a contract which contains all significant terms;

SECURITY OF TENDER APPLICATION - Security presented to the Procuring Entity by the supplier (contractor) which guarantees the fulfilment of any obligation and which includes any type of security, such as a bank guaranty, surety, standby letter of credit, check for which the primary obligor is a bank, cash deposit, or a simple or negotiable promissory note;

SECURITY FOR PERFORMANCE OF PROCUREMENT CONTRACT - Security presented to the Procuring Entity by the supplier (contractor) which guarantees the performance of any obligation connected with the execution of a Procurement Contract and which includes the types of security set forth in the ninth definition of this Article;

BEST OFFER - the offer or tender with the lowest price filling the exact characteristics of the procurement, or the offer or tender presenting the best price, life-cycle costs, completion or delivery time, or other criteria specified in the relevant regulations on Procurement;

SUPPLIER (CONTRACTOR) - depending on the context, any potential party or the concrete party to a Procurement Contract with the Procuring Entity;

DELIVERY - all stages of the procurement process of raw materials, prepared products, equipment and other goods delivered to the Procuring Entity;

CONSTRUCTION - any work associated with the drafting, construction, reconstruction, demolition or repair or renovation of a building, structure or object, including the site preparation, excavation, erection, building, installation of equipment or materials, decorations and decoration work, as well as services incidental to construction, such as drilling, mapping, satellite photography, seismic investigations and similar services provided pursuant to a Procurement Contract, if the value of those services does not exceed that of the construction itself;

TENDER - a proposal to deliver goods, perform services, or perform construction in a procurement proceeding;

GOODS - products of labor of any kind and description including raw materials, products, equipment and solid, liquid and gas objects, electric energy, and also services incidental to delivery of good, if their cost does not exceed the cost of those goods;

SERVICES - any procurement other than goods or construction.

Article 2. Scope of Application

1. This Law applies to all procurements of goods, services and construction, financed in whole or in part with government funds.

2. This Law does not regulate procurement connected with national defense and state security, protection of state secrets, or natural disasters, the guidelines for which shall be determined by the Government of the Kyrgyz Republic.

3. The Procuring Entity may not divide a procurement into parts or lower the value of a procurement in order to avoid the application of this Law.

Article 3. Requirements for Protection of Domestic Market

1. If on the territory of the Kyrgyz Republic there are enough bidders to deliver goods, or perform constructions or services, the Procuring Entity may limit participation in the procurement proceeding to domestic suppliers or contractors.

2. If the subject of a procurement is services or construction on the territory of the Kyrgyz Republic, the Procuring Entity may require that all of the services or construction be performed by domestic entities, and with domestic raw materials and products.

3. When applying limitations based on nationality, the Procuring Entity shall make the appropriate announcement to participants before the beginning of the procurement proceeding. The declaration regarding such a limitation cannot be changed thereafter.

4. When using any limitation based on nationality, the Government of the Kyrgyz Republic shall comply with its international obligations in determining:

the categories of deliveries, services, and construction to which the limitation based on nationality applies;

the criteria on the basis of which the Director of the State Procurement Agency of the Government of the Kyrgyz Republic (hereinafter "State Agency") must approve or reject any limitation based on nationality;

the procedure for use of any limitation based on nationality in conducting procurement, including the limitations set forth in points 1 and 2 of this Article.

5. In the event a decision on limitation of participants based on nationality is adopted, all obligations of the Kyrgyz Republic set forth in international treaties shall be followed.

6. Domestic and foreign suppliers and contractors shall be able to participate in procurement proceedings on an equal basis according to the provisions of this Law.

Article 4. Conditions for Exclusion from Participation in State Procurements

A decision to exclude an applicant from participating in a State Procurement proceeding shall be done when:

the suppliers (contractors) have unsatisfactorily fulfilled even one Procurement Contract within three years of the beginning of the present procurement proceedings;

the suppliers (contractors) are in bankruptcy proceedings or have been declared bankrupt;

the suppliers (contractors) are in default on taxes owed, social insurance premiums and other fees;

individuals have been validly sentenced for a crime committed in connection with a procurement proceeding, or any other economic crime;

legal entities have an employee who has been validly sentenced for a crime committed in connection with a procurement proceeding, or other economic crime.

Article 5. Conflicts of Interest

1. Government employees of the Kyrgyz Republic are prohibited from acting as suppliers (contractors) in any procurements regulated by this Law. No Procurement Contracts may be concluded between them and establishments in which they are employees, agents or members of the board of directors.

2. A person may not represent a Procuring Entity or perform other responsibilities connected to a procurement proceeding, or be a consultant to a procurement proceeding, if:

in a marital or direct birth relationship, an adoption relationship, guardianship or trusteeship with the supplier (contractor), with its legal counsel, or with its officers;

in the last three years has been an employee or officer of a supplier (contractor) participating in a procurement proceeding.

3. The Procuring Entity shall not sign a Procurement Contract with a supplier (contractor) associated with a parent company or branch a consultant of which was responsible for preparing the specifications or tender documents for the Procurement Contract.

4. Rejection of a tender application, proposal, offer or quotation in accordance with this Article and the reasons therefor shall be recorded in the record of the procurement proceedings and promptly communicated to the interested supplier (contractor).

Article 6. Inducements from Suppliers (Contractors)

In the event that a supplier (contractor) who has submitted a tender application, offer or quotation directly or indirectly offers, gives or agrees to give to any current or former officer or employee of the Procuring Entity or other governmental body compensation in any form, or to render any service, with a purpose of influencing a procurement proceeding, decision, or selection of a particular procurement method, the Procuring Entity, with the approval of the State Agency, upon verification by it of the indicated actions of the supplier (contractor) shall reject the tender application, offer or quotation. Information on such a rejection of a tender application, offer, or quotation of a supplier (contractor) and the reasons for the adopted decision shall be indicated in the record of the procurement proceedings and promptly communicated to the supplier (contractor).

Article 7. Form of Communications

1. Unless otherwise specified in this Law, only statements and notifications of a Procuring Entity made in writing shall be considered effective.

2. If, in the course of a procurement proceeding, the parties communicate in other than written form, the contents of such communication must be promptly confirmed in writing.

Article 8. Qualifications of Suppliers (Contractors)

1. In order to participate in procurement proceedings, suppliers (contractors) must have relevant licenses and satisfy the following criteria:

they must possess professional and technical competence, experience and reputation, financial resources, equipment and other physical capacities;

they must not be insolvent or bankrupt, their property must not be under judicial control, their business activities must not be managed by a court or a person appointed by a court, their commercial activity has not been suspended, and they must not be subject to such judicial proceedings;

they have fulfilled their obligations to pay taxes and other obligatory payments in the Kyrgyz Republic;

they and their officers and employees have not been convicted of any criminal offense related to their professional conduct, for making false statements or misrepresentations of facts or for making errors related to their qualifications for the purpose of entering into a Procurement Contract within 5 years preceding the commencement of the procurement proceedings;

That they have legal capacity to enter into a Procurement Contract.

2. Subject to the right of suppliers (contractors) to protect their intellectual property or trade secrets, the Procuring Entity may require suppliers (contractors) participating in procurement proceedings to provide appropriate documentary

evidence or other information to verify that the suppliers (contractors) are qualified in accordance with the criteria referred to in point 1 of this Article.

3. Any qualification requirements established pursuant to this Article shall be set forth in prequalification documents (in the event of a prequalification procedure), tender documentation or other documentation for solicitation of proposals, offers or quotations. This requirement shall apply to all suppliers (contractors).

4. The Procuring Entity shall evaluate the qualifications of suppliers (contractors) in accordance with the qualification criteria set forth in the prequalification documents (in the event of a prequalification procedure), in the tender documents or other documents for solicitation of proposals, offers or quotations.

5. The Procuring Entity shall not establish criteria, requirements or procedures which discriminate against suppliers (contractors) on the basis of nationality, or which are not objectively justifiable, except in cases described in Article 3 of this Law.

6. The Procuring Entity, with the consent of the State Agency, shall disqualify a supplier (contractor) from participation in the procurement proceeding in instances of:

- submission of knowingly false information concerning the qualifications of the supplier or contractor;
- the supplier (contractor) does not meet the qualification requirements.

Article 9. Prequalification Proceedings

1. Before announcing procurement proceedings or before sending invitations to participate in a State Procurement proceeding, the Procuring Entity may conduct prequalification procedures of suppliers (contractors).

2. Not later than one month before announcement of tenders or invitation to participate in tenders, the Procuring Entity must publish in Republican mass media and in the Bulletin of State Procurements, and if necessary - in international press, information about the conduct of prequalification selection and, in the event of conducting procurement by way of invitation to participate, must send this information to the suppliers (contractors).

3. The information on conducting prequalification selection shall include, at a minimum, the following information:

- name and address of Procuring Entity;
- character and quantity of goods to be delivered; character, quantity and location of construction to be fulfilled; or the character of services and place where they must be rendered;
- desired or required time period for delivery of goods, completion of construction, or schedule for performing services;
- specific requirements presented to suppliers (contractors);
- place and deadline for submission of applications for prequalification selection;
- other information based on requirements of the Procuring Entity.

4. The Procuring Entity, not later than 14 days before the deadline for submission of applications, shall submit to all interested suppliers (contractors) the prequalification documentation which includes the information set forth in point 3 of this Article, plus:

- instructions for submission of prequalification documentation;
- description of criteria and evaluation procedures of the qualification information of suppliers (contractors);
- information about documentary proof which must be submitted by suppliers (contractors) to confirm that they meet the required conditions;
- names, titles and instructions for communicating with the employees of the Procuring Entity who are authorized to communicate directly with suppliers (contractors).

5. The Procuring Entity shall conduct qualification selection of suppliers (contractors) for further participation in procurement proceedings only on the basis of the terms set forth in the tender documentation.

6. Further participation in state procurement proceedings is allowed only to the suppliers (contractors) who succeeded through the prequalification selection.

7. The Procuring Entity shall notify with the results of the prequalification selection within two working days each supplier (contractor). The list of suppliers (contractors) admitted to further procurement proceedings must be published in the Bulletin of State Procurements.

Article 10. Record of Procurement Proceedings

1. Throughout a State Procurement proceeding, the Procuring Entity shall maintain an official record of the procurement proceedings and which shall contain at a minimum the following:

a description of the subject matter of the procurement, using characteristics and quality features complying with the established standards of the Kyrgyz Republic. In the description of the subject matter and conditions of procurement, it is prohibited to present demands which impede fair competition;

- the name and addresses of the suppliers (contractors) submitting tender applications, proposals or quotations;

information about requirements presented to suppliers (contractors) for entering into a Procurement Contract;
the price and other essential terms of each tender application, proposal or offer;
summary evaluations, comparison and basis for selection of the submitted tender applications, proposals;
if all tender applications, proposals or offers are rejected, the justification for their rejection;
if, as a result of a procurement proceeding no Procurement Contract is signed, a statement so indicating and a summary of the relevant reasons;
if participation of suppliers (contractors) was limited based on nationality, in accord with Article 3 of this Law, the basis for such a limitation;
in the event of use of procedures other than tender with unlimited participation, the basis for such a method;
the basis for conducting prequalification procedures of suppliers (contractors);
a generalized summary of inquiries for clarification of prequalification procedures of suppliers (contractors);
information about submitted protests and appeals and methods of their resolution;
information concerning the suspension of proceedings;
information on hiring of experts.

2. Information contained in paragraphs 1 and 2 of point one of this Article shall be provided on demand to any supplier (contractor) participating in the procurement proceeding after acceptance of a tender application, proposal, offer or quotation or after the conclusion of procurement proceedings which did not result in a signed Procurement Contract.

3. Information contained in paragraphs 3-7, and 11 of point one of this Article shall be provided to a supplier (contractor) who submitted a tender application, offer, proposal or quotation after acceptance of a tender application, proposal, offer or quotation or after conclusion of procurement proceedings which did not result in a signed Procurement Contract.

4. The Director of the State Agency may publish regulations establishing:
a model of the record of procurement proceedings;
additional requirements of the record for the procurement proceedings.

5. In its regulations, the State Agency may determine the scope of information submitted to it by Procuring Entities of their procurement plans, of signed contracts and of performance of Procurement Contracts, of records of procurement proceedings, and also the procedure for their submission.

Article 11. Language Used in Conducting State Procurements

1. Prequalification documentation, tender documentation and other documentation for solicitation of proposals, offers or quotations shall be composed in Kyrgyz, Russian, and English.

2. In instances when the circle of participants of the procurement proceeding is limited to domestic suppliers (contractors) in compliance with point 1 of Article 3 of this Law, or also if the Procuring Entity decides that due to the small amount and low cost of the goods (constructions) or services to be procured, only domestic suppliers (contractors) will be interested in submitting tender application, only Kyrgyz and Russian languages shall be used.

Article 12. Normative Legal Acts on Procurement

1. Promulgation of regulations in accordance with the provisions of this Law on procurement of goods, construction, and services for the purposes of carrying out this Law is in the jurisdiction of the executive body authorized by the Government of the Kyrgyz Republic.

2. Normative legal acts on procurement must be published in the official newspaper and in the Bulletin of State Procurement.

CHAPTER 2 PARTICIPANTS IN PROCUREMENT PROCEEDINGS

Article 13. Participants in Procurement Proceedings

1. The main participants in a procurement proceeding shall be:

- Procuring Entities;
- Tender Committees; and
- Suppliers (contractors).

2. Procuring Entities may be:

- Budget organizations, state bodies, services or enterprises;
- Community organizations funded by a local budget;
- Bodies of local self-government;

Funds established with state funds.

3. The Government of the Kyrgyz Republic may by its regulations designate other entities dispensing state funds which will be governed by this Law.

4. In the event that several Procuring Entities intend to conduct State Procurements related to one subject of procurement, the Government of the Kyrgyz Republic may assign a particular body of the government body to conduct the procurement proceeding and to conduct one joint procurement on behalf of all the indicated Procuring Entities.

5. Participants in a procurement proceeding are obligated to maintain the confidentiality of submitted and used information containing information which is considered a commercial secret; such information may be transferred to third parties only on mutually agreed terms, or in instances set forth in legislation.

Therefore, a Procuring Entity does not have the right to disclose:

information, if its disclosure is not consistent with state interests, causes damage to important commercial interests of the parties, or to the principles of honest competition;

information, related to the study, evaluation, and comparison of submitted tender applications, offers, quotations or their prices, except for information, contained in paragraph 5 of point 1 of Article 10 of this Law.

Article 14. State Procurement Agency of the Government of the Kyrgyz Republic

1. The State Procurement Agency of the Government of the Kyrgyz Republic is the central body which carries out Republican-wide policy on procurement of goods, construction, and services.

The activity of the State Agency is governed by regulations which are approved by the Government of the Kyrgyz Republic.

2. The Director of the Agency shall be appointed and dismissed by the President of the Kyrgyz Republic.

3. The main functions of the State Agency shall be as follows:

- to develop a normative legal framework for a functioning system of State Procurement, which includes procurement procedures and proceedings, awarding of contracts and payments thereunder;

- to coordinate and regulate the activity of state bodies in carrying out procurement of goods (construction and services), with state budget funds and foreign credits and grants, in compliance with legislation of the Kyrgyz Republic;

- to monitor compliance by state bodies with legislation of the Kyrgyz Republic on State Procurement;

- to assist state bodies in carrying out procurement of goods (services and construction), which includes the training of personnel in procurement procedures and rendering consultative assistance to them;

- to provide openness and transparency in procurement proceedings.

4. The State Agency, in the event of violations of legislation in the area of procurement, shall employ the provisions set forth in paragraphs 1-5 of point one of Article 49 of this Law.

5. The costs of funding the State Agency shall be provided by the National budget.

6. Acts issued by the State Agency within the scope of its competence shall be binding for all ministries, administrative agencies, bodies of local self-government, state organizations and institutions.

Article 15. Tender Committee

1. In instances and according to the procedure set forth in legislation, a Procuring Entity jointly with the State Agency shall form a tender committee.

The tender committee shall carry out the following functions:

- conduct preliminary qualification of bidders, organize the drafting and distribution of the solicitation documents, and submit proposals to amend such documentation and procedures, familiarize the bidders with tender documentation, and give any necessary clarifications;

- carry out the collection, custody, and evaluation of submitted tender applications, offers or quotations;

- determine the winner or make any other decision on the results of the procurement proceeding;

- publish in mass media a report on the results of the work of the tender committee.

2. A tender committee shall consist of not less than five people.

The salary of individuals on a tender committee shall be paid by the Procuring Entity or by the authority of the latter, by the organizer of bids through contracts (employment agreements) made in accordance with the legislation of the Kyrgyz Republic.

Article 16. Bidder

1. A supplier (contractor) acquires the status of bidder from the moment of submission of an application to a tender committee for participation in a tender.

The status of bidder shall be terminated in the following events:

- at the bidder's wish - at any preparatory stage;
- as a result of failure to pass any preliminary qualifications;
- failure to make a required security of the tender application at the time of submission of the tender application;
- as a result of a violation by the bidder of this Law or of conditions of the tender known by it.

2. The bidder has the right:

- to receive complete information from the tender committee on the terms and procedure of conducting the procurement proceeding;
- to request the Procuring Entity, tender organizer, or tender committee for an extension to submit an offer in writing. The Procuring Entity shall make the decision on granting the extension.

3. To participate in a tender, the bidder must submit the following documents:

- an application for participation in the tender;
- a copy of a payment order, which confirms the making of a of the tender application (in the event that any is required in the tender documentation).

Article 17. Offerer

1. From the moment of registration of an offer, a bidder acquires the status of offerer.

2. The winner of a tender has right to make contracts with the Procuring Entity on the terms established in its offer and in compliance with the solicitation documents.

CHAPTER 3 METHODS OF STATE PROCUREMENT. PROCEDURE OF CONDUCTING TENDERS

Article 18. Methods of State Procurement

1. State Procurements shall be conducted by the following methods:

- tenders with unlimited participation;
- tenders with limited participation;
- two-stage tenders;
- competitive negotiations;
- request for quotations;
- procurement from single-source.

2. The preferred procedure for conducting State Procurement are tenders with unlimited participation. Selection of any other procurement method by the Procuring Entity shall be done with the consent of the State Agency.

Article 19. Tenders with Unlimited and Limited Participation

1. In conducting tenders with unlimited participation, the suppliers (contractors) who want to participate in the procurement proceeding have the right to submit tender applications without limitation.

2. Tenders with limited participation can be done if:

- the expenses required to review and evaluate a large quantity of tender applications is not commensurate with the value of goods, construction, or services to be procured;
- the goods (construction) or services with regard to the level of their technical complexity or specialized nature have only a limited circle of suppliers (contractors).

3. In conducting tenders with limited participation, the Procuring Entity shall solicit tender applications from all suppliers (contractors) which can supply the procured goods, construction or services and select a sufficient number of suppliers (contractors) to assure competition by soliciting their tender applications.

4. The provisions of this Chapter shall be used for tenders with limited participation to the extent not in contradiction with the provisions of this Article.

Article 20. Contents of Invitation to Participate in Tenders

1. An announcement on invitation to participate in a tender must contain, at a minimum, the following information: the name and legal address of the Procuring Entity;

- the nature, quantity, and place of delivery of goods to be procured; the nature and location of the construction to be done, or the nature and location of the services to be rendered;
 - the desired or required time for delivery of the goods or for the completion of the construction, or the timetable for rendering services;
 - conditions required of suppliers (contractors);
 - a statement that suppliers (contractors) may participate in the procurement proceeding regardless of nationality in accordance with the requirements established in Article 3 of this Law;
 - the methods and location to receive the tender documentation and any payment for it to the Procuring Entity (if payment is required);
 - the place and deadline for submission of tender applications;
 - the place and deadline for opening tender applications.
2. The Director of the State Agency in regulations may determine:
 - additional information to be included in announcements;
 - a form for announcements on tenders.
 3. An invitation to participate in a tender must contain, at a minimum, the information set forth in paragraphs 1-8 of point 1 of this Article.
 4. The time period allowed by the Procuring Entity for submission of applications for participation in a tender proceeding must not be less than 3 weeks from the date of sending the invitation.
 5. The Director of the State Agency shall determine in regulations a form for the invitation to submit a tender application.

Article 21. Distribution of Tender Documentation

1. The Procuring Entity shall send the tender documentation specifying the essential provisions of the procurement proceedings to suppliers (contractors) not later than one week after the request to receive the necessary documents was made.
2. In tenders with limited participation, the tender documentation containing the specifications shall be sent together with the invitation.
3. In the event of a prequalification procedure, the tender documentation shall be sent to every selected supplier (contractor).
4. For sending the tender documentation which contains the fundamental provisions of the procurement proceeding, the Procuring Entity may charge a fee which must not exceed the costs of printing and sending the documents.

Article 22. Contents of Tender Documentation

1. Tender documentation shall consist of the following mandatory sections:
 - instructions for preparing tender applications;
 - the criteria and methods of evaluating compliance of suppliers (contractors) with the required conditions;
 - the requirements of documentary proof or other information to be submitted by suppliers (contractors) for verification of their qualifications;
 - the description and required technical and quality characteristics of goods, construction or services, which includes technical specifications, plans, drawings and designs; the quantity of the goods; additional services to be provided under the contract; the location of the construction to be done or of the rendering of services;
 - the desired or required deadline for performing the contract;
 - the description of all criteria, other than price, which the Procuring Entity will use in selecting the successful tender application, and which includes the relative weight of such criteria;
 - all provisions, determined as essential by the Procuring Entity, which will be included in the written contract;
 - a description of part or parts of the procured goods for which a tender application may be submitted, if suppliers (contractors) are permitted to submit tender applications only for a portion of the goods, construction or services;
 - the method of calculating and expressing the score of a tender application, which includes a statement as to whether the price is to include elements other than the cost of the procured goods, construction or services (transportation and insurance charges, customs duties and taxes, etc);
 - if tender applications can be submitted by foreign bidders - the currency or currencies in which all settlements will be made between the Procuring Entity and the supplier (contractor);
 - all requirements for the form, amount, and other fundamental conditions of any security for a tender application and the performance of the contract, and also the period of validity for such security;
 - a definite description of the place and deadline for submission of tender applications;

a description of the procedures for providing clarifications of the tender documentation sought by a supplier (contractor) and also a statement as to whether the Procuring Entity intends to convene a meeting of suppliers or contractors on the issue;

the period for which the tender application will be valid;

a definite description of the place, date, and time for opening tender applications;

the procedure for opening and examining tender applications;

the language or languages in which tender applications must be prepared;

the name, title and address of one or more officers or employees of the Procuring Entity who are authorized to communicate directly with suppliers (contractors) and also information on how such communications shall be made;

the concrete obligations which the supplier (contractor) shall in the future undertake according to the Procurement Contract;

notice of the right of suppliers (contractors) to appeal illegal actions or decisions of the Procuring Entity in the course of the procurement proceedings;

other formalities, compliance with which will be obligatory after acceptance of a tender application and which must be satisfied before signing the contract;

the general conditions of the contract and a model contract if the Procuring Entity requires an offeror to sign a contract which includes any of the above provisions.

2. For procurement of construction or services, the Procuring Entity must possess documentation describing the subject matter of the procurement and an estimate to the investor.

3. The Director of the State Agency may in regulations determine additional information which is to be included in these documents for specified categories of procurements.

Article 23. Clarifications and Modifications of Tender

Documentation

1. A supplier (contractor) may request a clarification of the tender documentation from the Procuring Entity. The Procuring Entity shall respond to any such request within three working days and without identifying the source of the request, communicate the clarification to all suppliers (contractors) to which the Procuring Entity sent the tender documentation.

2. In particular cases, at any time before the deadline for submission of tender applications, the Procuring Entity may modify the tender documentation by issuing an addendum. The addendum shall be communicated immediately to all suppliers (contractors) and shall be binding on those suppliers (contractors).

3. If the Procuring Entity convenes a meeting of suppliers (contractors) to clarify any questions concerning the tender documentation, it shall prepare minutes which contain all inquiries for clarification of the tender documentation submitted at the meeting and its responses to such inquiries without identifying their source. The minutes shall be communicated immediately to all suppliers (contractors) who received the tender documentation.

Article 24. Deadline for Submission of Tenders Applications

1. A tender application received after the deadline for submission of tender applications shall not be opened and shall be returned to the supplier (contractor) who submitted it.

2. The Procuring Entity shall set a deadline for submissions of tender applications which must be:

for a tender with unlimited participation - not less than 6 weeks after announcement of the tender;

for a tender with limited participation - not less than 4 weeks from the date of sending invitations to participate in the tender.

Article 25. The Validity Period, Modifications and Withdrawal of

Tender Applications

1. In cases when the Procuring Entity makes any clarifications or modifications of the tender documentation, it may extend the deadline for submission of tender applications to allow suppliers (contractors) time to consider such clarifications or modifications in their tender applications.

2. If a supplier (contractor) is not able to submit a tender application on-time due to circumstances beyond its control, upon petition of such a supplier (contractor), the Procuring Entity may extend the deadline for submission of tender applications.

3. The extension of the deadline for submission of tender applications is permitted only after the original deadline has passed.

4. The Procuring Entity shall send prompt notice of any extension of the deadline to each supplier (contractor) who received the tender documentation.

5. Applications shall remain in force for the period indicated in the tender documentation. Such a period begins on the day of opening of the tender applications.

6. Prior to expiration of the validity period of the tender applications, the Procuring Entity may request suppliers (contractors) to extend the period for an additional concrete period of time.

7. In the event of a refusal to grant the request of the Procuring Entity, the supplier (contractor) shall not forfeit its right to its security for its tender application.

8. Suppliers (contractors) who agree to extend the validity period of their tender applications shall extend the validity period of the security of their tender applications or provide new security of their tender applications to cover the extended validity period of their tender applications.

9. A supplier (contractor) may change or withdraw its tender application before the deadline for submission of tender applications without forfeiting its right to the return of any security of its tender application.

Article 26. Security of Tender Applications

1. A supplier (contractor) at the time of submission of a tender application must simultaneously provide security of its tender application, the size of which must not exceed 5 % of the value of the procured goods (services) offered in its tender application. The validity period of security of the tender application must not be shorter than the validity period of the tender application.

2. Tender security can be provided in cash, bonds, bank guaranties, and with permission of the Procuring Entity, in tradeable stocks, in bearer deposit certificates, or in a promissory note.

3. Upon petition of the Procuring Entity, the Director of the State may repeal the duty to provide security in cases when the sum for procurement of goods, construction or services is insignificant.

4. The Procuring Entity shall return security of a tender application upon:
expiration of the validity period of the security of the tender application indicated in the tender documentation;
entry into a Procurement Contract and submission of security for performance of the contract, if provision of such security is set forth in the tender documentation;

the withdrawal of a tender application prior to the deadline for the submission of tender applications, if the tender documentation does not state that such a withdrawal is not allowed;

the termination of the procurement proceeding without entering into a contract.

5. An offeror loses its right to return of security of its tender application only in cases:

the offeror's refusal to sign a contract on the terms set forth in its application;

the offeror's refusal to provide the required security for performance of the contract.

Article 27. Opening of Tender Applications

1. Tender applications shall be opened at the time and place specified in the tender documentation. In the event of an extension of the deadline for submission of tender applications, their opening shall be done on the corresponding day.

2. All offerors or their representatives have the right to be present at the opening of the tender applications.

3. The name and address of each offeror whose tender application is opened, as well as the price of each tender application, shall be announced immediately to those persons present at the opening of the tender applications and registered in the record of the procurement proceeding.

4. The information referred to in point 3 of this Article shall be communicated to offerors who so request and who were not present at the opening of the tender applications.

Article 28. Evaluation and Comparison of Tender Applications

1. When conducting the procedure of selection of tender applications, the Procuring Entity shall use only procedures and criteria set forth in this Law and the tender documentation.

2. During the course of evaluating submitted tender applications, the Procuring Entity may request suppliers (contractors) to clarify their tender applications.

3. No substantive changes of tender applications, including changes in price, and no negotiations between the Procuring Entity and the offeror concerning a submitted tender application shall be permitted.

4. The Procuring Entity shall correct obvious errors discovered during the course of review of the tender application and immediately inform the offeror about the correction and receive written consent for the correction.

Article 29. Rejection of Tender Applications

The Procuring Entity shall reject a tender application if:
the tender application does not satisfy the provisions set forth in this Law or the requirements set forth in the tender documentation;
the offeror does not agree to the correction of obvious errors in its tender application.

Article 30. Cancellation of Tenders

1. The Procuring Entity shall cancel a tender when:
less than two valid applications are submitted;
all applications are rejected;
the lowest price indicated in a tender application exceeds the sum allocated by the Procuring Entity for the given procurement;
conducting the procurement is no longer in the state's interest because of a serious, unforeseeable change of circumstances.
2. In the notification of cancellation of the tender, the Procuring Entity shall state the reasons for such cancellation without having to justify the legitimacy of its basis.
3. The Procuring Entity shall send promptly to all offerors the notification required in point 2 of this Article.
4. The Procuring Entity bears no liability to offerors in the event of its rejection of all applications.

Article 31. Notice of Results of Selection

1. Written notice that its tender application has been selected as the winning application shall be sent to the supplier (contractor) who submitted it within 3 days of the selection.
2. The Procuring Entity within three days shall notify by way of publishing an announcement on the selection to all offerors and identify the name and the address of the successful offeror and the price presented in its application.
3. If the announcement soliciting tenders was published in the Bulletin of State Procurement, the announcement referred to in point 2 of this Article shall be published in this Bulletin.
4. The Director of the State Agency by regulation shall determine:
additional information which must be contained in this announcement;
the form of the announcement of the selection of the winner.

Article 32. Selection of Tender Applications and Entry into Contract

1. Upon selection in accordance with the provisions of this Law, the Procuring Entity is obligated to sign a contract not more than seven days from the date of publication of the announcement referred to in point 2 of Article 31.
2. A Procurement Contract in accordance with the conditions of the tender application shall be signed with the supplier (contractor) whose winning tender application was selected.
3. In the event that the selected supplier (contractor) does not sign a contract or fails to provide required security of performance of the Procurement Contract, a new selection shall be made from the already submitted tender applications, unless the other tenders were rejected or the time period set forth in point 5 of Article 25 of this Law has expired.

CHAPTER 4 THE PROCEDURE FOR TWO-STAGE TENDERS

Article 33. The Concept of Two-Stage Tenders

1. The procedure of two-stage tenders consists of 2 stages:
 - in the first stage, all suppliers (contractors) submit initial tender applications without indication of price. The tender documentation may solicit proposals relating to the technical, quality or other characteristics of the goods, construction or services, contract terms for their delivery, and when necessary, the professional and technical competence and qualifications of the suppliers (contractors). At this stage of a two stage tender, the Procuring Entity may engage in negotiations with any supplier (contractor) whose tender application has not been rejected;
 - in the second stage of a two-stage tender, the Procuring Entity shall invite suppliers (contractors) whose tenders have not been rejected to submit final tenders with an indication of the price for the exact kinds of good, construction or services. Any supplier (contractor) not wishing to submit a final tender application may withdraw from the procurement proceedings without forfeiting any security for the tender application.

2. Unless the provisions of this Chapter state otherwise, the same procedures for tenders with unlimited participation are used for two-stage tenders.

Article 34. Conditions for Use of Two-Stage Tenders

Two-stage tenders shall be used when:

- the Procuring Entity cannot determine in advance the specific technical characteristics and quality features of the procured goods, construction or services;
- it is necessary to conduct negotiations with suppliers (contractors) because of the special nature of the goods, construction or services;
- the subject matter of the procurement is research, an experiment, preparation of a scientific opinion or performance of any other specialized services.

Article 35. Invitation to Participate

1. The invitation to participate in a two-stage tender must contain, at a minimum, the following:

- the name and legal address of the Procuring Entity;
- a description of the subject matter of the procurement which includes technical and other parameters, and in the case of a construction procurement, the location and the type of construction;
- a description of the criteria that the Procuring Entity will apply in evaluating an application;
- the deadline and place for submission of initial offers;
- the specification in the tender documentation of the request of the Procuring Entity to the suppliers (contractors) to define the method and the time of performance, the technical parameters, the quality and other features of the procured goods, construction or services.

2. The Director of the State Agency may in regulations determine additional information that should be included in an invitation to a two-stage tender.

Article 36. Deadline for Submitting Initial Offers

1. The deadline for submitting initial offers cannot be less than six weeks from the date of publication of the invitation to participate in a two-stage tender.

2. In special cases or based on a petition of the Procuring Entity and with the consent of the Director of the State Agency, a shorter period may be allowed than is indicated in point 1 of this Article.

CHAPTER 5 OTHER STATE PROCUREMENT PROCEDURES

Article 37. The Concept of Competitive Negotiations

Competitive negotiations is a State Procurement procedure in which the Procuring Entity negotiates the provisions of a Procurement Contract with a sufficient number of suppliers (contractors), but not less than three, to ensure competition.

Article 38. Procedure of Competitive Negotiations

1. In a competitive negotiation procedure, sending of invitations to a sufficient number of suppliers (contractors) to submit an application may precede negotiations. The invitation to submit applications must contain, at a minimum, the information set forth in point 1 of Article 35.

The requirements, clarifications and information, as well as the documents connected with the negotiations, shall be provided to all suppliers (contractors).

2. The Procuring Entity shall establish the minimal level of requirements related to the quality and technical aspects of proposals in compliance with the criteria, other than price, set forth in the invitation for submission of applications.

3. The supplier (contractor) receiving the highest score according to point 2 of this Article shall be invited to negotiations concerning the price of the proposal. If the Procuring Entity decides that negotiations with the supplier (contractor) who received the invitation will not lead to entering into a Procurement Contract due to failure to agree on price, then it shall inform the supplier (contractor) that negotiations with it shall be terminated.

4. In the event of termination of negotiations, the Procuring Entity shall invite to negotiations the supplier (contractor) whose proposal received the next highest score and if negotiations with this supplier (contractor) do not lead

to entering into a contract, the Procuring Entity shall repeat this procedure among the remaining suppliers (contractors) until a Procurement Contract is signed or until it rejects the remaining proposals.

5. All negotiations are confidential. Neither party may disclose without the consent of the other party technical, trade or other valuable information related to the negotiations.

6. The provisions of Articles 31-32 apply to competitive negotiations.

Article 39. The Concept of Request for Quotations

1. A request for quotations is a State Procurement procedure in which the Procuring Entity requests quotations for already available goods or services from a number of suppliers (contractors), not less than three, to ensure competition and selection of the best offer.

Request for quotations is used when a procurement is for already available goods or services with the requisite quality standards.

2. Each supplier (contractor) from whom a request for quotation is asked additionally shall be informed whether to include in the price any other elements, in addition to the costs of the goods or services, such as transportation and insurance costs, or customs and tax payments.

3. In addition to price, the Procuring Entity may establish other selection criteria. In this case, the request for quotations, besides price, must contain a list of all other criteria. In evaluating the quotations, the Procuring Entity can only use those criteria which are stated in the request for quotations.

Article 40. Procedure for Request for Quotations

1. Each supplier (contractor) is allowed to submit only one price quotation and can not change it. No negotiations of the quoted price between the Procuring Entity and the supplier (contractor) shall be conducted.

2. A Procurement Contract shall be entered into between the Procuring Entity and the supplier (contractor) which submitted the lowest price quotation meeting the requirements of the Procuring Entity.

Article 41. Single-Source Procurement and Conditions for its Use

1. Procurement from a single source is a State Procurement procedure in which the Procuring Entity signs a Procurement Contract after negotiating with only one supplier (contractor).

2. The Procuring Entity, with the consent of the State Agency, may adopt a decision on conducting a single-source procurement only in the following circumstances:

if it is conducting additional orders, not exceeding 15% of the value of the previous procurement, and maintains the same norms, parameters and standards;

signing of a contract for research, experiments or preparation of a scientific opinion;

if the specific types of goods, construction or services are available only from a particular supplier (contractor);

if the Procuring Entity is conducting a State Procurement for a creative work or for creative activity in the area of arts or culture;

if the procurement can only be obtained from one supplier (contractor) due to limitation based on nationality in compliance with legislation;

if an immediate necessity arises to conduct procurements in connection with circumstances which the Procuring Entity could not foresee.

CHAPTER 6 STATE PROCUREMENT CONTRACTS

Article 42. State Procurement Contracts

1. A state Procurement Contract comes into force on the moment of its signing by the parties.

2. An announcement about the entering into of a Procurement Contract with the name and address of the supplier (contractor) with whom the contract was signed, and the price of the contract, shall be presented within 7 days of signing to all suppliers (contractors) who took part in the procurement proceeding.

3. The provisions of the Civil Code shall apply to state Procurement Contracts.

4. State Procurement Contracts shall be in written form.

5. A copy of the state Procurement Contract shall be submitted to the State Agency within three days of its signing by the parties.

Article 43. Security for Performance of the Contract

1. The Procuring Entity may request from a supplier (contractor) security for performance of the contract.
2. The security set forth in point 1 of this Article may be provided in the form of cash, treasury bonds, guarantees made by state institutions, bank guarantees, securities issued or guaranteed by the National Bank, and with permission of the Procuring Entity - in the form of tradeable stocks, bearer deposit certificates, promissory notes and guarantees, or liens granted by individuals or legal entities. The security cannot be higher than double the value of fines set forth in contract or be higher than 10 per cent of the value of the procurement.

Article 44. Modification of Terms of Contract is Prohibited

1. It is prohibited to change any point of a signed contract and to introduce new terms into a signed contract which may change the substance of the offer which was the basis for selection of the supplier, unless the mutually agreed change is based on a circumstance which could not have been foreseen at the moment of signing the contract.
2. Any change done in violation of point 1 of this Article is invalid.
3. The Director of the State Agency may petition a court to protest the illegality of a modification pursuant to point 1 of this Article.

Article 45. Termination of Contract

1. If there arises a substantial change in the circumstances which existed at the time the contract was entered into and which were impossible to foresee at the time of entering into the contract, and which make the performance of the contract contrary to the public interest, only after approval of the State Agency, the Procuring Entity may terminate the contract within one month from the date of learning about the circumstances.
2. When a contract is terminated in these circumstances, the supplier (contractor) is entitled to demand payment only for actual performance of the contract.

Article 46. Claims under the Contract

1. If a dispute connected with the performance of a state Procurement Contract arises, the supplier (contractor) is obligated to resolve the dispute by addressing its claims to the Procuring Entity.
2. The Procuring Entity is obligated to review claims submitted by a supplier (contractor) and to present an answer in writing within 21 days of submission of the claim.
3. If the Procuring Entity rejects the claim or does not reply within the prescribed time period indicated in point 2 of this Article, the supplier (contractor) may petition a court.

CHAPTER 7 PROTESTS AND APPEALS

Article 47. Right to Appeal

1. Participants in a procurement proceeding, before adoption of a decision on the selection of an application by the tender committee have the right to submit protests to the tender committee.
2. Any decision of the tender committee may be appealed by the participants in the procurement proceeding to the Procuring Entity within 10 days after publication of the announcement on the results of a procurement proceeding. Upon expiration of such period, protests submitted by suppliers (contractors) to the Procuring Entity shall not be reviewed.
3. The following cannot be the subject of appeal:
 - the selection of the method of procurements;
 - the selection of the procedure of conducting procurements;
 - limitation of the procurement proceeding based on nationality in accordance with the provisions of this Law;
 - decisions of the Procuring Entity pursuant to Article 29 of this Law.
4. A supplier (contractor) or any government body whose interests are violated or might be violated as a result of an appeal have the right to participate in the appellate proceeding. A supplier (contractor) not participating in such a proceeding shall forfeit the right to file a similar appeal.

Article 48. Actions of the Procuring Entity

1. Before signing a Procurement Contract, a supplier (contractor) may submit to the Procuring Entity a written protest with the reasons for filing such a protest. The Procuring Entity cannot review the protest after a Procurement Contract has entered into force.

2. A complaint may be filed within 10 days from the day when the supplier (contractor) found out or could have found out the circumstances giving rise to the protest.

3. The Procuring Entity must review a protest within 7 days of its submission.

4. Based on the results of the review of a protest, the Procuring Entity must make a written decision which indicates:

- the basis of the adopted decision;

- the measures taken to rectify the protest in the event of a full or partial remedy of the protest.

5. In the event that in the period indicated in point 3 of this Article a decision of the Procuring Entity is not made or the supplier (contractor) is not satisfied with the adopted decision, it has the right to appeal to the State Agency or to a court in accordance with Article 49 or 51 of this Law. From the moment of submission of such a protest, review of the dispute ceases to be in the jurisdiction of the Procuring Entity.

6. A decision of the Procuring Entity is final in the event that an investigation pursuant to Article 49 or 51 of this Law is not initiated.

Article 49. Procedure for Review of Protests by the State Agency

1. The State Agency in the event that a protest is not rejected by it may use one or more of the following means of enforcement:

forbid the Procuring Entity from carrying out illegal actions, adopting illegal decisions, or using illegal procedures;

fully or partially revoke an illegal decision of a Procuring Entity except those decisions on recognizing as invalid a decision on entering into a Procurement Contract;

revoke an illegal decision of a tender committee or Procuring Entity which violates procurement procedures;

require the Procuring Entity to compensate a supplier (contractor) for costs of making the protest except for lost income (lost profits) in connection with the conducted procurement proceeding and as a result of the illegal action or decision of the Procuring Entity by its use of illegal procedures;

make a decision to terminate a procurement proceeding.

2. The Director of the State Agency shall make within 10 days a written decision of the protest with the reasons therefor. The decision shall contain:

- the reasons for the decision;

- the measures ordered for satisfaction of the protest in the event of a full or partial satisfaction of the protest.

3. A decision of a protest is final if it is not appealed in a judicial proceeding in accordance with Article 51 of this Law.

4. The State Agency shall immediately notify the Procuring Entity of the receipt of a protest.

5. A protest is not subject to review when it is submitted more than 15 days from the moment when the supplier (contractor) submitting it found out or could have found out about the circumstances giving rise to the protest, and also after entry into a Procurement Contract. A protest in such a case must be done pursuant to Article 51 of this Law.

Article 50. Suspension of Procurement Proceedings

1. Pursuant to Articles 47-49, the timely submission of a complaint suspends the procurement proceedings for a period of up to 10 days provided that the complaint has a basis and contains an affirmation which demonstrates that the supplier (contractor) will suffer injury in the absence of such a suspension, it is probable that the complaint will succeed, if granting the suspension will not cause substantial harm to the Procuring Entity or to other suppliers (contractors).

2. When the Procurement Contract is already entered into, the timely submission of a complaint pursuant to Article 51 of this Law shall suspend performance of the Procurement Contract for a period of 10 calendar days, provided that the complaint meets the requirements set forth in point 1 of this Article.

3. The State Agency may extend the suspension period provided for in point 1 and 2 of this Article in order to preserve the rights of the supplier (contractor) submitting the complaint or commencing the action pending the completion of the review proceedings, provided that the total period of suspension shall not exceed 30 days.

4. The suspension provided for by this Article shall not apply if, with the consent of the State Agency, the Procuring Entity certifies that the public interest demands the procurement to proceed. The certification of the Procuring Entity explaining the need to continue the procurement proceedings shall be made a part of the record of the procurement proceedings and is only appealable in a judicial proceeding.

5. Any decision adopted by the Procuring Entity in accordance with this Article and which contains the basis for the decision shall be made part of the record of the procurement proceedings.

Article 51. Judicial Review

Disputes between suppliers (contractors) and the Procuring Entity arising from a procurement proceeding, and also decisions of the Procuring Entity and the State Agency adopted in accordance with Articles 47-49 of this Law, may be appealed to court, in compliance with the procedure established by legislation of the Kyrgyz Republic.

CHAPTER 8
FINAL PROVISIONS

Article 52. International Obligations of the Kyrgyz Republic

If an international treaty of the Kyrgyz Republic establishes other rules than those set forth in this Law or regulations on procurement, the rules of the international treaty take precedence.

Article 53. Procedure for this Law Entering into Force

1. This Law shall become effective as of June 1, 1997.
2. To propose to the President of the Kyrgyz Republic to make its decisions in accordance with the Law of the Kyrgyz Republic "On State Procurement of Goods, Constructions, and Services."
3. To order the Government of the Kyrgyz Republic to make its decisions in accordance with this Law.

President of the Kyrgyz Republic A.Akaev

Adopted by the Legislative Assembly
of the Jogorku Kenesh of the Kyrgyz Republic 15 April 1997