

On Public Procurement

Invalidated Unofficial translation

The Law of the Republic of Kazakhstan dated 21 July, 2007 No. 303-III.

U n o f f i c i a l t r a n s l a t i o n

Footnote. The Law of the Republic of Kazakhstan dated 04.12.2015 No. 434-V (effective from 01.01.2016) has lost its force.

Footnote. Throughout the text, the words “websites”, “website”, “website”, “Website”, “website” are replaced by the words “the internet resources”, “the internet resource”, “the internet resource” “The internet resource”, “the internet resource” by the Law of the Republic of Kazakhstan dated 10.07.2009 No. 178-IV; the words “open goods exchanges” with the words “goods exchanges” by the Law of the Republic of Kazakhstan dated 04.05.2009 No. 156-IV (shall be enforced from 08.11.2009).

This Law regulates the social relations, arising between the subjects of the public procurement system during the implementation of their activities in the field of public procurement.

Chapter 1. GENERAL PROVISIONS

1. The basic definitions, used in this Law

The following basic definitions shall be used in this Law:

- 1) an auction step is a money interval, for which the price of the auction is reduced;
- 2) an auction commission is a collegial body, created by the organizer of the public procurement, single organizer of the public procurement for the implementation of the procedure for public procurement by the way of auction, provided by this Law;
- 3) an auction documentation is a documentation, provided to the potential supplier to prepare an application for participation in the auction, which contains the requirements for the application for participation in the auction, the conditions and procedure of public procurement by the way of auction;
- 4) a potential supplier is an individual, engaged in entrepreneurial activity, a legal entity (except for the state institutions, unless otherwise provided for them by the Laws of the Republic of Kazakhstan), a temporary association of legal entities (a consortium), claiming to the conclusion of the contract on public procurement. An individual, who is not a subject of entrepreneurial activity, may be a potential supplier in the case provided for in subparagraph 5) of paragraph 3 of Article 41 of this Law;
- 5) an affiliated entity of a potential supplier is any individual or legal entity, who has the right to make decisions and (or) influence on the decisions of the potential

supplier, including by virtue of the transaction, made in writing, and any individual or legal entity in respect of which this potential supplier has the right;

6) similar goods, works and services are the goods, works and services, which are not identical, but have the similar characteristics and are composed of similar components, which allow them to perform the same functions and to be interchangeable;

7) affiliated entities of legal entities, fifty or more percent of the voting shares (stakes in the authorized capital) of which are owned by the state are the legal entities in which fifty or more percent of the voting shares (stakes in the authorized capital) of which directly or indirectly owned by the legal entities, fifty or more percent of the voting shares (stakes in the authorized capital) of which are owned by the state. Indirect ownership means the ownership of each subsequent affiliated entity of fifty or more percent of the voting shares (stakes in the authorized capital) of another legal entity;

8) a dumping price is the price, offered by the contestant for work and services, which is known to be low compared to the prices in force for the similar work and services, in order to conclude the contract on public procurement;

9) *Is excluded by the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161 -V (shall be enforced upon expiry of ten calendar days after its first official publication);*

10) works - an activity, associated with the construction, with the arrangement of raw material deposits, which has the real results, as well as other activities, referred to the works in accordance with the laws of the Republic of Kazakhstan;

11) domestic suppliers of works, services are the individuals, engaged in entrepreneurial activities, and (or) legal entities, who are the residents of the Republic of Kazakhstan, using no less than ninety-five percent of the local labor force of the Republic of Kazakhstan to carrying out of the work, provide the services;

12) a tender commission is a collegial body, created by the organizer of the public procurement, single organizer of the public procurement for the implementation of the public procurement procedure by the way of tender, provided by this Law;

13) a tender documentation is the documentation, provided to the potential supplier to prepare an application for participation in the tender, which contains the conditions and procedure of public procurement by the way of tender;

14) services are the activities, aimed at satisfying the requirements of the customer, which has no real effect;

15) residents of the Republic of Kazakhstan are the citizens of the Republic of Kazakhstan, including those, who are temporarily abroad or staying in civil service abroad, with the exception of citizens, having the document on the right of permanent residence in a foreign country, issued in accordance with the legislation of that State;

foreigners and stateless persons, who have the document on the right of permanent residence in the Republic of Kazakhstan;

legal entities, established under the legislation of the Republic of Kazakhstan, located in its territory, as well as their branches and representative offices, located in the Republic of Kazakhstan and abroad;

diplomatic, trade and other official representative offices of the Republic of Kazakhstan, which are abroad;

16) a resolution is an act of the body for the external state financial control, defined by the Budget Code of the Republic of Kazakhstan, confirming the results of monitoring and containing solutions, binding on all subjects of the public procurement system, to which it is addressed;

17) affiliated entities of state enterprises are the state branch enterprises;

18) a public procurement is the purchase by the customers for a fee of goods, works and services, required for the operation and performance of public functions or the customer's authorized activity, carried out in the manner prescribed by this Law and the civil legislation of the Republic of Kazakhstan, with the exception of:

the services, purchased from individuals under the labor contracts;

the services from individuals, who are not subjects of entrepreneurial activity, under the paid services contract;

the state task and goods, works, services acquired under its fulfillment according to the budget legislation of the Republic of Kazakhstan;

making contributions (deposits), including to the authorized capital of legal entities ;

19) a web portal of public procurement is the state information system that provides a single point of access to e-services of the electronic public procurement;

19-1) a single organizer of public procurement - the organizer of public procurement that is a public institution, engaged in the organization and implementation of procedures of public procurement on the budget programs or goods, works and services, defined by the Government of the Republic of Kazakhstan;

19-2) the procedure of organizing and conducting of public procurement - a set of interrelated, sequential activities carried out by the organizer of public procurement and the relevant commission in accordance with this Law, in order to conclude a public procurement contract with a potential supplier;

19-3) organizer of public procurement-a legal entity, appointed by the decision of the Government of the Republic of Kazakhstan or by akim of the region, city of republican significance and the capital, or a structural subdivision, acting on behalf of a legal entity that created it, carrying out organization and conduct of public procurement ;

20) an authorized body for public procurement (hereinafter - the authorized body) is the state body, regulating the public procurement system;

21) a public procurement system is a set of public procurement subjects and their relationships, defined by unity and interconnection, in the course of their activities in the field of public procurement;

22) subjects of the public procurement system are the individuals and legal entities, operating in the field of public procurement;

23) an activity in the field of public procurement is the development and approval of the annual procurement plan, organization and conduct of public procurement, performance of public procurement contracts, provision of services for the preparation and (or) further training of specialists in the field of public procurement, consulting, information services to the subjects of public procurement, carried out in accordance with this Law and the civil legislation of the Republic of Kazakhstan;

24) a public procurement contract is a civil contract, entered into between the customer and the supplier in accordance with this Law and the civil legislation of the Republic of Kazakhstan, on the supply of goods, works and services for the operation and performance of public functions or statutory activity of the customer;

24-1) electronic public procurement contract – a contract on public procurement in electronic form, certified by the electronic signature and concluded on the web portal of public procurement;

25) *Is excluded by the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication);*

26) *Is excluded by the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication);*

27) *Is excluded by the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication);*

28) domestic producers are the potential suppliers (hereinafter - the domestic producers) – individuals and (or) legal entities, who are the residents of the Republic of Kazakhstan and manufacturing:

the goods, wholly produced in the Republic of Kazakhstan in accordance with the customs legislation of the Customs Union and (or) of the Republic of Kazakhstan;

the goods, which have undergone to the sufficient processing in the Republic of Kazakhstan in accordance with the criteria of sufficient processing in accordance with the customs legislation of the Customs Union and (or) of the Republic of Kazakhstan;

29) a provider is an individual, engaged in entrepreneurial activities, a legal entity (except for the state institutions, unless otherwise provided by the Laws of the Republic

of Kazakhstan), a temporary association of legal entities (a consortium), acting as the counterparty of the customer in the concluded public procurement contract. An individual, who is not a subject of entrepreneurial activity, may be a supplier in the case, provided in subparagraph 5) of paragraph 3 of Article 41 of this Law;

30) an expert commission is a collegial body, created by the organizer of the public procurement or customer with attracting experts to participate in the development of technical task, and (or) technical specifications of the goods, works and services (or) to prepare an expert opinion related to the conformity of the proposals of the potential providers to the technical specifications of the purchased goods, works and services as well as to determine the best technical specification (the best technical specifications) of goods and services;

31) an expert is an individual with special and (or) technical knowledge, experience, qualification in the field of carried out public procurement, confirmed by the relevant documents (diplomas, certificates and other documents), involved by the organizer of public procurement, single organizer of public procurement or customer who attracted to participate in the development of technical task, and (or) technical specifications of the purchased goods, works and services (or) to prepare an expert opinion related to the conformity of the proposals of the potential providers to the technical specifications of the purchased goods, works and services as well as to determine the best technical specification (the best technical specifications) of goods and services;

32) customers are the state bodies, state institutions, as well as the state enterprises, legal entities, fifty and more percent of the voting shares (stakes in the authorized capital) of which are owned by the state, and their affiliated legal entities engaged in the acquisition of goods, works and services in accordance with this Law and the civil legislation of the Republic of Kazakhstan, except for national management holdings, national holdings, national management companies, national companies and their affiliated legal entities, the National Bank of the Republic of Kazakhstan, its departments and legal entities, in respect of which it is the founder (authorized body) or shareholder;

33) goods are the items (things), including semi-finished products or raw materials in solid, liquid or gas, electric and thermal energy, objectified results of creative intellectual activity, as well as the property rights, with which the purchase and sale transactions can be made in accordance with the Laws of the Republic of Kazakhstan;

33-1) database of prices for goods, works and services - information subsystem that is a part of the web portal of public procurement, and contains the information about the prevailing minimum, average and maximum prices for goods, works and services based on the results of public procurement;

33-2) a reference book of goods, works and services (hereinafter - the reference book) - a systematic list of goods, works and services that are the subject of public procurement with a unique code;

33-3) national regime—a regime, providing for the admission of goods, works and services of foreign origin and potential suppliers, offering such goods, works and services, to participate in public procurement on an equal conditions with the goods, works and services of domestic origin and potential suppliers, offering such goods, works and services, if the requirement to provide such a regime is established by the international treaties, ratified by the Republic of Kazakhstan;

34) a recommendation is a binding act of the authorized body, the body of state financial control, directed to the controlling objects to correct the identified violations of the legislation of the Republic of Kazakhstan on public procurement, and (or) the causes and conditions that contribute to them, as well as taking the measures of liability under the Laws of the Republic of Kazakhstan, to the persons, who committed these violations;

34-1) the best technical specification –the technical specification, containing the description of goods (services),required for the customer, that by its specification surpasses the technical and quality specifications, claimed by the customer;

35) a conditional price is the price, calculated to the application of the relative importance of the criteria, set forth in the tender documentation, and used exclusively in the evaluation and comparison of price of the proposals to determine the winner of the tender to the competitive price offer of the participant;

36) an electronic auction (hereinafter - the auction) is a way of electronic public procurement, in which the purchased goods, works and services of the customer comply with the auction documentation and the potential supplier, who offered the lowest price for them, determined when it is lowered, satisfies the qualified requirements;

37) an electronic document is the document in which the information is provided in electronic form and authenticated by the digital signature;

38) an electronic public procurement is the public procurement, carried out by the use of information systems and electronic information resources;

39) a single operator in the field of electronic public procurement is a legal entity, created by the decision of the Government of the Republic of Kazakhstan, the sole owner of the shares (stakes in the authorized capital) of which is the state or national holding, performing the implementation of a uniform technical policy in the field of electronic public procurement.

Footnote. The Article 1 is in the wording of the Law of the Republic of Kazakhstan dated 13.01.2012 No. 543 -IV (shall be enforced upon expiry of thirty calendar days after its first official publication), as amended and supplemented by the Law of the

Republic of Kazakhstan dated 05.07.2012 No. 30 -V (shall be enforced upon expiry of ten calendar days after its first official publication); the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

2. Legislation of the Republic of Kazakhstan on public procurement

1. The legislation of the Republic of Kazakhstan on public procurement is based on the Constitution of the Republic of Kazakhstan and consists of the rules of the Civil Code of the Republic of Kazakhstan, this Law and other normative legal acts of the Republic of Kazakhstan.

2. If an international treaty, ratified by the Republic of Kazakhstan stipulates other rules than those stipulated in this Law, the rules of the international treaty shall be applied.

3. Principles of legal regulation of public procurement

The legislation of the Republic of Kazakhstan on public procurement is based on the following principles:

- 1) an optimal and efficient spending of the money, used for public procurement;
- 2) providing the equal opportunities to the potential suppliers to participate in the procedure of public procurement, except as provided by this Law;
- 3) a fair tender among potential suppliers;
- 4) openness and transparency of public procurement process;
- 5) support of domestic manufacturer of goods, work and services providers.

Footnote. The Article 3, as amended by the Law of the Republic of Kazakhstan dated 20.11.2008 No. 87-IV (the order of enforcement see Art. 2); the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

4. Public procurement, carried out without the application of this Law, governing the selection of the supplier and the conclusion of the public procurement contract with him (her)

1. Public procurement is carried out without the use of the provisions of this Law, governing the selection of the supplier and the conclusion of the public procurement contract with him (her) in the following cases:

1) a purchase of goods, works and services, if the total annual amount, required by annual procurement plan does not exceed two thousand monthly calculation indices, established for the relevant financial year by the law on the republican budget;

2) a purchase of goods, works and services at prices, rates, fees and charges, established by the legislation of the Republic of Kazakhstan;

3) a purchase for the implementation of operational investigation, as well as investigation by the bodies, authorized to carry them out in accordance with the legislation of the Republic of Kazakhstan:

the services of individuals, who agreed to provide confidential assistance to the bodies, responsible for the implementation of operational investigation;

the office accommodation, transport and other technical means, property;

the goods, works and services for the creation of secret organizations;

the service of officers and specialists with the necessary scientific and technical or other specialized knowledge;

4) an acquisition of the right to use the natural resources;

5) a purchase of the goods, which are the raw materials for industries of strategic importance, not produced in the territory of the Republic of Kazakhstan and acquired abroad, according to the list of goods, approved by the Government of the Republic of Kazakhstan;

6) a purchase of goods for the purpose of further processing according to the list, approved by the Government of the Republic of Kazakhstan by state enterprises, legal entities, fifty and more percent of the voting shares (stakes in the authorized capital) of which are owned by state and their affiliated legal entities;

7) a purchase of goods and services, associated with the expenses of representation;

8) a purchase of materials of exhibitions, seminars, conferences, meetings, forums, workshops, training sessions, as well as payment for participation in these activities;

9) a purchase of periodicals on paper and (or) electronic media;

9-1) an acquisition of services for distribution of information in the international media, as well as services to provide the information, posted on the internet resources;

10) an acquisition of services for training, retraining and advanced training of workers abroad;

11) an acquisition of services of rating agencies, financial services in terms of provision of service for enrollment of wages to the accounts of beneficiaries (individuals) in the case, if the individual self-determined the credit (transfer) organization, as well as in the operations of the cash funds of individuals;

11-1) an acquisition of financial services related to banking;

12) a purchase of the specialized library services for the blind and visually impaired people;

13) a purchase of goods for their onward transmission to leasing in the implementation of leasing activities;

14) a purchase of the securities, the share in the capital of legal entities;

15) a purchase of goods and services, provided by the legislation of the Republic of Kazakhstan on elections, according to the list, approved by the Government of the Republic of Kazakhstan;

16) an acquisition of services for the production of the state and departmental awards and the documents to them, the badge of the deputy of the Parliament of the Republic of Kazakhstan and the document to it, state verification marks, passports (

including official and diplomatic), identity cards of citizens of the Republic of Kazakhstan, registration certificate of foreigner in the Republic of Kazakhstan, certificate of persons without citizenship, certificates of registration of acts of civil status, as well as purchasing from suppliers, determined by the Government of the Republic of Kazakhstan, the printed materials, requiring special protection, according to the list, approved by the Government of the Republic of Kazakhstan;

17) a purchase of goods, works and services, carried out in accordance with the international treaties of the Republic of Kazakhstan, according to the list approved by the Government of the Republic of Kazakhstan, as well as in the implementation of investment projects, financed by the international organizations which member is the Republic of Kazakhstan;

18) *Is excluded by the Law of the Republic of Kazakhstan dated 05.07.2012 No. 30 -V (shall be enforced upon expiry of ten calendar days after its first official publication)*;

19) a purchase of goods, works and services, related to the use of the money of grants, provided to the Government of the Republic of Kazakhstan free of charge by the states, governments of the states, international and national organizations, foreign non-governmental organizations and funds, whose activities are charitable and international, as well as the money allocated to the co-financing of these grants, in cases where agreements granting them provide for other procedures for the acquisition of goods, works and services;

20) a purchase of services, related to the state educational order for individuals (in the case, if the individual selected the organization of education independently);

21) *Is excluded by the Law of the Republic of Kazakhstan dated 28.06.2012 No. 22 -V (shall be enforced from 01.07.2012)*;

21-1) a purchase of services for mandatory medical examination of workers, engaged in heavy work or work under harmful (particularly harmful) and (or) hazardous working conditions, as well as the work, associated with increased risk, machines and mechanisms;

21-2) a purchase of medical equipment to provide the guaranteed volume of free medical care, treatment, and prevention of epidemic diseases;

22) a purchase of services for the treatment of citizens of the Republic of Kazakhstan abroad, as well as services for their transportation and maintenance;

23) a purchase of services, related to the implementation of business trip expenses;

24) a purchase of goods, which are the cultural treasure, including museum objects and collections, as well as the rare and valuable publications, manuscripts, archival documents, including copies, having historical, artistic or other cultural value, taken under the state protection as monuments of history and culture and intended to replenish the state museum, library, archive funds, film, photo funds and other funds;

25) a purchase of goods and services, which are the objects of intellectual property, from the person having the exclusive rights in respect of the purchased goods and services;

26) a purchase of the controlled goods, works and services from the subjects of natural monopolies;

27) a purchase of goods, works and services from the subject of the state monopoly on the activity, classified as the state monopoly;

28) a purchase of goods, works and services as a result of the occurrence of force majeure, including the localization and (or) emergency recovery, to eliminate accidents at electric power facilities, communication systems of the life support, railway, air, road and sea transport, sewage treatment plants, oil pipelines, gas pipelines, and the need for immediate medical intervention as well as in the event of breakdown, failure of communications, mechanisms, components, spare parts and materials in transit, requiring the immediate recovery;

29) a purchase of goods, works and services by the foreign establishments of the Republic of Kazakhstan, as well as by the separate divisions of customers, acting on their behalf, to ensure their activities on the territory of a foreign state;

30) a purchase of services to provide the information by the international media organizations;

31) a purchase of goods, works and services by the state body from the corporations and business partnerships, one hundred percent of the voting shares (stakes in the authorized capital) of which are owned by the state, and the appropriate powers of which are established by the laws of the Republic of Kazakhstan and decrees of the President of the Republic of Kazakhstan;

31-1) a purchase of goods, works and services by the state body from the state enterprises, in respect of which it administers in accordance with the legislation of the Republic of Kazakhstan on the state property, in the case, when such purchase, provided by the laws of the Republic of Kazakhstan and the decrees of the President of the Republic of Kazakhstan;

31-2) a purchase of goods, works and services, required for the implementation of monetary operations, as well as the activity for the management of the National Fund of the Republic of Kazakhstan and the pension assets of the single pension fund;

31-3) the acquisition of goods, works and services at state enterprises by the state body, ensuring the activity of the President of the Republic of Kazakhstan, the Parliament of the Republic of Kazakhstan, the Government of the Republic of Kazakhstan, in respect of which, it exercises administration in accordance with the legislation of the Republic of Kazakhstan on state property, on the basic subject of activity of such state enterprises;

32) *Is excluded by the Law of the Republic of Kazakhstan dated 05.07.2012 No. 30 -V (shall be enforced upon expiry of ten calendar days after its first official publication);*

33) a purchase of goods, works and services, required for the safety and security of the President of the Republic of Kazakhstan, and other protected persons and objects, intended to staying of the protected persons, as well as services to form the video archive and information service of the President of the Republic of Kazakhstan;

33-1) a purchase of goods, works and services, required for the operation of the President of the Republic of Kazakhstan and other protected persons, maintenance, servicing and operation of the state residences, vehicles and aircraft, intended to serve the President of the Republic of Kazakhstan and other protected persons, and the purchase of goods, works and services, required for events with participation of the President of the Republic of Kazakhstan and other protected persons in accordance of the legislation of the Republic of Kazakhstan;

34) an acquisition of advisory and legal services to protect and represent the interests of the state or the customers in the international commercial arbitration and international courts;

35) an acquisition of services for trust administration of property from a person, determined by the legislation of the Republic of Kazakhstan;

36) a purchase of goods, works and services from the person, determined by the Laws of the Republic of Kazakhstan;

36-1) a purchase of goods, works and services, required for the implementation of depository activities, including the acquisition of services of foreign depositories and other financial institutions;

37) *Is excluded by the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication);*

38) a purchase of food products by a specialized organization (agent) from domestic manufacturers of these products, as well as services for their storage, processing and transportation. The list of specialized organizations (agents) is approved by the Government of the Republic of Kazakhstan;

39) a purchase of services for the processing of the statistical observations;

40) a purchase of the property (assets), which is sold in the auction (auctions).

by enforcement agents, in accordance with the legislation of the Republic of Kazakhstan on enforcement procedures and status of enforcement agents;

conducted in accordance with the legislation of the Republic of Kazakhstan on rehabilitation and bankruptcy;

conducted in accordance with the land legislation of the Republic of Kazakhstan; in the privatization of the state property;

41) a purchase of services, rendered by lawyers to the persons, released from its payment in accordance with the Laws of the Republic of Kazakhstan;

42) a purchase of goods, works and services, produced, performed, provided by the state enterprises of the penal institutions by the bodies of the penal system. The list and quantities of goods, works and services, as well as the list of state enterprises of penal institutions, from which such goods, works, services are purchased, shall be approved by the Government of the Republic of Kazakhstan;

43) a purchase of goods, works and services of military and dual-purpose (application) that are part of the state defense order from the domestic producers and domestic suppliers of works, services and (or) from the authorized organization, defined by the Government of the Republic of Kazakhstan;

44) *Is excluded by the Law of the Republic of Kazakhstan dated 29.12.2009 No .233-IV (shall be enforced from 01.01.2011);*

45) *Is excluded by the Law of the Republic of Kazakhstan dated 20.11.2008 No.87 -IV (the order of enforcement see Art. 2);*

46) a purchase of electricity;

47) *Is excluded by the Law of the Republic of Kazakhstan dated 20.11.2008 No.87 -IV (the order of enforcement see Art. 2);*

48) a purchase of natural gas, uranium and its compounds by the legal entities, fifty or more percent of the voting shares (stakes in the authorized capital) of which are owned by the state and their affiliated legal entities;

49) a purchase of goods in the state material reserve for the provision of the regulatory impact on the market;

50) a purchase of services for the storage of material assets of the mobilization reserve from the organizations, performing mobilization orders;

51) *Is excluded by the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication);*

52) a purchase of goods, works and services for the production, which is part of the state defense order, determined by the Law of the Republic of Kazakhstan “On the state defense order” by the domestic producers – performers of the state defense order;

53) the acquisition of goods (products) works and services of military and dual purpose (application), necessary to ensure the military security of the state, by the authorized organization, defined by the Government of the Republic of Kazakhstan;

54) an acquisition of services for the training of astronauts and organization of flights of astronauts into the space;

55) a purchase of goods by the state enterprises, legal entities, fifty and more percent of the voting shares (stakes in the authorized capital) of which are owned by the state, and their affiliated legal entities under the long-term five-year contracts from

the domestic producers, providing the production of prototype of the industrial design and the organization of serial production of goods in the Republic of Kazakhstan on the specifications of the customer, if the purchase of such goods in the past three years was carried out outside the Republic of Kazakhstan;

56) *Is excluded by the Law of the Republic of Kazakhstan dated 14.01.2014 No .161-V (shall be enforced upon expiry of ten calendar days after its first official publication);*

57) an acquisition of services for repair of aviation equipment in the specialized aircraft repair plants;

58) a purchase of goods, works and services at the expense of the money, allocated from the reserve of the Government of the Republic of Kazakhstan to the immediate costs, in cases of situations that threaten the political, economic and social stability of the Republic of Kazakhstan or its administrative-territorial units;

59) *Is excluded by the Law of the Republic of Kazakhstan dated 14.01.2014 No .161-V (shall be enforced upon expiry of ten calendar days after its first official publication);*

60) a purchase of similar goods, works and services, if the annual amount of such similar goods, works and services, not exceeding in terms of value one hundred monthly calculation indices, established for the financial year by the law on the republican budget;

61) a placement of the order to visit the zoo, theater, cinema, concert, circus, museum, exhibitions and sporting events;

62) an acquisition of services for the author's supervision over the development of project documentation of the objects of capital construction, the author's supervision over the construction, reconstruction and the capital repair of the objects of capital construction by the respective authors;

63) an acquisition of services for the maintenance and author's supervision over the preservation of the cultural heritage (monuments of history and culture), the nation of the Republic of Kazakhstan;

64) an acquisition by the theatre, philharmonic hall, museum, cultural and leisure organization of goods and services for carrying out stage performances and public performance of artwork;

65) the acquisition of goods, works, services of a body, defined by the Government of the Republic of Kazakhstan under the decision (order) of the President of the Republic of Kazakhstan;

66) the acquisition of goods, works, services by public enterprises, legal entities, fifty and more percent of voting shares (interest in Charter capital) that are owned by the state, in respect of which, a state authority, providing the activity of the President of the Republic of Kazakhstan, the Parliament of the Republic of Kazakhstan, the

Government of the Republic of Kazakhstan or its departments carry out the management in accordance with the legislation of the Republic of Kazakhstan on state property;

67) the acquisition of goods, works, services, related to ensuring the nutrition of children, raised and trained in preschool educational institutions.

2. In the cases, provided in paragraph 1 of this article, the public procurement is carried out in accordance with the civil legislation of the Republic of Kazakhstan with the principle of legal regulation of public procurement, as provided in subparagraph 1) of Article 3 of this Law.

3. The provisions of paragraphs 5), 6), 9-1), 11-1), 13), 21-1), 21-2), 33-1), 38), 48), 53), 55), 64), 66) and 67) of paragraph 1 of this Article shall not be applied to the public procurement, carried out by state bodies and state institutions.

Footnote. The Article 4, as amended by the Laws of the Republic of Kazakhstan dated 20.11.2008 No. 87-IV (the order of enforcement see Art.2), dated 11.07.2009 No. 182 -IV (the order of enforcement see Art. 2), dated 16.07.2009 No. 186-IV; dated 11.12.2009 No. 229 -IV (the order of enforcement see Art. 2), dated 29.12.2009 No. 233-IV (shall be enforced from 01.01.2011), dated 19.03.2010 No. 258-IV; dated 15.07.2010 No. 334-IV (the order of enforcement see Art. 2), dated 26.01.2011 No. 400-IV (the shall be enforced upon expiry of thirty calendar days after its first official publication), dated 18.02.2011 No. 408 -IV (shall be enforced upon expiry of ten calendar days after its first official publication), dated 24.03.2011 No. 420 -IV (shall be enforced upon expiry of ten calendar days after its first official publication), dated 13.01.2012 No. 543-IV (the order of enforcement see Art. 2), dated 28.06.2012 No. 22-V (shall be enforced from 01.07.2012), dated 05.07.2012 No. 30-V (shall be enforced upon expiry of ten calendar days after its first official publication), dated 21.06.2013 No.106-V (shall be enforced upon expiry of ten calendar days after its first official publication);dated 03.07.2013 No. 125-V (shall be enforced upon expiry of ten calendar days after its first official publication); dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication); dated 15.01.2014 No. 164-V (shall be enforced upon expiry of ten calendar days after its first official publication); dated 07.03.2014 No. 177-V (shall be enforced upon expiry of ten calendar days after its first official publication).

5. The process of public procurement

1. The public procurement process includes:

1) *(Is excluded by the Law of the Republic of Kazakhstandated20.11.2008 No. 87-IV (the order of enforcement see Art. 2);*

2) the development and approval of the annual plan of public procurement;

3) the selection of the supplier and the conclusion of the public procurement contract;

4) the execution of the public procurement contract.

The provisions of this paragraph shall not be applied to public procurement, the implementation of which is stipulated in Article 41-1 of this Law.

2. *(Is excluded by the Law of the Republic of Kazakhstan dated 20.11.2008 No. 87 -IV (the order of enforcement see art. 2)).*

3. On the basis of the relevant budget (business plan, income and expenditure estimate), the customer develops and approves the annual plan for public procurement, in the manner and form determined by the rules for public procurement.

The annual public procurement plan is approved by the customer within ten working days from the date of approval of the appropriate budget (business plan, income and expenditure estimate) and shall contain the following information:

1) nomenclature of goods, works, services according to the book of reference, including the amounts, set aside for carrying out the public procurement, excluding value added tax;

2) a method, except in cases provided for in Article 4 of this Law, and the terms of public procurement;

3) planned dates and place of delivery of goods, works and services;

4) planned dates for delivery of the goods, works and services in accordance with the schedule and by year within the allocated and specified amounts for each financial year in the cases provided in Article 37 of this Law.

The information on public procurement, specified in sub-paragraphs 1), 2), 3) and 4) of this paragraph, in the cases provided in subparagraph 2-1) of part two of paragraph 2 of Article 79 of the Budget Code of the Republic of Kazakhstan, is approved by the customer in the annual plan for public procurement. The annual plan for public procurement is approved by the customer within ten working days from the date of execution of paragraph 7 of Article 153 of the Budget Code of the Republic of Kazakhstan.

4. The customer within five working days from the date of approval of the annual plan for public procurement shall post it on the web portal of public procurement, with the exception of information, constituting the state secrets in accordance with the legislation of the Republic of Kazakhstan on state secrets, and (or) information, containing the proprietary information of limited distribution, defined by the Government of the Republic of Kazakhstan, which are submitted to the authorized body without the use of a web portal for public procurement.

5. The customers have a right to make changes and (or) amendments to the annual plan for public procurement.

The customer within five working days from the date of the decision on making changes and (or) amendments in the annual plan for public procurement shall post the changes and (or) amendments on the web portal of public procurement, with the

exception of information, constituting the state secrets in accordance with the legislation of the Republic of Kazakhstan on state secrets, and (or) the information, containing proprietary information of limited distribution, defined by the Government of the Republic of Kazakhstan that are submitted to the authorized body, without the use of a web portal for public procurement.

6. The information on public procurement, carried out in accordance with subparagraphs 3), 28) and 33-1) of paragraph 1 of Article 4 of this Law shall not be included in the annual plan for public procurement.

7. The decision on the implementation of public procurement is taken by the customer on the basis of the approved or revised annual plan for public procurement.

Customers have the right to adopt the decision on carrying out public procurement on submission of the budget only in case of conducting public procurement by way of tender with the use of two-phase procedures.

8. The purchase of goods, works or services, not provided by the approved annual plan for public procurement (revised by the annual plan for public procurement) shall not be allowed, except for the purchase of goods, works and services in accordance with subparagraphs 3), 28) and 33-1) of paragraph 1 of Article 4 this Law.

9. The selection of a supplier of goods, works and services, as well as the conclusion of the public procurement contract are carried out in compliance with this Law, except as provided by paragraph 1 of Article 4 of this Law.

In order to ensure the continual activity of the customer, he (she) has the right to extend the contract on public procurement of goods, works and services of daily or weekly needs on the list, approved by the Government of the Republic of Kazakhstan, to the first quarter of next year, in an amount, not exceeding the amount of such goods, works and services, used in the first quarter of this year.

10. The customer has the right to refuse from the implementation of public procurement in the following cases:

1) a reduction of the costs for the purchase of goods, works and services, provided in the approved annual plan for public procurement (the revised annual plan for public procurement) that occurred in the refinement (adjusting) of the appropriate budget, in accordance with the legislation of the Republic of Kazakhstan;

2) an introduction of changes and amendments to the strategic plan of the state body, the budget (business plan, income and expenditure estimates) of the customer, precluding the need to purchase the goods, works and services, provided in the approved annual plan for public procurement (the revised annual plan for public procurement), in accordance with the legislation of the Republic of Kazakhstan.

The customer or the organizer of public procurement shall within five working days from the date of acceptance by the customer of such a decision:

1) inform on the decision of the persons, participating in the conducted public procurement;

2) return of the made tender security for participation in the tender and (or) the enforcement of public procurement contracts.

Footnote. The Article 5, as amended by the Laws of the Republic of Kazakhstan dated 20.11.2008 No. 87-IV (the order of enforcement see Art. 2), dated 02.04.2010 No. 263-IV (shall be enforced from 01.01.2010), dated 24.11.2011 No. 495 -IV (shall be enforced upon expiry of ten calendar days after its first official publication), dated 13.01.2012 No. 543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication), dated 27.04.2012 No. 15-V (shall be enforced upon expiry of ten calendar days after its first official publication), dated 05.07.2012 No. 30-V (shall be enforced upon expiry of ten calendar days after its first official publication), dated 26.12.2012 No. 61-V (shall be enforced from 01.01.2014), dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication)

6. Limitations, related with the participation in the public procurement

1. A potential supplier does not have the right to participate in the conducting public procurement, if:

1) close relatives, spouse (s) or relatives in-law of the leaders of the potential supplier and (or) an authorized representative of the potential supplier have the right to decide on the selection of the supplier, or are the representative of the customer or the organizer of public procurement in the conducting public procurement;

2) a potential supplier, and (or) its employee provided the expert, consulting, and (or) other services for the preparation of conducted public procurement to the customer or the organizer of public procurement, participated as a chief designer or a sub-designer to develop a feasibility study and (or) project (design estimates) documentation for construction of the facility, which is the subject of the conducted public procurement, except for the participation of the developer of the feasibility study in public procurement for the development of project (project-estimate) documentation;

3) a head of a potential supplier, applying for the participation in public procurement, had relations to the administration, establishment, participation in the authorized capital of the legal entities, included in the register of unfair participants of public procurement;

3-1) a head of a potential supplier, applying for the participation in the public procurement, is an individual, engaged in entrepreneurial activities, included in the register of unfair participants of public procurement;

3-2) a potential supplier, who is an individual, engaged in entrepreneurial activities, applying for the participation in public procurement, is the head of a potential supplier, which is included in the register of unfair participants of public procurement;

4) a potential supplier is in the register of unfair participants of public procurement;

5) a property of the potential supplier (or) it's attracted sub-contractor (co-executor), the book value of which exceeds ten percent of the value of such fixed assets, are seized;

5-1) a potential supplier, and (or) it's attracted sub-contractor (co-executor) has the outstanding obligations on the executive documents and are incorporated by the authorized body in the field of enforcement of court orders, in the appropriate register of debtors;

6) a financial and economic activity of a potential supplier, and (or) it's attracted sub-contractor (co-executor) is suspended in accordance with the legislation of the Republic of Kazakhstan or the legislation of the state of the potential supplier, who is a non-resident of the Republic of Kazakhstan;

7) a potential supplier, and (or) it's attracted sub-contractor (co-executor), and (or) their head, founders (shareholders) are included in the list of organizations and individuals, related with the financing of terrorism and extremism, in accordance with the legislation of the Republic of Kazakhstan.

2. The potential supplier and affiliated entity of the potential supplier do not have the right to participate in one tender (the lot).

3. The customer, in the interests of whom, the public procurement is carried out, does not have the right to participate in such purchases as a potential supplier.

4. The potential supplier or the supplier, who has admitted the violation of the requirements of this article, shall be included in the register of unfair participants of public procurement, in accordance with the procedure, established by this Law.

Footnote. The Article 6, as amended by the Laws of the Republic of Kazakhstan dated 02.04.2010 No. 262-IV (shall be enforced from 21.10.2010), dated 13.01.2012 No. 543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication); dated 08.01.2013 No. 63-V (shall be enforced upon expiry of ten calendar days after its first official publication).

7. The procedure for determining the organizer public procurement

Footnote. Title of Article 7 is in the wording of the Law of the Republic of Kazakhstan dated 20.11.2008 No. 87-IV (the order of enforcement see Art. 2).

1. For the procedures of the organization and conducting public procurement, the customer determines the organizer of public procurement, as well as an official of the customer, who represents the interests of the latter in the upcoming public procurement, except in cases, where the customer and the organizer of the public procurement is the same person.

2. The customer directly or through its structural unit, responsible for carrying out the procedures for the organization and conducting of public procurement can act as the organizer of public procurement.

The customer has the right to determine as organizer of public procurement the state institution subordinated to the customer or the affiliated entity of the customer.

3. *Is excluded by the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161 -V (shall be enforced upon expiry of ten calendar days after its first official publication).*

4. The administrator of the budget program may act as the organizer of public procurement for the state institutions subordinated to it, the legal entity in respect of which, it is a body of state administration, or a person, affiliated with legal entity, in respect of which the administrator of the budget program is a body of state administration.

The state enterprise has the right to act as the organizer of public procurement to its affiliated entities.

The legal entity, fifty or more percent of the voting shares (stakes in the authorized capital) of which are owned by the state, has the right to act as an organizer of public procurement to its affiliated entities.

5. For the purpose of conducting unified public procurement:

1) the Government of the Republic of Kazakhstan determines a single organizer of public procurement;

Organization and holding of public procurement of goods, works and services are carried out by a single organizer of public procurement on the list of budget programs and (or) goods, works and services, established by the Government of the Republic of Kazakhstan;

It is a new wording of subparagraph 2) in accordance with the Law of the Republic of Kazakhstan No.161-V (shall be enforced from 01.01.2015).

2) the akim of the respective administrative -territorial unit shall have the right to determine a single organizer of public procurement among the number of customers;

3) the customer shall have the right to act as a single organizer of public procurement for several state institutions, subordinated to the customer or its affiliated entities;

4) the customer shall have the right to determine a single organizer of public procurement among the number of state institutions, subordinated to the customer;

5) for legal entities in respect of which the National Bank of the Republic of Kazakhstan is the founder (competent authority) or a shareholder, he is entitled to act as a single organizer of public procurement.

6. *Is excluded by the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161 -V (shall be enforced upon expiry of ten calendar days after its first official publication).*

7. The organizer of public procurement shall determine the official, representing him (her) in the relationship with the customer, potential suppliers, the relevant commissions and the expert, with the exception of cases where the customer and the organizer of the public procurement is the same person. The representative of the organizer of public procurement must be determined from the number of employees of the structural unit, responsible for carrying out the procedures for organizing and conducting public procurement.

Footnote. The Article 7, as amended by the Laws of the Republic of Kazakhstan dated 20.11.2008 No. 87-IV (the order of enforcement see Art. 2), dated 13.01.2012 No.543 -IV (shall be enforced upon expiry of thirty calendar days after its first official publication), dated 05.07.2012 No. 30-V (shall be enforced upon expiry of ten calendar days after its first official publication), dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

7-1. Specific aspects of conducting the public procurement by a single organizer of public procurement

1. Single organizer of public procurement, determined in accordance with subparagraphs 1) and 2) of paragraph 5 of Article 7 of this Law, shall conduct public procurement with the following successive stages:

1) provision of a task to a single organizer of public procurement by the customer for organizing and conducting of public procurement, that contains documents, established by the rules of e-procurement;

2) development and approval by a single organizer of public procurement of the tender or auction documentation based on the task, given by the customer, and containing the documents, established the rules of e-procurement;

3) determination and approval of the composition of the tender or auction commission by a single organizer of public procurement.

The composition of tender or auction commission, that determined and approved by the single organizer of public procurement, also includes the representatives of the customer, provided that:

in the case of the organization and conduct of public procurement by a single organizer of public procurement, determined in accordance with subparagraph 1) of paragraph 5 of Article 7 of this Law, the chairman of the tender or auction commission shall define the first head of the customer;

in the case of the organization and conduct of public procurement by a single organizer of public procurement, determined in accordance with subparagraph 2) of paragraph 5 of Article 7 of this Law, the akim of the respective region, the city of

republican significance and the capital shall be determined as the chairman of the tender or auction commission;

4) if necessary, making changes and (or) additions to the tender or auction documentation by a single organizer of public procurement;

5) placing offers of public procurement by a single organizer of public procurement ;

6) direction to the customer by a single organizer of public procurement the suggestions and comments by individuals, automatically registered on the web portal of public procurement, the details of which are logged in the registration of persons, who have received the tender or auction documentation to draft of a public procurement contract and (or) technical specifications of the tender or auction documentation;

7) determination of the winner of public procurement by way of tender or auction;

8) conclusion of a public procurement contract by the customer with the winner, on the basis of the report on the results of public procurement in the manner prescribed by this Law and the rules of e-procurement.

2. Organization and conducting public procurement by a single organizer of public procurement determined in accordance with subparagraphs 1) and 2) of paragraph 5 of Article 7 of this Law shall be exercised in the manner prescribed by this Law and the rules of e-procurement.

Footnote. Chapter 1 is supplemented by Article 7-1 in accordance with the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

8. Qualification requirements for a potential supplier

1. The general and specific qualification requirements are presented to potential suppliers.

2. The potential supplier shall conform to the following general qualification requirements:

- 1) have legal capacity (for legal entities), civil capacity (for individuals);
- 2) be solvent, does not have a tax debt;
- 3) not be subject to bankruptcy or liquidation.

The requirements of subparagraph 2) of this paragraph shall not be applied to potential suppliers, for which the procedure of rehabilitation is carried out, as well as to potential suppliers that are members of government support measures, for which the use of accelerated rehabilitation procedure is obligatory.

3. The potential supplier of goods, works and services, in addition to general qualification requirements, stipulated in paragraph 2 of this Article shall conform to a specific qualification requirement in the possession of material, financial and human resources sufficient to fulfill the obligations under the public procurement contract.

4. The potential supplier to confirm its compliance with the qualification requirements, established by this article, shall present the appropriate documents, provided by the rules of electronic public procurement to the organizer of public procurement.

5. The potential supplier, who is the non-resident of the Republic of Kazakhstan to confirm its compliance with the qualification requirements, established by this Article, shall present the same documents as the residents of the Republic of Kazakhstan, or the documents, containing the similar information on the qualifications of the potential supplier, who is the non-resident of the Republic of Kazakhstan.

6. The potential supplier has the right to confirm the compliance with the general qualification requirements, by providing one of the following documents:

1) a document, confirming the assignment of the rating of the international rating organization to the potential supplier;

2) an extract from the stock exchange on the inclusion of a potential supplier to official stock exchange listing;

3) *Is excluded – by the Law of the Republic of Kazakhstan dated 20.02.2009 No. 138-IV (the order of enforcement see Art. 2).*

The legal capacity of a potential supplier, conducting the activities that are subject to licensing, is supported by the state information system in accordance with the legislation of the Republic of Kazakhstan on informatization.

In the absence of information in the public information system, the potential supplier shall present a notarized copy of a license, issued in accordance with the legislation of the Republic of Kazakhstan on licensing.

7. The qualification requirements, established in paragraphs 2 and 3 of this Article shall also be applied to individuals or legal entities, which the potential supplier provides to involve as subcontractors to perform work or as sub-executors to provide services that are the subject of the conducting public procurement.

The potential supplier, who provides to involve subcontractors (co- executors) of works or services, must provide the documents, confirming compliance of the involved subcontractors (co-executors) of works or services with the qualification requirements set forth in paragraphs 2 and 3 of this Article, to the organizer of public procurement.

The limit amounts of work and services that can be subcontracted (co-executed) to perform work or provide services, are set by the rules of electronic public procurement.

8. The potential supplier has the right to confirm the compliance with the general qualification requirement of solvency by providing the enforcement of the contract in the form of a bank guarantee of one or several banks- residents of the Republic of Kazakhstan in the amount equal to one hundred percent of the amount held by public procurement:

1) together with the application for participation in the tender in public procurement by way of tender or together with the application for participation in the auction in carrying out the public procurement by the way of auction. Enforcement of a public procurement contract is given by the potential supplier for a period specified in the tender or auction documentation for the complete fulfillment of the obligations under the public procurement contract;

2) at the stage of determining its compliance with the qualification requirements in carrying out the public procurement from a single source for a period, sufficient to achieve full implementation of obligations under the public procurement contract.

9. The qualification requirements, established in paragraphs 2 and 3 of this Article shall not be applied in cases of public procurement under paragraph 1 of Article 4, Articles 30, 31, subparagraph 4) of Article 32 and Article 36 of this Law.

10. The establishment of qualification requirements not provided in paragraphs 2 and 3 of this Article is not allowed, except for carrying out the public procurement with the use of specific and special orders for public procurement by the way of tender under Articles 41 and 42 of this Law.

Footnote. The Article 8, as amended by the Laws of the Republic of Kazakhstan dated 05.07.2008 No. 60-IV (the order of enforcement see Art. 2), dated 20.11.2008 No. 87-IV (the order of enforcement see Art. 2), dated 20.02.2009 No. 138-IV (the order of enforcement see Art. 2), dated 13.01.2012 No. 543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication), dated 17.02.2012 No. 564 -IV (shall be enforced upon expiry of ten calendar days after its first official publication), dated 10.07.2012 No. 36-V (shall be enforced upon expiry of ten calendar days after its first official publication), dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

9. Grounds for recognizing the potential supplier as not qualified

1. The potential supplier should be considered as not qualified for one of the following grounds:

1) a failure to submit document (s) to verify the compliance with the qualification requirements of the potential supplier, and (or) its involved sub-contractor (co-executor) of works or services;

2) non-conformance with the qualification requirements on the basis of the information, contained in the documents, submitted by the potential supplier to confirm its compliance, as well as compliance of the involved sub-contractor (co-executor) of works or services with the qualification requirements;

3) a determination of the provision of false information on the qualification requirements.

2. The recognition of the potential supplier and (or) its involved sub-contractor (co-executor) of works or services as not meeting the qualification requirements on the grounds, not provided in paragraph 1 of this Article, is not allowed.

Footnote. Article 9, as amended by the Law of the Republic of Kazakhstan dated 14.01.2014 No.161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

10. The consequences of submission of false information on qualification requirements by a potential supplier

1. The potential suppliers who provided false information on qualification requirements are included in the register of unfair participants of public procurement procedure, established by this Law.

2. The accuracy of the information on qualification requirements, provided by the potential supplier may be determined by the customer, the single organizer of public procurement, the authorized body or by the bodies for state financial control at any stage of public procurement.

3. Those, who determine the facts of submission of false information on the qualification requirements by the potential supplier, shall:

1) no later than three working days from the date of the determination of such fact, notify in writing, the customer and the authorized body with the application to the notice the copies of documents, proving the facts;

2) no later than thirty calendar days from the date of determination of such fact, bring a suit in court for recognition of the potential supplier, who submitted the false information on qualification requirements, as unfair participant of public procurement.

The requirement of subparagraph 2) of this paragraph shall not be applied to the Accounts Committee for Control over Execution of the Republican Budget and audit committees of regions, cities of republican importance, capital, except in cases where, they act as customers (organizers) of public procurement.

Footnote. The Article 10, as amended by the Laws of the Republic of Kazakhstan dated 20.11.2008 No. 87-IV (the order of enforcement see Art. 2), dated 21.07.2011 No. 465-IV (shall be enforced upon expiry of ten calendar days after its first official publication), dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

11. Registers, formed in the field of public procurement

1. The authorized body shall form and maintain the following unified republican registers in the field of public procurement (hereinafter - the registers):

- 1) customers;
- 2) public procurement contracts;
- 3) unfair participants of public procurement.

2. The register of customers is a list of legal entities, required to carry out the purchase of goods, works and services they need, to ensure the functioning and performance of public functions or authorized activities, in accordance with this Law and civil legislation of the Republic of Kazakhstan.

3. The register of public procurement contracts is a list of public procurement contracts, entered into by customers in the corresponding financial year that contains the information about an item, quantitative and value terms of the public procurement contract, the results of performance of the contractual obligations by the parties.

The public procurement contracts, containing the information constituting the state secrets or other secrets protected by law, are included in a separate register of public procurement contracts, the conduct of which is determined by the authorized body in coordination with the authorized body for the protection of state secrets. Access to such information shall be in accordance with the legislation of the Republic of Kazakhstan on state secrets.

The information on the contracts, concluded by the results of public procurement, provided in subparagraphs 3) and 23) of paragraph 1 of Article 4 of this Law, shall not be included in the register of public procurement contracts.

4. The register of unfair participants of public procurement is a list of:

1) potential suppliers that submitted the false information on qualification requirements;

2) potential suppliers that committed a violation of Article 6 of this Law;

3) potential suppliers, determined as winners, and evaded from the conclusion of a public procurement contract;

4) suppliers that did not perform or improperly performed their obligations under the contracts on public procurement, concluded with them.

The register of unfair participants of public procurement is formed on the basis of the courts decisions, which have entered into legal force.

The potential suppliers or suppliers, included in the register of unfair participants of public procurement on the grounds, provided in this paragraph, shall not be allowed to participate in public procurement within twenty-four months from the date of entry into force of the court decision on recognition of them as unfair participants of public procurement. In the case, provided in subparagraph 2) of paragraph 2 of Article 38 of this Law, the public procurement contract may be concluded with a potential supplier, who is included in the register of unfair participants of public procurement.

The information, contained in the register of unfair participants of public procurement, is excluded from the register not later than one working day after the deadline, set by the third part of this paragraph.

The decision to include a potential supplier or a supplier in the register of unfair participants of public procurement may be challenged by them in a court.

The customer, in cases specified in subparagraphs 2), 3) and 4) of first part of this paragraph, shall no later than thirty calendar days from the date, when he became aware of the fact of violation the legislation of the Republic of Kazakhstan on public procurement by a potential supplier or a supplier, submit a claim to court for recognition of the potential supplier or the supplier as an unfair participant of public procurement.

Single organizer of public procurement in the cases, specified in subparagraphs 1) and 2) the first part of this paragraph, shall not later than thirty calendar days from the date when he became aware of the fact of violation by a potential supplier of the legislation of the Republic of Kazakhstan on public procurement, shall apply to the court for recognition of such potential supplier as unfair participant of public procurement.

5. The information, contained in the registers, with the exception of information, constituting the state secrets or other secrets protected by law, is posted on the web portal of public procurement and should be available to interested parties without charge.

Footnote. Article 11 is in the wording of the Law of the Republic of Kazakhstan dated 13.01.2012 No. 543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication), as amended by the Law of the Republic of Kazakhstan dated 05.07.2012 No. 30-V (shall be enforced upon expiry of ten calendar days after its first official publication), dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

12. The methods of public procurement

1. Public procurement, except in cases, provided in paragraph 1 of Article 4 of this Law shall be carried out by one of the following ways:

- 1) a tender. The tender can be carried out by using two-stage procedures;
- 2) a budget enquiry;
- 3) from a single source;
- 4) at auction;
- 5) through good exchanges.

2. The method of public procurement is selected by the customer in accordance with this Law without the consent of the authorized body.

3. The customer has the right to determine the method of public procurement on the basis of annual volumes of goods, works and services, required for the operation of its branch (representative office), upon condition of the implementation of public procurement on behalf of the customer directly by branch (representative office) of the customer.

4. Public procurement, carried out by the method, provided in subparagraph 3) of paragraph 1 of this Article may be carried out by means of electronic public procurement in the manner, specified by the rules of the electronic public procurement.

5. Public procurement, carried out by the method, provided in subparagraph 2) of paragraph 1 of this Article shall be carried out by means of electronic public procurement in the manner, specified by the rules of the electronic public procurement.

Paragraph 6 shall be valid until 01.07.2012 (see Art. 47-1 of this Law).

6. Public procurement, carried out by the methods, provided in subparagraphs 1) and 4) of paragraph 1 of this Article may be carried out by means of electronic public procurement in the manner, specified by the rules of the electronic public procurement.

7. Public procurement, carried out by the methods, provided in subparagraphs 1) and 4) of paragraph 1 of this Article shall be carried out by means of electronic public procurement in the manner, specified by the rules of the electronic public procurement.

This requirement shall not be applied to public procurement, carried out by way of tender in accordance with Articles 41 and 42 of this Law.

Footnote. The Article 12, as amended by the Laws of the Republic of Kazakhstan dated 20.11.2008 No. 87 -IV (the order of enforcement see Art. 2), dated 13.01.2012 No. 543-IV (the order of enforcement see Art. 2).

Chapter 2. STATE REGULATION OF PUBLIC PROCUREMENT SYSTEM

13. The competence of the Government of the Republic of Kazakhstan in the field of public procurement

The Government of the Republic of Kazakhstan shall:

- 1) develop the main directions of the public policy in the field of public procurement;
- 2) *Is excluded by the Law of the Republic of Kazakhstan dated 20.11.2008 No. 87-IV (the order of enforcement see Art. 2);*
- 3) approve the list of goods, works and services of daily or weekly needs, which are purchased by customers for securing the continual activity;
- 4) approve the list of stock exchanges, required for application of this Law, and set out the requirements for the form and content of the documents, provided in paragraph 6 of Article 8 of this Law;
- 5) approve the list of goods, purchased by the state enterprises, legal entities, the fifty and more percent of the voting shares (stakes in the authorized capital) of which are owned by the state and their affiliated legal entities, for their subsequent processing ;
- 6) approve the list of goods, works and services, purchased in accordance with the international treaties of the Republic of Kazakhstan;

7) approve the list of goods that are the raw resource for the strategic industries, not produced in the territory of the Republic of Kazakhstan and acquired abroad;

8) *Is excluded by the Law of the Republic of Kazakhstan dated 13.01.2012 No. 543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication);*

9) define the measures of the state support for the categories of domestic potential suppliers, specified in this Law;

9-1) approve the list of separate types of goods, produced by domestic manufacturers and purchased from them;

10) approve the rules for carrying out the public procurement, a model agreement of public procurement of goods, a model agreement of public procurement of works and a model agreement of public procurement;

11) define a special procedure for public procurement, carried out by the way of tender;

12) set the standard requirements for the special procedure of public procurement, carried out by the way of tender;

13) define the procedure for the formation and maintenance of registers in the field of public procurement;

14) define the rules for electronic public procurement;

15) define the procedure for retraining and advanced training of specialists in the field of public procurement;

16) define the suppliers of printed materials that require the special protection, and approve the list of such products, purchased from them in accordance with subparagraph 16) of paragraph 1 of Article 4 of this Law;

17) approve the list of specialized organizations (agents), engaged in purchasing and commodity interventions, as well as the procurement of services for the storage, processing and transportation of food products;

18) approve the list of state enterprises, correctional institutions, and the list and the amounts of their produced, performed, provided goods, works and services, purchased from them by customers in accordance with subparagraph 42) of paragraph 1 of Article 4 of this Law;

19) *Is excluded by the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication);*

20) define a single operator in the field of electronic public procurement;

21) define a special procedure for public procurement to meet the needs of defense;

22) *Is excluded by the Law of the Republic of Kazakhstan dated 13.01.2012 No. 543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication);*

23) *Is excluded by the Law of the Republic of Kazakhstan dated 13.01.2012 No. 543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication);*

24) *Is excluded by the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication);*

24-1) approve the list of goods, works and services that are the subject of public procurement, carried out by the way of auction;

24-2) approve the list of goods and services, provided by the legislation of the Republic of Kazakhstan on elections;

24-3) approve the list of goods, works and services of daily or weekly needs, which are purchased by customers from a single source to the period before the results of the tender or the auction and the entry into force of the public procurement contract.

25) perform other functions, assigned to it by the Constitution, this Law and other the Laws of the Republic of Kazakhstan and the acts of the President of the Republic of Kazakhstan.

Footnote. The Article 13, as amended by the Laws of the Republic of Kazakhstan dated 20.11.2008 No. 87-IV (the order of enforcement see Art. 2), dated 20.02.2009 No. 138-IV (the order of enforcement see Art. 2), dated 11.12.2009 No. 229-IV (the order of enforcement see Art. 2), dated 29.12.2009 No. 233-IV (the order of enforcement see Art. 2), dated 26.01.2011 No. 400-IV (shall be enforced upon expiry of thirty calendar days after its first official publication), dated 05.07.2011 No. 452-IV (shall be enforced from 13.10.2011), dated 13.01.2012 No. 543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication), dated 10.07.2012 No. 33-V (shall be enforced from 01.01.2012), dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

Article 14. The competence of the authorized body

The authorized body in the field of public procurement shall carry out the following functions:

1) *Is excluded by the Law of the Republic of Kazakhstan dated 03.07.2013 No. 124 -V (shall be enforced upon expiry of ten calendar days after its first official publication);*

2) *Is excluded by the Law of the Republic of Kazakhstan dated 13.01.2014 No. 159 -V (shall be enforced upon expiry of ten calendar days after its first official publication);*

3) develop and adopt the regulatory legal acts under this Law;

4) implement the formation and maintenance of registers in the field of public procurement;

5) *Is excluded by the Law of the Republic of Kazakhstan dated 20.11.2008 No. 87-IV (shall be enforced from 01.01.2010);*

6) define the order of collecting, generalization and analysis of reporting, taking into account the information on procurement from domestic manufacturers, included in the integrated base for data of goods with web portal of public procurement, works, services and their suppliers under the legislation of the Republic of Kazakhstan on state support of industrial-innovative activity;

7) *Is excluded by the Law of the Republic of Kazakhstan dated 13.01.2014 No. 159-V (shall be enforced upon expiry of ten calendar days after its first official publication);*

8) *Is excluded by the Law of the Republic of Kazakhstan dated 13.01.2014 No. 159-V (shall be enforced upon expiry of ten calendar days after its first official publication);*

9) *Is excluded by the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication);*

9-1) determine the order for usage of the web portal of public procurement

10) determine the order of work of the web-portal for public procurement in case of malfunction of work of the web-portal for public procurement;

11) carry out the control for the compliance with the legislation of the Republic of Kazakhstan on public procurement;

if necessary, check the accuracy of the reported data, materials and information, submitted by the subjects of the public procurement system;

12) exercise other powers, stipulated by this Law, other Laws of the Republic of Kazakhstan, acts of the President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan.

The authorized body may:

1) request and obtain the necessary information and materials from subjects of public procurement in the manner, specified by the rules of public procurement;

2) attract the specialists of the state bodies and other organizations for the examinations and consultations.

Footnote. The Article 14, as amended by the Laws of the Republic of Kazakhstan dated 20.11.2008 No. 87-IV (the order of enforcement see Art. 2), dated 05.07.2011 No. 452-IV (shall be enforced from 13.10.2011), dated 09.01.2012 No. 535-IV (shall be enforced upon expiry of 10calendar days after its first official publication), dated 03.07.2013 No. 124-V (shall be enforced upon expiry of ten calendar days after its first official publication), dated 13.01.2014 No. 159-V (shall be enforced upon expiry of ten

calendar days after its first official publication), dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

14-1. The powers of a single operator in the field of electronic public procurement

A single operator in the field of electronic public procurement shall:

- 1) carry out the development, implementation, information and technology support, and the maintenance of public information systems in the field of public procurement;
- 2) provide the technical support for registers in the field of public procurement;
- 3) provide the establishment, operation and technical support of the web portal of public procurement;
- 4) place on the web portal of public procurement the information on public procurement, subject to mandatory publication in accordance with this Law, free of charge;
- 5) provide the electronic services to the subjects of public procurement system and other interested parties with the use of information systems in accordance with the legislation of the Republic of Kazakhstan on informatization, free of charge;
- 6) provide advice and assistance to the subjects of public procurement system in the field of electronic public procurement without of charge;
- 7) exercise functions of project management and technical support of electronic public procurement through the public information systems;
- 8) provide the technical support for accountability in the field of public procurement by the state information system;
- 9) interact with the national operator in the field of information on the integration and security of public information systems and public electronic information resources;
- 10) carry out the implementation and support of database of prices for goods, works and services with the introduction of the handbook.

Footnote. Chapter 2 is supplemented by Article 14-1, in accordance with the Law of the Republic of Kazakhstan dated 20.11.2008 No. 87-IV (the order of enforcement see Art. 2), as amended by the Law of the Republic of Kazakhstan dated 09.01.2012 No. 535-IV (shall be enforced upon expiry of 10 calendar days after its first official publication), dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

15. Control over the compliance with the legislation of the Republic of Kazakhstan on public procurement

1. Control over the compliance with the legislation of the Republic of Kazakhstan on public procurement is carried out by performing the scheduled and unscheduled inspections of controlling objects by the following bodies:

- 1) the bodies for state financial control within the powers, established by the Budget Code of the Republic of Kazakhstan;
- 2) the authorized body.

2. The objects of control are:

1) a customer, an organizer of public procurement, the tender commission, the tender commission, the auction commission, the expert commission, an expert;

2) a potential supplier, a contestant, a bidder, a supplier, as well as persons, engaged by them as sub-contractors to perform work or as subcontractors to provide services;

3) *Is excluded by the Law of the Republic of Kazakhstan dated 13.01.2012 No. 543 -IV (shall be enforced upon expiry of thirty calendar days after its first official publication);*

4) persons, participating in public procurement through the good exchanges;

5) a single operator in the field of electronic public procurement.

3. The objects of control over the compliance with the legislation of the Republic of Kazakhstan on public procurement, carried out by the bodies for state financial control, are the persons, referred to in paragraph 2 of this Article, that are both the objects of state financial control.

4. The scheduled checks are carried out not more than once per calendar year concerning the objects of control.

5. The unscheduled checks are carried out by the authorized body when one of the following cases is happened:

1) the written request of the potential supplier, the contestant, supplier or their authorized representative with a complaint about the actions (inaction), the decisions of the customer, the organizer of public procurement or the tender commission, the expert commission, the expert and single operator in the field of electronic public procurement. The consideration of such a complaint is subject to the conditions, provided in Article 45 of this Law;

2) the receipt of the information on making by the objects of control the actions (or inaction) that contains the elements of an administrative offence;

3) upon receipt of the orders of the law enforcement agencies;

4) based on the collection, compilation and analysis of public procurement;

5) *(Is excluded by the Law of the Republic of Kazakhstan dated 20.11.2008 No. 87 -IV (the order of enforcement see Art. 2)).*

6. The authorized body in identifying as a result of the control measures the violations of the legislation of the Republic of Kazakhstan on public procurement by the object of control, shall take the following measures:

1) direct to the object of control the performance, binding on execution;

2) *(Is excluded by the Law of the Republic of Kazakhstan dated 20.11.2008 No. 87 -IV (the order of enforcement see Art. 2));*

3) apply to the court with the action for invalidation of the enforced public procurement contracts, entered into in violation of the legislation of the Republic of Kazakhstan on public procurement.

7. The bodies for the state financial control in identifying as a result of the control measures the violations of the legislation of the Republic of Kazakhstan on public procurement, by the relevant objects of control, shall take the following measures:

1) direct to the object of control the resolutions and performances, binding on execution;

2) *(Is excluded – by the Law of the Republic of Kazakhstan dated 20.11.2008 No. 87-IV (the order of enforcement see Art. 2)).*

8. In identifying as a result of the control measures the fact of the object of control actions (or inaction) that contains the elements of a crime, the bodies for the state financial control shall, within five working days from the date of detection of such fact, provide the information about the commission of a specified action (or inaction) and the supporting documents of such fact to the law enforcement agencies.

9. The actions (inaction) and the decisions of the bodies for the state financial control can be appealed in accordance with the legislation of the Republic of Kazakhstan.

Footnote. The Article 15, as amended by the Laws of the Republic of Kazakhstan dated 20.11.2008 No. 87-IV (the order of enforcement see Art. 2), dated 13.01.2012 No. 543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication), dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

Chapter 3. PUBLIC PROCUREMENT BY THE WAY OF TENDER

16. Public procurement by the way of tender

1. *(Is excluded by the Law of the Republic of Kazakhstan dated 20.11.2008 No. 87-IV (the order of enforcement see Art. 2)).*

2. *(Is excluded by the Law of the Republic of Kazakhstan dated 20.11.2008 No. 87-IV (the order of enforcement see Art. 2)).*

3. In public procurement by the way of tender of goods, works and services that are not homogeneous, the organizer of public procurement has the right to organize and conduct a unified public procurement in this way with the mandatory separation of such goods, works and services in the tender documentation for the lots.

In public procurement by the way of tender of similar goods, works, services, the organizer of public procurement shall share the similar goods, works and services for the lots at the point of delivery (performance, service) in the tender documentation.

Upon carrying out of state procurement by the way of tender of several types of homogeneous goods, works, services, the organizer of public procurement shall divide the goods, works, services into lots according to their uniform types and (or) at their place of delivery (performance, rendering) in tender documentation.

Upon carrying out of public procurement of works on construction, the organizer of public procurement shall divide works into lots, inseparably related to construction and goods, not related to the construction in tender documentation.

In the cases, provided in this paragraph, the consideration of applications for participation in the tender, the evaluation and comparison of price proposals of contestants, as well as the determination of the winner of the tender are made ??for each lot, provided for in the tender documentation.

4. The potential suppliers, identified on the basis of consideration of applications for participation in the tender as appropriate to the qualification requirements and the requirements of the tender documentation and recognized as contestants by the tender commission, shall be taken part in the tender.

Public procurement by the way of tender shall be considered as failed in the event of one of the following cases:

- 1) deficiency of the required applications for the participation in the tender;
- 2) representation of less than two applications for participation in the tender;
- 3) neither one potential supplier is not allowed to participate in the tender;
- 4) one potential supplier is allowed to participate in the tender;
- 5) deficiency of the required competitive pricing facilities of tenderers;
- 6) representation of at least two competitive pricing facilities of tenderers;
- 7) after the dismissal of competitive pricing facilities of tenderers, in the cases provided for in paragraph 4 of Article 26-1 of this Law, at least two competitive pricing facilities of tenderers shall be subject to evaluation and comparison;
- 8) the winner of the tender avoided the execution of the contract on public procurement.

Footnote. Article 16, as amended by the Law of the Republic of Kazakhstan dated 20.11.2008 No. 87-IV (the order of enforcement see Art. 2), dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication)

17. The tender documentation

1. The tender documentation shall be developed by the organizer of public procurement in the Kazakh and Russian languages ??on the basis of electronic form of tender documentation, specified by the rules for conducting electronic public procurement, taking into account the requirements of the legislation of the Republic of Kazakhstan on state secrets.

2. The tender documentation, other than the general and specific qualification requirements, established by Article 8 of this Law shall contain the following information:

1) the name and address of the organizer of public procurement;

2) the description and the required technical, quality and performance characteristics of the goods, works and services, technical specifications indicating the national standard or non-governmental standard, approved by the non-profit organizations of the manufacturers of the Republic of Kazakhstan, if any, and, if necessary, with an indication of normative and technical documentation.

In public procurement of work, requiring the design estimate documentation, instead of the description and the required functional, technical, quality and performance of works purchased, the tender documentation shall contain the duly approved design estimate documentation;

3) the quantity of goods, the volume of performed work, services that are the subject of conducted public procurement;

4) the place of delivery of goods, execution of works and rendering services;

5) the required period of time for delivery of goods, execution of works and rendering services, provision of guarantees on the quality of the offered goods, works and services;

6) the conditions of payment and the draft public procurement contract, indicating the essential conditions;

7) the criteria, except price, on the basis of which the winner of the tender will be determined, including the relative importance of each of these criteria, and the methodology for calculating the conditional price;

8) the requirements for the content of a competitive pricing facility, as well as the instructions, besides the price of the purchased goods, works and services, the cost of their transportation and insurance, payment of customs duties, taxes and fees, as well as other expenses prescribed by the conditions of the delivery of goods, rendering of services, excluding the tax amount for the added value;

9) the currency or currencies, in which the tender quotation of the contestant should be expressed and the rate that will be applied to bring the conditional price to a single currency for the purpose of comparison and evaluation;

10) the requirements for the language of preparation and submission of applications for participation in the tender, public procurement contract in accordance with the legislation of the Republic of Kazakhstan on languages??;

11) the conditions for application, the content and types of security of applications for participation in the tender;

12) the indication for the right of the potential supplier to change or withdraw its application for participation in the tender prior to the deadline of their submission;

13) the procedure, method and deadline for the submission of the envelope with the application for participation in the tender and the required duration of the applications for participation in the tender;

14) the methods, with the help of which the potential suppliers may request clarifications on the content of tender documentation;

15) the date and time of opening envelopes with the applications for participation in the tender;

16) the description of the procedure of opening applications for the participation in the tender, review of applications for participation in the tender, evaluation and comparison of competitive pricing facilities;

17) the information about the representatives of the customer and the organizer of public procurement, authorized to represent them in the upcoming public procurement by the way of tender;

18) the conditions, types, amount and way to make enforcement of a public procurement contract;

19) the information on the amounts, allocated for the procurement of goods, works and services that are the subject of conducting public procurement by the way of tender

The tender documentation may contain other additional information that allows potential suppliers to obtain the most complete information about the conducting public procurement.

3. The tender documentation must not contain the references to trademarks, service marks, trade names, patents, utility models, industrial designs, appellations of origin and the name of the manufacturer, as well as other characteristics that determine the identity of the purchased goods, works, services, to the individual potential supplier, except in the following cases of carrying out public procurement:

1) for resupply, upgrade and retrofit of the main (fixed) equipment;

2) to determine the service provider for the provision of goods in leasing and causing a detailed description of the leased asset.

4. To determine the tenderer, that offers the highest quality goods, work, services, the organizer of public procurement or a unified organizer of public procurement shall specify the following criteria, affecting the competitive pricing facility of tenderers of the tender:

1) the existence of a potential supplier:

the experience in the market of goods, works and services that are the subject of conducting public procurement;

the document, confirming the execution of voluntary certification of the offered goods for domestic producers in accordance with the legislation of the Republic of Kazakhstan on technical regulation;

the certified system (certified systems) of quality management in accordance with the requirements of national standards;

the certified system (certified systems) of management of the environmental management in accordance with the requirements of national standards and (or) the conformity to the standards of environmentally friendly products in accordance with the legislation of the Republic of Kazakhstan on technical regulation;

2) the functional, technical, quality characteristics of goods and (or) the costs for operation, maintenance and repair of the goods;

5. *Is excluded by the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161 -V (shall be enforced upon expiry of ten calendar days after its first official publication).*

5-1. *Is excluded by the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).*

6. The tender documentation shall be approved by the first head or the executive secretary or other official, exercising the power of the executive secretary, determined by the President of the Republic of Kazakhstan, the customer or the person, performing his (her) duties.

The tender documentation, developed by a single organizer of public procurement, is approved by the first heads or executive secretaries or other officials, exercising the power of the executive secretary, determined by the President of the Republic of Kazakhstan, customers or the persons, executing their duties.

The tender documentation, developed by a single organizer of public procurement, determined in accordance with subparagraphs 1) and 2) of paragraph 5 of Article 7 of this Law, shall be approved by the first head of a single organizer of public procurement or a person, executing his (her) duties.

7. Making changes and (or) amendments to the tender documentation shall be in accordance with paragraph 2 of Article 20 of this Law.

Footnote. The Article 17, as amended by the Laws of the Republic of Kazakhstan dated 20.11.2008 No. 87-IV (the order of enforcement see Art. 2), dated 29.12.2009 No. 233-IV (the order of enforcement see Art. 2), dated 03.12.2011 No. 505-IV (shall be enforced upon expiry of ten calendar days after its first official publication), dated 22.12.2011 No. 515-IV (shall be enforced from 01.01.2012), dated 09.01.2012 No.535-IV (shall be enforced upon expiry of 10 calendar days after its first official publication) , dated 13.01.2012 No. 543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication), dated 10.07.2012 No. 31-V (shall be enforced upon expiry of ten calendar days after its first official publication), dated 14.01.2014 No. 161 (shall be enforced upon expiry of ten calendar days after its first official publication).

18. Notification on carrying out public procurement by the way of tender

The organizer of public procurement, not later than three working days from the date of approval of the tender documentation, but not less than twenty calendar days before the final date for the submission of applications by potential suppliers to participate in the tender shall publish the advertising text on carrying out public procurement by the way of tender on the web portal of public procurement.

In the case of carrying out the repeated public procurement by the way of tender, the organizer of public procurement, not later than three working days from the date of approval of the tender documentation, but no less than ten calendar days before the final date for the submission of applications for participation in the tender, shall publish the advertising text on carrying out the repeated public procurement by the way of tender on the web portal of public procurement.

Footnote. The Article 18 is in the wording of the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

19. Presentation of the tender documentation

The tender documentation is presented by the organizer of public procurement to the interested parties by the publication of the approved tender documentation on the web portal of public procurement.

The information about the persons that received a copy of the tender documentation on the web portal of public procurement, and wishing to participate in public procurement by way of tender, are automatically registered on the web portal of public procurement.

Footnote. The Article 19 is in the wording of the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

20. Clarification of the provisions of the tender documentation

1. The individuals, the information about whom is automatically registered on the web portal of public procurement, in accordance with Article 19 of this Law shall have the right to request the organizer of public procurement for clarification of the provisions of the tender documentation, no later than five calendar days prior to the deadline for submission of applications for participation in the tender. The request for clarification of the provisions of the tender documentations should be sent to the organizer of public procurement by the methods, specified in the tender documentation

The organizer of public procurement shall, within two working days of receipt of the request, respond to it without specifying the source of the request to publish an

explanation of the provisions of the tender documents on the web portal of public procurement with the automatic notification of potential suppliers that received the tender documentation.

2. The organizer of public procurement has the right, not later than three calendar days prior to the final date for submission of applications for participation in the tender, on its own initiative or in response to a request of the persons, the information of whom is automatically registered on the web portal of public procurement, in accordance with Article 19 of this Law, to make changes and (or) amendments to the tender documentation. Making changes and (or) amendments to the tender documentation is approved in the manner, prescribed by paragraph 6 of Article 17 of this Law.

The organizer of public procurement not later than one working day from the date of making decisions on changes and (or) amendments to the tender documentation must send a text of changes and (or) amendments to the individuals, the information of whom is automatically registered on the web portal of public procurement, in accordance with Article 19 of this Law.

The deadline for submission of applications for the participation in the tender should be extended for a period of not less than fifteen calendar days.

Footnote. The Article 20 is in the wording of the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

21. Application for participation in the tender

1. An application for participation in the tender is a form of expression of the consent of the potential supplier to supply goods, perform work, and provide services in accordance with the requirements and conditions of the tender documentation.

2. An application for participation in the tender must include the acknowledgment of the potential supplier:

- 1) on the absence of violation of the restrictions, under Article 6 of this Act;
- 2) on the absence of between him (her) and the customer or the organizer of public procurement the relationship, prohibited by this Law;
- 3) the consent to terminate a public procurement contract, in accordance with the laws of the Republic of Kazakhstan, in the case of detection of the facts, specified in paragraph 10 of Article 37 of this Law.

The information and documents that should be in the application for participation in the tender are determined by the rules of public procurement or the rules of the electronic public procurement.

3. The validity of the application for participation in the tender must comply with the required deadline, set by the tender documentation.

Footnote. The Article 21, as amended by the Law of the Republic of Kazakhstan dated 13.01.2012 No. 543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication), dated 14.01.2014 No. 161-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

22. Submission of an application for participation in the tender

1. An application for participation in the tender is submitted by a potential supplier to the organizer of public procurement through the web portal of public procurement in the form of an electronic document before the deadline for submission, specified in the tender documentation.

An application of the potential supplier for participation in the tender is subject to automatic rejection of the web portal of public procurement in the following cases:

1) the application for participation in the tender is submitted by the potential supplier before;

2) the application for participation in the tender came on the web portal of public procurement after the deadline for receipt of applications for participation in the tender;

3) specified in subparagraphs 3), 3-1), 3-2) and 4) of paragraph 1 of the Article 6 of this Law.

2. The applications for participation in the public procurement by the way of tender , submitted by the potential suppliers are automatically registered on the web portal of public procurement in the electronic log of applications for participation in the tender, provided by the rules of the electronic public procurement.

3. A potential supplier no later than the deadline for submission of applications for participation in the tender has the right to:

1) change and (or) amend the submitted application for participation in the tender;

2) withdraw its application for participation in the tender, without losing the right to return the submitted secure of an application for participation in the tender.

Making changes and (or) amendments, as well as withdrawal of the application for participation in the tender after the deadline for submission of the applications for participation in the public procurement by the way of tender, is not allowed.

4. The organizer of public procurement not later than ten calendar days prior to the expiration of the validity of applications for participation in the tender, specified by the tender documentation, has the right to request the potential suppliers to extend their validity for a specific period of time. The potential supplier has the right to refuse the request without losing the right to:

1) participate in public procurement carried out by the way of tender during the period of validity of its application for participation in the tender;

2) return the security of application for participation in the tender, made by him after the expiration of such application.

5. A potential supplier shall bear all the costs, related with its participation in public procurement by the way of tender. The customer, the organizer of public procurement, a single organizer of public procurement, expert commission, the expert, a single operator does not have the obligation to pay these costs, regardless of the results of public procurement by the way of tender.

Footnote. Article 22 is in the wording of the Law of the Republic of Kazakhstan dated 14.01.2014 № 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

23. Security of the application for participation in the tender

Footnote. Article 23 is excluded by the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

23-1. Security of the application to participate in the electronic public procurement by the way of tender

1. Security of the application to participate in the electronic public procurement by the way of tender is introduced by a potential supplier as a guarantee, that he (she) in the case of:

1) recognition of him (her) as a contestant, shall submit within the prescribed period, and subsequently shall not withdraw his (her) tender price offers;

2) determination of him (her) as the winner of the tender, shall enter into the public procurement contract;

3) entering into the public procurement contract, shall fulfill timely and properly the requirements, established by the tender documentation on making and (or) period of making enforcement of the public procurement contract.

2. Security of the application to participate in the electronic public procurement by the way of tender is introduced at a rate of one per cent of the amount, allocated for the procurement of goods, works and services, in the manner, specified by the rules of the electronic public procurement.

3. The potential supplier has the right to choose one of the following types of security of applications for participation in the electronic public procurement by the way of tender:

1) the guarantee monetary contributions, paid into the bank account of the organizer of public procurement or for the account, provided by the budget legislation of the Republic of Kazakhstan for the organizers of public procurement, which are the state bodies and state institutions;

2) the bank guarantee.

Making the actions, by the potential supplier that lead to the emergence of the claim to the third parties in whole or in part on the paid financial contribution, before

the expiry of validity of his (her) application for participation in the electronic public procurement by the way of tender shall not be allowed.

Using by the organizer of public procurement a guarantee monetary contribution, made by the potential supplier is not allowed, except as specified in paragraphs 5 and 6 of this Article.

4. Security of the application for participation in the electronic public procurement by the way of tender shall not be returned to the potential supplier by the organizer of public procurement, in the occurrence one of the following cases:

1) the potential supplier, recognized as the participant of the tender, did not submit within the prescribed period or withdrew his (her) tender price offers, except for a potential supplier, recognized as contestant, not submitting the competitive price offer in accordance with the third part of paragraph 2 of Article 26-1 of this Law;

2) the potential supplier, determined as the winner of the tender, evaded to sign the public procurement contract;

3) the winner of the tender, by signing the public procurement contract did not fulfill or improperly fulfill, also untimely fulfill the requirements, established by the tender documentation on making and (or) period of making enforcement of the public procurement contract.

5. Upon the occurrence of any of the cases, provided for in paragraph 4 of this Article, the amount of security of the application for participation in the electronic public procurement by the way of tender is credited in the income of the corresponding budget, state enterprise, legal entity, fifty and more percent of the voting shares (stakes in the authorized capital) of which are owned by the state or their affiliated legal entities.

6. The organizer of public procurement shall return the paid security of the application for participation in the electronic public procurement by the way of tender, to the potential supplier, within three working days from the date of the occurrence of one of the following cases:

1) withdraw the application for participation in the tender by the potential supplier prior to the deadline for submission of applications for participation in the tender;

2) signing of the protocol on admission to the tender. This case shall not be applied to the potential suppliers, recognized as the participants of the tender;

3) signing of the protocol on the results of public procurement by the way of tender. This case shall not be applied to the participant of the tender, determined as the winner of the tender;

4) enforcement of the public procurement contract and making the enforcement of the public procurement contract, provided in the tender documentation, by the winner of the tender.

Footnote. Chapter 3 is supplemented by the Article 23-1, in accordance with the Law of the Republic of Kazakhstan dated 13.01.2012 No.543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication), as amended by the Law of the Republic of Kazakhstan dated 05.07.2012 No. 30-V (shall be enforced upon expiry of ten calendar days after its first official publication), dated 14.01.2014 No.161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

24. Opening of the envelopes with applications for participation in the tender

Footnote. Article 24 is excluded by the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

24-1. Opening the applications for participation in the electronic public procurement by the way of tender

1. Access to the secretary of the tender commission for the opening of applications for participation in the electronic public procurement by the way of tender is provided by a web portal of public procurement automatically upon the occurrence of the date and time of the final submission of the applications, specified by the organizer of public procurement in the tender documentation.

2. The protocol of opening of applications for participation in the electronic public procurement by the way of tender is published on the web portal of public procurement by the secretary of tender commission on the day of opening. In such a case, the web portal of public procurement shall automatically send the notification on the publication of the protocol of opening the applications for participation in the electronic public procurement by the way of tender to members of the tender commission, potential suppliers, the information about which is included in the register, referred to paragraph 2 of Article 22 of this Law.

Footnote. Chapter 3 is supplemented by the Article 24 in accordance with the Law of the Republic of Kazakhstan dated 13.01.2012 No. 543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication).

25. Consideration of applications for participation in the tender for work, admission to the tender

1. Consideration of applications for participation in the tender is carried out by the tender commission in order to identify the potential suppliers who meet the qualification requirements and the requirements of the tender documentation, and recognition of them as participants of the tender.

2. When considering the applications for participation in the tender the tender commission identifies the potential suppliers that do not meet the eligibility requirements and the requirements of the tender documentation.

3. Organizer of public procurement has the right to form an expert commission or determine an expert for the preparation of expert opinion as to the conformity of works , offered by potential suppliers, with the technical specifications, that is an integral part of the tender documentation.

In the organization and conduct of public procurement by a single organizer of public procurement, determined in accordance with subparagraphs 1) and 2) of paragraph 5 of Article 7 of this Law, the customer constitutes an expert commission or determines an expert to prepare an expert opinion as to the conformity of works, offered by potential suppliers, with the technical specifications that is an integral part of the tender documentation.

In this case an expert cannot be the person:

- 1) interested in the results of public procurement procedures;
- 2) related to labour relations with the customer, the organizer of public procurement , a single organizer of public procurement or their dependent, subsidiary and affiliated entities or with potential suppliers;
- 3) is a close relative of the first leaders of the customer, the organizer of public procurement, a single organizer of public procurement or their subordinate, subsidiary and affiliated entities.

In the absence of experts, meeting the requirements set by the third part of this paragraph, the organizer of public procurement or the customer involve the corresponding profile civil servants to work as experts or other specialists, the specialty of which corresponds to the purchased works. Civil servants are involved as experts on a grant basis, and other specialists involved in both paid and free of charge by agreement of the parties.

Experts do not have the right to vote in the tender commission decision.

Selecting the persons involved as experts on a fee basis, shall be in accordance with this Law.

4. Following the review of applications for participation in the tender for non-compliance of potential suppliers with the qualification requirements and the requirements of the tender documentation, a preliminary protocol for admission to the tender is issued, and signed by the chairman and all the members presenting at a meeting of the tender commission, and also by the secretary of the tender commission, in the day of the decision for preliminary admission of potential suppliers to participate in the tender.

The preliminary protocol for admission to the tender shall contain the information, indicating the reasons of non-conformity of potential suppliers with the qualification requirements and the requirements of the tender documentation.

In the case of non-conformity of potential suppliers with the qualification requirements and the requirements of the tender documentation, the preliminary protocol for admission to the tender will not be issued.

5. The tender commission in the case of identifying of potential suppliers, that do not meet the qualification requirements and the requirements of the tender documentation, provides such potential suppliers the right to bring the applications for participation in the tender, within three working days from the date of publication of the preliminary protocol for admission to the tender, in accordance with the qualification requirements and the requirements of the tender documentation.

6. In the repeated considering of the applications for participation in the tender, harmonized with the qualification requirements and the requirements of the tender documentation in accordance with paragraph 5 of this Article, the tender commission may:

1) in writing and (or) in the form of an electronic document request from potential suppliers of materials and explanations in connection with their applications in order to facilitate the review, evaluation and comparison of applications for participation in the tender;

2) in order to clarify the information, contained in the application for participation in the tender, in writing, and (or) an electronic document request the necessary information from the relevant individuals or legal entities, state bodies.

Addressing request and other actions of the tender commission, connected with the bringing of an application for participation in the tender in accordance with the requirements of the tender documentation, which means the supplement of the application for participation with the missing documents, replacing the documents, submitted in the application for participation in the tender, in matching of the improperly executed documents after the expiry of the period for bringing the applications to participate in the tender in accordance with the qualification requirements and the requirements of the tender documentation, provided for in paragraph 5 of this Article.

The tender commission considers an application for participation in the tender as meeting the requirements of the tender documentation, if it contains grammatical or arithmetic errors that can be corrected without affecting the merits of the application submitted.

7. Potential supplier cannot be allowed to participate in the tender (recognized as a tenderer) after bringing of the applications for participation in the tender in accordance with the qualification requirements and the requirements of the tender documentation in accordance with paragraph 5 of this Article, if:

1) it and (or) its subcontractor determined, as not qualified on the grounds specified in this Law and the rules of conducting the electronic public procurement;

2) it violated the requirements of Article 6 of this Law;

3) its application for participation in the tender is determined as not meeting the requirements and conditions of the tender documentation on the grounds specified in this Law and the rules of conducting the electronic public procurement.

8. If the potential supplier is not allowed to participate in the tender on the grounds specified in subparagraph 2) of paragraph 7 of this Article, then:

1) the justification for rejection of the application for participation in the tender of such potential supplier is indicated in the protocol for admission to the tender;

2) the information on the potential supplier, violated Article 6 of this Law shall be subject to entry in the register of unfair participants of public procurement.

9. After reconsidering of applications for participation in the tender, the tender commission shall:

1) identify the potential suppliers that meet the qualification requirements and the requirements of the tender documentation, and recognize them as contestants;

2) apply to the contestants the relative values of the criteria, provided for in paragraph 4 of Article 17 of this Law;

3) prepare a protocol of admission to the tender.

If the public procurement by way of tender consists of lots, the contestants of each lot shall be indicated in the protocol for admission to the tender. The execution of a common protocol for admission to the tender is allowed, provided that the contestants for each lot are indicated in it.

10. The protocol for admission to the tender is signed by the chairman and all the members presenting at a meeting of the tender commission, and also by the secretary of the tender commission in the day of the decision on the admission of potential suppliers to participate in the tender (recognized as tenderers).

The protocol for admission to the tender is published by the secretary of the tender commission on the day of signature on the web portal of public procurement with automatic e-mail notification of all potential suppliers, whose applications are automatically registered in the electronic logbook, in accordance with paragraph 2 of Article 22 of this Law.

11. Decision of the tender commission for admission to the tender may be appealed in accordance with the procedure, established by Article 45 of this Law.

Footnote. Article 25 is in the wording of the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

25-1. Consideration of applications for participation in the tender for goods and services, admission to the tender

1. Consideration of applications for participation in the tender is carried out by the tender commission in order to identify potential suppliers that meet the qualification

requirements, the requirements of the tender documentation, including with identifying the best technical specification (the best technical specifications) and the recognition of them as the tenderers.

The best technical specification is defined on the basis of assessment of functional, technical, quality and performance characteristics of the offered goods and services.

2. Organizer of public procurement has the right to form an expert commission or determine an expert for the preparation of expert opinion as to the conformity of the goods and services, offered by potential suppliers, with the technical specifications that is an integral part of the tender documentation and identify the best technical specification (the best technical specifications).

In the organization and conduct of public procurement by a single organizer of public procurement, determined in accordance with subparagraphs 1) and 2) of paragraph 5 of Article 7 of this Law, the customer constitutes an expert commission or determines an expert to prepare an expert opinion as to the conformity of the goods and services, offered by potential suppliers with the technical specification that is an integral part of the tender documentation and identify the best technical specification (the best technical specifications).

In this case an expert cannot be the person:

- 1) interested in the results of public procurement procedures;
- 2) related to the labour relations with the customer, the organizer of public procurement, a single organizer of public procurement or their dependent, subsidiary and affiliated entities or with potential suppliers;
- 3) is close relative of the first leaders of the customer, the organizer of public procurement, a single organizer of public procurement or their subordinate, subsidiary and affiliated entities. In the absence of experts, meeting the requirements set by the third part of this paragraph, the organizer of public procurement or the customer involves the corresponding profile civil servants to work as experts or other specialists, the specialty of which corresponds to the purchased goods and services. Civil servants are involved as experts on a grant basis, and other specialists are involved in both paid and free of charge by agreement of the parties.

Experts do not have the right to vote during making of decision by the tender commission.

Selecting the persons, involved as experts on a fee basis shall be in accordance with this Law.

3. When considering the applications for participation in the tender, the tender commission identifies the potential suppliers that do not meet the qualification requirements and the requirements of the tender documentation.

4. Following the review of applications for participation in the tender for non-compliance of potential suppliers with the qualification requirements and the

requirements of the tender documentation, a preliminary protocol for admission to the tender is issued, and signed by the chairman and all the members presenting at a meeting of the tender commission, and also by the secretary of the tender commission in the day of the decision for preliminary admission of potential suppliers to participate in the tender.

The protocol of preliminary admission to the tender shall contain the information indicating the reasons of non-conformity of potential suppliers with the qualification requirements and the requirements of the tender documentation.

In the case of non-conformity of potential suppliers with the qualification requirements of and the requirements of the tender documentation, the protocol of preliminary admission to the tender will not be issued.

In this case, the protocol for admission to the tender is made with the definition of the best technical specification (the best technical specifications).

5. The tender commission in the case of identifying potential suppliers that fail to meet the qualification requirements and the requirements of the tender documentation, provides such potential suppliers the right to bring the applications for participation in the tender, within three working days from the date of publication of the preliminary protocol for admission to the tender, in accordance with the qualification requirements and the requirements of the tender documentation.

6. In reconsidering of applications for participation in the tender, harmonized with the qualification requirements and the requirements of the tender documentation in accordance with paragraph 5 of this Article, the tender commission may:

1) in writing and (or) in a form of an electronic document request from potential suppliers of materials and explanations in connection with their applications in order to facilitate the review, evaluation and comparison of applications for participation in the tender;

2) in order to clarify the information, contained in the application for participation in the tender, in writing, and (or) in a form of an electronic document request the necessary information from the relevant individuals or legal entities, state bodies.

The direction of request and other actions of the tender commission, connected with the bringing of an application for participation in the tender in accordance with the requirements of the tender documentation, which means the supplement of the application for participation with the missing documents, replacing the documents submitted in the application for participation in the tender, in matching the improperly executed documents after the expiry of the period for bringing the applications to participate in the tender in accordance with the qualification requirements and the requirements of the tender documentation, provided for in paragraph 5 of this Article.

The tender commission considers an application for participation in the tender as meeting the requirements of the tender documentation, if it contains grammatical or

arithmetic errors that can be corrected without affecting the merits of the application submitted.

7. Potential supplier cannot be allowed to participate in the tender (recognized as contestant) after bringing of applications for participation in the tender in accordance with the qualification requirements and the requirements of the tender documentation, in accordance with paragraph 5 of this Article, if:

1) it and (or) its subcontractor is identified as not qualified on the grounds specified in this Law and the rules of conducting of electronic public procurement;

2) it violated the requirements of Article 6 of this Law;

3) its application for participation in the tender is determined as not meeting the requirements and conditions of the tender documentation on the grounds specified in this Law and the rules of conducting of electronic public procurement.

8. If the potential supplier is not allowed to participate in the tender on the grounds specified in subparagraph 2) of paragraph 7 of this Article, then:

1) the justification for rejection of the application for participation in the tender of such potential supplier is indicated in the protocol for admission to the tender;

2) the information on the potential supplier, violated Article 6 of this Law shall be subject to entry in the register of unfair participants of public procurement.

9. After reconsidering of applications for participation in the tender, the tender commission shall:

1) identify the potential suppliers that meet the qualification requirements and the requirements of the tender documentation, and recognize them as tenderers;

2) determine, including based on the conclusions of the expert commission (expert), the best technical specification (best technical specifications) that is in applications for participation in the tender;

3) apply to the tenderers the relative values of the criteria, provided for in paragraph 4 of Article 17 of this Law;

4) prepare a protocol of admission to the tender.

If the public procurement by way of tender consists of lots, the contestants of each lot shall be indicated in the protocol for admission to the tender. The execution of a common protocol for admission to the tender is allowed, provided that the tenderers for each lot are indicated in it.

10. The protocol for admission to the tender is signed by the chairman and all the members presenting at a meeting of the tender commission, and also by the secretary of the tender commission in the day of the decision on the admission of potential suppliers to participate in the tender (recognized as tenderers).

The protocol for admission to the tender is published by the secretary of the tender commission on the day of signature on the web portal of public procurement with automatic e-mail notification of all potential suppliers, whose applications are

automatically registered in the electronic logbook, in accordance with paragraph 2 of Article 22 of this Law.

11. Decision of the tender commission for admission to the tender may be appealed according to the procedure, provided for by Article 45 of this Law.

12. If it is not possible to determine the best technical specification (the best technical specifications) due to its (their) absence, the technical specifications that comply with the description of the functional, technical, quality and performance characteristics, stated by the customer shall be subject to the consideration.

Footnote. Chapter 3 is supplemented by Article 25-1 in accordance with the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

26. Evaluation and comparison of competitive pricing facility(tender)

Footnote. Article 26 is excluded by the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

26-1. Evaluation and comparison of competitive pricing facility in carrying out the electronic public procurement by the way of tender

1. Evaluation and comparison of competitive quotations by the tender commission are carried out on the day and time, specified in the protocol for admission to the tender.

2. In public procurement of works a potential supplier, who has been admitted to participate in the tender (recognized as a contestant) shall, not later than three working days from the date of publication of the protocol for admission to participate in the tender, present competitive quotation on the web-portal of public procurement.

In public procurement of goods and services, a potential supplier who has been admitted to the tender (recognized as contestant), shall, not later than three working days from the date of publication of the protocol for admission to participate in the tender, present competitive quotation on the web portal of public procurement to one of the technical specifications laid down in the protocol for preliminary admission, in accordance with paragraph 4 of Article 25-1 of this Law, in the manner prescribed by the rules of e-procurement.

Potential supplier who has been admitted to the tender (recognized as a contestant), a technical specification of which is not defined as the best, shall have the right not to submit competitive quotation in accordance with Article 25-1 of this Law.

3. The information on the submitted by the participants of the tender competitive pricing facility is automatically entered into the electronic log of the competitive pricing facility.

4. The tender quotation of the participant of the tender is subject to the automatic rejection of the web portal of public procurement in the following cases:

- 1) the price of the tender quotation is dumping. The procedure for calculating dumping price is determined by the rules of the electronic public procurement;
- 2) the tender quotation exceeds the amount, allocated for the purchase of the goods, works and services;
- 3) the participant of the tender presented the quotation in this tender earlier;
- 4) the tender quotation is received later than the date, specified in paragraph 2 of this Article.

5. In the established by the protocol for admission to the tender date and time, the web portal of public procurement shall automatically evaluate the undismissed competitive pricing facility by applying the corresponding relative values ??of the criteria, specified in the protocol for admission to the tender to them, and the conditional price of each contestant is calculated.

The web portal of public procurement shall automatically compare the conditional prices of the participants of the tender and determine the winner on the basis of the lowest conditional price.

In case of equality of conditional competitive pricing facilities, the winner shall be the potential supplier that has an extensive experience in the market of purchased goods, works and services that are the subject of the tender. In case of equality of working experience of several potential suppliers that have equal conditional prices, the winner shall be a potential supplier, the competitive pricing facility of which proceeded before the competitive pricing facilities of other potential suppliers.

Footnote. Chapter 3 is supplemented by Article 26-1 in accordance with the Law of the Republic of Kazakhstan dated 13.01.2012 No. 543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication), as amended by the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161-V shall be enforced upon expiry of ten calendar days after its first official publication).

27. Protocol on the results of public procurement by the way of tender

1. Protocol on the results of public procurement by way of tender is automatically formed and published by the web portal of public procurement with the e-mail notification of all members of the tender commission and all potential suppliers, details of which are included in the registration book of tender quotation.

2. Customer, within five working days from the date of publication by web portal of public procurement the protocol on the results of public procurement by way of tender, shall sign and send the winner a project of a public procurement contract with specifying the technical specification, according to which the winner was determined.

Footnote. Article 27 is in the wording of the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

28. Effects of recognition of public procurement by the way of tender as failed

1. If the public procurement by the way of tender is recognized as failed, the customer is entitled to make one of the following decisions:

- 1) on carrying out the repeated public procurement by the way of tender;
- 2) on changing the tender documents and carrying out the repeated public procurement by the way of tender;
- 3) on carrying out the public procurement from a single source.

2. In the case of recognition of the public procurement by the way of tender as failed due to the fact that only one potential supplier is admitted to participate in the tender, the customer is entitled to make a decision on the conclusion of the public procurement contract from a single source with him (her). The price of the concluded public procurement contract shall not exceed the amount, allocated to public procurement by the way of tender, recognized as failed by virtue of access to participation in the tender of one potential supplier.

3. In the case of recognition of public procurement by the way of tender as failed due to the fact that after the rejection in the cases provided for in paragraph 4 of Article 26-1 of this Law, there is only one undismissed tender quotation of the participant of the tender, the customer is entitled to make a decision on the conclusion of the public procurement contract from single source with that participant. The public procurement contract is concluded with him (her) on the conditions, provided by his (her) application for participation in the tender, and the price of the signed with him (her) contract should not exceed the competitive quotation.

Footnote. Article 28, as amended by the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

29. Features of the public procurement by the way of tender with using two-stage procedures

1. The public procurement by the way of tender with using two-stage procedures can be carried out in cases when:

- 1) it is difficult to formulate the detailed specifications of the goods, works and services and determine their technical and other characteristics, and (or) the need to request the proposals from potential suppliers or hold talks with them on any questions;
- 2) the need to conduct research, experimentation, study or development.

2. The public procurements by the way of tender with using two-stage procedures are a combination of the following sequential steps:

- 1) the following activities are carried out in the first stage:
 - the customer definition of public procurement;
 - the formation of an expert commission or determination of an expert by the organizer of public procurement;

the formation of technical specification to the purchased goods, works and services by an expert commission or an expert, based on the needs of the customer;

the determination of the internet resource of the customer;

the publication of the announcement on the web portal of public procurement and on the internet resource of the customer on carrying out the public procurement by the way of tender with using two-stage procedures;

the presentation of technical specification for the persons, interested in participating in the first stage of public procurement by the way of tender with using two-stage procedures, by the organizer of public procurement;

the presentation of technical proposals, developed in accordance with the technical specification, by the potential suppliers;

the consideration of technical proposals of the potential suppliers by an expert commission or an expert and discussing with the potential suppliers the issues, related to the technical, quality and (or) other characteristics of the goods, works, services, the contractual terms of their delivery (execution, provision);

the development of technical specification of the purchased goods, works and services by an expert commission or an expert;

the development of the tender documentation by the organizer of public procurement and the approval of it by the first head or executive secretary or other official, designated by the President of the Republic of Kazakhstan, on exercising the authority of the executive secretary, the customer or the person, performing his (her) duties;

the sending by the organizer of public procurement the invitation to the potential suppliers, who submitted technical proposals in the first stage, to participate in the second stage of public procurement by the way of tender with using two-stage procedures;

2) The measures, provided to carry out the public procurement by the way of tender are implemented in the second stage.

3. Potential supplier does not make security of the application for participation in the tender if he is involved in the first stage of public procurement by way of tender with two-stage procedures.

4. Tender procedure with using two-stage procedures is determined by the rules of public procurement.

Footnote. The Article 29, as amended by the Laws of the Republic of Kazakhstan dated 20.11.2008 No. 87-IV (the order of enforcement see Art. 2), dated 18.02.2011 No. 408-IV (shall be enforced upon expiry of ten calendar days after its first official publication), dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

Chapter 4. Public procurement by the way of request for quotation

30. The grounds of public procurement by the way of request for quotation

1. The public procurement by the way of request for quotation is conducted on similar goods, works and services, if the annual amounts of similar goods, works and services in terms of value do not exceed four thousand monthly calculation indices, established for the financial year by the law on the republican budget, in this case, the crucial condition is the price.

2. In carrying out public procurement by the way of request for quotation of several species of similar goods, works and services, the organizer of public procurement must share the goods, works and services for the lots on their uniform types and (or) at the point of delivery (execution, provision).

In carrying out public procurement by the way of request for quotation of similar goods, works and services, the organizer of public procurement must share the goods, works and services for the lots at the point of delivery (execution, provision).

In the cases, provided for in this paragraph, the determination of the winner of public procurement by the way of request for quotation is carried out on each lot.

3. The crushing of the annual amount of public procurement of similar goods, works and services to use the way of requesting quotations within the financial year for parts, the size of which is less than the one provided for in paragraph 1 of this Article shall not be allowed.

Footnote. The Article 30 is in the wording of the Law of the Republic of Kazakhstan dated 13.01.2012 No. 543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication).

31. The organization and conduct of public procurement by the way of request for quotation

1. The organizer of public procurement shall, not later than five working days before the deadline for submission of quotations, place on the web portal of public procurement in the Kazakh and Russian languages, the following information:

1) on the quantity of the goods, on the amount of performed work, provided services that are the subject of conducting public procurement, with the amounts, allocated to public procurement;

2) the brief description of purchased goods, works, services, including national standards or non-governmental standards, approved by non-commercial organizations of the manufacturers of the Republic of Kazakhstan in its presence;

3) the place of delivery of goods, works and services;

4) the required time for delivery of goods, works and services;

5) on the time of starting and completion for representing the quotations by the potential suppliers;

6) the draft public procurement contract, indicating the essential conditions, including the technical specifications.

The instructions on the trademarks, service marks, trade names, patents, utility models, industrial designs, appellations of origin and the name of the manufacturer, as well as other characteristics that determine the identity of the purchased goods, works, individual services to the potential supplier are not allowed to place in the posted information, provided by this paragraph, except in the following cases of carrying out the public procurement:

1) for resupply, upgrade and retrofit of the main (fixed) equipment;

2) to determine the service provider for the provision of goods in leasing and causing a detailed description of the leased asset.

2. The potential supplier shall have the right to submit only one quotation that contains the information, provided by the rules of electronic public procurement, making changes and (or) amendments in which is not allowed.

The submission of the quotation by a potential supplier means his (her) agreement to supply goods, works and services in compliance with the conditions, stipulated in the draft public procurement contract.

3. At the end of the deadline for submission of quotations, the web portal of public procurement shall automatically open and sum up the public procurement by the way of request for quotation.

The potential supplier, who offered the lowest quotation, is recognized as the winner.

If the lowest quotation is represented by a number of potential suppliers, the potential supplier, whose quotation is received earlier than the quotations of other potential suppliers, is recognized as the winner. A comparison of quotations is made ?? by the web portal of public procurement automatically.

4. The negotiations between the organizer of public procurement and the potential supplier concerning his (her) quotation through the web portal of public procurement or other means without the use of web portal of public procurement are not allowed, except as provided for in Article 39 of this Law.

5. If during the term of submission of quotations, less than two quotations of potential suppliers is submitted, such public procurement is automatically considered as failed by the web portal of public procurement and the organizer of public procurement shall exercise the repeated public procurement by the way of request for quotation.

6. The quotation of the potential supplier shall be subject to automatic rejection by the web portal of public procurement in the following cases:

1) if it exceeds, the amount allocated for the purchase of the goods, works and services;

- 2) if a potential supplier submitted the quotation on this lot earlier;
- 3) subparagraphs 3), 3-1), 3-2) and 4) of paragraph 1 of Article 6 of this Law.

The rejection of quotations for other reasons is not allowed.

7. If after the automatic rejection of the quotations by the web portal of public procurement on the grounds, provided for in paragraph 6 of this Article, there is less than two quotations of potential suppliers, such public procurement is recognized as failed and the organizer of public procurement shall exercise the repeated public procurement by the way of request for quotation.

8. The results of public procurement by the way of request for quotation are posted on the web portal of public procurement automatically after the summing up.

9. Customer within five working days after the approval of the results of public procurement by price proposals request signs and sends to the potential supplier, who offered the lowest price proposal, a draft public procurement contract. The draft public procurement contract shall be signed by the potential supplier, who offered the lowest quotation or by the determined winner, in accordance with the third part of paragraph 3 of this article and presented to the customer within seven working days from the date of submission of the signed draft public procurement contract to him (her) by the organizer of public procurement.

Making changes and (or) amendments to the essential terms of the draft public procurement contract is not allowed, except as provided by paragraph 1 of Article 39 of this Law.

The potential supplier, determined as the winner, evaded from the conclusion of a public procurement contract shall be entered in the register of unfair participants of the public procurement in the manner, established by this Law.

10. If a potential supplier, determined as the winner, did not submit the signed public procurement contract to the customer on time, the customer has the right to:

- 1) enter into a public procurement contract with a potential supplier, who provides the same quotation, and in the absence of such a potential supplier, with a potential supplier, whose quotation is the lowest since the price, offered by the potential supplier, who evaded from conclusion of a public procurement contract;

- 2) carry out the repeated public procurement by the way of request by quotation.

Footnote. The Article 31 is in the wording of the Law of the Republic of Kazakhstan dated 13.01.2012 No. 543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication), as amended by the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

Chapter 5. Public procurement from a single source

32. The grounds for carrying out the public procurement from a single source

The public procurement from a single source can be carried out in the following cases, if:

1) a state enterprise, legal entity, fifty or more percent of the voting shares (stakes in the authorized capital) of which are owned by the state and their affiliated legal entities, purchased the goods, works and services from a supplier, need to make other purchases for the purpose of unification, standardization or compatibility with the existing goods, equipment, technology, works or services;

2) a public procurement by the way of tender is recognized as failed. This provision shall not be applied to the cases, where the public procurement by the way of tender is recognized as failed in accordance with the Laws of the Republic of Kazakhstan;

3) there is a need for carrying out public procurement of daily (or) weekly needs for the period before the results of the public procurement by the way of tender or auction and the entry into force of the public procurement contract, if such public procurement is carried out within the first month of the year according to the list, approved by the Government Republic of Kazakhstan, in an amount not exceeding the amount of public procurement of goods, works and services, required to ensure the needs of the customer during the term of the public procurement, but not more than two months;

4) the measures, provided for in paragraphs 5 and (or) 7 of Article 31 of this Law, taken by the organizers of public procurement, did not lead to the conclusion of a public procurement contract;

5) the public procurement by auction is recognized as failed. This provision shall not apply to cases where the public procurement by auction method was invalid under the Laws of the Republic of Kazakhstan.

Footnote. The Article 32 is in the wording of the Law of the Republic of Kazakhstan dated 13.01.2012 No.543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication), as amended by the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

33. Public procurement from a single source

1. In carrying out the public procurement from a single source the organizer of public procurement shall send a written invitation to the potential supplier to participate in public procurement, which shall contain the following information:

1) the name and address of the organizer of public procurement;

2) the description and the required functional, technical, quality and performance characteristics of the purchased goods, works, services, technical specifications indicating national standard or non- governmental standard, approved by non-profit organizations of manufacturers of the Republic of Kazakhstan, if it is available.

In public procurement of work, requiring design estimate documentation, instead of the description and the required functional, technical, quality and performance characteristics of the purchased works, the invitation should contain the duly approved design estimate documentation;

3) the quantity of goods, the volume of the performed work, provided services that are the subject of the conducting public procurement;

4) the place of delivery of goods, works and services;

5) the required time for delivery of goods, works and services, the provision of guarantees on the quality of the offered goods, works and services;

6) the terms of payment and the draft public procurement contract, indicating the essential conditions;

7) the conditions, shape, volume and method of enforcement of public procurement contract in the cases, provided by the rules of public procurement;

8) the information on the amounts, allocated for the procurement of goods, works and services that are the subject of the conducting public procurement from a single source;

9) the list of general and specific qualification requirements, stipulated in Article 8 of this Law, as well as the list of documents that a potential supplier should submit in support of his (her) compliance with the qualification requirements, except when the public procurement from a single source is carried out under subparagraph 4) of Article 32 of this Law;

10) the place and date of submission of the documents, by a potential supplier, confirming his (her) compliance with the qualification requirements, except when the public procurement from a single source is carried out under subparagraph 4) of Article 32 of this Law, as well as the information provided for in paragraph 2 of this Article.

2. A potential supplier, who expressed a desire to supply goods, works and services that are the subject of the conducting public procurement from a single source, shall provide the following information in the established time to the organizer of public procurement:

1) a description of the goods, works and services, offered by the potential supplier, indicating the persons, who the potential supplier planned to involve as sub-contractors (sub-executors) of works or services;

2) the documents, confirming the compliance with the qualification requirements of the potential supplier and the persons, whom he (she) planned to involve as sub-contractors (sub-executors) of works or services, except when the public procurement from single source is carried out under subparagraph 4) of Article 32 of this Law;

3) a written justification of prices for the offered goods, works and services.

3. In carrying out the public procurement from a single source in the case provided for in subparagraph 2) of Article 32 of this Law, the contestant, which is recognized as failed, invited by the organizer of public procurement to participate in the public procurement from a single source shall have the right not present the documents, confirming the compliance of the participant with the qualification requirements to the same organizer of public procurement.

4. The organizer of public procurement shall consider the submitted by the potential supplier documents for compliance with the qualification requirements, except when the public procurement from a single source is carried out under subparagraph 4) of Article 32 of this Law, as well as with the requirements, established by the rules of public procurement or the rules of the electronic public procurement.

Footnote. The Article 33, as amended by the Law of the Republic of Kazakhstan dated 13.01.2012 No. 543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication), dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

34. Protocol on the results of public procurement from a single source

1. In carrying out public procurement from a single source, the organizer of public procurement shall prepare a protocol, which should contain the following information:

1) a rationale for the use of public procurement from single source;
2) a brief description of the goods, works and services procured from single source;
3) on the compliance of the potential supplier with the qualification requirements, except when the public procurement from a single source is carried out under subparagraph 4) of Article 32 of this Law;

4) the name and address of the supplier, with whom the public procurement contract and the contract price shall be concluded.

2. The customer shall place the text of the protocol on the internet resource of the customer no later than two working days after the signing of the protocol on the results of public procurement from a single source. This requirement shall not be applied to the public procurement from a single source of goods, works and services, the information about which is state secrets.

Footnote. The Article 34, as amended by the Law of the Republic of Kazakhstan dated 13.01.2012 No.543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication).

Chapter 6. Public procurement by the way of auction and through good exchanges

Footnote. The title of Chapter 6 is in the wording of the Law of the Republic of Kazakhstan dated 13.01.2012 No. 543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication).

35. The implementation of public procurement by the way of auction

1. Public procurement by the way of auction is carried out in real time on the web portal of public procurement, which is provided by a single operator in the field of electronic public procurement.

2. The auction is held on one lot, and the subject of the auction is the goods, work, service, the annual volume of which in value terms exceeds than four thousand monthly calculation indices, established for the corresponding financial year by the law on the republican budget, according to the list approved by the Government of the Republic of Kazakhstan.

If there are several places of delivery (performance, rendering) of goods (works, services), an indication of several places of delivery (performance, rendering) of goods (works, services) in the lot, held by the auction method is allowed.

3. The potential suppliers, identified on the results of consideration of applications for participation in the auction, meet the requirements of the auction documentation and recognized, as bidders by the auction commission shall participate in the auction.

Footnote. The Article 35 is in the wording of the Law of the Republic of Kazakhstan dated 13.01.2012 No. 543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication), as amended by the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

35-1. The auction documentation

1. The auction documentation is formed by the organizer of public procurement in the Kazakh and Russian languages on the basis of the electronic form of auction documentation, specified by the rules for electronic public procurement, taking into account the requirements of the legislation of the Republic of Kazakhstan on state secrets.

2. The auction documentation, in addition to general qualification requirements, established by Article 8 of this Law, shall contain the following information:

- 1) the name and location of the organizer of public procurement;
- 2) the description and the required functional, technical, quality and performance characteristics of goods, works, services, technical specifications indicating national standard or non-governmental standard, approved by non-profit organizations of manufacturers of the Republic of Kazakhstan, if any, and, if necessary, with an indication of normative and technical documentation;
- 3) the quantity of goods, the volume of performed work, provided services that are the subject of conducting public procurement;

- 4) the place of delivery of goods, works and services;
- 5) the required time for delivery of goods, works and services, the provision of guarantees on the quality of the offered goods, works and services;
- 6) the condition of payment and the draft public procurement contract, with indication the essential conditions;
- 7) the requirements for language of preparation and submission of applications for participation in the auction, the public procurement contract, in accordance with the legislation of the Republic of Kazakhstan on languages??;
- 8) the terms of payment and the amount of security of applications for participation in the auction;
- 9) the indication for the right of the potential supplier to change or withdraw his (her) application for participation in the auction until the deadline for their submission;
- 10) the procedure for submission of applications for participation in the auction and the required duration of the applications for participation in the auction;
- 11) the procedure for submission of potential suppliers' requests for clarification of the content of the auction documentation;
- 12) the date and time for receipt of requests to participate in the auction;
- 13) the description of the procedure for opening, consideration of applications for participation in the auction, reducing the initial (maximum) price of the auction;
- 14) the conditions, types, amount and method of enforcement of the public procurement contract;
- 15) the information on the amount, allocated for the purchase of goods, works and services, which is the subject of conducting public procurement by the way of auction;
- 16) the reducing amount of the amount, allocated for the purchase of goods, works and services that are the subject of public procurement, carried out by the way of auction (an auction step is in monetary terms);
- 17) the date of expiry of the consideration of applications for participation in the auction;
- 18) the date and time of the auction.

The auction documentation may contain other additional information that allows potential suppliers to obtain the most complete information about the public procurement carried out by the way of auction.

3. The auction documentation shall not content the indications to the trademarks, service marks, trade names, patents, utility models, industrial designs, appellations of origin and the name of the manufacturer, as well as other characteristics that determine the identity of the purchased goods, works and services to the individual potential supplier, except for public procurement for resupply, upgrade and retrofit the main (fixed) equipment.

4. The auction documentation is approved by the chief executive or the executive secretary or other official, exercising the power of the executive secretary, designated by the President of the Republic of Kazakhstan, the customer or the person, performing his (her) duties.

In the case of public procurement by auction method by a single organizer of public procurement, determined in accordance with subparagraphs 1) and 2) of paragraph 5 of Article 7 of this Law, the auction documentation is approved by the first head of a single organizer of procurement or a person acting as him (her).

5. The procedure for submission of auction documentation to the potential suppliers, as well as clarification of the auction documentation is determined by this Law and the rules of the electronic public procurement.

6. The organizer of public procurement has the right to make changes and (or) additions to the auction documentation not later than five calendar days before the deadline for submission of applications for participation in the auction on his (her) own initiative or in response to a request for clarification of the provisions of the auction documentation. Changing the subject of conducting public procurement by the way of auction is not allowed. Making changes and (or) additions to the auction documentation is approved in the manner, prescribed by paragraph 4 of this article of this Law.

The organizer of public procurement shall, not later than one working day from the date of the decision on making changes and (or) additions to the auction documentation :

1) send a text of the made changes and (or) additions to the persons, the information about which is entered in the log book of the persons, who have received the auction documentation;

2) publish the refined auction documentation, indicating the changes and (or) additions on the web portal of public procurement.

The deadline for submission of applications for participation in the auction shall be extended for a period of not less than seven calendar days in the case of making the changes and (or) additions to the auction documentation.

Footnote. Chapter 6 is supplemented by Article 35-1, in accordance with the Law of the Republic of Kazakhstan dated 13.01.2012 No.543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication), as amended by the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

35-2. Notice on the implementation of public procurement by the way of auction

1. The organizer of public procurement shall place the advertising text on the implementation of public procurement by the way of auction on the web-portal of the public procurement, not later than three working days from the date of approval of the

auction documentation, but not less than twenty days before the final date for the submission of applications by potential suppliers to participate in the auction.

2. If the amount, allocated for the purchase of goods, works and services that are the subject of conducting public procurement by the way of auction do not exceed twenty thousand monthly calculation indices, established for the corresponding financial year by the law on the republican budget, the organizer of public procurement shall place the advertising text on carrying out the public procurement by the way of auction on the web portal of the public procurement, not less than seven calendar days before the final date for the submission of applications by potential suppliers to participate in the auction.

Footnote. Chapter 6 is supplemented by Article 35-2, in accordance with the Law of the Republic of Kazakhstan dated 13.01.2012 No.543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication).

35-3. An application for participation in the auction

1. An application for participation in the auction is a form of expression of the consent of the potential supplier to supply goods, perform work, provide services in accordance with the requirements and conditions of the auction documentation.

2. An application for participation in the auction shall include the acknowledgment of the potential supplier:

- 1) on the absence of the violation of restrictions, provided in Article 6 of this Law;
- 2) on the absence of the relationship, prohibited by this Law between him (her) and the customer or the organizer of public procurement;
- 3) on the consent to terminate a public procurement contract in accordance with the Laws of the Republic of Kazakhstan, in the case of revealing the facts, contained in paragraph 10 of Article 37 of this Law.

The information and the documents that should be contained the application for participation in the auction is determined by the rules of electronic public procurement.

3. The validity of the application for participation in the auction must meet the required deadline, set by the auction documentation.

Footnote. Chapter 6 is supplemented by Article 35-3 in accordance with the Law of the Republic of Kazakhstan dated 13.01.2012 No. 543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication).

35-4. Submission of an application for participation in the auction

1. An application for participation in the auction, represented to the organizer of public procurement by the potential supplier, who has expressed a desire to participate in the auction, is formed as an electronic document on the web portal of public procurement and consists of two parts, which contain the electronic copies of paper documents and (or) electronic documents, listed in the auction documentation.

2. The first part of the application for participation in the auction shall contain:

1) in public procurement of goods, the description and proposed technical, quality and performance characteristics of the goods (with indication of the trademark, service mark, trade name, appellation of origin and the name of the manufacturer, and if the auction documentation provides for the requirement to provide sketches, graphics, drawings, photographs and other images of the purchased goods, the application for participation in the auction shall contain such information), and if appropriate with the indication of technical standard documentation;

2) in public procurement of work, service, the consent of a potential supplier for the execution of the work, the provision of services in accordance with the requirements of the auction documentation;

3) the electronic copy of the payment document, confirming the guarantee monetary contribution, in the case of making the security of application for participation in the auction in the form of guarantee cash contribution, which is placed in the bank account of public procurement or on the account, provided by the budget legislation of the Republic of Kazakhstan for the organizers of public procurement, which are the state bodies and the state institutions.

When making the security of application for participation in the auction in the form of a bank guarantee, its original is submitted to the organizer of public procurement to the deadline for submission of applications for participation in the auction in the manner, prescribed by the rules of the electronic public procurement.

3. The second part of the application for participation in the auction must include the documents, confirming the compliance of the potential suppliers and their attracted subcontractors (co-executors) with the qualification requirements, stipulated in Article 8 of this Law.

The submission of an application for participation in the auction after the deadline for their submission, specified in the auction documentation, is not allowed.

4. The potential suppliers, who submitted the application to participate in the auction before the deadline, are registered on the web portal of public procurement in a chronological order.

5. The potential supplier, no later than the deadline for submission of applications for participation in the auction, has the right to:

1) change and (or) supplement the submitted application for participation in the auction;

2) withdraw his (her) application for participation in the auction, without losing the right to refund the security of the application paid by him (her) for participation in the auction.

Making changes and (or) additions, as well as withdrawal of the application for participation in the auction are not allowed after the deadline for submission of applications for participation in the auction.

6. The potential supplier shall bear all the costs, related with his (her) participation in the public procurement by the way of auction. The customer, organizer of public procurement, a single organizer of public procurement, auction commission, expert commission, an expert, a single operator in the field of electronic public procurement shall not bear the obligation to reimburse these costs, regardless of the results of public procurement by the way of auction.

Footnote. Chapter 6 is supplemented by Article 35-4 in accordance with the Law of the Republic of Kazakhstan dated 13.01.2012 No. 543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication), as amended by the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

35-5. Security of the application for participation in the auction

1. Security of the application for participation in the auction is introduced by a potential supplier as a guarantee, that he (she):

1) does not withdraw or change, and (or) supplement his (her) application to participate in the auction after the deadline for submission of such applications;

2) in the case of determining the winner of the auction shall conclude the public procurement contract and make enforcement of the public procurement contract, provided in the auction documentation.

2. Security of the application for participation in the auction is introduced at a rate of one per cent of the amount, allocated to the auction for the purchase of goods, works and services in the manner, specified by the rules of the electronic public procurement.

3. The potential supplier has the right to choose one of the following types of security applications for participation in the auction:

1) the guarantee monetary contribution, paid into the bank account of public procurement or for the account, provided by the budget legislation of the Republic of Kazakhstan for the organizers of public procurement, which are the state bodies and the state institutions;

2) the bank guarantee.

Making the actions by a potential supplier that lead to the emergence of the claim of the third parties in whole or in part on the guarantee monetary contribution, before the expiry of the validity of his (her) application for participation in the auction is not allowed.

Using by the organizer of public procurement a guarantee monetary contribution, made by the potential supplier is not allowed, except as specified in paragraphs 5 and 6 of this Article.

4. The security of the application for participation in the auction is not refunded by the organizer of public procurement, when one of the following cases is happened:

1) the potential supplier, identified as the winner of the auction, evaded to sign the public procurement contract;

2) the winner of the auction, signing the public procurement contract, did not fulfill or improperly fulfill, including the untimely fulfillment of the requirements, established by the auction documentation on making and (or) the timing of making the enforcement of the public procurement contract;

3) none of the bidders within thirty minutes after the start of the auction, did not submit the proposals to the price of the goods, works and services that are the subject of conducting auction. In this case, the security of the application for participation in the auction is not refunded by the organizer of public procurement to all bidders.

5. Upon the occurrence of any of the cases, provided for in paragraph 4 of this Article, the amount of security of the application for participation in the auction shall be credited to the income of the corresponding budget, state enterprise, legal entity, fifty and more percent of the voting shares (stakes in the authorized capital) of which are owned by the state or their affiliated legal entities.

6. The organizer of public procurement shall return to the potential supplier his (her) paid security of the application for participation in the auction, within three working days from the date of the occurrence of one of the following cases:

1) withdrawal by the potential supplier of his (her) application for participation in the auction until the deadline for submission of applications for participation in the auction;

2) the signing of the protocol on admission to the auction. This case shall not be applied to the potential suppliers, recognized as the bidders;

3) the signing of the protocol on the results of public procurement by the way of auction. This case shall not be applied to the bidders, determined as the winner of the auction;

4) the entry into force of the public procurement contract and making by the winner of the auction the enforcement of the public procurement contract, provided in the auction documentation.

Footnote. Chapter 6 is supplemented by Article 35-5 in accordance with the Law of the Republic of Kazakhstan dated 13.01.2012 No. 543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication), as amended by the Law of the Republic of Kazakhstan dated 05.07.2012 No. 30 -V (shall be enforced upon expiry of ten calendar days after its first official publication).

35-6. Opening and examination of the first parts of applications to participate in the auction, admission to the auction

1. Access to the secretary of the auction commission for the opening of the first part of applications for participation in the auction is provided by the web portal of public procurement automatically upon the occurrence of the date and time of the

deadline for submission of applications for participation in the auction, indicated by the organizer of public procurement in the auction documentation.

2. Web portal of public procurement on the day of opening of the first part of applications for participation in the auction automatically sends the notifications to the auction commission members, potential suppliers, the information about which is included in an electronic log of applications for participation in the auction, provided by the rules of electronic public procurement.

3. Consideration of the first part of the application for participation in the auction is carried out by the auction commission in order to identify the potential suppliers, who comply with the requirements of the auction documentation and recognition of them as bidders.

4. The auction commission shall consider the first part of the application for participation in the auction and decide on the admission of potential suppliers to participate in the auction no later than seven calendar days of the date and time of the deadline for submission of applications for participation in the auction.

5. The public procurement by the way of auction is recognized as failed, if less than two applications for participation in the auction are submitted.

6. If necessary, the organizer of public procurement shall have the right to form the expert commission or determine the expert for the preparation of the expert opinion on the conformity of the goods, works and services offered by potential suppliers, with the technical specifications, which is an integral part of the auction documentation.

In the absence of the specialists of the appropriate profile of the organizer of public procurement, he (she) attracts to work as experts the civil servants or other experts, which specialization corresponds to the purchased goods, works and services. The civil servants are involved as experts free of charge, and other specialists are attracted both paid and free of charge by agreement of the parties.

The experts do not have the right to vote in making the decision of the auction commission.

Selection of the persons, engaged as experts on a paid basis, is carried out in accordance with this Law.

7. The auction commission shall consider the first part of the application for participation in the auction as meeting the requirements of the auction documentation, if it contains the grammatical or arithmetic errors, not affecting to the subject of the submitted first part of the application.

8. A potential supplier cannot be allowed to participate in the auction (recognized as the bidder of the auction) if:

1) the first part of his (her) application for participation in the auction is recognized as non-confirming to the auction documentation;

2) did not make the security of the application for participation in the auction.

9. The protocol on the admission to the auction shall be signed by the chairman and all the members, presenting at a meeting of the auction commission and secretary of the auction commission on the day of the decision on the admission of potential suppliers to participate in the auction (recognition as the bidders of the auction).

The protocol on the admission to the auction shall be published by the secretary of the auction commission on the day of decision on the admission, on the web portal of public procurement with automatic e-mail notification of all potential suppliers, the information about which is included in an electronic log of applications for participation in the public procurement by the auction, provided by the rules of electronic public procurement.

10. In the case of recognition by the auction commission as the participants of the auction less than two potential suppliers, public procurement by the way of auction is recognized as failed.

11. The decision of the auction commission on the admission to the auction can be appealed in accordance with Article 45 of this Law.

Footnote. Chapter 6 is supplemented by Article 35-6 in accordance with the Law of the Republic of Kazakhstan dated 13.01.2012 No. 543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication).

35-7. Holding of an auction

1. The auction is carried out on the web portal of public procurement on the day and time, specified in the notice of the public procurement by the way of auction.

The day of the auction shall be a working day, following after expiration of two working days from the date of expiry of the consideration of applications for participation in the auction.

2. The potential suppliers recognized as the auction bidders shall participate in the auction.

3. The auction is carried out by reducing of the current offer on the price, from the amount, allocated for the purchase of goods, works and services that are the subject of conducting auction, to the auction step.

The auction step is from a half percent (0.5) of up to five percent of the amount, allocated for the purchase of goods, works and services that are the subject of conducting auction.

4. In carrying out the auction, the participants of the auction shall submit the proposals on the price of goods, works and services that are the subject of conducting auction, providing for a reduction of the current minimum price proposal for the amount within the auction step.

5. At the auction any participant of the auction has right to submit a proposal to the price of goods, works and services that are the subject of conducting auction, reduced from the amount, allocated for the purchase of goods, works and services that are the

subject of conducting auction, regardless of the auction step in the absence of the current minimum proposal.

6. A bidder shall not have the right to submit a proposal to the price of goods, works and services that are the subject of conducting auction, lower than the current minimum proposal on the price of the goods, works or services which are the subject of conducting auction, in the case if such a proposal to the price of goods, works, services which are the subject of conducting auction, submitted by the same bidder to the auction.

7. The time for submission of proposals of the bidders on the price of the goods, works and services that are the subject of conducting auction is thirty minutes from the start of the auction, and ten minutes after the last proposal on the price of the goods, works and services that are the subject of conducting auction. If within that time any proposal on a lower price of the goods, works and services that are the subject of conducting auction, is not received, the auction ends.

8. In case, if a price of goods, works and services that are the subject of conducting auction is offered, which is equal to the price, offered by another bidder, as the best proposal on the price of goods, works and services that are the subject of conducting auction, is recognized the proposal, received before the other proposals.

9. If within thirty minutes after the start of the auction, none of the bidders did not submit proposals on the price of goods, works and services that are the subject of conducting auction in accordance with paragraph 4 of this Article, the auction is declared as failed.

10. The protocol on the results of the auction is automatically formed and posted on the web portal of public procurement on the last day of the auction.

Footnote. Chapter 6 is supplemented by Article 35-7 in accordance with the Law of the Republic of Kazakhstan dated 13.01.2012 No. 543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication).

35-8. Consideration of the second parts of applications for participation in auction

1. Access of the auction commission to the consideration of the second part of the applications for participation in the auction of the potential suppliers, recognized as the auction bidders, is provided by a web portal of public procurement automatically on the last day of the auction and placing of the protocol on the results of the auction.

2. The auction commission shall consider the second part of the application for participation in the auction and make a decision on the compliance or non-compliance of potential suppliers, recognized as bidders with the qualification requirements, established by the auction documentation, no later than seven calendar days.

In case of adoption of a decision on the non-conformity of qualification requirements by the potential supplier set by the auction documentation, protocol of consideration of the second parts of application forms for participation in auction shall

be issued and published on the web portal of public procurement that shall be signed by the Chairman and all attended members of the auction commission at the meeting, as well as the secretary of the auction commission on the day of execution of the protocol on consideration of the second parts of application forms for participation in the auction.

The Protocol of consideration of the second parts of application forms for participation in auction shall contain information including the reasons for the inconsistency of qualifying requirements of potential suppliers, specified in the auction documentation.

The auction commission in case of detection of potential suppliers that do not meet the qualifying requirements of the auction documentation, provides such potential suppliers the right to bring the second parts of application forms for participation in auction within three working days from the date of publication of the Protocol of consideration of the second parts of application forms for participation in auction in accordance with the qualification requirements set by the auction documentation.

3. During considering the second part of applications for participation in the auction, the auction commission may:

1) in writing and (or) in the form of an electronic document request from the potential suppliers, recognized as the bidders the materials and clarifications to facilitate the consideration of the second part of applications for participation in the auction;

2) in order to clarify the information, contained in the second part of applications for participation in the auction, request the necessary information from the relevant individuals or legal entities, state bodies, in writing and (or) in the form of an electronic document.

Sending the request and other actions of the auction commission, related to bringing the application for participation in the auction in accordance with the requirements of auction documentation, by supplementing missing documents in the application for participation in the auction, replacing the documents, submitted in the application for participation in the auction, conformation of improperly prepared documents upon expiry of bringing the application for participation in the auction in accordance with qualified requirements, established by the auction documentation, provided by the part four of paragraph 2 of this Article shall not be allowed.

The auction commission shall consider the second part of the application for participation in the auction as meeting the requirements of the auction documentation, if it contains the grammatical or arithmetic errors, not affecting to the subject of the submitted second part of the application.

4. The potential supplier is considered as not meeting the qualification requirements in the cases provided for by this Law and the rules of the electronic public procurement.

5. Upon the results of consideration of the second part of the application for participation in the auction, the auction commission shall determine the winner of the auction from the number of potential suppliers, recognized as the bidders and meeting the qualification requirements, set by the auction documentation for the lowest offer on the price, and identify the candidates for the conclusion of a public procurement contract from the number of potential suppliers, recognized as the bidders and meeting the qualification requirements, set by the auction documentation, if they are available, or recognize the auction is not held in the case, provided for by paragraph 6 of this Article.

5-1. If upon consideration of the second part of applications for participation in the auction, the auction commission recognizes only one potential supplier as relevant to the qualification requirements set by the auction documentation, such a potential supplier shall be the winner of the auction.

6. If none of the potential suppliers, recognized as the bidders and submitted the proposal for the price, do not meet the qualification requirements, set by the auction documentation, the public procurement by the way of auction is recognized as failed.

7. The protocol on the results of the auction shall be signed by the chairman and by all the presenting members of the auction commission and the secretary of the auction commission on the day of the decision on the results of the auction.

The secretary of the auction commission shall form and place the protocol on the results of the auction on the web portal of public procurement at the date of signing of the protocol on the results of the auction.

8. The customer within five working days from the date of approval of the protocol on the results of the auction shall sign and send the draft public procurement contract to the winner of the auction.

9. The agreement on public procurement contract shall be signed and presented by the winner of the auction, or, in the cases provided for in paragraphs 10 and 11 of this Article, by an applicant for the execution of an agreement on public procurement within seven working days from the day of presented signed agreement on public procurement by the customer to him (her).

Making the changes and (or) additions to the essential terms of the draft public procurement contract shall not be allowed.

The winner of the auction, evaded from conclusion of a public procurement contract shall be entered in the register of unfair participants of the public procurement according to the procedure, established by this Law.

10. If the winner of the auction, evaded from conclusion of the public procurement contract, the customer has the right to conclude a contract on public procurement with the applicant for the conclusion of a public procurement contract, the proposal for the price of which is the lowest after the proposal for the price of the winner of the auction, evaded from conclusion of a public procurement contract.

11. In case of failure of an applicant for the conclusion of a public procurement contract to submit on time, as provided in paragraph 9 of this Article the signed public procurement contract, the customer has the right to conclude a public procurement contract with the applicant for conclusion of a public procurement contract, the proposal for the price of which is the lowest, after the proposal for the price of the applicant for conclusion of a public procurement contract, who does not submit the signed public procurement contract.

The applicants for the conclusion of a public procurement contract, who do not submit within the time, specified by paragraph 9 of this Article the signed public procurement contract, are not entered in the register of the unfair participants of public procurement, as provided by the Law, except for the winner of the auction.

12. The auction commission decision may be appealed in accordance with Article 45 of this Law.

Footnote. Chapter 6 is supplemented by Article 35-8 in accordance with the Law of the Republic of Kazakhstan dated 13.01.2012 No. 543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication), as amended by the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

35-9. The grounds and consequences of recognition of public procurement by the way of auction as failed

1. The auction is recognized as failed:

1) in the case, if less than two applications for participation in the public procurement by the way of auction is submitted;

2) in the cases, provided for in paragraph 10 of Article 35-6, paragraph 9 of Article 35-7, and paragraph 6 of Article 35-8 of this Law;

3) if the winner of the auction, evaded to conclude the public procurement contract and the customer does not exercise the right, provided in paragraphs 10 and 11 of Article 35-8 of this Law;

4) if the contract on public procurement is not concluded with the applicant, who should sign the contract on public procurement in accordance with paragraph 9 of Article 35-8 of this Law.

2. If public procurement by the way of auction is recognized as failed, the customer shall have the right to take one of the following decisions:

1) on carrying out the repeated public procurement by the way of auction;

2) on changing the auction documentation and carrying out the repeated public procurement by the way of auction;

3) on carrying out the public procurement from a single source, except as provided in subparagraphs 3) and 4) of paragraph 1 of this Article.

Footnote. Chapter 6 is supplemented by Article 35-9 in accordance with the Law of the Republic of Kazakhstan dated 13.01.2012 No. 543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication), as amended by the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

36. Public procurement of goods through good exchanges

1. Public procurement of goods through good exchanges is carried out in accordance with the legislation of the Republic of Kazakhstan on good exchanges on the list of exchange commodities.

2. If the annual volume of public procurement of goods, included in the list of exchange commodities, does not exceed the minimum lot size, provided in the list of exchange commodities, the customer shall have the right to choose another form of public procurement of goods.

Footnote. The Article 36 is in the wording of the Law of the Republic of Kazakhstan dated 13.01.2012 No. 543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication).

Chapter 7. Public procurement contract

37. Conclusion of a public procurement contract

1. The customer shall sign and send a draft contract on public procurement, concluded in accordance with a standard contract to the potential supplier, pronounced as the winner within five working days from the date of signing of the protocol on the results of public procurement.

In the case of summing up of public procurement by the way of tender, the customer shall send a copy of the protocol on the results and a draft public procurement contract, concluded in accordance with the tender documentation to the winner of the tender.

The conclusion of electronic agreement on public procurement shall be allowed.

2. In cases of conclusion of a public procurement contract with a non-resident of the Republic of Kazakhstan, a public procurement contract in his (her) proposed form under the terms of legislation of the Republic of Kazakhstan can be concluded.

3. The term of a public procurement contract cannot be more than thirty calendar days from the date of sending a draft public procurement contract to the potential

supplier, except the term for conclusion of a public procurement contract, specified in paragraph 9 of Article 31 and paragraph 9 of Article 35-8 of this Law.

4. Public procurement contract should include a forfeit for non-fulfillment or improper fulfillment of the obligations under this public procurement contract, and the obligation of the customer to ensure the recovery of the forfeit from the full amount of the public procurement contract.

5. In cases, stipulated by the rules of public procurement or the rules of electronic public procurement, the supplier shall, within ten working days from the date of conclusion of the public procurement contract, make the enforcement of the public procurement contract.

The enforcement of the public procurement contract is entered by the supplier as a guarantee that he (she) timely, fully and properly perform his (her) obligations under the public procurement contract, concluded with him (her).

In case of conclusion of an agreement on public procurement with the period of validity for more than one financial year, the amount of performance of a contract on public procurement for the current financial year shall be calculated on the basis of the annual amount of the contract, specified in the relevant financial year.

The supplier shall have the right to choose one of the following types of enforcement of the public procurement contract:

1) the guarantee monetary contributions, paid into the bank account of the customer or for the account provided by the budget legislation of the Republic of Kazakhstan for customers, which are the state bodies and state institutions;

2) the bank guarantee.

Making the actions by the supplier that lead to the emergence of the claim of the third parties in whole or in part of the contributed guarantee monetary contribution to the complete fulfillment of obligations under the contract is not allowed.

Using a guarantee monetary contribution, made by the supplier, for purposes not provided in this Law by the customer shall not be allowed.

The requirement on introduction of security of execution of an agreement on public procurement shall not be applied to the suppliers, identified on the basis of the public procurement by the way of request of pricing facilities through boards of trade, from one source, provided on the basis of subparagraph 4) of Article 32 of this Law, as well as suppliers, that presented it in cases, provided by paragraph 8 of Article 8 of this Law, the suppliers, not being the subjects of entrepreneurial activity, in cases, provided by subparagraph 5) of paragraph 3 of Article 41 of this Law.

6. The state bodies, state institutions and state enterprises on the operational management may conclude a public procurement contract for a period of more than one financial year in the case of acquisition:

1) work with the term of their completion in the next (following) financial year (years), provided for in the design and construction documents;

2) the assets and other goods, the duration of the period of manufacturing process of which, causes their supply in the next (following) financial year (years);

3) catering services for the Armed Forces of the Republic of Kazakhstan, other troops and military formations of the Republic of Kazakhstan. The validity of such a public procurement contract shall not exceed three years;

4) services for more than one financial year;

5) goods, works and services, the term of performance (rendering, delivery) of which in relation to the duration of execution is due to the next (following) financial year (years), established in the relevant budget, development plan (business plan), financing plan, and also works and services for current repair and maintenance of auto roads of regional and district level. The validity of such a public procurement contract shall not exceed three years.

7. The state enterprises on the basis of the right of economic management, as well as the legal entities, fifty or more percent of the voting shares (stakes in the authorized capital) of which are owned by the state, and their affiliated legal entities may conclude a long-term contract for public procurement of goods, works and services, required for performance of measures with the completion period in the next (following) financial year (years), set in the development plan (business plan), approved by the governing body or the supreme body of the indicated entities.

8. The contract for public procurement of services for audit of the annual financial statements can be concluded for a period not exceeding three years.

9. The conclusion of the public procurement contract with a term of over one year in the cases, provided for in paragraphs 7 and 8 of this Article is allowed only with suppliers, defined on the basis of public procurement, carried out on a competitive basis.

10. The public procurement contract shall include a provision on its dissolution at any stage in the case of revealing one of the following facts:

1) the violation of the restrictions, provided for in Article 6 of this Law;

2) the assistance, which is not provided for in this Law, by the organizer of public procurement to the potential supplier.

11. *Is excluded by the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).*

11-2. Minimum period of delivery of goods, performance of works and rendering services under the public procurement contract should not be less than fifteen calendar days.

12. The public procurement contract is considered as executed on the condition that the customer and the supplier performed undertaking obligations under this contract.

13. In the case of non-fulfillment or improper fulfillment of the obligations, taken by the supplier under the public procurement contract, the customer shall, within ten working days of the end of the financial year, take action to recover the forfeit in the income of the corresponding budget, state enterprise, legal entity, fifty or more percent of the voting shares (shares in the authorized capital) of which are owned by the state, or their affiliated entities.

Footnote. The Article 37 is in the wording of the Law of the Republic of Kazakhstan dated 13.01.2012 No. 543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication), as amended by the Law of the Republic of Kazakhstan dated 05.07.2012 No. 30-V (shall be enforced upon expiry of ten calendar days after its first official publication), dated 26.12.2012 No. 61-V (shall be enforced from 01.01.2014), dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

38. Avoidance of the conclusion of a public procurement contract

1. If a potential supplier, determined as the winner, within the time prescribed by this Law, did not submit a signed public procurement contract to the customer or by signing a public procurement contract, did not make the enforcement of a public procurement contract in the cases, provided for in paragraph 5 of Article 37 of this Law, then such potential supplier is recognized as evaded from conclusion of a public procurement contract.

2. In the case of recognition of a potential supplier, determined as the winner of the public procurement, as evaded from conclusion of a public procurement contract, the customer shall:

1) hold for his (her) proposed security application for participation in the tender or auction and appeal to the court for recognition of the potential supplier as unfair participant of public procurement;

2) have the right to apply to the court to compel such potential supplier to conclude the public procurement contract, as well as for compensation of damages, caused by avoidance of conclusion of the public procurement contract.

Footnote. The Article 38, as amended by the Law of the Republic of Kazakhstan dated 13.01.2012 No. 543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication), dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

39. Grounds for making changes to a draft or a concluded public procurement contract

1. Making changes to the draft public procurement contract under the condition of constant quality and other conditions, which were the basis for selecting the supplier, is allowed by complying with the following interrelated conditions:

1) making changes to the draft contract is initiated by one of the parties no later than five working days from the date of signing of the protocol on the results of public procurement by the way of tender;

2) making changes is allowed in reducing the amount of the draft contract;

3) the decision to make changes to reduce the amount of the contract is made by mutual agreement of the parties.

Making changes to the draft public procurement contract without complying with the conditions, provided for in this paragraph is not allowed.

2. Making changes to the concluded public procurement contract under the condition of constant quality and other conditions, which were the basis for the choice of the supplier, shall be allowed:

1) by mutual agreement of the parties in reducing the prices of goods, works and services and, accordingly, the amount of the contract;

2) in terms of increasing the amount of the contract, if the design and estimate documentation, passed the state examination, is changed and decided to allocate the additional money to the amount of the change, which was adopted in the manner, specified by the legislation of the Republic of Kazakhstan;

3) in reducing or increasing the amount of the contract, related with a decrease or an increase in demand in the volume of the purchased goods, works, with the exception of the works, referred to in subparagraph 2) of this paragraph, services, subject to the immutability of the price for the unit of goods, works or services, specified in the concluded contract for public procurement of goods, works and services. This change in the concluded contract for public procurement of goods, works and services is allowed within the amounts, provided for in the annual plan of public procurement for the purchase of goods, works and services;

4) if the supplier in the execution of the concluded with him (her) contract for public procurement of goods, offered under the conditions of constant price for unit of goods better quality and (or) technical specifications or the timing and (or) the conditions of delivery of the goods, which are the subject of the concluded contract for public procurement of goods;

5) in terms of reducing or increasing the amount of a contract to perform work with a period for completion in the next (following) year (years) due to the changes in tax, customs and another legislation of the Republic of Kazakhstan;

6) in reducing the amount of the contract to perform work with a period for completion in the next (following) year (years);

7) in changing the period of the execution of a contract to perform work, in the case of changing of financing by year from the state budget, provided the immutability of

the amount of the signed contract or reducing the estimated cost of the work and making the appropriate changes in the design and estimate documentation, subsequently passed the state examination;

8) in changing the period of the execution of the contract to perform work, in the case of a criminal case, related to the performance of a contract against an official of the customer, and (or) the supplier;

9) in changing the term of the contract for the supply of goods, if the supplier is a commodity producer of the goods delivered. Such a change in the concluded contract of public procurement of goods is allowed within the current financial year on notification of the supplier for a period of not more than ten working days.

3. Making to a draft or a signed contract on public procurement the changes that may change the content of the conditions of conducting (held) public procurement, and (or) proposals, which appeared as a basis for choosing a supplier, on other grounds not provided for in paragraphs 1 and 2 of this Article is not allowed.

Footnote. The Article 39, as amended by the Law of the Republic of Kazakhstan dated 13.01.2012 No.543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication) dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

40. The entry into force of the public procurement contract

1. A public procurement contract shall enter into force upon signature by the customer and the supplier or the full introduction of enforcement for execution of the contract by the latest, provided by the tender documentation. If a public procurement contract is subject to registration, it shall enter into force upon its registration in accordance with the legislation of the Republic of Kazakhstan.

2. A public procurement contract, which is subject to registration in accordance with the legislation of the Republic of Kazakhstan, is submitted by the customer to the authorized body for registration of public procurement contracts not later than five working days after its conclusion or making by the supplier the full enforcement of the execution of the contract, provided in the tender documentation or auction documentation.

Footnote. The Article 40 is in the wording of the Law of the Republic of Kazakhstan dated 20.11.2008 No. 87-IV (the order of enforcement see Art.2), as amended by the Law of the Republic of Kazakhstan dated 13.01.2012 No. 543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication).

Chapter 8. Special provisions

41. Special procedure for carrying out the public procurement by the way of tender

1. *Is excluded by the Law of the Republic of Kazakhstan dated 20.11.2008 No. 87-IV (the order of enforcement see Art. 2).*

2. Public procurement with using a special procedure is carried out in accordance with this Law, with the exception of the rules establishing the qualification requirements, as well as regulating the procedures and timing of public procurement under this Law.

3. Public procurement with using a special procedure is carried out in cases of acquisition of:

1) the goods, works and services for enforcement of the law and national security, as required to establish the special arrangements for public procurement to ensure the compliance with the secrecy, as well as the guarantee of national security of the Republic of Kazakhstan;

2) the services, provided by the state social order;

3) *Is excluded by the Law of the Republic of Kazakhstan dated 20.11.2008 No. 87-IV (the order of enforcement see Art. 2);*

4) *Is excluded by the Law of the Republic of Kazakhstan dated 18.02.2011 No. 408-IV (shall be enforced upon expiry of ten calendar days after its first publication);*

5) dwellings, owned by the right of private property to an individual, who is not an entrepreneur;

6) *Is excluded by the Law of the Republic of Kazakhstan dated 14.01.2014 No.161-V (shall be enforced upon expiry of ten calendar days after its first official publication);*

7) the goods, works and services, the information about which is a state secret, and (or) the information that constitutes the proprietary information of limited distribution, defined by the Government of the Republic of Kazakhstan;

8) the social services provided for a guaranteed volume of social services and the services for assessment and determination of the need for special social services;

9) *Is excluded by the Law of the Republic of Kazakhstan dated 13.01.2012 No.543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication).*

4. Special procedure for public procurement by the way of tender is established by the Government of the Republic of Kazakhstan.

Footnote. The Article 41, as amended by the Laws of the Republic of Kazakhstan dated 20.11.2008 No. 87-IV (the order of enforcement see Art. 2), dated 29.12.2008 No. 115-IV (shall be enforced from 01.01.2009), dated 05.05.2009 No. 158-IV (the order of enforcement see Art. 2), dated 18.02.2011 No. 408-IV (shall be enforced upon expiry of ten calendar days after its first official publication), dated 13.01.2012 No. 543-IV (shall be enforced upon expiry of thirty calendar days after its first official

publication), dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

41-1. Special procedure for public procurement to meet the needs of defence

Footnote. Title of article 41-1, as amended by the Law of the Republic of Kazakhstan dated 11.07.2009 No. 182-IV (the order of enforcement see Article 2).

The special procedure for public procurement of weapons, military equipment, ammunition, special means, and works and services for their repair and modernization to meet the needs of defense and military security, is determined by the Government of the Republic of Kazakhstan.

The special procedure shall not be applied in the cases provided for in subparagraph 43) of paragraph 1 of Article 4 of this Law.

Footnote. Chapter 8 is supplemented by Article 41-1, in accordance with the Law of the Republic of Kazakhstan dated 20.11.2008 No. 87-IV (the order of enforcement see Art. 2), as amended by the Law of the Republic of Kazakhstan dated 11.07.2009 No. 182-IV (the order of enforcement see Art. 2).

42. Special procedure for public procurement by the way of tender

1. The special procedure for public procurement by the way of tender (hereinafter - special order) is applied by the customers, which are the state enterprises on the right of economic management, by the legal entities, fifty and more percent of the voting shares (stakes in the authorized capital) of which are owned by the state and their affiliated legal entities.

2. The public procurement with using of a special procedure is carried out in accordance with this Law, with the exception of the rules establishing the qualification requirements, as well as regulating the procedures and timing of public procurement under this Law.

3. The special procedure is approved by the administrating authorities of customers , specified in paragraph 1 of this Article in accordance with the standard requirements to the special procedure, established by the Government of the Republic of Kazakhstan , which include the requirements for:

- 1) the order of holding the regular pre-qualification of potential suppliers;
- 2) the order for the formation of the list of qualified potential suppliers;
- 3) the procedures and terms of selection of a supplier, based on the request for price proposals of potential suppliers, who prequalified in accordance with sub-paragraph 1) of this paragraph and the conclusion of the contract on public procurement with him (her);

4) the order to provide the support to domestic producers, domestic suppliers of works and services.

Footnote. The Article 42, as amended by the Laws of the Republic of Kazakhstan dated 20.11.2008 No. 87-IV (the order of enforcement see Art. 2), dated 13.01.2012

No.543 -IV (shall be enforced upon expiry of thirty calendar days after its first official publication).

43. Special conditions of participation in the public procurement of temporary associations of legal entities (the consortium)

The special conditions of participation in the public procurement of temporary associations of legal entities (the consortium) are determined by the rules of electronic public procurement.

Footnote. Article 43 is in the wording of the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

44. Support for specific categories of domestic potential suppliers

1. In public procurement of goods, originating from foreign countries, works and services, respectively, performed, provided by a foreign potential suppliers, the national regime is applied on an equal conditions with the goods of Kazakhstan origin, work, services, respectively performed, provided by Kazakh potential suppliers, in the cases and under the conditions provided for by the international treaties, ratified by the Republic of Kazakhstan.

2. In order to protect the constitutional order, law enforcement, national security and defence of the country, to protect the domestic market of the Republic of Kazakhstan, the development of the national economy, to support domestic producers, domestic suppliers of works, services, the Government of the Republic of Kazakhstan shall have the right to prohibit the admission of goods, originating from foreign countries, works and services, respectively, performed, provided by foreign potential suppliers and to limit the admission of goods, works and services in public procurement.

Determination of the country of origin of goods is carried out in accordance with the legislation of the Republic of Kazakhstan.

3. The Government of the Republic of Kazakhstan may establish conditions for admission of public procurement of goods, originating from foreign countries, works and services, respectively, performed, provided by foreign potential suppliers, except for goods, works and services in respect of which the Government of the Republic of Kazakhstan established ban, and restrictions under the paragraph 2 of this Article.

Footnote. Article 44 is in the wording of the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

44-1. Participation in the public procurement of certain categories of potential suppliers

1. Participation in the public procurement of certain types of potential suppliers is defined in the cases provided by this Law.

2. Organizers of public procurement in public procurement of certain types of goods, works and services make the procurement of:

1) goods, intended for the needs of persons with disabilities (typhlo-technical facilities, special vehicles, mandatory hygiene products) that should be carried out by way of tender, from the public associations of persons with disabilities and the organizations, created by a public associations of persons with disabilities of the Republic of Kazakhstan, producing and (or) delivering such goods in the amount of not less than fifty percent of the total funds, allocated for the purchase of these goods in the current year;

2) goods, other than those specified in subparagraph 1) of this paragraph from the goods-producing associations of persons with disabilities and the organizations, created by public associations of persons with disabilities of the Republic of Kazakhstan, in an amount not less than fifty percent of the total funds, allocated for the purchase of goods in the current year;

3) works and services from the public associations of persons with disabilities of the Republic of Kazakhstan and the organizations, created by public associations of the persons with disabilities of the Republic of Kazakhstan that carry out work and provide services, in the amount of one hundred per cent of the total funds, allocated for the purchase of works and services in the current year.

3. List of public associations of persons with disabilities of the Republic of Kazakhstan and the organizations, created by a public association of persons with disabilities of the Republic of Kazakhstan, that produce goods and (or) supply goods, perform works, render services of the certain types of goods, works and services, purchased from public associations of persons with disabilities of the Republic of Kazakhstan and the organizations, created by public associations of persons with disabilities of the Republic of Kazakhstan, that produce and (or) supply goods, perform works, render services, and the order of their purchase, are determined by the Government of the Republic of Kazakhstan.

At the same time, the public associations of persons with disabilities of the Republic of Kazakhstan and the organizations, created by a public association of persons with disabilities of the Republic of Kazakhstan, specified in paragraph 2 of this Article, must comply with the conditions stipulated in the second subparagraph of subparagraph 13) of Article 248 of the Code of the Republic of Kazakhstan “On taxes and other obligatory payments to the budget” (Tax Code).

4. To implement the provisions, stipulated in paragraph 2 of this Article, the organizer of public procurement carries out public procurement by methods, provided for in this Law, for which the public associations of persons with disabilities of the

Republic of Kazakhstan and the organizations, created by public associations of persons with disabilities of Republic of Kazakhstan that produce and (or) supply goods , execute works, render services, are admitted.

Those, who perform work, render services to the public associations of persons with disabilities of the Republic of Kazakhstan and the organizations, created by public associations of persons with disabilities of the Republic of Kazakhstan are not allowed to involve subcontractors to perform work and co-executors to render services that are the subject of ongoing public procurement.

In public procurement in accordance with paragraph 2 of this Article, the organizer of public procurement indicates in the text that the public procurement is carried out exclusively among public associations of persons with disabilities of the Republic of Kazakhstan and the organizations, created by public associations of persons with disabilities of Republic of Kazakhstan that produce and (or) supply goods, perform works, render services.

5. In the case of recognition of public procurement as not valid, on the grounds specified in paragraph 4 of Article 16 of this Law, the customer may decide to conduct a public procurement from one source among public associations of persons with disabilities of the Republic of Kazakhstan and the organizations, created by public associations of persons with disabilities of the Republic of Kazakhstan that produce and (or) supply goods, execute works, render services.

In the case of recognition of public procurement from one source among public associations of persons with disabilities of the Republic of Kazakhstan and the organizations, created by public associations of persons with disabilities of the Republic of Kazakhstan that produce and (or) supply goods, execute works, render services as not valid, the customer may decide to re-conduct the public procurement among other potential suppliers in accordance with the legislation of the Republic of Kazakhstan on public procurement.

6. In public procurement of certain types of goods, works and services, established by the Government of the Republic of Kazakhstan, by the way of tender, the organizers of public procurement must provide to the state-owned enterprises of the correctional institutions, that produce goods, perform works, render services, determined by the Government of the Republic of Kazakhstan, the benefits in the form of fifteen percent conditional reduce of the competitive quotation.

The order to provide benefits, referred to in this paragraph shall be determined by the rules for electronic public procurement.

7. The organizer of public procurement in public procurement of goods, works and services, allowed to be distributed on the part, by methods, provided for in paragraph 1 of Article 12 of this Law, shall carry out public procurement from small and medium-sized businesses in the amount of not less than fifteen percent of the total

volume in cumulative terms, allocated to purchase of the goods, works and services in the current year.

The volume of goods, works and services, acceptable to the distribution, should not exceed in a cumulative term the sixty thousand monthly calculation index, set for the relevant financial year by the law on the republican budget.

8. In public procurement in accordance with paragraph 7 of this Article, the organizer of public procurement indicates in the advertising that public procurement is carried out exclusively among small and medium-sized businesses.

9. In the case when the public procurement of small and medium-sized businesses are not valid, the organizer of public procurement shall be entitled to conduct public procurement on a common basis in accordance with the legislation of the Republic of Kazakhstan on public procurement.

The volume of goods, works and services that are the subject of procurement, is considered in the total cumulative annual terms, allocated to purchase of these goods in the current year.

10. The organizer of public procurement in public procurement of works, services may establish the requirement in the tender or auction documentation for a potential supplier that is not subject to small and medium-sized businesses, to attract to the execution of a public procurement contract the subcontractors (co-executors) from the small and medium-sized businesses.

The volume of works and services for execution, rendering of which, involved the subcontractors (co-executors), is considered in the total cumulative annual terms, allocated to purchase of these works and services in the current year.

Footnote. Chapter 8 is supplemented by Article 44-1 in accordance with the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

Chapter 9. Final provisions

45. Appeal against the actions (inaction) of the customer, organizer of public procurement, commission, an expert, a single operator in the field of public procurement

The potential supplier shall have the right to appeal against the actions (inaction) of the customer, the organizer of public procurement, a single organizer of public procurement, commission, an expert, a single operator in the field of public procurement, if their actions (inaction), decisions violate the rights and legitimate interests of the potential supplier. The decision of the customer is not subject to appeal in the bodies of state control, concerning:

- 1) the choice of the way of public procurement;

2) the refusal for carrying out the public procurement, made in accordance with paragraph 10 of Article 5 of this Law.

Footnote. Article 45 is in the wording of the Law of the Republic of Kazakhstan dated 14.01.2014 No. 161-V (shall be enforced upon expiry of ten calendar days after its first official publication).

46. Resolution of disputes

All disputes, arising in the process of public procurement shall be resolved in accordance with the legislation of the Republic of Kazakhstan.

47. Responsibility for violation of the legislation of the Republic of Kazakhstan on public procurement

Violation of the legislation of the Republic of Kazakhstan on public procurement entails the responsibility under the Laws of the Republic of Kazakhstan.

47-1. Transitional provisions

The provisions of paragraph 6 of Article 12 of this Law shall be valid until 1 July 2012.

Footnote. Chapter 9 is supplemented by the Article 47-1, in accordance with the Law of the Republic of Kazakhstan dated 20.11.2008 No. 87-IV (the order of enforcement see Art. 2), as amended by the Law of the Republic of Kazakhstan dated 13.01.2012 No. 543-IV (shall be enforced upon expiry of thirty calendar days after its first official publication).

48. The order of the enforcement of this Law

1. This Law shall enter into force from 1 January, 2008.

2. The Law of the Republic of Kazakhstan dated 16 May, 2002 “On public procurement” shall be declared to be no longer in force (Bulletin of the Parliament of the Republic of Kazakhstan, 2002, No. 9, Art. 95, 2004, No. 14, Art. 83; No. 17, Art. 101, 2005, No. 6, Art. 7; No. 23, Art. 105, 2006, No. 10, Art. 52; No. 12, Art. 71, 2007, No. 2, Art. 14).

The President of the
Republic of Kazakhstan

N. Nazarbayev