



## **This document has been provided by the International Center for Not-for-Profit Law (ICNL).**

ICNL is the leading source for information on the legal environment for civil society and public participation. Since 1992, ICNL has served as a resource to civil society leaders, government officials, and the donor community in over 90 countries.

Visit ICNL's **Online Library** at  
<http://www.icnl.org/knowledge/library/index.php>  
for further resources and research from countries all over the world.

### Disclaimers

**Content.** The information provided herein is for general informational and educational purposes only. It is not intended and should not be construed to constitute legal advice. The information contained herein may not be applicable in all situations and may not, after the date of its presentation, even reflect the most current authority. Nothing contained herein should be relied or acted upon without the benefit of legal advice based upon the particular facts and circumstances presented, and nothing herein should be construed otherwise.

**Translations.** Translations by ICNL of any materials into other languages are intended solely as a convenience. Translation accuracy is not guaranteed nor implied. If any questions arise related to the accuracy of a translation, please refer to the original language official version of the document. Any discrepancies or differences created in the translation are not binding and have no legal effect for compliance or enforcement purposes.

**Warranty and Limitation of Liability.** Although ICNL uses reasonable efforts to include accurate and up-to-date information herein, ICNL makes no warranties or representations of any kind as to its accuracy, currency or completeness. You agree that access to and use of this document and the content thereof is at your own risk. ICNL disclaims all warranties of any kind, express or implied. Neither ICNL nor any party involved in creating, producing or delivering this document shall be liable for any damages whatsoever arising out of access to, use of or inability to use this document, or any errors or omissions in the content thereof.

# GEORGIAN LAW ON STATE PROCUREMENT

## CHAPTER I. GENERAL PROVISIONS

### Article 1. Scope of Application of Law

1. This Law states the general legislative and economic principles governing State procurement.
2. The regulations determined by the present Law apply to any State procurements except the State procurement related to State secrets as defined by the Georgian Law “on State Secrets”.
3. Regulations for implementation of State procurement connected to State secrets defined in the Georgia Law “on State Secrets” is developed by the National Security Council and approved by the President of Georgia.

### Article 2. Purpose of the Law

1. The purpose of the Law is to:
  - a) provide rational and economical expenditure of financial resources allocated for State procurement;
  - b) develop sound competition between suppliers producing goods, works and services meeting State needs;
  - c) provide just and non-discriminative approach towards participants of procurement proceedings;
  - d) achieve transparency and publicity in the State procurement;
  - e) create a single, integrate procurement system and promote public confidence in the mentioned system.

### Article 2. Definition of Concepts and Terms Used in the Law

1. “State procurement” - acquisition of any goods, works or services in order to meet State needs and by utilizing funds from:
  - a) Georgian State budget and means consolidated in the State budget;

- b) Budgets of the Abkhazian Autonomous Republic and the Adjarian Autonomous Republic;
  - c) Budgets of other Georgian territorial units determined by Georgian legislation.
2. “Procuring organization” – management bodies; management and self-governing bodies; institutions and organizations funded from the corresponding budgets; and other institutions and enterprises for which State and local budgets are allocated for acquisitions of goods, works or services; of Georgia, Abkhazian and Adjarian Autonomous Republic.
  3. “Object of Procurement” – particular types of goods, works, and services purchased by the procuring organization.
  4. “Bidder” - any physical or legal body in Georgia or in foreign countries that passed through the qualification procedure.
  5. “Supplier” - any physical or legal body in Georgia or a foreign country that concluded contract with a procuring organization on implementing State procurement.
  6. For the purpose of the present Law, the term “construction works” means works that are carried out for construction of an entity or its parts, as well as repair, reconstruction, and rehabilitation of the entity (except design related activity).
  7. For the purpose of the present Law, the term “preference” means the acceptable difference between the values of the bid submitted by the national bidder and that of the foreign bidder in which case upon the evaluation by price factor the preference will be given to the national bidder.

#### Article 4. Coordination of State Procurement Related Activity

1. State procurement related activity determined by this law is coordinated by the Georgian Ministry of Economy.
2. The Ministry of Economy within the limits of its competence :
  - a) elaborates and approves the by-laws ensuring the full enactment of the present Law.
  - b) analysis the efficiency of the State procurement system and takes measures for its improvement; periodically informs the President of Georgia on State procurement related issues; in case of necessity prepares proposals and submits them to the Georgian President to take a decision;
  - c) carries out advisory activity concerning State procurement related issues; assists procuring organizations to comply with the norms determined by this Law and the by-laws; arranges seminars and meetings to improve the qualification of the participants of State procurement proceedings and ensures the publicity of the legislation regulating State procurement;
3. The functions, rights and obligations provided by this Law will be exercised by the State Procurement Department established with the Ministry of Economy of

Georgia. The Head of Department is appointed and dismissed by the President of Georgia at the proposal of the Ministry of Economy.

## Article 5. Rights and Obligations of procuring organizations

1. A procuring organization is obliged:
  - a) to carry out State procurement in a rational manner within the limits of the allocated assigned budget allocations and stemming from the country's interests and according to the rules stated by this Law and the by-laws;
  - b) to keep confidential the information provided by bidders to the procuring organization before the contract on state procurement is signed.
  - c) submit to the Georgian Ministry of Economy reports on the realized State procurements according the format and within the terms set forth by the Article 24 of the present Law.
  - d) immediately submit to the Georgian State Department of Statistics statistical reports on the realized State procurements according the format developed and approved by the Georgian State Department of Statistics.
  - e) pay the supplier the cost of works and/or services immediately upon goods, works, and services are delivered, unless otherwise stated in the contract.
  - f) in case if state procurement is canceled according to the Article 5 (2) (c) implement this procurement only by resuming the terminated procedures.
  - g) in the cases provided by the Article 5 (2) (c) notify the Georgian Ministry of Economy and parties participating in the procurement process about its decision and the grounds for such a decision within the 3 (three) days upon the decision is made. Meanwhile, procuring organization is not obliged to provide the participants of the procurement process with the evidence or give the detailed information, that made basis for the above mentioned decision, as well as reimburse the bidders' costs related to the participation in the proceedings, except tender fees.
  
2. A procuring organization has the right:
  - a) to select a supplier according to this Law and bylaws and conclude a contract with the supplier;
  - b) to disqualify a person according this Law;
  - c) to terminate procurement proceedings at any time before a contract is signed if such a decision stems from an objective necessity that is beyond the control of the procuring organization and can not be foreseen , also based on state or public interests;
  - d) to supervise and exercise control over the fulfillment of the contract;
  - e) according to the effective legislation suspend or terminate the realization of the contract if the supplier submits false qualification documents, also in other cases determined by the legislation.

## **CHAPTER II. METHODS OF STATE PROCUREMENT**

### Article 6. Methods of State Procurement

1. Methods of State procurement are as follows:
  - a) open tendering
  - b) closed tendering
  - c) single-source procurement
2. In cases justified by the present Law, open and close tenders can be carried put in two stages.
3. Principles for the use of procurement methods are determined by the present Law and by-laws adopted by the Georgian Ministry of Economy;

## **CHAPTER III. TENDER**

### Article 7. Basic Principles Governing the Choice of Type of Tender

1. Open tender is held in cases when the estimated value of the subject to procurement exceeds the amount of ECU 30.000 equivalent in national currency, while in the case of procurements of construction works – ECU 100.000 equivalent in national currency.
2. Closed tender is held in the cases when the estimated value of the subject to procurement is less then the amount of ECU 30.000 equivalent (while in the case of procurements of construction works – ECU 100.000 equivalent) in national currency, but exceeds the amount of ECU 10.000 equivalent (while in the case of procurements of construction works – ECU 50.000 equivalent) in national currency.

### Article 8. Grounds for Establishing and Functioning of Tender Committee

1. Both, open and closed tenders are held by Tender Committee which is established by the Head of the procuring organization and consists of at least 5 members;
2. Head of procuring organizations and/or deputies, as well as heads of structural sub-divisions of procuring organizations are appointed as members of Tender Committee;
3. It is prohibited for a close relative of the head of bidder (physical or legal body); a founder or member of bidding organization that has a status of legal body and exists as a Fund or a Union; or has a share in the bidder enterprise equity; to be a member of the Tender Committee;

4. Pursuant to the decision of the Tender Committee, specialists from corresponding fields and representatives of other treasury organizations can be invited to the Tender Committee as experts and consultants, with voting right;
5. The Tender Committee will be chaired by the head of the procuring organization or the person appointed by him (her);
6. Pursuant to the order of the Head of the procuring organization with the purpose of proving organizational-technical activities of the Tender Committee, there will be established apparatus, manned by the staff members of the procuring organization and headed by the Chairman of the Tender Committee;
7. The Tender Committee takes decisions by the simple majority of the Committee members. The member of the Committee, that disagrees with the decision of the Committee has right to submit his own view-point, that should be attached to the decision of the Tender Committee. In the case of equal votes, the Chairman has the casting vote;
8. The minutes of meetings of the Tender Committee shall be signed by the members of the Committee.

## Article 9 Tender announcement

1. In an open tender the Tender Committee on the behalf of a procuring organization:
  - (a) shall make an announcement about the tender via the Mass Media, defined in the by-laws;
  - (b) when the estimated value of the State procurement exceeds the amount of ECU 300.000 equivalent in national currency, while in the case of the construction work procurement – ECU 4.000.000 equivalent in national currency notification shall be also placed in an wide-spread international periodical or specialized printing organ, on one of the languages most accepted in the international trade practices. The notification shall also be sent to the foreign diplomatic and consular institutions based in Georgia;
  - (c) if necessary shall define additional means, other than the ones defined in the sub-unit (a) and sub-unit (b) of the Unit, for tender announcement
2. In the case of closed tender the procuring organization sends to the bidders selected in advance subject to this Law (no less than five bidders) an official notification of holding the tender.
3. In the tender announcement there should be indicated:
  - (a) contact details of the procuring organization;
  - (b) the type, quality and quantity, the point and form of supply of the procured goods; the essence and the place of implementation of the work or service to be implemented; all other details, that the procuring organisation considers necessary as connected with the description of the objects to be procured;
  - (c) the desire to supply of the goods, to implement the work, to render the service to be procured, and the obligatory terms;
  - (d) criteria and rule for estimation of qualification data;
  - (e) the terms, place and language for submission of the qualification data;

- (f) request for the documentation proving the qualification data;
  - (g) the rules, terms, place and language for submission of tender documents, also payment rate for acceptance of tender documents.
4. The Tender Committee approves the tender announcement.
  5. The Tender Committee publishes and, correspondingly distributes tender announcements no later, than 15 calendar days before the collection of the qualification data starts. In the case of closed tender the Tender Committee should select the mean of distribution of tender announcement, that will enable the selected persons to receive the announcement in the shortest possible term.
  6. The Tender Committee might amend the information mentioned in the announcement, notice of which shall be made through mass media, the same way the announcement had been published, and in the case of closed tender the notice should be distributed to all the persons, whom the Committee addressed initially.
  7. Amendment of the announcement and the publication (distribution) of these amendments should occur no later, than 5 calendar days before end of the submission term.

#### Article 10. Qualification data

1. The qualification data of the legal entities bidding for State procurements should meet the following requirements:
  - (a) their property should not be arrested; no bankruptcy or sanation proceedings should be commenced against them, they should not be under re-organisation or liquidation process;
  - (b) within the last 5 years period their heads should not had been sentenced or no criminal proceedings, connected with their duties at job, should be instituted against them by the moment the State procurements start.
2. The qualification data of the physical person bidding for State procurements should meet the following requirements:
  - (a) they should be capable of functioning;
  - (b) no bankruptcy proceedings should be commenced against them;
  - (c) within the last 5 years period their heads should not had been sentenced for economic activities or activities connected with their duties at job, or no criminal proceedings should be instituted against them by the moment the State procurements start;
3. In case if supply of goods, implementation of works or rendering of service subject to the legislation requires license, certificate or other types of permission, the bidder for the State procurements should have such license, certificate or permission.
4. In case if the documentation submitted by person as proof for the qualification data is not valid or it does not meet the qualification requirements, the procuring organization can disqualify the person at any stage of procurement procedure, before entering the agreement on State procurement.

5. The disqualified person can sue the decision on disqualification;
6. In case if the documentation reflecting the qualification data is not correct or complete, or if it contains any technical mistake the procuring organization gives the bidder opportunity to correct the mistake or inconsistency, or to fill in the documentation with the necessary information. The process of correction or filling of the qualification documentation should be fulfilled before the end of the qualification selection.
7. The detailed rule for estimation of qualification data is defined by by-law.

### Article 11. Qualification selection

1. The purpose of the qualification selection is to define the list of bidders, by comparing the submitted data with the qualification data.
2. The qualification selection should be ended no later, than in 10 days after the procedure for the submission of qualification data stops.
3. The results of the qualification selection shall be registered under the decision of the Tender Committee and it will reflect the reasons and basis for disqualification of corresponding person(s) and approves the list of bidders.
4. All the persons, that had submitted their qualification data on due time shall be informed about the decision of the Tender Committee on the qualification selection. In the case of disqualification they will also be informed about the basis for disqualification. The Tender Committee should choose the most efficient and quick way of delivery of the information.

### Article 12. Tender documentation

1. The Tender Committee approves the tender documentation before publication (distribution) of the tender announcement.
2. After payment of the fees defined in this Article 19 of the Law, if there is such, the Tender Committee is obliged to issue tender documentation upon the request from the bidder.
3. The tender documentation should include:
  - (a) instructions for development of the bidders tender proposals;
  - (b) prioritized the procedures and criteria for estimation of the bidders' proposals;
  - (c) the quantity of the goods to be procured, obligatory or desirable terms and place for supply of goods, implementation of work and rendering of service, and other details, that the procurement organization will consider important in connection with the object to be procured;
  - (d) full description of the technical and qualitative data of the object to be procured, including relevant technical specifications, plans, schemes and sketches, also the reasonable alternative technical and qualitative



- specifications to the object of procurement, if permitted by the procuring organization;
- (e) the necessary conditions for the agreement on State procurements, that are known to the procuring organizations in advance, including the instructions for the form of the agreement;
  - (f) the methodology for calculation of the price of tender proposal, also the information whether the price should include other elements, besides the goods, work or service (e.g. transportation, insurance, taxes, etc);
  - (g) instructions for the currency, that the amount for the tender proposal should be stated in;
  - (h) the term, place and language for submission of the tender proposal;
  - (i) description of the means and procedures for requirement of additional information or explanation, connected with the tender documentation by the bidder. While in case of two-stage tender – also the opportunity to hold direct negotiations with the bidders;
  - (j) the names and contact details of the officers of the Tender Committee apparatus, that are entitled to have direct contact with the bidders and provide them with the information and explanations on the procurement procedures;
4. The textual materials, specifications, plans, schemes, sketches and other materials used for the technical and qualitative parameters of the object to be procured should correspond to the current standards of international and Georgian standards, technical specifications, terminology and conventional definitions. It is forbidden to include the trademark, patent, model, source and producer in the description of goods to be procured.
  5. The Tender Committee, pursuant to the written request of bidder, or at its own discretion, shall explain or verify the information connected with the tender documentation, which shall be attached to the tender documentation in the form of appendices and shall be distributed to all the bidders 15 calendar days before the end of submission of tender proposals. The appendices or verification should not change the essence of the tender documentation.

### Article 13 Preferences

In the case of participation of both local and foreign bidders 15 % preference is granted in respect of the tender proposal price, which should be submitted by the local bidder.

### Article 14 Agreement on Intention

1. The procuring organization, prior to review of tender proposals enters agreement on intention with each bidder. Under the agreement:
  - (a) in case of winning the tender the bidder undertakes the obligation to enter agreement with the procuring organization on goods supply or, correspondingly implementation of work, or rendering services;
  - (b) except for the case envisaged in Article 5.2.(c) of the Law or the event of disqualification, the procuring organization undertakes obligation to enter agreement with the bidder on goods supply or, correspondingly

implementation of work, or rendering services in case of winning the tender by the latter, on the terms defined in the tender proposal;

2. Agreement on intention shall include term of the agreement on State procurement, the term of validity of the bidders tender proposals, also the responsibilities of parties in the event of default on the liabilities assumed under the agreement on intention.
3. The rules for definition of the forms of responsibility for breaching the form and conditions of the agreement on intention are defined by by-laws.

#### Article 15. The procedure for submission and review of tender proposals

1. Tender proposals are submitted to the Tender Committee in sealed envelopes and the envelopes are opened at a Tender Committee meeting upon the expiration of their submission period and in the presence of the bidders. After opening the envelopes the committee determines the deadline for the reviewing of received proposals and taking a final decision.
2. Before the disclosure of the tender proposals bidders have right to withdraw or change the tender proposal any time;
3. The Tender Committee only reviews the proposals of the bidders, which entered the agreement, envisaged by the Article 14 of the Law with the procuring organization.
4. Tender proposals are assessed in accordance with the criteria and priorities defined in the tender documentation. In case if the tender proposal submitted by bidder is not consistent with the requirements of tender documentation, the Tender Committee, at its own discretion, takes decision on disqualification.
5. The Tender Committee does not disqualify tender proposal, in case it includes inconsistencies, that do not materially change or contradict the essence of the requirements stated in the tender documentation or correction of which does not affect the essence of the tender documentation.
6. In the case defined in unit 5 of this Article the Tender Committee addresses the corresponding bidder with the request to verify the tender proposal.
7. Tender winner is determined on the basis of written conclusions submitted by Tender Committee members, in accordance with the estimation criteria and prioritization stated in the tender documentation.
8. The conclusion of Tender Committee member there should indicate the name of the preferred bidder, and also the basis and arguments for such preference.
9. The absolute majority of conclusions of Tender Committee members decide winner. In the case of equal votes the chairman of Tender Committee has the casting vote.

10. The decision of Tender Committee, stated in unit 7 of the Article is registered in minutes, with the conclusions of Committee members attached to it. Minutes should include information on the persons participating in the review of tender proposals, on bidders and also summary of the submitted proposals.
11. Bidder can sue for any issues connected with the tender procedures.

#### Article 16. Signing a Letter of Agreement with the winner

1. Subject to the current law and on the basis of the agreement defined in the Article 14 of the law, as well as tender proposal conditions of the winner, agreement on State procurement is made between procuring organization and the winner.
2. The conditions of agreement are defined by by-laws.
3. In the case of procurement of construction works no less, than 70 % of the engineering-technical personnel and workers involved in implementation of the work should be citizens of Georgia.
4. In the case of disqualification of the winner, or in case, if the winner refuses to enter the agreement the Tender Commission addresses other bidders for participation in the renewed review process of tender proposals, and if necessary, on prolongation of the term of the agreement on intention. In case, if non-of the bidders express desire to participate in the renewed review process new tender is held.

#### Article 17. Re-announcement of tender

1. In case if no winner was declare pursuant to tender process and renewed review-assessment of tender proposals, or despite tender announcement no tender proposals had been submitted or non of the submitted proposals was consistent with the conditions of Tender documentation, than Tender Committee elaborates new tender documentation and announces new tender.
2. Subject to the unit 1 of the Article the procuring organization can change the tender Committee, or appoint new members.

#### Article 18. Prohibition of negotiations with the bidders during the tender process

Tender Committee is not entitled to negotiate with the persons desiring to take part in tender and bidders, except of the event of two-stage tender.

#### Article 19. Tender fee

1. The following rates are set for tender fee in the case of State procurement from the State budget resources of Georgia:
  - (a) in the case of open tender – ECU 200 equivalent in national currency.
  - (b) in the case of closed tender – ECU 50 equivalent in national currency.

2. In the case of State procurement from Abkhazian, Adjarian or local budget resources subject to the Law there can be set local tender fee, which should not exceed the amount defined in the unit 1 of the Article.

#### Article 20. Candidate selection during closed tender

1. In the case defined in the Article 7.2 of the Law tender announcement will be sent to the selected persons;
2. In the case of closed tender the number of the tender proposals to be reviewed should not be less, than three.
3. Besides the rules defined in the unit 1 and the unit 2 of the Article other rules determined for open tender are also used for closed tender.

#### Article 21. Two-stage tender

1. Two-stage tender is held if:
  - (a) given the peculiarity of the object to be procured, it is impossible to determine all the technical and economic conditions of the object in advance and the procuring organization considers it necessary to hold negotiation with bidders at the first tender stage, in order to determine technical, economic and other aspects;
  - (b) the object of State procurement is consultancy, scientific research, experimental, investigative or consultation-projecting works, and it is impossible to determine their results and price in advance;
2. At the first stage of two-stage tender the bidders shall submit their free Initial tender proposals, (“**initial tender proposal**”);
3. At the first stage Tender Committee can hold direct negotiations with bidders, with the purpose to verify any issues of the initial tender proposal, as well as define the final parameters for tender documentation;
4. Pursuant to review of the initial tender proposal the Tender Committee determines the final version of tender documentation, that shall be distributed among all the bidders in case of payment of tender fee.
5. Besides the rules defined in the units 2,3 and 4 of the Article, the rules for one-state tender are also applicable to the two-stage tender.

### **CHAPTER IV. THE METHOD OF HOLDING NEGOTIATION WITH ONE BIDDER**

Article 22. The method of direct negotiation with a single person

1. The procuring organization may chose to use the method of holding direct negotiations on State procurement with a single person, in case:
  - (a) the assumed price of the State procurement object does not exceed ECU 10.000 (while in the case of construction works – ECU 50.000) equivalent in national currency of Georgia;
  - (b) supply or implementation of the State procurement object is the exclusive right of a single person;
  - (c) as a result of Force Majeure the State procurement can not be postponed;
  - (d) it is necessary to implement State procurement from the same supplier with the purpose of further application and prevention of deterioration of qualitative feature of goods, technology or equipment received from the supplier, except for the case when the initial supply cost exceeds the assumed amount of the State procurement to be implemented;
2. In the case of application of the method of holding direct negotiations on State procurements the head of the procuring organization or the authorized person appointed by him (her) subject to legislation.
3. The person, that has been approached in the case of application of the method of holding direct negotiations should be meeting all the qualification data defined in the Article 10 of the Law.
4. The procedure for the method of holding direct negotiations with a single perons is defined by Georgia Legislation.

## **CHAPTER V. REVIEW OF THE CONDITIONS OF AGREEMENT ON IMPLEMENTATION OF STATE PROCUREMENT**

### Article 23. Review of the conditions of agreement on Implementation of State procurement

1. It is not permitted to change the conditions of the agreement entered with the supplier if it causes increase in the price of the agreement and adversely affects the conditions of the agreement referring to the procuring organization, except for the case envisaged by the Article 398 of the Civil Code;
2. The procedures and rules for review of the conditions of agreement on implementation of State procurements are defined by the Georgian Legislation.

## **CHAPTER VI. CONTROL OF STATE PROCUREMENTS**

### Article 24. State procurement account

1. The State procurement process is reflected in the State procurement account and the rule for its elaboration and keeping is defined by the by-law, adopted by the Ministry of Economy.
2. After tender is held minutes of Tender Committee meeting, decisions taken, conclusions of the experts and consultants participating in the tender, also other documents defined in the by-law referred to in the unit 1 of the Article should be attached to the account.
3. The State procurement accounts shall be submitted to the Ministry of Economy of Georgia within the following terms:
  - (a) in the case of tender no later, than 10 days after agreement is executed;
  - (b) in the case of holding negotiations with a single person, if the amount of State procurements exceed ECU 10.000 equivalent in the national currency-no later, than 10 days after agreement is executed;
  - (c) in the case the amount of State procurements is less. than ECU 10.000 equivalent in the national currency- on quarterly basis, no later, than the 10th day of the first month of the following quarter;
4. All the interested persons shall have access to the State procurement accounts if requested, and their summary should be made public on regular basis through the State procurement bulletins, founded by the Ministry of Economy of Georgia.

## **CHAPTER VII. TRANSITIONAL PROVISIONS**

Article 25. Procurement rule for goods until January 1, 2000, subject to the Presidential Ordinance #317, dated June 20 1997.

The Law is not applicable to the goods envisaged by the Ordinance of the President of Georgia “ on Certain Urgent Measures for the Optimal Use of Budgetary Appropriations for the Country’s Law Enforcement Bodies and Some Urgent Measures Fostering the Operation of Local Enterprises at a Maximum Capacity” dated June 20, 1997.

