

## **LAW OF UKRAINE**

### **ON PROCUREMENT OF GOODS, WORK AND SERVICES FOR PUBLIC FUNDS**

*(Vidomosti Verkhovnoyi Rady (VVR), 2000, #20, p.148)*

*(Changed and amended according to Laws of Ukraine*

*#434-IV (434-15) of January 16, 2003;*

*#1047-IV (1047-15) of July 09, 2003;*

*#1158-IV (1158-15) of September 11, 2003;*

*#1294-IV (1294-15) of November 20, 2003;*

*#2188-IV (2188-15) of November 18, 2004;*

*#2229-IV (2229-15) of December 14, 2004;*

*#2377-IV (2377-15) of January 20, 2005;*

*#2664-IV (2664-15) of June 16, 2005)*

*(In the text of the Law the words "contractor" and "contractors" in all cases have been replaced with the words "participant" and "participants" according to Law of Ukraine #434-IV (434-15) of January 16, 2003)*

The present Law shall establish the general legal and economic principles for executing the procedures of procurement of goods, works and services at the expense of public funds.

The purpose of the present Law is to create a competitive environment in public procurement as well as prevent manifestations of corruption in this area, ensure transparency of the procedures of procurement of goods, works and services for public funds, and achieve their optimal and rational use.

## **SECTION I GENERAL PROVISIONS**

### **Article 1. Definitions of Main Terms**

The terms used herein shall have the following meaning.

- 'Contracting party' shall be understood as a spending unit, which undertakes the procurement according to the procedure specified hereby, at that, an entity, whose tender committee is carrying out the procurement procedure and which simultaneously enters into the procurement contract with the successful tenderer shall be deemed the principal, except for cases of procurement of goods on the basis of interagency coordination;

Enterprises – state owned, non-corporatized state-owned, municipal enterprises and economic entities, in which State or municipal stake (stock, share) exceeds 50 percent, their subsidiary enterprises, as well as enterprises, economic entities, in which 50 or more percent in the authorized capital belongs to state owned, non-corporatized state-owned, municipal enterprises and economic entities, in which State or municipal stake (stock, share) exceeds 50 percent (hereinafter referred to as enterprise);

- 'Spending units' shall be understood as state authorities, authorities of the Autonomous Republic of Crimea, local self-administration bodies, other agencies, institutions and organizations specified by the Constitution of Ukraine (254k/96-VR) and the legislation of Ukraine, as well as

enterprises, institutions or organizations founded according to the established procedure by the state authorities, authorities of the Autonomous Republic of Crimea, local self-administration bodies, and authorized to obtain state funds, assume liabilities thereunder and make payments; enterprises;

- 'State procurement (hereinafter referred to as the "procurement")' shall be understood as the acquisition of goods, work and services by the client at the expense of public funds according to the procedure established hereby, at that, the procurement by one principal in the interests of another principal shall be prohibited, except for cases of procurement of goods on the basis of interagency coordination;

- 'State funds' shall be understood as funds of the State Budget of Ukraine, the budget of the Autonomous Republic of Crimea and local budgets, the state lending resources, and funds of the National Bank of Ukraine, state special-purpose funds, the Pension Fund of Ukraine, the social assurance funds, funds of general obligatory state social insurance, funds of insurance in case of unemployment, funds of general obligatory state social insurance in connection with temporary loss of capacity for work and expenses caused by birth and burial, and funds stipulated by the Law of Ukraine "On Compulsory State Social Insurance Against Labour Accidents And Occupational Diseases Causing Disability" (1105-14) which are used for procuring commodities, work and services; humanitarian aid in pecuniary form, the funds of the Agrarian Fund, State and local energy saving funds, the funds of establishments or organizations, set up in the established procedure by bodies of State power, bodies of power of the Autonomous Republic of Crimea or bodies of local self-government, funds of enterprises;

- 'Procurement procedure participant (hereinafter referred to as 'participant')' shall be understood as a resident or non-resident legal entity, which confirmed its intention to take part in the procurement procedure and submits or submitted a tender proposal;

- 'Goods' shall be understood as products of any kind and purpose, including raw materials, products, equipment, technologies, objects in the solid, liquid or gaseous state, including electric power, as well as services related to the delivery of goods, provided that the cost of such services does not exceed the cost of the latter;

- Works — the design, construction of new, expansion, modernization, overhaul and restoration of facilities used for production and non-production purposes, the technical re-equipment of the existent enterprises as well as work-related services, including the geodetic activities, drilling, seismic research, aerial and satellite mapping, and other services that are included in the cost estimate of works provided that the cost of such services does not exceed the works cost

- 'Services' shall be understood as any procurement, except for goods and work, including the training of specialists, the provision of transportation and communication facilities, the implementation of technologies, the scientific research, the medical and consumer services, as well as consultation services, to which belong services related to consultation, expert examination, valuation, preparation of opinions and recommendations;

- 'Tender documents' shall be understood as the documents to be prepared by the client and handed over to bidders for the preparation of bids as to the object of the procurement in conformity with this Law,

- 'Tender committee' shall be understood as a group of specialists appointed by the client and be responsible for executing the procurement procedures in compliance with the provisions of the present Law;

- 'Bid' shall be understood as a proposal in respect of a certain procurement object, which is prepared and submitted by the bidder to the client in accordance with requirements of tender documents;

- 'Alternative bid' shall be understood as a proposal submitted by the bidder to the client as additional component of the bid, if the tender documents so provides and if such proposal is different from the main proposal made according to terms and conditions of the tender documents;

- 'Acceptance of the bid -- acceptance by the customer of the bid recognized as the best by the results of assessment and the consent to pay therefore. The bid shall be deemed accepted, if the client handed a bid acceptance notice in writing to the bidder within the term specified in tender documents

after the bidder had been declared a winner of the procurement procedure

- 'Bidding (tender)' shall be understood as the competitive selection of participants in order to identify a successful bidder in accordance with procedures (except for the procedure of procurement from a single participant) established hereby; (*Paragraph 15 of Article 1 in the wording of Law of Ukraine # 434-IV (434-15) of January 16, 2003*)

- 'Procurement contract' shall be understood as a written contract between the contracting party and the successful bidder in the procurement procedure, which provides for the provision of services, performance of works, or the acquisition of the title to commodities against an appropriate payment; (*Paragraph 17 of Article 1 in the wording of Law of Ukraine # 434-IV (434-15) of January 16, 2003*)

- 'Bid security (hereinafter – tender security)' shall be understood as the provision of guarantees by the bidder to the client as to the bidder ensuring the performance of his commitments that arise in connection with the submission of bids, including such security instruments as bank guarantees, standby letters of credit, checks under which any bank has to meet primary liabilities, deposits, bills, surety and other types of security by choice of the client in compliance with the law;

- 'Procurement contract performance security' shall be understood as the provision of guarantees by the bidder to the client as to his performance of the procurement contract requirements, including such security instruments as bank guarantees, standby letters of credit, checks under which any bank has to meet primary liabilities, deposits, bills, surety and other types of security by choice of the client in compliance with the law;

- 'Successful bidder' shall be understood as a participant, whose tender proposal has been deemed the best as a result of the evaluation, and accepted; (*The Paragraph was added to Article 1 according to Law of Ukraine #434-IV (434-15) of January 16, 2003*)

- 'A part of the procurement object (lot)' shall be understood as a portion of commodities, work or services defined by the client (in terms of the volume, range or the place of delivery of commodities (performance of work, provision of services), for which the tenderers are allowed to submit tender proposals within the scope of the single procurement procedure. The number of tender proposals for each individual portion of the procurement object may not be less than three;

- 'Electronic state procurement' shall be understood as the performance of the procurement hereunder by the principals using an information system on the Internet in the online mode using the electronic document exchange and the electronic digital signature.

- 'General client' shall be understood as the body of state authority, state institution, organization or enterprise determined by the Cabinet of Ministers of Ukraine as being responsible for organizing and executing procurement procedures on the basis of interagency coordination in the interests of clients and for discharging their functions in compliance with the present Law;

- 'Procurement on the basis of interagency cooperation' shall be understood as the procurement with the use of the interaction mechanism between the general client and clients under procedure established by the present Law;

- 'Qualification documentation' shall be understood as the documentation drawn up by the client and transferred to the bidders for them to prepare qualification offers during pre-qualification of bidders;

- 'Qualification offer' shall be understood as the offer prepared and submitted to a bidder by the client in compliance with the requirements of qualification documentation;

- 'Validity term of tender offer (price proposal)' shall be understood as the time set in the tender documentation (requests (announcements) for price proposals) by the client that is valid before the conclusion of a procurement contract, during which the bidder does not have to right to alter his tender offer(price proposal) (except for price reduction in cases, as provided by this Law);

## **Article 2. Sphere of Application Hereof**

1. This Law shall apply to every procurement of goods, works and services, which are undertaken in full or in part for public funds, provided that the purchase value of the good (goods), service (services) makes up or exceeds UAH 20,000, and for works – UAH 50,000.

This Law shall not apply to procurement of goods and services, carried out by enterprises of the defense-industrial complex.

2. Conditions for the procurement of goods, works and services for public funds may be established or changed exclusively by this Law and exclusively in cases, stipulated by this Law.

Amendments to this Law should be officially announced by August 15th of the year preceding the new budget year.

3. The procurement procedures, set forth in this Law, shall not apply to cases, if the object of procurement is as follows:

Central water supply and sewerage.

Central heat energy supply.

Postal services, as well as stamps and stamped envelopes.

Goods, works and services, the procurement of which is carried out by clients abroad.

Telecommunication services, including transmission of radio and TV signals (with the exception of mobile communication and Internet services).

Use of railroad tracks.

Goods, works or services, which due to their special designation are classified as state secrets.

Services for transportation of oil and oil products by pipelines.

Services for transportation of natural and oil gas by pipelines and its distribution.

Services for transportation of other substances by pipeline transport.

Transfer and distribution of electrical energy.

Services for management of air traffic.

Services for maintenance and emergency repair of transportation facilities beyond the borders of Ukraine.

Services for air conveyance of official state, parliamentary, government and diplomatic delegations.

Precious metals and stones, the procurement of which is regulated by relevant laws of Ukraine.

Food products, fodder crops, fuel and services for direct carrying out of concert tours by artistic groups and performers, which are conducted upon the decision of a central body of executive power, which carries out state policy in the sphere of culture, exclusively during these tours.

Services for extending lease on communication facilities.

Services rendered by banks for receiving payments for municipal services and servicing of current accounts.

Services, procured by state banks during banking operations in conformity with the Law of Ukraine “On Banks and Banking.”

Services for customs clearance of cargo, rendered by the State Customs Service of Ukraine.

Services for issuance of certificates on origin of goods.

Nuclear fuel, nonirradiated fuel elements (solid) for nuclear reactors.

Services, the procurement of which are carried out in order to provide implementation of the State budget as to state loans, servicing and repayment of state debt;

Goods and services directly related to design and manufacturing of protected paper, banknotes and coins;

Natural gas used by gas transporting enterprises for their technological and other production needs;

Goods, works and services procured for scheduled repair of nuclear reactor in accordance with the procedure established by the Interdepartmental Commission on Public Procurement;

4. It shall be prohibited to conclude contracts, which envisage the spending of public funds and/or payment by administrator of public funds for goods, works and services prior to/without carrying out procedures, set forth in this Law, with the exception of cases, provided by this Law.

5. Should the object of procurement be a food products, medicines or medical goods, fuel, services for organization of hot meals, transport services, repair services, as well as raw material, completing units, needed by enterprises for the manufacture of goods, the client has the right during the procurement procedure to purchase necessary items for current needs without applying procurement procedures, set forth in the Law, amounting to a sum, which does not exceed 10 percent of the total expected value of procurement item, informing thereof in the course of 3 business days the Antimonopoly Committee of Ukraine, Interdepartmental Commission on Public Procurement and Tender Chamber of Ukraine.

The provisions, stipulated in paragraph one of this Parte, shall not be applied during the following procurement procedure carried out by the client of the same object of procurement.

6. Enterprises shall procure goods, works and services at the expense of funds of the State Budget of Ukraine, the budget of the Autonomous Republic of Crimea and local budgets on general basis in the procedure, provided by this Law.

The composition of the tender committee of the enterprise shall be appointed by the head of the body of state power that manages enterprise property or through which (head of which) the activity of the central body of executive power performing these functions is directed (coordinated).

The procurement by enterprises of goods, works and services at the expense of other public funds shall be carried out with due account to particularities, as follows:

1) Enterprises shall apply this Law to the procurement of goods, works and services if the value of the procurement object for the good (goods), service (services) makes up or exceeds UAH 50,000, and UAH 400,000 for works.

2) Enterprises can carry out procurement by applying procedures for request for price proposals (quotation) as to goods, works and services, for which permanently acting market exists, and under condition that the value of the object of procurement does not exceed UAH 100,000 for procurement of goods and services and UAH 500,000 for procurement of works.

3) Enterprises can procure goods, works and services, connected with the liquidation of the aftermath of emergency situations having technogenic or natural nature, consequences of accidents at production, transport and objects of nuclear power engineering without applying procurement procedures, specified in this Law, in the procedure determined by the Interdepartmental Commission on Public Procurement.

4) Norms of this Law related to approval and publication of annual procurement plan shall not apply to enterprises.

5) Enterprises shall have the right, in the procedure set forth in Article 14 of this Law, to receive corresponding conclusions on list of products (goods, works and services) for a year or other period, the procurement of which is planned by way of applying procurement procedures, specified in Article 33 of this Law.

6) If procurement of raw material, materials, completing items for production needs, as well as services, which according to technological process are provided within the framework of production or scientific-technical cooperation, with the availability of respective grounds, the enterprises shall have the right, in the procedure specified in Article 14 of this Law, to receive corresponding conclusions on possibility to apply procurement procedures, provided by Article 33 of this Law.

7) Should enterprises carry out, as follows:

- Open bidding with price reductions with reduction of price and tenders with restricted participation – the term for submission of bid proposals can, in the procedure set forth in Article 8 of this Law, be set at not less than 10 calendar days from the date of publication of the announcement on planned procurement or conducting previous qualification, and not less than 7 calendar days from the date invitations were sent out for participation therein.

- Procedure for reduction and two stage tenders – the term for submission of previous proposals by bidders can, in the procedure set forth in Article 8 of this Law, be set at not less than 10 calendar days from the date of publication of the announcement on planned procurement. The term for submission of bid proposals for the second stage can be set at not less than 5 calendar days from the date bidders were informed about the results of the first stage.

8) Particularities for procurement of raw material, materials, completing items for production and development of industrial and consumer goods by the enterprises in conformity with designing and technological documentation can be determined by the Interdepartmental Commission on Public Procurement with the availability of respective positive conclusions of the body of state power, managing enterprise property or through which (head of which) activity of the central body of executive power, performing these functions is directed (coordinated), and in conformity with Section II<sup>1</sup> of this Law.”

### **Article 2-1. Principles of Public Procurement**

1. Public procurement shall be carried out on the basis of the following principles:

- Maximum economy and efficiency;
- Fair competition among bidders;
- Openness and transparency at all stages of public procurement;
- Non-discrimination of bidders;
- Objective and impartial assessment of tender offers.
- prevention of manifestations of corruption;
- free access, openness and availability of information on procurement issues, including for citizens of Ukraine and social organizations

### **Article 2-2. Stages of Public procurement and their Planning**

1. The stages of public procurement shall be as follows:

- 1) Approval of cost estimates (program, plan of public funds utilization);
- 2) A copy of the annual plan, which is approved by the customer not later than within one month following approval of the budget (program, plan for public funds utilization), and changes to it shall be forwarded to the Antimonopoly Committee of Ukraine in cases and under a procedure established by this agency and made public through posting in at least one information system in the Internet within 15 calendar days from the date of its approval
- 3) Selection and execution of procurement procedures on the basis of approved cost estimates (program, plan of public funds utilization) and the annual public procurement plan;
- 4) Determination of the procurement procedure winner;
- 5) Conclusion of procurement contracts;
- 6) Compilation of reports on procurement procedure results;
- 7) Performance of procurement contracts;
- 8) Control over the performance of procurement contracts.

2. Procurement shall be executed in accordance with the annual plan approved by the client not later than within one month after the approval of the cost estimates (program, plan of public funds utilization). A copy of the annual plan shall be forwarded to the Antimonopoly Committee of Ukraine in cases and under procedure set out by this agency. The annual procurement plan shall be made public by posting it on at least one Internet Network information system within 15 calendar days from the date of its approval.

### **Article 3. The System of State Supervision, Monitoring and Coordination in the Procurement Area**

State supervision, monitoring and coordination in the procurement area shall be carried out by the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, the authorized central executive body on coordination of procurement of goods, works and services, the Accounting Chamber, the State Auditing and Inspection Service of Ukraine, the State Treasury of Ukraine, the Ministry of Agrarian Policy of Ukraine, the authorized central executive body on statistics, pursuant to the Law of Ukraine *On National Statistics*, law-enforcement authorities within the limits established by the Constitution, laws of Ukraine and this Law.

The Accounting Chamber shall carry out supervision, monitoring and coordination in the procurement area within the jurisdiction established by the Constitution, the Law of Ukraine *On the Accounting Chamber*, this Law and other laws of Ukraine

#### **Article 3.1 The Authorized Central executive Body on Coordination of Procurement of goods, Works and Services**

1. The Antimonopoly Committee of Ukraine shall accomplish the main objective of the Law related to creating competitive environment in the procurement area.

2. The main functions of the Antimonopoly Committee of Ukraine in the public procurement area are, as follows::

- preparation, and submission to the Cabinet of Ministers and the Accounting Chamber, of half-yearly reports on procurement by customers;
- drafting normative and legislative acts exclusively in cases, as provided by this Law.;
- conducting of checks on spending agencies' procurement legislation compliance in accordance with this Law;
- submission of materials to law-enforcement authorities as provided by this Law;
- cooperation with public authorities in the prevention of corruption in the procurement area;
- international cooperation in the procurement;
- submission of proposals to the Cabinet of Ministers for identifying a general customer;
- monitoring compliance with the legislation on protection of economic competition in the procurement area, in particular in case the bidding (tender) results are distorted, within the limits established by the existing legislation of Ukraine;

3. The Antimonopoly Committee of Ukraine shall be empowered:

- to request the customers to provide a report on the results of procurement procedure pursuant to this Law and the performance of procurement contracts;
- to fix dates for the customers to furnish information on planned procurement, concluded procurement contracts and their performance;
- to take action pursuant to this Law in case of violations of procurement procedures;
- to ensure the exercise of control of procurement legislation compliance;
- to draw up reports about administrative offences and legislation noncompliance in the procurement of goods, works and services for public funds;
- to make a decision on:
  - the additional information contained in the advertisement/invitation;
  - the form of a report on the procurement procedure results and further requirements to this report;
  - the form of a report about bids opening;
  - the form of an annual plan for procurement for public funds;

- the form of a register of received bids;
- the procedure for conducting checks on spending agencies' procurement legislation compliance and for interaction with law-enforcement authorities;
- the form of register of unscrupulous bidders.

### **Article 3-2. Other Authorities Dealing with Supervision and Monitoring in the Procurement Area**

1. The public authorities, in addition to the Antimonopoly Committee of Ukraine, dealing with state supervision and monitoring in the procurement area within their jurisdiction shall include: the State Auditing and Inspection Service of Ukraine, the State Treasury of Ukraine, the Ministry of Agrarian Policy of Ukraine, the authorized central executive body on statistics, pursuant to the Law of Ukraine *On National Statistics*, and law-enforcement authorities.

2. The bodies dealing with state supervision and monitoring in the procurement area within the limits established by the Constitution, laws of Ukraine and this Law, shall perform the following functions:

the State Auditing and Inspection Service:

- conducts checks on spending agencies' procurement legislation compliance in accordance with this Law and other laws of Ukraine;
- cooperates with public authorities to prevent manifestations of corruption in the procurement area;
- monitors legislation compliance in the procurement area;
- draws up reports about administrative offences and violations of legislation in procurement of goods, works and services for public funds;
- submits materials to law-enforcement authorities as provided by law;
- carries out other functions in accordance with Ukraine's laws.

The State Treasury of Ukraine:

- checks the availability and conformity of concluded contract with the report on effected procurement and other documents as provided by law;
- verifies grounds for making payments, specifically: the availability, and procurement legislation compliance, of an annual procurement plan and the documents proving the conduct of procurement procedures as well as accuracy of payment documents;
- participates in the economic justification of individual expenditure items of the State Budget of Ukraine;
- monitors procurement legislation compliance;
- submits materials to law-enforcement authorities as provided by law;
- takes action to prevent payments from the customer's account in compliance with obligations under the contract in case of cancellation of a procurement procedure upon decision as to consideration of complaints (lawsuit) about violations in the conduct by the customer of procurement procedures;
- carries out other functions in accordance with Ukraine's laws.

The authorized central executive body on statistics, pursuant to the Law of Ukraine *On National Statistics*:

- maintains records of procurement through collecting information on planned procurement and tenders that took place;
- approves the statistic report forms in the procurement area;
- carries out other functions in accordance with Ukraine's laws.

Law-enforcement authorities exercise supervision and carry out monitoring in the procurement area within the limits established by Ukraine's laws.

### **Article 3-3 The Interdepartmental Commission on Public Procurement**



1. In order to provide transparency and openness of public procurement, the Interdepartmental Commission on Public Procurement (hereinafter: the Commission.)

The Commission shall comprise one representative each from the Accounting Chamber, the State Auditing and Inspection Service, and the State Treasury, Antimonopoly Committee of Ukraine, Ministry of Economy of Ukraine, three representatives responsible for regulating public procurement market nominated by the respective Verkhovna Rada committee that deals with issues for regulating public procurement market, and three representatives of the Tender Chamber of Ukraine.

2. The Commission shall:

issue opinions to the customer on the practicability of using the restricted tender procedure or single source procurement procedure pursuant to Article 14 herein;

consider complaints about violations of procurement procedures or adopted decisions by the customer, acts or omissions to act, and make respective decisions in cases and under a procedure set forth in this Law;

analyze procurement-related problems and report about the results to the Verkhovna Rada, Cabinet of Ministers, and the Antimonopoly Committee of Ukraine as well as take relevant decisions as to their elimination;

issue independent conclusions on the activities of the Antimonopoly Committee of Ukraine and send them to the Verkhovna Rada and the Cabinet of Ministers and, if necessary, to law-enforcement authorities;

present proposals to the Antimonopoly Committee of Ukraine for ensuring efficient monitoring in the procurement area;

determine the legal and management methods of corruption prevention in the procurement area;

promote the creation of conditions for transparency in the procurement area;

assist in improving the system of provision of procurement information to the public;

promote the adoption of modern procedures and methods of formation of a transparent market of agricultural produce procurement;

protect the enterprises of the social organizations of the disabled in the area of state procurement, including the adoption of relevant decisions;

enjoy the right to request and receive information, documents and material on activity of tender committee of the client, procurement carried out thereby, state of execution of contracts on procurement at any stage of performance, and as to results of their consideration (should the need arise with the attraction of respective specialists and representatives of law enforcement authorities) take decision in conformity with part seven, Article 12 of this Law. Clients and bidders, upon request (demand) of the Commission shall be obliged in the course of 5 business days to provide information, duly certified copies of relevant documents and materials, with the exception of those that contain secrets protected by law. The failure to provide the client with information, documents and materials upon the decision of the Commission can be grounds for canceling procurement procedures;

determine procedure for procurement of goods, works and services, specified in sub-item 3, part six, Article 2 of this Law.

enjoy the right to determine particularities for the procurement of goods, set forth in sub-item 8, part six, Article 2 of this Law;

enjoy the right to draw corresponding conclusions, stipulated by Articles 26 and 34 of this Law;

approve procedure for determining object of procurement;

approve methods for determining sum of losses should the client fail to observe requirements of the effective legislation during procurement of goods, works and services for public funds, methods of assessment for determining the best bid proposals, including specific weight of assessment criteria;

approve list of materials for collection of methodic material "Collection of Methodic Materials on Public Procurement of Ukraine;

keep list of tender committee members, which were expelled from composition of tender committee for committing violations;

keep register of unscrupulous bidders and register of participants of procurement procedure, in conformity with this Law;

takes decision and (or) give recommendations for putting into practice scientific-technical developments, technologies, inventions, methods and procedures in the public procurement area, and undertakes action for ensuring the observance of norms of the effective legislation in this sphere;

determine the procedure and take relevant decisions on including enterprises, establishments and organizations into the list of enterprises, establishments and organizations on the basis of which training and advance training on organization and carrying out of procurement procedures are conducted, keeps their list and posts it on its official Internet site;

determine procedure and carry out attestation of teachers conducting training or advance training on organization and carrying out of procurement procedures, approves programs for training and advance training on organization and carrying out of procurement procedures;

enjoy the right to draw conclusions and take decisions on other issues related to public procurement area.

3. The Commission shall be headed by a Chairman. A Chairman and a Secretary shall be elected among members thereof by a majority of two thirds of the votes of Commission members.

Each Commission member shall have one vote.

4. The Commission shall approve the Regulation on the Interdepartmental Commission on Public Procurement.

5. The Commission shall be independent in its work. It shall be prohibited to interfere into the activity of the Commission and exert pressure on its members. The activity of the Commission shall be transparent for society.

6. A Commission meeting shall be deemed valid when attended by not less than three-quarters of its members. Commission decisions on issues set forth in paragraph two, part two of this Article and paragraph three, part two, Article 34 of this Law shall be considered as accepted if not less than two thirds of the members, present at the Commission sitting, voted in its favor, on other issues it shall be deemed passed when they are voted for by over half of its members in attendance. In case the votes of members are equally divided, the chairman's vote shall be a deciding one, in case of his absence – the vote of a person presiding at the sitting. All decisions of the Commission, signed by the Commission Chairman and Secretary, shall be registered simultaneously.

Should signs of felony be discovered during the consideration and analysis of documents and materials related to public procurement, the Commission shall have the right to submit such documents and materials to law enforcement authorities.

7. All decisions and conclusions of the Commission, adopted within its competence, in conformity with requirements of this Law, shall be obligatory for implementation by clients, bidders, and other persons, which these decisions concern.

In order to ensure public control in the public procurement area, the Commission shall furnish the Tender Chamber of Ukraine with copies of all decisions and conclusions in the course of 2 days from the date of their adoption.

Decisions and conclusions of the Commission, specified in paragraphs three, twelve – seventeen, nineteen – twenty forth, part two of this Article shall come into force on the day of their publication in the information bulletin published by by the Tender Chamber of Ukraine, but not later than in 5 business days from the date of their adoption irrespective to the publication; other decisions and conclusions of the Commission shall come into force in 5 days after the date of their adoption, with the exception of cases, specified by this Law.

All decisions and conclusions of the Commission may be appealed in court with due account to the requirements of this Law;

8. The Antimonopoly Committee of Ukraine shall provide organizational and methodic support to the activity of the Commission”;

#### **Article 4. International Commitments of Ukraine in Respect of the Procurement**

If an international treaty of Ukraine affirmed as compulsory by the Supreme Council of Ukraine contains provisions other than the provisions hereof, then the provisions of the international treaty of Ukraine shall prevail.

##### **Article 4-1. Transparency of the State Procurement and Publication of the Information on the Procurement of Commodities, Work and Services for State Funds**

1. in order to prevent manifestations of corruption and develop an efficient competitive environment in the procurement area, the customer is required to ensure the transparency of the state procurement by means of publishing the necessary information envisaged by this Law on the procurement of commodities, work and services for state funds using information systems on the Internet, namely, it shall publish:

- Annual plans of public procurement;
- The announcement of the planned procurement or the pre-qualification;
- Protocol of opening tender offers (bids);
- The report on results of the procurement procedure, including all annexes thereto;
- acceptance of a bid and information on the bidding results;
- request for quotations
- The announcement of results of the performed procurement procedure;
- The information related to the consideration of a complaint, if any (the information about the receipt of a complaint, the decision made upon review of the claim);
- The information about public procurement, as stipulated by the present Law, shall be placed consecutively at least in one of the Internet Network information systems in accordance with own regulations and under procedure specified by information systems. In this case absolutely all documents on public procurement provided for under this Article shall be placed in the Internet Network information system the chosen by the client.

2. For the purposes hereof, an information system on the Internet shall be understood as a set of the software facilities with its own address on the Internet, which provides access to the information resources and meets the following obligatory requirements: it supports the collection, accumulation, transfer and processing of the information on the state procurement by principals from all administrative and territorial units of Ukraine; it meets the requirements of the legislation for the protection of the state information; it provides an opportunity for the performance of the electronic state procurement and accord with other requirements established by the present Law.

3. The timing of the publication of the information envisaged in part one of this article must be compatible with time frames of the performance of the commodity, work and service procurement procedures as provided for by Law.

4. The principal shall publish the information required hereby in information systems on the Internet by sending the said information to such systems on paper or electronically under procedure set out for the information systems.

5. The Principal shall have the right to undertake the procurement in accordance with procedures specified in Article 13 hereof (except for the procedure of the procurement from a single participant by undertaking the electronic state procurement in compliance with requirements of this Law.

6. The publication of the information on the procurement of commodities, work and services for state funds in the information systems on the Internet as envisaged in part one of this article shall not be deemed to constitute the electronic state procurement.

7. The Antimonopoly Committee of Ukraine shall monitor competition legislation compliance on the part of information systems in the Internet and promote competition in this area. The selection of information systems on the Internet shall be undertaken by the principal on its own on a competitive basis; it must meet the requirements for such systems specified in part two of this article. The intervention of other state fund administrators into the selection of information systems on the Internet by the principal, and the illegitimate use of information systems on the Internet shall be prohibited.

8. For purposes of ensuring the exercise of parliamentary control, the customer shall, at the request of the Verkhovna Rada of Ukraine, its committees and parliament deputies, furnish full and reliable information on the procurement carried out by him and, in case violations of procurement legislation are found, take the necessary remedial action

#### **Article 4-2. Requirements to Information Systems in the Internet Network to Ensure Protection of State Information, Execution of Electronic Public procurement and Meeting the Requirements of the Present Law**

1. The Internet Network information system insofar as its concerns ensuring protection of state information, execution of electronic public procurement and meeting the requirements of the present Law shall:

- Have a own regulation – a document setting out the procedure of operation of the system and requirements to work in this system;
- Ensure multilingual support, including in the Ukrainian and English languages;
- Have a built-in comprehensive information protection system;
- Use technical information protection equipment approved by the technical opinions of the Department of Special Telecommunication Systems and Information Protection under the Security Service of Ukraine;
- Have a certificate of conformance to the comprehensive information protection system issued by Department of Special Telecommunication Systems and Information Protection under the Security Service of Ukraine;
- Discharge the functions specified in part 2, Article 4-2 of the present Law
- Provide the possibility for executing electronic public procurement in the online mode in compliance with the requirements set by the present Law with the application of industrially applicable technological solutions built on processes (methods) for converting data during electronic public announcement and periodical updating of documents and during representation of electronic circulation of documents, as well as for computerized public procurement which is proven by respective protective documents;

3. The client's failure to make public the information about public procurement, as stipulated by the present Law, in the Internet Network information systems that accord with the requirements under the present Law may be appealed by procedure specified in Article 37 of the present Law or by judicial procedure and shall serve as a reason for canceling tenders.

#### **Article 5. Non-discrimination of Bidders**

1. National and foreign bidders shall participate in the procurement procedures on an equal basis according to the provisions of the present Law.

2. Clients shall ensure equal access of all bidders to the information about procurement issues.

### **Article 7. Inappropriate and Uncompetitive Coordinated Actions of Bidders**

1. The client shall be bound to ensure the creation of conditions for conducting transparent public procurement and making public the information about the procedure stipulated by the present Law.

2. The client shall be bound to reject a bid or qualification offer, if he has conclusive evidence that a bidder offers, gives or agrees to give to any official of the client or to a state agency a reward in any form (employment offer, a valuable object, a service, etc.) in order to influence the decision-making on declaring a procurement procedure winner or for the client to apply a certain type of procurement procedure.

3. The client shall be bound to reject a bid or qualification offer if he has conclusive evidence that:

- An individual/bidder was convicted for a crime committed during the procurement procedure or another crime committed for mercenary motives, the conviction record of which has not been expunged or cancelled under established procedure;
- An official of the bidder, who was appointed by him to be in charge of the procurement procedure, was convicted for a crime committed for mercenary motives, the conviction record of which has not been expunged or cancelled under established procedure;

4. The client shall be obliged to reject bids or qualification proposals should they be submitted by participants of procurement procedure, which are affiliated persons.

Affiliated person – a person answering any of the below mentioned characteristics:

- legal entity, which exerts control over participant or is controlled by such participant, or is under joint control with such participant;
- individual or relatives of individual, which exerts control over participant;
- official of the participant, authorized to undertake legal action on behalf of the participant directed at establishing, amending or curtailing legal relations, as well as his relatives.

Exerting control means holding directly or through the majority of affiliated individuals or legal entities the biggest stake (stock, block of shares) in the authorized capital of the participant, or managing the biggest number of votes in the managerial body of such a participant, or holding a stake (stock, block of shares), which equal at least 20 percent of the authorized capital of the participant.

The total sum for an individual of the stake in the authorized capital of the participant (votes in the managerial body) is determined as total sum of corporate right, which belong to such an individual, family member of such an individual and legal entities, which control such an individual or family member.

Husband and wife and their children, parents, brothers, sisters, grandchildren, spouses of children, parents, brothers, sisters, and grandchildren shall be considered relatives for the purpose of this Law.”

5. The information about the rejection of the tender or qualification offer and the reasons for rejection shall be presented by the client in a report on the results of procurement procedures and within seven calendar days brought to the notice of the bidder who performed the inappropriate and uncompetitive coordinated actions specified in this Article.

## **SECTION II GENERAL CONDITIONS OF PROCUREMENT**

### **Article 8. Publication of Procurement Announcements**

1. In order to develop an optimum competitive environment for the activities of mass media in the procurement area, advertisements of scheduled procurement or pre-qualification notices shall be placed in a specialized publication having nationwide circulation, which only carries news on public procurement issues and has a title that directly concerns public procurement (hereinafter: the specialized publication), and in the information bulletin issued by the Tender Chamber of Ukraine and in the Internet information systems.

In order to provide information and guidance support for public procurement pursuant to Article 17<sup>3</sup> herein, the Tender Chamber shall, based on the information received from relevant government agencies, publish free of cost information about specialized publications, international publications and Internet information systems that are consistent with this Law, and post other news on its site, access to which is free

2. The procurement procedure may not be undertaken until the publication of the announcement thereof in the specialized publication and in the information bulletin published by the Tender Chamber of Ukraine and in information systems on the Internet except for cases of the contracting party's resorting to procedures of the limited participation bidding (tender), request for quotations, and procurement from a single participant in accordance with the procedure specified by this Law.

If in the announcement of planned procurement (pre-qualification) or in the announcement of the results of the executed procurement procedure the client failed to state or stated an incorrect code assigned to the Internet Network information system, such an announcement shall be invalid.

3. The announcements about the planned procurement or about the pre-qualification of participants additionally shall be placed in relevant international bulletins ~~and~~ or in information systems on the Internet in English, provided that the anticipated cost of the procurement object exceeds an amount equivalent to:

- EUR 200,000 for goods;
- EUR 300,000 for services;
- EUR 4 million for work.

The exchange rate of the Euro shall be set in accordance with the official exchange rate of the National Bank of Ukraine established on the day the call for bids was dispatched for publication or on the day the invitations to tender were dispatched – in case of restricted participation tender.

4. When accepting announcements of planned procurement (announcement of pre-qualification) and announcements of the results of tenders, the editorial offices of the specialized publications and the information bulletin published by the Tender Chamber of Ukraine are required to check under their established procedures the clients' compliance with the requirements to the placement of information in the Internet Network information systems (availability of confirmation of conformance to the Internet Network information systems' requirements under the present Law and the availability and conformity of the code in the announcement with the code assigned to the Internet Network information system).

If the clients fail to meet or violate the requirements to the placement of information in the Internet Network information systems, the editorial offices of the specialized publications and the information bulletin published by the Tender Chamber of Ukraine shall be entitled not to accept the announcements for publication.

Failure to make public under the present Law the information about public procurement in the Internet Network information systems shall be a reason for canceling tenders. Officials of the clients shall be liable under legislation for stating in the documents on state procurement knowingly unreliable data about the public presentation of information in the Internet Network information systems.

## **Article 9. Format of Communications during Procurement Procedures**

1. Only statements and communications executed in writing in the format prescribed by the client shall be deemed valid.
2. If parties exchanged information other than in writing in the course of procurement procedures, the contents of such information shall be confirmed in writing by such parties.
3. If the client executes electronic public procurement, information and notifications shall be exchanged with the use of electronic document circulation and electronic digital signature in the online mode.

## **Article 10. Language to be Used during the Procurement Procedure**

1. Announcements about the procurement procedure, invitations for bids, notifications of the pre-qualification of participants, as well as tender documents shall be prepared in the Ukrainian language and one of foreign languages used in the international trade in cases envisaged by this Law. The texts should be authentic; the text in the Ukrainian language shall prevail. *(The Paragraph changed and amended according to Law of Ukraine # 434-IV (434-15) of January 16, 2003)*
2. Bids shall be submitted in the language (languages) specified by the client in tender documents.

*(Article 11 has been deleted according to Law of Ukraine # 2664-IV (2664-15) of June 16, 2005)*

## **Article 12. Tender Committees**

1. A tender committee shall be established to organize and execute the procedures of procurement of goods, works and services for public funds on the basis of collective decision-making, absence of conflict of interests of the tender committee members, and their impartiality.
2. The composition of the tender committee and its statute shall be approved by the client's decision. On the tender committee of the client may not be officials and representatives of the bidders, their close relatives, officials of associations of enterprises, their representatives and close relatives.
3. Not less than five representatives of the client shall be members of the tender committee.
4. The work of the tender committee shall be administered by its chairman who is assigned by a client's decision in the form of an order and shall be a person entitled to sign procurement contracts. The chairman of the tender committee shall organize its work and be personally responsible for discharging the functions vested with the committee.  
The chairman of the tender committee shall appoint his deputy (deputies), executive secretary and determine the functions of each tender committee member.
5. Decisions on issues considered at the meetings of the tender committee shall be made by a simple majority of vote in the presence of not less than two-third of the tender committee members. In case of an equal distribution of vote, the vote of the committee chairman shall be decisive.
6. The decisions of the committee shall be formalized by a protocol signed by all tender committee members who took part in the voting.

7. Within six months from the date they joined the tender committee, the tender committee members shall receive corresponding warrants of an established model of their ongoing training or advanced training for organizing and executing procurement procedures. Repeated advanced training or training shall be held not less than once every two years.

Teachers at training and advance training courses on organization and carrying out of procurement procedures can be persons, which underwent attestation by the Commission at least once every 2 years in order to determine the sufficiency of their education, qualification and experience for training qualified personnel. Information on the issuance of certificates shall be posted on the official Internet site of the Commission in the course of 3 business days from the moment a respective decision is taken by the Commission.

The client shall send information on the training or advance training of members of the tender committee for organization and carrying out of procurement procedures with copies of relevant certificates to the Commission not later than January 15<sup>th</sup> of the year, following the accounting year.

Should the Commission encounter violations resulting from the activity of the tender committee, carried out procurement thereby, which lead to the cancellation of procurement procedures and (or) recognizing the contract as invalid (worthless), the Commission shall have the right to adopt decision on expelling from the composition of the tender committee persons, members of its composition; on certain action to be taken by the client to eliminate the detected violations, and in the course of 3 business days inform the client, Antimonopoly Committee of Ukraine, State Treasury of Ukraine (or servicing bank), and Tender Chamber of Ukraine thereof. All decisions and action of such a tender committee, from the moment the decision of the Commission was received on expelling from the composition of the tender committee of persons, members of its composition, shall no longer be effective, and the contracts concluded after receiving such a decision shall be considered worthless (invalid).

The decision on the Commission on expelling from the composition of the tender committee of persons, members of its composition, leads to entering information on members of such tender committee into the list of tender committee members (hereinafter referred to as list) that were expelled from the composition of the tender committee for committing violations, and banning such persons from becoming members of any tender committee for a term of 2 years.

The list shall be posted on official Internet site of the Commission. Information shall be entered into the list in the course of 3 business days from the moment a respective decision was adopted by the Commission. The date of inclusion of information on members of such tender committee into the list shall be the adoption date of respective decision of the Commission.

The client, in the course of 3 business days from the moment the decision of the Commission as to expulsion from the composition of the tender committee of persons, members of its composition, shall be obliged to approve a new composition of the tender committee and in the course of 1 business day inform the Commission, Antimonopoly Committee of Ukraine, the State Treasury of Ukraine (servicing bank) and Tender Chamber of Ukraine on the adoption of the decision.

The State Treasury of Ukraine (servicing bank) shall not be entitled to effect payments from the account of the client if the submitted documents on carrying out of public procurement have been signed by persons, expelled from the composition of the tender committee upon decision of the Commission. Should such documents be submitted for effecting payment, the State Treasury of Ukraine (servicing bank) shall in the course of 2 business days inform law enforcement authorities, as well as the Commission, the Antimonopoly Committee of Ukraine and the Tender Chamber of Ukraine.

8. Specialists, lawyers, economists, consultants and other individuals or legal entities, which may be engaged to work on tender committees on a contractual bases in compliance with legislation, as well as notaries, who attest procurement contracts (in case of notarization of procurement contracts by request of the client), may not be tender committee members and shall not be liable for the decisions, actions or inaction of the tender committee and the client's officials, bidders or other



persons, for performance (non-performance) of procurement contracts concluded on the basis of decisions of the client's tender committee, as well as for the consequences caused by such decisions, actions or inaction.

### **Article 13. Procurement Procedures**

The following procedures may be used for the procurement:

- Open bidding with price reduction;
- Restricted tender;
- Two-stage tender;
- Request for price proposals (quotations);
- Procurement from a single participant;
- Reduction.

### **Article 14. Specific Features of the Application of Some Procurement Procedures**

1. The main procedures of public procurement shall be reduction and open bidding with price reductions with reduction of price.

2. The application of the limited bidding procedure for procuring commodities, work and services, whose expected purchase value exceeds UAH 500,000 shall require relevant conclusion of the Commission in conformity with Article 3-3 of this Law, except for the case, when the limited bidding procedure is applied after the pre-qualification of participants.

The application of the procedure of the procurement from a single participant shall require relevant conclusion of the Commission in conformity with Article 3-3 of this Law, if the expected purchase value exceeds UAH 30,000 for goods and services, and UAH 3000,000 for works.

The client shall be liable for the application of these procurement procedures.

3. The contracting party may not split the procurement of commodities, work and services into parts in order to avoid holding an open bidding with price reduction.

#### **Article 14-1. Procurement of Goods on the Principles of Inter-agency Coordination**

1. The Cabinet of Ministers of Ukraine shall approve the list of goods and services procured on the basis of interagency coordination, the procedure of procurement and the general client. If two and more chief managers of state budget funds intend to procure specific goods on terms of interagency coordination in the total amount exceeding UAH 700,000, the Antimonopoly Committee of Ukraine shall submit to the Cabinet of Ministers proposals for identifying the general client.

2. The general client shall:

- Execute the procedures of procurement of corresponding goods in accordance with legislation and determine the bidders/winners of the procurement procedures;
- Inform all interested chief managers of state budget funds about the results of procurement procedures.

3. The chief managers shall conclude contracts for the procurement of goods with the bidders, who were determined as the winners by the general client by the results of the procurement procedures they executed, except for cases when the goods do not meet the requirements of the chief manager of state budget funds to their technical characteristics, quality, terms of delivery, prices and the like. In this case, the chief manager shall be entitled to refuse concluding a procurement contract, inform the general client to this effect, and independently execute the procedure of procurement of such goods.

4. Upon receiving from the clients notifications about the acceptance of tender offers and concluding a contract or refusing to accept the tender offer, the general client shall submit to the Antimonopoly Committee of Ukraine and all interested clients a report on the results of procurement procedures, stating all clients in it.

### **Article 15. Qualification Requirements to Bidders**

- 1.

The customer may request that the participants provide information, proven by documents, that they meet the qualification requirements. Such requirements may include:

- a license/permit to engage in a respective activity (in cases prescribed by law);
- availability of the equipment and staff that have the necessary skills and experience;
- payment of taxes and impositions (mandatory payments) as provided by law;
- the conduct of business by the participants in compliance with their charters;
- absence of a decision on officially declaring the participant bankrupt or bankruptcy proceedings against him

2. The qualification requirements specified by this article shall be indicated in the documents required for the pre-qualification of participants (if applied), the tender documents and other documents related to the submission of bids. *(Part 2 of Article 15 changed and amended according to Law of Ukraine # 434-IV (434-15) of January 16, 2003)*

3. The Client shall not establish discriminatory requirements to bidders.

### **Article 16. Register of Unscrupulous Bidders**

1. Included into the register of unscrupulous bidders shall be information on participants, as follows:

- that groundlessly refused to sign contract;
- with whom agreement was abrogated in connection with essential violation thereby of contract terms without relevant grounds;
- that performed unapproved and anti-competitive coordinated actions, specified in this Law;
- that violated legislation on protection of economic competition in the public procurement area;
- that furnished tender committee with any false information.

2. The keeping of the register of unscrupulous bidders shall be undertaken by the Commission. The procedure for keeping and functioning of the register of unscrupulous bidders shall be determined by decisions of the Commission. Information shall be entered into the register of unscrupulous bidders for a term, which cannot exceed 2 years.

3. The register of unscrupulous bidders shall contain information as follows:

- information on participant of procurement procedure (full name, legal and actual address, SSREOU Code (for legal entities), surname, name, patronymic, place of registration, SRIU identification number (for individuals);
- grounds for entering of bidders into the register of unscrupulous bidders;
- date of entry of mentioned information into the register of unscrupulous bidders;
- other information as to decisions of Commission.

4. The register of unscrupulous bidders shall be posted on the official Internet site of the Commission and in the thematic catalogue of participants of procurement procedures.

### **Article 16-1. Register of Participants of Procurement Procedures**

1. A register of participants of procurement procedures shall be kept in order to raise the stability of the public procurement market, step up participation in procurement procedures at the expense of public funds.
2. Participants shall be included into the register of participants of procurement procedures on the grounds of their application in accordance to rating assessment, depending on the number of procurement procedures, in which the bidders took part, number of winnings in procurement procedures, number of contracts on public procurement fulfilled on time and in full measure, other criteria.
3. The Commission shall keep the register of participants of procurement procedures. The procedure for keeping and functioning of the register of participants of procurement procedures shall be determined by decision of the Commission.
4. Should the participant, included into the register of participants of procurement procedures, be entered into the register for unscrupulous bidders, such a bidder shall be automatically expelled from the register of participants of procurement procedures.
5. The register of participants of procurement procedures shall be posted on the official Internet site of the Commission and in the thematic catalogue of participants of procurement procedures.”

### **Article 17. Procurement Result Report**

1. The report about the results of the procurement procedure, which shall be made to the prescribed format and kept by the client during three years, must contain the following data:
  - A brief description of the object of procurement;
  - The names and addresses of bidders, who submitted bids, qualification offers, the name and the address of the bidder, with whom the procurement contract has been concluded, as well as the price of the said contract;
  - The price and a brief description of other principal conditions of each bid and procurement contract, as well as additional conditions offered by bidders;
  - A brief specification of criteria of the comparison and evaluation of bids and the determination of the successful bidder;
  - A specification of grounds for the rejection, in case of the rejection of certain or all bids;
  - The date of publication of announcement of planned procurement (advertisement on holding of participants pre-qualification, announcement on price proposals /quotation/) in conformity with Article 8 of this Law and announcement (notification) on results of tender in conformity with Article 29-1 of this law or date of sending invitation for participation in tenders with restricted participation, procurement from one bidder and date of informing bidders on results of effected procedure.
  - The specification of reasons and circumstances taken into account by the tender client, while opting for a procurement procedure other than the open bidding with price reduction procedure with the specification of grounds for such choice;
  - A brief specification of any requests for the clarification of qualification or tender documents, the replies to the same, as well as any changes in the said documents;
  - A specification of reasons, if no procurement contract has been concluded as a result of the tender;
  - In case of the rejection of a bid in accordance with requirements hereof, a specification of reasons for such rejection;
  - The information about the qualification of participants, who submitted their bids, applications for the participation in the pre-qualification of participants, or a record confirming the lack of such applications; reasons for the application of the bidder pre-qualification of participants; the submitted appeals, claims, and results of the

consideration of the same; the suspension of the procurement procedure; the complement of the tender committee; *(The Paragraph changed and amended according to Law of Ukraine # 434-IV (434-15) of January 16, 2003)*

- The date of tender proposal acceptance and conclusion of the procurement contract. *(The Paragraph added to Part 1 according to Law of Ukraine # 434-IV (434-15) of January 16, 2003)*

*(Part 2 of Article 17 has been deleted on the basis of Law of Ukraine # 2188-IV (2188-15) of November 18, 2004)*

- the addresses of Internet information systems selected by the customer and the code numbers assigned by Internet information systems
- Information on absence of participant – winner of procurement procedure in the register of unscrupulous bidders.
- Information on presence of participant – winner of procurement procedure in thematic category of participants of procurement procedures.

2. In order to prevent violations of current legislation, the customer shall, in making payments under contracts concluded on the basis of bidding results, attach the following documents to the report on bidding results:

- the copies of the advertisement of planned procurement (announcement on holding qualification procedure, announcement on price proposals /quotation/), announcement (notification) and the notice of bidding results that were published in the specialized publication, attested by this publication, and in the information bulletin that is published by the Tender Chamber of Ukraine, attested by this Chamber and in cases should the value of the contract exceed the sum, specified by part three, Article 8 of this Law, as well as copies of announcement on planned procurement and on tender results, which were published in the International Information Bulletin put out by the Tender Chamber of Ukraine, certified by the Tender Chamber of Ukraine;
- the copy of the document proving the posting of the documents specified in Article 4-1 herein, attested by the Internet information system.

When payments are made under contracts concluded by enterprises, the banks shall check the availability of the report on bidding results and other documents that prove compliance with this Law on the part of such enterprises.

Should tenders with restricted participation be carried out or procurement procedures in one bidder, treasury agencies (servicing bank) shall not be entitled to effect payment from the account of the client according to obligations under contract, if procurement was carried out with violation of the requirements of Article 14 of this Law. Information on such contracts shall in the course of 2 business days be furnished by the State Treasury of Ukraine (servicing bank) to law enforcement authorities, as well as to the Commission, Antimonopoly Committee of Ukraine and the Tender Chamber of Ukraine

The report on bidding results (except for information containing a state secret) shall be made public by the customer in the Internet information system within ten days of the date of the report's approval

3. The time of storage of documents on the performance of procurement procedures shall be three years.

## **SECTION II-1 PUBLIC CONTROL IN PUBLIC PROCUREMENT**

### **Article 17-1. Participation of the Public in Formulating and Implementing State Policy in Public procurement**

1. Citizens, public organizations and their unions shall take part in formulating and implementing state policy in public procurement by:

- Participation in the design and discussion of draft laws and other regulations on public procurement;
- Ensuring free access of the public to the information about expended public funds for the procurement of goods, works and services;
- Ensuring publicity, openness, and transparency in the activity of the Cabinet of Ministers of Ukraine, the Antimonopoly Committee of Ukraine and the managers of public funds in the sphere of public procurement;
- Holding consultations with the public and taking into account public opinion;
- Establishing a systematic dialogue with the Cabinet of Ministers of Ukraine, the Antimonopoly Committee of Ukraine, the managers of public funds and the public;
- Using other forms stipulated by operative Ukrainian legislation.

2. The Cabinet of Ministers of Ukraine, the Antimonopoly Committee of Ukraine and the managers of public funds shall be bound to ensure proper response to the appeals of citizens, public organizations and their unions.

3. The citizens, public organizations and their unions shall not be entitled to interfere in the client's determination of a tender's winner.

4. The Tender Chamber of Ukraine shall be one of the forms of the public's participation in formulating and implementing state policy in public procurement.

#### **Article 17-2. Legal Status of the Tender Chamber of Ukraine**

1. The Tender Chamber of Ukraine shall be a non-profit union of public organizations operating in compliance with operative Ukrainian legislation. The Tender Chamber of Ukraine shall not pursue any entrepreneurial activity and shall not be entitled to provide any payable services, but operate exclusively for the purpose of achieving its objectives under the present Law and its statute. The activity of the Tender Chamber of Ukraine shall be transparent for society.

2. Participation in the Tender Chamber of Ukraine shall be voluntary.

3. The Tender Chamber of Ukraine shall be a legal entity, have its own seal, blank form, and accounts in banking institutions.

4. The city of Kyiv shall be the location of the Tender Chamber of Ukraine.

#### **Article 17-3. Goals and Objectives of the Tender Chamber of Ukraine**

1. The Tender Chamber of Ukraine shall operate for the purpose of promoting: the development of the public procurement system in Ukraine, transparency of public procurement, higher efficiency and rational utilization of public funds, informational and methodological backing of public procurement, formation of a modern infrastructure of public procurement, advancement of the professional skills of specialists in public procurement, and exercise of public control. The Tender Chamber of Ukraine shall be independent in its activity.

2. The Tender Chamber of Ukraine shall at no charge:

- Design methodological materials on organizing and holding tenders by managers of public funds;
- Offer proposals for improving regulations on public procurement;

- Organize conferences, round tables and seminars on issues of public procurement;
  - Have a right to provide conclusions as to complaints in accordance with Article 37 herein;
  - In case of arrival of an request from a client, bidder, Antimonopoly Committee of Ukraine, control bodies and other state bodies, citizens, public organizations, or independently issue – under procedure of exercising public control – provide conclusions about compliance with the public procurement procedures as well as have a right to provide conclusions about lawful application of the procedures by clients in accordance with the present Law;
  - In case of arrival of a request from the Ukrainian Parliament, MPs, parliamentary committees, ad hoc investigation parliamentary commissions, the Cabinet of Ministers of Ukraine, control bodies and other state agencies authorized to exercise control functions, bidders, citizens, public organizations, or independently issue – under procedure of exercising public control – opinions about the efficiency of public funds utilization by the clients at all stages of procurement;
  - Conduct legal and economic studies in public procurement;
  - Issue opinions on issues of public procurement;
  - Analyze markets and prices for goods, works and services in public procurement;
  - Pursue other types of activity provided for by its statute.
  - Develop methods for determining the sum of losses should the client fail to observe requirements of the effective legislation during the procurement of goods, works and services for public funds.”
  - Carry out measures, connected with training and advance training on organization and carrying out of procurement procedures, including distance learning, and issues respective certificates.
  - Organize specialized exhibits, fairs, conferences, competitions, directed at ensuring stable development of public procurement market and study of markets in the public procurement area.
3. Tender Chamber of Ukraine is not a subject of imperious authority and does not carry out administrative and managerial functions.
4. The Tender Chamber of Ukraine shall also issue opinions upon request of respective law enforcement bodies and other state bodies examining the legality of public procurement, of courts for judicial reviews, and in other cases stipulated by operative Ukrainian legislation.
5. The Tender Chamber of Ukraine shall issue the opinions within 30 calendar days from the date of receipt of a respective request under procedure set out by the Tender Chamber of Ukraine.
- In order to ensure public control in the public procurement area, the client shall, in paper or electronic form, furnish the Tender Chamber of Ukraine with tender (qualification) documentation, protocols on opening of tender (qualification, price) proposals, protocols on assessment and report on results of procurement procedures in the course of 3 business days from the date of their approval.
6. In order to ensure public control in the public procurement area, the Tender Chamber of Ukraine shall, at all stages of public procurement, have the right to request and receive from the client, bidders and other persons information, documents and materials on activity of tender committee of the client, procurement carried out by the client, state of fulfillment of contracts on procurement at any stage of performance. Clients, bidders and other persons shall in the course of 5 business days from the date respective request was received to furnish Tender Chamber of Ukraine with information, properly certified copies of documents and materials, with the exception of those that contain secrets protected by law.

Should it be impossible to provide the necessary documents due to considerable volume thereof, clients, bidders and other persons shall in the term, not exceeding 2 business days from the

date a respective request was received, provide unhindered access to these documents and materials, including copying thereof. Refusal or failure to provide information, copies of documents and materials in the term determined by this Law, shall be grounds for the Tender Chamber of Ukraine to address law enforcement authorities and the Commission to take measures in conformity with legislation.

7. The responsibility for the completeness and trustworthiness of documents and materials submitted to the Tender Chamber of Ukraine for the preparation and issue of corresponding opinions shall be borne by the party that submits such documents and materials.

8. If during the consideration and analysis of documents and materials on public procurement violations of operative legislation on public procurement were detected, or violations during corresponding inspections of control bodies, as well as in cases of interference into activity, hindering activity, as well as pressure on the members of employees of the Tender Chamber of Ukraine by individuals or legal entities, the Tender Chamber of Ukraine shall be entitled to:

- o Forward information to corresponding bodies for the latter to take proper measures;
- o Inform local councils (radas) of a corresponding level, the Parliament of the Autonomous Republic of Crimea, the Ukrainian Parliament, parliamentary committees, the Cabinet of Ministers of Ukraine, the Antimonopoly Committee of Ukraine, and the public;
- o Make public the prepared opinions on detected violations or other information in the mass media and conduct public hearings on these issues.

Should signs of felony be encountered during consideration and analysis of documents and materials on public procurement, the Tender Chamber of Ukraine shall have the right to submit such documents and materials to law enforcement authorities.

Should violations be encountered in the public procurement area, committed by the client or commission, or controlling agency, as well as adoption of sub-legal acts, which run counter to the norms of this Law, the Tender Chamber of Ukraine, in order to exert public control, shall have the right to initiate a lawsuit in order to appeal decisions or conclusions of the Commission, decisions, actions or inactivity of the client, controlling agency or by subordinate legislation and enactments, which run counter to the norms of this Law with simultaneous submission to the court of respective conclusion as to the raised issue.

The Tender Chamber of Ukraine shall send a copy of the claim statement to the client, as well as to the State Treasury of Ukraine (servicing bank), and should the need arise, to law enforcement authorities. The State Treasury of Ukraine (servicing bank), from the moment a copy of the declaration is received, shall be obliged to terminate payment from the account of the client according to obligations under contract, concluded according to results of the procedure, which is being appealed.

Information on appeal of decisions or conclusions of the Commission, decisions, actions or inactivity of the client, controlling agency or subordinate legislation and enactments, which run counter to the norms of this Law shall be published by the Tender Chamber of Ukraine in the information bulletin, which is put out by the Tender Chamber of Ukraine and posted on its Internet site.

Should the appeal of decisions, actions or inactivity of the, which run counter to the norms of this Law, be lodged in court, the force of such decisions shall be terminated until the case is dismissed or court decision takes on legal force.

9. The Tender Chamber of Ukraine shall at no charge assist in:

- Involving the public in public procurement;
- Taking into consideration public opinion when pursuing state policy in public procurement;
- Conduct public discussions of issues related to spending public funds for the procurement of goods, works and services;

- Processing public proposals and remarks on issues of formulating and implementing state policy in public procurement.

10. The Tender Chamber of Ukraine shall be the founder of an information bulletin, international information bulletin and other mass media.

The Tender Chamber of Ukraine shall issue a monthly collection of methodic materials “Collection of Methodic Materials on Public Procurement of Ukraine,” subject to publication in which shall be information on activity of the Commission and results of its activity. The Commission shall approve the list of materials to be included in the collection.

Upon the request of the Commission, the Tender Chamber of Ukraine shall provide information and methodological support to the activity of the Commission in conformity with this Law.

In order to study the commodity market and promote the creation of competitive environment in the public procurement area, the Tender Chamber of Ukraine shall put out a thematic catalogue of participants of procurement procedures (hereinafter referred to as catalogue) with nation-wide distribution, also published in which should be information on bidders, markets and prices on goods, works and services in the public procurement area, information envisaged by Articles 16, 16-1 and other information on public procurement. The catalogue shall be published in printed and electronic form.

Entered into the catalogue shall be individuals and legal entities on the basis of their application. The application should contain the following information: full name, legal and actual address, surname, name and patronymic of the manager, telephone, and SSREOU Code (for legal entities) or surname, name and patronymic, place of residence, telephone, SRIU identification number (for individuals), certification on state registration, permit and (or) license for conducting respective activity in cases, specified by legislation, other documents attesting to registration (for non-residents); experience (with the exception of newly established entities), types of goods, works or services, which are provided (fulfilled) by individuals or legal entities, as well as other information. The applicant shall be responsible for the authenticity of information.

Information on individual or legal entity shall be included into the catalogue in the course of 5 business days from the date application is received. The Tender Chamber of Ukraine shall have the right to address controlling, law enforcement authorities and other state agencies in order to verify information included in the application. In such cases the term for including information on individual or legal entity into the catalogue shall be extended to 30 business days. Facts revealed on submission of any false information by individual or legal entity shall be grounds for refusal to include information into the catalogue. The decision on refusal to include mentioned information into the catalogue can be appealed by individual or legal entity to the Commission or to the court. Information, included in the catalogue, is renewed annually. Information on individual or legal entity is included in the catalogue for a term of one year. Upon the completion of the year the information shall be subject to renewal.

Information, included in the catalogue, shall be used by client in the procedure established by this Law, during organization and carrying out of procurement procedures.

11. The Tender Chamber of Ukraine shall provide at no charge information and analytical materials about public procurement and, when necessary, issue corresponding opinions and materials to the Ukrainian Parliament, the MPs, ad hoc investigation parliamentary commissions, the Cabinet of Ministers of Ukraine, and the Antimonopoly Committee of Ukraine.

12. The activity of the Tender Chamber of Ukraine as well as the results of such activity including conclusions and other documents of the Tender Chamber of Ukraine may be appealed exclusively by judicial procedure in compliance with the law.



#### **Article 17-4. Managerial and Control Bodies of the Tender Chamber of Ukraine**

1. The managerial bodies of the Tender Chamber of Ukraine shall be its congress and managerial board.
2. The control body of the Tender Chamber of Ukraine shall be its auditing commission.
3. The Statute of the Tender Chamber of Ukraine and the present Law shall specify the powers of the managerial and control bodies of the Tender Chamber of Ukraine.

#### **Article 17-5. Supervisory Council and State Supervision over the Activity of the Tender Chamber of Ukraine**

1. The composition of the Tender Chamber of Ukraine shall include three representatives from the Antimonopoly Committee of Ukraine and one representative each from the Ministry of Finance of Ukraine, Ministry of Justice of Ukraine, Main Auditing Administration of Ukraine, Accounting Chamber, State Treasury of Ukraine, as well as three MPs by petition of a corresponding parliamentary committee concerned with regulation of public procurement market. The Tender Chamber of Ukraine may by its decision also include in its composition other persons.
4. Members of the Supervisory Council may not be members of the managerial board of the Tender Chamber of Ukraine.
5. Members of the Supervisory Council shall discharge their functions on a voluntary basis.
6. The Supervisory Council shall be an advisory body.
7. The Supervisory Council shall:
  - Offer to the managerial board of the Tender Chamber of Ukraine recommendations and proposals on ensuring the efficient work of the Tender Chamber of Ukraine;
  - Approve by its decisions regulations for the work of the Supervisory Council;
  - When necessary, demand the convocation of a Congress;
  - Exercise within its competence supervision over compliance by the Tender Chamber of Ukraine with the requirements of the present Law;
  - Take part in public discussions and hearings;
  - Assist the Tender Chamber of Ukraine in achieving its objectives and discharging its functions;
  - Perform other functions under the statute of the Tender Chamber of Ukraine and the present Law.
8. The Supervisory Council shall act exclusively within the scope of the powers under the statute of the Tender Chamber of Ukraine and the present Law. The recommendations of the Supervisory Council shall be binding for consideration by the Tender Chamber of Ukraine insofar as they are consistent with the law.

### **SECTION III PROCEDURES OF OPEN AND RESTRICTED TENDERS**

#### **Article 18. Conditions of the Application of Open and Restricted Tender Procedures in Respect of the Procurement of Goods, Work, Services**

1. While holding an open bidding with price reduction, the tender proposals may be submitted by all the interested participants information on whom is included into the catalogue invited by the contracting party by means of the publication of an announcement under provisions of Articles 4-1 and 8 hereof.

2. In the course of the restricted tender, only the bidders information on whom is included into the catalogue invited by the client to participate in the procurement procedure shall be entitled to submit bids.

3. The restricted tender procedures may be applied, if:

- Goods, work or services may be offered by a limited number of bidders due to their complicated or specialised nature;

4. In case of holding a bidding process with limited participation, the contracting party shall invite only those participants information on whom is included into the catalogue to take part in the procurement procedure, whose number could ensure the selection of the most beneficial proposal and the competition, but not less than three.

#### **Article 18-1. Pre-Qualification during Tenders with Restricted Participation**

1. When holding tenders with restricted participation, the client shall be entitled to conduct a pre-qualification of the bidders.

2. The information about the pre-qualification of bidders shall be made public and published by the clients in accordance with articles 4-1 and 8 of the present Law.

3. The announcement of the pre-qualification of bidders shall under binding condition state the following:

- o Name and legal address of the client;
- o Type, quantity and place of delivery of goods, type and location for the performance of works, or type and location for provision of services;
- o Time of delivery of goods, performance of works, and provision of services;
- o Methods and place of receiving qualification documents, and the amount to be paid for them (if such a payment is established);
- o Place and time for the submission of qualification proposals;
- o Place and date of opening qualification proposals;
- o Addresses of the Internet Network information systems chosen by the client and codes assigned to the Internet Network information systems.
- o Registration account, opened with State Treasury agencies (for enterprises – name, MFO of the servicing bank and full list of opened current accounts).”

4. The qualification documentation shall be furnished (forwarded) to the bidder within three working days from the date of payment for it or from the date of receipt of a corresponding request, if payment was not established. The document of payment for the qualification documentation shall be forwarded or furnished to the bidder within two days from the date a corresponding request has been received from him. Qualification documents shall contain on binding condition the following:

- o Instructions for the preparation and submission of qualification proposals;
- o Qualification requirements;
- o Brief of criteria and procedures for assessing conformity with qualification requirements;
- o Information about the documents a bidder needs to confirm his conformity with established qualification requirements;

- Information about the necessary technical and qualitative characteristics of the procurement item, including the following:
  - corresponding technical specification, plans, blueprints, drawings, and descriptions;
  - quantity of goods;
  - location where works will be performed or services provided;
  - additional services to be provided;
  - time of delivery of goods, performance of works, provision of services;
- Description of a separate part or parts of the item of procurement (lot) for which tender offers can be made if bidders are permitted to submit tender offers only related to a part of the goods, works or services that are procured;
- Stated language (languages) in which qualification proposals have to be made;
- Indication of the method, place and deadline for the submission of qualification proposals;
- Summary of the procedure for providing clarifications relative to qualification documentation as well as notification about the client's intention to hold a meeting of bidders;
- Indication of the place, date and time for opening qualification proposals;
- Stated names, positions and addresses of one or several officials or
- Other employees of the client authorized to communicate with the bidders;
- Other information the client deems necessary to include in the qualification documentation.
- Qualification documentation shall be approved by the tender committee of the client prior to submission of announcement on holding previous qualifications

5. The technical specification, plans, blueprints, drawings or description of the item of procurement required by the client shall contain the following:

- Detailed description of the goods, works and services that are procured with a statement of objective technical and qualitative characteristics;
- Requirements to the technical characteristics of operation of the item of procurement in case it is impossible to set forth a description or when it is more expedient to state such indicators;
- Reference to standard characteristics, requirements, conventional signs and terminology of the goods, works or services that are procured with the application of existing international or national standards, norms and rules.

6. Technical specifications shall not contain references to a specific trademark or company, patent, construction or type of the item of procurement, the source of its origin or manufacturer. If such reference is required, the specification shall contain the phrase "or equivalent."

7. Qualification proposals shall be submitted without indicating prices. The time for submitting qualification proposals shall be not less than 15 calendar days. The client shall select the bidders for further participation in the tender procedure with restricted participation exclusively on the basis of their conformity with the conditions stated in the qualification documents throughout 14 calendar days from the date of opening of the qualification proposals.

The qualification bids of participants shall be opened at the end date of their submission at the time and place indicated in the bid pre-qualification notice. The customer shall allow all bidders information on whom has been included into the catalogue who have submitted bids, or their authorized representatives, to participate in the procedure of opening of bids. In opening the bids, the customer shall check if all requisite bidding documents are available and properly completed. The said information as well as the name and address of every bidder shall be announced. In opening the bids, a report shall be drawn up according to the form established by the Antimonopoly Committee

of Ukraine, a copy of which shall be distributed to all bidders within one business day following receipt of the relevant request of a bidder. This information shall be given in the report on the bidding results

8. The client shall within five days after completion of the pre-qualification of the bidders inform each of the latter about its results.

9. Only those bidders information on whom has been included into the catalogue who were selected by the results of the pre-qualification shall be admitted to further participation in the tender procedure with restricted participation. The time of submitting tender offers after pre-qualification shall be not less than 10 calendar days.

### **Article 19. Information of Bidders about Open and Restricted Tenders**

1. An announcement of an open bidding with price reduction and invitation to participate in the limited-participation bidding procedure must contain: *(The Paragraph changed and amended according to Law of Ukraine # 434-IV (434-15) of January 16, 2003)*

- The name and the legal address of the tender client;
- The type, number and place of delivery of goods, or the type and location of the performance of work or the provision of services;
- The deadline for the delivery of goods, the performance of work, or the provision of services;
- The qualification requirements to bidders;
- The methods and the place of the receipt of tender documents and the amount payable therefor (if charged by the client);
- The place of and the deadline for the submission of bids;
- The place and the date of the bid opening;
- The conditions of the provision of the tender collateral and the channels of the communication for obtaining the additional information;
- Addresses of information systems on the Internet and the code numbers assigned by the Internet information systems chosen by the principal (in case of carrying out open bidding with price reduction with price reduction, two-stage bidding, reduction).
- Registration of account, opened with State Treasury agencies (for enterprises – name, MFO of the servicing bank and full list of opened current accounts).

2. An invitation for a restricted tender must contain the information listed in paragraphs two to seven of part one hereof.

3. The time for the submission of bids should be equal to 30 calendar days after the date of the publication of an announcement of tender or the dispatch of the invitation for the participation therein. In some cases, this period may be reduced to 15 calendar days (up to 10 calendar days in case of using the limited participation bidding procedure). The reasons for such reduction shall be indicated in the report; they must not confirm the intention of the client to weaken the competition among bidders.)

Should the need arise, the client shall have the right to extend the term for submission of bid proposals, but not by more than sixty (60) calendar days

### **Article 20. Tender Documents Provision Procedure**

1. The tender documents shall be provided (sent) to a tenderer within three working days of the payment therefor. A document for the payment for the tender documents shall be sent or issued to the participant within three days of the receipt of the relevant request therefrom. The

provision of the tender documents, the ascertainment of its value, and the procedure of payments shall comply with provisions of the civil law.

2. In case of the limited participation bidding for the procurement of commodities and services, the contracting party may send the tender documents simultaneously with the invitation to take part in the bidding. *(Part 2 in the wording of Law of Ukraine # 434-IV (434-15) of January 16, 2003)*

3. *(Part 3 of Article 20 has been deleted on the basis of Law of Ukraine # 2188-IV (2188-15) of November 18, 2004)*

4. In case of holding tenders for the procurement of work, the tender documents shall be sent after the payment of the expenses for the preparation of them by the bidder.  
*(Part 5 deleted according to Law of Ukraine # 434-IV (434-15) of January 16, 2003)*

5. In case of carrying out the pre-qualification procedure, the tender documents shall be sent to all bidders, who passed the selection.

## **Article 21. Tender Documents**

1. Tender documents must contain:

- an instruction to bidders for the preparation of bids;
- a list of criteria, which the tender committee will apply during the assessment of the compliance of bidders with the established qualification requirements;
- the information about the need to provide documentary evidence of the bidders' compliance with the specified qualification requirements;
- the information about the character and the required technical and quality characteristics of the object of procurement, including:
  - the appropriate technical specification, plans, drawings, diagrams developed according to parts two and three of this article;
  - the quantity of the goods;
  - the place where the work should be performed or the services provided;
  - the additional services to be provided;
  - the schedule of the goods delivery, work performance or services provision;
- a list of criteria and the evaluation methodology applied for determining the best bid;
- a list of principal conditions, which will be included in the procurement contract;
- a description of an individual part or parts of the object of procurement, in respect of which bids may be submitted, if the bidders are allowed to submit bids only for a part of goods, work, or services being procured;
- the method of the evaluation and the comparison of alternative bids;
- the methodology of the bid price calculation and the specification, whether it should include other elements in addition to the value of goods, work or services themselves; such as transportation, insurance, loading and unloading costs, the customs tariffs, taxes, etc.;
- the information about the currency (currencies), in which the bid price should be calculated and indicated;
- the language (languages), in which the bids should be prepared;
- the client's requirements as to the provision of the bid security and the performance bond;
- the conditions of the repayment or non-repayment of the bid security;
- the specification of the method, location and deadline of the submission of bids;
- the specification of the procedure of providing explanations as to the tender documents, and the information about the client's intent to hold a meeting with bidders;

- the indication of the period, during which the bids are deemed valid;
- the indication of the place, date and time of the bid opening;
- the indication of the name, position and address of one or several officials or employees of the client authorised to communicate with bidders;
- the information about additional conditions needed for the acceptance of the bid.
- other information the client deems necessary to include in the tender documentation.
- Scale for calculating step of tender or reduction

2. The technical specification, plans, drawings, diagrams or descriptions of the object of procurement required by the client shall contain:

- a detailed description of the goods, work, services being procured with the specification of objective technical and qualitative characteristics;
- requirements to the technical characteristics of the operation of the object of procurement, if it is not possible to compile a description or if it is more appropriate to provide such indicators;
- references to standard characteristics, requirements, conventional signs and terminology of goods, work or services being procured using the existing international or national standards, norms and rules.

3. The technical specification should not contain references to specific brands or companies, patents, designs or types of the object of procurement, the source of its origin or the manufacturer. Should such a reference be needed, the specification should contain the statement 'or its equivalent'.

4. In the tender documentation may be specified the interrelations and settlements between the client, experts, consultants and bidders, as well as the Internet Network information systems in compliance with civil law.

5. Tender documentation shall not contain requirements that restrict competition and discriminate against bidders.

6. Tender documentation shall be approved by tender committee of the client prior to the submission of announcement on planned procurement.

The editorial office of the periodical, publishing announcement on planned procurement or on holding preliminary qualification of bidders in conformity with Article 8 of this Law, shall be obliged during acceptance of such announcement to verify fulfillment by client of requirements for availability of approved tender (qualification) documentation. Should the client fail to fulfill or violate requirements as to availability of approved tender (qualification) documentation, the editorial office of the periodical, publishing announcement on planned procurement or on holding preliminary qualification of bidders, shall have the right to refuse to publish the announcement

## **Article 22. Provision of Explanations in respect of Tender Documents and Introduction of Changes Therein**

1. The bidder shall have the right to request the client to explain the tender documents not later than seven days prior to the bid submission deadline. The client must reply to the bidder's inquiry within three working days.

2. Not later than in three days prior to the bid submission deadline, the client shall be entitled to make changes in tender documents either by own initiative or on the basis of results of inquiries received from bidders, prolonging in this case the time for submitting and opening tender

offers, and notify thereof in writing all the bidders, who were provided with tender documents by the client.

3. If the client holds a meeting to explain any questions related to the tender documents, he shall keep minutes of such a meeting containing all the explanations to inquiries and send the said minutes to all bidders, who were provided with tender documents, regardless of their presence on the meeting.

4. In case of the client's failure to provide explanations regarding the contents of the tender documents in time, the changes thereof or if the changes to the tender documents are substantial, the client shall extend the time for the submission of bids. The decision to extend the time for bid submission shall be made by the client taking into account the requirement that such time should be sufficient for the incorporation of the said changes, amendments or explanations by bidders and the timely submission of bids but must not less three working days. (*Part 4 changed and amended according to Law of Ukraine #434-IV ( 434-15 ) of January 16, 2003 )*

### **Article 23. Bid Security**

1. The client shall be entitled and is required to specify in tender documents the requirements to the provision of the bid security, its scope, and cases, when such security is not repaid to the bidder.

Requirements for providing tender security shall be mandatory, if the total value of the procurement object exceeds the sum of UAH 100,000 for goods and services and UAH 500,000 for works.

2. at the time of the bid submission the participant shall pay the bid security with its sum one per cent of the anticipated cost of works for work procurement tenders, and five per cent in case of the goods or services procurement tender on conditions indicated in tender documents. In cases when tender offers may be submitted relative to a part of the item of procurement (lot), the tender security shall be established by the client proceeding from the expected value of the item of procurement for each lot.

3. In case of the provision of the tender collateral in the form of a deposit, the contracting party shall repay the whole deposit amount to the participant together with the interest accrued in the bank, where the deposit was placed. (*Part 3 added to the Article according to Law of Ukraine # 434-IV (434-15) of January 16, 2003*)

4. If the bid security is paid for the bidder by another enterprise, institution or organisation, the bidder shall agree upon such a solution with the client prior to the submission of the bid. The bidders – spending agencies and organizations may provide a bid validity bond in any form acceptable to them and the customer that is not at variance with current legislation

5. The tender security shall not be returned by the client in case of:

- revocation or change of tender proposal by the bidder after the time for its submission has expired;
- failure of the tender winner to sign the procurement contract in contradiction to the requirements of tender documentation;
- failure to meet other requirements stipulated in tender documentation.

6. The client shall not claim the bid security and must repay the appropriate amount to the participant within 10 calendar days since the onset of the grounds for the repayment of the bid security, in case of:

- the expiry of the bid security validity period indicated in tender documents;

- the conclusion of the procurement contract with the successful bidder;
- the revocation of the bid before the expiry of the time for bid submission, if the tender documents so provide;
- the completion of the procurement procedure without conclusion of the procurement contract with any of bidders.

7. The funds provided as a bid validity bond (in case they are not returned to the bidder) are subject to transfer to the revenue of the general fund of the relevant budget

## **Article 24. Bid Submission Procedure**

1. A bid shall be submitted in writing with a signature of the authorized representative of the bidder in a sealed envelope or in another format indicated in tender documents. Upon bidder's request, the client shall acknowledge the receipt of the bid and state the date and time of such receipt.

Each bidder shall be entitled to submit only one tender offer (related to the lot specified in the tender documentation included) and also to submit an alternative tender offer if stipulated in the tender documentation. The received tender offer shall be entered by the client in a register, the form of which shall be specified by the Antimonopoly Committee of Ukraine.

2. The bid must be accompanied by a document confirming the provision of the bid security by the bidder.

3. The bids received by the client after the expiry of the time for submission shall be returned to respective bidders unopened.

4. The client shall have the right to extend the specified time for bid submission prior to its expiry, if one or several bidders are not able to submit their bids in the specified time for objective reasons. The notification of the time extension, eventual changes in the place and procedure of bid opening shall be promptly sent to each bidder provided with tender documents.

5. The bids shall remain valid during the period specified in tender documents. Until the expiry of this period, the client shall be entitled to require bidders to extend the validity of bids.

Bidders shall have the option:

- to reject such a requirement without losing the bid security provided by him;
- to accept such a requirement and extend the validity of his bid and bid security.

6. Bidders, who do not extend the validity of their bid securities, shall be deemed to have rejected the requirement to extend the validity of their respective bids.

7. Unless otherwise provided by tender documents, the bidder shall have the right to alter or revoke his bid till the expiry of the time for bid submission without losing his bid security. Such alterations or the application for the bid revocation may be accepted, if they were received by the client before expiry of the time for bid submission.

## **Article 25. Procurement Contract Performance Bond**

1. While procuring goods, work, services, the client shall have a right to demand the successful bidder to provide the performance bond at the time of the procurement contract conclusion according to conditions specified in the tender documents. The contracting party shall return the collateral for the performance of the procurement contract to the participant according to conditions specified in that contract. The bidders – spending agencies and organizations may provide



a bid validity bond in any form acceptable to them and the customer that is not at variance with current legislation

2. The amount of the performance bond shall amount to 15 per cent of its estimated value in respect of goods and services and 5 per cent in respect of work.

3. The funds provided as a performance security bond (in case they are not returned to the bidder) are subject to transfer to the revenue of the general fund of the relevant budget

## **Article 26. Opening, Evaluation and Comparison of Bids**

1. The tender proposals shall be opened on the day of the tender proposal submission deadline at the time and place indicated in tender documents. ( *Part 1 in the wording of Law of Ukraine #434-IV ( 434-15 ) of January 16, 2003* )

2. All bidders or their authorized representatives, as well as representatives of bodies of state authority (deputies of all levels included), should be allowed to attend the procedure of the bid opening by the client. The absence of a participant or its authorized agent from the tender proposal opening procedure shall not constitute the basis for non-opening, non-reviewing or rejecting its tender proposal.

3. In the course of the bid opening, the availability of all the necessary documents envisaged by the tender or qualification documentation shall be checked. Should the client carry out open bidding with price reductions with reduction of price or the second stage of two-stage bidding, the client, after opening of tender proposals, shall propose the present representatives of bidders to reduce the proposed price of tender proposals by corresponding sizes of tender stage, determined by the scale. If after three times announcement of the current price a lower price is not proposed in the procedure, determined by the scale for calculating tender stage, the client shall allow the present representatives of the bidders to voluntarily lower the price of proposals, until each of the bidders announces that he proposed the final price. This should be indicated in the protocol on the opening of tender proposals. If the procurement object is goods, works and services, which technically have a complicated nature, the client, during the holding of open bidding with price reductions with reduction of price or other stage of two-stage tenders, shall have the right not to apply norm as to reduction of price of tender proposals under condition that relevant conclusion was issued by the Commission

The correctness of filling in tender (price, qualification) proposals by bidders, degree of conformity of requirements and terms of tender (qualification) documents or demands of the client, indicated in the request (announced) as to price proposals (quotation), shall be indicated in the protocol on rejected tender (price, qualification) proposals, which is an appendix to the protocol on assessment of proposals of bidders

The client shall announce to the present representatives of the bidder the names and addresses of each bidder and the price of each bid. While opening the tender proposals, a protocol shall be drawn up in the format specified by the Antimonopoly Committee of Ukraine, and a copy of this protocol shall be provided to all participants within one business day following the date of receipt of the relevant request from a bidder. These data shall be provided in the procurement result report. The protocol of opening tender offers shall be made public by the client in the Internet Network information systems throughout five working days from the date of opening of the tender offers.

4. The client shall have the right to request bidders to detail the contents of their bids in order to facilitate the consideration, evaluation and comparison thereof.

5. The contracting party and participants may not initiate any negotiations on introducing the modifications into the submitted tender proposal, including the modification and adjustment of its price, taking into account part six of this article.

*(Part 5 in the wording of Law of Ukraine # 434-IV (434-15) of January 16, 2003)*

6. The contracting party shall have the right to correct arithmetic mistakes detected in the submitted tender proposal during the evaluation procedure subject to a written consent of the participant, which submitted the tender proposal in question, to such a correction.

*(Part 6 in the wording of Law of Ukraine # 434-IV (434-15) of January 16, 2003)*

7. The client shall determine the winner of the tender from among the bidders whose tender offers were not rejected.

The client shall select the winning bidder on the basis of the criteria and assessment techniques specified in the tender documentation.

Criteria of assessment are, as follows:

- Price.
- Term of delivery (fulfillment).
- Settlement terms.
- Rating of bidder in register of participants of procurement procedures in conformity with Article 16-1 of this Law.
- Other criteria in conformity with this Law

8. If the criteria other than price are used for determining the successful bid, the tender documents should contain the definition (if possible) of their cost equivalent or the share of these criteria in the bid evaluation as a whole. The weighting factor of the pricing criterion may not be lower than 70 per cent. *(Part 8 changed and amended according to Law of Ukraine # 434-IV (434-15) of January 16, 2003)*

9. A principal shall have the right to require any participant of the procurement procedure to provide the repeated confirmation of its conformity with all qualification requirements under Article 15 hereof or request the confirmation of such information from state authorities or relevant expert enterprises, institutions and organisations, as well as in respect of the price of its tender proposal. In case of the tenderer's refusal to provide such confirmation or the obtainment of the true information about the non-conformity of the tenderer with qualification requirements established in the bidding documents, or the fact of the provision with the tender proposal of any false information, the principal must reject the tender proposal of the said tenderer, and nominate the successful tenderer from among the remaining tenderers.

10. Relevant expert organisations or individual experts may be involved into the assessment of tender proposals on the basis of contracts between them and the principal in accordance with provisions of the civil law, whose recommendations may be used while determining the successful tenderer in the procurement procedure. The relations and the procedure of payments between parties to the contract and the tenderers shall be specified in the tender documents'.

*(Part 11 of Article 26 has been deleted on the basis of Law of Ukraine # 2188-IV (2188-15) of November 18, 2004)*

### **Article 26-1. Confidentiality**

1. Prior to the conclusion of a procurement contract, information about the consideration and assessment of tender offers shall be not furnished to persons who did not officially take part in the procurement procedure, except for cases when such information is furnished exclusively to the

Antimonopoly Committee of Ukraine, Commission, the Tender Committee of Ukraine, a court, or for the consideration of a complaint.

### **Article 27. Rejection of Bids**

1. The client shall reject a bid, if:
  - the bidder fails to meet the qualification requirements indicated in Article 15 hereof;
  - the bid fails to meet the conditions of tender documents;
  - the bidder fails to agree to the rectification of an arithmetic error detected by the client;
  - the bidder brought about the circumstances indicated in Article 7 hereof by his actions
  - the bidder did not provide tender security in cases envisaged by this Law,
  - the bidder did not pay for the tender (qualification) documentation, if such payment was established.
  - the bidder was entered into the register of unscrupulous bidders.
  - actions of the bidder resulted in the emergence of circumstances, indicated in part nine, Article 26 of this Law.
  - information on bidder that submitted tender proposal is absent in the catalogue
2. The client may reject all bids before the bid acceptance, if the tender documents so provide.

### **Article 28. Cancellation of Tender or Declaration of Tender Invalid**

1. The tender shall be cancelled if:
  - less than three bids were submitted, in respect of the procurement object defined by the principal in the tender documents'.
  - all bids were rejected pursuant to requirements of Article 27 hereof
  - the client violated the requirements of the present Law to making the information public.
  - if less than three participants submitted their bids ;
  - the Commission or the court made a decision about cancellation of biddingTenders shall be cancelled partially (for lots), if less than three tender offers for a corresponding lot were made.
2. The client may declare a tender invalid, if:
  - the price of the most lucrative tender offer exceeds the sum foreseen by the client for financing the procurement;
  - the procurement ceased to accord with state requirements in consequence of unforeseen objective circumstances (force majeure circumstances);
  - after the rejection of a tender offer, the offer of only one bidder is admitted for assessment even in the presence of an alternative tender offer.
  - other cases as decided by the customer

*(Part 3 of Article 28 has been deleted according to Law of Ukraine # 2664-IV (2664-15) of June 16, 2005)*

4. The notification of the tender cancellation or the declaration of tender invalid shall be sent by the client to all participants within three working days since the date of the relevant decision.

### **Article 29. Acceptance of the Bid and Conclusion of the Procurement Contract**

1. The contracting party shall accept the tender proposal found to be the best as a result of the evaluation. *(Part 1 in the wording of Law of Ukraine # 434-IV (434-15) of January 16, 2003)*

2. Within five calendar days of the acceptance date, the contracting party shall send a notice to the successful bidder of the acceptance of a tender proposal, whose validity period has not expired, and send a notice in writing (including the information systems on the Internet) to all the participants of the open tender, two-stage bidding, restricted participation bidding procedures to inform them of the name and location of the successful bidder, whose tender proposal was found to be the best as a result of the revaluation.

The contracting party shall conclude a procurement contract with the participant, whose tender proposal was accepted, in accordance with requirements of the tender documents not earlier than in five working days of sending a written notice to all the participants of the open bidding with price reduction, two-stage bidding, restricted participation bidding procedures to inform them of the results thereof, but not later than in 21 working days of the acceptance date. All expenses related to the contract conclusion may be laid upon the successful tenderer in the procurement procedure on conditions specified in tender documents and in accordance with provisions of the Civil Code of Ukraine (435-15). Any expenses incurred by the bidder/procurement procedure winner related to his participation in the tender and conclusion of a contract, including expenses for notarization by demand of the client, shall not be considered as losses and shall not be subject to compensation

*(Part 2 in the wording of Law of Ukraine # 434-IV (434-15) of January 16, 2003)*

*(Part 3 of Article 29 has been deleted according to Law of Ukraine # 2664-IV (2664-15) of June 16, 2005)*

4. In case of the successful bidder's refusal to sign a procurement contract according to requirements of the tender documents, the client shall determine the best bid from among those, which are still valid, except if all bids have been rejected.

### **Article 29-1. Informing Bidders about the Tender Results**

1. The announcement of the results open and two-stage tenders, restricted tender and reduction shall be made public and posted in the Internet Network information systems and published in the specialized publications and the information bulletin published by the Tender Chamber of Ukraine and in cases when the value of the contract exceeds the sum, specified in part three, Article 8 of this Law, as well as in the International Information Bulletin, put out by the Tender Chamber of Ukraine, and other relevant international periodicals within 10 calendar days after the conclusion of a procurement contract or after a decision on canceling tenders or declaring them invalid.

2. The announcement of the tender results shall under binding condition state the following:  
name and legal address of the tender's client;  
the type, number and place of delivery of goods, or the type and location of the performance of work or the provision of services;

date of publication of the announcement of the planned procurement (announcement of pre-qualification) in the specialized publications and the information bulletin published by the Tender Chamber of Ukraine and in cases when the value of the contract exceeds the sum, specified in part three, Article 8 of this Law, as well as in the International Information Bulletin, put out by the Tender Chamber of Ukraine, and other relevant international periodicals;

addresses of the chosen Internet Network information systems in which the information has been placed as stipulated by the present Law, as well as information placement codes assigned to the Internet Network information systems;

Number of bidders that received tender documentation and number of bidders that submitted tender (qualification) proposals  
date of acceptance of the tender offer recognized as the best;  
date of conclusion of the procurement contract;  
date and reasons for canceling tenders or recognizing them invalid;  
value of the procurement contract;  
full name of tender winner.

### **SECTION III-1**

#### **TENDER PROCEDURE WITH PRICE REDUCTION**

##### **Article 29-2. Terms and Conditions for Applying the Tender Procedure with Price Reduction**

1. The tender procedure with price reduction shall be applied in cases when the items of procurement of goods or services, for which there is a permanently operating market and which are manufactured, performed or provided not under separately designed specifications, on condition that the expected procurement cost of such goods and services exceeds UAH 50,000.

##### **Article 29-3. The Procedure of Price Reduction**

1. Price reduction shall be practiced under procedure stipulated for open bidding with price reductions with reduction of price with allowance for the specifics set out in this Section. During the price reduction procedure the client shall make public the information stipulated by the present Law and comply with its established procedure and time.

2. The price reduction procedure shall be executed in two stages:  
at stage I, all bidders shall be offered to submit preliminary bids without indicating the prices. In this case, tender documentation has to state only proposals concerning technical, qualitative and other characteristics of the item of procurement, conditions of delivery and qualification requirements. The time for submitting preliminary bids shall be not less than 15 calendar days from the date the announcement of executing the price reduction procedure was published.

at stage II, the client shall offer to the bidders whose preliminary bids were not rejected at stage I to submit their final bids and stated prices. The time for submitting the bids at the second stage shall be not less than 7 calendar days from the date when the bidders were informed on the results of stage I.

3. When the tender offers are opened at stage II, the client shall announce the name of each bidder and the price of each tender offer. Then the client proposes that the attending representatives of the bidders reduce the price of the tender offer as stated in the tender documentation. The starting price for reduction shall be considered as the minimum price of the tender offer. The attending representatives of the bidders shall confirm their consent of price reduction of the tender offer by raising cards on which the names of the bidders are stated. If after three announcements of the starting price or next price none of the bidders proposed a new price, the reduction shall be ceased and the bidder who was named the last and offered the lowest price shall be declared the winner.

### **SECTION IV**

#### **TWO-STAGE TENDER PROCEDURE**

##### **Article 30. Application of Two-Stage Tender Procedure**

1. The two-stage tender procedure shall be chosen in the following cases:

- the client is not able to draw up a specific list of goods (work) or determine the services, and if preliminary negotiations with bidders should be held to take the optimum procurement decision;

*(Paragraph 3 of Part 1 of Article 30 has been deleted on the basis of Law of Ukraine # 2188-IV (2188-15) of November 18, 2004 )*

*(Paragraph 4 of Part 1 of Article 30 has been deleted on the basis of Law of Ukraine # 2188-IV (2188-15) of November 18, 2004)*

- the object of procurement is the scientific research, experiments or development work, the provision of consultancy and other special services.

2. The two-stage tender procedure shall be conducted in two stages:

- at the first stage, all bidders should be invited to submit preliminary bids without quotations. The tender documents in this case shall contain only suggestions as to technical, qualitative and other characteristics of the object of procurement, the terms of delivery, the confirmation of the professional and technical competence of bidders and their compliance with qualification requirements.

The Client shall conduct negotiations with any bidder. Upon receipt of the preliminary bids, the client shall have the right to make changes in tender documents in respect of technical requirements and requirements to the quality of the object of procurement or to suggest new characteristics and criteria of the evaluation of bids according hereto. The client shall inform all bidders about the change in conditions of the tender documents, while inviting them to take part in the second stage of the tender;

- at the second stage, the client shall request bidders, whose preliminary bids were not rejected at the first stage, to issue the final bids with quotations.

3. The bidders, whose preliminary bids were not rejected at the first stage shall provide bid security in respect of their bids prior to the participation in the second stage of the tender, if the tender documents so provide.

4. After that, the procedure of the two-stage tender shall be identical to the open bidding with price reduction procedure.

### **Article 31. Informing the Bidders on carrying out Two-stage Tender and Time for Preliminary Bid Submission**

1. 1. Announcement on two-stage bidding shall be published and made public in the procedure, envisaged for open bidding with price reductions with reduction of price

2. The time for the preliminary bid submission by bidders shall be specified by the client, but may not be less than 21 calendar days from the date of the publication of the announcement of the two-stage tender procedure. The time for the submission of tender proposals at the second stage may not exceed 10 calendar days.

## **SECTION V PROCEDURES OF THE REQUEST FOR QUOTATIONS AND PROCUREMENT FROM A SINGLE BIDDER**

### **Article 32. Procedure of Request for Price Proposals (Quotations)**

1. A client may carry out the procurement by applying the procedure of request for price proposals (quotations) relative to goods and services, for which there is a permanently operating

market and on condition that their procurement cost does not exceed exceeds UAH 50,000 (for procurement of goods and services) and UAH 200,000 (for procurement of works).

2. In order to receive price proposals (quotations), the client shall publish announcement on price proposals query (quotation) in conformity with Article 8 of this law and simultaneously send such a request to not less than three bidders and post it in an Internet Network information system.

3. In the request (announcement) the following shall be stated:

- name and legal address of the client;
- type, quantity and place of delivery of goods or type and place of work performance or provision of services;
- time of delivery of goods, performance of works or provision of services;
- place and time of submission of price proposals;
- place and date of opening of price proposals;
- essential terms and conditions of the contract.
- validity term of price proposal
- addresses of information systems on the Internet and codes, appropriated to information systems within Internet framework, selected by the client.
- registration account opened with State Treasury agencies (for enterprises – name, MFO of servicing bank and complete list of opened current accounts)."

In the request (announcement) shall be stated whether the price includes expenses for transportation, insurance, payment of customs duties, taxes and other fees and mandatory payments.

Term for submission of price proposals by bidders shall be set by the client, but cannot be less than 5 business days from the date the announcement was published in compliance with part two of this Article.

During the conducting of procedure for price proposals query (quotation), all interested bidders shall have the right to submit price proposals, information on which is entered into the catalogue, invited by the client by way of publication of announcement on price proposals query (quotation) in compliance with Article 8 of this Law, and bidders, information on which is entered into the catalogue, invited by the client by way of sending price proposals query (quotation)."

4. Each bidder shall be entitled to submit only one price proposal. The proposal shall be submitted in a sealed envelope or in another form determined by the client not later than the time established by him.

5. The proposals shall be opened at the time specified by the client. All bidders who submitted their proposals shall be invited for the opening of the proposals.

During the opening of price proposals, the client shall announce the items, addresses of each bidder and price of each price proposal. After this, the client shall allow the present representatives of the bidders to reduce proposed price proposal. The reduction of prices can continue until each of the bidders agrees that he proposed the final price. This shall be indicated in the protocol on opening of price proposals.

During the opening of the proposals a protocol shall be drawn up and its copy furnished to all bidders upon their request throughout one working day after receipt of a corresponding request.

6. Not less than within three working days from the date of a dispatched written notification to all bidders about the results of the procedure and not later than 14 working days from the date the winner was declared, the client shall conclude a procurement contract with the bidder/winner who submitted the proposal meeting the requirements of the client at the lowest price.

7. The client shall reject the proposals that do not meet his requirements stated in the request (announcement), or the bidder caused by his action the emergence of circumstances stated in Article 7 of the present Law.

The procedure of price proposal query shall be cancelled, if :

- less than three proposals were submitted;
- all proposals were rejected because of their noncompliance with the client's requirements stated in the request (announcement);

The procedure of price proposals query can be recognized as such that did not take place, if the lowest price from among the price proposals meeting the client's requirements stated in the request exceeds the sum envisaged by the client for financing the procurement.

8. Announcement on results of procedure of price proposals query (quotation) shall be published in the procedure, specified in Article 29-1 of this Law.

### **Article 33. Conditions of the Application of the Procedure of Procurement from a Single Bidder**

1. Procurement from a single bidder is a procedure, under which the client concludes a procurement contract with the bidder after negotiations with him.

2. The procedure of procurement from a single bidder shall be applied by the client in accordance with the requirements of Article 14 of the present Law in case of:

- the procurement of works of art or the procurement related to the protection of intellectual property rights or concluding a purchase contract with a winner of an architectural or art contest;
- the lack of competition (including the technical reasons) for the goods, work or services, which may be supplied (carried out) only by a certain bidder and there is no alternative; (*The Paragraph changed and amended according to Law of Ukraine #434-IV ( 434-15 ) of January 16, 2003 )*)

- the need to receive additional supplies from the primary bidder, which are required for the partial replacement or expansion of supplies, which are not interchangeable with the available commodities or services; (*The Paragraph changed and amended according to Law of Ukraine #434-IV ( 434-15 ) of January 16, 2003 )*)

- the need to perform extra construction work not included in the initial design, but which became necessary for the project implementation for unpredictable reasons, provided that the contract is concluded with the participant, who performed such work and if such work is related to the main contract technically or economically. In this case, the value of the contract for extra work should not exceed 50 per cent of the main contract value;

- the emergence of an urgent need for the procurement in connection with special economic or social, legal, other circumstances, which could not have been predicted by the client, including the procurement related to the elimination of consequences of extraordinary situations. (*The Paragraph changed and amended according to Law of Ukraine # 434-IV (434-15) of January 16, 2003*)

- the procurement of scientific-technical, research and designing works, that passed competitive selection according to the procedure for holding competitions on scientific projects or are the assignment or measures of State targeted programs

- food products and agricultural products are procured by budget organizations (institutions) directly from the State Reserve, Agrarian Fund, State Joint Stock Company "Khlib Ukrainy" for the state need;

## **SECTION VI PROCUREMENT CONTRACT**



## **Article 34. Principal Requirements to Procurement Contracts**

1. The procurement contract shall become effective from the date of its being signed by the contracting party and the participant found to be the successful bidder in the procurement procedure in accordance with this Law.

2. The procurement contract shall be made only in writing and in compliance with provisions of the Civil Code of Ukraine ( 1540-06 ). The validity of a purchase contract may be extended for a period sufficient for carrying out a procurement procedure in the next budget period in the amount on not more than 15 percent of the cost of the contract concluded in the previous budget period that does not exceed the relevant assignment in the previous budget period. All expenses related to the contract conclusion (including the expenses related to the notarization thereof) may be laid upon the successful tenderer in the procurement procedure solely on conditions specified in tender documents and in accordance with provisions of the Civil Code of Ukraine ( 435-15 ). Notarization of a contract shall not be binding, but by request of the client the procurement contract shall be subject to binding notarization.

The client shall conclude the procurement contract upon approval of a corresponding budget. An essential condition of the procurement contract shall be the possibility of reducing the volumes of procurement depending on the real financing of expenditures.

The client shall have the right to stipulate advance payment for a term which cannot exceed 90 calendar days in the contracts, concluded as a result of procurement procedure, should procurement be carried out of goods and services, and for procurement of works – for a term which cannot exceed 180 calendar days, under condition a respective positive conclusion of the Commission is received.

The terms and conditions of the procurement contract must not be different from the conditions of the tender (price) offer of the bidder/procurement procedure winner, except for cases of price reduction of the tender offer in accordance with the procedure envisaged by this Law, and they must not change after the procurement contract was signed, except for cases when the contract price is adjusted should the Commission issued the positive conclusion.

In case a purchase contract is concluded based on the results of a tender procedure that provides for price reduction, the parties may agree that the contract will specify the quantity of goods or the volume of services that do not exceed the planned value of procurement at the price of accepted bid. At that, changes in the terms and requirements of the technical specification contained in bidding documents shall not be allowed

3. The concluded contract shall be deemed invalid, (void) if:

- the contracting party failed to be bound by requirements of part 7 of Article 12 or part two of Article 29 hereof;
- the contract was concluded based on the results of bidding held in violation of articles 4-1, 4-2, 8, 17, 18-1, 19, 26, 29, 29-1 herein;
- the contract was concluded in contradiction to the tender documentation and its specified main terms and conditions that had to be binding exclusively for the procurement contract.

The concluded contract may be recognized invalid exclusively by decision of a court.

The contract as to results of tenders with restricted participation or procurement procedure of one bidder was concluded with violation of requirements of part two, Article 14 of this Law.

This part shall not apply to the application of procedures of the request for quotations and the procurement from a participant.

4. A copy of the concluded procurement contract shall be handed over to the authorised agency on its request and the general client if the procurement was executed on the basis of interagency coordination.

5. If the bidder/procurement procedure winner refuses to perform the contract, the client shall be entitled to unilaterally revoke the contract and is required to execute a new procurement procedure.)

*(Article 35 deleted according to Law of Ukraine # 434-IV (434-15) of January 16, 2003)*

6. The client shall be obliged to furnish the Commission and Tender Chamber of Ukraine with information on conclusion of contract and on performance of contract in the course of 5 business days from the moment of its conclusion and performance, respectively.

Information on conclusion of contract shall contain: full name and location of the client; source of financing of procurement; object of procurement, date on the holding of procurement procedures; date of acceptance; date of conclusion and price of contract; information on tender winner (full name, location, telephone and SSREOU Code (for legal entities), surname, name and patronymic, place of registration, telephone, SRIU identification number (for individuals).”

## **SECTION VII**

### **APPEAL AGAINST APPLICATION OF PROCUREMENT PROCEDURES**

#### **Article 36. Right to Appeal Against Actions of the Client**

1. In order to protect infringed, unrecognized or questioned rights and freedoms in the procurement area, any bidder or any other person shall have the right to appeal against a decision, act or omission to act of the customer to the Commission, or to a court of justice in accordance with this Law

2. The following may not be object of appeal:

- choice of the procurement procedure, except for the cases envisaged by this Law;
- establishment of the requirement to notarize the contract;
- any expenses incurred by the bidder in the process of the procurement procedure and conclusion of the procurement contract.

#### **Article 37. Procedure For Appealing Decisions, Action or Inactivity of Client**

1. The claimant shall have the right to appeal decisions, action or inactivity of client of the Commission.

The claimant shall send a copy of the complaint to the client, Tender Chamber of Ukraine and State Treasury of Ukraine (servicing bank).

In the course of 1 (one) business day from the date the complaint was received, the Commission shall send a copy thereof to the Tender Chamber of Ukraine and State Treasury of Ukraine (servicing bank).”

2. The receipt of the complaint from bidder shall terminate procurement procedure for a term which cannot exceed 20 business days from the date the Commission demanded the termination of procurement procedure (15 business days if the complaint concerns price proposals query (quotation).

In the course of 5 business days from the date of respective demand was received, the client shall be obliged to furnish the Commission with copies of relevant documents and material for consideration of the complaint.

The failure to provide or provision of copies of relevant documents and materials for consideration of complaint with violation of terms specified by this law shall be grounds for extending procurement procedure termination for a term, which cannot exceed 10 calendar days. The failure to provide copies of relevant documents and materials in the course of the term, establish

for extension of procurement procedure termination, shall be grounds for canceling such procurement procedure.

The receipt of a complaint from the claimant, which did not acquire the status of bidder or did not participate in procurement procedures, shall not terminate procurement procedure. The consideration of such a complaint shall be carried out by the Commission in the term, set for the consideration of complaints, received from bidders. The Commission, according to the results of the consideration of such a complaint, shall have the right to suspend the procurement procedure for the term that may not exceed 20 working days or take other decision pursuant to this Law..

3. Should procurement procedure be appealed, according to which a contract was concluded, the Commission shall immediately inform the State Treasury of Ukraine (servicing bank), which is obliged, prior to the adoption of a decision on complaint by the Commission, to terminate payments under this contract, and inform the Commission and Tender Chamber of Ukraine thereof.

4. Tender Chamber of Ukraine shall have the right to submit conclusion on the consideration of the complaint.

The opinion on consideration of the complaint shall be forwarded to the Commission within one business day of the date of approval of the opinion.

5. Based on the results of consideration of the complaint, the Commission, shall make a decision about full /partial satisfaction of the complaint, which results in elimination of violations in conformity with the effective legislation, abolishing illegal decision of the client, cancelling procurement procedure, carrying out other action, by the client, including those connected with development of bidding documentation, assessment of bids, or takes a decision on recognizing the complaint as unsatisfied or leaving it without consideration.

If the complaint is of a complex or specialized nature, the Commission may involve independent qualified (technical) experts and advisors in the relevant fields and extend the suspension of the procurement procedure until the experts and advisers reach a final conclusion on the questions posed to them.

The Commission shall have the right to leave the complaint without consideration if it was submitted later than 15 days from the date announcement (notification) was published on results of tenders in compliance with Article 29-1 of this Law.

6. The Commission shall send to the customer a copy of the decision on consideration of the complaint to each other as well as to the complainant, the State Treasury (servicing bank) and the Tender Chamber within three business days of the date of adoption of the decision.

7. The Commission's decision may be appealed to a courting accordance with a procedure established by legislation.”

### **Article 37-1. Appeal to a Court of Law against Procurement Procedures, Decisions, Acts or Omissions to Act of the Customer**

Procurement procedures, decisions, acts or omissions to act of the customer may be appealed against to a court of law with due consideration for the statements of this Law.

The complainant shall forward to the State Treasury, the Antimonopoly Committee of Ukraine, the customer as well as the Tender Chamber an attested copy of a statement of claim within three business days of the date of its submission to the court, with the document proving its submission to the court enclosed, as well as an attested copy of the court decision on initiation of proceedings. If, at the time of forwarding of the copy of the statement of claim, the court decision has not come yet, the complainant is required to forward an attested copy of the court decision within 20 calendar days of the date of forwarding of the copy of the statement of claim.

As of the date of receipt of the copy of the statement of claim, the customer shall suspend the procurement procedure and may not enter into a purchase contract, except in cases where, based on

the same person's complaint on the same matter, the Commission has made a decision under a procedure established by this Law in Article 37.

As of the date of receipt of a copy of the statement of claim, the State Treasury of Ukraine and its bodies are required not to effect the payment related to the procedure against which an appeal was filed regardless of whether a purchase contract is entered into or not, except in cases where, based on the same person's complaint on the same matter, the Commission has made a decision under a procedure established by this Law in Article 37.

The customer may continue the procurement procedure, and the State Treasury and its bodies shall suspend payments if:

- the complainant failed to send an attested copy of the decision on initiation of judicial proceedings, within 20 calendar days of the date of forwarding of the copy of the statement of claim;
- closure of proceedings on the case;
- the court decision coming into force.

In suspending the procurement procedure, the customer shall have the right to make a decision to deem the bidding invalid and commence a new procurement procedure.

The State Treasury shall within three business days notify the Antimonopoly Committee of Ukraine and the Tender Chamber of the suspension and termination of suspension of payments

#### **Article 37- 2. Procedure for Conducting Inspections by State Agencies**

1. The Antimonopoly Committee of Ukraine, the bodies of the State Auditing Service of Ukraine, and the Accounting Chamber (hereinafter – control bodies) shall be the state agencies empowered to check whether the managers of public funds comply with the requirements of legislation on public procurement. The Main Auditing and Inspection Department of Ukraine shall prescribe the procedure of inspecting state procurements by the bodies of the State Auditing and Inspection Service as well as of their collaboration with the law enforcement authorities. The controlling agencies shall prescribe the procedure of inspecting by other controlling agencies as to adherence to legal requirements in the state procurement area and of collaboration with the law enforcement authorities.

2. Inspections of compliance by the manager of public funds with legislation on public procurement shall be conducted at all stages of public procurement stipulated in Article 2-2 of the present Law.

The results of the inspections shall be reflected in the corresponding documents of the control bodies that conducted them.

Inspection by one and the same control body of the legality of a certain procurement procedure executed by a manager of public funds may not be conducted more than once.

Inspections may be conducted by requesting and receiving from a manager of public funds the required documents (originals or duly certified copies) related to the procurement of goods, works and services and their consideration and analysis through on-site inspections directly at the location of the manager of public funds.

The results of the inspections may be appealed by judicial procedure.

3. If control bodies detected elements of crime during inspections, the materials of the inspections shall be forwarded to law-enforcement bodies.

#### **Article 38. Liability for the Violation of the Legislation on the Procurement of Goods, Work and Services for Public Funds**

Officers of principals and tenderers shall be liable for the violation of requirements of this Law and other regulations developed on its basis according to the administrative law of Ukraine.

Specialists, lawyers, economists, consultants and other individuals or legal entities, which engaged to work on tender committees on a contractual bases in compliance with legislation, as well as notaries, who attest procurement contracts (in case of notarization of procurement contracts by request of the client), shall not be liable for the decisions, actions or inaction of the tender committee and the client's officials, bidders or other persons and for performance (non-performance) of procurement contracts concluded on the basis of decisions of the client's tender committee, as well as for the consequences caused by such decisions, actions or inaction.

## **SECTION VIII FINAL PROVISIONS**

1. This Law shall become effective in three months after its publication.

2. Within three months upon this law's becoming effective, the Cabinet of Ministers of Ukraine shall:

- prepare and submit to the Supreme Council of Ukraine proposals as to bringing the laws of Ukraine in compliance herewith;
- bring its regulations in compliance herewith;
- ensure the review and abrogation by executive authorities of their regulations contradicting this Law;
- ensure the adoption of regulations needed for the implementation of provisions hereof.

**L. Kuchma, President of Ukraine**  
**City of Kyiv, February 22, 2000**  
**#1490-III**

*Updated by O. Hik*

The **Economic Code of Ukraine** (*Vidomosti Verkhovnoyi Rady Ukrainy*, 2003, ##18-22, p.144):

in paragraph two of part two, Art. 12, the words “state contract” shall be deleted;

Art. 13:

the words “state contract” shall be deleted from the title;

part four shall be deleted;

in part three of Art. 67, the words “which was not included in the state contract or state commission” shall be deleted;

in part one of Art. 75, the words “ and state commission” and the words “considering the specific features and under a procedure established by the Cabinet of Ministers of Ukraine” shall be deleted;

in part five of Art. 79, the words “considering the specific features and under a procedure established by the Cabinet of Ministers of Ukraine” shall be deleted;

in the text of Art. 13, part two of articles 47 and 264, the second sentence of part one of Art. 276 and part six of Art. 331, the words “state needs” in all cases shall be replaced by the words “priority state needs” in the appropriate case.

Part one of Art. 7 of the **Law of Ukraine On the Antimonopoly Committee of Ukraine** (*Vidomosti Verkhovnoyi Rady Ukrainy*, 1993, #50 (Dec. 14, 93), p.472):

item 18, worded as follows, shall be added:

“18) exercise the authority as provided by the Law of Ukraine *On Procurement of Goods, Work and Services for Public Funds*.”

Due to this, item 18 shall be deemed item 19.

Article 6 of the **Law of Ukraine On the Accounting Chamber** (*Vidomosti Verkhovnoyi Rady Ukrainy*, 1996, #43 (Oct.22,96), p.144; 1998, #24, p.137), shall be supplemented with item 13, worded as follows:

“13) performs the functions as provided by the Law of Ukraine *On Procurement of Goods, Work and Services for Public Funds*.”

Part one of Article 8 of the **Law of Ukraine On the State Auditing and Inspection Service of Ukraine** (*Vidomosti Verkhovnoyi Rady Ukrainy*, 1993, #13, p.110) shall be supplemented with item 8, having the following language:

“8) performs the functions as provided by the Law of Ukraine *On Procurement of Goods, Work and Services for Public Funds*.”

Article 12 of the **Law of Ukraine On National Statistics** (*Vidomosti Verkhovnoyi Rady Ukrainy*, 1993, #13, p.110) shall be supplemented with paragraph thirteen, worded as follows:

“The authorized central executive body in the statistics area, which is established under Article 106 of the Constitution of Ukraine, shall also perform the functions provided by the Law of Ukraine *On Procurement of Goods, Work and Services for Public Funds*.”

Article 51 of the **Law of Ukraine On Banks and Banking** (*Vidomosti Verkhovnoyi Rady Ukrainy*, 2001, N 5-6, p.30, 2002, N 5, p.30, 2003, N 1, p.2, 2003, N 14, p.104, 2003, N 35, p.270, 2003, N 38, p.322, 2004, N 13, p.181, 2004, N 38, p.473, 2005, N 26, p.358 ) shall be supplemented with paragraph seven, worded as follows:

“When payments are made under contracts concluded by state-owned, noncorporotized state-owned, communal enterprises and companies in which the state’s stake exceeds 50 percent, the banks shall check the availability of the report on bidding results and other documents that prove compliance with the Law of Ukraine *On Procurement of Goods, Work and Services for Public Funds* on the part of such enterprises and companies. “

**The Law of Ukraine On the Supply of Products for State Needs** (*Vidomosti Verkhovnoyi Rady Ukrainy*, 1996 , № 3, p. 9; 2000 , № 4, p. 28; 2003., № 30, p. 247):

1) the title shall be worded as follows:

“The Law of Ukraine *On State Contract for Meeting Priority State Needs*”;

2) the *preamble*, after the word “to meet”, shall be supplemented with the word “priority”;

3) Art.1:

part one:

paragraph one shall have the following language:

“1. Priority state needs shall be understood as the needs of Ukraine for the goods, works and services necessary for resolving the most important socioeconomic problems, maintaining the country’s defense capacity and security, creating, and keeping at the required level, national physical resources, implementing government and state-to-state target programs, ensuring the operation of government agencies that are financed out of the State Budget of Ukraine”;

in paragraph two, the words “the products necessary for state needs” shall be replaced by the words “the goods, works and services necessary to meet priority state needs”;

in paragraph three, the words “the government institutions and agencies defined by the Law on the State Budget of Ukraine, as well as the government institutions and agencies empowered by the Cabinet of Ministers to conclude state contracts with government contractors” shall be replaced by the words “the government institutions and other agencies that are major administrators of the state budget”;

paragraph four shall have the following language:

“Government contractors shall be understood as economic agents of any form of ownership (resident or nonresident) that produce or supply goods (works, services) to meet priority state needs”;

part two:

in paragraph one, the words “products for state needs” shall be replaced by the words “goods, works and services for priority state needs”;

in paragraph two, the words “said products} shall be replaced by the words “said goods, works and services”;

part three:

in paragraph one, the words “the products necessary” shall be replaced by the words “the goods, works and services necessary”;

in paragraph two, the word “products” shall be replaced by the words “goods, works and services”;

paragraph one of part four, after the words “(procurement) for” shall be supplemented with the word “priority”;

4) Article 4:

the title of the Article shall be worded as follows:

“Article 2. Formation of State Contract and Monitoring of its Execution”

part two:

in paragraph one: “establish the central executive bodies that coordinate the work of government customers with regard to the placement of deliveries of products for state needs, inform government customers on volumes of deliveries, balanced with financial resources, for concluding state contracts with government contractors unless otherwise prescribed by law” shall be replaced by “identify and approve the list of government customers, the volume and composition of a state contract”;

paragraph two shall be worded as follows:

“The procedure for formation of a state contract and the priority state needs shall be approved by the Cabinet of Ministers of Ukraine”;

part three:

in paragraph two, the words “for concluding state contracts with them through competitive selection” shall be replaced by the words “under a procedure established by the Law of Ukraine *On Procurement of Goods, Work and Services for Public Funds*”;

paragraphs four and five shall be deleted.

in paragraph one of part four, the words “meeting the state needs for respective products” shall be replaced by the words “meeting the priority state needs for respective goods, works and services”;

part five shall have the following language:

“5. Coordination of activities associated with the formation of a state contract and monitoring of its execution shall be the responsibility of the Antimonopoly Committee of Ukraine on coordination of procurement of goods, works and services for public funds”;

parts six and seven shall be deleted;

5) Article 3 shall have the following language:

“Article 3. Encouraging the Fulfillment by National Producers (Resident) of Delivery of Goods, Works and Services for Priority State Needs

1. The national producer (resident) of goods, works and services, who carries out a state contract, shall be encouraged and protected in accordance with the Law of Ukraine *On Procurement of Goods, Work and Services for Public Funds*;

b) Article 4 shall have the following wording:

“Article 4. Financial Support for State Contract Execution

1. The execution of a state contract shall have financial support from the State Budget of Ukraine”;

7) Articles 5 and 6, having the following language, shall be added:

“Article 5. Liability for Untargeted Use of State Budget Funds

1. Responsibility for untargeted use of the state budget funds allocated for a state contract shall be borne by relevant officials as provided by law.

Article 6. Reporting and Publication of Information on State Contract Execution

1. Reports on state contract execution shall be prepared and submitted in accordance with a procedure set forth in the Law of Ukraine *On Procurement of Goods, Work and Services for Public Funds*.

2. Government customers are required to publish information on state contract execution and the efficiency of use of the state budget funds in accordance with a procedure set forth in the Law of Ukraine *On Procurement of Goods, Work and Services for Public Funds*.

## **II. Final Provisions**

1. This Law shall become effective as of the date of its promulgation.

2. The Cabinet of Ministers of Ukraine shall, within one month from the date of publication of this Law, bring its legal and regulatory documents into consistency with this Law.

3. The Ministry of Economy of Ukraine shall stop the performance of the functions of the Antimonopoly Committee of Ukraine on coordination of procurement of goods, works and services for public funds as of the effective date of this Law.

4. The National Bank of Ukraine shall ensure control of compliance by banks with the requirements of the Law of Ukraine *On Procurement of Goods, Work and Services for Public Funds* and adopt the relevant regulatory and legal documents within a month from the effective date of this Law.

5. The Accounting Chamber, the State Auditing and Inspection Service, the State Treasury and the Tender Chamber shall, within five days from the date of promulgation of this Law, delegate its authorized representatives to the Interdepartmental Commission on Public Procurement.

6. Pending bringing other regulatory and legal documents into consistency with this Law, they shall be effective where they are not at variance with this Law.