

**Unofficial translation**  
**PUBLIC PROCUREMENT LAW OF MONGOLIA**

December 1, 2005

Government House, Ulaanbaatar

**CHAPTER ONE**  
**General Provisions**

**Article 1. Purpose of the Law**

1.1. The purpose of this law is to govern the matters of planning, organizing, overseeing, filing a complaints and settling the disputes, pertaining to procurement of goods, works and services, financed by state and local funds and of holding responsibility to the violators of this law.

**Article 2. Legislation on Procurement of Goods, Works and Services with State and Local Funds**

2.1. Legislation on procurement of goods, works, and services with state and local funds is comprised of the Constitution of Mongolia,<sup>1</sup> the Civil Code,<sup>2</sup> the Law on Transparency of Information and Right to Obtain Information, the Law on Transparent Account, and this law and other legislative acts issued in conformity with them.

*/This clause was amended by the Law ratified on the 16<sup>th</sup> of June, 2011/*

*/This clause was amended by the Law ratified on the 1<sup>st</sup> of July, 2014 and shall become effective from the 1<sup>st</sup> of January, 2015/*

2.2. If an international treaty, to which Mongolia is a party, has provided differently than as stated in this Law, the provisions of the international treaty shall prevail.

**Article 3. Scope of the Law**

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

3.2. This law shall be applied on procurement of goods, works and services funded by foreign grants or loans, unless other procurement procedures are specified by the relevant Mongolian international treaty.

3.3. The Law on Transparency of Information and Right to Obtain Information, and Law on Transparent Accounts shall govern the relationship concerning the transparency of the procurement of goods, works, and services by the state and local funds.

*/This clause was added by the Law ratified on the 16<sup>th</sup> of June, 2011/*

*/This clause was amended by the Law ratified on the 1<sup>st</sup> of July, 2014 and shall become effective from the 1<sup>st</sup> of January, 2015/*

3.4. This law shall not apply to the procurement of special purpose equipment, facility, works, services, and firearms, which are ascribed by law pertaining to state secret and relating to ensuring of national security.

*/This clause was amended by the Law ratified on the 16<sup>th</sup> of June, 2011/*

3.5. The Law shall not apply to procurement of works, and services related to maintenance of the roads of national significance, executed by the state owned entity, acting pursuant to its power mandated by the legislation.

*/This clause was amended by the Law ratified on the 16<sup>th</sup> of June, 2011/*

3.6. The Law shall not apply to procurement of goods, works and services related to activities of the Development Bank of Mongolia.

*/This clause was added by the Law ratified on the 10<sup>th</sup> of February, 2011/*

*/This clause was amended by the Law ratified on the 16<sup>th</sup> of June, 2011/*

3.7. The Law shall not apply to procurement of goods, works and services related to elections organized by the General Election Commission of Mongolia with the budget stated in provision 38.1 of the Law on Election.

*/This clause was added by the Law ratified on the 5<sup>th</sup> of February, 2016/*

3.8. The Law shall not apply to procurement of goods, works and services related to activities of the Future Heritage Foundation and the Future Heritage Foundation Corporate.

*/This clause was added by the Law ratified on the 5<sup>th</sup> of February, 2016 and shall become effective from the 1<sup>st</sup> of January, 2017/*

#### **Article 4. Procuring Entity**

4.1. Following entities shall be the "Procuring entity":

4.1.1. a legal entity of state and local ownership;

4.1.2. a legal entity with 50% or more percent by state and local ownership;

4.1.3. the project implementing entity as defined by provision 4.1.21 of the Law on Debt Management.

*/This clause was amended by the Law ratified on the 18<sup>th</sup> of February, 2015/*

#### **Article 5. Definitions of the Law**

5.1. The terms used in the present Law are defined as follows:

5.1.1. "bid" means the proposal prepared and furnished by the interested entity of providing goods, works, and services, in accordance with the conditions and requirements set by the procuring entity;

5.1.2. "bidding" means the process of selecting the lowest evaluated and substantially responsive bid in accordance with the procedures specified in this law, awarding a contract to provide goods, works, and services and signing the contract;

5.1.3. "threshold" means either maximum or minimum price ceiling that shall be used in the bidding in accordance with the procedures of this law, depending on the budget of the goods, works and services;

5.1.4. "invitation to bid" means the document of conducting a bidding which the procuring entity notifies or informs through mass media;

5.1.5. "bidding document" means the document, issued by the procuring entity to potential bidders and defining of a bidding conditions and requirements;

5.1.6. "bidder" means the following entities which are independent from the procuring entity:

5.1.6.a. an entity submitting the bid solely;

5.1.6.b. several entities submitting a single bid based on cooperation agreement;

5.1.7. "bid security" means a bank guarantee, government bond, and other securities approved by the government, which is submitted by the bidder to the procuring entity as a guarantee to maintain the validity of the bid until the contract signing or within the period of bid validity, and in the case of awarding a contract, to secure signing of a contract;

5.1.8. "advance payment security" means a bank guarantee, government bond, and other securities approved by the government, submitted by the contractor to the procuring entity to guarantee its

obligation of disposing of advance payment in accordance with the contractual purpose, when procuring entity releases an advance payment;

5.1.9. "evaluation committee" means a working group established by the procuring entity for the purpose of organizing the bidding in accordance with procedures specified in this law;

5.1.10. "goods" means items with the economic significance and value, which can be exchanged or traded and works necessary for supplying goods. Where the cost of the works exceeds the cost of the goods, the contract shall be regarded as a "contract for works";

5.1.11. "works" means civil works, assembly, installation, and configuration of construction equipment, and procurement of goods required for completion of those works. Where the cost of procured goods exceeds the cost of the works, the contract shall be regarded as a "contract for goods";

5.1.12. "civil works" means activities involving construction, expansion, rehabilitation, capital renovation, drilling, and exploration that of requiring combined use of labor, machinery, equipment, material and technology;

5.1.13. "assembly, installation, and configuration of equipment" means an activity involving equipment assembly, installation, and configuration and piloting other than those specified in provision 5.1.11 of the Law;

5.1.14. "services" means consulting and other services;

5.1.15. "consulting services" means professional services provided by the consultant based on specialized knowledge and expertise to design and implement a project, conduct training, provide technical assistance, conduct research and analysis, develop a design and drawing, and supervise the contract execution;

5.1.16. "turnkey contract" means a single contract covering several interconnected works, goods, and services for construction design, engineering calculation, supply and installation of equipment, and completing the building and/or facility;

5.1.17. "performance security" means a bank guarantee, government bond, and other securities approved by the government, submitted to the procuring entity by the bidder with award of contract, prior to signing contract as a guarantee to fully perform its contractual obligations;

5.1.18. "award of contract" means the notification of the procuring entity's decision to enter into contract with the lowest evaluated and substantially responsive and bidder;

5.1.19. "technical specification" means a set of documents in which the procuring entity indicates technical specifications, production and operational methods, technology, and technological requirements for the goods, works, and services to be procured;

5.1.20. "goods of Mongolian origin" means goods extracted, grown, cultivated, produced, processed, or created; or new goods of which majority of components were assembled in Mongolia, that differs substantially in its basic characteristics, purpose, and utilization modes;

5.1.21. "a foreign entity" means a foreign and/or international organization, foreign citizen, legal entity or stateless person who is interested in participating in the procurement according to the procedure of this law.

*/This clause was amended by the Law ratified on the 6<sup>th</sup> of February, 2007/*

5.1.22. "least-cost method" means selecting a consultant with the lowest price among those consultants who secured equal or higher than the minimum qualifying score for technical proposals, set by the procuring entity;

5.1.23. "framework agreement" means the contract signed between the procuring entity and one or more suppliers, service providers, and contractors on provision of goods, works and services with permanent use, based on agreed price and other terms and conditions for the period up to 3 years;

*/This clause was added by the Law ratified on the 9<sup>th</sup> of June, 2011/*

## **Article 6. Principles of Procurement**

6.1. The principles of transparency, equal opportunity for competition, economy and efficiency, and accountability shall be pursued in the procurement process.

## **Article 7. Procurement Procedure**

7.1. The procuring entity shall select a contractor and enter into a contract guided by the following procurement procedures in procurement of goods, works or services:

7.1.1. open bidding procedure;

7.1.2. special bidding procedure;

7.1.3. procedure of selecting contractor for consulting services;

7.1.4. procedure of bidding with public participation.

*/This clause was added by the Law ratified on the 23<sup>rd</sup> of December, 2011/*

7.2. All procurement shall be carried out in accordance with open bidding procedure, except as the use of other procedures provided in provisions 7.1.2-7.1.4 of the Law.

*/This clause was added by the Law ratified on the 23<sup>rd</sup> of December, 2011/*

7.3. The procuring entity may directly procure goods, works, and services with the cost less than the threshold value stated in provision 8.1.2 of this law, without the abiding provision 7.1 of this law.

## **Article 7.1 Public participation in procurement**

7<sup>1</sup>.1. Based on permission by a general budget governor, a central budget governor as described in article 15 of Budget law, may combine same type of goods or works or services within the budget framework of several budget entities under its mandate and select a supplier or contractor.

7<sup>1</sup>.2. Within soum and district budget framework, procurement of goods, works and services with cost of up to MNT 20 million, shall be undertaken with public participation.

7<sup>1</sup>.3. Procedure, instructions and standard documents in procurement with public participation shall be approved and enforced by the state central administrative body in charge of finance and budget.

7<sup>1</sup>.4. A representative of local citizens shall be involved in procurement with public participation and principle for wider participation of local citizens in implementation and performance of a project shall be followed.

*/This clause was added by the Law ratified on the 23<sup>rd</sup> of December, 2011/*

## **Article 8. Selection of Procurement Procedure**

8.1. The Cabinet shall determine the following threshold for each category of goods, works and services:

8.1.1. an upper ceiling for cost estimates of goods, works, and services to be procured under comparison method;

8.1.2. an upper ceiling for cost estimates of goods, works, and services to be procured directly;

8.1.3. an upper ceiling for cost estimates of consulting service under least-cost selection method;

~~8.1.4. /This clause was withdrawn by the Law ratified on the 9<sup>th</sup> of June, 2011/~~

8.1.5. a lower ceiling for cost estimates of goods, works, and services of which invitation to bid is subject to website posting, mentioned in provision 52.1.12 of this law;

8.2. The open bidding procedure shall be used in procurement of goods, works, and services of which cost estimates exceed the threshold, specified in provision 8.1.1 of this law, unless the law states otherwise.

8.3. The threshold, specified in provision 8.1 of this law would be reset by the Cabinet, based on the recommendations of the state central administrative body in charge of budget, when consumer price index fluctuates by more than 10%.

*/This clause was amended by the Law ratified on the 6<sup>th</sup> of February, 2007/*

8.4. Selection of the procurement procedure shall be based on the total cost estimate of the goods, works, and services.

8.5. It is prohibited to conduct several biddings by splitting the total cost estimate for the purpose of staying within the threshold, specified in provision 8.1 of this law or refraining from the usage of the open bidding procedure.

8.6. For the purpose of promoting competition, the procuring entity may split the goods, works, and services into a series of packages and conduct several biddings by resemblance of type and similarity depending on their purpose, type, and geographical location.

8.7. The procuring entity shall meet the following requirements in the case of conducting bidding in packages as specified in provision 8.6 of this law:

8.7.1. the total cost of all packages shall be used for determining of the procurement procedure;

8.7.2. The procuring entity shall indicate the existence of packages, and the right of bidders to submit their proposals on one or several, and/or all bid packages, in the invitation to bid and bidding documents;

8.7.3. Each package shall be evaluated individually;

8.7.4. Select the option in which the total cost of all contracts to be signed as a result of bid evaluation, should be the minimum.

8.8. Award of contract may be given for each package or several packages or all packages.

8.9. If decision to award a contract for more than one package of goods or works or services to one bidder, should be mentioned in the procurement report.

8.10. It can be undertaken as a single bid to procure detailed design, construction and adjustment works to be conducted under a turnkey contract, according to procedure of the provision 5.1.16 of this law.

*/This clause was added by the Law ratified on the 6<sup>th</sup> of February 2007 /*

8.11. A bid can be announced to purchase work, goods, and service by concluding a framework agreement.

*/This clause was added by the Law ratified on the 9<sup>th</sup> of June, 2011/*

8.12. Procedures and guidelines for a framework agreement shall be approved by Cabinet member in charge of budget issues.

*/This clause was added by the Law ratified on the 9<sup>th</sup> of June, 2011 /*

### **Article 9. Foreign Entities' Participation in Biddings**

9.1. A foreign entity is entitled to participate in the biddings in accordance with procedures of this law.

9.2. The procuring entity may not restrain participation of foreign entity in biddings for works with cost estimates of above MNT 10,000,000.001, and goods, and services with cost estimates of above MNT 100,000.001.

*/This clause was amended by the Law ratified on the 6<sup>th</sup> of February, 2007 /*

9.3. A foreign entity shall not be allowed to participate in biddings except as specified in provision 9.2 of this law.

*/This clause was revised by the Law ratified on the 16<sup>th</sup> of July, 2009 /*

### **Article 10. Granting of a Preference to Bidders**

10.1. The procuring entity may grant a preference to the following entities in evaluating bids:

10.1.1. A bidder offering to supply goods of Mongolian origin;

10.1.2. The following subjects, submitting bids to execute at least 50% of works independently:

10.1.2.a. a citizen or legal entity of Mongolia;

10.1.2.b. a legal entity with foreign investment, registered in Mongolia and with at least 50% of controlling shareholders by a Mongolian citizen, and/or legal entity;

10.1.3. an entity with the largest use of locally produced goods, materials and services;

10.1.4. an entity with the largest employment of local labor.

10.1.5. no less than 90 percent of the workforce of a legal entity consists of Mongolian citizens.

*/This clause was added by the Law ratified on the 16<sup>th</sup> of July, 2009 /*

10.1.6. a local entity producing of innovation products.

*/This clause was added by the Law ratified on the 22<sup>nd</sup> of May, 2012 /*

10.1.7. 50 percent and more of the workforce of a legal entity, with 25 and more employees, consists people with disability.

*/This clause was added by the Law ratified on the 5<sup>th</sup> of February, 2016 /*

10.2. In the case of granting a preference to bidders, specified in provisions 10.1.1 and 10.1.3 of this law, the bid price shall be artificially reduced by 10 percent for goods of Mongolian origin and by 7.5 percent for works to be provided by bidders, specified in provisions 10.1.2, 10.1.4 and 10.1.7 respectively for the purpose of comparison with other bidders' price, and evaluation.

*/This clause was amended by the Law ratified on the 5<sup>th</sup> of February, 2016 /*

10.3. The artificial estimate of prices for goods to be supplied and works to be provided, as specified in 10.2 of this law, shall not be a ground for decreasing and modifying the bid price of bidders, specified in 10.1.1, 10.1.2, 10.1.3, 10.1.4 and 10.1.7 of this law.

*/This clause was amended by the Law ratified on the 5<sup>th</sup> of February, 2016 /*

10.4. In the case of granting a preference to the entities specified in 10.1 of this law during bid evaluation, it should be clearly specified in the bidding document, and the bidder who interested to get the preference, shall provide information on origin and cost of goods or supporting evidence to prove the provisions specified in 10.1.1, 10.1.2, 10.1.3, 10.1.4 and 10.1.7 of this law.

*/This clause was amended by the Law ratified on the 5<sup>th</sup> of February, 2016 /*

10.5. The methodology, instructions on granting of a preference shall be approved by the Cabinet member in charge for budget issues.

### **Article 10<sup>1</sup>. Purchasing Goods from Domestic Manufacturer**

10<sup>1</sup>.1. a bidder who supplies foreign goods shall not be selected as qualified bidder where domestically manufactured goods that meet quality requirements and standard, are available.

10<sup>1</sup>.2. The Cabinet shall approve a list of goods required to be purchased from domestic manufacturers, as specified in 10<sup>1</sup>.1 of this law.

10<sup>1</sup>.3. The provision of 10<sup>1</sup>.1 shall not supersede the provision of 9.2 of this law.

*/This clause was added by the Law ratified on the 9<sup>th</sup> of July, 2015 /*

### **Article 11. Technical Specifications**

11.1. The procuring entity must fulfill the following requirements in preparation of technical specifications:

11.1.1. define the goods, works, and services in terms of their purpose, application, usage, quality, and technical characteristics, but not in terms of their design or descriptive characteristics;

11.1.2. utilize international standards accepted in Mongolia, unless such standard doesn't exist, use national standards, technical requirements, regulations, and instructions;

11.1.3. shall not specify a definite requirements and conditions indicating a trademark, brand name, design, type, origin, manufacturing method, manufacturer and/or supplier;

11.1.4. use the words "or at least equivalent", if it is required to specify the requirements and conditions specified in provision 11.1.3 of this law;

11.2. In defining technical specifications, the procuring entity is prohibited to obtain an advice from interested parties that might limit the competition.

### **Article 12. Evaluation of Bidders' Qualifications**

12.1. For the purpose of providing equal opportunity and secure fair competition to bidders, the overall, financial, and technical capacities as well as experience of the bidders shall be examined and evaluated by criteria, specified in provision 14-16 of this law.

12.2. The procuring entity shall determine and set out in the bidding document the criteria and requirements in accordance with the provisions 14-16 of this law.

12.3. As stated in provision 12.2 of this law, a bidding that does not satisfy criteria and requirements defined by the procuring entity, shall be rejected and it should be notified to the bidder in writing.

12.4. Prior to awarding a contract to the bidder with “the lowest evaluated and substantially responsive” bid, the procuring entity may postqualify the qualifications’ requirements, specified in provision 12.2 of this law.

12.5. The procuring entity shall maintain the confidentiality of bidders’ technical and business information, obtained during the postqualification.

### **Article 13. Prequalification**

13.1. Prior to submission of bids, the procuring entity may conduct a prequalification to assess capacity among interested participants, and must follow below mentioned procedures:

13.1.1. Prepare a prequalification document containing a qualification criterion, and requirements of the interested participants, and proof of them;

13.1.2. As specified in provisions 21.1-21.4 of this law, advertise a notice for prequalification;

13.1.3. Inform participants, who met the qualification criteria as specified in the prequalification document, to submit a bid.

13.2. During prequalification, the "invitation to bid" as specified in provisions 17.1, 21.1, 21.3 and 21.4 of this law and "bidding document" specified in provisions 19, 22, and 23 of this law shall be used as "invitation for prequalification" and "prequalification document", respectively;

13.3. The prequalification procedure and instructions shall be approved by Cabinet member in charge for budget issues.

### **Article 14. Determination of Substantive Responsiveness**

14.1. A bidder shall be regarded as being not satisfied substantive responsiveness, if the following circumstances are confirmed:

14.1.1. The bidder becomes insolvent, in receivership, enters into an arrangement with creditors to elude bankruptcy, business operations are suspended, or is in an equivalent situation as mentioned above pursuant to the legislation of the country of incorporation;

14.1.2. The bidder has not fulfilled its tax, fee, and payment obligations, pursuant to the legislation of Mongolia or the country of incorporation;

14.1.3. Fully or partially state owned entity, of which operations are dependent from the procuring entity;

14.1.4. The bidder, seriously violated or did not executed its contractual obligations, or committed error in its professional operation for the last 3 years and been instituted by court or a certified state inspector, specified in provision 52<sup>1</sup>.1 of this law;

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

14.1.5. the bidder has vested interests with the entity who prepared the design, technical specifications, and other documents of goods, works, and services or who was been nominated to supervise the implementation of contract and provide consulting services;

14.1.6. submission of a bid with misleading information that has been proven by a certified state inspector, specified in provision 52<sup>1</sup>.1 of this law;

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

14.1.7. engaging in corrupt practice over the last three years, which has been determined by the court.

~~14.2.~~ /This clause was withdrawn by the Law ratified on the 6<sup>th</sup> of February, 2007 /

14.3. The bidder may prove with the following documents of Mongolian or the country of its incorporation, of the occurrence of circumstances, specified in provision 14.1 of this law:

14.3.1. a court decision and/or official document issued by a competent authority;

14.3.2. a certificate and/or other equivalent documents issued by the competent authorities of the country of incorporation.

14.4. The bidding document shall specifically indicate the documents that need to be submitted for the bidding among the documents specified in provision 14.3 of this law.

14.5. The state central administrative body in charge of budget, shall keep the sanctions list of the entities blacklisted in bidding, on the basis of decisions by certified state inspector specified in provision 52<sup>1</sup>.1 on establishing the occurrence of circumstances specified in provisions 14.1.4, 14.1.6 and 14.1.7 of this law, and publicly release the information.

/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/

14.6. The bidder shall notify in writing, of the absence of circumstances under provision 14.1 of this law.

14.7. As per request from the procuring entity, the bidder shall deliver the written information on the contract being executed or awarded.

14.8. The procuring entity shall take into account of the information specified in 14.7 of this law, in evaluating the financial and technical capacities of the bidder to execute the contract.

#### **Article 15. Evaluation of Financial Capacity**

15.1. The procuring entity may require bidders to submit evidence of their financial capacity to perform contractual obligations.

15.2. The procuring entity shall indicate requirements for financial capabilities in the bidding documents or pre-qualification documents.

15.3. Evidence of financial capacities may be demonstrated by the following documents:

15.3.1. statement from correspondent bank;

15.3.2. bidders' audited financial statements, along with the auditor's opinion, if necessary;

15.3.3. consultants' positions, remuneration, and other cost estimation sheets;

15.3.4. information of bidders' annual turnover from goods, works and services that is similar to the proposed contract, within the last five years.

15.4. The documents to be submitted for the bidding, out of documents specified in 15.3 of this law, shall be indicated in the bidding documents.

#### **Article 16. Evaluation of Technical Qualification and Experience**

16.1. The bidder's technical qualification and experience shall be determined based on any of following indicators, depending on the nature, specifics, and volume of the works, goods, and services:

16.1.1. education and professional qualifications of management, supervision, and execution staff of the bidder;

*/This clause was amended by the Law ratified on the 6<sup>th</sup> of February, 2007/*

16.1.2. a list of works, carried out over the last 5 years, of which the cost, timeframe, and site of work with similar nature, and references on full completion by previous clients;

16.1.3. a list of goods and services delivered over the last 5 years, their total cost, timeframe, and buyers' list; and a reference on execution of goods and services by previous buyers, if required;

16.1.4. specification of bidder's equipment, technical facilities, list of its plants and equipment;

16.1.5. quality control measures to be carried out directly or under a sub-contract;

16.1.6. samples, descriptions and/or photographs of the goods to be supplied, and certificates of authenticity;

16.1.7. in the case of goods, quality certificates issued by competent authorities and manufacturer's authorization.

16.2. The documents to be submitted for the bidding, out of documents specified in 16.1 of this law, and its requirement shall be indicated in the bidding documents.

## CHAPTER TWO

### Open Bidding Procedures

#### Article 17. Open Bidding

17.1. Invitation for open bidding shall be announced in accordance with article 21 of this law, and all interested bidders shall be given an equal opportunity to participate.

17.2. Interested bidders shall submit their technical and financial proposals together, within the deadline stipulated by the procuring entity.

17.3. Open bidding shall be carried out in single-stage, except circumstances indicated in article 18 of this law.

#### Article 18. Conducting Two-Stage Open Bidding

18.1. Procuring entity may adopt a two-stage open bidding in following circumstances:

18.1.1. the procuring entity reasons that the scope of work is large, cost estimates are high, and there is a need to conclude a contract to supply a number of goods, works, and services that are interrelated with each other and technically unequal proposals are likely to be submitted, or two and more similarly acceptable technical solutions could be available;

18.1.2. the procuring entity cannot establish technical specifications in advance and requires an assistance from experienced contractors and suppliers in order to finalize the scope of work and establish technical specifications.

18.2. Two-stage open bidding shall be conducted as follows:

18.2.1. a bidder to submit technical proposal at first, which are then assessed by the procuring entity, and clarification and revisions are agreed with bidder;

18.2.2. a bidder then invited to submit their financial proposals based on clarified and revised technical proposals, and the procuring entity shall evaluate it.

18.3. The procuring entity shall indicate two-stage open bidding in the bidding documents and invitation to bid.

#### Article 19. Preparing a Bidding Document

19.1. The procuring entity shall prepare bidding documents according to standard bidding documents, contract templates, or other procedures and methodology approved by the Cabinet member in charge for budgetary issues.

19.2. Bidding documents shall include all necessary information, required for bidders to submit a responsive bid, requirements to bidders, instructions to bidders, criteria and methods for selecting a qualified bid, contractual terms and conditions proposed by the procuring entity, technical specification and drawing, templates of bidding documents, and terms of reference in the case of consulting service.

#### Article 20. Bid Security

20.1. The procuring entity shall require bidders to submit a bid security in bidding for goods, works, non-consultancy services, above threshold specified in 8.1.1 of this law, and consultancy service with the amount of more than MNT 100 million.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

20.2. As a bid security, Mongolian legal entity may submit a bank guarantee, government bond, and foreign legal entity may submit a Mongolian or foreign bank guarantee, Mongolian government bond, or securities approved by the Mongolian government.

20.3. Government shall define a list of securities that could be used by foreign legal entity, as a bid security, performance security, and/or advance payment security.

20.4. The procuring entity may set the amount of bid security as follows:

20.4.1. indicate in the bidding document that the bidder is required to submit a security amounted as 1-2% of its bid price;

20.4.2. if required, the procuring entity may set bid security to be equal to 1-2% of the cost estimate given goods, works, and services and include it in the bidding document.

20.5. Any bid not accompanied by a substantially compliant bid security or the submitted security does not meet the requirements specified in this law, shall be rejected by the procuring entity as non-responsive.

20.6. The procuring entity shall return the bid security once the successful bidder has signed the contract.

20.7. The bid security shall be forfeited in following circumstances:

20.7.1. a bidder withdraws from its bid before expiration of bid validity, once bids are opened;

20.7.2. the successful bidder fails to submit the performance security within the time indicated in the notice of contract award, or declines to sign a contract.

#### **Article 21. Public Advertisement of Invitation for Bids**

21.1. The procuring entity shall publicly advertise the invitation for bids, through national circulation daily newspapers and other forms of mass media.

21.2. The procuring entity shall advertise detailed information of the bidding openly and transparently and provide to any interested entity without delay.

21.3. For works with cost estimates exceeding MNT 10,000,000,001 and goods, and services with cost estimates exceeding MNT 100,000,001, the invitation for bids shall be published through publications, media outlets in a language widely used in international trade.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

21.4. The procuring entity shall post the invitation for bids as well as a result of the bid evaluation each time, on the website specified in 52.1.12 of this law.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

21.5. The invitation for bids shall contain the following information:

21.5.1. definition of the procuring entity;

21.5.2. a brief description of the works, goods, and services to be procured;

21.5.3. the address at which bidding documents or other information are available and bids to be submitted;

21.5.4. price of bidding document;

21.5.5. special requirements for bidding;

21.5.6. deadline for bid submission;

21.5.7. bid opening date and time;

21.5.8. whether to allow participation of foreign entities or not;

21.5.9. whether to grant a preference or not.

## **Article 22. Provision of Bidding Documents and Related Information**

22.1. The procuring entity is obliged to finalize preparing a bidding document, before to the date of publishing the invitation for bids.

22.2. The bidding document shall be priced at the fee of reproducing and delivering the document, and organizing the bid evaluation and sold without a delay to any interested parties at that price.

22.3. Additional information or clarifications of the bidding document may be requested from the procuring entity in writing, by bidders at least 5 working days prior to the bid submission deadline.

22.4. The procuring entity shall provide the additional information and/or clarification along with a copy of the request specified in 22.3 of this law in writing, simultaneously to all interested parties who have bought the bidding document and the additional information or clarification shall be considered as delivered after its submission to the postal office.

## **Article 23. Preparation and Dissemination of Bidding Document and Invitation for Bids in Foreign Language**

23.1. The bidding document and invitation for bids shall be prepared in the Mongolian language as well as in the language that widely used in international trade in the following cases:

23.1.1. participation of foreign bidders is allowed in the bidding in accordance with article 9 of this law;

23.1.2. the procuring entity considers that the cost estimates and nature or scope of goods, works, and services would attract the interest of foreign parties.

## **Article 24. Deadline for Bid Submission and Validity Period**

24.1. The procuring entity shall provide bidders sufficient and equal time to prepare and submit their bids.

24.2. The procuring entity shall determine the bid submission deadline from the date of the first advertisement of the bidding.

24.3. For open bidding, the deadline for bid submission shall be 30 days or more.

24.4. If it is required to make a site visit for bid preparation, the time required for the visit shall be considered.

24.5 The bid evaluation shall be completed within 45 days from the date of its opening and a bid shall be valid within this period.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

## **Article 25. Submission of Bids**

25.1. Bids shall be submitted within the stipulated deadline, in the form specified in the bidding documents to the specified address, and bidder may submit their modification and withdrawal request within this period.

25.2. Any late bid arrived after the deadline specified in 21.5.6 of this law, or furnished in a form different than that of specified in the bidding document shall not be accepted and shall be returned to their addresses.

25.3. Information other than specified in article 26 of this law, related to the content of bids, evaluation process and examination of bidders' qualification, shall remain confidential until a contract is concluded.

### **Article 26. Opening of Bids**

26.1. The procuring entity shall open all the received bids publicly at the place and time, stated in the bidding document and the time for bid opening shall be scheduled to be within 1 hour after the deadline for submission of bids.

26.2. Bidders or their representatives and other interested bodies shall be entitled to attend the bid opening.

26.3. At the opening of bids, the procuring entity shall read out and record the bidders' name, bid price, in the case if alternative bids are permitted, alternative bid price, discounts, the presence or absence of a bid security is, and information on bid modification and/or withdrawal request.

26.4. The entities specified in 26.2 of this law and the representative of the procuring entity shall sign the record specified in 26.3 of this law.

26.5. The record specified in 26.3 of this law shall be made available to any interested party.

26.6. At the bid opening, it is prohibited to conduct activities and make decisions except those provided for in 26.3-26.5 of this law.

26.7. Any bid price, discount, and alternative bid price that not announced or read out at the bid opening, shall not be considered for bid evaluation.

26.8. The procuring entity is prohibited from exchanging a view with bidders on the contents of the bid and price after the bid opening.

26.9. The procuring entity may request a bidder to provide clarifications in writing on issues other than changing the contents and price of the bid.

26.10. The procuring entity shall register and maintain the clarifications as specified in 26.9 of this law.

### **Article 27. Examination of Bids**

27.1. Following the bid opening, each bid shall be ascertained to examine whether they meet the following requirements:

27.1.1. capacity requirements set by the procuring entity, subject to articles 14-16 of this law;

27.1.2. technical specifications;

27.1.3. other terms and conditions specified in the bidding document.

27.2. In evaluation of the requirements specified in provision 27.1 of this law, following criteria should be used as a guideline:

27.2.1. negative effect to the scope, quality and performance of goods, works, and services;

27.2.2. whether any reservations that are inconsistent with the law have been added in the terms and conditions of contract proposed by the procuring entity, or not;

27.2.3. whether acceptance of provisions in 27.2.1, 27.2.2 of this law shall have effect on unfair competition to other bids, or not.

27.3. By meeting all the conditions set in provision 27.1 of this law at once, the bid shall be considered as a qualified bid.

27.4. Other bids except those specified in 27.3 of this law, shall be considered as non-responsive and rejected by the procuring entity.

## **Article 28. Evaluation of Bids**

28.1. In the single-stage bidding, an examination shall be carried out in accordance with article 27 of this law, and all qualified bids shall be evaluated further.

28.2. The evaluation of bids shall be concluded within the bid validity period, as quick as possible.

28.3. For evaluation of all substantially responsive bids, the main criteria shall be the bid price.

28.4. Depending on nature of goods, works, and services to be procured except consulting services, the procuring entity may select appropriate criteria mentioned below that could affect its economic efficiency, express them in monetary terms and add to the bid price:

28.4.1. time for completion of works, and services, and delivery of goods;

28.4.2. current expenses or cost and benefit analysis;

28.4.3. after-sales services, and technical assistance;

28.4.4. assurance to supply spare parts and their price;

28.4.5. quality and technical specifications of works, goods and services;

28.4.6. other criteria consistent with this law.

28.5. The evaluation for additional estimate specified in 28.4 of this law, shall be used only for the purpose of comparing bids and shall not be the ground for changing the bid price.

28.6. Unless otherwise specified in the bidding document, the bid price shall include taxes, insurance, transportation and all other expenses associated with the implementation of the contract, and if these costs not specifically calculated, the procuring entity shall consider these costs are included in the bid price.

28.7. Responsive bids shall be evaluated by the following manners:

28.7.1. The comparison price of bids shall be determined via adjusting arithmetical errors, correcting minor deviations/omissions, reducing the bid price due to discount, and in the case if the procuring entity chooses the other evaluation criteria under this law, adding these offers expressed in monetary terms into the bid price.

28.7.2. if bidding document sets forth to provide a preference, the comparison price of bids submitted by bidders eligible for preference shall be adjusted by percentage according to article 10.2 of this law;

28.7.3. all bids shall be ranked from the lowest to the highest evaluated price and the bid with the lowest evaluated price shall be selected;

28.7.4. a bid with the lowest evaluated price shall be considered as the «lowest evaluated and substantially responsive» bid.

28.7.5. for the procurement of medicine, medical devices and medical equipment, a bid with the highest score in comparison of quality and evaluation shall be considered as the «lowest evaluated and substantially responsive» bid.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011 /*

28.8. Proposals for consulting services shall be evaluated according to procedures specified in articles 37, 38 and 39 of this law.

28.9. If the procuring entity chooses to use the criteria stated in provision 28.4 of this law, the conditions and methodology to be applied for expressing these criteria in monetary terms and evaluating them shall be set in consistent with this law and stipulated in the bidding document.

28.10. Criteria specified in 28.4 of this law shall not cover the qualification criteria of bidders, and over fulfillment of the minimum requirements defined by the procuring entity, as specified in articles 14-16 of this law, shall not be the reason to qualifying that bid.

28.11. In evaluating the substantially responsive bids and determining the «lowest evaluated» bid, the procuring entity shall use the criteria pursuant to the procedures specified in the bidding document.

28.12. If foreign currency to be used in the bid evaluation, it should be stated in the bidding document.

28.13. If foreign currency not specified in the bidding document shall be used for payment, this currency shall be converted using the Mongolbank official rate issued on bid announcement date.

28.14. In the two-stage open bidding, bid evaluation shall be conducted by following manner:

28.14.1. technical proposals shall be examined to determine their responsiveness to the requirements according to article 27 of this law;

28.14.2. to discuss with each bidder, whose technical proposal meets the requirement specified in 27.1 of this law, in order to prepare a standard technical specification that better conforms the procuring entity's needs;

28.14.3. following the discussions, the procuring entity shall issue a standard technical specification;  
28.14.4. the bidder shall review and revise its technical proposal to meet the standard technical specification set out in 28.14.3 of this law and submit it along with financial proposal;

28.14.5. the procuring entity shall open financial proposals in public at a time set;

28.14.6. financial proposals shall be evaluated in accordance with 28.2-28.7 of this law, and the bidder with the «lowest evaluated substantially responsive» bid shall be awarded a contract.

28.15. If a bidder finds it unavailable to revise its bid in accordance with the standard technical proposal set out by the procuring entity pursuant to 28.14.3 of this law, the procuring entity shall reserve the right to reject the bid.

28.16. Methodology and instructions on bid evaluation shall be approved by Cabinet member in charge of budget issues.

*/This clause was amended by the Law ratified on the 6<sup>th</sup> of February, 2007 /*

## **Article 29. Award of Contract**

29.1. The procuring entity shall award the contract to the bidder whose bid has been met the requirements of article 27 of this law and submitted the “lowest evaluated substantially responsive” bid as specified in article 28, and inform in writing about it to this bidder and the justifications on which their bids were not selected to the other bidders, simultaneously.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

29.2. The contract shall be signed not less than 5 working days after notification of the award of the contract, within the bid validity period.

29.3. If the bidder, who has submitted the “lowest evaluated substantially responsive” bid, refuses to enter into a contract, or in the case where the circumstances specified in 20.7.2 of this law are emerged, the procuring entity shall annul the award of the contract sent to the bidder, enter into a contract with the bidder who has the next “lowest evaluated substantially responsive” bid in accordance with the provisions of this law, and in the absence of such bidder, makes one of the decisions specified in provision 30.4.

29.4. If signing of a contract is not possible prior to the expiration of the bid validity period due to reasons not related to the procuring entity, the procuring entity shall extend this period for 30 days for a one time, based on the request to the state central administrative body responsible for budget issues and upon receipt of the no-objection.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

29.5. Within 5 working days following the receipt of the request stated in provision 29.4 of this law, the state central administrative body responsible for budget issues shall make a decision, by reviewing documents, information, and other clarification provided by the procuring entity.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

### **Article 30. Rejection of All Bids**

30.1. The procuring entity shall reject all bids in the following circumstances:

30.1.1. no responsive bids submitted;

30.1.2. the court or competent authority has determined that the bid prices were colluded, or the competitors were misled from bidding practice, or coerced them;

30.1.3. bid prices of all responsive bids exceeded the procuring entity’s cost estimate by more than 5%;

30.1.4. the negotiation specified in 30.2 of this law has failed.

30.2. If the bid prices of all responsive bids exceed the procuring entity’s cost estimate, the procuring entity shall enter into negotiations with a bidder whose bid price exceeds by up to 5%, in order to reduce the bid price within the cost estimate, however the procuring entity is prohibited to demand to lower the bidder’s price without justification.

30.3. If all bids are rejected in accordance with 30.1 of this law, the procuring entity shall not bear any liability to bidders.

30.4. The procuring entity shall make one of following decisions, if all bids are rejected:

30.4.1. review the causes for failings of the bidding, make necessary revisions to bidding document’s contents and conduct an open bidding;

30.4.2. in case if the situations stated in 30.1.3 and 30.1.4 of this law took place and the reason of unsuccessful bidding is only the quantity and scope of goods, works, and services to be procured, a limited bidding shall be carried out after making relevant revisions to the bidding document;

30.4.3. if the conditions set out in 30.1 reoccurred after carrying out the bidding in accordance with 30.4.1 and 30.4.2 of this law, direct contracting shall take place.

## CHAPTER THREE

### Special Bidding Procedure

#### Article 31. Using of the Special Bidding Procedure

31.1. Following methods shall be used in special bidding:

31.1.1. limited bidding;

31.1.2. shopping;

31.1.3. direct contracting.

31.2. Terms not regulated by the special bidding procedure of articles 32-34 of the law shall be regulated by the appropriate articles and provisions set out in chapter 2 of this law.

#### Article 32. Limited Bidding

32.1. Limited bidding shall be used in following cases:

32.1.1. the number of entities is limited, who can provide goods, works, and services that of requiring highly specialized professional expertise, experience, equipment, and technology;

32.1.2. the condition specified in 30.4.2 of this law.

32.2. When conducting a limited bidding, the procuring entity shall post an invitation for bid on the website specified in 52.1.12 of this law, and provide interested parties an equal opportunity to participate.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

32.3. The invitation for bid shall contain the information specified in provision 21.5 of this law.

32.4. The bidding document shall be provided promptly to interested parties in accordance with 22.2 of this law.

32.5. The bid submission deadline shall be set to 15 or more days, following an issuance of the invitation for bid.

#### Article 33. Shopping

33.1. The shopping procedure shall be used where the cost estimate of the goods, works, and services does not exceed the threshold set out in 8.1.1 of this law.

33.2. The shopping procedure shall be applied as follows:

33.2.1. request for a price quotation from 3 or more entities with satisfactory technical specification and other conditions and requirement;

33.2.2. award a contract to a bidder with the lowest price quotation, who meets the technical and other requirements as specified in 29.1 of this law.

33.3. The timeframe for submission of the price proposal specified in 33.2.1 of this law shall be no less than 5 working days from the day of sending an invitation.

33.4. If the contract is not awarded due to failed shopping, the direct contracting method shall be applied.

#### Article 34. Direct Contracting

34.1. The direct contracting may only be used in the following cases:

34.1.1. the conditions specified in 30.4.3 and 33.4 of this law;

34.1.2. given the need to protect the right on an intellectual property, a contract could be signed only with one entity, and if there is no alternative available;

34.1.3. in the case of an additional supply not exceeding 20% of the original contract value, the changing a supplier during replacing, repairing and additional supplies of some items of the goods and equipment which were provided under the original contract could lead the procurement entity to acquire supplies with different technical specifications, which may cause a technical difficulty in usage and maintenance or incur inefficient cost;

34.1.4. in case of the cost of additional works not exceeding 15% of the original contract value or threshold for shopping method as specified in 8.1.1 of this law, the additional works procured through the bidding, or re-bidding via the repeat bidding for works with similar nature is considered with no result for better proposals;

34.1.5. if it is impossible to maintain a minimum timeframe for the bid submission deadline under the open and limited bidding procedure as a result of an event of force majeure.

34.1.6 */This clause was amended by the Law ratified on the 6<sup>th</sup> of February, 2007/*

*/This clause was withdrawn by the Law ratified on the 9<sup>th</sup> of June, 2011/*

34.1.7. if it is found as necessary to procure it directly or via agent, certain specific medicines, and medical equipment from international organizations in order to maintain safety of public health.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011 /*

34.2. For direct contracting in accordance with the condition specified in 34.1 of this law, the procuring entity shall make negotiations with one or more entities, that meet the requirements of articles 14-16 of this law and are capable of providing given goods, works or services, and as per this law, enter into a contract with the entity who is substantially responsive to the technical specifications, and other conditions and requirements, and any agreements concluded at negotiations shall be reflected in the contract.

34.3. In the case of direct contracting under the conditions set out in 34.1 of this law, the procuring entity shall furnish to the state central administrative authority for budgetary issues a copy of the contract together with the justifications for applying this procedure.

**34.4. */This clause was withdrawn by the Law ratified on the 9<sup>th</sup> of June, 2011/***

## CHAPTER FOUR

### Selection of Consulting Services

#### Article 35. Selecting of Consultants

35.1. An individual and/or legal entity may provide consulting services.

35.2. If consulting service requires a multi-disciplinary expertise and specialized personnel, a legal entity shall be chosen.

35.3. If a given consulting service is best provided by an individual with necessary qualifications and experience, those shall be chosen.

#### Article 36. General Procedure for Selecting Consultants

36.1. The procuring entity shall prepare the terms of reference ("TOR") of the required services, defining its objectives, expected outcome and other relevant information.

36.2. TOR along with their changes shall form an integral part of the contract to be concluded with a consultant.

36.3. In preparing cost estimates of the required services, the procuring entity shall base profession and expertise level of the personnel, the assignment's time-input in the field and home office, reproduction of reports and other expenses required for a given service.

36.4. After preparing the TOR and cost estimations, the procuring entity shall advertise an invitation to submit an expression of interest for consultants' list, in daily and other publications.

36.5. The long list may consist of following bodies:

36.5.1. consultants who submit proposals as response to the invitation specified in 36.4 of this law;

36.5.2. national and/or international consultants operating in Mongolia;

36.5.3. consultants recorded in the registration specified in article 51 of this law;

36.5.4. consultants from professional associations, and international financial and other organizations.

36.6. Time for submission of expressions to long list shall be set to no less than 7 working days.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011 /*

36.7 The procuring entity shall choose 3 or more consultants that satisfy the requirements set out in articles 14-16 of this law and qualification requirements determined by the procuring entity, out of the consultants from long list, and create a shortlist.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

36.8. The procuring entity shall provide the request for proposal ("RFP") and the TOR to the shortlisted consultants.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

36.9. RFP shall contain:

36.9.1. brief description of the assignment and details of financing;

36.9.2. TOR;

36.9.3. qualification requirements set out by the procuring entity based on criteria prescribed in articles 14-16 of this law and evaluation criteria and methodology established by the procuring entity in accordance with article in 28.11;

36.9.4. the name of invited consulting legal entities and individuals;

36.9.5. draft contract;

36.9.6. Instructions for submitting proposals;

36.9.7. selection method to be used.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011 /*

36.10. The deadline for submitting proposals shall be no more than 60 days; however, it shall be set to be more than 30 days for legal entities and more than 7 days for individuals and clearly stated in the RFP.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011 /*

36.11. The consultant shall prepare technical and financial proposals separately.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011 /*

36.12. The technical proposal shall include information related to consultant's professional qualification and experience, and in the case of a legal entity, key experts and approach and methodology.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011 /*

36.13. The price for implementation of the contract as per the terms stated in the technical proposal shall be reflected in the financial proposal.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011 /*

36.14. The financial proposal shall only be evaluated after evaluating the technical proposal.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011 /*

36.15. Financial and technical proposals shall be submitted simultaneously and unless otherwise specified in the RFP, sealed in separate envelopes.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

36.16. The procuring entity shall evaluate technical and financial proposals in accordance with articles 37-39 of this law, and award a contract as specified in article 29 of this law in case negotiations with a selected consultant succeeded.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

36.17. If a selection of consultant has failed, a short list shall be re-created and the deadline for submission of proposals shall be set to more than 5 days.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

### **Article 37. Evaluation Methods for Selecting Consultants**

37.1. The procuring entity shall determine the evaluation method for selecting consultants prior to sending the RFP.

37.2. The evaluation method for selecting a consultant shall have types of selection such as qualifications, quality, and combined.

37.3. In selection of the individual consultant, the method of qualification evaluation shall be used, based on consultant's knowledge, experience, expertise, and other professional skills.

37.4. In selection of consulting legal entity, either method of quality evaluation or method of combined evaluation shall be used.

37.5. For the contract of performing services that requires complicated professional experience, technical qualifications, or a complex or interdependent services, a consulting firm shall be selected using the quality evaluation method.

37.6. Except as specified in 37.3 and 37.5 of this law, the combined evaluation method shall be used.

### **Article 38. Quality Evaluation Method for Selecting Consultant**

38.1. Proposals shall be compared by analyzing approach and methodology of the assignment, work schedule, expert's experience and qualifications and the quality of the service and technical equipment.

38.2. Technical proposals shall be given a score on the basis of the requirements and criteria set out in articles 14-16 of this law.

38.3. The procuring entity shall open the financial proposal of the consultant, whose technical proposal got highest score and negotiate financial and other conditions with the given consultant.

38.4. When negotiating as specified in 38.3 of this law, the procuring entity shall not require the consultant to reduce the proposed price without any justification.

38.5. The consultant or its authorized representative is obliged to provide the procuring entity with relevant documents, calculations, analysis, and other information and evidence.

38.6. If the parties fail to reach an agreement on financial or other terms of the contract, the procuring entity may terminate the negotiation with the selected consultant, and open the financial proposal of the next ranked consultant and start negotiations.

### **Article 39. Combined Evaluation Method**

39.1. Procuring entity shall indicate the minimum qualifying score for a technical proposal in the RFP, when using the combined evaluation method.

39.2. Technical proposals shall be evaluated and scored subject to the requirements and criteria specified in articles 14-16 of this law.

39.3. Consultants that have secured the minimum qualifying technical scores or more shall be notified of the opening date of financial proposals, and the financial proposals of the other consultants, who did not meet the minimum qualifying score will be returned unopened.

39.4. Financial proposals of the consultants who obtained the minimum qualifying technical score or more shall be opened publicly at the stipulated date and time.

39.5. The consultant or its representative is entitled to be present at the opening.

39.6. All opened financial proposals shall be evaluated and scored in accordance with requirements and criteria specified in 36.9.3 of this law.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

39.7. Scores for technical and financial proposals shall be added in accordance with the weight set out in the RFP and this will determine the total score of the quality and price evaluation.

39.8. The procuring entity shall negotiate with the consultant with the highest score.

39.9. If necessary, some requirements for the assignment such as person-months, person-days, consultants' inputs on the field and home office, and reproduction of reports may be modified at the negotiations.

39.10. The proposed unit rates such as rate of person-days and person-months shall not be altered during the negotiations.

39.11. If the parties fail to reach an agreement on non-financial matters of the contract, the procuring entity may terminate the negotiation with the selected consultant, and negotiate with the second ranked consultant.

39.12. For consultancy assignments with standard or routine practices such as auditing, simple engineering design, or drawing, whose estimated contractual value does not exceed the threshold set out in 8.1.3 of this law, the least cost method as a simplified version of the combined evaluation method may be applied.

39.13. Under the least cost method, technical proposals shall be evaluated according to 39.2-39.4 of this law and financial proposals shall be opened.

39.14. Negotiations shall be made with the consultant who submitted the lowest price proposal as specified in 39.9-39.11 of this law.

39.15. When using the least cost method, time for submission of proposal shall be set to be 5 days or more.

*/This clause was added by the Law ratified on the 9<sup>th</sup> of June, 2011/*

## CHAPTER FIVE

### Contract for Procurement of Goods, Works, and Services

#### Article 40. Contract for Procurement of Goods, Works, and Services

40.1. Matters related to the contract for procurement of goods, works, and services (hereinafter referred to as the "procurement contract") to be signed between the procuring entity and the contractor shall be governed by the Civil Law unless this law provides otherwise.

40.2. The lowest evaluated substantially responsive bid or commercial and technical requirements in the bidding documents determined by the procuring entity shall be the general provisions of the procurement contract.

40.3. The procurement contract must contain the following terms in addition to those specified in 40.2 of this law:

40.3.1. contract price;

40.3.2. payment terms and methods;

40.3.3. amount and form of advance payment security, if applicable;

40.3.4. procuring entity's supervision and other conditions;

40.3.5. amount and form of performance guarantee, if applicable;

40.3.6. commercial terms;

40.3.7. schedule of supply of goods or execution of works and services;

40.3.8. conditions and methodology of price adjustment, if applicable.

40.4. The procuring entity may specify for an adjustment in the price of equipment, primary and raw materials, and labor cost for goods, works, and services to be procured in the contract on following cases:

40.4.1. price index has changed of the contract that been implementing over 2 years;

40.4.2. abrupt change of the base price.

40.5. The Cabinet member in charge for budgetary issues shall approve standard terms and conditions of the contract for procurement.

#### Article 41. Prohibition of Amending and Modifying of a Procurement Contract

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

41.1.1. changing contractual terms and conditions relating to the contents of the bid, except making necessary amendments in the contract due to unforeseeable circumstances;

41.1.2. increasing the contract price except the condition specified in 40.4 of this law.

41.2. The contractor is prohibited to transfer its contractual obligations to the third party.

#### Article 42. Invalid Contract

42.1. The procurement contract shall be regarded invalid in the following cases:

~~42.1.1. /This clause became void by the Law ratified on the 9<sup>th</sup> of June, 2011 /~~

42.1.2. the procuring entity has entered into the contract by breaching the procedures set out in articles 27, 28 and 29 of this law;

42.1.3. a violation made during the implementation of procurement procedures as set out in this law, had visible influence on the final outcome of the bidding.

### **Article 43. Performance Security, Its Amount and Issuance**

43.1. The procuring entity may require the successful bidder to submit a performance security prior entering into a contract.

43.2. The procuring entity shall set the amount of performance security at 5 percent of the contract value and specify it in the bidding document.

43.3. The performance security shall remain valid until completion of the contract and handover of goods, works or services.

43.4. The procuring entity shall require the contractor to submit a performance security in the following cases:

43.4.1. entering into a procurement contract for works with an cost estimate of over MNT 150 million;

43.4.2. entering into a procurement contract for goods or services with an cost estimate of over MNT 100 million;

43.4.3. entering into a procurement contract lasting for over two years.

43.5. If the execution of a procurement contract is to continue for over two years, the procuring entity may reduce the amount of performance security by the percentage equal to the contractor's performances of works.

43.6. For the purpose of securing the performance of the contractor's contractual obligations during the warranty, **tuning and adjustment** period of goods, works, and services, the procuring entity may specify in the bidding document, the provisions for retention of 5-10 percent from the contract price until the end of the warranty period.

*/This clause was amended by the Law ratified on the 5<sup>th</sup> of February, 2016 /*

43.7. The contractor may secure its obligations specified in 43.6 of this law with a bank guarantee, **insurance certificate** or government bonds, and after issuance of such guarantee, the procuring entity shall release the retention money in the amount equal to the bank guarantee.

*/This clause was amended by the Law ratified on the 5<sup>th</sup> of February, 2016 /*

### **Article 44. Advance Payment and Its Security**

44.1. The procuring entity may make an advance payment to the contractor for the purpose of mobilization of the works.

44.2. Based on the security specified in 20.2 of this law, issued by the contractor in the amount equal to advance payment, the procuring entity shall make the advance payment.

44.3. Amount of performance security may be considered as a part of advance payment security.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011 /*

44.4 The procuring entity shall not pay advance payment if it is not specified in the bidding document.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011 /*

## CHAPTER SIX

### Management of Procurement

#### Article 45. Organizing the Procurement of the Procuring entity

45.1. Pursuant to the procedure set out in this law, the procuring entity shall organize the procurement of goods, works, and services financed with funds and other resources allocated from the central and local budget for expenditures other than an investment, and with its own funds.

45.2. The following entities shall be the procuring entity for public procurement of goods, works and services to be funded by sources of state budget investment:

45.2.1. Secretariats of the President and the Parliament of Mongolia, Cabinet Secretariat, National Security Council, state central administrative authorities and the authorities accountable to the Parliament; Constitution Court; Supreme Court, Office of the Prosecutor-General, General Council of Courts, agencies and organizations under Prime Minister and Cabinet Member, and Governor's Offices of aimag, capital city, soum and district, for procurement of all goods, works and services for their own needs;

*/This clause was amended by the Law ratified on the 6<sup>th</sup> of February, 2007/*

45.2.2. Governor's Office of aimag and capital city, for procurement of goods, works and services for its local needs.

*/This clause was rephrased by the Law ratified on the 9<sup>th</sup> of June, 2011/*

45.3. For the procurement of goods, works and services financed by the local budget's investment resources, the procuring entity shall be a respective Governor's Office.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

45.4. A professional organization in charge of procurement shall be the procuring entity for procurement of goods, works and services of national and regional priority as stated in 45.5 of this law as well as other procurements except those specified in 45.2 and 45.3 of this law,

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

45.5. The list of projects and activities with national and regional priority to be undertaken by the professional organization in charge of procurement shall be approved by the Cabinet within 5 working days after approval of the state budget.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

45.6. If Governor's Offices of Aimag and capital city considers as needed, they may transfer their rights stated in 45.2.2 of this law to the Governor's Offices of soum and district.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

45.7. If performing its works for own needs required for military brigade, divisions, border defense organization and prison or detention organizations as stated in provision 4.3 of Law on armed forces; provisions 1 and 2 of article 33, chapter 1 of Law on border; and provision 120.5 of Law on court decision enforcement, is considered efficient by the procuring entity, based on permission received from the state central administrative body in charge for budget issues, the procedures for open bidding stated in 7.1.1 of this law may not be applied.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

#### Article 46. Rights and Duties of the Procuring Entity

46.1. The procuring entity shall have the following rights and duties with respect to procurement of goods, works, and services:

46.1.1. set up an evaluation committee as specified in this law;

46.1.2. supervise the compliance of the evaluation committee's operations and evaluation reports with relevant law and regulations and take measures to correct breaches;

46.1.3. conclude to award the contract based on a decision from the evaluation committee;

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

46.1.5. start the procurement process after the funds for financing given goods, works, and services are approved;

46.1.6. review the performance of contractual obligations of procurement of goods, works, and services;

46.1.7. not to make amendments in the contract except in cases specified in this law and contract;

46.1.8. initiate the procurement of goods, services or works with specific characteristics and required to be executed in particular seasons such as construction, road, and engineering network, immediately after the approval of the budget of that year.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

46.1.9 To require placing of an information board in publicly available area for the warranty period of works and services, containing information such as contractor's brief introduction; phone numbers; contract amount; financing schedule; works' commencement and completion date; and for construction of road and engineering pipelines, route mapping.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

46.2. The general budget manager representing the procuring entity specified in 4.1.1 of this law, and the executive director representing the procuring entity specified in 4.1.2 of this law, shall administer the rights and duties specified in 46.1 of this law.

46.3. The body authorized to represent the procuring entity as specified in 46.2 of this law may delegate its rights given by this law to relevant officials; however, such delegation does not release him from its responsibility.

46.4. The procuring entity shall make all communications related to the procurement only in writing.

#### **Article 47. Evaluation Committee**

47.1. The procuring entity shall set up an Evaluation committee if the cost estimate of goods, works, and services exceeds the threshold specified in 8.1.1 of this law.

47.2. The Evaluation committee shall operate on non-standing basis and shall have following functions:

47.2.1. prepare technical specifications, invitation for bid, and bidding documents, and receive and open the bids in accordance with respective instructions;

47.2.2. review and evaluate bids, in order to issue evaluation conclusions and submit the decision to award a contract to the procuring entity. Officials authorized to represent the procuring entity stated in 46.2 of this law, are prohibited from changing this decision without any justification.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

47.3. Officials appointed to the evaluation committee shall satisfy the following requirements:

47.3.1. shall be specialized in procurement or related sectors of given goods, services or works;

47.3.2. shall not to be parents, parents-in-law, spouse, brothers and sisters, and children of bidders and their representatives;

47.3.3. shall not have concluded an employment contract with a bidder during last 3 years;

47.3.4. shall not have any violations of civil servant's duties specified in 50.1 of this law during the last one year.

47.4. In order to ensure transparency in the procurement process, the bid evaluation committee shall include no less than two members representing related sector professional associations; private sector; or non-governmental organization; a citizen appointed by the respective People's Representative Khural; and an official from the respective Governor's Office.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

47.5. Procedure to appoint members to the evaluation committee and its operational procedures shall be approved by the Cabinet Member in charge of budget issues.

*/This clause was added by the Law ratified on the 9<sup>th</sup> of June, 2011/*

47.6. Members of the evaluation committee shall be specialized in procurement.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

47.7. A decision made by the evaluation committee (hereinafter referred to as the "evaluation report") shall be in the form of meeting minutes and include decisions approved by the majority of committee members, their rationale, and all relevant information.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

47.8. All committee members shall sign the evaluation report and members who had an opposing opinion shall make relevant notes on the report and sign on it.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

47.9. An operational arrangement, activity and incentive of the evaluation committee shall be regulated by procedures approved by the Cabinet member in charge of budget issues.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

## **Article 48. Procurement Planning**

48.1. The procuring entity shall prepare a draft of the procurement plan of goods, works and services, if necessary along with feasibility study, and the next year's budget proposal and submit to the corresponding general budget governor.

48.2. A general budget governor shall compile a draft of procurement plans for goods, works and services within its budget framework and submit it to the state central administrative body in charge of budget along with budget proposal.

48.3. A general budget governor shall submit requests for procurement of goods, works, and services stated in 45.4 of this law, including technical specifications, feasibility study, drawings, terms of reference and other required documents of each project and activity to the procurement professional organization within 10 working days after approval of the state budget.

48.4. General budget governor and professional organization in charge of procurement shall approve the consolidated plan for procurement of goods, works and services within 10 working days after the approval of state budget and submit it to the state central administrative body in charge of budget.

48.5. The procuring entity shall announce the procurement plan to the public through mass media within a month after the approval of state budget.

48.6. Procedures for procurement planning shall be approved by the Cabinet member in charge of budget issues.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

#### **Article 49. Reporting of the Procurement**

49.1. The procuring entity shall compile a bidding file for each procurement and keep it as archive unit.

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

49.2.1. procurement plan, its execution, and notes if required;

49.2.2. rationale for selecting a given method, if procedures other than the open bidding are applied;

49.2.3. brief description of goods, works, and services to be procured and bidding document;

49.2.4. correspondences between the procuring entity and bidder;

49.2.5. bids submitted;

49.2.6. minutes of the bid opening, evaluation report, and recommendations to award a contract;

49.2.7. reason and rationale if the bidding has failed or all bids have been rejected;

49.2.8. decision to award a contract, and the contract;

49.2.9. other documents related to given bidding;

49.2.10. documents related to completion of the contract and handover of goods, works, and services.

49.3. The state central administrative body for budgetary issues, legal and supervision authorities, and officials shall reserve the right to review the documents and materials specified in 49.1 of this law.

49.4. The documents and materials specified in 49.2.2, 49.2.6, 49.2.7, and 49.2.8 of this law shall be made available to given bidders upon their written request.

49.5. The procuring entity shall submit a report on procurement of goods, works and services of a given year within 1<sup>st</sup> of December of the year to the general budget governor, the latter shall report to the central public administrative body for budgetary issues by 15<sup>th</sup> of January of the following year.

49.6. The Cabinet member in charge of budgetary issues shall adopt a reporting procedure.

49.7. The central public administrative body for budgetary issues shall consolidate procurement reports submitted in accordance with provision 49.5 of this law and report to the Cabinet, within first quarter of the following year.

49.8. The Cabinet shall include the results of Government procurement in the annual budget execution report.

## **Article 50. Duties of the Civil Servant Involved in Procurement**

50.1. Civil servants involved in procurement with planning, preparation, execution, and supervision and other responsibilities, shall have the following duties:

50.1.1. provide a condition for fair competition;

50.1.2. respect the state interest;

50.1.3. abstain from illicit act such as offering and receiving an illegal proposals for their private interest;

50.1.4. inform the direct supervisor of a potential conflict of interest such as family member being a bidder or working for a bidder and remunerated by them, and abstain from organizing of a given bidding;

50.1.5. promptly inform direct supervisor and legal and supervisory authority if a bidder attempts to influence bidding results by offering a bribe and coercing.

## **Article 51. Registration System**

51.1. For the purpose of enhancing the scope of bidders, encouraging competition and providing information to the procuring entity, the respective state central administrative body by the matters of given Cabinet members shall maintain a register and establish a database of legal entities and individuals interested in participating in the procurement in accordance with procedures stated in this law.

51.2. The Cabinet member in charge for budgetary issues shall adopt the procedure of registration specified in 51.1 of this law.

51.3. A legal entity and/or individual may provide to the registration authority a request for a registration at any time by itself or through its representative, along with information on scope of business, capability and experience.

51.4. The bodies interested in bidding who are registered or not registered shall not affect their rights to participate in the bidding in accordance with the procedures set out in this law.

51.5. In inviting a particular number of bidders when applying the special bidding procedure, the procuring entity may obtain information on the legal entity and individual in the register.

51.6. The following general requirements must be satisfied while maintaining the register:

51.6.1. create the register based on the qualification criteria specified in articles 14-16 of this law;

51.6.2. provide an equal conditions for applicants in registration;

51.6.3. submit in writing the request for registration;

51.6.4. update the register with amendments upon request from registered bodies;

51.6.5. interested bodies shall be allowed access to the registry;

51.6.6. requests for registration shall be solved within one month;

51.7. The registration authority may require the applicant legal entity, individual, and their representatives to submit clarifications and additional notes.

51.8. The registration authority shall follow the procedures below to maintaining a registry:

51.8.1. define indicators for assessing bidders' qualifications, on each aspect under its jurisdiction;

51.8.2. after defining the indicators for assessing the qualifications in accordance with provision 51.8.1 of this law, make a public announcement on the registry through daily newspaper of national circulation.

51.9. Defining the qualification assessment indicators may be assisted by an expert or a consultant selected in accordance with this law.

51.10. When the registration authority rejects a request for registration or amendment to registration, it shall provide the respective decision along with justifications to the applicant in writing.

## **Article 52. Rights of the State Central Administrative Body for Budgetary Issues**

52.1. The state central administrative body for budgetary issues shall administer the government policy, methodology, and oversight on procurement in accordance with this law and have the following powers:

52.1.1. prepare proposal to upgrade procurement legislation;

52.1.2. provide professional and practical advice on procurement to the procuring entity;

52.1.3. draft the policies and procedures, guidelines, instructions, manuals and standard documents of procurement and adopt, if the legally authorized to do so;

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

52.1.5. oversee and analyze procuring entity's compliance to relevant procurement procedures;

52.1.6. compile procuring entities' reports, create and maintain a national database of procurements, produce consolidated reports and database;

52.1.7. review and resolve complaints from bidders in accordance with this law;

52.1.8. provide recommendations and opinions on particular issues related to implementation of this law upon request from legal and supervisory authorities;

52.1.9 */This article was withdrawn by the Law ratified on the 9<sup>th</sup> of June, 2011 /*

52.1.10 */This article was withdrawn by the Law ratified on the 9<sup>th</sup> of June, 2011 /*

52.1.11. outline the training level, quality, and standards for procurement, jointly with the state central administrative body in charge of education issues, provide support and assistance in organizing the training, approve guidelines on conducting training for procurement professionals.

*/This article was amended by the Law ratified on the 9<sup>th</sup> of June, 2011 /*

52.1.12. manage a website dedicated to disclosure of information on procurement, bidding announcements, and evaluation results and define of ways to posting the invitations for bid and other information on it;

52.1.13. cooperate with international and other foreign organizations on public procurement matters and to plan and coordinate the technical assistance in this area;

52.1.14. register, oversee, and disclose the sanctions list on entities blacklisted to participate in bidding, as specified in 14.5 of this law;

52.1.15. establish procedures for auditing procuring entities operations, contract performance, conducting an interim and performance quality monitoring, analysis and auditing;

*/This article was added by the Law ratified on the 9<sup>th</sup> of June, 2011 /*

52.1.16. other right set by the law.

*/This article was amended by the Law ratified on the 9<sup>th</sup> of June, 2011 /*

52.2. The state central administrative body for budgetary matters shall define the conditions and procedures for application of information technology and electronic systems in procurement.

52.3. Having procuring entity's operation, performance of contract, midterm and performance quality audit carried out by private and professional non-governmental entities, which are selected by procurement procedure according to article 35-39 of this law.

*/This clause was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

#### **“Article 52<sup>1</sup>. State Inspector in Charge of Procurement Procedures**

52<sup>1</sup>.1. The state central administrative central body in charge of budget affairs shall have a senior state inspector and state inspector for overseeing implementation of procurement activities.

52<sup>1</sup>.2. For overseeing procurement process, the state inspector in charge of procurement shall exercise the following rights in addition to the general rights stated in 10.9 of the State audit law:

52<sup>1</sup>.2.1. To recommend including into the sanctions list the bidder who fulfilled the conditions stated in 14.1.4; 14.1.6 and 14.1.7 of this law;

52<sup>1</sup>.2.2. To make statement to release from public services of an official has violated the provision 57.2 of this law, and to submit the statement to the related organization;

52<sup>1</sup>.2.3. To terminate an invalid contract as stated in article 42 of this law;

52<sup>1</sup>.2.4. To annul contracts that transferred contractual obligations to a third party without approval of the procuring entity or that made payments exceeding the amount previously stated in the bidding document.

*/This part was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

#### **Article 53. Professional Organization in Charge of Procurement and Its Authorities**

53.1. The professional organization in charge of the procurement is the Government implementing agency responsible for organization and implementation of procurement activities authorized by this law.

53.2. Shall have units under governor's offices at aimag, capital city and district, which are responsible for organization and implementation of procurements of goods, works and services to be financed by state and local budget.

53.3. The unit head under governor's office at aimag and capital city shall be appointed or resigned by the governor of respective aimag and capital city in consultation with the director general of professional organization in charge of procurement; whereas the unit head under governor's office at district shall be appointed and resigned by the governor of respective district in consultation with the governor of the capital city.

53.4. Directors of professional organization in charge of procurement and heads of units shall have no criminal background, and have work experience in public service at least 10 years, out of which minimum 3 years of experience in procurement.

53.5. The professional organization in charge of the procurement shall have the following responsibilities apart from duties and responsibilities of the procuring entity as stated in this law:

53.5.1. provide the procurement units with professional and methodological support and oversee their activities;

53.5.2. organize activities that ensure working conditions and social security of staff of procurement professional organization;

53.5.3. summarize the results of implementation of procurement laws and legislation, and submit proposals to the state central administrative body responsible for budget;

53.5.4. manage a website for posting procurement related information, news, bid announcements and results; outline and improve the methods for posting the bid invitation and other related information on it;

53.5.5. provide with procurement related technical advice and organize related training to procuring entities' and bidders;

53.5.6. implement activities directed to strengthening the capacity of the procurement professional organization and improving hardware and software within the general policy and plan;

53.5.7. facilitate activities related with establishment and implementation of a framework agreement stated in 5.1.23 of this law;

53.5.8. other responsibilities related to the procurement process stated in this law.

53.6. Procedures for organization, implementation and monitoring activities of the professional organization in charge of the procurement shall be approved by the Cabinet.

53.7. The professional organization in charge of the procurement shall delegate private and/or professional non-government organizations for executing a certain portion of its activities and conduct not less than 20 percent of total biddings, via an electronic procurement system.

*/This part was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

## CHAPTER SEVEN

### Settlement of Disputes, and Accountability

#### Article 54. Submitting Complaints to the Procuring Entity and Resolution of It

54.1. A bidder may submit a written complaint attached with the supporting evidence to the procuring entity within 5 working days after the date in which the bidder finds that procuring entity has breached its obligations related to the bidding.

54.2. The procuring entity shall notify all bidders about the nature of the complaint and based on respective decision, invite the bidder, whose interest might be affected, to attend a complaint resolution process.

54.3 If the bidder specified in 54.2 of this law fails to participate in the complaint resolution process shall be prohibited from submitting complaints further concerning the subject matter.

54.4. The procuring entity shall review and make a decision on the complaint within 10 working days after receiving the complaint, and the decision should describe a justification in the case of rejection and measures for resolving the complaints in the case of acceptance.

54.5 The procuring entity shall not issue an award of a contract after receiving a complaint, except its decision to continue the bidding with no suspension in order to protect public interests.

54.6. In pursuant to 54.5 of this law, if decided to continue the bidding, the respective justifications shall be submitted to the bidder with complaint in no less than 5 working days prior to accomplishing the decision.

54.7. The procuring entity shall not accept complaints submitted after awarding of contracts.

#### Article 55. Making Complaint Regarding the Procuring Entity's Decision

55.1. If the bidder considers that the provision 11.2 of this law is breached and violation on limitation of competition is observed during the preparation of bidding document, it may file a complaint to the Fair Competition and Consumer Protection Authority, and a complaint concerning with disagreement with the procuring entity's decision or decision not made within legal timeframe or any concerns on awarding of a contract, to the central administrative body in charge for budget respectively within 5 working days before opening the bids.

*/This part was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

55.2. Central administrative body in charge for budget and Fair Competition and Consumer Protection Authority shall review complaints made before awarding of a contract and resolve it within 14 days after receipt of complaints and this would become the final decision.

*/This part was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

55.3. Central administrative body in charge for budget and Fair Competition and Consumer Protection Authority shall make the following decision if they find that procuring entity breaches this law:

*/This part was amended by the Law ratified on the 10<sup>th</sup> of June, 2010/*

*/This part was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

55.3.1. partially or wholly revoke or modify the action or decision of the procuring entity that breaches this law.

55.3.2. provide an instruction on which provision of the law to be used, to address the issue.

55.3.3. request the procuring entity to continue the bidding after correction of violation.

55.4. Central administrative body in charge for budget and Fair Competition and Consumer Protection Authority may conclude to temporal suspension of the decision or action by the procuring entity, during the review and resolution of the complaints in following cases if:

*/This part was amended by the Law ratified on the 10<sup>th</sup> of June, 2010/*

*/This part was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

55.4.1. it is more reasonable to grant the bidder's complaints;

55.4.2. the bidder faces a substantial amount of loss, if not suspended;

55.4.3. a temporary suspension is not clearly damaging to the government authorities, procuring entity, and bidders.

~~55.5.~~

~~55.6.~~

~~55.7.~~

~~55.8./This article was withdrawn by the Law ratified on the 9<sup>th</sup> of June, 2011/~~

#### **Article 56. Filing a Complaint to the Court**

56.1. In the complaints not resolved within the timeframe stated in 55.2 of this law, or bidder disagrees with the decision, the bidders are entitled to file a claim to court.

*/This part was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

56.2. Complaints related to the bidding shall only be filed with the court after a contract is signed.

56.3. Unless otherwise stated in provisions 55.4.1-55.4.3 of this law, the court that received the complaint on bidding shall be prohibited to suspend the decision made by Central administrative body in charge for budget.

*/This part was amended by the Law ratified on the 6<sup>th</sup> of February, 2007/*

#### **Article 57. Liability for Violation of Legislations**

57.1. If a criminal liability should not be imposed on guilty person or entity with violation of procedure stated in this law, the following administrative penalties shall be imposed by the court or an authorized state inspector:

57.1.1. If the open bidding procedures are not used for procurements requiring it, the official in charge shall be fined with amount equal to from five to ten times of minimum wage level;

57.1.2. provisions 8.4; 8.5; and 8.7.1 of this law are violated when selecting the methods, the official in charge shall be fined in an amount equal to from five to ten times of minimum wage level;

57.1.3. If article 9.2 of this law is violated and the participation of international bidder is restricted, the official in charge shall be fined in an amount equal to from five to ten times of minimum wage level;

57.1.4. When using a margin of preference in the bid evaluation, articles 10.1-10.3 of this law are violated, members of evaluation committee shall be fined in an amount equal to from five to ten times of minimum wage level, if article 10<sup>1</sup> of this law is violated, the general budget governor, executive director, and director of the procuring entity shall be fined in an amount equal to ten times of minimum wage level;

*/This clause was added by the Law ratified on the 9<sup>th</sup> of July, 2015 /*

57.1.5. If invitation for bid and bidding documents are not prepared using the procedures, guidelines and standard documents approved by the state central administrative body in charge for budget, the official in charge shall be fined with an amount equal to from five to ten times of minimum wage level;

57.1.6. If the invitation for bid and bidding undertaken without preparing bidding document, and violating article 19 of this law, the official in charge shall be fined in an amount equal to five to ten times of minimum wage level;

57.1.7. If articles 21.3 and 21.4 of this law are violated during announcement of bid invitation, the official in charge shall be fined in an amount equal to five to ten times of minimum wage level;

57.1.8. If article 22.2 of this law is violated, and an unduly high price for the bid document is set without any rationale, the official in charge shall be fined in an amount equal to five to ten times of minimum wage level;

57.1.9. If article 24.3 of this law is violated during open bidding procedure, and the bid proposal submission date is set less than 30 days or provision 36.10 of this law is violated during selection of consulting services, the official in charge shall be fined in an amount equal to five to ten times of minimum wage level;

57.1.10. If due to the procuring entity, the contract is not signed within the deadline set in provisions 24.5 and 29.4 of this law, the official in charge shall be fined in an amount equal to from five to ten times of minimum wage level;

57.1.11. If article 26.6 of this law is violated, the official in charge shall be fined in an amount equal to five to ten times of minimum wage level;

57.1.12. If bid is refused or annulled on basis other than those stated in provisions 27.1 and 30.1 of this law, the official in charge shall be fined in an amount equal to from five to ten times of minimum wage level;

57.1.13. Bid is not evaluated within validity period without any justification and violating 28.2 of this law, the official in charge shall be fined in an amount equal to five to ten times of minimum wage level;

57.1.14. If the procuring entity conducts an unfair selection of bid, by violating 29.1 of this law, and awarded a contract to unsuccessful bidder, also extending the contract period by violating the provision 29.4 of this law, the official in charge shall be fined in an amount equal to five to ten times of minimum wage level;

57.1.15. the contract was signed within 5 working days after award of contract, by violating the provision 29.2 of this law, the official in charge shall be fined in an amount equal to five to ten times of minimum wage level;

57.1.16. special bidding procedure were used in situations other than as stated in 32.1; 33.1 and 34.1 of this law, the official in charge shall be fined in an amount equal to five to ten times of minimum wage level;

57.1.17. If provisions in article 41 of this law are violated, the official in charge shall be fined in an amount equal to five to ten times of minimum wage level;

57.1.18. Violating the provision 47.1 of this law and the evaluation committee was not established, the official in charge shall be fined in an amount equal to five to ten times of minimum wage level;

57.1.19. If the official in charge alters the evaluation committee decision stated in provision 47.2.2 of this law were without justifications, shall be fined in an amount equal to five to ten times of minimum wage level;

57.1.20. If provisions in articles 48 and 49 of this law are violated, by not announcing the procurement plan, or not preparing files for the respective bid, the official in charge shall be fined in an amount equal to five to ten times of minimum wage level;

57.1.21. If provisions 48.2 and 49.5 of this law are violated, not submitting the procurement plan and report to the State central administrative body responsible for budget within the deadline stated in the law, the official in charge shall be fined in an amount equal to five to ten times of minimum wage level;

57.1.22. If provision 54.4 of this law is violated, by not resolving the complaint within the time stated in the law, the official in charge shall be fined in an amount equal to five to ten times of minimum wage level;

57.1.23. If a court or other authorized body identified that the state chief inspector or state inspector violated provision 57.1 of this law, the inspector will fined in an amount equal to five to ten times of minimum wage level.

57.2. If a court or other authorized body identified that provision 57.1 of this law was violated repetitively, the procuring entity's general manager, executive director and evaluation committee members shall be dismissed from public service by decisions of respective authorized official;

57.3. If provision 50.1 of this law is violated, an official in charge shall be imposed disciplinary punishment and dismissed by respective authorized body or official.

57.4. If state chief inspector violates provision 52<sup>1</sup>.2.2 of this law, shall be to disciplinary punished as stated in Law on public services.

57.5. If a court and other authorized body identified that a bidder or other body violated or did not fulfill procurement contractual obligations, provided misrepresentation during participation in bidding, committed a crime of bribery, the decision shall be reported to the State central administrative body responsible for budget and included in the sanctions list for blacklisted entities.

*/This part was amended by the Law ratified on the 9<sup>th</sup> of June, 2011/*

#### **Article 57. Liability for Violation of Legislations**

57.1. If a criminal liability should not be imposed on an official with violation of procedure stated in this law, disciplinary punishments shall be in effect as stated in Law on public services

57.2. A liability should be imposed on guilty person or entity with violation of this law, as specified in the Criminal law and the Law on Infringement of Legislation.

*/This article was amended by the Law ratified on the 4<sup>th</sup> of December, 2015 and shall enter into force on 1 July, 2017/*

#### **Article 58. The Law Entering Into Force**

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

CHAIRMAN OF STATE GREAT HURAL

TS.NYAMDORJ