

## **On Public Procurement**

*Unofficial translation*

Law of the Republic of Kazakhstan dated December 4, 2015 No. 434-V.

*Unofficial translation*

### **Chapter 1. GENERAL PROVISIONS**

#### **Article 1. The scope of this Law**

This Law shall apply to the relations related to purchase of goods, works, services necessary for functioning, as well as performing state functions or statutory activities of the customer, except for:

- 1) services purchased from individuals under employment contracts;
- 2) services purchased from individuals who are not entrepreneurial entities, under contracts of paid services;
- 3) services related to implementation of traveling expenses;
- 4) state task and goods, works, services purchased in the framework of its implementation in accordance with the budget legislation of the Republic of Kazakhstan;
- 5) making contributions (deposits), including to the authorized capital of legal entities;
- 6) goods, works, services purchased by national management holdings, national holdings, national management companies, national companies and legal entities affiliated with them, the National Bank of the Republic of Kazakhstan, its departments, organizations within the structure of the National Bank of the Republic of Kazakhstan, and legal entities, which fifty or more percent of the voting shares (stakes in the authorized capital) belong to the National Bank of the Republic of Kazakhstan or are in its trust management, and their affiliated legal entities;
- 7) military goods (products), dual-use (application) goods (products), military works and military services that are part of the state defense order;
- 8) goods, works, services purchased by an organization specializing in improving the quality of credit portfolios of second-tier banks for carrying out types of activity provided for in paragraph 2 of Article 5-1 of the Law of the Republic of Kazakhstan "On Banks and Banking Activity in the Republic of Kazakhstan";
- 9) goods, works, services purchased in the framework of realization of investment projects financed by international organizations of which the Republic of Kazakhstan is a member. Acquisition of goods, works and services within the framework of realization of investment projects, fully or partially financed by other foreign banks, shall be carried out according to the rules of these banks, in compliance with the following conditions:

the foreign bank has a long-term credit rating in foreign currency not lower than "A-" of Standard & Poor's agency or a rating of a similar level of one of the other rating agencies;

more than fifty percent of financing shall be carried out by foreign banks;

realization of the investment project shall be carried out by state enterprises, legal entities, which fifty percent or more of the voting shares (stakes in the authorized capital) belong to the state, and legal entities affiliated with them;

realization of the investment project does not require a state guarantee and does not involve encumbrance of the borrower's property.

Footnote. Article 1 as amended by the Laws of the Republic of Kazakhstan dated 27.02.2017 No. 49-VI (shall be enforced upon expiry of ten calendar days after its first official publication); dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2009); № 237-VI as of 18.03.2019 (shall be enforced twenty-one calendar days after its first official publication).

## **Article 2. Basic definitions used in this Law**

The following basic definitions shall be used in this Law:

1) unreliable information – false information contained in the application of a potential supplier for participation in the tender (auction), as well as made by corrections that distort the actual content and do not correspond to the reality of the application submitted by the potential supplier;

1-1) auction step – a monetary interval for which the price of the auction is reduced;

2) a potential supplier – an individual carrying out entrepreneurial activity, a legal entity (except for state institutions, unless otherwise established for them by the laws of the Republic of Kazakhstan), a temporary association of legal entities (consortium), claiming for conclusion of a contract on public procurement. An individual who is not a subject of entrepreneurial activity may be a potential supplier in the case of acquisition of a dwelling by the customers belonging to such an individual on the right of private ownership;

3) an affiliated entity of a potential supplier – any individual or legal entity who has the right to make decisions and (or) influence on the decisions made by this potential supplier, including by virtue of transaction made in written form, as well as any individual or legal entity in respect of which this potential supplier has such a right;

4) starting price – the price offered by a potential supplier before the auction, attached to the application for participation in the auction;

4-1) qualifying body – a legal entity pre-qualifying potential suppliers and forming a list of qualified potential suppliers, which is determined by the authorized body;

5) homogeneous goods, works, services – goods, works, services that are not identical, have similar characteristics and consist of similar components, which allows them to perform the same functions;

6) affiliated entities of state enterprises, legal entities, which fifty or more percent of voting shares (stakes in the authorized capital) belong to the state - legal entities which fifty or more percent of voting shares (stakes in the authorized capital) directly or indirectly belong to state enterprises, legal entities, fifty or more percent of voting shares (stakes in the authorized capital) of which belong to 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;

7) is excluded by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019);

8) works – an activity having real results, as well as other activity referred to the works in accordance with the laws of the Republic of Kazakhstan;

9) competitive price offer – the price offered by a potential supplier for participation in public procurement by the tender method attached to the application for participation in the tender;

10) tender commission (auction commission) – a collegial body established by the organizer of public procurement for implementation of the procedure of public procurement by the way of tender (auction) provided for by this Law. Tender commission (auction commission) must consist of an odd number, but not less than three people;

11) tender documentation (auction documentation) – documentation submitted to a potential supplier for the preparation of an application for participation in the tender (auction), which contains the requirements for the application for participation in the tender (auction), the conditions and procedure for public procurement by the way of tender (auction);

12) services – activity aimed at meeting the needs of the customer, which does not have a tangible result;

13) residents of the Republic of Kazakhstan – citizens of the Republic of Kazakhstan, including temporarily being abroad or in public service abroad, with the exception of citizens who have a document on the right of permanent residence in a foreign country, issued in accordance with the legislation of that state;

foreigners and stateless persons having a document on the right of permanent residence in the Republic of Kazakhstan;

legal entities established in accordance with the legislation of the Republic of Kazakhstan, with location on its territory, as well as their branches and representative offices with location in the Republic of Kazakhstan and abroad;

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

14) public procurement – purchase by the customers of goods, works, services fully or partly at the expense of budget funds and (or) own incomes, except for the incomes related to rendering services by non-residents of the Republic of Kazakhstan;

15) web portal of public procurement – information system of state body, providing a single point of access to electronic public procurement services;

16) a single organizer of public procurement – a legal entity determined by the Government of the Republic of Kazakhstan, akimat of the region, the city of republican significance and the capital city or akimat of the district, city, district in the city, carrying out implementation of procedures for organization and conduct of centralized public procurement;

16-1) regulation of public procurement – establishment of requirements for the purchased goods, works, services, including natural norms developed and approved in accordance with the budget legislation of the Republic of Kazakhstan;

17) identification code of public procurement – identification number assigned to each public procurement (lot), which contains information of all stages of public procurement;

18) the procedure of organization and conduct of public procurement – a set of interrelated, consistent activities carried out by the organizer of public procurement, the relevant commission in accordance with this Law, in order to conclude a contract with a potential supplier of public procurement;

19) subjects of the public procurement system – a potential supplier, a supplier, a customer, an organizer of public procurement, a single organizer of public procurement, a single operator in the sphere of public procurement, an authorized body, an expert;

20) a single operator in the sphere of public procurement – a legal entity determined by the authorized body in the sphere of public procurement, which sole owner of the shares (stakes in the authorized capital) is the state;

21) an authorized body in the sphere of public procurement (hereinafter – an authorized body) – the state body carrying out management in the sphere of public procurement;

22) contract on public procurement – a civil-legal contract concluded through the web portal of public procurement between a customer and a supplier, certified by electronic digital signatures, except for the cases provided for by this Law;

23) instruction – an obligatory for execution act of an authorized body, sent to the objects of control to eliminate violations of the legislation of the Republic of Kazakhstan on public procurement and (or) the causes and conditions contributing them, as well as taking measures of responsibility, provided by the laws of the Republic of Kazakhstan, to the persons who committed these violations;

24) a supplier – an individual carrying out entrepreneurial activity, a legal entity (except for state institutions, unless otherwise provided by the laws of the Republic of Kazakhstan), a temporary association of legal entities (consortium) acting as a counterparty of

the customer in the contract concluded with him on public procurement. An individual who is not a subject of entrepreneurial activity may be a supplier in the case of acquisition by the customers of a dwelling belonging to such an individual on the right of private ownership;

25) expert commission – a collegial body created by the organizer of public procurement or the customer with involvement of experts to participate in the development of technical tasks and (or) technical specifications of purchased goods, works, services and (or) preparation of an expert conclusion on the compliance of proposals of potential suppliers of technical specifications of purchased goods, works, services;

26) expert – an individual having special and (or) technical knowledge, experience and qualification in the field of the conducted public procurement confirmed by the relevant documents (diplomas, certificates, licenses and other documents) attracted by the organizer of public procurement or the customer for participation in development of technical task and (or) technical specification of purchased goods, works, services and (or) preparation of an expert conclusion on the compliance of proposals of potential suppliers of technical specification of purchased goods, works, services;

27) customers – state bodies, state institutions, as well as state enterprises, legal entities, which fifty or more percent of voting shares (stakes in the authorized capital) belong to the state, and legal entities affiliated with them, except for:

national management holdings, national holdings, national management companies, national companies and legal entities affiliated with them;

The National Bank of the Republic of Kazakhstan, its branches, organizations included in the structure of the National Bank of the Republic of Kazakhstan, and

legal entities, which fifty percent or more of the voting shares (stakes in the authorized capital) belong to the National Bank of the Republic of Kazakhstan or are in its trust management, and legal entities affiliated with them;

state enterprises as property complexes, legal entities, which fifty or more percent of voting shares (stakes in the authorized capital) belong to the state, and legal entities affiliated with them transferred to the trust management of individuals or non-state legal entities with the right of subsequent redemption;

28) goods – objects (things), including semi-finished products or raw materials in solid, liquid or gaseous state, electric and thermal energy, objects of intellectual property rights, as well as real rights with which it is possible to make purchase and sale transactions in accordance with the laws of the Republic of Kazakhstan;

29) the database of prices for goods, works, services – information subsystem which is a part of the web portal of public procurement containing data on the developed minimum, average and maximum prices of goods, works, services following the results of public procurement;

30) a reference book of goods, works, services (further – a reference book) – the systematized list of codes of goods, works, services determined by an authorized body used for implementation of public procurement;

31) national regime – a regime providing for admission of goods, works, services of foreign origin and potential suppliers offering such goods, works, services to participate in public procurement on equal terms with goods, works, services of domestic origin and potential suppliers offering such goods, works, services, if the requirement for such a regime is established by international treaties ratified by the Republic of Kazakhstan.;

32) conditional price - the price calculated taking into account the application to the competitive price offer of the bidder of the relative value of the criteria provided in the tender documentation, and used exclusively in evaluating and comparing the tender price offers to determine the winner of the tender.

33) digital wallet - a personal account of a potential supplier, placed in the bank account of the single operator in the field of public procurement, for settlement operations related to securing applications for participation in a tender, auction and quote request.

Footnote. Article 2 as amended by the Laws of the Republic of Kazakhstan dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after its first official publication); № 202-VI as of 26.12.2018 (the enforcement procedure is in Art. 6).

### **Article 3. 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 norms 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 establishes rules other than those provided for by this Law, the rules of the international treaty shall be applied.

#### **Article 4. Principles of public procurement**

Public procurement shall be based on the principles of:

- 1) optimal and efficient spending of 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 for by this Law;
- 3) fair competition among potential suppliers;
- 4) openness and transparency of public procurement process;
- 5) providing support to domestic producers of goods, as well as domestic suppliers of works and services to the extent that it is not contrary to international treaties ratified by the Republic of Kazakhstan;
- 6) responsibility of participants of public procurement;
- 7) prevention of corruption;
- 8) purchase of innovative and high-tech goods, works and services;
- 9) observance of rights to the objects of intellectual property contained in the purchased goods.

Footnote. Article 4 as amended by the Law of the Republic of Kazakhstan dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after its first official publication).

#### **Article 5. Public procurement process**

1. The public procurement process includes:

- 1) the development and approval of the annual public procurement plan (preliminary annual public procurement plan);
- 2) the selection of a supplier and entering into a public procurement contract with him/her/it;
- 3) the execution of the public procurement contract.

2. Based on the relevant budget (development plan) or individual financing plan, the customer develops and approves the annual public procurement plan in the manner and form determined by the public procurement rules.

On the basis of a positive proposal from a relevant budget commission, the customer has the right to develop and approve a preliminary annual public procurement plan prior to the approval (adjustment) of the relevant budget.

Customers that are state-owned enterprises, legal entities, more than fifty percent of the voting shares (participatory interests in the authorized capital) of which belong to the state, have the right to develop and approve a preliminary annual public procurement plan prior to the approval of the development plan or individual financing plan.

In the above cases, a preliminary annual public procurement plan is developed and approved separately both at pre-approval and pre-adjustment stages of the relevant budget (development plan) or individual financing plan.

The preliminary annual public procurement plan is valid until the approval (adjustment) of the annual public procurement plan.

Information on public procurement, provided for in the preliminary annual public procurement plan, is transferred to the annual public procurement plan.

The annual public procurement plan is approved (adjusted) by the customer within ten working days of approval (adjustment) of the relevant budget (development plan) or individual financing plan.

The annual public procurement plan (preliminary annual public procurement plan) shall contain the following information:

- 1) the identification code of public procurement;
- 2) the nomenclature of goods, works, services according to the reference book, including amounts allocated for public procurement, ex. VAT;
- 3) the method and timing of public procurement;
- 4) the planned dates and place of supply of goods, performance of works, provision of services;
- 5) the planned terms for the supply of goods, the performance of works, the provision of services in accordance with the schedule and with a breakdown by year within the amounts allocated and provided for each financial year in the cases specified in Article 43 of this Law;
- 6) the conditions for carrying out public procurement in accordance with Article 51 of this Law.

The information on public procurement specified in subparagraphs 1), 2), 3), 4), 5) and 6) of part eight of this paragraph, in the cases provided for by subparagraph 2-1) of part two of paragraph 2 of Article 79 of the Budget Code of the Republic of Kazakhstan, shall be approved by the customer in the annual public procurement plan.



The annual public procurement plan shall be approved by the customer within ten working days of execution of paragraph 7 of Article 153 of the Budget Code of the Republic of Kazakhstan.

When planning and implementing public procurement, customers shall be guided by the priority of acquiring innovative and high-tech goods, works, and services.

3. When drawing up an annual public procurement plan (preliminary annual public procurement plan), the customer is obliged to divide goods, works, services into lots according to their homogeneous types and the place of their supply (performance, provision), except for:

1) the purchase of works, services providing for a complex of interrelated works, services;

2) the purchase of goods, works, services according to the list approved by the authorized body.

If there are at least five places for the supply of goods, the provision of services, it is allowed to indicate several places for the supply of goods, the provision of services in a lot.

4. It is not allowed to approve (adjust) the annual public procurement plan in an amount out of tune with the budget (development plan) or the individual financing plan in aggregate according to the specifics of the economic classification (expense items), which require the conclusion of public procurement contracts.

5. When carrying out public procurement of works with available design and estimate documentation, customers are obliged, in the annual public procurement plan (preliminary annual public procurement plan),:

1) to indicate the prepayment (advance payment) worth thirty percent of the amount allocated for public procurement, ex. VAT;

2) to post design and estimate documentation examined in accordance with the legislation of the Republic of Kazakhstan on the public procurement website.

6. The customer, within five working days of approval of the annual public procurement plan (preliminary annual public procurement plan), is obliged to post it on the public procurement website, except for information constituting state secrets in accordance with the legislation of the Republic of Kazakhstan on state secrets and (or) classified information determined by the Government of the Republic of Kazakhstan.

7. Customers have the right to make amendments and (or) additions to the annual public procurement plan no more than twice a month.

The requirement of part one of this clause does not apply in the cases below:

1) the implementation of public procurement by state enterprises, legal entities, more than fifty percent of voting shares (participatory interests in the authorized capital) of which belong to the state, and legal entities affiliated with them;

2) the execution of orders, notifications on the elimination of violations identified as a result of control measures, including the results of in-house audit;

3) the distribution of distributed budget programs, as well as when specifying and adjusting the budget;

4) adoption of the decision provided for by subparagraph 1) of part one of paragraph 2 of Article 22 of this Law;

5) the purchase of goods, services related to representation expenses;

6) the purchase of goods, works, services due to savings resulting from public procurement.

The customer, within five working days of the decision on amendments and (or) additions to the annual public procurement plan (preliminary annual public procurement plan), is obliged to post the amendments and (or) additions made on the public procurement website, except for the information constituting state secrets in accordance with the legislation of the Republic of Kazakhstan on state secrets and (or) containing classified information determined by the Government of the Republic of Kazakhstan.

8. Information on public procurement carried out in accordance with subparagraphs 4), 9), 31), 32) and 35) of paragraph 3 of Article 39 of this Law shall not be included in the annual public procurement plan (preliminary annual public procurement plan).

9. The decision to carry out public procurement is made by the customer on the basis of the approved or adjusted annual public procurement plan (preliminary annual public procurement plan).

Customers have the right to make a decision to carry out public procurement prior to the approval of the corresponding budget in the case of public procurement by tender using two-stage procedures.

10. It is not allowed to purchase goods, works, services that are not provided for by the approved (adjusted) annual public procurement plan (preliminary annual public procurement plan), except for the purchase of goods, works, services in accordance with subparagraphs 4), 9), 31), 32) and 35) of paragraph 3 of Article 39 of this Law.

11. A supplier of goods, works, services is selected in the manner prescribed by this Law, except for the cases specified in paragraph 3 of Article 39 of this Law.

12. When carrying out public procurement by tender by the single operator in the field of public procurement, it is necessary to ensure confidentiality of price bids of potential suppliers until the results of public procurement are summed up.

13. The customer, prior to entering into a public procurement contract, has the right to refuse to carry out public procurement in case of:

1) reduction of expenses for the purchase of goods, works, services provided for in the approved (adjusted) annual public procurement plan (preliminary annual public procurement plan), which occurred as a result of adjusting (revising) the relevant budget, draft budget, in accordance with the legislation of the Republic of Kazakhstan;

2) amendments and additions to the strategic plan of a state body, budget (development plan) or individual financing plan of the customer, which exclude the need to purchase goods, works, services provided for in the approved (adjusted) annual public procurement plan (preliminary annual public procurement plan), in accordance with the legislation of the Republic of Kazakhstan.

In the case specified in subparagraph 2) of part one of this paragraph, it is not allowed to make amendments and additions to the annual public procurement plan (preliminary annual public procurement plan) aimed at the purchase of such goods, works, services in the current year.

14. The customer or the organizer of public procurement, within five working days of the decision specified in paragraph 13 of this article, is obliged to notify the persons participating in the ongoing public procurement of the decision taken.

The single operator in the field of public procurement, from the moment of posting an announcement of the adoption of the decision, specified in paragraph 13 of this article, on the public procurement website, in the manner prescribed by the public procurement rules, unlocks the security of the application for participation in the tender (auction) and quote request in the form of money in the digital wallet of a potential supplier.

Footnote. Article 5 is as amended by Law № 202-VI of the Republic of Kazakhstan as of 26.12.2018 (the enforcement procedure is in Art. 6).

## **Article 6. Restrictions related to participation in public procurement**

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

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

2) a potential supplier and (or) his (her) employee, and (or) his affiliated person, provided the customer or the organizer of public procurement with expert, consulting and (or) other services in the preparation of the conducting public procurement, participated as a general designer or sub-designer in the development of feasibility study and (or) project (design and estimate) documentation for the construction of the facility, which is the subject of the conducting public procurement, except for participation of the developer of feasibility study in public procurement for the development of project (design and estimate) documentation.

This requirement does not apply to the projects implemented in accordance with international construction standards;

3) the head of a potential supplier applying for participation in public procurement has relation with the management, institution, participation in the authorized capital of legal entities that are in the register of unfair participants of public procurement;

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

5) a potential supplier who is an individual engaged in entrepreneurial activity, applying for participation in public procurement, is the head of a potential supplier who is included in the register of unfair participants of public procurement;

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

7) a property of a potential supplier and (or) a subcontractor (co-executor) attracted by him, the book value of which exceeds ten percent of the value of the respective fixed assets, is seized;

8) a potential supplier and (or) subcontractor (co-executor) attracted by him have unfulfilled obligations under the executive documents and are included by the authorized body implementing state policy and state regulation of activity in the sphere of enforcement of executive documents into the Unified register of debtors.

This requirement does not apply to potential suppliers and suppliers determined in the cases provided for in subparagraphs 1), 2), 11), 27) and 36) of paragraph 3 of Article 39 of this Law;

9) the activity of a potential supplier and (or) a subcontractor (co-executor) attracted by him is suspended in accordance with the legislation of the Republic of Kazakhstan or the legislation of the state of the potential non-resident supplier of the Republic of Kazakhstan;

10) a potential supplier and (or) a subcontractor attracted by him (co-executor), and (or) their head, founders (shareholders) are included in the list of organizations and individuals involved in financing of terrorism and extremism, in the manner established by the legislation of the Republic of Kazakhstan;

11) a potential supplier is a legal entity whose place of registration is a state or territory included in the list of countries with preferential taxation (offshore zones) approved by the authorized body that manages the provision of taxes and payments to the budget.

1-1. The restrictions specified in subparagraphs 3), 4), 5) and 6) of paragraph 1 of this article also apply to potential suppliers entered in the register of unscrupulous procurement participants provided for by the legislation of the Republic of Kazakhstan on state property, and (or) the list of unreliable potential suppliers (suppliers) of the National Welfare Fund and legal entities, fifty or more percent of voting shares (participation interests in the authorized capital) of which directly or indirectly belong to the National Welfare Fund.

2. A potential supplier and an affiliated person of a potential supplier shall not have the right to participate in one lot of the tender (auction).

3. A customer, in whose interests public procurement is conducted, shall not have the right to participate in such procurement as a potential supplier.

4. Violations of the requirements of this Article may be established by the customer, the organizer of public procurement, the single organizer of public procurement, the authorized body or the bodies of state audit and financial control at any stage of public procurement.

5. An authorized body or a body of state audit and financial control not later than five working days from the date of establishing the fact of violation of the requirements of this Article shall notify in written form about this:

1) the customer, if such a fact is established after the conclusion of the contract on public procurement;

2) the organizer of public procurement, the single organizer of public procurement, if such a fact is established before the conclusion of the contract on public procurement.

In this case, copies of documents confirming this fact must be attached to the notification.

6. Insurance agents and insurance brokers shall not have the right to participate in public procurement for the provision of services related to the conclusion of an insurance contract.

Footnote. Article 6 as amended by the Law of the Republic of Kazakhstan dated 02.07.2018 No. 166-VI (shall be enforced upon expiry of ten calendar days after its first official publication); dated № 202-VI as of 26.12.2018 (the enforcement procedure is in Art. 6).

## **Article 7. The procedure for determining the organizer of public procurement**

1. To perform the procedures for organizing and conducting public procurement, the customer shall determine the organizer of public procurement, as well as the official of the customer representing the interests of the latter in upcoming public procurement, except in cases when the customer and the organizer of public procurement act in one person.

2. The organizer of public procurement can be the customer himself, either directly or in the person of his department responsible for implementation of procedures for organizing and conducting public procurement.

The customer shall have the right to determine a subordinate state agency of the customer as the organizer of public procurement.

3. The customer shall have the right to act as an organizer of public procurement for several state agencies subordinate to the customer.

4. The customer shall have the right for several state agencies subordinate to the customer to determine the organizer of public procurement among them.

5. The administrator of a budget program shall have the right to act as an organizer of public procurement for a state institution under its jurisdiction, a legal entity in respect of which he acts as a government body, or a person affiliated with a legal entity in respect of which the administrator of a budget program acts as a body of state management.

A state enterprise shall have the right to act as an organizer of public procurement for its affiliated persons.

A legal entity, which fifty or more percent of the voting shares (stakes in the authorized capital) belong to the state, shall have the right to act as an organizer of public procurement for its affiliated persons.

6. The organizer of public procurement shall be obliged to determine the official, representing him in relations with the customer, potential suppliers, relevant commissions and an expert, except when the customer and the organizer of public procurement act in one person. The representative of the organizer of public procurement should be determined from among the employees of a structural unit responsible for implementation of the procedures for organizing and conducting of public procurement.

## **Article 8. The procedure for conduct of centralized public procurement**

1. Centralized public procurement shall be conducted by unified organizers of public procurement.

2. An authorized body shall determine the lists of goods, works and services for which public procurement is conducted by the unified organizers of public procurement.

3. The unified organizer of public procurement shall conduct centralized public procurement:

1) according to the list of goods, works and services determined by the authorized body, by creating joint tender commissions (auction commissions) with the customer;

2) according to the list of goods, works, services, determined by the authorized body, by combining homogeneous goods, works, services in one lot, regardless of the place of their delivery (performance, provision);

3) at the applications of customers for the purchase of goods, works, services not included in the list of goods, works, services, determined by the authorized body, by creating joint tender commissions (auction commissions) with the customer. This subparagraph shall be applied subject to the consent of the single organizer of public procurement with the conduct of such public procurement.

In the cases provided for in subparagraphs 1) and 3) of part one of this paragraph, the Akim of the relevant administrative-territorial unit or the first head of the customer shall be determined as a chairman of the tender commission in the manner determined by the rules of public procurement, except for the case provided for in paragraph 4 of this Article.

In the case provided for by subparagraph 2) of part one of this paragraph, the first head of the unified organizer of public procurement or his deputy shall be determined as a chairman of the tender commission.

4. In the case of organizing and conducting public procurement for the material and technical support of central executive bodies by a single public procurement organizer, the chairman of the tender commission (auction commission) shall be determined by the first head of the central executive body, except in the case provided for in subparagraph 2) of part one of paragraph 3 of this Article.

5. The procedure for conduct of public procurement by a single organizer of public procurement shall be determined by the rules of public procurement.

Footnote. Article 8 is in the wording of the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019).

## **Article 9. Qualification requirements for a potential supplier**

1. The following qualification requirements are imposed on potential suppliers:

1) to have legal capacity (for legal entities), civil capacity (for individuals);

2) to be financially stable and to have no tax arrears in excess of six times the monthly calculation index established for the corresponding financial year by the law on the republican budget.

The financial stability of potential suppliers is determined by categorizing them in accordance with the procedure established by the public procurement rules;

3) not to be subject to bankruptcy or liquidation;

4) to have material, labor and financial resources sufficient to fulfill the obligations under the public procurement contract;

5) to have work experience.

Qualification requirements stipulated in subparagraphs 2), 4) and 5) of part one of this paragraph shall be established in the manner determined by the rules of conducting public procurement.

2. It is not allowed to establish the qualification requirements specified in subparagraph 4) of paragraph 1 of this Article, which:

1) limit and unreasonably complicate the participation of potential suppliers in public procurement;

2) do not directly follow from the need to fulfill obligations under the contract on public procurement of goods, works and services.

3. A potential supplier in confirmation of his compliance with the qualification requirements established by this Article shall submit the relevant documents provided for by the rules of conducting public procurement to the organizer of public procurement.

4. A potential supplier-non-resident of the Republic of Kazakhstan in confirmation of his compliance with qualification requirements established by this Article, shall submit the same documents as the residents of the Republic of Kazakhstan, or documents confirming the similar information on qualification of a potential non-resident supplier of the Republic of Kazakhstan.

5. The legal capacity of a potential supplier carrying out types of activity for which it is necessary to obtain a permit, sending the notification, shall be confirmed by the information systems of state bodies in accordance with the legislation of the Republic of Kazakhstan on informatization.

In case of absence of information in the information systems of state bodies, a potential supplier shall submit a notarized copy of the relevant permit (notification) received (sent) in accordance with the legislation of the Republic of Kazakhstan.

6. Qualification requirements, established by subparagraphs 1), 2) in part of the tax debt and 3) of part one of paragraph 1 of this Article shall also be applied to individuals engaged in entrepreneurial activity and legal entities, which potential



supplier provides to involve as subcontractors in the performance of work or sub-executors in rendering services that are the subject of the conducting public procurement.

A potential supplier, who provides to involve subcontractors (co-executors) of works or services, must submit the documents confirming the compliance of the involved subcontractors (co-executors) of works or services with the qualification requirements established by subparagraphs 1), 2) in terms of tax debt and 3) of part one of paragraph 1 of this Article, to the organizer of public procurement.

In case of involvement of subcontractors (co-executors) for the performance of separate types of works or services, the documents confirming their compliance to the qualification requirements established by subparagraphs 1), 2) in part of tax debt and 3) part one of paragraph 1 of this Article shall be submitted on the types of works, services performed by them.

7. Qualification requirements shall not apply to the cases of conducting public procurement provided for in Articles 37, 38, subparagraph 2) of paragraph 2 and paragraph 3 of Article 39 and Article 42 of this Law.

8. It is not allowed to establish qualification requirements not provided for in paragraph 1 of this Article, except for the cases provided for in Articles 31, 50 and paragraph 6 of Article 51 of this Law.

Footnote. Article 9 as amended by the Law of the Republic of Kazakhstan dated № 202-VI as of 26.12.2018 (the enforcement procedure is in Art. 6)..

## **Article 10. Grounds for recognition of a potential supplier as not complying with qualification requirements**

1. A potential supplier shall be recognized as not complying with qualification requirements for one of the following grounds:

1) non-submission of a document (s) to confirm the compliance with the qualification requirements of a potential supplier and (or) its involved subcontractor (co-executor) of works or services;

2) establishing the fact of non-compliance with the qualification requirements on the basis of information contained in the documents provided by the potential supplier for confirmation its compliance, as well as non-compliance of the involved subcontractor (co-executor) of the works or services with qualification requirements;

3) establishing the fact of providing false information on qualification requirements.

2. It is not allowed to recognize a potential supplier and (or) a subcontractor (co-executor) of works or services involved by him or her as not complying with the

qualification requirements on the grounds not provided for by paragraph 1 of this Article.

### **Article 11. Consequences of providing false information by a potential supplier**

1. Potential suppliers or suppliers who have provided false information on qualification requirements and (or) documents influencing the tender price offer shall be included in the register of unfair participants of public procurement in the manner prescribed by this Law.

2. The accuracy of information provided by a potential supplier can be established by the customer, the organizer of public procurement, the single organizer of public procurement, the authorized body or bodies of state audit and financial control at any stage of conducting public procurement.

3. The authorized body or bodies of the state audit and financial control which established the fact of providing false information on qualification requirements and (or) documents influencing the tender price offer by a potential supplier, no later than five working days from the date of establishment of such a fact shall notify about it in written form:

1) the customer, if such a fact is established after summarizing the results of public procurement;

2) the organizer of public procurement, a single organizer of public procurement, if such a fact is established before the results of public procurement.

At the same time, copies of documents confirming this fact must be attached to the written notification.

Footnote. Article 11 is in the wording of the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019).

### **Article 12. Registers formed in the sphere of public procurement**

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

1) customers;

2) public procurement contracts;

3) unfair participants of public procurement;

4) is excluded by Law № 202-VI of the Republic of Kazakhstan as of 26.12.2018 (shall be enforced from 01.07.2019);

5) complaints.

2. The register of customers is a list of legal entities required to carry out the purchase of goods, works, services they need to ensure functioning, as well as

performing state functions or statutory activity in accordance with this Law and the civil legislation of the Republic of Kazakhstan.

3. The register of public procurement contracts is a list of public procurement contracts concluded by customers in the relevant fiscal year, and contains information on the subject, quantitative and monetary indicators of the public procurement contract, the results of fulfillment of contractual obligations by the parties.

Registration in the register of contracts on public procurement information shall be carried out by the customer on:

the concluded public procurement contracts in the relevant financial year - no later than ten working days from the date of enforcement of the public procurement contract;

execution of the contract on public procurement (the act of acceptance and transfer of goods or the act of performed works, rendered services) - no later than ten working days from the date of signing;

payments made under public procurement contracts - no later than ten working days from the date of payment.

The information on the contracts concluded on the results of public procurement stipulated by subparagraphs 9), 18), 31), 32) and 35) of paragraph 3 of Article 39 and Article 50 of this Law shall not be included in the register of public procurement contracts.

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

1) potential suppliers or suppliers who submitted false information on qualification requirements and (or) documents influencing the tender price offer;

2) potential suppliers determined by the winners who have avoided concluding a public procurement contract;

3) suppliers who have not fulfilled or improperly fulfilled their obligations under public procurement contracts concluded with them.

In case specified in subparagraph 1) of part one of this paragraph, the organizer of public procurement, the customer shall, not later than thirty calendar days from the date when they became aware of the fact of violation by a potential supplier or supplier of the legislation of the Republic of Kazakhstan on public procurement, file a lawsuit on recognition of such a potential supplier or a supplier as an unfair participant of public procurement.

In case specified in subparagraph 3) of part one of this paragraph, the customer shall be obliged not later than thirty calendar days from the date when he became aware of the fact of violation by the supplier of the legislation of the Republic of Kazakhstan on public procurement, to file a lawsuit on recognition of such a supplier

as an unfair participant of public procurement, except in cases that in total satisfy the following conditions:

- 1) payments of the penalty (fine, surcharges) by the supplier;
- 2) full performance of contractual obligations;
- 3) no damage caused to the customer.

5. The register of unfair participants of public procurement, provided for in subparagraphs 1) and 3) of part one of paragraph 4 of this Article, shall be formed on the basis of decisions of courts that have entered into force.

The register of unfair participants of public procurement, provided for by subparagraph 2) of part one of paragraph 4 of this Article, shall be formed on the basis of the decision of the authorized body on recognition of potential suppliers as unfair participants of public procurement.

6. Suppliers included in the register of unfair participants of public procurement on the grounds provided for in subparagraphs 1) and 3) of part one of paragraph 4 of this Article shall not be allowed to participate in public procurement within twenty-four months from the date of enforcement of the court's decision on recognition them as unfair participants of public procurement.

Potential suppliers included in the register of unfair participants of public procurement on the basis provided by subparagraph 2) of part one of paragraph 4 of this Article shall not be allowed to participate in public procurement within twenty-four months from the date of the decision by the authorized body on recognition them as unfair participants of public procurement.

The information contained in the register of unfair participants of public procurement shall be excluded from the specified register no later than one working day from the date of expiration of the period established by parts one and two of this paragraph.

7. The decision to include a potential supplier or a supplier into the register of unfair participants of public procurement may be appealed by him/her in accordance with the legislation of the Republic of Kazakhstan.

8. The information contained in registries, with the exception of information constituting state secrets in accordance with the legislation of the Republic of Kazakhstan on state secrets and (or) containing official information of limited distribution, determined by the Government of the Republic of Kazakhstan, shall be placed on the web portal of public procurement and must be available for familiarization to the interested parties free of charge.

9. Is excluded by Law № 202-VI of the Republic of Kazakhstan as of 26.12.2018 (shall be enforced from 01.07.2019).

10. Potential suppliers and suppliers determined in the cases provided by subparagraphs 1), 2), 27) and 36) of paragraph 3 of Article 39 of this Law shall not be included in the register of unfair participants of public procurement.

11. The register of complaints is a list of complaints of potential suppliers and suppliers submitted through the web portal of public procurement to the authorized body, and contains information about the decisions taken as a result of consideration of complaints and issued instructions (notifications).

Footnote. Article 12 as amended by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (the enforcement procedure is in Art. 6).

### **Article 13. The methods of public procurement**

1. Public procurement shall be carried out in one of the following ways:

- 1) a tender (open tender, tender with prequalification selection, tender using two-stage procedures);
- 2) at auctions;
- 3) request for quotations;
- 4) from one source;
- 5) through commodity exchanges.

2. The customer shall determine the method for conduct of public procurement in accordance with this Law, except for the list of goods, works, services for which the method of public procurement is determined by the authorized body.

3. Public procurement shall be carried out on the web portal of public procurement, with the exception of cases provided for by this Law.

4. The customer shall have the right to determine the method of public procurement on the basis of annual volumes of goods, works, services required for ensuring the activities of its branch (representative office), subject to conduct such public procurement on behalf of the customer directly by the customer's branch (representative office).

5. Is excluded by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019).

Footnote. Article 13 as amended by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019).

### **Article 14. Application of national treatment in public procurement**

1. When conducting public procurement for the goods originating from foreign countries, works, services, respectively performed by foreign potential suppliers, the national treatment shall be applied in cases and on conditions stipulated by international treaties ratified by the Republic of Kazakhstan.

2. The Government of the Republic of Kazakhstan in order to protect the foundations of the constitutional system, ensure the country's defense and state security, protect the domestic market, develop the national economy, support domestic producers, shall have the right to establish exemptions from the national treatment for a period not exceeding two years.

3. The procedure for establishing exemptions from the national treatment shall be determined by the Government of the Republic of Kazakhstan.

Footnote. Article 14 as amended by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019).

## **Chapter 2. STATE REGULATION OF PUBLIC PROCUREMENT**

### **Article 15. The competence of the Government of the Republic of Kazakhstan in the sphere of public procurement**

The Government of the Republic of Kazakhstan shall:

1) develop the main directions of state policy in the sphere of public procurement and organize their implementation;

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

### **Article 16. The competence of the authorized body**

The authorized body shall:

1) approve the rules of conducting public procurement;

2) approve the rules of collection, generalization and analysis of reporting taking into account the information on purchases from domestic producers included in the database of goods, works, services and their suppliers integrated with the web portal of public procurement, provided by the Entrepreneurial code of the Republic of Kazakhstan;

3) approve the rules for the use of the web portal of public procurement;

4) approve the rules of work of the web portal of public procurement in the event of technical failures of the web portal of public procurement;

5) carry out control over the compliance with the legislation of the Republic of Kazakhstan on public procurement, including desk control, if necessary, check the accuracy of the reporting data, materials and information provided by the participants of public procurement;

6) take a decision on cancellation of decisions of the organizer of public procurement, the single organizer of public procurement, the customer and the tender commission (auction Commission), adopted in violation of the legislation of the

Republic of Kazakhstan on public procurement, or on cancellation of public procurement before the conclusion of contracts on public procurement;

7) determine the list of types of goods, works, services, which public procurement is conducted in accordance with the standard tender documents (auction documents), developed and approved by the authorized bodies of the relevant branch in coordination with the authorized body;

7-1) develop and approve a list of separate goods, works, services, in public procurement of which additional requirements may be established for potential suppliers and suppliers;

8) approve the rules of retraining and advanced training of employees carrying out their activity in the sphere of public procurement;

9) approve the rules of formation and maintenance of registers in the sphere of public procurement;

10) request the necessary information and materials from the participants of public procurement in accordance with the rules of conducting public procurement;

11) attract experts of state bodies and other organizations for conducting examinations and consultations;

11-1) ensure integration of the information system of public procurement with the information system of the National chamber of entrepreneurs of the Republic of Kazakhstan in order to form a single point of access to procurement conducted in accordance with the legislation of the Republic of Kazakhstan;

11-2) develop and approve methodological recommendations on public procurement issues, including in coordination with the authorized bodies of the relevant industry;

12) exercise other powers provided 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.

Footnote. Article 16 as amended by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019).

## **Article 17. Powers of a single operator in the sphere of public procurement**

The single operator in the sphere of public procurement shall:

1) carry out development, maintenance and system-technical servicing of the web portal of public procurement;

2) carry out management of projects for the development of web portal of public procurement;

3) provide services on the use (access) of the web portal of public procurement to potential suppliers on a paid basis. The price of services for the use (access) of the web

portal of public procurement by potential suppliers shall be established by a single operator in the sphere of public procurement in coordination with the authorized body.

At the same time, the price of services for the use (access) of the web portal of public procurement should provide full reimbursement of the costs incurred by the single operator in the sphere of public procurement for performing the powers of the single operator in the sphere of public procurement;

4) provide consultation assistance to the subjects of the public procurement system on the issues of functioning of the web portal of public procurement free of charge;

5) provide information security of storage of electronic information resources of the subjects of the public procurement system placed on the web portal of public procurement;

6) provide information content of the web portal of public procurement in accordance with the rules of carrying out public procurement;

7) interact with the authorized entities on the issues of integration of information systems of state bodies, state electronic information resources and ensuring information security;

8) carry out introduction and maintenance of database of prices for goods, works and services with the introduction of the reference.

9) ensure operational support of the process of depositing and returning the security of applications for participation in a tender (auction) and quote request in the manner prescribed by this Law and the public procurement rules, using the means of the public procurement website.

Footnote. Article 17 as amended by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (the enforcement procedure is in Art. 6)

### **Chapter 3. CONTROL AND MONITORING OF PUBLIC PROCUREMENT**

#### **Article 18. Control over compliance with the legislation of the Republic of Kazakhstan on public procurement**

1. Control over compliance with the legislation of the Republic of Kazakhstan on public procurement shall be carried out by the authorized body.

State audit and financial control bodies shall carry out control over compliance with the legislation of the Republic of Kazakhstan on public procurement within the powers established by the Law of the Republic of Kazakhstan "On State Audit and Financial Control".

2. The objects of control shall be:



1) a customer, an organizer of public procurement, a single organizer of public procurement, a tender commission (an audit commission), an expert commission, an expert;

2) a potential supplier, a supplier, as well as the persons attracted by them as subcontractors for the performance of works or co-executors for the provision of services within the limits of the subject of public procurement;

3) persons participating in public procurement through commodity exchanges;

4) a single operator in the sphere of public procurement.

3. Checks shall be carried out by the authorized body at occurrence of one of the following cases:

1) a written request or an appeal received by public information systems and complying with the requirements of the legislation of the Republic of Kazakhstan on an electronic document and electronic digital signature, a potential supplier, a participant in a tender or auction, a supplier or their authorized representative with a complaint about the actions (inaction), the decision of the customer, the organizer of public procurement, a single organizer of public procurement or a tender commission (auction commission), an expert commission, an expert, a single operator in the sphere of public procurement. Consideration of such a complaint shall be carried out subject to the conditions provided for in Articles 47 and 48 of this Law;

2) at receipt of resolutions of law enforcement bodies;

3) based on the analysis of information obtained through the risk management system.

4. The authorized body, when identifying as a result of control measures, including desk control, a violation of the legislation of the Republic of Kazakhstan on public procurement by the object of control, shall take the following measures:

1) send to the object of control the instruction, obligatory for execution, the notification on elimination of violations revealed by the results of desk control;

2) apply to the court for recognizing invalid the contracts on public procurement that have entered into force, concluded in violation of the legislation of the Republic of Kazakhstan on public procurement, with the exception of contracts on public procurement, under which the obligations have been fulfilled properly.

3) is excluded by the Law of the Republic of Kazakhstan 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019).

5. If, as a result of control measures, it is revealed that an object of control has committed an action (inaction) containing signs of a criminal offense, the authorized body and state audit and financial control bodies shall be obliged to transfer

information on commission of the specified action (inaction) and documents confirming such fact to law enforcement bodies.

6. Actions (inaction), as well as decisions of the authorized body and state audit and financial control bodies may be appealed in the manner established by the legislation of the Republic of Kazakhstan.

Footnote. Article 18 as amended by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019).

## **Article 19. Monitoring of public procurement**

1. Monitoring of public procurement shall be carried out on the basis of collection, synthesis, analysis, systematization and evaluation of information on carrying out public procurement.

2. Monitoring of public procurement shall be carried out by the authorized body through the web portal of public procurement and on the basis of the information contained therein.

3. According to the results of monitoring of public procurement, the authorized body shall send an annual report on public procurement to the Administration of the President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan.

4. Rules of preparation of the annual report on public procurement shall be approved by the authorized body.

### **Chapter 4. IMPLEMENTATION OF PUBLIC PROCUREMENT BY THE METHOD OF TENDER**

## **Article 20. Implementation of public procurement through the tender**

1. Is excluded by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019).

2. Is excluded by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019).

3. Is excluded by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019).

4. Consideration of applications for participation in the tender, evaluation and comparison of the tender price offers of the tender participants, as well as determination of the winner of the tender shall be carried out for each lot provided in the tender documentation.

5. Potential suppliers determined by the results of consideration of applications for participation in the tender as complying with the qualification requirements and requirements of the tender documentation shall participate in public procurement through the tender method.

Footnote. Article 20 as amended by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019).

## **Article 21. Tender documentation**

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

2. Tender documentation, in addition to the qualification requirements established by Article 9 of this Law, shall contain:

- 1) name and location of the organizer of public procurement;
- 2) technical specification with indication of national standards, and in case of their absence of interstate standards for the purchased goods, works, services. In the absence of national and interstate standards, the required functional, technical, quality and operational characteristics of the purchased goods, works and services shall be specified, taking into account the regulation of public procurement.

At the same time, the technical specification shall contain requirements to suppliers on provision of documents confirming compliance of the delivered goods with the requirements established by technical regulations, provisions of standards or other documents in accordance with the legislation of the Republic of Kazakhstan.

When conducting public procurement of works requiring design and estimate documentation, instead of the technical specification, tender documentation must contain design and estimate documentation approved in the prescribed manner. At the same time, the terms for performance of works on such state procurements should correspond to the terms for execution of works specified in the design and estimate documentation approved in the prescribed manner;

- 3) the number of goods, the volume of performed works, services rendered, which are the subjects of public procurement;
- 4) the place of delivery of goods, performing works, rendering services;
- 5) required time for the supply of goods, performing works, rendering services, provision of guarantees on the quality of the offered goods, works, services;
- 6) conditions of payment and draft of a public procurement contract;
- 7) criteria, except for the price, on the basis of which the winner of the tender will be determined, including the relative value of each of these criteria and calculation of the conditional price;
- 8) requirements to the content of the tender price offer, including the indication, in addition to the price of purchased goods, works, services, costs on their transportation

and insurance, payment of customs duties, taxes and fees, as well as other expenses stipulated by the conditions of goods delivery, performing works, rendering services, net of the amount of value added tax;

9) the currency or currencies in which the tender price offer is to be expressed and the rate, at which the notional price is to be applied to a single currency for purposes of comparison and evaluation;

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

11) conditions of entering, contents and types of support of the application for participation in the tender;

12) indication of a potential supplier's right to change or withdraw its application on participation in the tender before the deadline for submission;

13) the procedure, method and deadline for submission of applications for participation in the tender and the required period of validity of applications for participation in the tender;

14) the procedure for preliminary discussion of the tender documentation draft;

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

16) description of the procedure for opening applications on participation in the tender, consideration of applications for participation in the tender, evaluation and comparison of tender price offers;

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

18) conditions, types, amount and method of making support for the fulfillment of the contract on public procurement;

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

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

3. It is prohibited to establish the conditions of public procurement in the tender documentation, which entail a limitation of the number of potential suppliers, in cases not provided for by this Law, including those relating to:

1) establishing any non-quantifiable and (or) non-administrated requirements for potential suppliers;

2) the content of indications on trademarks, service marks, brand names, patents, utility models, industrial designs, the name of the place of origin of the goods and the name of the manufacturer, as well as other characteristics determining the ownership of the purchased goods, works, services to a single potential supplier, except for the following cases of public procurement:

for completing, modernization and retrofitting of the main (installed) equipment, as well as installed software (licensed software);

for determination the supplier of services on the provision of goods for leasing and the need for a detailed description of the leased asset;

for repair and (or) maintenance of the goods available at the customer.

4. The criteria influencing the tender price offer and their calculation shall be determined by the rules of carrying out public procurement.

4-1. The organizer of public procurement or a single organizer of public procurement shall be obliged to provide in the tender documentation the priority for the goods produced with the use of secondary raw materials derived from waste on the territory of the Republic of Kazakhstan, having a confirming document in accordance with paragraph 4 of this Article.

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

The draft of tender documentation developed by a single organizer of public procurement shall be approved by the first head of the single organizer of public procurement or the person performing his (her) duties.

Footnote. Article 21 as amended by the Laws of the Republic of Kazakhstan dated 28.04.2016 No. 506-V (shall be enforced upon expiry of sixty calendar days after its first official publication); dated 20.06.2018 No. 161-VI (shall be enforced upon expiry of ten calendar days after its first official publication); dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2009).

## **Article 22. Preliminary discussion of the draft of tender documentation**

1. A prerequisite for the approval of tender documentation shall be a preliminary discussion of the draft of tender documentation by potential suppliers.

Comments to the draft of tender documentation, as well as requests for clarification of the provisions of the tender documentation may be sent to the customer, the organizer of public procurement, the single organizer of public procurement no later than five working days from the date of announcement of public procurement.

In the absence of comments to the draft of tender documentation, as well as requests for clarification of the provisions of the tender documentation, a decision on the approval of the tender documentation shall be taken.

2. In case of comments, as well as requests for clarification of the provisions of the tender documentation, the customer, the organizer of public procurement within five working days from the date of expiration of preliminary discussion of the tender documentation shall take one of the following decisions:

1) make changes and (or) additions to the draft of tender documentation;

2) reject comments on the draft of tender documentation indicating the justifications of the reasons for their rejection;

3) give explanations of provisions of tender documentation.

From the date of adoption of the specified decisions, the tender documentation shall be considered approved.

The customer, the organizer of public procurement no later than one working day from the date of adoption of one of the decisions specified in part one of this paragraph and part three of paragraph 1 of this Article, shall be obliged to place on the web portal of public procurement the protocol of preliminary discussion of the draft of tender documentation, as well as the text of the tender documentation.

The protocol of preliminary discussion of the draft of tender documentation shall contain information on the received comments to the draft of tender documentation and the decisions taken on them.

3. The deadline for submission of applications by potential suppliers for participation in the tender must be at least fifteen calendar days from the date of placement of the protocol of preliminary discussion of the draft of tender documentation, as well as the text of the tender documentation.

The customer shall have the right to make amendments to the tender documentation on his (her) own initiative before the deadline for submission of applications by potential suppliers for participation in the tender. In such cases, the tender documentation shall be subject to preliminary discussion in the manner prescribed by this Article.

4. The customer's decision on the results of preliminary discussion of the draft of tender documentation may be appealed in the manner prescribed by this Law.

5. The requirements of this Article shall not apply to:

1) public procurement, information on which constitute state secrets in accordance with the legislation of the Republic of Kazakhstan on state secrets and (or) contain official information of limited distribution, determined by the Government of the Republic of Kazakhstan.

2) is excluded by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019).

6. The requirements of this Article shall apply to public procurement of works requiring design and estimate documentation, where, instead of the technical specification, the tender documentation contains design and estimate documentation that has passed the examination in accordance with the legislation of the Republic of Kazakhstan in part 3) of part one of paragraph 2 of this Article.

Footnote. Article 22 as amended by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019).

### **Article 23. Notification on implementation of public procurement by the method of tender**

1. The organizer of public procurement no later than three working days from the date of approval of the draft of tender documentation shall be obliged to place on the web portal of public procurement the text of the announcement on implementation of public procurement by the method of tender.

2. In case of repeated public procurement by the method of tender, the organizer of public procurement at least five working days before the final date of submission of applications for participation in the competition shall be obliged to place on the web portal of public procurement the text of the announcement on implementation of repeated public procurement by the method of tender, provided that the tender documentation of the failed competition remains unchanged, except for the extension of the term of execution of the public procurement contract in connection with repeated public procurement.

3. In case of repeated public procurement by the method of tender and making amendments and (or) additions to the tender documentation, public procurement shall be conducted in accordance with paragraph 1 of this Article, taking into account the requirements of Article 22 of this Law.

Footnote. Article 23 as amended by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019).

### **Article 24. Application for participation in the tender**

1. Application for participation in the tender is a form of expressing the consent of a potential supplier with the requirements and conditions established by the tender documentation, as well as the consent of a potential supplier to obtain information about it, confirming compliance with the qualification requirements and restrictions established by Article 6 of this Law.

2. The application for participation in the tender shall be 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 its submission specified in the tender documentation.

3. The application for participation in the tender must contain confirmation of the potential supplier:

1) on the absence of violations of restrictions provided for in Article 6 of this Law;

2) on the absence between him (her) and the customer or the organizer of public procurement of the relations forbidden by this Law;

3) on the consent to termination in the manner established by the laws of the Republic of Kazakhstan, the contract on public procurement in case of revealing the facts specified in paragraph 19 of Article 43 of this Law.

The tender price offer, as well as the documents which must be contained in the application for participation in the tender, shall be determined by the rules of carrying out public procurement.

4. The application for participation of a potential supplier in the tender shall be subject to automatic rejection by the web portal of public procurement in the following cases:

1) a potential supplier has previously submitted an application for participation in this tender;

2) the application for participation in the tender was received on the web portal of public procurement after the deadline for accepting applications for participation in this tender;

3) the tender price offer exceeds the amount allocated for the purchase of these goods, works, services;

(4) as provided for in subparagraphs 1), 3), 4), 5), 6) and 8) paragraph 1 of Article 6 of this Law;

5) the absence or insufficiency of the amount of security of an application for participation in a tender, which is in the digital wallet of the potential supplier.

5. A potential supplier not later than the deadline for submission of applications to participate in the tender shall have the right to:

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

2) withdraw his (her) application for participation in the tender, without losing the right to return the security provided by him to the application for participation in the tender.



Changes and (or) additions shall not be allowed, as well as withdrawal of the application for participation in the tender after the deadline for submission of applications for participation in the tender.

6. The validity of the application for participation in the tender must meet the required deadline set by the tender documentation.

7. Potential suppliers who have submitted an application for participation in the tender, after three working days from the date of placement of the protocol of preliminary admission shall be provided with the access to view applications of other potential suppliers for participation in this tender.

Potential suppliers who have not submitted an application for participation in the tender or who have not submitted it in the amount determined by the rules of public procurement shall not be provided with the access to view applications of other potential suppliers for participation in this tender.

Footnote. Article 24 as amended by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (the enforcement procedure is in Art. 6)

#### *Article 25. Securing an application for participation in a tender*

1. A potential supplier secures his/her/its application for participation in a tender to guarantee that, in case of becoming a successful tenderer, he/she/it will enter into a public procurement contract and deposit a security for the execution of the public procurement contract, as well as the amount in accordance with Article 26 of this Law (if any).

2. The security of the application for participation in the tender is deposited in the amount of one percent of the amount allocated for the purchase of goods, works, services.

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

1) money in the digital wallet of the potential supplier;

2) a bank guarantee provided in the form of an electronic document. The provision of a bank guarantee in paper-based form is allowed in the cases specified in Article 50 of this Law.

It is not allowed for a potential supplier to commit actions that can lead to the emergence of a right of third parties to claim, in whole or in part, the money in his/her/its digital wallet.

It is not allowed for the single operator in the field of public procurement to use money in the digital wallet, except for the cases specified in paragraphs 4 and 5 of this article.

4. The security of the application for participation in the tender is blocked and is not returned to a potential supplier in the event of one of the following cases:

1) a potential supplier, determined as a successful tenderer, evaded the conclusion of a public procurement contract;

2) the successful tenderer, having entered into a public procurement contract, failed to fulfill or improperly fulfilled, and also untimely fulfilled, the requirements established by the tender documentation on the depositing and (or) the timing of the security for the execution of the public procurement contract.

5. In the event of one of the cases specified in paragraph 4 of this article, the amount of security of the application for participation in the tender shall be credited to the income of the corresponding budget, state enterprise, legal entity, fifty or more percent of voting shares (participatory interests in the authorized capital) of which belong to the state, or legal entities affiliated with them.

6. The single operator in the field of public procurement automatically unblocks the security of the application for participation in the tender blocked by it for a potential supplier in case of:

1) this potential supplier's withdrawal of his/her/its application for participation in the tender before the expiration of the deadline for submitting applications for participation in the tender;

2) signing a protocol on the results of public procurement by tender. The specified case does not apply to the tender participant determined as successful tenderer;

3) a potential supplier's signing of a public procurement contract and depositing security for the execution of a public procurement contract, as well as the amount in accordance with Article 26 of this Law (if any).

7. At the potential supplier's request to return money placed in his/her/its digital wallet, the single operator in the field of public procurement, within three working days of such a request, returns the specified money, which was not blocked or the blocking of which was terminated.

Footnote. Article 25 is as amended by Law № 202-VI of the Republic of Kazakhstan as of 26.12.2018 (shall be enforced from 01.01.2020).

#### *Article 26. Anti-dumping measures in relation to public procurement by tender*

1. The dumping price is the one offered by a tender participant, which is lower than the threshold value determined by the public procurement rules.

2. It is not allowed to offer dumping prices, except for the cases stipulated by the public procurement rules, provided that the potential supplier, in addition to the security for the execution of a contract, deposits an amount equal to the amount reduced from the minimum allowable price, which is not recognized as dumping.

Footnote. Article 26 is as amended by Law № 202-VI of the Republic of Kazakhstan as of 01.01.2019)

## **Article 27. Consideration of applications for participation in the tender**

1. Consideration of applications for participation in the tender shall be carried out by the tender commission in order to identify potential suppliers who meet the qualification requirements and requirements of the tender documentation.

2. The organizer of public procurement shall have the right to form an expert commission or to determine an expert for preparation an expert conclusion on the conformity of goods, works, services offered by potential suppliers, technical specifications, which are an integral part of the tender documentation.

When organizing and conducting centralized public procurement in the cases provided for in subparagraphs 1) and 3) of part one of paragraph 3 of Article 8 of this Law, the customer shall form an expert commission or determine an expert to prepare an expert conclusion on the conformity of goods, works and services offered by potential suppliers, technical specifications, which is an integral part of the tender documentation.

When organizing and conducting centralized public procurement in the cases provided for in subparagraph 2) of part one of paragraph 3 of Article 8 of this Law, the single organizer of public procurement shall form an expert commission or determine an expert to prepare an expert conclusion on the conformity of goods, works, services offered by potential suppliers technical specifications, which is an integral part of the tender documentation.

An expert may not be a person:

1) interested in the results of public procurement procedures;

2) related to labor relations with the customer, the organizer of public procurement, the single organizer of public procurement or their subordinate, subsidiaries and dependent organizations, or potential suppliers;

3) being a close relative, spouse (s) or relatives-in-law of the first leaders of the customer, the organizer of public procurement, the single organizer of public procurement or their subordinate, subsidiaries and dependent organizations. In case of absence of the experts conforming to the requirements established by part three of this paragraph, the organizer of public procurement or the customer shall involve public servants of the corresponding profile for works as experts or other specialists whose specialization corresponds to the purchased goods, works, services. Civil servants shall be involved as experts on a gratuitous basis, and other specialists shall be involved both on a paid and on a gratuitous basis by an agreement of the parties.

Civil servants or other specialists involved as experts shall conform with the requirements established by part three of this paragraph.

Experts shall not have the right to vote in taking the decision by the tender commission.

Selection of persons involved as experts on a paid basis shall be carried out in accordance with this Law.

3. According to the results of consideration of applications for participation in the tender for the compliance of potential suppliers with the qualification requirements and requirements of the tender documentation, a protocol of preliminary admission to participation in the tender shall be drawn up which is signed by the chairman and all members of the tender commission and the secretary of the tender commission on the day of taking the decision on preliminary consideration of applications for participation in the tender.

The decision of the tender commission on preliminary admission of potential suppliers to participate in the tender shall be taken within ten working days from the date of opening of applications for participation in the tender.

The protocol of preliminary admission for participation in the tender shall contain information about potential suppliers whose applications for participation in the tender were rejected, with the detailed description of the reasons of their rejection including with indication of the data and documents confirming their discrepancy to qualification requirements and requirements of the tender documentation.

In case of conformity of potential suppliers with the qualification requirements and the requirements of the tender documentation, the protocol of preliminary admission to participation in the tender shall not be drawn up.

4. In case of identification of potential suppliers not complying with the qualification requirements and requirements of the tender documentation, the tender commission shall grant such potential suppliers with the right to bring applications for participation in the tender in accordance with the qualification requirements and requirements of the tender documentation within three working days from the date of placement of the protocol of preliminary admission to participation in the tender on the web portal of public procurement.

The right to bring the applications for participation in the tender in accordance with the qualification requirements and requirements of the tender documentation shall not be granted to potential suppliers:

- 1) who violated the requirements of Article 6 of this Law;
- 2) provided false information on qualification requirements and requirements of the tender documentation;

3) did not submit a security of application for participation in the tender or did not submit it in the amount determined by the rules of public procurement.

5. When considering applications for participation in the tender for the subject of compliance of potential suppliers with the qualification requirements and requirements of the tender documentation, the tender commission shall have the right:

1) to request from potential suppliers the materials and clarifications in connection with their applications in order to simplify the consideration, evaluation and comparison of applications for participation in the tender in written form and (or) in the form of an electronic document;

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

It is not allowed to send a request and other actions of the tender commission related to the addition of the application for participation in the tender with missing documents, replacement of documents submitted in the application for participation in the tender, bringing into compliance with improperly executed documents after the expiration of the term for bringing applications for participation in the tender in accordance with the qualification requirements and requirements of the tender documentation provided for in paragraph 4 of this Article.

The tender commission shall consider 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 content of the submitted application.

The tender commission at repeated consideration of applications for participation in the tender shall not allow rejection of potential suppliers on the ground which are not provided in the protocol of preliminary admission to participation in the tender.

6. A potential supplier may not be allowed to participate in the tender (recognized as a participant of the tender) after bringing applications for participation in the tender in compliance with the qualification requirements and requirements of the tender documentation in accordance with paragraph 4 of this Article, if:

1) he (she) and (or) his (her) subcontractor (co-executor) are determined as not complying with the qualification requirements on the grounds determined by this Law and the rules of public procurement;

2) he (she) violated the requirements of Article 6 of this Law;

3) his (her) application for participation in the tender is determined as not complying with the requirements and conditions of the tender documentation on the grounds determined by this Law and the rules of public procurement.

7. If a potential supplier is not allowed to participate in the tender on the grounds provided for by subparagraph 2) of paragraph 6 of this Article, then the protocol on the results of public procurement by the method of tender shall specify the reasons for rejection of the application for participation in the tender of such a potential supplier, indicating the confirming information and documents that were the grounds for the rejection of the application for participation in the tender.

8. According to the results of re-consideration of applications for participation in the tender, the tender commission within five working days from the date of expiration of repeated submission of applications for participation in the competition by potential suppliers, brought in compliance with the qualification requirements and requirements of the tender documentation shall:

1) determine the potential suppliers complying with the qualification requirements and requirements of the tender documentation and recognize them as participants of the tender;

2) apply and calculate the criteria influencing the tender price offer.

9. The tender price offer shall be opened by the web portal of public procurement automatically, after consideration of the application for participation in the tender for compliance with the qualification requirements and requirements of the tender documentation.

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

The tender participant who took the second place on the basis of evaluation and comparison of tender offers shall be is determined on the basis of the price following the lowest conditional price.

Conditions on recognition of the winner (the participant of the tender who has taken the second place following the results of evaluation and comparison of tender price offers) at equality of conditional prices shall be determined by the rules of carrying out public procurements.

Footnote. Article 27 as amended by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019).

**Article 28. The protocol on the results of public procurement by the method of tender**

1. The protocol on the results of public procurement by the method of tender shall be automatically generated and placed by the web portal of public procurement with simultaneous notification by e-mail to all members of the tender commission and all potential suppliers who have applied for participation in the tender.

2. The protocol on the results of public procurement by the method of tender should contain the following information:

1) on bringing applications for participation in the tender in accordance with the qualification requirements and requirements of the tender documentation;

2) on the requests of the tender commission in accordance with subparagraphs 1) and 2) of paragraph 5 of Article 27 of this Law;

3) on potential suppliers whose applications for participation in the tender were rejected, with a detailed description of the reasons for their rejection, including information and documents confirming their non-compliance with the qualification requirements and the requirements of the tender documentation;

4) other information determined by the rules of carrying out public procurement.

3. The protocol on the results of public procurement by the method of tender may be appealed by the participant in the manner established by this Law.

#### **Article 29. Grounds and consequences of recognition of public procurement by the method of tender as failed**

1. Public procurement by the method of tender shall be recognized as failed on one of the following grounds:

1) absence of the submitted applications for participation in the tender;

2) submission of less than two applications for participation in the tender;

3) if no potential supplier is allowed to participate in the tender;

4) if one potential supplier is allowed to participate in the tender.

2. If public procurement by the method of tender is recognized as failed, the customer shall take one of the following decisions:

1) on conducting the repeated public procurement by the method of tender;

2) on changing the tender documentation and conducting the repeated public procurement by the method of tender.

3) is excluded by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019).

3. In case of recognition of the repeated public procurement by the method of tender as failed, the customer shall have the right to carry out public procurement by the method from a single source in the following cases:

1) absence of the submitted applications for participation in the tender. At the same time, the potential supplier to whom an invitation to participate in public

procurement by the method from a single source is sent, shall be determined by the customer;

2) submission of less than two applications for participation in the tender. At the same time, an invitation to participate in public procurement from a single source shall be sent to a potential supplier who submitted an application for participation in the tender. The price of the concluded contract on public procurement shall not exceed the tender price offer of the potential supplier specified in the application for participation in the tender.

Footnote. Article 29 as amended by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019).

### **Article 30. Features of conducting public procurement by the method of tender using two-stages procedures**

1. Public procurement by the method of tender using two-stages procedures shall be conducted according to the list of goods, works, services approved by the authorized body, in cases when:

1) it is difficult to formulate detailed specifications of goods, works, services and determine their technical and other characteristics, and (or) it is necessary to request proposals from potential suppliers or to negotiate with them on the issues that have arisen;

2) it is necessary to conduct researches, experiments, investigations or developments;

3) innovative and high-tech goods, works and services are purchased.

2. Is excluded by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019).

3. A potential supplier shall not make a security of application for participation in the tender if he (she) participates in the first stage of public procurement by the method of tender using two-stages procedures.

4. The procedure for conduct of public procurement by the method of tender using two-stages procedures shall be determined by the rules for conducting public procurement.

Footnote. Article 30 as amended by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019).

### ***Article 31. Features of public procurement by tender with pre-qualification***

1. Public procurement by tender with pre-qualification shall be carried out in respect of the list of goods, works, services approved by the authorized body.



2. Public procurement by tender with pre-qualification is carried out in the following sequence:

1) at the first stage, the qualifying body forms a list of qualified potential suppliers;

2) at the second stage, the customer carries out public procurement by tender among potential suppliers included in the list of qualified potential suppliers.

3. The requirements for carrying out public procurement by tender with pre-qualification, for tender documentation, preliminary discussion, notice of public procurement, application for participation in the tender, its consideration, presentation of a dumping price, protocol on the results of public procurement with account of the features established by this article are determined by Articles 20, 21, 22, 23, 24, 26, 27 and 28 of this Law.

4. The procedure for carrying out public procurement by tender with pre-qualification is determined by the public procurement rules.

Footnote. Article 31 is as amended by Law № 202-VI of the Republic of Kazakhstan as of 26.12.2018 (shall be enforced from 01.07.2019).

## **Chapter 5. IMPLEMENTATION OF PUBLIC PROCUREMENT BY THE AUCTION METHOD**

### **Article 32. Implementation of public procurement by the auction method**

1. Public procurement by the auction method shall be carried out in real time on the web portal of public procurement, which is provided by a single operator in the sphere of public procurement.

2. The auction shall be held for one lot, and the subject of the auction is the goods.

3. Potential suppliers, identified on the results of consideration of applications for participation in the auction, complying with the qualification requirements and requirements of the auction documentation shall participate in the auction.

4. The requirements for the auction documentation, preliminary discussion, notification of public procurement by the auction method, application for participation in the auction, its security, taking into account the features established by this Article, shall be determined by the rules of paragraphs 1, 2, 3 and 5 of Article 21, Articles 22, 23, 24 and 25 of this Law.

Footnote. Article 32 as amended by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019).

### **Article 33. Consideration of applications for participation in the auction, admission to participate in the auction**

1. Consideration of applications for participation in the auction shall be carried out by the auction commission in order to determine potential suppliers complying with the qualification requirements and requirements of the auction documentation.

2. The organizer of public procurement shall have the right to form an expert commission or to determine an expert for preparation of an expert conclusion on the conformity of goods offered by potential suppliers, technical specifications, which are an integral part of the auction documentation.

When organizing and conducting public procurement by a single organizer of public procurement, the customer shall form an expert commission or determine an expert for preparation of an expert conclusion on the conformity of goods offered by potential suppliers, technical specifications, which are an integral part of the auction documentation.

An expert may not be a person:

1) interested in the results of public procurement procedures;

2) related to labor relations with the customer, the organizer of public procurement, a single organizer of public procurement or their subordinate, subsidiaries and dependent organizations, or potential suppliers;

3) being a close relative, spouse (s) or relatives-in-law of the first managers of the customer, the organizer of public procurement, the single organizer of public procurement or their subordinate, subsidiaries and dependent organizations. In case of absence of the experts complying with the requirements established by part three of this paragraph, the organizer of public procurement or the customer involve public servants of the corresponding profile for the works as experts or other specialists whose specialization corresponds to the purchased goods. Civil servants shall be involved as experts on a gratuitous basis, and other specialists shall be involved both on a paid and on a gratuitous basis by an agreement of the parties.

Civil servants or other specialists involved as experts shall comply with the requirements established by part three of this paragraph.

Experts shall not have the right to vote in taking decision of the auction commission.

The selection of persons involved as experts on a paid basis shall be carried out in accordance with this Law.

3. Based on the results of consideration of applications for participation in the auction for compliance of potential suppliers with the qualification requirements and requirements of the auction documentation, a protocol of preliminary admission to participate in the auction shall be drawn up, which is signed by the chairman and all members of the auction commission, as well as by the secretary of the auction

commission on the day of taking the decision on preliminary consideration of applications for participation in the auction.

The protocol of preliminary admission to participate in the auction shall contain information on potential suppliers whose applications for participation in the auction were rejected, with detailed description of the reasons for their rejection, including with indication of information and documents confirming their discrepancy to qualification requirements and requirements of the auction documentation.

In the case of conformity of potential suppliers with the qualification requirements and the requirements of the auction documentation, the protocol of preliminary admission to participate in the auction shall not be drawn up.

4. The auction commission in case of identification of potential suppliers who do not comply with the qualification requirements and requirements of the auction documentation, shall grant such potential suppliers the right to bring applications for participation in the auction in accordance with the qualification requirements and requirements of the auction documentation within three working days from the date of placement of the protocol of preliminary admission to participate in the auction on the web portal of public procurement.

The right to bring applications for participation in the auction in accordance with the qualification requirements and requirements of the auction documentation shall not be granted to potential suppliers:

- 1) who violated the requirements of Article 6 of this Law;
- 2) provided false information on qualification requirements and requirements of the auction documentation;
- 3) who did not make the security of application for participation in the auction or did not make it in the amount determined by the rules of public procurement.

5. When re-considering applications for participation in the auction brought into compliance with the qualification requirements and requirements of the auction documentation in accordance with paragraph 4 of this Article, the auction commission shall have the right to:

- 1) request materials and clarifications in connection with their applications in order to simplify consideration, evaluation and comparison of applications for participation in the auction from potential suppliers in the written and (or) in electronic form;
- 2) request the necessary information in the written form and (or) in the form of an electronic document, from the relevant individuals or legal entities, state bodies in order to clarify the information contained in the applications for participation in the auction.

It is not allowed to send a request and other actions of the auction commission related to the addition of the application for participation in the auction with missing documents, replacement of documents submitted in the application for participation in the auction, alignment of improperly executed documents after the expiration of the term for bringing applications for participation in an auction into compliance with the qualification requirements and requirements of the auction documentation, provided for by paragraph 4 of this Article.

The auction commission shall consider an application for participation in the auction as complying with the requirements of the auction documentation, if it contains grammatical or arithmetic errors that can be corrected without affecting the content of the submitted application.

When the auction commission reconsiders applications for participation in the auction, it is not allowed to reject potential suppliers on the grounds not provided for in the protocol of preliminary admission to participation in the auction.

6. A potential supplier may not be allowed to participate in the auction (recognized as an auction participant) after bringing the applications for participation in the auction in accordance with the qualification requirements and requirements of the auction documentation in accordance with paragraph 4 of this Article if:

- 1) he (she) is considered not complying with the qualification requirements on the grounds determined by this Law and the rules of carrying out public procurement;
- 2) he (she) violated the requirements of Article 6 of this Law;
- 3) his (her) application for participation in the auction is considered not complying with the requirements and conditions of the auction documentation on the grounds determined by this Law and the rules of conducting public procurement.

7. If a potential supplier is not allowed to participate in the auction on the grounds provided for in subparagraph 2) of paragraph 6 of this Article, the protocol on admission to participate in the auction shall specify the reasons for rejection of the application for participation in the auction of such a potential supplier, indicating the confirming information and documents that served as the basis for rejection of the application for participation in the auction.

8. By the results of repeated consideration of applications for participation in the auction, the auction commission shall:

- 1) identify potential suppliers who comply with the qualification requirements and requirements of the auction documentation, and recognize as the auction participants;
- 2) draw up a protocol on admission to participate in the auction.

9. The protocol on admission to participate in the auction shall be signed by the chairman and all members of the auction commission presenting at the meeting, as

well as by the secretary of the auction commission on the day of taking the decision on admission of potential suppliers to participate in the auction (recognition them as the auction participants).

The protocol on admission to participate in the auction shall be placed on the web portal of public procurement with automatic notification by e-mail to all potential suppliers who have applied for participation in the auction by the secretary of the auction commission on the day of its signing.

10. The decision of the auction commission on admission to participate in the auction may be appealed in the manner prescribed by Article 47 of this Law.

Footnote. Article 33 as amended by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019).

### **Article 34. Holding an auction**

1. The auction shall be held on the web portal of public procurement on the day and time specified in the protocol on admission to participate in the auction.

The day of the auction shall be the working day following the expiration of two working days from the date of placement of the protocol on admission to participate in the auction.

2. Potential suppliers recognized as participants of the auction shall participate in the auction.

3. The auction shall be conducted by reducing the current price offer starting from the lowest starting price of the auction participant for the purchase of goods, which is the subject of the auction, to a step of the auction.

The auction step is from half a percent (0.5) to five percent of the lowest starting price of the bidder for the purchase of the goods that are the subject of the auction.

4. When conducting an auction, the auction participants shall submit the proposals on the price of the goods being the subject of the auction, providing for a reduction of the current minimum price proposal by an amount within the auction step.

5. When conducting an auction, any auction participant shall have the right to submit a proposal on the price of the goods being the subject of the auction, reduced from the lowest starting price of the auction participant for the purchase of the goods being the subject of the auction, regardless of the auction step, provided that there is no current minimum proposal.

6. The auction participant shall not have the right to submit a proposal on the price of the goods being the subject of the auction lower than the current minimum proposal on the price of the goods being the subject of the auction, if such a proposal on the price of the goods being the subject of the auction was submitted by the same auction participant.

7. The time for submission of the auction participants' proposals on the price of the goods, being the subject of the auction, is thirty minutes from the start of the auction, as well as ten minutes after the receipt of the last proposal on the price of the goods, being the subject of the auction. If no proposal for a lower price of the goods being the subject of the auction is received within the specified time, the auction shall be terminated.

8. The public procurement web portal shall automatically determine the winner of the auction based on the lowest price.

The second-place auction participant shall be determined on the basis of the price following the lowest price.

9. In case, that the starting price of the goods being the subject of the auction was offered, equal to the starting price offered by other participant of the auction, the starting price of the goods received earlier than other offers shall be recognized as the lowest starting price.

10. In case, that within thirty minutes after the start of the auction, none of the auction participants has submitted a proposal on the price of the goods being the subject of the auction, the potential supplier whose starting price is the lowest shall be recognized as the auction winner.

### **Article 35. Protocol on the results of public procurement by the auction method**

1. The protocol on the results of public procurement by the auction method shall be automatically generated and placed by the web portal of public procurement on the day of the auction end with simultaneous notification by e-mail to all members of the auction commission and all potential suppliers who have applied for participation in the auction.

2. The protocol on the results of public procurement by the auction method should contain the following information:

1) on bringing applications for participation in the auction in accordance with the qualification requirements and requirements of the auction documentation;

2) on the requests of the auction commission in accordance with subparagraphs 1) and 2) of paragraph 5 of Article 33 of this Law;

3) on potential suppliers whose applications for participation in the auction were rejected, with a detailed description of the reasons for their rejection, including information and documents confirming their non-compliance with the qualification requirements and requirements of the auction documentation;

4) other information determined by the rules of public procurement.

3. The protocol on the results of public procurement by the auction method may be appealed by the auction participant in the manner prescribed by this Law.

## **Article 36. Grounds and consequences of recognition of public procurement by the auction method as failed**

1. Public procurement by the auction method shall be recognized as failed on one of the following grounds:

- 1) absence of the submitted applications for participation in the auction;
- 2) submission of less than two applications for participation in the auction;
- 3) if no potential supplier is allowed to participate in the auction;
- 4) if one potential supplier is allowed to participate in the auction.

2. If public procurement by the auction method is considered failed, the customer shall take one of the following decisions:

- 1) on conducting the repeated public procurement by the auction method;
- 2) on changing the auction documentation and conducting repeated public procurement by the auction method.

3. In case of recognition of repeated public procurement by the auction method as failed, the customer shall have the right to conduct public procurement by the method from a single source in the following cases:

1) absence of the submitted applications for participation in the auction. At the same time, the potential supplier to whom an invitation to participate in public procurement by the method from a single source is sent, shall be determined by the customer;

2) submission of less than two applications for participation in the auction. At the same time, an invitation to participate in public procurement by the method from a single source shall be sent to a potential supplier who submitted an application for participation in the auction. The price of the concluded contract on public procurement should not exceed the starting price of the potential supplier specified in the application for participation in the auction.

Footnote. Article 36 as amended by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019).

## **Chapter 6. PUBLIC PROCUREMENT BY THE METHOD OF PRICE PROPOSALS REQUEST**

### **Article 37. Grounds for public procurement by the method of price proposals request**

1. Public procurement by the method of price proposals request shall be conducted on homogeneous goods, works, services, if annual volumes of such homogeneous goods, works, services in terms of value does not exceed four thousand times the monthly calculation index established for the corresponding financial year by the Law on the republican budget, whereas the decisive condition is the price.

2. Is excluded by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019).

3. For the purpose of applying the method of price proposals request, it is not allowed to split the annual volume of public procurement of homogeneous goods, works, services during the financial year into parts, the size of one of which is less than that provided for in paragraph 1 of this Article.

4. Is excluded by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019).

5. The requirements for securing an application for participation in public procurement by quote request with account of the features established by this article are determined in accordance with the rules of Article 25 of this Law.

Footnote. Article 37 as amended by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (the enforcement procedure is in Art. 6).

### **Article 38. Organization and conduct of public procurement by the method of price proposals request**

1. The organizer of public procurement no later than five working days before the deadline for submission of price proposals shall be obliged to place on the web portal of public procurement in the Kazakh and Russian languages the following information:

1) on the number of goods, volumes of performed work, provided services, which are the subject of public procurement, indicating the amounts allocated for public procurement;

2) a brief description of the purchased goods, works, services, indicating national standards, and in case of their absence, interstate standards for the purchased goods, works and services. In the absence of national and interstate standards, the required functional, technical, quality and operational characteristics of the purchased goods, works and services are specified, taking into account the regulation of public procurement.

At the same time, a brief description of the purchased goods should contain a requirement for suppliers to provide documents confirming the compliance of the supplied goods with the requirements established by technical regulations, provisions of standards or other documents in accordance with the legislation of the Republic of Kazakhstan;

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



4) required terms for the supply of goods, performance of works, rendering services;

5) on the date of beginning and end of price proposals submission by potential suppliers;

6) draft of the contract on public procurement with technical specification.

2. The information provided for in paragraph 1 of this Article shall not contain indications on trademarks, service marks, brand names, patents, utility models, industrial designs, name of the place of the goods origin and name of the manufacturer, as well as other characteristics determining the ownership of the purchased goods, works, services to a single potential supplier, except for the following cases of public procurement:

1) for full completion, modernization and retrofitting of the main (installed) equipment, as well as installed software (licensed software);

2) for determination the supplier of services on provision of goods for leasing and the need for a detailed description of the leased asset;

3) for repair and (or) maintenance of the goods available at the customer;

4) the goods presented and available on the market, which value does not exceed a thousandfold amount of the monthly calculation index established for the corresponding financial year by the Law on the Republican budget.

3. The potential supplier shall have the right to submit only one price proposal containing information provided by the rules of public procurement, making changes and (or) additions to which are not allowed.

4. The submission of a price proposal by a potential supplier shall be a form of expression of his (her) consent to supply goods, perform works, render services in compliance with the conditions stipulated in the draft contract on public procurement.

5. After the deadline for submission of price proposals, the web portal of public procurement shall automatically compare the price proposals and sum up the results of public procurement by the method of price proposals request.

The potential supplier who offered the lowest price proposal shall be recognized as the winner.

If the lowest price proposal is presented by several potential suppliers, the winner shall be recognized a potential supplier whose price proposal was received earlier than the price proposals of other potential suppliers.

The potential supplier ranked second shall be determined on the basis of the price following the lowest price proposal.

6. It is not allowed to conduct negotiations between the organizer of public procurement and a potential supplier in respect of his (her) price proposal through the

web portal of public procurement or in other ways without the use of the web portal of public procurement, except for the cases provided for in Article 45 of this Law.

7. If during the term of submission of price proposals, only one price proposal of a potential supplier was submitted, such public procurement shall be automatically recognized as failed by the public procurement web portal and the organizer of public procurement shall conduct public procurement by method from a single source from this potential supplier. In this case, the price of the concluded contract on public procurement should not exceed the price proposal of the potential supplier.

8. If no price proposals of potential suppliers are submitted within the period of submission of price proposals, such public procurement shall be automatically recognized as failed by the public procurement web portal and the organizer of public procurement shall conduct the repeated public procurement by the method of price proposals request.

9. The price proposal 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 these goods, works, services;

2) as provided for in subparagraphs 1), 3), 4), 5), 6) and 8) paragraph 1 of Article 6 of this Law;

3) the absence or insufficiency of the amount of security of the application for participation in the quote request, which is in the digital wallet of the potential supplier.

Rejection of price proposals on other grounds shall not be allowed.

10. If after automatic rejection by the web portal of public procurement of price proposals on the grounds provided for in paragraph 9 of this Article, there are less than two price proposals of potential suppliers, such public procurement shall be recognized as failed and the organizer of public procurement shall carry out the repeated public procurement by the method of price proposals request.

11. The results of public procurement by the method of price proposals request shall be placed on the web portal of public procurement automatically after their summing up.

Footnote. Article 38 as amended by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (the enforcement procedure is in Art. 6)..

## **Chapter 7. PUBLIC PROCUREMENT BY THE METHOD FROM A SINGLE SOURCE, THROUGH COMMODITY EXCHANGES**

### **Article 39. Grounds for public procurement from a single source**

1. Public procurement by the method from a single source shall be conducted in the cases provided for in paragraphs 2 and 3 of this Article.

2. Public procurement by the method from a single source for failed public procurement shall be conducted in cases if:

1) public procurement by the method of tender (auction) was recognized as failed in cases stipulated in this Law.

This provision shall not apply to the cases when public procurement by the method of tender (auction) was recognized failed in accordance with the laws of the Republic of Kazakhstan;

2) public procurement by the method of price proposals request was recognized as failed in the cases provided for by this Law, or the measures taken by the organizer of public procurement, provided for in paragraphs 8 and 10 of Article 38 of this Law, did not lead to the conclusion of a contract on public procurement.

3. Public procurement by the method from a single source by direct conclusion of the contract on public procurement shall be carried out in the following cases:

1) purchase of services related to the spheres of natural monopolies, as well as energy supply or purchase and sale of electricity with a guaranteed supplier of electricity;

2) purchase of goods, works, services at prices, tariffs established by the legislation of the Republic of Kazakhstan;

3) purchase of goods, services, being the objects of intellectual property from the person possessing exclusive rights in respect of the purchased goods, services, as well as works on adjustment of pre-project or design and estimate documentation from the person who developed this pre-project or design and estimate documentation;

4) the purchase of goods, works, services because of the occurrence of force majeure circumstances, including localization and (or) liquidation of the consequences of emergency situations, for the localization and (or) liquidation of especially dangerous, exotic animal diseases firstly or newly discovered in the Republic of Kazakhstan, quarantine objects, alien species, for taking action in quarantine zones and points of concern for especially dangerous animal diseases, in hotspots of quarantine objects, emergency phytosanitary measures, for eliminating accidents at electric power facilities, communication life support systems, railway, air, road, water transport facilities, treatment facilities, oil pipelines, gas pipelines, and the need for urgent medical intervention, as well as in the event of breakdowns, failure of communications, mechanisms, assemblies, spare parts and materials en route that require immediate recovery;

5) purchase of goods, works and services at the expense of money allocated from the reserve of the Government of the Republic of Kazakhstan, in cases of situations threatening political, economic and social stability, life and health of people;

6) purchase of goods to the state material reserve for the provision of regulatory impact on the market;

7) purchase of services on the storage of material assets of the state material reserve;

8) purchase of material assets of the state material reserve issued in the order of refreshment;

9) purchase for carrying out operational-search, counterintelligence activity, investigative actions by the bodies authorized to carry out them in accordance with the legislation of the Republic of Kazakhstan, as well as by state enterprises and joint-stock companies, one hundred percent of the voting shares of which belong to the state, in respect of which the national security bodies carry out management in accordance with the legislation of the Republic of Kazakhstan on state property:

services of persons who have agreed to provide official assistance to the bodies engaged in operational investigative, counterintelligence activities;

office premises, transport and other technical means, information systems, property, as well as services for their maintenance, servicing and technical support;

goods, works, services for creation and maintenance of conspiracy organizations and objects;

services of officials and specialists possessing the necessary scientific-technical or other special knowledge;

9-1) purchase of goods, works, services necessary for carrying out activities on prevention, suppression and counteraction to terrorism, extremism by the bodies authorized to carry out it in accordance with the legislation of the Republic of Kazakhstan;

10) is excluded by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019);

11) purchase of services of international rating agencies, financial services;

12) purchase of services of specialized libraries for the blind and visually impaired citizens;

13) is excluded by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019);

14) is excluded by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019);

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

16) purchase of services for the production of state and departmental awards and documents to them, the badge of the deputy of the Parliament of the Republic of Kazakhstan and the document to it, state verification stamps, passports (including service and diplomatic), identity cards of citizens of the Republic of Kazakhstan, residence permit of a foreigner in the Republic of Kazakhstan, identity card of a stateless person, certificates of registration of civil status, as well as purchase from suppliers determined by the Government of the Republic of Kazakhstan, of printed materials, requiring a special degree of protection, according to the list approved by the Government of the Republic of Kazakhstan;

17) purchase of goods, works, services carried out in accordance with international treaties of the Republic of Kazakhstan, according to the list approved by the Government of the Republic of Kazakhstan;

18) purchase of goods, works, services related to the use of grant money provided to the Government of the Republic of Kazakhstan on a gratuitous basis by the states, governments of states, international and state organizations, foreign non-governmental public organizations and funds which activities are charitable and international in nature, as well as money allocated for co-financing of these grants in cases when other procedures for the purchase of goods, works, services are provided for the agreements on their provision;

19) purchase of services related to the state educational order for individuals (if the individual has chosen the organization of education independently);

20) purchase of services for training, retraining and advanced training of employees abroad;

21) purchase of services for the treatment of citizens of the Republic of Kazakhstan abroad, as well as services for their transportation and accompanying;

22) purchase of services rendered by the lawyers to the persons exempted from its payment in accordance with the Laws of the Republic of Kazakhstan;

23) purchase of goods, works, services by foreign institutions of the Republic of Kazakhstan, separate divisions of customers acting on their behalf, to ensure their activities on the territory of a foreign state, as well as for the purposes of peacekeeping operations;

24) purchase of goods and services related to representation expenses;

25) purchase of periodicals on paper and (or) electronic carriers;

26) purchase of information provision services by international and (or) foreign information organizations;

27) purchase of goods, works and services by the state body from:

joint-stock companies and business partnerships, which one hundred percent of voting shares (stakes in the authorized capital) belong to the state, the relevant powers of which are established by the Laws of the Republic of Kazakhstan, decrees of the President of the Republic of Kazakhstan;

state enterprises in respect of which it carries out management in accordance with the legislation of the Republic of Kazakhstan on state property, the relevant powers of which are established by the Laws of the Republic of Kazakhstan, decrees of the President of the Republic of Kazakhstan;

28) purchase of special social services provided by the guaranteed volume of special social services and services for the assessment and determination of the need for special social services;

29) purchase of goods, works, services produced, performed, rendered by state enterprises of institutions of criminal-executive (penitentiary) system. The list and volumes of goods, works and services, as well as the list of state enterprises of the institutions of criminal-executive (penitentiary) system from which such goods, works and services are purchased, shall be approved by the Government of the Republic of Kazakhstan.

Purchase by state enterprises of the institutions of criminal-executive (penitentiary) system of raw materials, materials and components for the production of goods, works and services for the purpose of employment of the convicted on the basis of contracts concluded with legal entities, provided that the purchase by the specified enterprise of such raw materials, materials and components shall be carried out at the expense of the funds provided for in these contracts.

State enterprises of institutions of criminal-executive (penitentiary) system are not allowed to engage subcontractors (co-executors) for the production of goods, performance of works and rendering services that are the subject of public procurement;

30) purchase by the state body providing activity of the President of the Republic of Kazakhstan, the Parliament of the Republic of Kazakhstan, the Government of the Republic of Kazakhstan of goods, works, services from the state enterprises concerning which it exercises management according to the legislation of the Republic of Kazakhstan on state property, on the main subject of activity of such state enterprises;

31) purchase of goods, works, services necessary to ensure the safety and security (including participation in security) of the President of the Republic of Kazakhstan, other protected persons and facilities intended for the stay of protected persons, as well as services for the formation of a video archive and information services of activity of the President of the Republic of Kazakhstan;

32) purchase of goods, works, services necessary for ensuring the activity of the President of the Republic of Kazakhstan and other protected persons, maintenance, servicing and functioning of state residences, vehicles and aircraft intended for servicing the President of the Republic of Kazakhstan and other protected persons, as well as purchase of goods, works, services necessary for carrying out events with participation of the President of the Republic of Kazakhstan and other protected persons in accordance with the legislation of the Republic of Kazakhstan.;

33) purchase of goods, works, services by state enterprises, legal entities, which fifty or more percent of voting shares (shares in the authorized capital) belong to the state, in respect of which the state body 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 shall carry out management in accordance with the legislation of the Republic of Kazakhstan on state property;

34) is excluded by the Law of the Republic of Kazakhstan dated 03.07.2017 № 86-VI (shall be enforced upon expiry of ten calendar days after its first official publication);

35) purchase of consulting and legal services on assessment of prospects of proceedings, protection and representation of interests of the state or customers in arbitrations, foreign arbitrations, foreign state and judicial bodies, as well as in the process before arbitration (judicial) settlement of disputes;

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

37) purchase of services on trust management of property from a person determined by the legislation of the Republic of Kazakhstan;

38) purchase of services for the processing of statistical observation data;

39) purchase of property (assets) sold at tenders (auctions):

by the bailiffs in accordance with the legislation of the Republic of Kazakhstan on enforcement proceedings and the status of bailiffs;

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 state property;

40) purchase of services on training of cosmonauts and organization of flights of cosmonauts into space;

41) purchase of services on repairing of aircrafts at specialized aircraft repair enterprises;

Note of the RCL!

Subparagraph 42) is provided in the wording of the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2021).

Note of the RCL!

This version of subparagraph 42) is valid till 01.01.2021 in accordance with the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI.

42) the purchase of homogeneous goods, if the annual volume of such homogeneous goods in value terms does not exceed one hundred times the monthly calculation index, works and services, if the annual volume of such homogeneous works and services in value terms does not exceed five hundred times the monthly calculation index, and for executive offices of akims of towns of district significance, villages, townships, rural districts does not exceed three thousand times the monthly calculation index established for the corresponding financial year by the law on the republican budget;

43) purchase of services related to the direction of students, undergraduates, postgraduate students to participate in creative competitions (competitions, olympiads, festivals, games), exhibitions, conferences, forums, master classes, internships, performance of educational practical tasks, including travel to the venue of these events and back, renting premises, transport services, catering;

44) purchase of goods that are cultural values, including museum objects and museum collections, as well as rare and valuable publications, manuscripts, archival documents, including copies of historical, artistic or other cultural significance intended to replenish the state museum, library, archival funds, film, photo fund and other similar funds;

45) purchase of materials of exhibitions, seminars, conferences, meetings, forums, symposiums, trainings, and also payment for participation in the specified events;

46) purchase by the organization of culture, the organization of education in the field of culture, the broadcasting organization of goods and services for implementation of scenic representations, public performance and representation of works of art and cultural values;

47) placing an order to visit the zoo, theater, cinema, concert, circus, museum, exhibition and sporting event;



48) purchase of services on the author's supervision over the development of project documentation of capital construction objects, author's supervision over construction, reconstruction and major repairs of capital construction objects by the corresponding authors;

49) is excluded by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019);

50) if there is a need for public procurement of daily and (or) weekly needs for the period before summing up the results of public procurement and entry into force of a public procurement contract in the event that such public procurement is conducted according to the list approved by the authorized body, in the volume not exceeding the volume of public procurement of such goods, works, services necessary to meet the needs of the customer during the period of public procurement, but not more than for two months.

This subparagraph shall be applied in case of refusal of the supplier for prolongation of the contract on public procurement concluded in the previous year, if such public procurement is conducted during the first month of the year, or in case of creation (reorganization) of the customer during the current financial year, but not more than for two months;

51) purchase of sports inventory and equipment (equipment), sports outfit necessary for participation and (or) preparation of sports national and combined teams of the Republic of Kazakhstan, as well as for participation of sports national and combined teams of the Republic of Kazakhstan in the Olympic, paralympic, deaflympic games and other international sports events on the basis of the calendar plan approved by the authorized body in the field of physical culture and sports;

52) purchase of communications services for the needs of national defense and national security, as well as ensuring of law and order;

53) purchase of buildings, structures, constructions, premises having non-residential purpose determined by the act in accordance with the legislation of the Republic of Kazakhstan and renting of buildings, structures, constructions, premises having non-residential purpose, procurement of services for technical maintenance, protection and servicing of the rented buildings, structures, constructions, premises having non-residential purpose, procurement of services for technical maintenance, protection and servicing of one or more non-residential premises, transferred for free use and (or) in operational management of the customer, in the case, if these services are provided to another person or persons using non-residential premises located in the building where the non-residential premises are located, transferred for free use and (or) in operational management of the customer;

Note of the ILLI!

Part one of paragraph 54) is in the wording of Law № 287-VI of the Republic of Kazakhstan as of 26.12.2018 (shall be enforced from 01.01.2021).

54) purchase of goods and services from public associations of the disabled of the Republic of Kazakhstan and (or) organizations created by public associations of the disabled of the Republic of Kazakhstan in terms of acquisition of technical auxiliary (compensatory) means (except prosthetic and orthopedic means) and special means of transportation, social services of an individual assistant and a sign language specialist provided to the disabled, invat taxi services, sanatorium vouchers for the disabled.

The draft of the contract on public procurement shall be sent to public associations of the disabled of the Republic of Kazakhstan and (or) organizations created by public associations of the disabled of the Republic of Kazakhstan, which have been tested in the information system of the state body providing a single point of access to electronic public procurement services, for compliance with:

1) all conditions provided in subparagraph 11) of part one of Article 394 of the Code of the Republic of Kazakhstan "On taxes and other obligatory payments to the budget" (Tax Code);

2) membership in public associations of the disabled of the Republic of Kazakhstan or organizations founded by public associations of the disabled of the Republic of Kazakhstan;

55) purchase of goods, works and services necessary to ensure the activities of special purpose units of law enforcement and special state bodies related to the detection and neutralization of explosives and explosive devices, conducting anti-terrorist operations, as well as special operations to free hostages, detention and neutralization of armed criminals, extremists, terrorists, members of organized criminal groups, persons who have committed grave and especially grave crimes;

56) the purchase of goods, works, services from a person determined by the Government of the Republic of Kazakhstan by decision (order) of the President of the Republic of Kazakhstan.

Footnote. Article 39 as amended by the Laws of the Republic of Kazakhstan dated 28.12.2016 No. 36-VI (shall be enforced upon expiry of two months after its first official publication); dated 05.05.2017 No. 60-VI (shall be enforced upon expiry of ten calendar days after its first official publication); dated 03.07.2017 No. 86-VI (shall be enforced upon expiry of ten calendar days after its first official publication); dated 28.12.2017 No. 128-VI (shall be enforced upon expiry of ten calendar days after its first official publication.); dated 24.05.2018 No. 156-VI (shall be enforced upon expiry of ten calendar days after its first official publication); dated 20.06.2018 No.

161-VI (shall be enforced upon expiry of ten calendar days after its first official publication); dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019); № 249-VI as of 19.04.2019 (shall be enforced ten calendar days after its first official publication); № 268-VI as of 28.10.2019 (shall be enforced ten calendar days after its first official publication).

#### **Article 40. Conduct of public procurement by a single source method on the failed public procurement**

1. In conduct of public procurement by a single source method in cases provided for in paragraph 2 of Article 39 of this Law, the organizer of public procurement shall send an invitation to a potential supplier through the web portal of public procurement to participate in public procurement, which should contain the following information:

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

2) description of the purchased goods, works, services with indication of national standards, and in case of their absence of interstate standards for the purchased goods, works, services. In the absence of national and interstate standards, the required functional, technical, qualitative and operational characteristics of the purchased goods, works and services shall be specified, taking into account the regulation of public procurement.

At the same time, the description of the purchased goods must contain a requirement for the suppliers to provide documents confirming the compliance of the supplied goods with the requirements established by technical regulations, provisions of standards or other documents with the legislation of the Republic of Kazakhstan.

At conduct of public procurement of the works demanding design and estimate documentation instead of description and the required functional, technical, qualitative and operational characteristics of the purchased works, the invitation should contain the design and estimate documentation approved in accordance with the established procedure;

3) the number of goods, the volume of performed works, provided services, which are the subject of public procurement;

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

5) required terms for the supply of goods, performing works, rendering services, provision of guarantees on the quality of the offered goods, works, services;

6) conditions of payment and draft of a public procurement contract;

7) conditions, form, volume and method of making the security of execution of the contract on public procurement in the cases provided for by the rules of public procurement;

8) information on the amounts allocated for the purchase of goods, works and services that are the subjects of public procurement by the method from a single source;

9) a list of qualification requirements provided for in Article 9 of this Law, as well as a list of documents which a potential supplier must submit to confirm its compliance with qualification requirements, except when public procurement by the method from a single source is carried out on the basis of subparagraph 2) of paragraph 2 of Article 39 of this Law;

10) the place and term for the provision by a potential supplier of documents confirming its compliance with shown qualification requirements except when public procurement by the method from a single source is carried out on the ground of subparagraph 2) of paragraph 2 of Article 39 of this Law, as well as information provided for by paragraph 2 of this Article.

2. A potential supplier who has expressed a desire to supply goods, perform works, render services that are the subjects of conducting public procurement by the method from a single source, through the web portal of public procurement should provide the following information to the organizer of public procurement within the prescribed period:

1) description of the goods, works, services offered by a potential supplier, indicating the persons whom the potential supplier provides to involve as subcontractors (co-executors) of works or services;

2) documents confirming the compliance with qualification requirements of the potential supplier and the persons whom he (she) provides to involve as subcontractors (co-executors) of works or services, except when public procurement by the method from a single source is carried out on the ground of subparagraph 2) of paragraph 2 of Article 39 of this Law;

3) justification of the price for the offered goods, works, services.

3. In implementation of public procurement by the method from a single source in the case provided for in subparagraph 1) of paragraph 2 of Article 39 of this Law, the participant of the tender (auction), recognized as failed, invited by the organizer of public procurement to participate in public procurement by the method from a single source, shall have the right not to re-submit the documents confirming the compliance of this participant of the tender (auction) with qualification requirements to the same organizer of public procurement.

4. The organizer of public procurement shall consider the documents submitted by the potential supplier for their compliance with the qualification requirements, except when public procurement by the method from a single source is carried out on the

ground of subparagraph 2) of paragraph 2 of Article 39 of this Law, as well as the requirements established by the rules for public procurement.

5. The organizer of public procurement within three working days from the date of provision of the requested information by the potential supplier shall form and place on the web portal of public procurement the protocol on the results of public procurement by the method from a single source.

Requirements for sending an invitation to a potential supplier, providing them with necessary information through the public procurement web portal and placing by the public procurement organizer of the protocol on the results of public procurement by the method from a single source on the public procurement web portal do not apply to public procurement by the method from a single source, information about which constitutes state secrets in accordance with the legislation of the Republic of Kazakhstan on state secrets and (or) contain official information of limited distribution, determined by the Government of the Republic of Kazakhstan.

Footnote. Article 40 as amended by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019).

#### **Article 41. Conduct of public procurement by the method from a single source by direct conclusion of the contract on public procurement**

1. In conduct of public procurement by the method from a single source by direct conclusion of the contract on public procurement, the customer shall determine the supplier and conclude with him (her) a contract on public procurement through the web portal of public procurement.

2. The customer not later than ten working days from the date of conclusion of the contract on public procurement shall be obliged to place on the web portal of public procurement the report on public procurement from a single source by direct conclusion of the contract on public procurement in the form determined by the rules of public procurement.

The report shall contain justifications of the selection of the supplier, prices of the concluded contract on public procurement, as well as other conditions of the contract on public procurement.

3. Public procurement by the method from a single source through the direct conclusion of a contract on public procurement shall be conducted in compliance with the principle of public procurement, provided for in subparagraph 1) of Article 4 of this Law.

4. The requirement of paragraph 1 of this Article shall not apply to public procurement by the method from a single source by direct conclusion of the contract on public procurement, information on which constitute state secrets in accordance

with the legislation of the Republic of Kazakhstan on state secrets and (or) contain official information of limited distribution, determined by the Government of the Republic of Kazakhstan, as well as public procurement, carried out on the ground of subparagraphs 4), 9), 17), 18), 20), 21), 23), 26), 31), 32), 35), 40) and 41) of paragraph 3 of Article 39 of this Law.

5. The requirement of paragraph 2 of this Article shall not apply to public procurement by the method from a single source by direct conclusion of the contract on public procurement, information on which constitute state secrets in accordance with the legislation of the Republic of Kazakhstan on state secrets and (or) contain official information of limited distribution, determined by the Government of the Republic of Kazakhstan, as well as public procurement, carried out on the ground of subparagraphs 4), 9), 18), 23), 31), 32) and 35) of paragraph 3 of Article 39 of this Law.

Footnote. Article 41 as amended by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019).

## **Article 42. Conduct of public procurement of goods through commodity exchanges**

1. Public procurement of goods through commodity exchanges shall be conducted in accordance with the legislation of the Republic of Kazakhstan on commodity exchanges on the list of exchange goods in the mode of double counter auction.

2. If the annual volume of public procurement of goods included in the list of exchange goods does not exceed the minimum batch size specified in the list of exchange goods, the customer shall have the right to choose another method of public procurement of goods.

### **Chapter 8. PUBLIC PROCUREMENT CONTRACT**

## **Article 43. Conclusion of a public procurement contract**

1. Draft contracts on public procurement shall be drawn up in accordance with the standard contracts on public procurement of goods, public procurement of works and public procurement of services approved by the authorized body.

For certain types of goods, works and services, the authorized body may approve standard contracts on public procurement.

Contracts on public procurement concluded in accordance with paragraph 3 of Article 39 of this Law may be drawn up in a different form, taking into account the requirements of the legislation of the Republic of Kazakhstan.

2. The customer shall send to the winner the draft of public procurement contract, certified by electronic digital signature through the web portal of public procurement:

1) within five working days from the date of expiry of the period for appeal of the protocol on the results of public procurement by the method of tender (auction);

2) within five working days from the date of determining the winner of public procurement by the method of price proposals request.

In cases when the procedures for selecting a supplier, including the procedures for appealing the results of public procurement conducted under the preliminary annual public procurement plan, are completed before the approval of the relevant budget (development plan), the draft of public procurement contract shall be sent to the winner within five working days from the date of approval of the relevant budget (development plan).

3. The draft of public procurement contract shall be certified by the winner of public procurement by the method of tender, auction, price proposals request by means of electronic digital signature within three working days from the date of receipt of notification with attachment of the draft of public procurement contract on the web portal of public procurement.

4. The requirements for conclusion of a public procurement contract through the web portal of public procurement do not apply to the cases provided for in subparagraphs 4), 9), 17), 18), 20), 21), 23), 26), 31), 32), 35), 40), 41) paragraph 3 of Article 39 and Article 50 of this Law.

At the same time, the term for concluding public procurement contracts provided for in part one of this paragraph may not be more than thirty calendar days from the date of sending the draft of a public procurement contract to a potential supplier.

6. In cases of concluding a public procurement contract with a non-resident of the Republic of Kazakhstan, it is allowed to issue a public procurement contract in the form offered by it on paper, taking into account the requirements of the legislation of the Republic of Kazakhstan.

7. If a potential supplier, determined by the winner, has not signed the draft of public procurement contract within the terms established by paragraph 3 of this Article or, having concluded the contract on public procurement, has not made the security of the contract on public procurement and (or) the amount in accordance with Article 26 of this Law (if any), the customer within two working days from the date of evasion of the winner from concluding the contract on public procurement shall send a potential supplier, who took the second place, the draft of public procurement contract, certified by electronic digital signature, through the web portal of public procurement.

The draft of public procurement contract should be certified by the potential supplier, who took the second place, by means of an electronic digital signature within

three working days from the date of submission of the draft of public procurement contract to him (her).

8. If a potential supplier, who took the second place, did not sign the contract on public procurement, signed by the customer within the period established by paragraph 7 of this Article, the customer shall conduct the repeated public procurement.

9. The supplier within ten working days from the date of conclusion of the contract on public procurement shall be obliged to make the security of the contract on public procurement, as well as the amount in accordance with Article 26 of this Law (if any).

At the same time, the customer, within two working days from the date of expiration of the term for making the security for execution of the contract on public procurement through the public procurement web portal, shall send a notification to the supplier of intention to terminate this contract. If the supplier within three working days from the date of receipt of the notification via the public procurement web portal, has not made the security for execution of the public procurement contract, the customer shall send a notice of termination of this contract.

The security for execution of the public procurement contract, as well as the amount in accordance with Article 26 of this Law (if any) shall be made by the supplier as a guarantee that he (she) shall properly fulfill his (her) obligations under the public procurement contract concluded with him (her).

10. The amount of security for execution of the public procurement contract shall be established by the organizer of public procurement in the amount of three percent of the total sum of the contract on public procurement.

In case if the contract on public procurement provides for the payment of the advance, the supplier in addition to security for execution of the contract on public procurement shall be obliged to make an advance payment in the amount equal to the advance.

The supplier shall have the right to refuse from the full amount of the advance or part of the advance. In case of partial refusal of the advance, the supplier shall be obliged to make an advance payment in the amount equal to the part of the advance.

As the obligations under the public procurement contract are fulfilled, the customer, upon the written notification of the supplier, reduces the amount of the advance payment in proportion to the performed obligations provided for in the public procurement contract.

If a public procurement contract is concluded based on the results of price proposals request, through commodity exchanges, from a single source, carried out on



the basis of subparagraph 2) of paragraph 2, and paragraph 3 of Article 39 of this Law, the customer shall have the right to establish a requirement for making an advance payment.

11. In case of conclusion of the public procurement contract with validity period more than one financial year, the size of security for execution of the public procurement contract for the current financial year is calculated proceeding from the annual amount of the contract on public procurement provided in the corresponding financial year.

The supplier shall have the right to choose one of the following types of security for execution of the contract on public procurement:

1) guarantee cash payment, which is made to the bank account of the customer or to the account provided by the budget legislation of the Republic of Kazakhstan for the customers being the state bodies and state institutions;

2) bank guarantee provided in the form of an electronic document. Provision of a bank guarantee on paper is allowed in the cases provided by subparagraphs 4), 9), 17), 18), 20), 21), 23), 26), 31), 32), 35), 40) and 41) of paragraph 3 of Article 39 and Article 50 of this Law;

3) a supplier's civil liability insurance contract concluded in accordance with a standard insurance contract for the purpose of securing the execution of a public procurement contract approved by the authorized body in agreement with the authorized body for the regulation, control and supervision of the financial market and financial organizations.

The object of the insurance contract for the purpose of securing the execution of the public procurement contract shall be the property interest of the supplier related to his obligation to compensate for property damage caused to the customer as a result of non-performance or improper performance of his obligations under the public procurement contract.

An insurance case under the insurance contract for the purposes of securing the execution of a public procurement contract is recognized the fact that of occurrence of the supplier's civil-legal liability to compensate for the damage caused to the property interests of the customer due to accidental events not dependent on the supplier.

The insurance amount shall be determined by the insurance contract for the purposes of securing the execution of public procurement contract and may not be less than three percent of the total amount of the public procurement contract.

It is not allowed for the supplier to perform actions that lead to the occurrence of a third party's right of claim in whole or in part for the deposited guarantee cash contribution until full fulfillment of obligations under the public procurement contract.

It is not allowed for the customer to use the guarantee cash payment made by the supplier for the purposes not provided for by this Law.

The requirement for making securing the execution of the public procurement contract shall not apply to the suppliers determined by the results of public procurement by the method of commodity exchanges, from a single source, carried out on the ground of subparagraph 2) of paragraph 2 and paragraph 3 of Article 39 of this Law, as well as the suppliers who are not subjects of entrepreneurial activity, in the case provided for in paragraph 6 of Article 51 of this Law.

12. The customer shall return the security for execution of the contract, as well as the amount of security in the case of anti-dumping measures (if any) to the supplier within five working days from the date of full and proper performance by the supplier of his (her) obligations under the public procurement contract.

Securing the execution of the public procurement contract, as well as the amount made by the supplier in accordance with Article 26 of this Law (if any), shall not be returned by the customer to the supplier in the event of termination of the public procurement contract in connection with the supplier's failure to fulfill contractual obligations.

Securing the execution of the public procurement contract, as well as the amount paid by the supplier in accordance with Article 26 of this Law (if any), shall be credited to the income of the relevant budget, state enterprise, legal entity, which fifty or more percent of the voting shares (stakes in the authorized capital) belong to the state, or legal entities affiliated with them.

13. The contract on public procurement should provide for a penalty (fine, surcharge) for non-performance or improper performance of obligations under the contract on public procurement. The amount of penalty shall be determined in accordance with the civil legislation of the Republic of Kazakhstan.

14. State bodies, state institutions and state enterprises on the right of operational management may conclude a public procurement contract for a period of more than one financial year in the case of purchase of:

1) works with the term of their completion in the next (subsequent) financial year (years) provided in the design and estimate documentation;

2) assets and other goods, which duration of technological period of manufacture determines their delivery in the next (subsequent) financial year (years);

3) catering services for the personnel of the Armed Forces of the Republic of Kazakhstan, other troops and military formations of the Republic of Kazakhstan. The term of such a contract on public procurement should not exceed three years;

4) services for more than one financial year;

5) goods, works, services, the delivery (performance, rendering) of which, due to duration of execution, is stipulated in the next (subsequent) financial year (s) established in the relevant budget, development plan, individual financing plan, as well as works and services on current repair and maintenance of highways of regional and district significance. The validity period of such a public procurement contract shall not exceed three years.

The conclusion of contracts on public procurement for a period of more than three years shall be carried out in accordance with the budget legislation of the Republic of Kazakhstan.

15. State enterprises on the right of economic management, as well as legal entities, which fifty or more percent of the voting shares (stakes in the authorized capital) belong to the state, and legal entities affiliated with them may conclude a long-term contract on public procurement of goods, works, services necessary for implementation of the event with a deadline for completion in the next (subsequent) financial year (years), established in the development plan approved by the management body or the supreme body of these persons.

16. The contract on public procurement of audit services of annual financial statements may be concluded for a period of not more than three years.

17. Is excluded by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019).

18. In order to ensure the smooth operation of the customer, the latter shall have the right to extend for a period before summing up the public procurement by the method of tender or auction and entry into force of the public procurement contract, the validity of the public procurement contract of goods, works, services of daily or weekly needs according to the list approved by the authorized body.

At the same time, such public procurement shall be carried out in the volume not exceeding the volume of government procurement of such goods, works, services necessary to ensure the needs of the customer during the term of the public procurement, but not more than two months. 19. A public procurement contract must contain a clause on its termination at any stage if one of the following facts is revealed:

1) violation of the restrictions provided for in Article 6 of this Law;

2) provision of assistance by the organizer of public procurement to a potential supplier not provided for by this Law;

3) is excluded by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019);

4) evasion from conclusion of the contract on public procurement by non-payment of security for execution of the contract on public procurement and (or) the amount in accordance with Article 26 of this Law.

20. The contract on public procurement shall contain conditions on full payment for the supply of goods, performance of works or rendering services within a period not exceeding thirty calendar days from the date of fulfillment of obligations under this contract.

21. The public procurement contract shall contain the conditions for payment of value added tax and excise duties in accordance with the requirements of the tax legislation of the Republic of Kazakhstan, the customs legislation of the Eurasian economic union and (or) the Republic of Kazakhstan.

22. The minimum term of delivery of goods, performance of works, rendering services under the contract on public procurement shall not be less than the term spent for delivery of goods, including its production (manufacture), delivery, performance of works, rendering services, but not less than fifteen calendar days.

23. The contract on public procurement shall be considered fulfilled subject to full implementation of the assumed obligations by the customer and supplier under the specified contract.

23-1. The maximum volume of works and services that may be transferred to subcontractors (co-executors) for the performance of works or rendering services shall not exceed, in the aggregate, one second of the work performed or services rendered.

The provision of this paragraph shall not apply to the cases of conclusion of contracts on public procurement, provided for by subparagraph 36) of paragraph 3 of Article 39 of this Law, with legal entities determined by the operators in accordance with the Laws of the Republic of Kazakhstan.

In this case, subcontractors (co-executors) are prohibited to transferring to other subcontractors (co-executors) the volume of performing works or rendering services that are the subject of conducting public procurement.

The subcontractors (the subcontractors) may not transfer to other subcontractors (the subcontractors) scope of works or rendering of services which are the subject of ongoing public procurement.

24. In case of non-performance or improper performance of the obligations assumed by the supplier under the public procurement contract, the customer shall ensure the recovery of a penalty (fine, surcharge).

Penalty (fine, surcharge) shall be credited to the income of the relevant budget, state enterprise, legal entity, which fifty percent or more of the voting shares (stakes in the authorized capital) belong to the state, or legal entities affiliated with them.

25. The contract on public procurement may not be concluded when making a decision by the authorized body in accordance with subparagraph 6) of Article 16 of this Law, including during the appeal by the customer, the organizer of public procurement, the single organizer of public procurement of such decision of the authorized body.

26. Documents on execution of the contract on public procurement (the act of acceptance and transfer of goods, the act of works performed, services rendered, invoice) shall be issued in an electronic form.

Requirements for the issuance of documents on execution of the contract on public procurement in an electronic form through the web portal of public procurement does not apply to the cases provided for in subparagraphs 4), 9), 17), 18), 20), 21), 23), 26), 31), 32), 35), 40) and 41) of paragraph 3 of Article 39 and Article 50 of this Law, in the part that does not contradict the tax legislation of the Republic of Kazakhstan.

When executing the contract on public procurement, the name, quantity, quality, technical specification, cost, place and terms of delivery of goods (performance works, rendering services) must comply with the content of the contract on public procurement.

Footnote. Article 43 as amended by the Laws of the Republic of Kazakhstan dated 08.04.2016 No. 489-V (shall be enforced upon expiry of ten calendar days after its first official publication); dated 26.12.2017 No. 124-VI (shall be enforced from 01.01.2018); dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2009); № 262-VI as of 03.07.2019 (shall be enforced from 01.01.2020).

#### **Article 44. Evasion from the conclusion of the contract on public procurement**

1. If a potential supplier recognized as the winner, within the terms established by this Law, has not submitted the signed contract on public procurement to the customer or, having concluded the contract on public procurement, has not made the security for execution of the contract on public procurement and (or) the amount in accordance with Article 26 of this Law (if any), such a potential supplier shall be recognized as evaded from the conclusion of the contract on public procurement.

2. In case of recognition of the potential supplier determined as the winner of public procurement, evaded from the conclusion of the contract on public procurement, the organizer of public procurement shall retain the security of the application for participation in the tender (auction).

Footnote. Article 44 is in the wording of the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019).

## **Article 45. Grounds for making changes to the draft of public procurement contract or a concluded public procurement contract**

1. Making changes to the draft of the public procurement contract, subject to the invariability of quality and other conditions, which were the grounds for selection of the supplier, shall be allowed in compliance of the following interrelated conditions:

1) making changes to the draft of the public procurement contract initiated by one of the parties no later than five working days from the date of signing the protocol on the results of public procurement by the method of tender (auction);

2) making changes are allowed in terms of reducing the amount of the draft of the public procurement contract;

3) the decision on making changes to the part of reducing the amount of the draft of the public procurement contract was made by mutual agreement of the parties;

4) making changes to the draft of the public procurement contract in part of extending the term of execution of the contract on public procurement by five working days, sent to the potential supplier, who took the second place and if the potential supplier, determined as the winner, evaded to conclude the contract on public procurement.

It is not allowed to make changes to the draft of the public procurement contract without observing the conditions stipulated by this paragraph.

2. Making changes to the concluded contract on public procurement subject to the invariability of quality and other conditions that were the grounds for selection of the supplier shall be allowed:

1) by mutual consent of the parties in part of reducing the price of goods, works, services and, accordingly, the amount of the contract on public procurement;

2) in part of increasing the amount of the public procurement contract, if changes were made into the design and estimate documentation, which was examined in accordance with the legislation of the Republic of Kazakhstan, and a decision was taken to allocate additional money for the amount of such change in the manner determined by the legislation of the Republic of Kazakhstan;

3) in part of reducing or increasing the amount of the public procurement contract related to a decrease or increase in demand in the volume of purchased goods, works, except for the works specified in subparagraph 2) of this paragraph, services, subject to the invariance of the price per unit of goods, work, services specified in the concluded contract on public procurement of these goods, works, services. Such a change in the concluded contract on public procurement of goods, works, services shall be allowed within the limits of the existing savings on this public procurement;

4) in case that the supplier in the process of execution of the concluded contract on public procurement of goods, work and services, offered, subject to the invariance of the price per unit of goods, work, services better quality and (or) technical characteristics or terms and (or) conditions of delivery of goods, performance of work, rendering service, which are the subjects of a public procurement contract concluded with him (her);

5) in part of reducing or increasing the amount of the contract on public procurement for the performance of work with completion date in the next (subsequent) financial year (s) caused by changes in the tax, customs and other legislation of the Republic of Kazakhstan;

6) in part of reducing the amount of the public procurement contract on the performance of works with completion date in the next (subsequent) financial year (s);

7) in part of changing the terms of execution of the contract on public procurement of works or public procurement of services in case of changes in funding by the year from the state budget, provided that the amount of the concluded contract on public procurement remains constant or the estimated cost of performing works or services is reduced and appropriate changes are made to the project-budget documentation, subsequently passed examination in accordance with the legislation of the Republic of Kazakhstan;

8) in part of changing the term of execution of the contract on public procurement for works in the event of initiation of a criminal case related to the execution of the contract on public procurement in respect of an official of the customer and (or) supplier;

9) in part of changing the term of execution of a public procurement contract for the delivery of goods if the supplier is a producer of the goods supplied. Such a change in the concluded contract on public procurement of goods shall be allowed within the current financial year by notifying the supplier for a period not exceeding ten working days.

3. It is not allowed to make changes to the draft of the public procurement contract or concluded public procurement contract that may change the content of conditions of conducted (conducted) public procurement, and (or) the proposal, which was the ground for choosing a supplier, for other reasons not provided for paragraphs 1 and 2 of this Article.

Footnote. Article 45 as amended by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019).

## **Article 46. Entry into force of the public procurement contract**

1. A public procurement contract shall enter into force upon its signing by the customer and the supplier or full introduction of the security for execution of the contract on public procurement by the latter, provided by the tender documentation (auction 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, subject to registration in accordance with the legislation of the Republic of Kazakhstan, shall be submitted by the customer to the relevant territorial unit of the central authorized body for budget execution not later than five working days after its conclusion or full introduction by the supplier of security for execution of the contract on public procurement, provided by the tender documentation (auction documentation).

#### **Chapter 9. APPEAL**

### **Article 47. Appeal against the actions (inaction), decisions of the customer, organizer of public procurement, a single organizer of public procurement, commissions, experts, a single operator in the sphere of public procurement**

1. A potential supplier shall have the right to appeal against the actions (inaction), decisions of the customer, organizer of public procurement, a single organizer of public procurement, commissions, experts, a single operator in the sphere of public procurement, if their actions (inaction), decisions violate the rights and legitimate interests of the potential supplier.

Complaints of potential suppliers on the requirements of tender documentation (auction documentation), including the qualification requirements specified in them on which the remarks to the draft of tender documentation (auction documentation) were not submitted in the order determined by Article 22 of this Law shall not be subjects to consideration.

2. In case of appeal against the actions (inaction), decisions of the customer, organizer of public procurement, a single organizer of public procurement, commissions, experts, a single operator in the sphere of public procurement to the authorized body not later than five working days from the date of placement of the protocol on the results of public procurement by the method of tender (auction), the term of conclusion of the contract on public procurement shall be suspended until the end of the period of consideration of the complaint.

Appeal of persons who did not participate in the tender (auction) and (or) in the preliminary discussion of the draft of tender documentation (auction documentation) in accordance with Article 22 of this Law shall not suspend the term of conclusion of the contract on public procurement.



3. In case of appeal against the actions (inaction), decisions of the customer, organizer of public procurement, a single organizer of public procurement, commissions, experts, a single operator in the sphere of public procurement after the deadline established by paragraph 2 of this Article, the complaint shall be considered in the framework of electronic public audit in accordance with the legislation of the Republic of Kazakhstan on public audit and financial control.

4. A complaint of a potential supplier may be filed through public information systems in accordance with the requirements of the legislation of the Republic of Kazakhstan on electronic document and electronic digital signature.

5. In case of appeal against the actions (inaction), decisions of the customer, organizer of public procurement, a single organizer of public procurement, commissions, experts, a single operator in the sphere of public procurement to the authorized body before summing up the results of public procurement and (or) within the terms established by paragraph 2 of this Article, the complaint shall be considered within the stated requirements (arguments) within ten working days from the date of expiry of the term established by paragraph 2 of this Article, in the framework of desk control in accordance with the legislation of the Republic of Kazakhstan on state audit and financial control.

The authorized body not later than one working day from the date of receipt of the complaint shall send a notification to the customer on the suspension of the conclusion of the contract on public procurement.

6. According to the results of consideration of the complaint received within the period established by paragraph 2 of this Article, the authorized body shall take a decision in accordance with subparagraph 6) of Article 16 of this Law or on refusal to satisfy the complaint.

7. In case of disagreement with the decision of the authorized body adopted in accordance with paragraph 6 of this Article, the potential supplier shall have the right to appeal it to a superior body.

8. The decisions of the authorized body adopted on the results of consideration of the complaint may be appealed in the court in accordance with the legislation of the Republic of Kazakhstan.

9. The pre-trial dispute settlement procedure provided for in this Article shall be binding.

Footnote. Article 47 is in the edition of the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019).

## **Article 48. Complaints procedure**

1. The complaint against the actions (inaction), decisions of the customer, organizer of public procurement, a single organizer of public procurement, commissions, experts, a single operator in the sphere of public procurement to the authorized body shall contain:

1) the name, location of the legal entity, whose actions (inaction), decisions are appealed;

2) the name and location of the person who filed the complaint;

3) information on the public procurement in the framework of which violations of the legislation of the Republic of Kazakhstan on public procurement have been committed;

4) appealed actions (inaction), decisions of the customer, organizer of public procurement, a single organizer of public procurement, commissions, experts, a single operator in the sphere of public procurement.

Documents confirming the arguments of the person who filed the complaint may be attached to the complaint.

2. The complaint shall be signed by the person who filed it or his (her) representative. A power of attorney or other document certifying the authority of the representative shall be attached to the complaint filed by the representative.

3. The complaint shall be returned to the person who filed it without consideration within two working days from the date of receipt if:

1) the complaint does not comply with the requirements established by part one of paragraph 1 of this Article;

2) the complaint is not signed or signed by a person who does not have the authority to sign it.

Footnote. Article 48 as amended by the Law of the Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019).

## **Chapter 10. SPECIAL AND FINAL PROVISIONS**

### **Article 49. 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 shall entail the responsibility established by the laws of the Republic of Kazakhstan.

### **Article 50. Special procedure for conduct of public procurement**

1. Public procurement with the use of a special procedure shall be conducted in accordance with this Law, except for the rules establishing qualification requirements, as well as regulating the procedures and terms of public procurement provided for by this Law.

2. Public procurement with the use of a special procedure shall be conducted in cases of purchase of:

1) goods, works, services for ensuring the needs of law and order and national security, information on which constitute state secrets in accordance with the legislation of the Republic of Kazakhstan on state secrets, and (or) contain official information of limited distribution, determined by the Government of the Republic of Kazakhstan;

2) goods, works, services, information on which constitute state secrets in accordance with the legislation of the Republic of Kazakhstan on state secrets and (or) contain official information of limited distribution determined by the Government of the Republic of Kazakhstan.

3. The procedure for conduct of public procurement with the use of a special procedure shall be determined by the Government of the Republic of Kazakhstan.

#### **Article 51. Participation in public procurement of certain categories of potential suppliers**

1. Participation in public procurement of certain categories of potential suppliers shall be determined in the cases provided for by this Law.

2. Organizers of public procurement in conducting public procurement of certain types of goods, works and services shall conduct procurement of:

Note of the ILII!

Subparagraph 1) shall be excluded by Law № 287-VI of the Republic of Kazakhstan as of 26.12.2019 (shall be enforced from 01.01.2021).

1) goods intended for the needs of persons with disabilities (tiflotechnical means, special means of transportation, mandatory hygiene means), from public associations of the disabled of the Republic of Kazakhstan and (or) organizations created by public associations of the disabled of the Republic of Kazakhstan, producing and (or) supplying such goods, in the amount of not less than fifty percent of the total amount of funds allocated for the purchase of these goods in the current year;

Note of the ILII!

Subparagraph 2) is in the wording of Law № 287-VII of the Republic of Kazakhstan as of 26.12.2019 (shall be enforced from 01.01.2021).

2) other goods, not specified in subparagraph 1) of this paragraph, from public associations of the disabled of the Republic of Kazakhstan and (or) organizations established by public associations of the disabled of the Republic of Kazakhstan producing goods, in the amount of not less than fifty percent of the total amount of funds allocated for the purchase of these goods in the current year;

3) works and services of public associations of disabled of the Republic of Kazakhstan and (or) the organizations created by public associations of the disabled of the Republic of Kazakhstan performing works, rendering services, in the amount of a hundred percent of the total amount of the funds allocated for the purchase of these works and services in the current year.

3. The list of certain types of goods, works, services purchased from public associations of the disabled of the Republic of Kazakhstan and (or) organizations created by public associations of the disabled of the Republic of Kazakhstan, producing and (or) supplying goods, performing work, rendering services, shall be determined by the Government of the Republic of Kazakhstan.

Public associations of the disabled of the Republic of Kazakhstan and (or) organizations created by public associations of the disabled of the Republic of Kazakhstan, producing goods and (or) supplying goods, performing work, rendering services, shall be allowed to participate in public procurement, specified in paragraph 2 of this Article, after passing the test in the information system of the state body, providing a single point of access to electronic services of public procurement, for compliance with:

1) all conditions provided in subparagraph 11) of part one of Article 394 of the Code of the Republic of Kazakhstan "On taxes and other obligatory payments to the budget" (Tax Code);

2) belonging to public associations of the disabled of the Republic of Kazakhstan and (or) organizations, the founder of which are public associations of the disabled of the Republic of Kazakhstan.

In case of non-compliance with subparagraphs 1) and 2) of part two of this paragraph, public associations of the disabled of the Republic of Kazakhstan and (or) organizations established by public associations of the disabled of the Republic of Kazakhstan, producing goods and (or) supplying goods, performing work, rendering services, shall not be allowed to participate in public procurement provided for by this Article.

4. For implementation of the provisions established by paragraph 2 of this Article, the organizer of public procurement shall conduct public procurement in the methods provided by this Law, to which public associations of the disabled of the Republic of Kazakhstan and (or) organizations created by public associations of the disabled of the Republic of Kazakhstan producing and (or) supplying goods, performing work, rendering services shall be allowed.

Performing works, rendering services public associations of the disabled of the Republic of Kazakhstan and (or) organizations created by public associations of the

disabled of the Republic of Kazakhstan, shall not be allowed to involve subcontractors for the performance of works and co-executors for rendering services that are the subjects of public procurement.

In conduct of public procurement in accordance with paragraph 2 of this Article, the organizer of public procurement in the text of the announcement shall indicate that public procurement is conducted exclusively among producing and (or) supplying goods, performing works, rendering services public associations of the disabled of the Republic of Kazakhstan and (or) organizations created by public associations of the disabled of the Republic of Kazakhstan.

Public associations of the disabled of the Republic of Kazakhstan and (or) organizations created by public associations of the disabled of the Republic of Kazakhstan, producing goods and (or) supplying goods, performing work, rendering services, do not provide a security of an application for participation in public procurement conducted in accordance with this Article.

5. In case of recognition of public procurement failed on the grounds provided for in paragraph 1 of Article 29, paragraph 1 of Article 36, paragraphs 7, 8 and 10 of Article 38 of this Law, the customer shall take a decision on implementation of public procurement among other potential suppliers in the manner prescribed by this Law.

6. Public procurement of services provided by the state social order, the dwellings belonging on the right of private ownership to an individual who is not a subject of entrepreneurial activity shall be conducted in accordance with this Law taking into account the features determined by the rules of public procurement.

Footnote. Article 51 is in the wording of the Law of Republic of Kazakhstan dated 26.12.2018 No. 202-VI (shall be enforced from 01.01.2019).

## **Article 52. The procedure for entry into force of this Law**

1. This Law shall be enforced from the 1<sup>st</sup> of January 2016, with the exception of:

- 1) Article 31, which shall be enforced on the 1<sup>st</sup> of April 2016;
- 2) paragraph 26 of Article 43, which shall be enforced on the 1<sup>st</sup> of January 2017.

2. To recognize invalid the Law of the Republic of Kazakhstan dated 21 July 2007 "On Public Procurement" (Vedomosti of the Parliament of the Republic of Kazakhstan, 2007, No.17, Article 135; 2008, No. 13-14, Article 58; No. 20, Article 87; No. 21, Article 97; No. 24, Article 128; 2009, No. 2-3, Article 21; No. 9-10, Article 47, 49; No. 15-16, Article 74; No. 17, Article 78, 82; No. 24, Article 129, 133; 2010 No. 5, Article 23; No. 7, Article 28, 29; No. 15, Article 71; No. 17-18, Article 108; No. 24, Article 146; 2011, No. 2, Article 26; No. 4, Article 37; No. 6, Article 49; No. 11, Article 102; No. 13, Article 115; No. 20, Article 151; No. 21, Article 161, 171; 2012, No. 2, Article 11; No. 3, Article 22; No. 6, p. 43; No. 8, p. 64; No. 12,

Article 83; No. 13, Article 91; No. 14, Article 92, 94; No. 15, Article 97; No. 23-24, Article 125; 2013, No. 1, Article 2; No. 10-11, Article 56; No. 14, Article 75; No. 15, Article 76; 2014, No. 1, Article 4, 6, 9; No. 4-5, Article 24; No. 10, Article 52; No. 14, Article 84, 86; No. 16, Article 90; No. 19-I, 19-II, Article 96; No. 23, Article 138, 143; the Law of the Republic of Kazakhstan dated October 28, 2015 "On amendments and additions to some legislative acts of the Republic of Kazakhstan on culture and historical and cultural heritage", published in the newspapers "Egemen Kazakhstan" and "Kazakhstanskaya Pravda" dated October 30, 2015.; The Law of the Republic of Kazakhstan dated November 12, 2015 "On amendments and additions to some legislative acts of the Republic of Kazakhstan on state audit and financial control", published in the newspapers "Egemen Kazakhstan" and "Kazakhstanskaya Pravda" dated November 17, 2015).

*The President of the  
Republic of Kazakhstan*

*N. NAZARBAYEV*