

LAW OF MONGOLIA
ON PROCUREMENT OF GOODS, WORKS AND SERVICES WITH STATE AND LOCAL FUNDS

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(Turiin medeelel #48, 2005)

CHAPTER ONE
GENERAL PROVISIONS

Article 1. Purpose of the Law

1.1. The purpose of this Law shall be to govern relationships concerning planning and organizing procurement of goods, works and services with state and local funds, exercising oversight of the procurement procedures, making and disposing of complaints and imposing liability for breaches of this law.

Article 2. Legislation on Procurement of Goods, Work and Service with State and Local Funds

2.1. Legislation on procurement of goods, works and services with state and local funds shall consist of the Constitution of Mongolia, the Civil Code, this Law and other acts of legislation enacted in conformity therewith.

2.2. If an international agreement to which Mongolia is a party provides otherwise than this Law, the former shall prevail.

Article 3. Scope of the Law

3.1. This Law shall apply to procurement of goods, works, and services with state and local funds.

3.2. Unless otherwise provided in international agreements to which Mongolia is a party, this Law shall apply to the regulating procurement of goods, works and services with funds generated from foreign aid and loans.

3.3. This Law shall not apply to the regulating of procurement of special equipment, facilities, works and services, and firearms included by law into state secrets and relating to national security.

3.4. This Law shall not apply to procurement of works and services related to repair and maintenance of national automobile roads undertaken by state-owned legal entities under the rights conferred by legislation.

Article 4. Customer

4.1. The following shall be customers:

4.1.1. State- and locally-owned legal entities;

4.1.2. Legal entities with 50 per cent or more state and/or local ownership;

4.1.3. Project implementing body as provided in 3.1.5 of the Law on Regulating Foreign Aid and Loans.

Article 5. Definitions

5.1. For the purposes of this law:

5.1.1. "Tender" shall mean a proposal by interested person to provide goods, works or services in accordance with requirements and conditions set by customer;

5.1.2. "Tender selection" shall mean a process of selecting the tender evaluated the best in accordance with the procedures prescribed by this Law, awarding of contract to perform goods, works or services and concluding of contract;

5.1.3. "Base price" shall mean the minimum or maximum price set for tender selection in accordance with the procedures prescribed by this Law, depending on the budgeted cost of goods, works or services;

5.1.4. "Tender invitation" shall mean customer's document notifying of tender selection or document announced through media;

5.1.5. "Tender documents" shall mean a document containing requirements and conditions for tender selection provided by customer to tender participants;

5.1.6. "Tender participant" shall mean the following persons that are independent from customer:

5.1.6. a. A person that independently submits tender;

5.1.6. b. Several persons that submit a single tender for one tender under joint venture agreement.

5.1.7. "Tender guarantee" shall mean a bank guarantee, Government bond or securities recognized by the Government, provided to customer by tender participant prior to or during tender selection, or in the case of being selected, as a guarantee of concluding a contract;

5.1.8. "Advance payment" shall mean a bank guarantee, Government bond or securities recognized by the Government, provided to customer by tender participant as a security of spending payment according to its purpose as set forth in contract, in case of advance payment by customer;

5.1.9. "Evaluation commission" shall mean a working group formed by customer in accordance with the procedure prescribed by this Law to organize tender selection;

5.1.10. "Goods" shall mean items with economic importance and value, possible to be sold or exchanged, or works required to be supplied with such goods. In the case where the cost of work exceeds the price of goods, contract shall be considered as "contract for works";

5.1.11. "Works" shall mean construction of buildings or facilities; installation, testing and adjustment of construction equipment; or supply of goods required for the performing of such works. In the case the price of supply of goods exceeds the cost of work, the contract shall be considered as "contract for goods";

5.1.12. "Construction work" shall mean works performed by combining of manpower, materials, devices and technology for building, refurbishing, repair or reconstruction of buildings, as well as drilling and exploration works;

5.1.13. "Installation, testing and adjustment of equipment" shall mean installation, testing and adjustment of construction equipment other than those specified in 5.1.11 of this Law;

5.1.14. "Services" shall mean consulting and other services;

5.1.15. "Consulting services" shall mean professional services provided on the bases of special knowledge and qualifications for drafting and implementing of projects, providing technical assistance, conducting research and analysis, engineering and architect designing, as well as monitoring the performance of a contract;

5.1.16. "Key-handover contract" shall mean a single contract comprising several correlated goods, works and services for installation, testing and adjustment of construction equipment, engineering and architect designing and preparing such construction for exploitation;

5.1.17. "Performance guarantee" shall mean a bank guarantee, Government bond or securities recognized by the Government, provided to customer by tender participant prior to signing a contract, certifying complete performance of contractual obligations;

5.1.18. "Award of contract" shall mean a notice of customer's decision to conclude a procurement contract with participant that submits the best evaluated tender;

5.1.19. "Technical definition" shall mean requisites consisting of technical data, production and operation methods, technology and its requirements for goods, works or services to be procured as defined by customer;

5.1.20. "Goods of Mongolian origin" shall mean goods explored, planted, grown, produced, processed or made in Mongolia, or new goods with obviously modified basic characteristics, purpose and form of use, created by assembling the majority of their parts;

5.1.21. "Foreign person" shall mean a foreign or international organization, foreign legal entity, foreign national or stateless person, registered with the taxation and other relevant registration authorities under Mongolian legislation and defined as taxpayers by the taxation legislation;

5.1.22. "Lowest price method" shall mean selection of consultant proposing the lowest price from amongst the consultants receiving the scores equal to or more than the lowest points set by customer for technical proposal.

Article 6. Principles of Procurement

6.1. The principles of transparency, equal opportunity for competition, efficiency, cost-saving and accountability shall be adhered to in procurement procedure.

Article 7. Rules of Procurement

7.1. For procurement of goods, works and services customer shall select contractor and conclude contract on the basis of the following rules of tender selection procedure:

7.1.1. Rules for open tender selection;

7.1.2. Special rules for tender selection;

7.1.3. Rules for selection of consulting service provider.

7.2. Unless law provides for application of the procedure prescribed by 7.1.2–7.1.3 of this Law in, rules for open tender selection shall apply.

7.3. Customer may directly procure goods, works and services with budgeted cost lower than the base price set in 8.1.2 of this Law, without observing the rules prescribed by 7.1 of this Law.

Article 8. Selection of Rules for Procurement Procedure

8.1. The Government shall define the following base prices separately for goods, works and services:

8.1.1. Highest price of goods, works and services that are possible to be procured through comparison;

8.1.2. Highest price of goods, works and services that are possible to be procured through direct procurement;

8.1.3. Highest price of consulting services that is possible to be procured through the consultant selection method or the lowest cost method;

8.1.4. Lowest price of goods, works and services subject to procurement with approval by the state central administrative body in charge of budget matters;

8.1.5. Lowest price of goods, works and services subject to procurement through posting of tender invitation on the website specified in 52.1.12 of this Law.

8.2. Unless otherwise provided in this Law, rules for open tender selection shall apply to the procurement of goods, works and services with prices higher than the lowest base price as set forth in 8.1.1 of this Law.

8.3. In each case of change of the commodity price index by more than 25 per cent, the Government shall redefine the base price, based on the recommendations by the state central administrative body in charge of budget matters.

8.4. Rules for tender selection shall be chosen upon consideration of the total budgeted cost of the given goods, works and services.

8.5. Dividing of the total budgeted cost and conducting of several tender selections for the purpose of fitting into the base price as provided in 8.1 of this Law or avoiding the rules for open tender selection shall be prohibited.

8.6. Customer may conduct tender selection by dividing the goods, works or services into several packages based on their purpose, types and geographic locations in order to promote competition.

8.7. Customer shall, when dividing tender selection into packages in accordance with 8.6 of this Law, fulfill the following requirements:

8.7.1. Use the total cost of all packages as the basis when choosing the rule for tender selection;

8.7.2. Include the information about the packages in the tender invitation, as well as notifying that the participants may tender for one, several or all packages simultaneously;

8.7.3. Evaluate each of the packages;

8.7.4. Choose the option of the lowest total sum of all tender contracts to be concluded upon the given tender selection results.

8.8. Contracts can be awarded on a package-by-package basis, on the basis of several packages, or on the basis of all packages.

8.9. In the case of decision to award contract to one tender participant on more than one package of goods, works and services, this shall be included in the procurement procedure report.

Article 9. Participation of Foreign Persons in Tender Selection

9.1. Foreign persons shall have, in accordance with procedures prescribed by this Law, the right to participate in tender selections.

9.2. Customer may not prohibit a foreign person from participating in a tender selection for works with budgeted cost more than 1,000,000.001 togrogs, and those for goods and services with budgeted cost more than 1,000,000.001 togrogs.

9.3. Customer may, in cases other than those specified in Article 9.2 of this Law, decide to grant or deny a foreign entity the right to participate in tender selection, and in the case of refusal such refusal shall be stated in tender documents and invitation.

Article 10. Granting Exclusive Rights to Tender Participants

10.1. Customer may, during tender evaluation, grant exclusive rights to the following persons:

10.1.1. Persons bidding for tender to supply goods of Mongolian origin;

10.1.2. The following persons submitting tenders for individual implementation of at least 50 per cent of works:

10.1.2. a. Mongolian citizens and legal entities;

10.1.2. b. Legal entities with foreign investment registered in Mongolia of which at least 50 per cent of assets are owned by Mongolian natural persons or legal entities;

10.1.3. Persons using most of all locally-produced goods, materials or locally-provided services;

10.1.3. Persons that recruit the most manpower from the local area.

10.2. In the case of granting exclusive rights to the persons as provided in 10.1.1 and 10.1.3 of this Law, the price of goods of Mongolian origin included in tenders proposed by such persons shall be subject to abstract reduction by 10 per cent; whereas in the case of granting exclusive rights to the persons specified in 10.1.2 and 10.1.4 of this Law, the price of services included in the tenders proposed by such persons shall be subject to abstract reduction by 7.5 per cent respectively, and such reductions shall be evaluated in comparison with tender prices of other participants.

10.3. Abstract reduction of the price of goods, works or services to be procured pursuant to 10.2 of this Law shall not serve as the basis for reduction and changes in tender price for the persons specified in 10.1.1–10.1.4 of this Law.

10.4. In the case of granting exclusive rights to the persons specified in Article 10.1 of this Law, such information shall be included in detail in tender

documents, and tender participant bidding for exclusive rights shall submit detailed documents concerning the origin and price of goods, or furnish documents proving the conditions specified in 10.1.2 –10.1.4 of this Law.

10.5. Methods and rules for granting exclusive rights shall be approved by the Member of Government in charge of budget matters.

Article 11. Technical Definition

11.1. Customer shall satisfy the following requirements when preparing technical definitions:

11.1.1. Defining of the given goods, works or services not by external indicators or qualitative data, but by their purpose, use, quality level and technical indicators;

11.1.2. To be based on international standards recognized in Mongolia, and in the case there is no such standard, to be based on national standards, technical requirements, norms, normatives, rules and regulations;

11.1.3. To not set specific requirements and conditions as to trademark, brand, type, place of origin, methods of production, producer or supplier;

11.1.4. In the case of required inclusion of conditions specified in 11.1.3 of this Law, to add the clause "... or equivalent to these ...".

11.2. Customer shall be prohibited from receiving from interested tender participant consultancy that may lead to limitation of the competition when preparing the technical definition.

Article 12. Evaluation of Tender Participant's Capabilities

12.1. For the purpose of allowing equal opportunities to and fair competition between tender participants, general, financial, technical capabilities and experiences of the persons interested in tender selection shall be evaluated in accordance with the criteria set forth in Articles 14-16 of this Law.

12.2. Customer shall, in accordance with Articles 14-16 of this Law, define and include in the tender documents qualification selection criteria for particular tender selection.

12.3. Customer may, as provided in 12.2 of this Law deny the tenders that do not satisfy the qualifications and requirements, set forth by customer and shall notify the respective tender participants in writing.

12.4. Customer may, prior to awarding a contract, re-verify the qualification requirements set forth in 12.2 of this Law for the tender participant evaluated as "the best".

12.5. Customer shall keep confidential the tender participant's technical and business secrets learnt in the course of evaluation of qualifications of tender participants.

Article 13. Preliminary Selection

13.1. Customer may, for the purpose of verifying the qualifications of the persons interested in tender selection, conduct preliminary selection. The following rules shall apply to preliminary selection:

13.1.1. Prepare in advance preliminary selection document containing qualification selection criteria and requirements and a proof of satisfying such criteria and requirements;

13.1.2. Announce preliminary selection in accordance with 21.1 – 21.4 of this Law;

13.1.3. Notify tender participants who satisfy requirements for preliminary selection and the need for submitting their tender.

13.2. For the purposes of preliminary selection process, the term “tender invitation,” used in 17.1, 21.1, 21.3 and 21.4 of this Law, shall be interpreted as “preliminary selection invitation,” whereas the term “tender documents,” used in Articles 19, 22 and 23 of this Law, shall be interpreted as “preliminary selection invitation,” respectively.

13.3. Member of Government in charge of budget matters shall approved by the rules and instruction for conducting preliminary selection.

Article 14. Evaluation of Basic Conditions

14.1. In the case the following circumstances are established, a tender participant shall be considered as not satisfying the basic conditions:

14.1.1. The tender participant becomes insolvent, undergoes liquidation, has concluded a deal with a loan provider to avoid bankruptcy, its business activities are terminated, or is in any condition similar to the aforementioned under the laws of the jurisdiction of establishment;

14.1.2. Has failed to pay taxes, charges or fees of Mongolia, or the jurisdiction of establishment;

14.1.3. A state-owned, or partially state- owned legal entity operates under the scrutiny of customer;

14.1.4. It is established by court or another relevant authority that the tender participant during the past 3 years has materially broke or failed to perform a procurement contract when engaged in procurement, or committed breaches in professional activities;

14.1.5. The tender participant is an affiliated person of the entity that has provided the design, technical definition, or other documents for goods, works or services, or that is nominated to provide monitoring of or consulting services for the performance of the contract;

14.1.6. It is established by a relevant authority that tender participant has submitted the tender containing obviously false information;

14.1.7. It is established by court that tender participant committed a corruption offence during the past 3 years.

14.2. A legal entity may participate in no more than six tenders relevant to its field of activities, and if was selected in three of these tenders, it shall be prohibited from participating in another tender within the given year.

14.3. The following documents of Mongolia or the jurisdiction of establishment of tender participant may serve as the proof of occurrence of the conditions specified in 14.1 of this Law:

14.3.1. A court decision or documents issued by relevant administrative authority;

14.3.2. Certificates or other similar documents.

14.4. The documents necessary to be submitted other than those specified in 14.3 of this Law, shall be specifically indicated in the tender documents.

14.5. The state central administrative body in charge of budget matters shall keep the registry of the entities denied of tender participation, based on the decisions of relevant authorities confirming the occurrence of the conditions specified in 14.1.6 and 14.1.7 of this Law and publicize such decision.

14.6. A tender participant shall provide a written notification on the absence of the conditions specified in 14.1 of this Law.

14.7. In case where customer demands so tender participant shall provide written information concerning contracts being performed, or those which are awarded.

14.8. Customer shall take into account the information specified in Article 14.7 of this Law when evaluating the technical and financial qualifications of tender participant to perform the contract.

Article 15. Evaluation of Financial Capacity

15.1. Customer may demand from tender participant a proof of financial capacity adequate to performing the contract.

15.2. Customer shall include the financial capacity evaluation requirement in the tender documents and in the preliminary selection document.

15.3. Financial capacity can be proven by the following documents:

15.3.1. Statement from the bank of which the tender participant is client;

15.3.2. Certified financial reports of the tender participant, accompanied, where necessary, by an auditing report;

15.3.3. Expenditure chart, including the number of consultants, their salaries and other expenses;

15.3.4. Information on annual sale of goods, works and services on the basis of contracts similar to the given one, for the past five years.

15.4. Documents necessary to be submitted other than those specified in 15.3 of this Law for the particular tender shall be specifically stated in tender documents.

Article 16. Evaluation of Technical Capacity and Experience

16.1 Technical capacity and experience of tender participants shall be evaluated on the basis of one of the following criteria, by taking into consideration the content, specifics, quality and quantity of the goods, works or services to be provided:

16.1.1. Education and professional qualifications of managing, supervising and executing personnel of the tender participant;

16.1.2. A list of all works performed by the tender participant during up to the past 5 years, letters of reference from previous customers on cost, duration, location and complete performance of the works similar to the given one;

16.1.3. A list of all goods or services supplied by the tender participant during the past 5 years, their cost, term, list of customers, and where necessary, letters of reference from previous customers on performance;

16.1.4. List of the participant's technical devices, production facilities and equipment;

16.1.5. Measures for direct quality control, or indirect control through concluding subcontract;

16.1.6. Samples, definitions or photographs of the goods to be provided, proof of their authenticity;

16.1.7. Quality certificates of the goods and producer's power of attorney.

16.2. The documents required for the particular tender from amongst of those specified in 16.1 of this Law, shall be specifically stated in the tender documents.

CHAPTER TWO PROCEDURE FOR OPEN TENDER SELECTION

Article 17. Open Tender Selection

17.1. Open tender invitation shall be publicized in accordance with Article 21 of this Law, and the tender participants shall be given equal opportunities to participate.

17.2. A person interested in tender participation shall submit the technical and financial tender simultaneously within the period set by customer.

17.3. In cases other than those specified in Article 18 of this Law, an open tender shall be conducted in one stage.

Article 18. Undertaking of Open Tender Selection in Two Stages

18.1. Customer may, in the following circumstances, conduct an open tender selection in two stages:

18.1.1. Excessive scope of the work, high budgeted cost, or the necessity to conclude a contract to supply a set of or a combination of several interrelated types of goods, works or services which may potentially attract unequal technical proposals, or those customer assesses as having two or more potential technical solutions deserving equal recognition;

18.1.2. Inability of customer to predetermine the technical definition, or requiring assistance from an experienced customer or supplier in preparing the technical definition.

18.2. An open tender selection in two stages shall be conducted as follows:

18.2.1. The tender participant shall submit the tender, and customer shall evaluate and negotiate with the participant on its amendments or revisions;

18.2.2. The tender participant shall submit a financial proposal including the revisions or amendments to the tender, and customer shall evaluate such proposal.

18.3. Customer shall indicate in the tender invitation its intention to conduct a two-stage open tender selection procedure.

Article 19. Preparing Tender Documents

19.1. Customer shall prepare the sample tender documents, in the forms of tender documents and contract approved by the Member of Government in charge of the budget matters as provided in other relevant regulations and methodologies.

19.2. The tender documents shall incorporate all the data required for the tender participant, information and all the requirements for tender participants, guidance for their attention, criteria and methodology for the selection of the tender evaluated as 'the best,' the contract conditions for an contract proposed by customer, the technical definitions, designs and charts, the tender specimen, and for the consulting service, shall also include the work plan.

Article 20. Tender Guarantee

20.1. Customer may require the tender participants bidding for procurement of goods, works or services with price more than the base price specified in 8.1.1 of this Law to submit tender guarantee.

20.2. Mongolian legal entities may submit tender guarantee in the form of a bank guarantee or the Government bond, and foreign legal entities in the form of a Mongolian or foreign bank guarantee, a Mongolian Government bond, or in the form of securities approved by the Government of Mongolia.

20.3. The Government of Mongolia shall approve the list of securities that can be used as tender guarantee, performance guarantee, or advance payment.

20.4. Customer may set the amount of tender guarantee as follows:

20.4.1. Include in the tender documents the requirement for tender participants to submit a tender guarantee equal to 1-2 per cent of the total tender price;

20.4.2. Where deemed necessary, set itself and specify in tender documents the amount of tender guarantee at 1-2 per cent of the budgeted cost of the given goods, works or services.

20.5. Customer may, if tender participant fails to submit tender guarantee where required, or if the tender guarantee submitted by such participant fails to meet the requirements set forth in this Law, deny the given tender.

20.6. Customer shall, upon conclusion of contract with the tender participant evaluated as 'the best,' cancel the tender guarantee.

20.7. In the following circumstances tender guarantee shall be seized for the benefit of the state:

20.7.1. Following the opening of tender and prior to the expiration of the tender term tender participant withdrew from own tender;

20.7.2. the tender participant evaluated as 'the best' fails to submit the performance guarantee within the period set by customer set in the award of the contract, or refused to conclude a contract.

Article 21. Publicizing Tender Invitation

21.1. Customer shall publicize tender invitation through nation-wide daily newspapers and other types of media.

21.2. Customer's announcement of detailed information on tender shall be transparent and open and customer shall provide free access to such information to all interested persons.

21.3. Tender invitations for works with budgeted cost more than 1,000,000.001 togrogs, and for goods or services with cost more than 1,000,000.001 togrogs shall be announced through the media in the language widely used in the international trade.

21.4. Customer shall place tender invitation with budgeted cost more than the amount specified in 8.1.5 of this Law on the website specified in 52.1.12 of this Law and shall each time announce the results of tender selection.

21.5. Tender invitation shall include the following information:

21.5.1. Letter of reference about customer;

21.5.2. Brief content of the goods, works or services to be procured;

21.5.3. Postal address to receive tender documents and other information and to submit tenders;

21.5.4. Price of tender documents;

21.5.5. Specific requirements for tender selection;

21.5.6. Deadline for acceptance of tenders;

21.5.7. Date of launching of tender;

21.5.8. Whether foreign persons shall be allowed to participate;

21.5.9. Whether exclusive rights shall be granted.

Article 22. Issuance of Tender documents and Relevant Information

22.1. Customer shall be obliged to prepare tender documents prior to the date of publishing the tender.

22.2. Tender documents shall be evaluated by the costs of printing, copying and distributing them, as well as costs of organizing of tender selection and shall be sold for such price without any hindrance to all persons interested.

22.3. Tender participants may, within not less than five business days prior to the deadline for receiving tenders submit a written request to customer to obtain clarifications and additional information concerning tender documents.

22.4. Customer shall send copies of the request specified in Article 22.3 of this Law, along with its additional clarifications and information, simultaneously to all the persons who have purchased tender documents, which clarifications and information shall be considered delivered on the day of their handing in to the postal service.

Article 23. Publishing and Distributing Tender documents in Foreign Languages

23.1. In the following circumstances tender documents shall, besides Mongolian, be executed in the language(s) widely used in international trade:

23.1.1. If foreign persons are entitled to participate in procurement procedure as provided in Article 9 of this Law;

23.1.2. If customer believes that the budgeted cost and nature of the goods, works or services shall attract foreign persons.

Article 24. Timeframe for Tender Submission and Validity

24.1. Customer shall provide to all participants an equal period of time, adequate enough for the preparation and submission of tenders.

24.2. The deadline for receiving tenders shall run from the day of tender announcement.

24.3. For open tender selection, the deadline for receiving tenders shall be 30 days or more from the day of tender announcement.

24.4. In the case of necessity of screening the workplace for tender preparation the required time shall be included in the tender timeframe.

24.5. Customer, upon tender announcement, shall define the timeframe from the opening of tenders until for the final date of tender selection, and shall include such timeframe in tender invitation and tender documents; within which period tender shall be valid.

Article 25. Submission of Tenders

25.1. Tenders shall be submitted within the timeframe specified in tender documents, to the address specified therein, in the specified form; and tender participants may, within such period, deliver proposals to amend or withdraw from the tender.

25.2. Tenders received later than the timeframe set forth in 21.5.6 of this Law, or submitted in the form other than the one prescribed by tender documents shall be considered invalid and sent back.

25.3. Content of tenders, progress of evaluation and all the information related to evaluating of qualifications of tender participants, except for the information specified in Article 26 of this Law shall be confidential until the conclusion of contract.

Article 26. Opening of Tenders

26.1. Customer shall publicly open all tenders at the time and location as specified in tender documents and set the time for opening of tenders at 1 hour following the deadline for receiving tenders.

26.2. Tender participants or their representatives, as well as other interested persons shall be entitled to be present at opening of tenders.

26.3. During opening of tenders customer shall announce the names of tender participants, tender price, price of alternative tender, if such was allowed,

price discounts specified in the tender, whether tender guarantees are received, and whether participants have amended or withdrawn from the tender, and keep protocols of all such information.

26.4. The persons specified in 26.2 of this Law and their representatives shall sign the protocols referred to in 26.3 of this Law.

26.5. The protocols specified in 26.3 of this Law shall be announced to the persons interested.

26.6. No activities or decisions other than those specified in 26.3–26.5 of this Law shall be allowed during opening of tenders.

26.7. Tender prices, price discounts and prices for alternative tender, unannounced and unrecorded during opening of tenders shall not be taken into account in evaluation.

26.8. Customer shall be prohibited from engaging in discussions with tender participants concerning content of tender and prices after opening of tenders.

26.9. Customer may demand from tender participants written explanation and clarification on the matters other than amending the content of tender or price.

26.10. Customer shall register and keep the explanations and clarifications submitted pursuant to 26.9 of this Law.

Article 27. Tender examination

27.1. Following opening of tenders all tenders shall be examined as to the satisfying of the following requirements:

27.1.1. Qualification requirements set by customer pursuant to Articles 14-16 of this Law;

27.1.2. Technical definition;

27.1.3. Other conditions and requirements set in tender documents.

27.2. In examining the satisfying of the requirements set forth in 27.1 of this Law, the following criteria shall be used:

27.2.1. Factors that may adversely impact the scope of goods, works or services, their quality or performance;

27.2.2. Whether there are unlawful limitations of contract terms proposed by customer;

27.2.3. Whether there is an unfair influence upon competition of other tender participants that satisfy the requirements set forth in 27.2.1 and 27.2.2 of this Law.

27.3. The tender that satisfies all the conditions specified in 27.1 of this Law shall be considered as satisfying the requirements.

27.4. All tenders, except for those specified in 27.3 of this Law, shall be considered invalid and customer shall refuse such tenders.

Article 28. Tender Evaluation

28.1. During one-stage tender selection tenders shall be subject to examination in accordance with Article 27 of this Law, and all tenders considered satisfying the requirements shall be evaluated.

28.2. Tender evaluation shall be conducted in shortest possible time during the term of tender validity.

28.3. Tender price shall be the basic criteria for evaluating the tenders satisfying requirements.

28.4. Customer may, taking into consideration the specific nature of the goods, works or services to be procured other than consulting services, select the appropriate ones from the following factors affecting the economic benefit, express them in monetary terms and add to tender price:

28.4.1. Timeframe for completing works or services or delivering goods;

28.4.2. Calculations of current expenses or of expenses and profit;

28.4.3. After-sale service and technical assistance;

28.4.4. Guarantees to be given for supply of spare parts and with respect to price;

28.4.5. Quality and technical data of the goods, works or services;

28.4.6. Other criteria conforming this Law.

28.5. The additional calculations specified in 28.4 of this Law shall be aimed only at comparing tenders and shall not serve as the basis for changing tender price.

28.6. Unless otherwise provided in tender documents, tender price shall include all expenses related to tax, insurance as well as transportation and miscellaneous costs required for performing the contract, and if such expense items are not specifically estimated in tender price, customer shall consider them as included in tender price.

28.7. Tenders satisfying the requirements shall be compared as follows:

28.7.1. For rectifying the small-scale errors or arithmetical miscalculations, reducing tender price based on price discount, or, in the case if customer selects other selection criteria based on the provisions of this Law customer shall estimate such proposals in monetary terms and add to or subtract from tender price, and define the compared tender price accordingly;

28.7.2. If tender documents provide for granting of exclusive rights, the proportions set forth in 10.2 of this Law shall apply to estimating compared tender price of tender submitted by the person granted exclusive rights;

28.7.3. All tenders shall be arranged from the ones with lowest compared price to the ones with highest compared price, and the tender with the lowest compared price shall be selected;

28.7.4. The tender with the lowest compared price shall be evaluated as 'the best.'

28.8. Procedures prescribed by Articles 37, 38 and 39 of this Law shall apply to the evaluating proposals for consulting service.

28.9. If customer selects from amongst the selection criteria specified in Article 28.4 of this Law customer shall express such in monetary terms and set

appropriate conditions and methodology for evaluation in accordance with this Law and include in tender documents.

28.10. Selection criteria set forth in 28.4 of this Law shall not pertain to the qualification criteria of tender participant and satisfying of the minimum requirements set by customer as provided in Articles 14-16 of this Law shall not serve as the basis for selection.

28.11. Customer, when evaluating the tenders satisfying the requirements and selecting the tender evaluated as 'the best,' shall use the selection criteria in the rules prescribed by tender documents.

28.12. In the case of using foreign currency in tender valuation this shall be specified in tender documents.

28.13. In the case of using in payment foreign currency other than that prescribed by tender documents, the rate of conversion thereof shall be the Bank of Mongolia exchange rate announced on the day of tender announcement.

28.14. For undertaking open tender selection in two stages, tender evaluation shall be conducted as follows:

28.14.1. Technical proposal shall be subject to review as to the satisfaction of the requirements set forth in Article 27 of this Law;

28.14.2. On each of the technical proposals that satisfy the requirements set forth in Article 27 of this Law, customer shall exchange views with tender participants with the purpose to prepare standard technical definition that provides more satisfactory performance;

28.14.3. Customer shall, following the exchange of views, issue standard technical definition;

28.14.4. Tender participant shall, re-evaluate its technical definition to conform the standard technical definition specified in 28.14.3 of this Law and submit along with financial proposal;

28.14.5. Customer shall publicly open financial proposal within the fixed timeframe;

28.14.6. Customer shall evaluate financial proposals in accordance with 28.2 – 28.7 of this Law, and award contract to the tender participant evaluated as 'the best.'

28.15. If tender participant considers amending its proposal in accordance with the standard technical definition set by customer as impossible, customer shall be entitled to refuse the given tender.

Article 29. Awarding a Contract

29.1. Customer shall decide to award a contract to the participant that has submitted the tender which satisfies the requirements set forth in Article 27 of this Law and is evaluated as 'the best' in accordance with the procedures prescribed by Article 28 of this Law, and shall simultaneously inform in writing such participant and all other participants of the decision.

29.2. Contract shall be concluded in at least 5 business days from the notification of awarding a contract within the period of tender validity.

29.3. In the case of a refusal of the tender participant evaluated as 'the best' to conclude a contract, or in the case of occurrence of conditions specified in

20.7.2 of this Law, customer may cancel the award of contract and may, in accordance with this Law, conclude a contract with the first runner-up; or, in the case of absence of such a participant, shall make one of the decisions specified in 30.4 of this Law.

29.4. Customer may, if for reasons not within its control contract could not be concluded within the period of tender validity, extend such period.

29.5. Customer shall, in the case of extension of the period in accordance with Article 29.4 of this Law, specify the reasons for it in the decision.

Article 30. Refusal of All Tenders

30.1. Customer shall refuse all tenders in any of the following situations:

30.1.1. No tenders satisfying the requirements were received;

30.1.2. Participation in tender by an advance deal on prices, misleading the competitors as to the real conditions of tender, or pressure upon them proved by a court or relevant authority;

30.1.3. Prices of all tenders satisfying the requirements exceed the budgeted cost estimated by customer by more than 5 per cent;

30.1.4. Failure of the negotiations specified in 30.2 of this Law.

30.2. If prices of all tenders satisfying the requirements exceed the budgeted cost estimated by customer then customer may negotiate with tender participants whose tender prices exceed those set by customer by up to 5 percent; and when negotiating, customer shall be prohibited from demanding from tender participant to reduce the proposed price without any reason.

30.3. Customer shall not, in the case of refusal from all tenders as provided in 30.1 of this Law, bear any liability before tender participants.

30.4. In the case of refusal from all tenders customer shall make one of the following decisions:

30.4.1. To examine the reasons of unsuccessful tender, make necessary amendments to the content of tender documents and conduct open tender selection;

30.4.2. In the case of occurrence of the conditions specified in 30.1.3 and 30.1.4 of this Law where the reasons of unsuccessful tender are only related to the amount and scope of the goods, works or services to be procured, customer shall make necessary amendments to the content of tender documents and conduct limited tender selection;

30.4.3. In the case of re-emerging of the conditions specified in 30.1 of this Law as a result of tender selection pursuant to the rules prescribed by 30.4.1 and 30.4.2 of this Law, customer shall immediately conclude a contract.

CHAPTER THREE

SPECIAL RULES FOR TENDER SELECTION

Article 31. Applying Special Rules for Tender Selection

31.1. The following methods shall be used in conducting tender selection under special procedures:

- 31.1.1. Limited tender selection;
- 31.1.2. Comparison method;
- 31.1.3. Immediate conclusion of a contract.

31.2. The relationships concerning tender selection under special rules which are not governed by Articles 32-34 of this Law shall be governed by relevant articles, paragraphs and sub-paragraphs of Chapter Two of this Law.

Article 32. Limited Tender Selection

32.1. Limited tender selection method shall apply in the following conditions:

32.1.1. Limited number of qualified persons capable of performing the complex tasks for goods, works or services requiring high professional skills, experience, technical and technological abilities;

32.1.2. in the case specified in 30.4.2 of this Law.

32.2. When conducting limited tender, customer shall, in accordance with Articles 14-16 of this Law, send tender invitation simultaneously to all tender participants capable of performing such tender and provide them equal opportunities for fair participation.

32.3. Tender invitation shall contain the information specified in 21.5 of this Law.

32.4. Tender documents shall be freely available, without any hindrance, to all parties interested in accordance with 22.2 of this Law.

32.5. The deadline for receiving tenders shall be set at 15 or more business days from the dissemination of tender invitation.

Article 33. Comparison Method

33.1. Comparison method can be used where the budgeted cost for goods, works or services does not exceed the base price set in 8.1.1 of this Law.

33.2. Comparison method shall be used as follows:

33.2.1. Notify to submit the price proposal 3 or more persons that satisfy technical definition and other conditions and requirements;

33.2.2. Awarding a contract to the tender participant from amongst those who satisfy technical and other conditions and requirement and who has submitted the lowest price in accordance with 29.1 of this Law.

33.3. The timeframe for the price proposal referred to in 33.2.1 of this Law shall be set at least for 5 business days from dispatching of the tender invitation.

33.4. If awarding a contract is not permitted due to unsuccessful comparison, the method of immediate contract conclusion can be used.

Article 34. Immediate Contract Conclusion Method

34.1. Immediate contract conclusion method can be only used in the following circumstances:

34.1.1. In the cases specified in 30.4.3 and 30.4.4 of this Law;

34.1.2. In the case of possibility to conclude contract only with one person, for the purpose of protection of intellectual property, where there is no another person capable of replacing;

34.1.3. In the case of procuring of materials with different type of technical nature by customer caused by replacing some parts of the goods or equipment supplied in accordance with the initial contract, under the condition that such additional supply does not exceed 20 per cent of the initially agreed price, or changing the supplier during such additional supply; and in the case if such arrangement is likely to cause any difficulties in the repair service, or unnecessary cost;

34.1.4. If customer believes that a new tender selection shall not bring about a better proposal outcome in the case of performing additional an/or partial repeated task of the procured work, where the cost of additional work is not more than the lowest of fifteen per cent of the initial contract price or the compared base price specified in 8.1.1 of this Law;

34.1.5. In the case of impossibility to observe the minimum timeframe for receiving tenders for open and limited tenders due to unforeseen or force majeure conditions.

34.2. For immediate conclusion of contract under the conditions specified in 34.1 of this Law customer shall negotiate with one or more persons capable of providing the goods, works or services which satisfy the requirements set forth in Articles 14-16 of this Law and shall conclude a contract with the person that qualifies the best for technical definition and other conditions and requirements as provided in this Law, and any agreements reached during the negotiation shall be included in the contract.

34.5. In the case of immediate contract conclusion customer shall submit a copy of this contract specifying the reasons for choosing this method to the state central administrative body in charge of budget matters.

CHAPTER FOUR

RULES ON PROCUREMENT OF CONSULTING SERVICES

Article 35. Selection of Consultants

35.1. Legal entities and individuals or may engage in consulting services.

35.2. Consulting firms shall be used where the work requires multi-disciplinary expertise and personnel with special qualifications.

35.3. Individual consultants shall be selected where an individual expert with the required qualifications and experience can best carry out a particular assignment.

Article 36. Common Procedure of Recruitment of Consultants

36.1. Customer shall prepare terms of reference that include the purpose, intended result and other necessary information for the required service.

36.2. Assignment given to the consultants, with consequential modifications, shall form an integral part of the contract concluded with consultant.

36.3. Customer shall make a cost estimate based on the qualification level and type of personnel, the period to be spent in the field and in the home office and stationeries any other items reasonably required for the provision of the services.

36.4. Once the terms of reference and a cost estimate have been prepared, customer shall publish in the daily and other press an invitation to potential consultants to apply for.

36.5. The detailed list may be compiled from:

36.5.1. Respondents to invitation of the proposed contract specified in 36.4 of this Law;

36.5.2. Domestic and international consultants operating in Mongolia;

36.5.3. Consultants registered in the Registry specified in Article 51 of this Law;

36.5.4. Consultants of professional associations, international financial and other institutions.

36.6. Customer shall draw up from the detailed list, in accordance with Articles 14-16 of this Law and the selection criteria of capabilities established by customer a short list of 3 or more consultants appearing in the list.

36.7. Customer shall send an invitation for proposals together with the terms of reference to the consultants appearing in the short list.

36.8. Invitation for proposals shall contain:

36.8.1. description of assignment and financing;

36.8.2. terms of reference;

36.8.3. selection criteria to be used based on Articles 14-16; evaluation criteria established by customer in accordance with 28.11;

36.8.4. names of consulting legal entities and individuals being invited;

36.8.5. draft contract;

36.8.6. instructions for submitting proposals;

36.8.7. evaluation method chosen.

36.9. The period to receive proposals shall be not more than 60 days, but more than 30 days for legal entities and more than 7 days for individuals.

36.10. Consultant shall prepare and submit the technical and financial proposals separately.

36.11. The technical proposal shall contain information relating to the consultant's professional capabilities, methods and experience as the key personnel.

36.12. The financial proposal shall contain the price for which the contract shall be performed on the terms of the technical proposal.

36.13. The financial proposal shall be evaluated after evaluation of the technical proposal.

36.14. Both proposals shall be submitted at the same time, and, where specifically provided in the letter of invitation, shall be contained in two separate sealed envelopes.

36.15. Customer in accordance with Articles 37-39 of this Law shall evaluate both technical and financial proposals and in case a negotiation with the selected consultant succeeds the consultant shall be awarded the contract as provided in Article 29 of this Law.

Article 37. Methods of Evaluation for Recruitment of Consultants

37.1. Before dispatching invitation for proposals, customer shall determine the method of evaluation to be used.

37.2. Method of evaluation shall be competence evaluation method, quality evaluation method or combined evaluation method.

37.3. Competence evaluation method based on personal knowledge, experience, professional level and other skills shall be used for recruitment of individual consultant.

37.4. In selection of consulting institution quality evaluation method or combined evaluation method shall be used.

37.5. Quality evaluation method shall be used for the selecting of consulting institution, in the case of technically complex contracts or contracts requiring simultaneous accomplishment of several interrelated services.

37.6. In all cases other than those specified in 37.3 and 37.5 of this Law combined evaluation method shall be used.

Article 38. Quality Evaluation Method

38.1. Proposals received shall be analyzed and compared with respect to the proposed consulting methodology, schedules of work, experience and capabilities of the personnel, quality of service and technical facilities.

38.2. Technical proposals shall be assigned scores on the basis of the requirement criteria set forth in Article 14-16 of this Law.

38.3. Customer may open the financial proposal submitted by the technically first ranked consultant and negotiate with such consultant financial and other terms of the contract.

38.4. During the negotiation procedure specified in 38.3 of this Law customer may not require to reduce the price proposed by consultant without objective reason.

38.5. Consultant or its authorized representative shall be obliged to provide customer with documents, estimates, researches and other required information and evidence necessary for conducting negotiations.

38.6. If the parties fail to reach agreement on the financial or other terms of the contract, customer may terminate negotiations with the selected consultant

and open the financial proposal of the next ranked consultant and negotiate with that consultant.

Article 39. Combined Evaluation Method

39.1. In the combined evaluation method, customer shall specify in the invitation the minimum score of the technical proposal which must be attained.

39.2. Technical proposals shall be assigned score on the basis of the requirements and criteria set forth in Article 14-16 of this Law.

39.3. All tenders which attain the minimum score for technical capability set in the invitation or higher shall be notified of the opening data of financial proposals and financial proposals of consultants who fail to attain the minimum score shall be returned unopened.

39.4. Financial proposals of consultants that have attained the minimum or higher score for the technical proposal shall be publicly opened at specified time with minutes kept.

39.5. Consultant or its representatives shall be entitled to be present during the opening of financial proposals.

39.6. All financial proposals opened shall be evaluated and assigned a score according to requirements and criteria set forth in 36.8.3 of this Law.

39.7. Total quality and price score shall be calculated by adding the proportions of scores for the technical and financial evaluations in the percentage set in the invitation.

39.8. Customer shall enter into negotiations with the consultant who achieves the highest score.

39.9. Negotiations may be conducted in order, where necessary, to modify the number of man-months or man-days, the periods to be spent in the field or home office, stationery and other requirements for the given service.

39.10. No unit price proposed, including cost of man-months or man-days may be modified by negotiations.

39.11. If parties fail to reach agreement on the non-financial terms of the contract, customer shall terminate negotiations with the selected consultant and invite the next ranked consultant for negotiations.

39.12. For contracts for auditing, ordinary engineering design and other common assignments in which the contract value does not exceed the threshold set forth in 8.1.3 of this Law, a simplified modification of the combined evaluation method, the "least cost method" may be used.

39.13. The "least cost method" to evaluate the technical proposal and the financial proposal shall be opened in accordance with 39.2-39.4 of this Law.

39.14. Negotiations with the consultant who provides the lowest cost proposal shall be conducted in accordance with 39.9-39.11 of this Law.

CHAPTER FIVE

CONTRACT FOR PROCUREMENT OF GOODS, WORKS OR SERVICES

Article 40. Contract for Procurement of Goods, Works or Services

40.1. Unless otherwise provided in this Law, relationships concerning contracts for procurement of goods, works or services (hereinafter referred to as “procurement contract”) to be concluded between customer and procurer shall be governed by the Civil Code.

40.2. “Best” qualified tender and technical and trade requirements defined by customer in the tender documents shall be the basic condition of a procurement contract.

40.3. A procurement contract shall contain the following terms, in addition to those specified in 40.2 of this Law:

- 40.3.1. Contract price;
- 40.3.2. Terms and form of payment;
- 40.3.3. Amount and form of guaranteed advance payment, in case of advance payment;
- 40.3.4. Customer’s oversight and other terms;
- 40.3.5. Amount and forms of the performance guarantee, where such is required;
- 40.3.6. Terms of sale;
- 40.3.7. Schedule of supply of goods or performance of service;
- 40.3.8. In case adjustment is to be made to the contract price, its terms and methodology.

40.4. In the following cases customer may define in the contract to justify the prices of procuring goods, works, service facilities, raw materials and payments:

40.4.1. in case the contract is for more than 2 years, commodity price index changes;

40.4.2. abrupt change of the base prices.

40.5. Member of Government in charge of budget matters shall approve standard conditions of procurement contract.

Article 41. Prohibition of Amendments to Procurement Contract

41.1. It shall be prohibited to make the following amendments to procurement contract:

41.1.1. Customer modifying contract terms related to its content in cases other than necessary amendments made as the result of unforeseen circumstances;

41.1.2. Increasing the contract price in any case except for the conditions specified in 40.4 of this Law.

41.2. Procurer shall be prohibited from assigning to any third party its obligations under contract.

Article 42. Void Contract

- 42.1. Procurement contract shall be void in the following cases:
- 42.1.1. Customer's failure to obtain a permission to award the contract as provided in Article 53 of this Law;
 - 42.1.2. Customer awarding the contract in breach of Articles 27, 28 or 29 of this Law;
 - 42.1.3. The breaches made in the course of implementation of the procurement rules prescribed by this Law materially affecting the final result of tender procedures.

Article 43. Performance Guarantee, its Amount and Issuing

43.1. Prior to awarding contract customer may demand issuing a performance guarantee from the participant who provides the "best" qualified tender.

43.2. Customer shall set up the amount of performance guarantee equal to 5 per cent of the contract price and specify in the tender documents.

43.3. Performance guarantee shall be valid until the final assessment of the contract and handing in of goods, works or services.

43.4. Customer shall demand performance guarantee from procurer in the following cases:

- 43.4.1. concluding of a work procurement contract with budgeted cost of more than 150 million togrogs;
- 43.4.2. concluding of service procurement contract with budgeted cost of more than 100 million togrogs;
- 43.4.3. concluding of procurement contract for more than 2 years.

43.5. In the case if the duration of performance of a procurement contract is more than 2 years customer may reduce the performance amount of guarantee in proportion to the percentage of works performed by procurer.

43.6. To secure the procurer's performance of overall tasks during the warranty period of goods, works or services customer may include in the tender documents a term that allows customer to pledge 5-10 per cent of the contract price until the expiration of the warranty period.

43.7. Procurer may provide a bank guarantee or Government bond as security of its obligations specified in 43.1 of this Law in which case customer shall prepay the pledged money in the amount equal to the sum specified in such guarantee.

Article 44. Prepayment and its Guarantee

44.1. Customer may make prepayment to procurer to ensure the preparation of work.

44.2. Customer shall make prepayment equal to the amount proposed by procurer and based on the guarantee specified in 20.2 of this Law.

44.3. In the case prepayment is not provided in tender documents customer shall not make prepayment.

CHAPTER SIX

MANAGEMENT OF PROCUREMENT

Article 45. Arranging of Procurement by customer

45.1. Customer shall make arrangements of procurement of goods, works or services with the funds allocated from the state and local budget for expenses other than those for investments, funds from other sources, as well as those to be financed from own funds in accordance with the rules prescribed by this Law.

45.2. The following shall be customers in case of procurement of goods, works or services with the investment sources of the state budget:

45.2.1. Secretariats of the President and the State Ih Hural, Secretariat of Government, National Security Council, state central administrative bodies and the bodies accountable to the State Ih Hural; Supreme Court, Office of the Prosecutor-General, General Council of Courts, agencies within the matters in charge of the Prime Minister and Deputy Prime Minister for procurement of overall goods, works and services for own needs;

45.2.2. A state central administrative body for procurement of goods and services with cost of more than 50 million togrogs and works with cost of more than 150 million togrogs for needs of agencies and organizations within the matters in charge of Member of the State Ih Hural;

45.2.3. Agencies and organizations specified in 45.2.2 of this Law and Offices of aimag and Capital city Governors for the procurement of goods and services with cost of 20-50 million togrogs and works services with cost of 50-150 million togrogs;

45.2.4. For procurement of goods, services and works with cost less than the minimum amount set in 45.2.3 of this Law- the particular customer.

45.3. The following shall be customer in case of procurement of goods, works and services with the local budget investment sources:

45.3.1. Offices of aimag and Capital city Governors for procurement of goods and services with cost of more than 5 million togrogs and works with price of more than 15 million togrogs;

45.3.2. Offices of aimag and district Governors or local budget organizations -for the procurement of goods and services with price up to 5 million togrogs and works with price up to 15 million togrogs.

45.4. Procurement of goods, works and services of certain assortments by two and more customers may be centralized or joined, if such arrangement is cost effective or economical.

45.5. General budget manager shall make a decision to centralize procurement and assign customer.

45.6. If joint procurement of goods, works or services of the same type by several customers is cost effective or economical general budget manager may make a decision to join such procurements as provided in 45.4 of this Law and assign customer.

45.7. Centralizing procurement in cases other than those specified in 45.5 of this Law shall be prohibited.

Article 46. Rights and Obligations of Customer

46.1. Customer shall have the following rights and obligations with respect to procurement of goods, works and services:

46.1.1. To establish evaluation committee as provided in this Law;

46.1.2. To oversee whether the activities of the evaluation committee and evaluation conclusions are in conformity with applicable legislation and to remedy the breaches committed;

46.1.3. To make decisions to award contracts on the basis of conclusions of evaluation committee;

46.1.4. To fit in the budget approved and effectively plan and organize procurement of goods, works and services;

46.1.5. To commence procurement process, after the source for financing the good, works or services is approved;

46.1.6. To oversee the performance of the procurement of goods, works or services;

46.1.7. To not amend the contract otherwise than provided in the law or contract;

46.1.8. To have commenced procurement of seasonal goods, works or services, including construction, roads and engineering lines within 15th January of the given year;

46.2. General Manager shall act as representative of the customer specified in 4.1.1 of this law, and executive director as representative of the customer specified 4.1.2 of this law respectively, which representatives shall exercise the rights and duties provided in 46.1 of this law.

46.3. The person authorized to represent customer specified in 46.2 of this law may transfer its rights conferred by this law but such transfer shall not serve as a reason to release from liability.

46.4. Customer's communications in the matters connected with procurement shall only be in writing.

Article 47. Evaluation Committee

47.1. Customer shall establish evaluation commission where the budget cost exceeds the maximum set in 8.1.1 of this law.

47.2. Evaluation Committee shall have no permanent operation and shall exercise the following functions:

47.2.1. To prepare technical definition, develop invitation for tender and tender documents, receive tenders and open tender procedure according to relevant instructions;

47.2.2. To review and assess tenders, draw assessment conclusions, and give to customer recommendation to award a contract.

47.3. Officials on the evaluation committee shall satisfy the following requirements:

47.3.1. Be specialized in field of procurement or in the field of the given goods, works or services;

47.3.2. Not be parent, parent-in-law, spouse, sibling, son or daughter of the tender participant or its representative;

47.3.3. Within past 3 years not be in labor relationships with tender participant;

47.3.4. Within past 1 year have not violated the duties of civil servants provided in 50.1 of this law.

47.4. Representative from non-government organizations in related fields may be on the evaluation commission.

47.5. Majority of members of the evaluation commission shall be specialized in procurements.

47.6. Decision of evaluation committee (hereinafter referred to as 'assessment conclusion') shall be in the form of minutes of meeting and shall contain decision taken by majority of vote of evaluation committee members, its basis and other relevant information.

47.7. Assessment conclusion shall be endorsed by signatures of all committee members and those who voted against shall make and sign notice to this effect in the conclusion.

Article 48. Planning of Procurement

48.1. Customer shall prepare plan of procurement of goods, works and services in consistency within the approved budget of the given year and deliver to the General Budget Manager within 30 days from approval of the State budget.

48.2. General Budget Manager shall finalize the plan of procurement of goods, works and services within the scope of own budget and deliver to the state central administrative body in charge of budget matters within 45 days from approval of the State budget.

48.3. General Budget Manager shall approve customer's plan of procurement and exercise control over its implementation.

48.4. The state central administrative body in charge of budget matters shall review the Procurement Plan of the General Budget Manager and exercise control over its implementation.

48.5. Customer shall announce the plan of procurement in the mass media within the first month of the respective year.

Article 49. Reporting of Procurement Procedures

49.1. Customer in each case of conducting procurement shall compile tender documents into a file and keep as an archive unit.

49.2. Tender file shall consist of the following documents and materials:

49.2.1. procurement plan, its implementation and comments, where necessary;

49.2.2. basis of selection, in case where method other than open tender is used;

49.2.3. brief description of goods, works or services to be procured and tender documents;

49.2.4. letters exchanged with customer and tender participant;

49.2.5. tender submitted by tender participant;

49.2.6. notice about tender opening, assessment conclusion and recommendation to award the contract;

49.2.7. reasons or grounds, in cases tender procedures are unsuccessful or all tenders are rejected;

49.2.8. decision to award contract and the contract;

49.2.9. other documents related to tender;

49.2.10. documents concerning review of performance of contract and acceptance of goods, works or services.

49.3. The state central administrative body in charge of budget matters and relevant central law-enforcement authorities and officials thereof shall have the right of access to the documents specified in 49.1 of this Law.

49.4. The persons who participated in the given tender may access the documents specified in 49.2.2, 49.2.6, 49.2.7 and 49.2.8 of this Law by making a request in writing.

49.5. Customer shall submit report of the goods, works and services procured in the given year to the General Budget Manager within 1 December of the same year and the General Budget Manager, in turn, shall submit report to the state central administrative body in charge of budget matters within 15 January of the subsequent year.

49.6. The member of the Government in charge of budget matters shall approve the procedure for reporting.

49.7. The state central administrative body in charge of budget matters shall sum up report of procurement procedures submitted pursuant to 49.5 of this law and report to the Government in the first quarter of the subsequent year.

49.8. The Government shall include the results of Government procurement in the report of budget implementation of each year.

Article 50. Obligations of Civil Servants Participating in Procurement Procedures

50.1. The civil servants participating in procurement procedures with the duties such as to plan, prepare, carry out and supervise shall have the following duties:

50.1.1. To create conditions for fair competition;

50.1.2. To respect the state interests;

50.1.3. To not make or receive illegal proposals for private benefit;

50.1.4. In case where tender participant is the civil servant's family member or employment of tender participant's family member in the tender participant-legal entity or other circumstances creating possible conflict of interests inform the immediate supervising official and refrain from participating in the organizing of the given tender procedure;

50.1.5. To immediately inform the immediate supervising official and law-enforcement authorities in the cases if tender participants attempt to influence tender results by proposing a bribe or exerting pressure.

Article 51. Registration System

51.1. In order to increase the number of tender participants, to encourage competition, to provide customer with information, the relevant state central administrative body shall keep a registry and create a database of the legal entities and citizens interested to participate in the procurement procedures pursuant to the rules prescribed by this Law.

51.2. The Member of Government in charge of budget matters shall approve the procedure of keeping the registry specified in 51.1 of this Law.

51.3. Legal entities and individuals may at any time make requests for registration along with information on the areas of activity and experiences to the registration body personally or through representatives.

51.4. The fact of inclusion or non-inclusion in the registry shall not affect the right of the person interested to participate in tender according to the procedures prescribed by this Law.

51.5. When using special tender procedure and inviting a fixed number of participants customer may request information on the registered legal entities and individuals.

51.6. The registry shall satisfy the following common requirements:

51.6.1. Be based on the capability criteria set forth in Articles 14-16 of this Law;

51.6.2. Provide equal conditions to all the persons wishing to be included in the registry;

51.6.3. The request to be included in the registry shall be in writing;

51.6.4. Pursuant to requests of the registered persons, appropriate amendments or modifications shall be made to the registry each time;

51.6.5. The interested persons shall have access to the registry;

51.6.6. The decision regarding a request to be included in the registry shall be made within 1 month.

51.7. The registration body may require clarifications to the request and additional explanations or clarifications from legal entities, individuals or their representatives.

51.8. The registration body shall observe the following procedure when keeping the registry:

51.8.1. define capabilities of tender participants with respect to each matter in own charge;

51.8.2. Pursuant to 51.8.1 of this Law, upon clarification of assessment criteria of capabilities, announce registration in a national daily newspaper.

51.9. In defining criteria of capabilities professionals in the given field or consultants selected as provided in this law may be involved.

51.10. In case the registration body refuses to accept request for registration, or for amendments to the registry the registration body shall give written explanation of the grounds for such refusal.

Article 52. Powers of State Central Administrative Body In Charge Of Budget Matters

52.1. Pursuant to this Law, the state central administrative body in charge of budget matters shall be in charge of the state procurement policies, matters related to its methodology and oversight and shall exercise the following powers:

52.1.1. To develop proposals for improvement of the procurement legislation;

52.1.2. To provide customer with the advice on professional and methodological matters related to procurement;

52.1.3. To draft procurement related rules, procedures, instructions, methodologies and model documents and approve them, if conferred such power by law;

52.1.4. To annually report to the Government the implementation of the procurement legislation;

52.1.5. To oversee and assess customer's observance of relevant procurement procedures;

52.1.6. To sum up the reports received from customer, to create and keep unified nation-wide database of procurement procedures and prepare general statistics and information;

52.1.7. Pursuant to this Law to dispose complaints of tender participants;

52.1.8. To provide law-enforcement authorities at their requests with recommendations and explanations on particular matters regarding implementation of this Law;

52.1.9. To review the proposals submitted pursuant to 53.1 of this Law and give approvals to award contracts;

52.1.10. To train the experts specified in the Article 55 of this Law and keep their registry;

52.1.11. Jointly with the state central administrative body in charge of education matters to set up the level, quality and standards of training in procurement procedures and support and assist in conducting trainings;

52.1.12. To maintain a website with the purpose to provide the public with news and information on procurement procedures and announce results thereof, to define methods and forms of placing tender invitation and other information on such website;

52.1.13. To cooperate in procurement procedures with international institutions and other foreign organizations, plan and coordinate technical assistance rendered therefrom in the concerned field;

52.1.14. to keep registry of persons with restricted rights to participate in tender as referred to in 14.5 of this Law, to control and inform;

52.1.15. Other powers conferred bylaw.

52.2. The state central administrative body in charge of budget matters shall define conditions and procedures for introduction of information technology and electronic devices into procurement procedures.

Article 53. Permission of the State Central Administrative Body In Charge Of Budget Matters

53.1. Customers other than those specified in 4.1.2 of this Law shall obtain permission from the state central administrative body in charge of budget matters prior to announcement and award of contract of procurement of goods, works or services with price exceeding the base price set forth in 8.1.4 of this Law.

53.2. Pursuant to 53.1, customer shall furnish the following information when requesting permission:

53.2.1. Prior to announcement of procurement, deliver draft tender documents and draft preliminary selection documents to the state central administrative body in charge of budget matters;

53.2.2. After assessment conclusion is made, the draft decision to award contract, draft contract, assessment conclusion, minutes of tender opening, and draft decision of preliminary selection, if such was carried out;

53.2.3. Grounds specified in 49.2 of this Law;

53.2.4. Other information the state central administrative body in charge of budget matters deems necessary.

53.3. The state central administrative body in charge of budget matters shall issue to customer in writing the following permissions related to procurement procedures:

53.3.1. To announce tender;

53.3.2. To award contract;

53.3.3. To announce preliminary selection;

53.3.4. To approve selected persons and to invite them to tender.

53.4. The state central administrative body in charge of budget matters shall review request within 5 working days from receipt and make one of the following decisions, based on the documents, information and other clarifications received from customer:

53.4.1. To give the permission specified in 53.3 of this Law to customer, if the tender satisfies the requirements of this Law and related procedures;

53.4.2. To make the decision specified in 53.3.1-53.3.3 by stating appropriate reasons, if breach of this Law or other related procedures and instructions adopted in conformity with this Law is proved.

53.5. In case the decision specified in 53.4.2 is made customer shall remedy the previous breach and obtain permission anew according to the procedure specified in 53.1 and 53.3 of this Law.

CHAPTER SEVEN

DISPUTE SETTLEMENT AND REMEDIES

Article 54. Making Complaints to Customer and Disposing them

54.1. In the event tender participant believes customer is in breach of the duties related to tender within 5 working days from becoming aware of such breach may submit a written complaint to customer with documentary evidence attached.

54.2. Customer shall notify all tender participants about the content of complaint and invite to participate the tender participants whose interests may be affected by any relevant decision.

54.3. Non- participation in the disposition of the complaint of participant specified in 54.2 of this Law shall deprive such participant from the right to make further complaints on the same subject matter.

54.4. Customer within 10 working days from receipt of the complaint shall make a decision which shall state the grounds in case of refusal to satisfy the complaint or indicate the steps to dispose it, if the complaint is satisfied.

54.5. Following submission of complaint, no contract shall be awarded unless customer decides that continuing of tender without interruption is required in public interests.

54.6. If a decision to proceed with tender is made pursuant to 54.5 of this Law the complainant shall be officially notified of its grounds within at least 5 working days prior to such decision taking effect.

54.7. Customer shall not accept complaints made after award of contract.

Article 55. Complaints With Respect to Customer's Decision

55.1. In the following cases if the complainant disagrees with the decision made by customer regarding the complaint, no decision is made within the period set forth in 54.4 of this Law, or customer awards contract, a complaint may be made within 5 working days to the state central administrative body in charge of budget matters.

55.2. The state central administrative body in charge of budget matters shall review only complaints made prior to award of contract and dispose them within 14 days from receipt.

55.3. If the state central administrative body in charge of budget matters upon reviewing complaint shall issue one of the following decisions if it deems that customer is in breach of this Law:

55.3.1. To rescind or modify in whole or partially act or decision of customer in breach of this Law;

55.3.2. To indicate the legal provisions to be applied to the given matter;

55.3.3. To require customer to proceed with tender based on remedying the breach.

55.4. The state central administrative body in charge of budget matters may suspend the enforcement of any decision or act of customer until the final decision on complaint is made in the following cases:

55.4.1. if satisfying of tender participant's complaint is more justified;

55.4.2. if tender participant is likely to suffer loss in large amount in the case no suspension is made;

55.4.3. if suspension is not obviously harmful to the relevant state authority, customer or to other tender participants.

55.5. The state central administrative body in charge of budget matters when reviewing complaint concerning award of contract pursuant to 53.1 of this

Law shall obtain an opinion of an expert team and shall base own decision thereon.

55.6. The expert team shall be composed of three experts who shall be selected within 3 days from complaint under the following procedure:

55.6.1. complainant and customer shall each select one expert;

55.6.2. the experts selected by complainant and customer shall select the third expert by mutual agreement.

55.7. In the event that parties fail to select the experts, then the state central administrative body in charge of budget matters may select them on behalf of parties.

55.8. The Government shall approve the rules of work and empowering of expert team.

Article 56. Making Complaint to Court

56.1. If the state central administrative body in charge of budget matters fails to make a decision within the period set in 55.2 of this Law or if complainant disagrees with the decision made, the complainant may file a complaint to court.

56.2. After conclusion of contract complaints concerning tender procedure may only be made to court.

Article 57. Liability for Breaches of the Legislation

57.1. A judge or state inspector shall impose the following administrative sanctions for breach of the procedures prescribed by this law, unless the person responsible is subject to criminal liability:

57.1.1. For the failure to apply the open tender procedure in an open tender a fine of 200,000-250,000 togrogs on customer and of 40,000-60,000 togrogs on an official;

57.1.2. For the restriction of participation of a foreign person in breach of 9.2 of this Law, a fine of 150,000-200,000 togrogs on customer;

57.1.3. For breaches of 8.4, 8.5 or 8.7.1 of this Law during selection of rules for open tender a fine of 200,000-250,000 togrogs on customer and 40,000-60,000 togrogs on an official;

57.1.4. For breaches of 10.1, 10.2 or 10.3 of this Law when applying the difference in evaluation of exclusive rights a fine of 30,000-60,000 togrogs on members of evaluation group;

57.1.5. For the failure to follow the relevant procedures, instructions and standard documents approved by the state central administrative body in charge of budget matters in preparation of tender invitation and documents a fine of 30,000-60,000 togrogs on an official;

57.1.6. For breach of 21.3 and 21.4 of this Law when announcing tender a fine of 200,000-250,000 togrogs on customer;

57.1.7. For overpricing of tender documents in breach of 22.2 of this Law a fine of 100,000-150,000 togrogs on customer;

57.1.8. For setting the deadline for submitting tender in less than 30 days in breach of 24.3 of this Law or the failure to observe the minimum period set in 36.9 of this Law during selection of consulting service provider, a fine of 100,000-150,000 togrogs on customer;

57.1.9. For an unfair conduct of tender by customer by awarding of contract to a participant whose tender is not evaluated as the “best” in breach of 29.1 of this Law a fine of 200,000-250,000 togrogs on customer, and 40,000-60,000 togrogs on an official;

57.1.10. For breach of 26.6 of this Law a fine of 40,000-60,000 togrogs on an official;

57.1.11. For the refusal from and cancellation of tender on the grounds other than those specified in 27.1 and 30.1 of this Law a fine of 200,000-250,000 togrogs on customer;

57.1.12. For the applying special tender procedure in the conditions other than those specified in 32.1, 33.1 or 34.1 of this Law, a fine of 150,000-200,000 togrogs on customer;

57.1.13. For the failure to form an evaluation committee in breach of Article 47.1 of this Law, a fine of 100,000-150,000 togrogs on customer;

57.1.14. For the failure to announce the procurement plan or to compile the given tender file in breach of Articles 48 and 49 of this Law, a fine of 100,000-150,000 togrogs on customer;

57.1.15. For concluding a contract without approval of the state central administrative body in charge of budget matters in breach of Article 53 or 41 of this law a fine of 20,000-60,000 togrogs on an official.

57.2. A competent body or official shall impose disciplinary sanction in the form of dismissal on the General Manager or executive management of customer and a member of the evaluation committee for repeated breaches of Articles 57.1.1, 57.1.3, 57.1.5, 57.1.7, 57.1.9, 57.1.11, 57.1.12, 57.1.13, or 57.1.15 of this Law.

57.3. If a court or a competent authority establishes that a tender participant or any person has failed or broken the procurement procedures, made an obviously false statement when participating in tender, or committed a corruption offence, the relevant decision shall be delivered to the state central administrative body in charge of budget matters which shall enter such persons in the registry of persons with restricted rights for tender participation.

Article 58. Entry into force

58.1 This Law shall enter into force on 1 February 2006.

CHAIRMAN OF THE
STATE IKH KHURAL

TS.NYAMDORJ