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Law of Georgia on Public Procurement

Chapter I. General Provisions

Article 1. Scope and Purpose of the Law

1.

This Law establishes the general legal, organisational and economic principles for conducting public procurement, also procedures for carrying out public procurements in the fields of defense and security, authority of the public procurement-related Dispute Resolution Council and the procedures for reviewing disputes.

2. The purpose of this Law shall be:

a) to ensure the most efficient, cost-effective, transparent and fair use of monetary funds stipulated for public procurements by establishing the requirements and rules that shall be observed by any contracting authorities and economic operators as well as by the entities involved in a procurement activity;

b) to ensure the integrity and accountability of persons involved in a public procurement by setting requirements in the manner that the decisions and actions of such individuals, and the legal and factual bases for such decisions and actions, are free of any political, personal or financial interests, are transparent and in compliance with the requirements of this Law, are unbiased and non-discriminatory, including on gender or any other grounds;

c) to promote the establishment of an institutional culture based on conscientiousness honesty, professionalism and cooperation among contracting authorities and economic operators.

d) to promote Sustainable Development, with consideration of environmental, social and economic aspects during public procurement.

Article 2. Principles of Public Procurement

1. Public Procurement shall be based on the following principles:

a) efficient and cost-effective use of funds designated for public procurements;

b) openness and transparency;

c) non-discrimination and equal attitude;

- d) proportionality;
 - e) implementation of public procurements through Unified Electronic System of Public Procurement.
 - f) achieving the goal of sustainable development in the implementation of public procurements in the cases defined by the decree of the Government of Georgia.
2. A contracting authority shall be obliged to conduct public procurements by observing the principles referred to in Paragraph One of this Article.

Article 3. Definition of Terms

1. Terms used in this Law shall have the following meaning:

- a) public procurement - procurement of any goods, construction works (hereinafter - works) or services by a contracting authority in compliance with the procedures determined by this Law notwithstanding the purpose of the procurement of these goods, services or works;
- b) Unified Electronic System of Public Procurement (hereinafter – Electronic System) – the only official web portal designated for conducting public procurements and for the activities related to public procurements; <https://eprocurement.gov.ge>;
- c) contracting authority - an entity/authority defined under this Sub-Paragraph performing public procurement (except for a political party, professional union and religious organization):
 - c.a) state body, body of Autonomous Republic or municipality;
 - c.b) Legal Entity under Public Law (except for a membership-based Legal Entity under Public Law that does not meet the criteria listed in Sub-Paragraph ‘c.c.b’ of Paragraph One of this Article);
 - c.c) entity (with the exception of enterprise) or the body which:
 - c.c.a) a contracting authority founded (set up) to achieve public purposes and has no industrial (commercial) nature;
 - c.c.b) meets at least one of the following criteria:
 - c.c.b.a) it receives more than 50% of its financing from State Budget of Georgia, the budget of the Autonomous Republic or the budget of municipality or other contracting authority;
 - c.c.b.b) is subject to management supervision of a contracting authority;
 - c.c.b.c) it has a managerial or supervisory board in which more than 50% of the members are appointed by a contracting authority;

c.d) enterprise on which a contracting authority has important influence. One of the following circumstances shall be considered as important influence:

c.d.a) contracting authority holds more than 50% of assets;

c.d.b) contracting authority holds more than 50% of the total votes;

c.d.c) contracting authority appoints more than 50% of the members of managerial or supervisory board;

d) economic operator – any individual, legal entity, group of entities, other derived institution that offers goods, services or works on the market. Along with this, according to relevant stage of public procurement, an economic operator might be:

d.a) candidate – an economic operator that has sought participation by submitting an application or has been invited to take part in a restricted procedure, a competitive dialogue, a negotiated procedure with prior publication, a negotiated procedure without prior publication, an innovation partnership or a design contest;

d.b) tenderer – an economic operator that has submitted a tender in public procurement;

d.c) supplier – a main economic operator who was awarded a public procurement contract by a contracting authority;

e) subcontractor – an economic operator who is entrusted by the supplier (the main economic operator) with performance of part of the public procurement contract in compliance with the procedures established by this Law;

f) other economic operator on whose capacities an economic operator relies – an economic operator on whose capacities a main economic operator (supplier) relies pursuant to Article 63 of this Law;

g) public procurement contract (hereinafter – Procurement Contract) – contract concluded between one or more contracting authorities and economic operators in writing. Procurement contract may be awarded:

g.a) for supply of goods if the objects of public procurement are the goods grouped under CPV codes from 03000000 to 45000000. Supply contracts may also apply to their installation and/or disposition, also accompanying services if the value of the installation/disposition/services does not exceed the value of goods;

g.b) for performing works if the objects of public procurement are the works grouped under CPV codes from 45000000 to 48000000. Work contracts may apply to only performing works as well as to designing and performing works simultaneously;

g.c) for providing services if the objects of procurement are the services grouped under CPV codes from 48000000 to 98910000.

h) CPV – Common Procurement Vocabulary provided for by the respective legal act of EU which establishes united nomenclature to be used in public procurements and which is reflected

in a normative act of the Chairperson of the Legal Entity under Public Law Public Procurement Agency;

i) CPV code – code provided by CPV comprising different hierarchy levels and describing goods, services or works and defining object of procurement;

j) object of public procurement (hereinafter – Object of Procurement) – goods, works, services, to be procured through a procurement procedure;

k) similar procurement objects – objects of procurement which are grouped under 1 unit of CPV codes (under first 3 digits);

l) artificial division of public procurement – procurement of similar procurement objects in an artificially reduced quantity and/or volume by a contracting authority or other activity that resulted in avoidance of the monetary thresholds determined by this Law;

m) estimated value of public procurement (hereinafter – estimated value of procurement) - the total planned payment established by the public procurement terms for providing the object of procurement (excluding Value Added Tax (hereinafter - VAT)), within the frames of which economic operator offers its bids to contracting authority in compliance with this Law. In negotiated procedure without prior publication expected value of procurement contract shall be considered as estimated value of procurement;

n) terms of public procurement (hereinafter – terms of procurement) – documentation drafted or defined by a contracting authority which describes or establishes elements for public procurement procedures. Such documents shall be: contract notice, procurement documentation (which includes specifications, requirements to economic operators, procurement contract terms, formats for submission of applications and bids, other additional information), call for submission of tenders/participation in dialogue or in negotiated procedure;

o) annual procurement plan (hereinafter - annual plan) – plan elaborated by a contracting authority and approved in compliance with this Law according to which procurements are implemented by him/her/it throughout the year;

p) military and dual-use goods – military goods and dual-use goods defined under the Law of Georgia on the Control of Military and Dual-Use Goods;

q) extreme urgency – events that cause real threat to the operation of a contracting authority and which are unforeseeable for and/or not attributable to the contracting authority or which may substantially prejudice Georgia's state and/or public interests or the property of a contracting authority;

r) Agency – Legal Entity under Public Law – Public Procurement Agency;

s) Council - Dispute Resolution Council reviewing disputes related to public procurement;

t) EU legal act – for the purposes of this Law, EU directives and regulations in the field of public procurement as well as other decisions of authorized body;

u) 'life cycle' — includes all consecutive and/or interconnected stages, including research and development to be carried out, production, trading and its conditions, transportation, use and maintenance, the whole period of existence of the goods, or execution of works and provision of services, from the moment of acquisition of raw material or generation of resources at disposal, through clearance to end of service or utilization;

v) life-cycle costing - includes the costs borne during a life cycle related to the delivery of goods, execution of works or provision of services including costs related to procurement, utilization, consumption of energy and other resources, maintenance, recycling, as well as costs imputed to environmental externalities (provided their monetary value can be determined).

2. The term 'day' shall mean a calendar day, unless a 'working day' is explicitly indicated in this Law or subordinate normative act approved/issued on its bases.

Article 4. Language

1. All public procurement related information shall be drafted and published in the Georgian language.

2. By the decision of a contracting authority, a contract notice and procurement documentation may also be published on the Electronic System in the English language. Where there are any discrepancies between Georgian text and its English translation when deciding on disputed issue/issues related to a contract notice and procurement documentation, Georgian version of a contract notice and procurement documentation shall prevail.

3. If estimated value of procurement equals to or exceeds the monetary thresholds established by the legal acts of the European Union, a prior information notice, a contract notice as well as a call for submission of tenders/participation in dialogue or in negotiated procedure shall be published on the Unified Electronic System of Public Procurement in the English language as well.

4. A candidate/tenderer shall be obliged to submit tenders and other documents for participation in public procurement procedure in the official language of Georgia. In the event that tender and other procurement documents are not drafted in the official language of Georgia, a candidate/tenderer shall be obliged to submit notarized translation of the documents. In case of any discrepancies, original version shall prevail.

Article 5. Electronic System

1. Electronic System is the only official portal of public procurement – an information technology system ensuring open, transparent and competitive environment for performing public procurements and for the activities related to public procurements.

2. Electronic System shall comply with the following criteria:

a) it shall be publicly accessible;

b) it shall be compatible with established standards for modern information technology system;

c) it shall apply an electronic identification of users;

d) all interested natural persons shall have access to the information related to public procurement with the exception of the cases directly provided by this Law and/or on the bases of the order of the Chairperson of the Agency when restricted access to the information results from the peculiarity of a public procurement procedure or public procurement instrument, specificity of electronic service and serves a legitimate purpose.

3. Electronic system shall be designed, maintained and operated by the Agency.

4. The procedures for using Electronic System shall be defined by the order of the Chairperson of the Agency.

5. Any person using Electronic System automatically agrees to the procedures and conditions established for using it.

6. Public procurement may also be performed through the Electronic System by any person (private organization) who is not a contracting authority provided for by this Law. The procedures and conditions for performing public procurement by this person through the Electronic System shall be defined by the order of the Chairperson of the Agency.

7. In order to ensure maximum openness, transparency and competition, a contracting authority shall be entitled to perform such procurements through Electronic System to which this Law does not apply. Performing such procurements through Electronic System does not make it subject to the scope of this Law. The procedures and conditions for performing such procurements through Electronic System shall be defined by the order of the Chairperson of the Agency.

Article 6. Nomenclature

1. All references to nomenclature provided for by this Law and subordinate normative acts approved/issued based on this Law shall be made using CPV codes.

2. Based on the respective legal act of the European Union, CPV codes shall be approved by the order of the Chairperson of the Agency.

Article 7. Monetary Thresholds

1. Monetary threshold is financial limit set by the established rule that defines procurement procedures, timeframes and other requirements that shall be applied in order to perform public procurement.

2. Monetary thresholds are determined under the respective legal acts of the European Union according to which the monetary thresholds shall be reflected in the order of the Chairperson of the Agency.
3. If estimated value of procurement is below the monetary thresholds established by the legal acts of the European Union, monetary thresholds determined under the Articles 33 and 54 of this Law shall be applied.
4. It shall be inadmissible to artificially divide public procurement with a view to avoiding application of public procurement procedures and timeframes complying with the monetary thresholds, also in order to avoid fulfilment of other requirements determined by this Law.

Chapter II. Exceptions

Article 8. General Provisions Related to Exceptions

When performing public procurements, a contracting authority shall be permitted to use solely the exceptions provided for in this Law. Employment of any other exceptions or other reasons for not applying this Law shall be prohibited.

Article 9. General Exceptions

This Law shall not apply to the following:

a) procurements when a contracting authority:

a.a) is obliged to apply the procurement procedures different from this Law which:

a.a.a) have been established by an international organization, international donor organization, international financial institution and/or national financial institution of a foreign country;

a.a.b) have been defined by an international contract awarded with one or several states in compliance with the generally acknowledged principles and norms of international law and/or by a loan/financial/cooperation agreement and/or which are stipulated by the document (minutes, memorandum and/or others) of negotiations conducted for adopting the text of such an agreement if the aforementioned agreement/document (minutes, memorandum and/or others) aims at joint implementation of the project, stipulated by the agreement/document (minutes, memorandum and/or others), by the parties thereof;

a.b) is eligible, on the bases of the decision of the government of Georgia, to apply public procurement procedures different from this Law which have been established by the organization and/or institution defined in Sub-Paragraph ‘a.a.a’ of this Article;

a.c) is carrying out the commitments deriving from a loan/financial/cooperaton agreement concluded with the organization and/or institution referred to in Sub-Paragraph ‘a.a.a’ of this Article;

b) procurements governed by specific rules established by an international organization, international donor organization, international financial institution and/or national financial institution of a foreign country when the procurement is fully funded by this organization or institution. In case co-funding is applied and majority of procurement is funded by an organization or institution referred to in this Sub-Paragraph, the parties agree themselves on the rules to be applied to the procurement contract;

c) acquisition of immovable property or obtaining it with the right of use;

d) following procurements by the broadcaster defined by the Law of Georgia on Broadcasting:

d.a) procurement, promotion, production or co-production of a content which is aimed for TV and radio production, web pages and social networks (programme, show, film, performance, serial, reporting, cultural events, videos footage, sports events, situation comedy, documentary, children's entertainment programme, drama) and/or services necessary to produce thereof; also contracts awarded with the broadcaster related to the air time or dissemination of the programme;

d.b) procurement of services related to the broadcasting and/or receipt of TV/radio products through a satellite (except for the procurement of goods/works/services necessary for production of TV/radio products and/or for broadcasting);

e) arbitration and conciliation services;

f) following legal services:

f.a) legal representation of a client by a lawyer/law firm in:

f.a.a) the process of an arbitration, conciliation or application of other dispute resolution mechanisms in Georgia or a third country, also before an international arbitration instance, conciliation instance or other dispute resolution mechanisms;

f.a.b) judicial proceedings before the court, administrative or law enforcement body of Georgia or a third country, also before international court, tribunal or institution;

f.b) legal advice given in preparation of any of the proceedings referred to in Sub-Paragraph 'f.a.' of this Paragraph, or where there is a clear reference and high probability that the issue to which legal advice applies, will become subject of discussion in compliance with the same Sub-Paragraph;

f.c) document certification and authentication services which must be provided by notaries, also apostilisation or legalization of a document;

f.d) legal services provided by trustees or appointed guardians designated by a court or by law which aim at carrying out specific tasks under the supervision of a court or an authorized body determined by law;

f.e) other legal services which are connected with the exercise of official legal authority;

g) financial, banking, rating, consultancy, brokerage and other related services in connection with the issue, registration, sale, purchase, transfer and other activities related to securities or other financial instruments; also procurement of sovereign credit rating services and credit rating services related to government securities, as well as to reimbursement of accompanying costs to the supplier of these services;

h) loan, credit, deposit and related services whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instrument;

i) following procurements by the National Bank of Georgia:

- i.a) procurements related to the implementation of monetary and financial policies and to the provision of the country's economy with cash by the National Bank of Georgia;
- i.b) procurements, except for those approved by the Board of the National Bank of Georgia in accordance with the administrative and capital expenditure budgets of the National Bank of Georgia;
- i.c) procurements of intangible assets, gold bars, lari banknotes and coins intended for collection and/or other purposes as well as procurements related to reproduction of lari banknotes and coins;
- i.d) public procurements of audit firm service for the conduction of external audit of the accounting records of the National Bank of Georgia;
- j) procurements related to implementation of investment services of Legal Entity under Public Law – Pension Agency; procurements by the Pension Agency of audit firm service for the conduction of independent audit of the accounting records of the specialized depository, asset management company and Pension Agency. Also, in accordance with the Law of Georgia on Funded Pensions, to the selection by the Investment Board of a specialized depository and to the selection process by the Investment Board and/or asset management company of one or more open-end fund instruments;
- k) public procurement of services of persons employed under administrative contracts and labor contracts provided for in the budget classification article 'Goods and Services';
- l) services related to carrying passengers by metro or rail;
- m) procurement of electricity, guaranteed capacity, and water supply, also selection of a public service rail operator provided for by the Railway Code of Georgia and a public service contract to be awarded with it;
- n) procurement of exclusive service by a contracting authority from another contracting authority when the procurement has been granted to the other contracting authority under the law or in compliance with the law;
- o) procurement of services provided for in Paragraph 5 of Article 41 of this Law from Central Purchasing Body;
- p) services related to scientific and research activities except for the services under CPV codes from 73000000 to 73120000, 73300000, 73420000 and 73430000 when all the following conditions are satisfied:
 - p.a) received benefits belong exclusively to a contracting authority that uses the benefits for its activities;
 - p.b) the service is fully funded by the contracting authority;
- q) procurement of goods, services and works within the frames of the Public-Private Partnership Project provided for in the Law of Georgia on Public-Private Partnership except for selection of a contractor based on the same Law which is performed in accordance with the

procurement procedures and conditions established by this Law. In compliance with the Law of Georgia on Public-Private Partnership, selection of a contractor shall be carried out on the bases of the public procurement procedures established by this Law provided that Articles 43-48, as well as Chapters IV, X and XIII of this Law shall not apply to the selection process of a contractor in compliance with the Law of Georgia on Public-Private Partnership;

r) procurement of the services whose value is determined by the normative act;

s) procurements to be performed during business trips;

t) procurements related to transportation of the corpse of a citizen of Georgia deceased abroad, provided for by the resolution of the government of Georgia;

u) procurements of vehicles for diplomatic representation of Georgia and its consulates abroad, for Defense Attaché, also for the representatives of Georgian Ministry of Defense and Georgian Ministry of Interior, State Security Service of Georgia and representation abroad of the Prosecutor's Office of Georgia;

v) according to the Agreement between the Government of Georgia and the Government of the United States of America Concerning the Transition of Sustainment Costs and Responsibilities Over the Unified Laboratory System for Detection, Epidemiological Surveillance and Response to Especially Dangerous Pathogens, and the Richard G. Lugar Centre for Public Health Research in Georgia, public procurement of goods and services entered in the Unified Laboratory System, the list of which shall be determined by the ordinance of the Government of Georgia.

w) procurements related to publications in local/international newspapers/editions/internet resources for exercising powers granted by the legislation of Georgia; also, to publication of scientific works in local/international scientific newspapers/editions/internet resources;

x) procurements to be performed for extension courses, trainings and certification of employees abroad;

y) procurements for organizing meetings and visits of the President of Georgia, the Chairperson of the Parliament of Georgia, the Prime Minister of Georgia, Ministers of Georgia, State Ministers of Georgia and/or Mayor of Tbilisi City, for organizing the reception of delegations at the Parliament of Georgia and visits of delegations of the Parliament of Georgia abroad, for organizing the reception of delegations at the Ministry of Foreign Affairs of Georgia and visits of delegations of the Ministry of Foreign Affairs of Georgia abroad, as well as procurements to be performed with funds allocated from the reserve funds of the President of Georgia, the Government of Georgia and Tbilisi City Hall;

z) procurements to be performed for the access to educational, scientific, library and other knowledge resources, electronic services, literature (printed, electronic or audiovisual literature and other), and electronic subscriptions. This Sub-Paragraph shall not apply to the procurement of textbooks of general education institutions defined by the Law of Georgia on General Education;

z¹) procurements related to state secrets defined by the Law of Georgia on State Secret. The Government of Georgia shall approve the list of the objects of procurement related to state

secrets as defined in the Law of Georgia on State Secrets and the procedure for conducting such procurement;

z²) cases provided for in Article 19¹ of Product Safety and Free Movement Code of Georgia and Paragraphs 9 and 10 of Article 9 of the Law of Georgia on Energy Labeling; also, to secret/control procurements to be carried out by other authorized body to fulfill the functions conferred to it by the Georgian legislation;

z³) procurements by Legal Entity under Public Law – Higher Educational Institution of services for obtaining international accreditation/authorization/external evaluation from non-resident institutions/international organizations;

z⁴) financing of relevant education, health and social protection services/goods through a voucher, including procurement of medical services or personal insurance through a voucher, as well as voucher redemption and transactions relating to its redemption;

z⁵) public procurements relating to dissemination of public service advertisements through mass media, (including through websites and social networks) (except for public procurements relating to the purchase of television and radio broadcasting time that is carried out in compliance with this Law under the conditions defined by Paragraph 2 of Article 66¹ of the Law of Georgia on Broadcasting;

z⁶) procurements relating to accession to international organizations and to the payment of membership/registration fees for participating in international events;

z⁷) public procurements of expert services, provided these services are procured under Articles 144-147 of the Criminal Procedure Code of Georgia;

z⁸) procurement of performance of scientific, literary and/or artistic works by the performer for receiving royalties (reimbursement);

z⁹) procurements relating to the engagement of a witness, expert and/or interpreter, aiming to protect the interests of a contracting authority, in the process of an arbitration, conciliation or application of other dispute resolution mechanisms in a third country, before an international arbitration instance, conciliation instance or other dispute resolution mechanisms, also before the courts, administrative or law enforcement bodies of a third country, as well as international courts, tribunals or institutions;

z¹⁰) procurement of crude oil, oil products and/or products of chemical industry, which are carried out to receive profits by their further realization, also, procurements of services relating to the realization and/or transfer/transit of crude oil, oil products and/or products of chemical industry with similar purposes;

z¹¹) procurement of natural gas and/or operations carried out/intended with derivatives of natural gas as well as procurements of services related thereto;

z¹²) procurements to be carried out, within the frames of economic activity abroad, by a branch, representation, subsidiary company founded by a contracting authority abroad for the purpose of earning profit.

z¹³) procurements of audit company services (external auditor) to carry out financial audit of the State Audit Service defined by Article 35 of the Organic Law of Georgia "On the State Audit Service".

Article 10. Exceptions Related to Awarding Procurement Contracts in Public Sector

1. This Law shall not apply to procurement contracts awarded by a contracting authority with a physical or legal person if all of the following conditions are fulfilled:

a) a contracting authority itself, or together with other contracting authorities, exercises full control over the legal person concerned. Full control means a decisive influence over both strategic objectives and significant decisions of the controlled legal person, including state control of a legal person under public law which implies supervision of lawfulness, expedience and efficiency of the activities carried out by it as well as its financial and economic activities. Such control may also be exercised by another legal person, which is itself controlled in the same way by the contracting authority/contracting authorities;

b) more than 80% of the activities of the controlled legal person are carried out in the performance of task/tasks entrusted to it by the controlling contracting authority/ contracting authorities, or by other legal persons controlled by that contracting authority/ contracting authorities. Body/bodies authorized to establish the percentage referred to in this Sub-Paragraph shall be defined by the legal act of the Government of Georgia;

c) there is no direct private capital participation in the activities of controlled legal person.

2. Paragraph One of this Article shall also apply where a controlled legal person, which is a contracting authority, awards a contract to its controlling contracting authority, or to another legal person fully controlled by the same contracting authority, provided that there is no direct private capital participation in the activities of the legal person being awarded the procurement contract.

3. This Law shall not apply to procurement contracts concluded between two or more contracting authorities if all of the following conditions are fulfilled:

a) the contract establishes or implements a cooperation between the participating contracting authorities with the aim of exercising their public powers jointly;

b) the implementation of a cooperation foreseen under Sub=paragram "a" of this Article is governed solely by considerations relating to the public interest;

c) the participating contracting authorities perform on the open market less than 20% of the activities concerned by the cooperation. Body/bodies authorized to determine the referred percentage shall be defined by the legal act of the Government of Georgia;

Article 11. Voluntary Subordination

Notwithstanding the exceptions determined by this Chapter, a contracting authority shall be entitled to voluntarily subordinate the procurements provided for in this Chapter to application of this Law. In such cases, requirements set forth by this Law shall fully apply to the respective procurement.

Chapter III. Parties of Public Procurement

Article 12. General Rights and Obligations of Parties of Public Procurement

1. A contracting authority shall be authorized to:

a) perform public procurement, select an economic operator and award a procurement contract/framework agreement with it in compliance with the procedures established by this Law and relevant normative acts;

b) select relevant procurement procedure and relevant procurement instrument in compliance with the procedures established by this Law and relevant normative acts with the aim to perform public procurement;

c) request protection of the rights assigned to it in compliance with this Law and relevant normative acts;

d) require the economic operator to fulfill the commitments taken by a procurement contract/framework agreement.

e) terminate procurement contract if the grounds/events provided for by Sub-Paragraph 'b' of Paragraph 2 of Article 21 of this Law become known to it; also, in the cases provided for by the legislation of Georgia;

f) require the economic operator to comply with social, environmental and labor law norms in order to achieve the goal of sustainable development

2. A contracting authority shall be obliged to:

a) follow procedures established by this Law and relevant normative acts;

b) fulfill the commitments taken by a procurement contract/framework agreement.

3. Responsibility for effective and cost-efficient performance of public procurement in compliance with the procedures and norms established by this Law and relevant normative acts shall fully rest with a contracting authority.

4. An economic operator shall be eligible to:

a) participate without hindrance in public procurement procedures in compliance with the procedures established by this Law;

b) request protection of the rights assigned to it in compliance with this Law and relevant normative act;

c) require the contracting authority to fulfill the commitments taken by a procurement contract/framework agreement.

5. An economic operator shall be obliged to:

- a) follow procedures and conditions established by this Law and relevant normative acts;
- b) fulfill the commitments taken by a procurement contract/framework agreement;
- c) comply with social, environmental and labor law norms established by Georgian legislation (including international treaties of Georgia), while fulfilling the procurement contract.

Article 13. Conflict of Interest

1. While performing public procurement, a contracting authority shall be obliged to implement all the necessary measures for effective prevention, identification and elimination of conflict of interest.

2. Conflict of interest comprises any event when persons employed in a contracting authority and/or economic operator who are participating in conduction of a specific public procurement, act on behalf of a contracting authority and/or can make influence on the outcome of procurement procedures, have direct or indirect financial or other personal interests which may prejudice their impartiality and independence while performing public procurement.

3. While conducting a specific public procurement, a member of procurement committee/jury and/or a member of its Office, an expert, a consultant, a person responsible for controlling fulfillment of the contract and other authorized person of a contracting authority involved in the activities related to public procurement shall be considered to have a conflict of interest if there are one or several of the following conditions:

- a) he/she or his/her relative is the head, shareholder, member of a managerial body or supervisory board of an economic operator for the past two years ;
- b) he/she is a relative of the head, shareholder, member of a managerial body or supervisory board of an economic operator;
- c) he/she or his/her relative is the representative of an economic operator or the head, shareholder, member of a managerial body or supervisory board of an economic operator;
- d) he/she is the relative of the representative of an economic operator or the head, shareholder, member of a managerial body or supervisory board of an economic operator;
- e) together with an economic operator, representative of an economic operator, the head, shareholder, member of a managerial body or supervisory board of an economic operator, he/she is also the shareholder, member of a managerial body or supervisory board of another economic operator;
- f) together with an economic operator, representative of an economic operator, with the head, shareholder, member of a managerial body or supervisory board of an economic operator, he/she also has direct or indirect control over other economic operator;

g) he/she is subordinate of the head, shareholder, member, member of a managerial body or supervisory board of an economic operator or their representative or vice versa, the person/ the persons thereon is/are his/her subordinates;

h) he/she controls directly or indirectly an economic operator, other than the ones referred to in this Paragraph;

i) he/she, as a natural person, is tenderer/candidate in the public procurement procedure himself/herself.

4. For the purposes of this Article, persons defined in Paragraphs 3 and 4 of Article 19 of the Tax Code of Georgia shall be deemed as relatives, while “control” shall be defined in compliance with Paragraph 5 of Article 19 of the Tax Code of Georgia.

5. Terms of the conflict of interest shall also apply to an economic operator, subcontractor and other economic operator on whose capacities the main economic operator relies in compliance with Article 63 of this Law.

6. While conducting a public procurement, a contracting authority shall be obliged to publish information on the Electronic System, under the procedure established by the Order of the Chairperson of the Agency, about the member of a procurement committee/jury and/or its Office, an expert, consultant, person responsible for the control of performance of procurement contract and other authorized person of a contracting authority involved in the activities related to public procurement. Persons referred to in Paragraphs 2-5 of this Article shall be obliged to confirm in writing absence of conflict of interest. A contracting authority, also an economic operator shall publish/upload the receipt on the Electronic System in compliance with the procedures established by the Order of the Chairperson of the Agency.

7. A person referred to in Paragraphs 2 and 3 of this Article, employed in a contracting authority, a member of a procurement committee/jury and/or its Office, an expert, a person responsible for the control of performance of procurement contract and other authorized person of a contracting authority involved in the activities related to public procurement, having conflict of interest, shall be obliged to immediately seek self-recusal and shall not participate in the respective public procurement.

8. An economic operator shall be entitled to seek recusal of the person referred to in this Article in case the person thereof has conflict of interest. Procurement committee/jury shall take decision related to recusal of the member of procurement committee/jury (without the participation of the person thereof); procurement committee/jury shall also take decision related to recusal of the whole composition of procurement committee/jury, a member of the Office of procurement committee/jury as well as of the experts and consultants involved in the activities of the procurement committee/jury. The head of a contracting authority or other person authorized by him/her shall take the decision regarding recusal of the expert or consultant invited by a contracting authority who is not involved in the activities of the procurement committee/jury as well as of the person responsible for the control of performance of procurement contract or other authorized person of a contracting authority.

9. In case of recusal or self-recusal of the whole procurement committee/jury or the amount of the members of the committee which leaves the committee/jury unauthorized for taking decision, a new procurement committee/jury shall be set up. In case of recusal or self-recusal

of a sole member of the Office of a procurement committee/jury or all of its members, a new Office of a procurement committee/jury shall be set up. A new person shall be defined in case of recusal or self-recusal of an expert, consultant, person responsible for the control of performance of a procurement contract or other authorized person of a contracting authority who is involved in the activities related to public procurement.

10. Detailed procedures and terms for identification of the presence of conflict of interest as well as procedures and terms for identification and eradication of conflict of interest by a contracting authority shall be defined by the Order of the Chairperson of the Agency.

Article 14. Procurement Committee

1. By the decision of the head of a contracting authority, considering the peculiarity of the procurement object, public procurement (except for design contest and negotiated procedure without prior publication) may be performed by the procurement committee or without it, except for the cases where the estimated value of goods and/or services equals to or exceeds 100 000 GEL or procurement object is work (in such case performance of public procurement without procurement committee is inadmissible). Procurement committee shall act on behalf of a contracting authority.

2. In case the head of a contracting authority decides that procurement committee carries out public procurement, he/she shall set up a procurement committee. With a view to performing public procurement, procurement committee might be established for the purpose of performance of specific procurement, or specific type of procurement or in general for a certain or indefinite period of time. Establishment of a procurement committee for the performance of specific procurement or specific type of procurement shall be given preference taking into account specialization of the committee members.

3. The number of the members of the procurement committee shall be odd. The number of members shall amount to minimum 3 members but not more than 9. The head of a contracting authority, his/her deputy and/or a head of structural unit of a contracting authority and/or his/her deputy may be appointed to the procurement committee. Other employees of the contracting authority may also be appointed as members of the procurement committee if the number of persons referred to in this Paragraph is not sufficient.

4. Under a decision of a procurement committee, experts in the corresponding field may be invited to assist the committee. Such invited persons shall act as experts or consultants.

5. Procurement committee shall be chaired by the head of a contracting authority or by a person designated by him/her.

6. Procurement committee shall adopt decisions by a majority of the current nominal list of the committee members and shall record decisions in the minutes signed by all the members participating in the decision-making process. In the case of equal votes, the vote of the chairperson of a procurement committee shall be decisive. Minutes shall contain information about each and every decision adopted by the procurement committee. Contracting authority/procurement committee shall not be entitled to refer to particular decisions in public procurement process, if such decisions are not described in the minutes. A member of a

procurement committee who disagrees with the decision of the committee may submit his/her opinion in writing, which shall be enclosed to the meeting minutes.

7. Minutes of the procurement committee meeting shall include:

- a) name of the procurement committee;
- b) date and venue of the meeting;
- c) names of the chairperson of the procurement committee and its members (including assumption regarding the members not attending the meeting);
- d) subject-matter of the meeting;
- e) discussion of the committee;
- f) opinions of invited experts and consultants (if any);
- g) legal or subordinate normative act and its relevant norm the committee refers to;
- h) results of voting;
- i) taken decision.

8. Immediately upon signature, minutes of the meeting shall be published on the Electronic System in compliance with the procedures established by the order of the Chairperson of the Agency. Minutes of the meeting related to establishing the terms of procurement shall be published on the Electronic System together with the terms of procurement. Uploading the minutes of the meeting on the Electronic System shall be deemed as official notice about the minutes.

9. With the purpose to support procurement committee in organization terms, along with the procurement committee, its Office shall also be set up which, as a rule, shall be comprised of the person(s) employed in the structural unit or to the position provided for in Article 15 of this Law. Furthermore, at least one member of the Office of the Procurement Committee shall be employed in the structural unit or to the position referred to in this Paragraph. The Office of the procurement committee shall be chaired by the chairperson of the committee.

10. In case public procurement is not performed by the procurement committee according to the decision of the head of a contracting authority, the unit of a contracting authority carrying out activities related to public procurement, shall perform procurement procedures in compliance with the rules and conditions established by this Law, while the decision is taken by the head of a contracting authority or his/her deputy designated by the head. In such cases, public procurement procedures are performed and decisions are taken in compliance with this Law considering the procedures established for the procurement committee by this Article.

Article 15. Unit of a Contracting Authority Carrying out Activities Related to Public Procurement

A contracting authority shall be obliged to determine, in the structure of the organization/in its staff list, authorized structural unit/ staff member performing activities related to public procurement.

Article 16. Certification of a Public Procurement Specialist

1. Person employed in a structural unit provided for in Article 15 of this Law, who is immediately involved in the activities related to public procurement, shall hold a certificate of a public procurement specialist (hereinafter in this Article - Certificate).

2. The Agency shall issue the certificate on the bases of certification. Certification shall be held electronically in the official language of Georgia not less than twice a year.

3. Any legally competent citizen of Georgia with higher education shall be eligible to participate in certification, except for the following cases when the person:

a) has been deprived of a certificate due to the breach of Code of Ethics of Contracting Authorities and a year has not elapsed since than;

b) is convicted for the crime under Sub-Paragraph 'a' of Paragraph 2 of Article 21 of this Law.

4. Fee shall be set for certification of public procurement specialists. Its amount as well as procedures for its payment shall be determined by the order of the Chairperson of the Agency. The amount of the fee shall not exceed 300 GEL.

5. With a view to supporting certification, the Agency shall be entitled to organize preparation programme for certification (carry out certification programme). Fee shall be set for undertaking a public procurement certification programme. Its amount as well as procedures for its payment shall be determined by the order of the Chairperson of the Agency. It shall not be mandatory to undertake the certification programme in order to obtain the certificate.

6. A certificate shall be permanent provided the person is appointed to the position determined by Paragraph One of this Article. A certificate shall be annulled if the holder of the certificate:

a) is not appointed to the position determined by Paragraph One of this Article within three years after obtaining the certificate;

b) is dismissed from the position determined by Paragraph One of this Article and is not appointed to the position within three years;

c) under a judgement of a court conviction entered into force, is proved guilty of committing the crime referred to in Sub-Paragraph 'a' of Paragraph 2 of Article 21 of this Law;

d) regularly breaches Code of Ethics of Contracting Authorities.

7. The Agency shall maintain the registry of holders of certificates.
8. A contracting authority shall be obliged to give the Agency immediate notice about appointment of the certificate holder in a structural unit or to the position defined under Paragraph One of this Article or his/her dismissal from the structural unit or from the position; also, provide information about the grounds for annulling the certificate thereof, if such information is available for the contracting authority.
9. The Agency shall be eligible to apply the competent authority defined by Georgian legislation with the request to submit only that information regarding the holder of the certificate which is necessary to establish the grounds for annulling the certificate, including personal data (among them the information containing special categories of data).
10. In the cases provided for in Sub-Paragraphs 'a', 'b' or 'c' of Paragraph 6 of this Article, a certificate shall be annulled automatically from the moment of confirmation of establishment of relevant grounds in compliance with the procedures determined by the legislation of Georgia. The Agency shall take the decision about annulling the certificate on the grounds determined by Sub-Paragraph 'd' of Paragraph 6 of this Article. Prior to taking the decision, the Agency shall be obliged to ensure participation of the certificate holder in administrative proceedings. Annulment of the certificate might be appealed in court in compliance with the procedures established by the legislation of Georgia.
11. The procedures for maintaining the registry of certificate holders, for organizing the certification and certification programme, as well as the procedures for issuing and annulling the certificate shall be defined by the order of the Chairperson of the Agency.
12. This Article shall not apply to diplomatic representations of Georgia and consulates abroad as well as to the branch of a contracting authority established abroad, its representation or a subsidiary company, to the representatives abroad of Defense Attaché, Georgian Ministry of Defense, Ministry of Interior, State Security Service of Georgia, Intelligence Service of Georgia and Prosecutor's Office of Georgia.

Article 17. Code of Ethics of Contracting Authorities

1. Persons appointed in structural units or to the positions determined by Article 15 of this Law as well as other competent persons of a contracting authority involved in the activities related to public procurement, shall be obliged to comply with the Code of Ethics of Contracting Authorities (hereinafter in this article – Code of Ethics) while exercising their power.
2. Code of Ethics shall be approved by the order of the Chairperson of the Agency.
3. Breach of the Code of Ethics shall result in imposition of disciplinary liability under the procedures established by the legislation of Georgia.
4. In compliance with the order established by the Chairperson of the Agency, permanent or flagrant breach of the Code of Ethics shall result in annulment of the certificate of a public procurement specialist.

Article 18. Organization of Trainings and Seminars in the Field of Public Procurement

1. The Agency shall be entitled to deliver trainings and workshops to contracting authorities, economic operators and all the other stakeholders in the field of public procurement.
2. In the cases provided for in Paragraph One of this Article, the Agency shall be entitled to set fee for participating in trainings and workshops.
3. Fee for participating in trainings and workshops in the field of public procurement shall be determined by the order of the Chairperson of the Agency.

Article 19. General Conditions in Relation to an Economic Operator

1. A contracting authority shall not be entitled to reject the tender of an economic operator with the ground that it does not have the legal status provided for by the legislation of Georgia, however, it is able to perform works, supply goods or provide services in accordance with the legislation of the country of residence. A contracting authority shall not also limit the participation in public procurement with a reference to any territory of Georgia or part thereof.
2. A contracting authority shall be entitled to request only such information or documents from an economic operator which are necessary for selection and evaluation according to the terms of procurement with the purpose to reveal the winner and award procurement contract/framework agreement.
3. An economic operator as well as a group of economic operators might submit applications/tenders. A contracting authority shall not be entitled to request from these groups to get organized in a specific legal status as a pre-requisite for submission of an application/tender. Besides, the group shall be obliged to meet the requirements determined by the order of the Chairperson of the Agency. In compliance with the procedures established by the order of the Chairperson of the Agency, in case of winning the tender, a group of successful economic operators might be requested to get organized in a specific legal status provided this is necessary for duly performing the procurement contract and this needs to be justified in the terms of procurement. Non-performance of this liability shall result in exclusion of the group of economic operators in compliance with the procedures established by the order of the Chairperson of the Agency.
4. If an economic operator, its employee or the person indicated in the application/tender of the economic operator has participated in any previous stage of the respective public procurement or in the development of the terms of procurement, the economic operator shall not be entitled to participate in the next stages of the public procurement, if the referred conditions provide the economic operator an advantage over other economic operators, thus narrowing genuine competition.
5. The contracting authority, immediately after establishing the conditions referred to in Paragraph 4 of this Article, shall take appropriate measures to ensure that competition is not distorted by the participation of such economic operator. Appropriate measures shall include the communication to the other economic operators of relevant information exchanged in the context of or resulting from the involvement of the economic operator concerned in the

preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders/applications. The economic operator referred to Paragraph 4 of this Article concerned shall only be excluded from the public procurement procedure where there are no other means to ensure compliance with the principle of equal treatment.

6. In the cases determined by Paragraph 5 of this Article, prior to the exclusion of an economic operator, a contracting authority shall allow it to submit eventual evidence that the economic operator in question does not enjoy any advantage in procurement procedure which would affect the principle of equal treatment.

Article 20. Subcontractor

1. In case an economic operator intends to involve subcontractor(s), it shall be obliged to submit relevant information to the contracting authority in the stage of submission of applications/tenders provided the subcontractor(s) has (have) to fulfil:

- a) at least 10% of the total value of procurement contract;
- b) a specific/substantial part of the commitment(s) taken by the procurement contract if so defined in the terms of procurement by a contracting authority.

2. In the cases provided for in Paragraph One of this Article, a contracting authority shall verify exclusion grounds in relation to subcontractor(s). In case of exclusion of the subcontractor(s) presented initially, an economic operator shall be obliged, in compliance with the procedures established by the order of the Chairperson of the Agency, to present other subcontractor(s) within the timeframes determined by a contracting authority; while if a contracting authority requests to specify the information about subcontractor(s), an economic operator shall be obliged to submit specified information. In case of failure to specify the information about subcontractor(s) (including incomplete specification), also in case of exclusion of subcontractor(s) after specification of information, failure to present other subcontractor(s) and/or exclusion of other subcontractor(s) after their presentation, a contracting authority shall exclude an economic operator under the procedures determined by the order of the Chairperson of the Agency.

3. Involving a subcontractor shall not release a supplier from the liability to perform a procurement contract. A supplier shall be liable in front of a contracting authority itself.

4. Article 63 of this Law shall also apply if an economic operator relies on the capacities of subcontractor(s).

5. A contracting authority shall be eligible to request that solely economic operator performs the commitments of critical importance that needs to be justified in the terms of procurement.

6. An economic operator shall be obliged to provide a contracting authority with the mandatory information, defined by this Law, relevant normative act and/or terms of procurement, about the change and/or supplement of a subcontractor.

7. Detailed procedures for the involvement of a subcontractor shall be determined by the order of the Chairperson of the Agency.

Article 21. Black List

1. Black List is an official registry maintained by the Agency. An economic operator registered in the Black List shall be forbidden to participate in a public procurement procedure under the conditions and timeframes defined by this Article. Black List and data contained in it are public, (except for those personal data, which, according to the legislation of Georgia, are not subject to publication).

2. An economic operator shall be the subject to being registered in the Black list in any of the following cases:

a) an economic operator or a person, who is a member of the board of directors or supervisory board or procurator of an economic operator, or a person having the right to represent the economic operator in activities related to subsidiary enterprises, has previous record of conviction for any of the following criminal offences:

a.a) bribe taking, bribery, influence peddling, taking of prohibited benefit, commercial bribing;

a.b) fraud, misappropriation or embezzlement, money laundering;

a.c) evading payment of taxes;

a.d) terrorism, financing of terrorism, other financial support of terrorism or providing with resources, public support of terror acts and/or terrorist organization or invitation to terrorism, terrorism threats or recruiting and training of a person for performance of terror acts;

a.e) trafficking, juvenile trafficking, enjoying the service of the victim of trafficking;

a.f) crime directed against the state that is not defined by Sub-Paragraphs 'a.a'-'a.d' of this Paragraph;

b) economic operator, by the decision of a competent authority or a judgment of a court which has entered into effect, has been found guilty of an infringement of employment rights which means:

b.a) employment of juveniles in banned cases;

b.b) employment of such one or more citizens or nationals of countries, which are not citizens or nationals of Georgia or the country of their stay, if they reside in the territory of Georgia or the country of their stay illegally;

b.c) employment of a person without entering into a written employment contract where legislation of Georgia provides for the liability of entering into a written employment contract; failure to submit an informative declaration regarding the person in question within the time

period laid down in the legislation of Georgia, which is to be submitted regarding persons in case they commence work;

c) an economic operator has been found guilty of the infringement of competition rights (manifested as a contract or decision narrowing competition or as participation in concerted practices) by a decision of a competent authority or a judgment of a court (which has entered into effect and/or has become non-disputable and not subject to appeal). This provision shall not be applicable where an economic operator has paid fine or where relevant authorized body, upon determining infringement of competition rights by an economic operator, has released the economic operator from a fine or reduced fine within the framework of the co-operation leniency programme; furthermore, where an economic operator took appropriate measures for preventing infringement of competition rights;

d) duly justified decision of a contracting authority proves dishonest activity of an economic operator while participating in public procurement, such as:

d.a) negotiation with other economic operator with a view to influencing a public procurement procedure and/or receiving benefits;

d.b) intentional or negligent submission of false information in the course of a procurement procedure with a view to meeting the requirements determined by this Law, relevant normative act or terms of procurement;

d.c) hampering the process of decision-taking by a contracting authority in order to obtain the information which might have given unjustified privilege to the economic operator in a public procurement procedure;

d.d) failure to submit mandatory information, determined by this Law, relevant normative act and/or terms of procurement, regarding the persons defined in Articles 20, 63 and 68 of this Law (except for the cases defined in Paragraph 2 of Article 20 of this Law), and/or submission of false information.

e) non-performance or undue performance of the commitments of contract taken by an economic operator. Furthermore, it is mandatory that the period of validity of contract be expired or contract be early terminated.

3. Paragraphs 2 of this Article shall be applied also to:

a) the member of a group of persons, if an economic operator is a group of persons;

b) other economic operators whose capacities the economic operator relies on in compliance with Article 63 of this Law, in case solid responsibility was required for performing procurement contract in compliance with the same Article.

4. If an economic operator is a foreign enterprise/permanent institution/branch (representation), decision related to black listing of an economic operator shall be taken in respect to the main enterprise and all of its permanent institutions/branches (representations) registered in Georgia by the time of taking decision, also all of its permanent institutions/branches (representations) that registered in the period of black listing or warning of an economic operator, with the time remaining for black listing or warning. Also, all the economic operators in which natural

persons provided for in Sub-Paragraph 'a' of Paragraph 2 of this Article hold the positions provided for by the same Paragraph, as well as the economic operator whose founder and/or shareholder is an economic operator registered in the Black List, shall not be allowed to participate in public procurement.

5. Respective economic operator shall be registered in the Black List:

a) for the term of three years in the cases provided for in Sub-Paragraph 'a' of Paragraph 2 of this Article in case the judgment of the court does not provide longer term for prohibition from participation in public procurements;

b) for the term of two years in the cases provided for in Sub-Paragraphs 'b', 'c' or 'd' of Paragraph 2 of this Article;

c) for the term of one year in the cases provided for in Sub-Paragraph 'e' of Paragraph 2 of this article.

6. In case provided for in Sub-Paragraph 'e' of Paragraph 2 of this Article, an economic operator might be warned prior to being registered in the Black List. Warning shall be valid for a year and shall be applied only once, where registration of an economic operator in the Black List will lead to violation of the principle of equality. Warning shall not be applied in the cases when an economic operator has infringed several procurement contracts, or, in case it has already been warned. The warning with expired term of validity shall not be taken into account while taking a decision on registration of an economic operator in the Black List.

7. Relevant economic operator may:

a) not be registered in the Black List if its registration in the Black List will significantly infringe the principle of respecting competition on the market as well as principle of proportionality of public and private interests;

b) not be registered in the Black List or be removed from the Black List prematurely provided it can prove that, based on the ground for black listing that is present, an economic operator has carried out particular measures that are sufficient to demonstrate economic operator's reliability despite the existence of a relevant ground for black listing; more precisely:

b.a) it has paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or administrative misconduct;

b.b) provided information/certificate issued by an authorized body about providing information/explanation, facts and circumstances in a comprehensive manner within the frames of active collaboration with the investigating authorities;

b.c) took effective measures, (among them carried concrete technical, organizational and personnel measures) that are appropriate to prevent further criminal offences or misconduct.

8. If an economic operator has been excluded from participating in public procurement procedures by a court decision/judgment entered into force, it shall not be entitled to make use of the possibility provided for in Paragraph 7 of this Article during the period of exclusion resulting from that judgment. An economic operator shall not also be entitled to make use of

the possibility provided for in Paragraph 7 of this Article where a court decision/judgment entered into force corresponding to Sub-Paragraph 'a' of Paragraph 2 of this Article serves as the ground for black listing of an economic operator concerned.

9. The Agency shall be eligible to request any information, including information containing tax secrets or personal data, including special categories of data, from the competent authority determined by the Georgian legislation about an economic operator or any other person provided for in this Article, which is necessary to establish the grounds for registration in the Black List.

10. In the event of existence of grounds provided for in Paragraph 2 of this Article, the Agency shall commence administrative maintenance of the Black List on the bases of application of a contracting authority and/or competent authority defined by the legislation of Georgia. Detailed procedures for maintaining the Black List shall be determined by the order of the Chairperson of the Agency.

Article 22. White List

1. White List is an official electronic registry maintained by the Agency. While participating in public procurement, an economic operator registered in the White List shall enjoy simplified procedures in compliance with the procedures, conditions and timeframes defined by this Article. White List and data contained in it shall be public.

2. In any public procurement procedure, an economic operator registered in the White List:

a) shall be released, in compliance with the procedures established by the order of the Chairperson of the Agency, from the obligation of providing a contracting authority with the document(s) containing the registration/legal data defined by the order of the Chairperson of the Agency;

b) shall provide half of the amount of the bank guarantee required to secure procurement contract. Besides, a contracting authority shall be eligible to fully release an economic operator from the obligation of providing bank guarantee;

c) in case of pre-payment, it shall provide bank guaranty in the amount of half of the pre-payment sum.

3. An economic operator shall be registered in the White List with the term of one year. Repeated registration in the White List shall be admissible (if the term for registration in the White List has expired); also, it shall be admissible to prolong the term of registration in the White List (if the term for registration in the White List has not expired yet).

4. Any economic operator meeting the requirements established for being registered in the White List shall be eligible to apply for registration in the White List. It shall be inadmissible to register such an economic operator in the White List which is registered in the Black List or is warned or one or several grounds provided for in Sub-Paragraphs 'a'-'d' of Paragraph 2 of Article 21 of this Law apply to it.

5. It shall be inadmissible to require registration of an economic operator in the White List as a pre-requisite for participation in public procurement.

6. Requirements which must be met by an economic operator for registration in the White List/for prolongation of registration in the White List, terms for submitting and reviewing an application for registration in the White List or prolongation of registration, grounds for annulment of registration, as well as rules for making decisions to register/prolong registration in the White List shall be determined by the order of the Chairperson of the Agency.

7. The Agency shall be eligible to request the competent authority determined by the Georgian legislation to provide any information containing tax secrets or personal data, (including information on special categories of data i.e. on criminal records) or any information for the purposes referred to in this Paragraph about an economic operator or any other person provided for in this Article, which is necessary for reviewing the application for registration in the White List/prolongation of registration and/or for establishing the grounds for annulment of registration in the White List.

Chapter IV. Agency

Article 23. Authorized body

1. The Agency, set up on the bases of the Law as an independent legal entity under public law, shall be a body authorized to ensure compliance with and fulfilment of the provisions of this Law.
2. The legal basis for the activities of the Agency shall be the Constitution of Georgia, treaties and international agreements of Georgia, this Law, the Statute of the Agency and other normative acts.
3. Principal functions of the Agency shall be to:
 - a) prepare subordinate normative acts necessary for the operation of this Law and issue them in compliance with established norms in order to refine public procurement regulatory legislation as well as work on its harmonization with the best international practices;
 - b) regularly study and analyze the situation in the field of public procurement, eliminate identified deficiencies and submit suggestions to the Government of Georgia to make relevant decisions in case resolution of the issue is beyond its competence;
 - c) determine the policy for regulating procurement proceedings, supervise the lawfulness of procurement procedures (except for classified public procurements);
 - d) identify facts of administrative offences in public procurement in compliance with the procedures established by the legislation of Georgian and take appropriate measures;
 - e) maintain the Black List and the White List;
 - f) issue permission to contracting authorities for carrying out negotiated procedures without prior publication in the cases defined by this Law;
 - g) ensure fine-tuning and operation of Electronic System, draft manual(s) for the users of Electronic System;
 - h) prepare special training programmes in the field of public procurement; deliver trainings, and workshops and organize working meetings to contracting authorities, economic operators and other stakeholders;
 - i) certify public procurement specialists, award and annul public procurement certificates;
 - j) elaborate methodic directives and recommendations with the purpose to improve public procurement practices;
 - k) fulfil other functions defined by Georgian legislation and Statute of the Agency.

4. The Government of Georgia shall approve the Statute defining the structure, authority and procedure for activity of the Agency.
5. The Agency shall be accountable to the Prime Minister of Georgia.
6. The Agency shall make annual report about its activities and shall submit it to the Prime Minister of Georgia till June 1 of every subsequent year. The report shall be published on the web page of the Agency.
7. With a view to exercising its power, operating Electronic System and ensuring electronic documents circulation in the process of public procurement, the Agency shall be eligible to process (among them to receive, store, publish and/or issue) any information and/or documentation, personal information (including special categories of data and information). With the same purpose, the Agency shall be eligible to request the information containing tax secrets from the taxation body.
8. The requirements established by the General Administrative Code of Georgia for enactment, publication and public announcement of individual administrative acts as well as for making them officially available, shall apply to the electronic individual administrative acts issued by the Agency. Publication of the electronic individual administrative act on the web page of the Agency shall be deemed as making it officially available for an interested party.

Article 24. Chairperson of the Agency

1. The Agency shall be chaired by the Chairperson appointed to this post by the Prime Minister of Georgia for a period of 5 years;
2. A Georgian citizen with no criminal record shall be appointed as the chairperson of the Agency, who:
 - a) holds master's degree in law/international law, finances, economics or business administration or equivalent academic degree;
 - b) has not less than 5 years' working experience in the field of law/international law/finances, economics or business administration.
3. The Chairperson of the Agency shall become subject to termination of authority in the cases determined by the Law of Georgia on Legal Entity under Public Law and established procedures.
4. The Chairperson of the Agency shall:
 - a) issue subordinate normative acts – orders, as determined by the legislative acts of Georgia;
 - b) issue individual legal acts - decrees pursuant to Georgian legislation;
 - c) regulate issues falling within the authority of the Agency;

- d) appoint and dismiss employees of the Agency and conclude labor contracts;
 - e) approve internal regulations of the Agency, determine job description for the positions in the Agency as well as additional qualification requirements for the staff;
 - f) take decisions regarding incentives and disciplinary actions against the staff of the Agency;
 - g) approve the rule of internship in the Agency;
 - h) manage agency affidavits;
 - i) represent the Agency in relations with state bodies, other local or international organizations and the third parties;
 - j) perform other duties and responsibilities determined by the legislation of Georgia and under the Statute of the Agency.
5. The Chairperson of the Agency shall be responsible for the activities of the Agency as determined by the law.

Article 25. Funding of the Agency

1. The Agency shall be funded from:

- a) funds allocated from the State Budget of Georgia;
- b) fees determined for publishing terms of procurement and for submitting an application/tender;
- c) guarantees submitted for securing the application/tender;
- d) revenues from rendering the services provided for in Paragraphs 6 and 7 of Article 5 of this Law;
- e) fees determined for certification of public procurement specialists and for undertaking certification programmes by public procurement specialists;
- f) fees set for the trainings and workshops to be delivered in the field of public procurement;
- g) other revenues permitted by the legislation of Georgia.

2. The Agency shall have an account with the State Treasury. The Agency may also have an account with a commercial bank when so provided by the legislation of Georgia.

Chapter V. Public Procurement Procedures

Article 26. Public Procurement Procedures

1. Public procurement might be performed by using the following procedures:

- a) open procedure;
- b) restricted procedure;
- c) competitive dialogue;
- d) innovation partnership;
- e) design contest;
- f) negotiated procedure with prior publication;
- g) negotiated procedure without prior publication;
- h) public procurement procedures for procuring services in social and other specific fields.

2. Public procurement procedures, except for negotiated procedure without prior publication, shall be performed through the Electronic System. Along with this, information regarding negotiated procedure without prior publication shall be published on the Electronic System.

3. Detailed procedures and conditions for performing public procurement procedures shall be determined by the order of the Chairperson of the Agency taking into account the requirements of this Law and relevant EU legal acts.

4. When several pre-requisites of the grounds for application of public procurement procedures defined by this Chapter are simultaneously present, a contracting authority shall be eligible to select a public procurement procedure at its discretion in compliance with the requirements of this Law with the exception of the cases when application of specific public procurement procedure is mandatory.

Article 27. Open Procedure

1. Open procedure is a one stage procedure.

2. A contracting authority shall announce public procurement and publish terms of procurement containing complete and full information related to public procurement.

3. Any economic operator shall be eligible to submit a tender. A contracting authority shall not be entitled to reduce the number of tenderers pursuant to Article 60 of this Law.

4. Conduction of negotiation shall be inadmissible during open procedure.

Article 28. Restricted Procedure

1. Restricted procedure is a two-stage procedure.
2. A contracting authority shall announce public procurement, invite any economic operator for submission of requests and define the list of the information to be submitted.
3. Based on submitted requests, a contracting authority shall verify whether economic operators are duly qualified and whether they meet minimal requirements established by the terms of procurement and shall invite selected candidates for submitting their tenders. A contracting authority shall be eligible to reduce the number of tenderers pursuant to Article 60 of this Law.
4. Conduction of negotiation shall be inadmissible during restricted procedure.

Article 29. Competitive Dialogue

1. Competitive dialogue is a two-stage procedure.
2. Competitive dialogue might be applied:
 - a) to procure goods, works or services if one or more of the following criteria are met:
 - a.a) needs of a contracting authority cannot be met without adjustment of the solutions available at the marketplace;
 - a.b) public procurement involves design or innovation solution;
 - a.c) procurement contract cannot be awarded without prior negotiation due to the circumstances related to its nature, complexity, legal and financial structure or risks;
 - a.d) a contracting authority fails to define specifications explicitly with reference to relevant standard;
 - b) when open or restricted procedures announced for procuring goods, works or services fail to be held or contracts are not awarded as a result of them.
3. A contracting authority shall define the need and requirements in the terms of procurement; it shall also define the criteria and timeframes for revealing the best tenders. Application of the best price-quality ratio criteria shall be mandatory.
4. Any interested economic operator shall be eligible to submit a request.
5. Based on submitted requests, a contracting authority shall verify whether economic operators are duly qualified and whether they meet minimal requirements established by the terms of

procurement and shall invite selected candidates to participate in a competitive dialogue. A contracting authority shall be eligible to reduce the number of tenderers pursuant to article 60 of this Law.

6. A contracting authority shall carry out a competitive dialogue with selected economic operators the aim of which is to identify/define the best method for meeting the needs of a contracting authority. During the dialogue it shall be possible to review all the aspects of procurement.

7. During the competitive dialogue, a contracting authority shall ensure equal treatment to all the participants. A contracting authority shall not provide the participants with information in different forms which might give privilege to some participants over others. A contracting authority shall be obliged not to reveal the solution proposed by a candidate or other confidential information to another candidate without its consent. Such a consent shall not be general and shall contain reference to a specific information.

8. Competitive dialogue might involve several consecutive stages the aim of which is to reduce the number of proposed solution(s) by applying the criteria for revealing the best tenders established by the terms of procurement. Step-by-step reduction of the number of proposed solution(s) shall be admissible in case such a possibility is foreseen by the terms of procurement beforehand.

9. A contracting authority shall continue the competitive dialogue until it identifies the method(s) for satisfying its needs.

10. After a contracting authority announces the competitive dialogue as completed and notifies selected economic operators in this regard, it shall request them to submit final tenders based on the grounds of the method(s) for satisfying the needs revealed and identified/defined during the dialogue. These tenders shall contain all the elements which are required and necessary for performing the project. These tenders might be specified and fine-tuned by the request of a contracting authority. Besides, such specification or fine-tuning shall not apply to the essential part of a tender or procurement, including needs and requirements defined in the terms of procurement, where such modifications may narrow competition or cause discrimination.

11. A contracting authority evaluates the tenders based on the criteria for revealing the best tender determined in the terms of procurement.

12. By the request of a contracting authority, with a view of defining final terms of the procurement contract, the tenderer with the best tender might be invited for confirming financial liabilities and other terms indicated in the tender, provided this shall not result in modifications in a tender or essential aspects of procurement, (including modifications of the needs and requirements defined in the terms of procurement) and shall not cause narrowing of competition or discrimination.

Article 30. Innovation Partnership

1. Innovation partnership is a two-stage procedure.

2. A contracting authority shall be obliged to indicate, in the terms of procurement, the need for innovative (among them new or reasonably improved) goods, works and/or services, (including research and development) which cannot be achieved through procurement of goods, works and/or services already available at Georgian or international marketplace. A contracting authority shall also indicate which element of the object of procurement defines those minimal requirements that must be satisfied by all the tenders. The information provided must be explicit in order for the economic operators to be able to define nature, content and scope of the public procurement and consequently, take decision whether or not to submit a tender in order to participate in public procurement procedure. It shall be mandatory to apply the best price-quality ratio criteria in case of carrying out innovation partnership.

3. Any interested economic operator shall be eligible to submit a request.

4. Based on the submitted requests, a contracting authority shall verify whether economic operators are duly qualified and whether they meet minimal requirements established by the terms of procurement and shall invite selected candidates to participate in innovation partnership. A contracting authority shall be eligible to reduce the number of tenderers pursuant to article 60 of this Law.

5. A contracting authority may decide to set up the innovation partnership with one or several partners conducting separate research and development activities. With this aim, a contracting authority enters into individual contract(s) about innovation partnership with partner(s).

6. The aim of innovation partnership is design/development of innovative goods, works and/or services and procurement of such goods, works and/or services provided that it meets the criteria for quality and maximum cost agreed between a contracting authority and the participants.

7. Innovation partnership shall be structured in successive phases in order to reflect the research process and it might include production of goods, performance of works or provision of services. Innovation partnership shall set intermediate goals to be achieved by the partners and remuneration of appropriate part shall be allocated based on these goals. After completion of each phase a contracting authority shall be eligible to terminate innovation partnership or in case innovation partnership is underway with several partners, to reduce the number of partners through termination of individual contracts provided such a possibility and conditions for applying it are indicated in the terms of procurement beforehand.

8. Unless otherwise determined by this Article, a contracting authority shall conduct negotiations regarding only initial and modified tenders, except for the final tender, with a view to further fine-tuning them. Minimal requirements and criteria for revealing the best tender shall not become the subject of negotiation.

9. During negotiation, a contracting authority shall ensure equal treatment to all the tenderers. A contracting authority shall not provide the tenderers with information in different forms which might give privilege to some tenderers over others. A contracting authority shall notify all the tenderers, except for the tenderers selected in compliance with Paragraph 10 of this Article, in writing about any modifications made to the terms of procurement except for minimal requirements. After modifications of terms of procurement, a contracting authority shall give reasonable timeframe to the tenderers to modify and re-submit amended tenders.

10. Negotiation might involve several consecutive stages the aim of which is to reduce the number of tenders regarding which negotiation shall be conducted, by using the criteria for revealing the best tenders established by the terms of procurement. Step-by-step reduction of the number of tenders shall be admissible in case such a possibility is indicated in the terms of procurement beforehand.

11. While selecting the tenderers, a contracting authority shall make use of the criteria which apply to the capacity of the tenderers in research and development fields as well as their capacity in developing and introducing innovative solutions. Solely the economic operators invited by the contracting authority as a result of evaluation, shall be eligible to submit research and innovation project which aims to satisfy those needs defined by the contracting authority which cannot be achieved through already available solutions.

12. A contracting authority shall define in the terms of procurement the arrangements related to intellectual property. In case innovation partnership is underway with several partners, a contracting authority shall be obliged not to reveal solution proposed by a partner or other confidential information to other partners without its consent. Such a consent shall not be general and shall contain reference to a specific information.

13. A contracting authority shall be obliged to ensure that the structure of innovation partnership, namely length of its stages and its value has effect on the quality of innovation of proposed solution as well as on the results of research of innovative solution and other activities which are not yet available at the marketplace. Estimated value of procurement shall be proportional to the investment necessary for achieving/developing innovative result.

Article 31. Design Contest

1. Design contest is a public procurement procedure where a contracting authority seeks to purchase ideas or design, among them in the field of planning a city or settlement, as well as in architectural and engineering field or in the field of processing data.

2. A contracting authority shall be eligible to limit the number of participants in design contest in compliance with clear and non-discriminative selection criteria determined in the terms of procurement in advance. The number of invited candidates shall be sufficient for ensuring genuine competition.

3. Design contest shall be led by the special jury that shall be comprised of the persons independent from design contest participants. The jury shall act on behalf of a contracting authority. In case a contracting authority determines required professional qualification for design contest participants, one third of the jury must be comprised of the persons with similar qualification or equivalent.

4. The jury shall be set up by the head of the contracting authority. Whenever appropriate, the head of a contracting authority shall be entitled to set up the Office of the jury for organizational provision of the activities of the jury. Unless otherwise determined by this Article, the rules established for procurement committee by Article 14 of this Law shall apply to the jury.

5. While taking a decision the jury shall be independent. The jury shall study the ideas and projects submitted by the candidates basing solely on the criteria determined in the terms of procurement.

6. The jury shall maintain a report where the projects are ranked according to their values. The report shall also contain remarks and issues that need to be specified. The report shall be signed by the members of the jury. Anonymity shall be preserved before the jury makes the final decision.

7. The jury shall be entitled to invite candidates for providing answers to questions. The jury shall be obliged to keep the minutes of meetings.

Article 32. Negotiated Procedure with Prior Publication

1. Negotiated procedure with prior publication is a two-stage procedure. This procedure allows a contracting authority to conduct negotiations with a selected economic operator after prior publication of the terms of procurement, in compliance with the needs/requirements defined in the terms of procurement, also according to the criteria for revealing the best tender defined by the contracting authority. Negotiated procedure with prior publication may be applied for the following:

a) to procure goods, works or services if one or several of the following criteria are met:

a.a.) needs of a contracting authority cannot be met without adjustment of the solutions already available at the marketplace;

a.b) public procurement involves design or innovation solution;

a.c) procurement contract cannot be awarded without prior negotiation due to the circumstances related to its nature, complexity, legal and financial structure or risks;

a.d) a contracting authority fails to define specifications explicitly with reference to relevant standard;

b) when open or restricted procedures announced for procuring goods, works or services fail to be held or contracts are not awarded as a result of them.

Article 33. Negotiated Procedure without Prior Publication

1. Negotiated procedure without prior publication allows a contracting authority to conduct negotiations with economic operator(s) without announcing public procurement with a view of awarding a procurement contract with them. Negotiated procedure without prior publication shall be applied strictly in the following cases:

a) open or restricted procedure did not take place or contracts were not awarded as a result due to reasons independent from a contracting authority and there is not enough time left for

announcing a new procedure. This Sub-Paragraph shall be applied solely in the cases when there are not any essential changes in the needs and requirements of a contracting authority which were determined in the terms of procurement of open or restricted procedure;

b) where the goods, works, or services can be provided only by a particular economic operator for any of the following reasons:

b.a) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;

b.b) competition is absent for technical reasons (among them due to technical specifications of the object of procurement);

b.c) there is necessity for the protection of exclusive rights (including intellectual property rights).

c) it is impossible to apply any other procurement procedure due to the reasons of extreme urgency brought about by events independent from and unforeseeable by the contracting authority. This Sub-Paragraph shall be applied solely in the cases when the extreme urgency is brought about artificially by the contracting authority;

d) where the products involved are manufactured purely for the purpose of scientific research, experimentation, study or development. Within the frames of this Sub-Paragraph it shall be inadmissible to award such a procurement contract that aims at quantity production to establish commercial viability or to cover the costs for the activities listed in this Sub-Paragraph;

e) where additional procurement of the object of procurement from the original supplier or from the subcontractor stipulated by the contract concluded with the original supplier is intended for the extension of originally procured object of procurement or a component thereof and where procuring the object of procurement from another supplier would cause deterioration of the quality of originally procured object of procurement, among them acquisition of the object of procurement having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance of the object of procurement. The duration of such contracts shall not exceed three years, while their value shall not exceed the value of original contracts;

f) where it is necessary to perform new work or provide new service which is identical to the work or service procured from original supplier. It is necessary that such works or services comply with the main works or services for the procurement of which the original procurement contract was awarded. Terms of procurement of main works or services shall provide for the possibility of additional works or services, also procedures according to which this possibility will be applied. A contracting authority shall be obliged to take into account the possibility of additional performance of works or provision of services when defining estimated value of original procurement with a view to defining monetary thresholds in the right way. Employment of this Sub-Paragraph shall be allowed solely for three years following the award of original procurement contract provided that the value of additional works or services shall not exceed the value of original contract;

g) where public procurement related to representation expenses is being performed;

h) the Election Administration of Georgia and legal entity under public law – Electoral Systems Development, Reforms and Training Center is performing public procurement during the election period/referendum period for the purpose of unimpeded conduct of elections;

i) legal entities under public law – state theatres, state orchestras, music centers, art institutions and ensembles are performing the procurement of goods and services necessary for theatrical staging and creative activities;

j) procurement of laboratory services from a non-resident economic operator is performed solely in cases when the laboratory with appropriate accreditation is not available at the Georgian marketplace or such a laboratory is unable to provide laboratory services due to objective reasons.

2. Employment of Sub-Paragraphs ‘b.b’ and ‘b.c’ of Paragraph One of this Article shall be allowed solely in case where there is no other feasible alternative and absence of competition is not caused artificially by a contracting authority.

3. For carrying out negotiated procedure without prior publication in the cases provided for in Sub-Paragraphs ‘b’, ‘e’ or ‘f’ of Paragraph One of this Article, a contracting authority shall seek and receive the consent of the Agency. Under the procedures established by a subordinate normative act, in order to carry out negotiated procedure without prior publication, a contracting authority shall also seek and receive the consent of the Agency in the cases provided for in Sub-Paragraphs ‘a’ or ‘c’ of Paragraph One of this Article if, under the same Sub-Paragraph, the value of the goods/works/services to be procured is below the monetary thresholds established by the EU Directives. The process of reception of the consent of the Agency shall be defined by the order of the Chairperson of the Agency and shall be conducted using Electronic System. Applications of contracting authorities submitted thereof are public and any interested party is allowed to express its opinion on the application. When making a decision, the Agency shall consider both - the application of a contracting authority and the related opinions of the interested parties. After granting the consent of the Agency, in the cases established by the order of the Chairperson of the Agency, amendments in the agreed terms of negotiated procedure without prior publication shall be subject to seeking and receiving consent of the Agency under the same procedures.

4. Except for the cases specified in Paragraph One of this Article, negotiated procedure without prior publication shall also be applied in the following cases if total value of similar procurement objects using the same source of funding during a single budget year is less than:

a) 10 000 GEL in case of goods or services and 20 000 GEL in case of works;

b) the monetary thresholds established by the EU Directives in the cases when public procurements are carried out by the Diplomatic Representations of Georgia and Consulates abroad, also by a branch/representation/subsidiary enterprise founded by a contracting authority abroad;

c) 20 000 GEL in the cases when contracting authorities under the system of Ministry of Interior of Georgia, Ministry of Defense of Georgia, State Security Service of Georgia, also Intelligence Service of Georgia, Special State Protection Service of Georgia are carrying out procurement of goods or services related to defense, state security and protection of public order.

Article 34. Public Procurement Procedures for Procuring Services in Social and Other Specific Fields

1. Different procurement procedures might be applied for procuring services in social and other specific fields. These procedures are determined by the order of the Chairperson of the Agency.

2. Pursuant to Paragraph One of this Article, it shall be allowed to define public procurement procedures to solely such services which are covered by the following CPV codes:

a) health, social and related services - 75200000; 75231200; 75231240; 79611000; 79622000; 79624000 and 79625000 from 85000000 to 85323000; 98133100, 98133000; 98200000; 98500000 and from 98513000 to 98514000;

b) administrative, social, educational, healthcare and cultural services:

b.a) 85321000 and 85322000, 75000000, 75121000, 75122000, 75124000; from 79995000 to 79995200; from 80000000 to 80660000; from 92000000 to 92700000;

b.b) 79950000, 79951000, 79952000, 79952100, 79953000, 79954000, 79955000, 79956000;

c) compulsory social security service - 75300000;

d) benefit services - 75310000, 75311000, 75312000, 75313000, 75313100, 75314000, 75320000, 75330000, 75340000;

e) other community, social and personal services including services furnished by trade unions, political organizations, youth associations and other membership organization services- 98000000; 98120000; 98132000; 98130000 and 98133110;

f) religious services - 98131000;

g) hotel and restaurant services:

g.a) from 55100000 to 55410000; from 55521000 to 55521200 (55521000, 55521100, 55521200);

g.b) 55520000, 55522000, 55523000, 55524000;

g.c) 55510000, 55511000, 55512000, 55523100;

h) legal services (to the extent not excluded pursuant to Sub-Paragraph 'f' of Article 9 of this Law) – from 79100000 to 79140000; 75231100;

i) other administrative and government services – from 75100000 to 75120000; from 75123000; 75125000 to 75131000;

j) provision of services to the community – from 75200000 to 75231000;

k) prison related services, public security and rescue services –from 75231210 to 75231230; from 75240000 to 75252000; 794300000; 98113100;

l) investigation and security services – from 79700000 to 79721000, 79722000, 79723000;

m) international services – 98900000; 98910000;

n) postal services - 64000000, 64100000, 64110000, 64111000, 64112000, 64113000, 64114000, 64115000, 64116000, 64122000;

o) miscellaneous services - 50116510, 71550000.

3. Pursuant to Paragraph One of this Article, following conditions shall be observed when defining public procurement procedures:

a) public procurement procedure shall provide for observing the principles determined by Article 2 of this Law;

b) employment of negotiated procedure without prior publication with the grounds and procedures other than of those determined by Article 33 of this Law shall be inadmissible;

c) public procurement procedure shall be announced, terms of procurement (which shall contain the information determined by this Law) shall be published and public procurement procedures shall be carried out through Electronic System. Besides, results of public procurement and procurement contracts/framework agreements shall be published in compliance with the procedures established by this Law;

d) when establishing the terms of procurement, contracting authorities shall be entitled to take into account following issues: quality, continuity, availability and comprehensibility of services, needs of the consumers of different categories (including disabled people and representatives of vulnerable groups), engagement and encouragement of consumer, innovation. It may also be established that the supplier of service shall be selected based on the best price-quality ratio criteria when the criteria of quality and sustainability for social service will be taken into account.

Article 35. Reservation of Public Procurement Procedures

1. Contracting authorities shall be entitled to announce public procurement procedures, by complying with the conditions determined by this Article, for such economic operators whose main goal is social and professional integration of disabled persons or members of other vulnerable groups (including underrepresented gender). In such cases, at least 30% of the employees of economic operators shall be comprised of disabled persons or members of other vulnerable groups. Announcement of public procurement procedure in compliance with this Paragraph shall be admissible when referred economic operators cannot compete with other economic operators in normal conditions.

2. Contracting authorities shall be entitled to announce public procurement procedures for procuring services in healthcare, social or cultural fields in compliance with the procedures

defined by Paragraph One of this Article solely for the economic operators that comply with the terms established by Paragraphs One and 3 of this Article provided these services are covered by the following CPV codes: 75121000, 75122000, 75123000, 79622000, 79624000, 79625000, 80110000, 80300000, 80420000, 80430000, 80511000, 80520000, 80590000, from 85000000 to 85323000, 92500000, 92600000, 98133000, 98133110. In order to announce public procurement procedure in compliance with Paragraph One of this Article, a contracting authority shall seek for the consent of the government of Georgia which shall be valid during a single budget year. Georgian government shall, within the frames of CPV codes determined by this Paragraph, define threshold from annual plan for respective contracting authority; within the frames of this threshold a contracting authority shall be able to reserve public procurement procedure in accordance with the CPV code(s) of the object of procurement defined by this Paragraph. It shall be inadmissible to reserve total volume of public procurement.

3. An economic operator shall enjoy the right to participate in public procurement procedures announced in compliance with this Article provided all of the following conditions are fulfilled:

- a) it is a Non-entrepreneurial (Non-commercial) Legal Entity and/or is carrying out activities for non-commercial purposes;
- b) the aim of its activities is to provide the services provided for in Paragraph 2 of this Article;
- c) for the past three years it has not been awarded a procurement contract using public procurement procedures provided for in this Article.

4. The duration of a procurement contract awarded through a public procurement procedure provided for in this Article shall not exceed 3 years.

Chapter VI. Public Procurement Tools and Aggregated Public Procurement

Article 36. Public Procurement Tools and Aggregated Public Procurement

1. When carrying out public procurement procedures a contracting authority shall be entitled to use public procurement tools and to perform public procurement procedures in aggregated way.

2. Following are public procurement tools:

- a) Framework agreements;
- b) Dynamic Purchasing Systems;
- c) Electronic reversed auctions;
- d) Electronic catalogues.

3. Following are aggregated public procurements:

- a) Centralized purchasing activity;
- b) Joint procurement.

4. Detailed procedures and conditions for the use of public procurement tools and carrying out public procurement through aggregated way shall be determined by the order of the Chairperson of the Agency taking into account the requirements of this Law and relevant EU legal acts.

Article 37. Framework Agreement

1. Framework agreement is an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing procurement contracts to be awarded within the frames of a framework agreement, in particular with regard to price of the procurement object and, where appropriate, the quantity envisaged. Framework agreement may be applied when exact quantity of the object of procurement and/or exact date of delivery is not known/defined beforehand. A procurement contract within the frames of a framework agreement may be awarded between the contracting authority/authorities defined by the terms of procurement of the framework agreement and economic operator(s) who are the parties to the agreement.

2. The duration of a framework agreement shall not exceed 4 years, except for the duly justified cases resulting from the subject of the framework agreement which needs to be justified.

3. If a framework agreement is awarded with one economic operator, procurement contract shall be awarded in compliance with the terms and conditions provided for in the framework

agreement. In such cases, a contracting authority may consult the economic operator in writing, requesting it to supplement its tender as necessary. It shall be inadmissible to supplement the tender with such conditions which lead to essential modifications in the framework agreement.

4. Where a framework agreement is concluded with more than one economic operators, procurement contract shall be awarded:

a) without reopening competition between the economic operators, parties to the framework agreement, where it sets out all the terms governing the provision of the works, services and supplies concerned and the objective conditions for selection of an economic operator. The latter conditions shall be indicated in the terms of procurement;

b) with reopening of competition between the economic operators, parties to the framework agreement, where it does not set out all the terms governing the provision of the works, services and supplies and objective conditions for selection of an economic operator;

c) partly with reopening of competition amongst the economic operators, parties to the framework agreement, where it provides for the approaches determined by Sub-Paragraphs 'a' and 'b' of this Paragraph. Employment of this Sub-Paragraph shall be allowed where this possibility has been stipulated in the terms of procurement. The choice of whether specific works, supplies and/or services shall be procured following a reopening of competition or without it shall be made pursuant to objective criteria, which shall be set out in the terms of procurement. These terms of procurement shall also specify which terms of a framework agreement may be subject to reopening of competition.

5. In the cases provided for in Sub-Paragraphs 'b' or 'c' of Paragraph 4 of this Article, it is necessary that all of the following conditions are fulfilled:

a) prior to awarding a procurement contract, a contracting authority shall consult the economic operators in writing;

b) a contracting authority shall fix a time limit for the economic operators which is sufficiently long to submit tenders, taking into account factors such as the complexity of the subject-matter of the procurement contract and the time needed to send in tenders;

c) tenders shall be submitted in writing, and their content shall not be publicly available until expiration of the deadline for submission of tenders;

d) a contracting authority shall award a contract to the economic operator that has submitted the best tender which shall be revealed on the basis of the award criteria set out in the terms of procurement.

6. A contracting authority shall be entitled not to procure the object of procurement, defined by a framework agreement, completely if so indicated in the terms of a framework agreement.

Article 38. Dynamic Purchasing System

1. Dynamic purchasing system shall be operated only through electronic systems and shall be applied for procuring the objects of procurement commonly used at the marketplace, the characteristics of which, as generally available at the market, meet the requirements of the contracting authority. Dynamic purchasing system shall not be applied for procuring individually specified objects of procurement.

2. A contracting authority shall be entitled to divide an object of procurement into categories on the bases of the peculiarities of the public procurement, which needs to be justified. Such peculiarities may include reference to the maximum allowable size of the subsequent specific procurement contracts or to a specific geographic area in which subsequent specific contracts will be performed.

3. In order to procure under a dynamic purchasing system, a contracting authority shall follow the rules applicable for the restricted procedure (except for Paragraphs 3 and 4 of Article 54 of this Law) taking into account the characteristics of this Article. All the candidates satisfying the selection criteria shall be admitted to the dynamic purchasing system. It shall be inadmissible to limit the number of candidates to be admitted to the system. Where a contracting authority has divided the object of procurement into categories in compliance with Paragraph 2 of this Article, it shall specify the applicable evaluation criteria for each category.

4. For the purposes of awarding contracts under a dynamic purchasing system, a contracting authority shall publish the terms of procurement electronically which shall contain at least:

- a) information about application of a dynamic purchasing system;
- b) information about nature of procurement and estimated quantity/volume of procurement object;
- c) information about dividing the objects of procurement into categories (if any);
- d) duration of a dynamic purchasing system;
- e) other necessary information related to dynamic purchasing system.

5. A contracting authority shall electronically invite all the participants admitted to dynamic purchasing system to submit their tenders. Where an object of procurement has been divided into categories in a dynamic purchasing system, a contracting authority shall invite all participants having been admitted to the dynamic purchasing system in relation to the category corresponding to the specific procurement. Procurement contract shall be awarded on the bases of the criteria determined in the terms of procurement. Those criteria may, where appropriate, be formulated in details in the invitation to tender.

6. A contracting authority may, at any time during the period of validity of the dynamic purchasing system, electronically require admitted participants to submit a renewed and updated application/document within not later than five working days.

7. Dynamic purchasing system, throughout the entire period of its validity, shall be open for any economic operator which satisfies the selection criteria. With the purpose to be admitted to the dynamic purchasing system, an economic operator shall submit an application to a contracting authority which shall be reviewed within 10 working days. The deadline may be prolonged to not more than 15 working days in individual cases where justified, in particular because of the need to examine additional documentation without which it is impossible to establish compliance of the application with evaluation criteria.

8. It shall be inadmissible to set any additional fee for participation in a dynamic purchasing system except for the fee for submission of an application/tender provided for in Paragraph 2 of Article 55 of this Law.

Article 39. Electronic Reverse Auction

1. Electronic reverse auction is a repetitive process involving an electronic device which occurs after an initial full evaluation of the tenders, enabling them to be ranked automatically using algorithms in the electronic system based on the criteria of low price, economic efficiency and best price-quality ratio.

2. Electronic reverse auction may be applied in:

- a) open procedure;
- b) restricted procedure;
- c) negotiated procedure with prior publication;
- d) competitive dialogue;
- e) framework agreement while carrying out competitive process among the participants of a framework agreement;
- f) dynamic purchasing system among the participants admitted to a dynamic purchasing system.

3. Electronic reverse auction may be applied only in the cases when the terms of procurement establish quantitative evaluation criteria and based on them algorithm can automatically rank tenders. It shall be inadmissible to apply electronic reverse auction with non-quantitative evaluation criteria.

4. Employment of electronic reverse auction shall be indicated in the terms of procurement.

Article 40. Electronic Catalogues

1. Electronic catalogue is the method for submitting a tender which provides for submission of tenders by economic operators under the procedures defined in the terms of procurement.

Where public procurement procedures are carried out through electronic system, in aggregated way or by applying the public procurement instruments defined by this Article, a contracting authority shall be entitled to request submission of tenders in the form of an electronic catalogue defined in the terms of procurement. Tenders submitted in the form of an electronic catalogue may be accompanied by other documents, completing the tender.

2. Electronic catalogues shall be drafted by an economic operator with a view to participating in a given procurement procedure in accordance with the format and specifications established in the terms of procurement. The object/objects of procurement with regard to which electronic catalogue shall be applied as the form of submission of tenders may be defined by the order of the Chairperson of the Agency.

3. In order to submit a tender in the format of an electronic catalogue, a contracting authority shall:

a) state so in the terms of procurement;

b) indicate in the terms of procurement all the necessary information concerning electronic catalogue(including format and specifications to be satisfied by an economic operator).

4. Where a framework agreement has been concluded with more than one economic operator, a contracting authority may request that the reopening of competition between the parties to the framework agreement takes place on the basis of updated electronic catalogues. In such a case, a contracting authority shall use one of the following methods:

a) invite tenderers to resubmit their electronic catalogues, adapted to the requirements of the contract in question;

b) notify tenderers that it intends to collect from the submitted electronic catalogues the information needed to constitute tenders adapted to the requirements of the contract in question; this possibility may be used provided that the use of that method has been announced in the terms of procurement of the framework agreement.

5. Where a contracting authority makes use of the possibilities provided for in Sub-Paragraph 'b' of Paragraph 4 of this Article, it shall be obliged to notify tenderers of the date and time at which it intends to collect the information needed and shall give tenderers the possibility to refuse such collection of information. A contracting authority shall allow for an adequate and reasonable timeframe. Before awarding the contract, a contracting authority shall present the collected information to the tenderers concerned so as to give them the opportunity to contest or confirm that the tender thus constituted does not contain any material errors.

6. Within the frames of a dynamic purchasing system, a contracting authority may request that offers for a specific contract are to be presented in the format of an electronic catalogue. A contracting authority may award contracts within the frames of an electronic catalogue in accordance with Sub-Paragraph 'b' of Paragraph 4 and Paragraph 5 of this Article provided that the request for participation in the dynamic purchasing system is accompanied by an electronic catalogue in accordance with the format and specifications established by the contracting authority. Those catalogues shall be completed subsequently by the candidates, when they are informed of the contracting authority's intention to constitute tenders by means of the procedure set out in Sub-Paragraph 'b' of Paragraph 4 of this Article.

Article 41. Centralized Purchasing Activity

1. Centralized purchasing activity implies that purchasing activities related to centralized procurement are performed by central purchasing body, which might include:

a) procurement of consumer/convenience goods and/or services defined by the government of Georgia intended for contracting authorities;

b) awarding a procurement contract or framework agreement on consumer/convenience goods, works and/or services intended for a contacting authority.

2. Except for the exceptions provided for in Paragraph 5 of this Article, centralized purchasing activities shall be applied in the cases determined by the Government of Georgia when a contracting authority provided for by the legal act of the Government of Georgia and by the terms of procurement shall be obliged to procure goods, works or service through centralized purchasing activities.

3. Contracting authorities can procure goods, works and/or services by:

a) applying procurement contract awarded by a central purchasing body;

b) applying a framework agreement awarded by a central purchasing body;

c) applying dynamic purchasing systems administrated by a central purchasing body.

4. In the cases provided for in Sub-Paragraphs 'b' or 'c' of Paragraph 3 of this Article, a contracting authority shall award a procurement contract in compliance with the procedures established by Articles 37 or 38 of this Law respectively.

5. Except for the cases provided for in Paragraph 2 of this Article, a central purchasing body performs centralized purchasing activities on the bases of application of a contracting authority, with or without appropriate remuneration which is determined by a central purchasing body. Along with the centralized purchasing activities, ancillary purchasing activities may be carried out that may include:

a) consulting related to planning or carrying out procurement procedures;

b) planning and carrying out procurement procedures in favor of and by the expenses of a respective contracting authority.

6. In compliance with Sub-Paragraph 'o' of Article 9 of this Law, this Law shall not apply to procurement of services from central purchasing body provided for in Paragraph 5 of this Article.

7. Central purchasing body is a legal entity under public law set up pursuant to the resolution of the Government of Georgian and the latter exercises state control of the central purchasing body and approves its Statute.

8. When carrying out its activities, central purchasing body shall act as a contracting authority. It shall be limited with the rights and obligations which are determined for contracting authorities under this Law and relevant normative act.

9. Under the decision of the government of Georgia, other contracting authority may be entitled to perform centralized purchasing activities in a specific segment. This notwithstanding, Paragraph 2 of this Article shall apply to the contracting authorities operating in this segment.

Article 42. Joint Procurement

1. Two or more contracting authorities may agree to conduct public procurement jointly.
2. Agreement between the contracting authorities shall be concluded in writing. Agreement shall be signed by the heads of respective contracting authorities or their authorized persons. Rights and obligations of the contracting authorities shall be set out in the written agreement.
3. Where joint procurement is carried out by the contracting authorities, functioning under coverage of single public authority, the decision regarding joint procurement shall be taken based on an individual administrative-legal act of a superior official or an authorized person designated by him/her.

Chapter VII. Preparation of Public Procurement

Article 43. Annual Plan

1. A contracting authority shall carry out public procurement under a pre-determined annual procurement plan. Procedures for its development, approval and submission shall be defined in an order of the Chairperson of the Agency. It shall be inadmissible to perform public procurement unless it is specified in an annual plan, except for the cases provided for in Sub-Paragraphs 'a' and 'c' of Paragraph One of Article 33 of this Law, which shall be reflected in an annual plan.

2. The following shall be taken into account when preparing an annual procurement plan:

- a) necessity of performing the public procurement;
- b) homogeneity of procurement objects;
- c) experience in performing similar public procurements;
- d) the type of a procurement object (goods, works, services);
- e) results of a market survey conducted to identify potential economic operators and determine contract terms acceptable for a contracting authority;
- f) public procurement procedures to be applied and their estimated timeframes;
- g) quantity of goods to be supplied, volume of works to be performed or of services to be rendered, considering the existing supplies;
- h) estimated value of the procurement objects, inclusive VAT;
- i) costs associated with the public procurement considering the taxes provided by the legislation of Georgia;
- j) current year's financial commitments under long-term contracts or under contracts awarded in the previous year;
- k) an estimated timeframe for the performance of the contract to be awarded;
- l) other circumstances related to the procurement.

3. A contracting authority shall submit an annual procurement plan approved for the following year to the Agency through Electronic System not later than 01 November of the current year, after which a contracting authority shall be entitled to start public procurement procedures necessary for the following year(s).

4. Before entry into force of a relevant normative act on the State Budget of Georgia, budgets of the Autonomous Republics and budgets of municipalities, the annual procurement plan of

organizations performing public procurement with funds referred to in Paragraph 3 of Article 44, shall, at the moment of submitting annual procurement plans, comply with the draft budget submitted to the appropriate representative body.

5. If after entry into force of a relevant normative act referred to in Paragraph 4 of this Article, it becomes necessary to bring into line with this normative act the annual procurement plan submitted to the Agency, the organizations performing public procurement with the funds referred to in Paragraph 3 of Article 44 of this Law shall make appropriate amendments to their annual procurement plans and submit the amended plans to the Agency, under the established rule, within 10 calendar days after the publication of the relevant normative act.

6. If a contracting authority is established (founded) or receives an additional source of financing from the funds referred to in Paragraph 3 of Article 44 of this Law, annual plan shall be approved and submitted to the Agency in compliance with this Law by not later than the last day of the month following the month of establishing (founding) the contracting authority or of receiving the additional funding.

7. Modifications can be made to the annual plan. While making modifications in the annual plan, a contracting authority shall be obliged to follow the procedures established for approving the annual plan and to submit amended annual plan to the Agency in compliance with the procedure established by Paragraph One of this Article. Modifications to the annual plan shall be duly justified.

Article 44. Multiyear Public Procurement

1. As a rule, public procurement involves one year. During one-year public procurement, payment is made with allocations provided in the current budget year. Based on the needs of a contracting authority and peculiarities of public procurement, public procurement may also be multiyear.

2. If public procurement is not regarded as a one-year procurement in compliance with Paragraph One of this Article, it shall be a multiyear procurement. Public procurement shall also be regarded as a multiyear procurement when payment is made with allocations provided in two or more budget years.

3. A contracting authority shall be obliged to agree multiyear public procurement with the Ministry of Finance of Georgia, Ministry responsible for the finances of relevant Autonomous Republic or other authorized financial body of relevant municipality and publish received confirmation, under the procedure established by the order of the Chairperson of the Agency, on the Electronic System if multiyear procurement is funded:

- a) from the State Budget of Georgia, budgets of the Autonomous Republics or the budgets of municipalities;
- b) from the budgets of organizations and institutions funded by the State Budget of Georgia, budgets of the Autonomous Republics or the budgets of municipalities.

4. Multiyear public procurement shall not require agreement and publication of received confirmation on the Electronic System for the public procurements whose payment is performed until 01 February of the following year, whereas supply of goods, performance of works and/or rendering of services provided for by the procurement contract are carried out through December 31 of the current budget year.
5. The National Bank of Georgia shall perform multiyear public procurements without approval of the Ministry of Finance of Georgia.
6. Multiyear procurement is annually reflected in annual plan.

Article 45. Mixed Procurement

1. Procurements which have as their subject-matter different organically related objects of procurement and/or are governed by different legal regimes are deemed as mixed procurements.
2. A contracting authority shall be obliged to divide mixed procurement and award separate contracts except for the exceptions provided for in this Article when a contracting authority shall be eligible to award a mixed procurement contract.
3. It shall be admissible to procure different objects of procurement under a single contract by negotiated procedure without prior publication. Objects of procurement must be explicitly distinguished in a procurement contract. In such cases, a contracting authority shall be obliged to observe the requirements of this Law to each object of procurement regarding monetary thresholds and other issues.
4. Except for the exceptions provided for in Paragraph 3 of this Article, it shall also be admissible to award a mixed contract if it is objectively impossible to divide procurement, which shall be justified. In such cases, a contracting authority shall guide itself in compliance with the procedures determined by Paragraphs 5-9 of this Article.
5. A contract subject-matter of which is different object of procurement, shall be awarded in compliance with the procedures governing the major subject-matter of the contract. The object of procurement having the highest value shall be the major subject-matter of a procurement contract.
6. A contract involving services provided for in Article 34 of this Law as well as other services shall be awarded in compliance with the procedures governing that part of the contract that foresees the procurement object, whose estimated value is higher.
7. A contract, involving public procurements provided for in this Law as well as procurements to which this Law does not apply, notwithstanding the major subject-matter of the contract, shall be awarded in compliance with the procedures established by this Law. In case a contracting authority decides to award separate contracts in compliance with this Article, the legal regimes to regulate each contract shall be defined depending on their nature.

8. A contract involving public procurements provided for in Chapter XI of this Law as well as other public procurements provided for in this Law, shall be awarded in compliance with the procedures established by Chapter XI of this Law.

9. In case a contract involves goods that might be used for public safety, as well as defense and security purposes, the procedures for awarding a contract shall be determined according to the purposes the goods are intended for primarily.

Article 46. Market Research

1. A contracting authority shall conduct market research in order to prepare public procurement. With this purpose, a contracting authority shall be eligible to consult independent experts, bodies or economic operators for advice, also to collect necessary information. A contracting authority shall ensure that use of the advice and information collected during the market research shall not cause breach of the principles provided for in Article 2 of this Law.

2. A contracting authority shall also be obliged to conduct primary market research with a view to elaborating annual plan.

3. Procedures for conducting market research shall be defined by the order of the Chairperson of the Agency.

Article 47. Determination of the Estimated Value of Procurement

1. When determining the estimated value of public procurement, a contracting authority shall take into account any expenses, existing by the day of opening the competition, related to conduction of public procurement within the frames of a specific public procurement, as well as estimated duration of a procurement contract, also payment, excluded VAT, to be paid for supplying the object of procurement within the frames of a specific public procurement.

2. In the cases of a framework agreement and a dynamic purchasing system, estimated value of procurement shall be defined as the total value of procurement contracts, excluded VAT, to be awarded within the total term of a framework agreement and a dynamic purchasing system.

3. Where public procurement is carried out into lots and respectively, procurement contract is awarded as a result of division of similar objects into lots, estimated value of procurement shall be determined by summing up estimated value of lots, excluded VAT.

4. Where mixed procurements are divided and procurement contracts are awarded separately, estimated value of procurement shall be determined as the total value of contracts to be awarded, excluded VAT.

5. It shall be inadmissible to calculate estimated value of procurement with intention that a contracting authority avoids the obligations stipulated by the monetary thresholds provided for in this Law.

6. Detailed procedures for defining the estimated value of procurement shall be determined by the order of the Chairperson of the Agency.

Article 48. Division of contracts into lots

1. A contracting authority, considering its own needs, shall be entitled to conduct public procurement for procuring similar objects of procurement in lots taking into account the requirements of this Article. Technical or economic aspects shall be the grounds for dividing the objects of procurement into lots. Where annual value of similar objects of procurement equals to or exceeds the monetary thresholds established by the EU Directives, a contracting authority shall be obliged to provide a justification in the terms of procurement for a decision not to divide contracts into lots and conduct procurement through this method.

2. When dividing the objects of procurement into lots and conducting public procurement through this method, total value of implemented/intended public procurement procedures for each lot shall be taken into account while calculating monetary thresholds. For the purposes of Paragraph 4 of Article 33 of this Law, public procurement of similar objects of procurement using the same source of funding during a single budget year shall be deemed as single procurement. In such cases, considering the needs of a contracting authority, it shall be admissible to conduct separate public procurement procedures, however when calculating monetary thresholds, total value of implemented/intended public procurement procedures shall be taken into account.

3. Except for the cases provided for in Paragraph 2 of this Article, public procurement of similar objects of procurement during a single budget year that aims at reaching a single goal and/or arriving at a single result shall also be considered as single procurement. As a rule, in such cases a contracting authority carries out public procurement procedures into lots. Where public procurement procedures cannot be carried out separately, a contracting authority shall be obliged to provide justification, in the terms of procurement, of the reason why division into lots is impossible. In case of carrying out public procurement into lots, when calculating monetary thresholds, total estimated value of implemented/intended lots shall be taken into account.

4. When performing public procurement into lots, a contracting authority shall be obliged to define in the terms of procurement the number of lots in which one economic operator shall be eligible to submit applications/tenders. If one economic operator shall be entitled to submit applications/tenders in several or all the lots, a contracting authority may define the maximum number of lots within the frames of which a procurement contract will be awarded with one economic operator. A contracting authority shall indicate in the terms of procurement, with due justification, the objective and non-discriminatory criteria or rules it intends to apply for determining in which lots an economic operator shall be awarded a procurement contract in case the economic operator concerned submits more applications/tenders than the maximum number.

5. Artificial division of public procurement with the purpose to avoid monetary thresholds shall be inadmissible. One of the following cases shall not be considered as artificial division of public procurement:

- a) where conduction of public procurements separately is caused by objective reasons that could not be foreseen by a contracting authority beforehand, which must be justified;
 - b) where conduction of public procurements separately is justified in terms of cost-efficient utilization of funds, which must be justified;
 - c) where conduction of public procurements separately is among the cases determined by the order of the Chairperson of the Agency when values of implemented/intended public procurement shall not be summed together due to the nature of public procurement and objective circumstances related to it.
6. Procedure for division of the objects of procurement into lots and carrying out public procurement, also methodology for avoidance of artificial division of public procurement and its identification shall be determined by the order of the Chairperson of the Agency.

Article 49. Specifications of Object of Procurement

1. A contracting authority shall determine specifications in the terms of procurement that describe characteristics of goods, works or services to be procured.
2. Where public procurements are intended for a natural person or for general public, environmental and social aspects, also the interests of the consumers of all categories (including disabled persons) shall be taken into account when drafting specifications, except for the duly justified cases
3. Terms of procurement may provide for the terms whether or not it is required to confer intellectual property related to the object of procurement.
4. Specifications shall ensure to allow equal participation of economic operators in public procurement procedures and shall not create artificial hampers. Technical specifications mentioned in the Paragraph two of this Article may also refer to any stage of the life cycle of the object of procurement even where such specifications are not related to the essential part of the object of procurement or its physical characteristic, provided that they are directly linked to the subject-matter of the contract and proportionate to its objectives.
5. Specifications may be formed in one of the following methods:
 - a) in the form of performance specifications and/or functional specifications, including with reference to environmental characteristics and criteria;
 - b) by reference to technical specifications and while describing them textual materials and other characteristics shall comply with relevant standards in the following order: international standard; or when the standard referred to does not exist - regional standard; or when it does not exist – state standard applicable in Georgia on the bases of international treaties of Georgia; or when it does not exist either – Georgian standard. Each reference to the standard shall be accompanied by the words ‘or equivalent’;

c) in the form of performance specifications and/or functional specifications with reference to technical specifications the purpose of which is to check compliance with performance specifications and/or functional specifications;

d) mixed in the form of performance, functional and technical specifications.

6. General description of performance and functional specifications shall prevail.

7. Description of specifications shall not be vague. It shall be inadmissible to indicate, directly and/or indirectly, specific trademarks, patents, models, separate processes, source of origin or manufacturer except for duly justified cases resulting from the peculiarities of object of procurement and when other, more precise means for description are absent. In such cases, description shall have assumption 'or equivalent'.

8. A contracting authority shall not be eligible to reject the tender with the ground that proposed goods, works or service do not comply with the specifications provided for in the terms of procurement provided the tenderer, in compliance with Paragraph 14 of this Article, justifies that the tender complies with the requirements determined by the contracting authority in the terms of procurement as technical specifications.

9. If a contracting authority wishes to take into account environmental, social or other similar issues while describing the object of procurement, it can indicate in specifications about the necessity of having particular labels (like "eco", "bio", "organic" and/or others) such as the evidence that offered goods, works or services comply with specifications referred to in this Paragraph. In such case, it shall be necessary that the label meets all of the following requirements:

a) the label concerns only those criteria which are linked with the object of procurement and are used as established method for determining the specifications of such object of procurement;

b) the label requirements are based on objectively verifiable non-discriminate criteria;

c) the label is established by the process in which all the stakeholders such as government bodies, consumers, entrepreneurs, manufacturers and CSOs could participate;

d) the label is accessible and available to all interested parties;

e) the label requirements are set by a third party over which the economic operator applying for the label cannot exercise a decisive influence.

10. In case a contracting authority does not request that the object of procurement meets all the label requirements, it shall indicate which requirement is mandatory to be satisfied.

11. In case a contracting authority has indication at any specific label, it shall be obliged to accept any label which proves that the object of procurement meets equivalent requirements.

12. In case an economic operator proves absence of possibility to obtain the label determined by a contracting authority or its equivalent due to the reasons independent from it, a contracting authority shall receive other, relevant evidence, including an official document issued by the

manufacturer, which proves that the object of procurement offered by the economic operator fully meets the requirements indicated by the contracting authority with regard to the label.

13. If the label meets the requirements provided for in Sub-Paragraphs ‘b’ – ‘e’ of Paragraph 9 of this Article, however, at the same time there are other requirements which are not related to the object of procurement, a contracting authority shall not be entitled to request such a label. In such cases, the contracting authority shall give description of the specifications of the object of procurement.

14. With a view to establishing compliance of the tender with the specifications, a contracting authority may request from an economic operator to submit:

a) description, document issued by the manufacturer, a photo or sample, also the verification of its authenticity;

b) conclusion of expertise, inspection or other evaluating person/body, a report or other similar document. In such cases, it shall be inadmissible to indicate the specific person/body issuing a conclusion, report or other similar document.

15. Detailed procedures for determining the specifications of the object of procurement, as well as for recognizing the standards referred to in this Article as equivalent, shall be established by the order of the Chairperson of the Agency.

Article 50. Criteria for Selection of an Economic Operator

1. Criteria for selection of an economic operator may apply to:

a) its suitability to pursue the professional activities;

b) its economic and financial standing;

c) its technical and professional ability.

2. Criteria for selection of an economic operator shall ensure to verify the legal, financial, technical and professional ability of an economic operator for fulfillment of the contract to be awarded. Any requirement determined in the terms of procurement, shall be related to the object of procurement and shall be proportional.

3. In relation to suitability to pursue the professional activities, a contracting authority may, by the terms of procurement, request from an economic operator that an economic operator is registered, accredited, authorized, licensed or certified in compliance with the procedures established by the legislation of its country of stay or is the member of a relevant organization or union provided the legislation of respective country establishes such a pre-conditions for supplying an object of procurement. It shall be inadmissible to determine requirements in respect of the minimum time that must have elapsed since such registration, accreditation, authorization, licensing, certification or membership.

4. In relation to economic and financial standing, a contracting authority shall be eligible to determine the minimum amount of annual turnover an economic operator must have, including minimum annual turnover it must have in the field related to the object of procurement. Minimum annual turnover must not exceed double amount of estimated value of procurement except for duly justified exceptions resulting from the risks related to the specification of the object of procurement, including timeframes for delivery of the object of procurement. Where a contract is awarded by reopening a competition within the frames of a framework agreement, required maximum annual turnover shall be calculated according to possible maximum value of the contract to be awarded and where it is not defined – then according to estimated value of a framework agreement. In case of a dynamic purchasing system, maximum annual turnover shall be calculated according to possible maximum value of the contract to be awarded through the system. A contracting authority may determine requirements related to the balance between assets and liabilities of an economic operator.
5. In relation to technical and professional compatibility, a contracting authority may request economic operator adequate human and technical resources, as well as its experience.
6. Detailed procedures for describing selection criteria of an economic operator shall be determined by the order of the Chairperson of the Agency.

Article 51. Criteria for Revealing the Best Tender

1. In the terms of procurement a contracting authority shall determine the criteria for revealing the best tender which ensure identifying the most economically advantageous tender.
2. Criteria for revealing the best tender may be based on:
 - a) low price;
 - b) economical efficiency - life-cycle cost which includes the cost of the life cycle stage of goods, works or services or total cost, namely:
 - b.a) costs, borne by the contracting authority or other users, such as:
 - b.a.a) costs relating to acquisition;
 - b.a.b) costs of use, such as consumption of energy and other resources;
 - b.a.c) maintenance costs;
 - b.a.d) end of life costs, in particular collection and recycling costs;
 - b.b) costs imputed to environmental externalities linked to the goods, service or works during its life cycle, including costs imputed as a result of environmental damage (provided their monetary value can be determined and verified); such costs may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.

c) the best price-quality ratio. This shall be assessed on the basis of criteria, including qualitative, environmental or social aspects; such criteria may comprise:

c.a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions;

c.b) organization, qualification and experience of staff assigned to performing the contract, where the quality and experience of the staff assigned can have a significant impact on the level of performance of the contract;

c.c) after-sales service and technical assistance, delivery conditions (delivery date, period, process or period of completion).

3. Following the order of the chairperson of the Agency there might be cases defined when it shall be admissible or banned to set low price criteria only. In the cases provided for in Articles 29-31 of this Law, it shall be obligatory to use the best price-quality ratio criteria.

4. Criteria for revealing the best tender shall be considered to be linked to the object of procurement where they relate to the works, goods or services to be provided under the contract in any respect and at any stage of their life cycle, including following factor(s) involved in:

a) the specific process of production, provision or trading of those works, goods or services;

b) a specific process for another stage of their life cycle.

5. Specific processes referred to in Paragraph 4 of this Article shall be taken into account even where such processes factors do not form part of the material substance or other physical characteristics of works, supplies or services.

6. Criteria for revealing the best tender defined by a contracting authority shall ensure the possibility of genuine competition. These criteria shall be described in the specifications of the object of procurement so that it allows the information provided by the economic operators to be effectively verified in order to assess how well the tenders meet the criteria. In case of doubt, a contracting authority shall verify effectively the accuracy of the information and relevant proof provided by the economic operators.

7. Except for the cases where low price alone is the criteria for revealing the best tender, the contracting authority shall specify, in the terms of procurement, the relative weighting which it gives to each of the criteria chosen. Where weighting is not possible for objective reasons, the contracting authority shall indicate the criteria in decreasing order of importance.

8. Where a contracting authority assesses the costs using a life-cycle costing approach, it shall indicate in the terms of procurement the data to be provided by the economic operators and the method which the contracting authority will use to determine the life-cycle costs on the basis of those data. The method used for the assessment of costs imputed to environmental externalities shall fulfil all of the following conditions:

a) it shall be based on objectively verifiable non-discriminatory criteria. In particular, where the method has not been established for repeated or continuous application, it shall not unduly favor or disadvantage certain economic operators;

b) it is equally accessible to all interested parties;

c) the data required can be provided with reasonable effort by any economic operator, including economic operators from third countries.

9. Detailed procedures for description of the criteria for revealing the best tender shall be determined by the order of the Chairperson of the Agency.

Chapter VIII. Announcing Public Procurement process.

Submission of Applications and Bids/Tenders.

Article 52. Prior Information Notice

1. A contracting authority shall be entitled to make known its intention of public procurements through the publication of a prior information notice in the Electronic System.
2. Prior information notice published according to determined procedures shall entitle a contracting authority to decrease minimum time limits for getting acquainted with the terms of procurement pursuant to Paragraph 3 of Article 54 of this Law.
3. Form and procedures for publication of prior information notice shall be determined by the order of the Chairperson of the Agency in compliance with this Law and requirements of relevant legal acts of EU.

Article 53. Terms of Procurement

1. In order to announce public procurement (except for negotiated procedure without prior publication), a contracting authority shall publish a notice.
2. A notice shall be accompanied by procurement documentation.
3. In restricted procedures, negotiated procedures with prior publication, competitive dialogue procedures or innovation partnerships, a contracting authority shall invite the selected candidates to submit their tenders or, in the case of a competitive dialogue/negotiation, to take part in the dialogue/negotiation, through publishing an invitation.
4. Terms of procurement shall be published on the Electronic System.
5. Form and procedures for publication of the terms of procurement shall be determined by the order of the Chairperson of the Agency in compliance with this Law and requirements of relevant legal acts of EU.
6. A contracting authority shall be entitled to make modifications to the terms of procurement prior to the expiration of the deadline fixed to acquaint oneself therewith. Making modifications to the terms of procurement after the expiration of the referred deadline shall be admissible solely on the basis of dialogue/negotiation in case the possibility of making modifications is defined in the terms of procurement. It shall be inadmissible to make modifications to public procurement procedure/public procurement instrument/aggregated method or object of procurement, also it shall be inadmissible to make modifications banned by this Law or any other essential modifications to the terms of procurement. When making modifications to the terms of procurement prior to expiration of the deadline fixed to acquaint oneself therewith, time limits for familiarization with the terms of procurement shall

automatically be prolonged with the term that passed from publication of the terms of procurement until the publication of the relevant modifications.

7. A contracting authority shall be entitled to make modifications to the terms of procurement to prolong the time limits for familiarization therewith. Sentence 4 of Paragraph 6 of this Article shall not be applicable to such cases.

8. Modifications, prior to the expiration of the deadline fixed to familiarize oneself with the terms of procurement, shall be made to the terms of procurement and published according to the procedures as determined for approving and publishing the terms of procurement. Modifications to the terms of procurement on the basis of dialogue/negotiation shall be made under the procedure determined by the order of the Chairperson of the Agency.

9. For publication of the terms of procurement through Electronic System, a contracting authority shall transfer the fee for publication of terms of procurement to the account of the Agency. The amount of the fee and the procedures for paying and refunding the fee shall be determined by the order of the Chairperson of the Agency. The amount of the fee shall not exceed 100 GEL. The fee shall not be refundable except for the cases of malfunctioning of the system or when extra amount of fee is paid by mistake.

10. A contracting authority shall be entitled to disseminate the terms of procurement by using additional methods as well.

11. A contracting authority shall be entitled to determine in the terms of procurement whether or not submission of variants of tenders is authorized in the public procurement procedure, also the types of variants that are authorized to be submitted by the economic operators. If there is no clear indication in the terms of procurement of the possibility of submission of variants, it shall be inadmissible to submit variants.

12. Where a contracting authority authorizes the submission of variants, it shall determine in the terms of procurement the minimal requirements and the criteria for revealing the best tender which shall be met by the variant submitted by an economic operator.

13. Detailed procedures for submission of variants and procedures for application of the possibility of submission of variants shall be determined by the order of the Chairperson of the Agency.

14. In the cases determined by the decree of the Government of Georgia, a contracting authority shall be obliged to take into account the characteristics which are necessary for sustainable development. When conducting public procurement, for sustainable development CPV codes of the procurement object (goods, works, services) for that it is mandatory to indicate sustainable development characteristics, also the rules and methodology for indicating sustainable development characteristics in the public procurement procedure, including considerations of cost-effectiveness, economic feasibility, wide range of sustainability dimensions, technical compatibility and proper competition, shall be determined by the decree of the Government of Georgia.

Article 54. Time Limits for Getting Acquainted with the Terms of Procurement and for Submission of Application/Tender

1. In open procedure and design contest following time limits are set for getting acquainted with the terms of procurement and submission of tenders:

a) if estimated value of procurement is equal to or above the monetary thresholds established by the legal acts of European Union, minimum extension term of deadline for getting acquainted with the terms of procurement shall be not less than 25 days, and deadline for submission of tenders shall be the following 5 days;

b) where estimated value of procurement is below the monetary thresholds established by the legal acts of European Union, the following time limits shall be determined:

b.a) not less than 5 days for getting acquainted with the terms of procurement and following 2 days for submitting the tender where estimated value of goods or services is below 150 000 GEL;

b.b) not less than 7 days for getting acquainted with the terms of procurement and following 3 days for submitting the tender where estimated value of goods or services is equal to or above 150 000 GEL;

b.c) not less than 7 days for getting acquainted with the terms of procurement and following 3 days for submitting the tender where estimated value of works is below 300 000 GEL;

b.d) not less than 15 days for getting acquainted with the terms of procurement and following 5 days for submitting the tender where estimated value of works is equal to or above 300 000 GEL;

2. Time limits for getting acquainted with notice and procurement documentation as well as for submitting the application in a restricted procedure, negotiated procedure with prior publication, competitive dialogue and innovation partnership shall be laid down in compliance with Paragraph One of this Article. Time limits for getting acquainted with the invitation for submission of tenders as well as for submission of tenders in a restricted procedure and a negotiated procedure with prior publication shall be laid down in compliance with Paragraph One of this Article. Time limits for getting acquainted with the invitation for submission of tenders/participation in dialogue and for submission of tenders in a competitive dialogue and innovation partnership, as well as time limits for getting acquainted with the invitation for participation in the negotiation procedure with prior publication shall be laid down by the order of the Chairperson of the Agency. Time limits for getting acquainted with the invitation for submission of tenders as well as for submission of tenders in a dynamic purchasing system shall be not less than 10 days in total if estimated value of procurement is equal to or above the monetary thresholds established by the legal acts of the European Union and not less than 5 days if estimated value of procurement is below the monetary thresholds established by the legal acts of the European Union.

3. If a contracting authority publishes a prior information notice, which was not itself used as a means of calling for submission of tenders, in compliance with established procedures between not later than 35 days and not earlier than 12 months prior to the date of publication of notice, time limits for getting acquainted with the terms of procurement, which should have

been not less than 25 days or 15 days taking into account relevant monetary thresholds in compliance with Sub-Paragraphs 'a' or 'b.d' of Paragraph One of this Article, might be not less than 10 days in case of an open procedure and not less than 5 days in case of a restricted procedure. Time limits for submission of applications/tenders shall not be modified.

4. If duly justified decision of a contracting authority establishes an emergency situation, however not to that extent/quality to allow a contracting authority to apply a negotiated procedure without prior publication in compliance with Article 33 of this Law, following time limits shall be set for getting acquainted with the terms of procurement and submission of tenders in an open procedure and a design contest:

a) not less than 10 days for getting acquainted with the terms of procurement and not less than following 5 days for submission of tenders where estimated value of procurement is equal to or above the monetary thresholds established by the legal acts of the European Union;

b) where estimated value of procurement is below the monetary thresholds established by the legal acts of the European Union:

b.a) not less than 5 days for getting acquainted with the terms of procurement and following 2 days for submission of tenders if estimated value of goods or services is equal to or above 150000 GEL;

b.b) not less than 7 days for getting acquainted with the terms of procurement and following 3 days for submission of tenders if estimated value of works is equal to or above 300 000 GEL;

5. In the cases provided for in Paragraph 4 of this Article, time limits for getting acquainted with notices and procurement documentation as well as for submission of tenders in a restricted procedure, also time limits for getting acquainted with the invitation for submission of tenders and time limits for submission of tenders, shall be determined under the same Paragraph.

6. Where time limits set by a contracting authority for getting acquainted with the terms of procurement are more than minimum time limits established by this Article, it shall be inadmissible to reduce these time limits after opening of competition.

7. When establishing a time limit for submission of an application/tender, the requirement, laid down in Paragraph 5 of Article 19 of this Law, related to establishment of adequate time limit, shall be taken into account.

8. Time limits defined in this Article shall start running on the day following the day of publication on the system.

Article 55. Submission of Applications and Bids/Tenders

1. Applications and bids/tenders shall be submitted through the Electronic System alone in compliance with the procedures established by this Law, order of the Chairperson of the Agency and the terms of procurement.

2. An economic operator shall transfer the fee for submission of an application through the Electronic System, or if an application does not exist – a tender submission fee to the account of the Agency. The amount of the fee, as well as procedures for paying and refunding the fee shall be determined by the order of the Chairperson of the Agency. The amount of the fee shall not exceed 100 GEL. The fee shall not be refundable except for the cases of malfunctioning of the electronic system or when extra amount of fee is paid by mistake.
3. During centralized purchasing, the successful tenderer, in addition to the fee determined under Paragraph 2 of this Article for submitting application/tender, shall also transfer not more than 1% of the value of the purchase agreement to be concluded to the account of a central purchasing body.
4. The amount determined under Paragraph 3 of this Article and the procedures for paying and refunding the fee shall be determined by the legal act of the head of the central purchasing body.
5. For safeguarding application/tender, an economic operator shall be obliged to submit guarantees for safeguarding the application/tender in the amount of 1% of estimated value of procurement, except for the cases provided for in Paragraph 6 of this Article. In addition, if the public procurement is carried out by dividing it into lots, the estimated value of each lot is taken into account when calculating the amount of the application/tender security guarantee. Procedures for submitting, activating and refunding the guarantees for safeguarding the application/tender with the purpose of safeguarding the application/tender shall be determined by the order of the Chairperson of the Agency.
6. In case of centralized purchasing activity, the obligation of submission of the guarantees for safeguarding the application/tender, also their amount and the procedure for submitting, activating and refunding thereof shall be determined by the order of the Chairperson of the Agency. In case the guarantees for safeguarding the application/tender are not requested during centralized purchasing activity, other means for safeguarding might also be determined by the order of the Chairperson of the Agency for ensuring the award of a contract.

Article 56. Right for Requesting and Receiving Information/Explanation

1. An economic operator shall be entitled to request from a contracting authority and receive information/explanation related to the terms of procurement and course of public procurement.
2. Information/explanations from a contracting authority may be requested through a contact person of a contracting authority determined in the terms of procurement, as well as through the Electronic System.
3. A “Q&A e-Module” shall be developed in the Electronic System for requesting information/explanations. Procedures for using the “Q&A e-Module”, also for requesting information/explanation from a contracting authority shall be determined by the order of the Chairperson of the Agency.

Chapter IX. Selection and Evaluation

Article 57. General Procedures

1. A contracting authority shall evaluate candidates/tenderers in accordance with the specifications and evaluation criteria specified by the terms of procurement in compliance with the procedures established by this Law and the order of the Chairperson of the Agency.

2. If an application/tender does not include sufficient requested information or does not include it at all and there is not direct ground for exclusion of a candidate/tenderer, a contracting authority shall request the economic operator to clarify the application/tender within an appropriate time limit in compliance with the procedures established by the order of the Chairperson of the Agency. Clarification of an application/tender shall not cause breaching of transparency and equality principles. Failure to clarify an application/tender in established time limits or its insufficient clarification shall become the ground for exclusion of a candidate/tenderer.

3. It shall be inadmissible to request from a candidate/tenderer to submit the information that was not provided for in the terms of procurement, except for the cases when the obligation to submit the requested information directly results from the legislation of Georgia. Likewise, it shall be inadmissible to consider the circumstance that was not provided for in the terms of procurement as a candidate's/tenderer's deficiency, except for the cases when considering the referred to circumstance as a deficiency directly results from the legislation of Georgia.

Article 58. Exclusion

1. A contracting authority shall exclude a candidate/tenderer from participation in a procurement procedure in any of the following cases:

a) candidate/tenderer is in the Black List;

b) there are one or several grounds provided for in Sub-Paragraphs 'a'-'d' of Paragraph 2 of Article 21 of this law;

c) insolvency proceedings have been ongoing for the candidate/tenderer, the economic activity of the candidate/tenderer has been suspended or discontinued, liquidation process of a candidate/tenderer has been launched or candidate/tenderer has been liquidated (has diseased – in case a candidate or tenderer is a natural person);

d) a candidate or tenderer has tax debts, except for the cases provided for in Paragraph 4 of this Article;

e) a candidate or a tenderer has a conflict of interest within the meaning of Article 13 of this Law and it cannot be avoided even in case of applying all the possible measures provided for in the same Article;

f) there are grounds for exclusion of an economic operator provided for in Paragraphs 3-5 of article 19 of this Law and exclusion cannot be remedied by other, less intrusive measures;

g) application/tender does not comply with the terms of procurement and it is not subject to being clarified in compliance with this Law and the order of the Chairperson of the Agency, while where it can be clarified – it has not been clarified in established time limits or has been clarified insufficiently;

h) conformity of pricing cannot be justified in compliance with Article 64 of this Law.

i) candidate/tenderer refuses to conclude a contract or expresses his refusal in any other form;

j) candidate/tenderer rejects the application/tender.

2. The grounds for exclusion provided for in Paragraph One of this Article shall be applied also to:

a) the member of an economic operator – if the economic operator is a group of persons;

b) the subcontractors in the cases provided for in Article 20 of this Law;

c) other economic operators on whose capacities the economic operator relies in compliance with Article 63 of this Law.

3. If a bailout or similar set of measures is applied within insolvency proceedings of a candidate, a tenderer or a person and a contracting authority may conclude that an economic operator will manage to fulfill the contract, the contracting authority may decide on non-application of Sub-Paragraph ‘c’ of Paragraph One of this Article by assessing potential economic risks and taking into account the peculiarities of the subject-matter of the contract.

4. It shall be inadmissible to exclude a candidate/tenderer on the basis of Sub-Paragraph ‘d’ of Paragraph One of this Article if any of the following conditions exists:

a) tax liabilities of a candidate/tenderer are less than 1000 GEL;

b) a candidate/tenderer has concluded a tax agreement or has taken a commitment of paying a tax liability by means of concluding an agreement with an authorized body.

5. If grounds for exclusion of a candidate/tenderer are revealed, a contracting authority shall exclude a candidate/tenderer at any stage of public procurement. A contracting authority shall be obliged to justify its decision on exclusion of a candidate/tenderer.

6. Detailed procedures for exclusion shall be determined by the order of the Chairperson of the Agency.

7. A contracting authority shall be entitled to request, in compliance with established procedure, a competent authority determined by the Georgian legislation to provide any information about an economic operator or any other person provided for in this Article, which is necessary to establish the existence/non-existence of the grounds for exclusion, including information containing tax secrets in case of written/electronic consent of the economic

operator or any other person provided for in this Article, also, to request the information containing personal data (including special categories of data).

Article 59. Examination of Grounds for Exclusion and Conformity with Selection Criteria

1. A contracting authority shall be obliged to determine, in the terms of procurement, the documents which it requests economic operators to submit with a view to examining the grounds for exclusion or conformity with selection criteria.

2. Non-existence of the grounds for exclusion (in the cases provided for in Sub-Paragraphs ‘b’–‘d’ of Paragraph One of Article 58 of this Law) might also be verified by an official document/certificate issued by an authorized court or administrative body of a respective country.

3. Conformity with the requirements related to professional activities may be verified by an official document/certificate of registration, accreditation, authorization, licensing, certification or by an official document/certificate verifying membership of a relevant organization or union.

4. Conformity with the requirements related to economic and financial standing may be verified by an official document/certificate issued by an authorized taxation body or financial institution of a relevant country, economic operator’s financial or annual report, and statements from these reports. Information regarding turnover may be requested for a maximum of the last three financial years depending on the date on which the economic operator was set up or the economic operator started operation. In case an economic operator confirms that it cannot present the documents requested by a contacting authority, it can confirm its economic and financial standing by other documents considered as acceptable by a contracting authority observing the principles defined by this Law.

5. Technical and professional ability defined in the terms of procurement may be verified by:

a) the information about the supplies delivered or services performed over not more than the past three years. This information shall include the data about the value, dates of delivery of goods/performance of services and about the recipient. It shall be accompanied by certificates of satisfactory execution of the relevant services. Where necessary in order to ensure an adequate level of competition, a contracting authority may indicate that evidence of relevant supplies delivered/services performed earlier than the timeframes defined by this Sub-Paragraph will be taken into account;

b) a list of the works carried out over not more than the past five years. This information shall include the data about the value of work, date of its performance and recipient. It shall be accompanied by the documentation of satisfactory performance of works. Where necessary in order to ensure an adequate level of competition, a contracting authority may indicate that evidence of relevant works carried out earlier than the timeframes defined by this Sub-Paragraph will be taken into account;

- c) an indication of the technicians or technical bodies involved, whether or not belonging directly to the economic operator's undertaking, especially those responsible for quality control and for carrying out the work;
- d) documents verifying qualification and experience of manager or technical staff;
- e) a description of the technical facilities and measures used by the economic operator for ensuring quality;
- f) a description of the supply chain management and tracking systems that the economic operator will be able to apply when performing the contract;
- g) a description of the environmental management measures that the economic operator will be able to apply when performing the contract;
- h) an indication of the proportion of the contract which the economic operator intends possibly to subcontract;
- i) where the object of procurement is complex or is required for a special purpose, a check carried out by a contracting authority or on its behalf by a competent official body. Such a check shall apply to the production capacities or the technical capacity of an economic operator and, where necessary, to the measures to be applied for ensuring quality control.

6. An economic operator shall not be requested to submit the information/documentation referred to in this Article where data can be checked on the Electronic System or through other open/public markets in compliance with the procedures established by the order of the Chairperson of the Agency.

Article 60. Reduction of the Number of Candidates

1. In a restricted procedure, a negotiated procedure with prior publication, a competitive dialogue or innovation partnership, a contracting authority may limit the number of candidates that are satisfying the selection criteria and will be invited for submission of tenders or participation in dialogue/negotiation, provided the number of candidates is not below the number defined by this Article.
2. A contracting authority shall define, in the terms of procurement, objective and non-discriminatory criteria according to which it will invite the candidates, and define minimum, and where necessary, maximum number of candidates to be invited. The number of candidates shall be defined in a way that ensures genuine competition. When defining the number of candidates, a contracting authority shall take into account the peculiarities of the object of procurement and respective marketplace, including competition at this marketplace.
3. In a restricted procedure, minimum number of candidates shall be 5 and in a negotiated procedure with prior publication, a competitive dialogue and in innovation partnership – 3.
4. A contracting authority shall invite at least minimum number of candidates to submit tenders or to participate in a dialogue/negotiation. If the number of candidates meeting the selection

criteria is below the minimum number, a contracting authority may also invite other candidates satisfying minimum requirements. In such cases, a contracting authority shall not be entitled to invite, in the same procurement, the economic operator that has not submitted an application and/or fails to comply with the minimum requirements.

5. Where a contracting authority enjoys the right of step-by-step reduction of the number of proposed solution(s) set forth in Paragraph 8 of Article 29 of this Law, reduction of the number of proposed solution(s) shall be carried out in compliance with the procedures determined in the terms of procurement. The number of tenderers and proposed solutions shall be sufficient for ensuring genuine competition. For that purpose, a contracting authority shall take into account the peculiarities of the object of procurement and respective marketplace, including competition at this marketplace.

Article 61. European Single Procurement Document

1. European Single Procurement Document (hereinafter in this Article – ESPD) is an initial proof of non-existence of exclusion grounds of an economic operator, compliance of an economic operator with selection criteria and conditions determined by Article 60 of this Law. A contracting authority shall be obliged to accept ESPD. If an economic operator decides to submit an ESPD, it shall submit it also regarding the following entities (if any):

- a) the member of a group of persons, if an economic operator is a group of persons;
- b) subcontractor in the cases provided for in Article 20 of this Law;
- c) other economic operator, whose capacities a subcontractor relies on pursuant to Article 63 of this Law.

2. The ESPD shall consist of a formal statement by the economic operator that the relevant ground for exclusion does not apply and that the relevant selection criteria and/or conditions determined by Article 60 of this Law are fulfilled. The ESPD shall further identify the public authority or third party responsible for establishing the supporting documents and contain a formal statement to the effect that the economic operator will be able, upon request and without delay, to provide those supporting documents.

3. An economic operator shall be entitled to submit an ESPD to a contracting authority which has already been used in a previous procurement procedure. In such case it confirms that the information contained therein continues to be correct.

4. A contracting authority may ask tenderers/candidates at any moment during the public procurement procedure to submit the supporting documents verifying non-existence of the grounds for exclusion and conformity with selection criteria and conditions determined by Article 60 of this Law. Before awarding the contract, a contracting authority shall, except for the cases provided for in Sub-Paragraph ‘a’ of Paragraph 4 of Article 37 of this Law, request the economic operator to which it has decided to award the contract, to submit up-to-date supporting documents in compliance with Article 59 of this Law and, where appropriate, in compliance with Article 62. A contracting authority may, under the procedure determined by the order of the Chairperson of the Agency, allow an economic operator to clarify submitted

documentation. A contracting authority shall not be entitled to request the information which it already holds or which is available on the Electronic System or other open/public database.

5. Detailed procedures of using ESPD shall be determined by the order of the Chairperson of the Agency.

Article 62. Quality Assurance and Environmental Management Standards

1. A contracting authority shall, where it requires in the terms of procurement checking quality assurance standards of an economic operator, refer to quality assurance systems which are relevant to specific standards of certification of a respective country and are certified by accredited bodies in accordance with the procedures established by the law. A contracting authority shall recognize the certificate issued by accredited bodies in compliance with the procedures established by the legislation of a respective country; it shall also accept other evidence of equivalent quality assurance measures submitted by an economic operator.

2. Capacity of an economic operator to carry out the measures determined by Sub-Paragraph 'g' of Paragraph 5 of Article 59 of this Law, may be proved by one of the following ways:

a) by registering in Eco-Management and Audit Scheme (EMAS);

b) by a certificate issued by an accredited body in compliance with procedures established by the legislation of Georgia or respective country which serves as an evidence for conformity with European or international environmental standards;

c) equivalent evaluation of conformity of activities with environmental requirements which in Georgia corresponds to environmental management systems/standards referred to in Sub-Paragraphs 'a' or 'b' of this Paragraph.

Article 63. Reliance on the Capacities of other Economic Operators

1. With regard to satisfying the criteria relating to economic and financial standing, also the criteria relating to technical and professional ability, an economic operator (main economic operator) is entitled, where appropriate, rely on the capacities of other economic operator in specific public procurement, regardless of the legal nature of the links which it has with it.

2. An economic operator may only rely on the capacities of other economic operator, also on the qualification and experience of its staff, where the latter will, within the frames of a procurement contract, execute the works and/or provide the services for performance of which such qualification and experience is necessary. This Paragraph shall only apply to the subcontractors.

3. Where an economic operator relies on the resources of other economic operators, it shall be obliged to prove that it will have at its disposal the necessary resources and will be able to use those resources. This might be proved by an agreement concluded with this economic operator and otherwise.

4. Where an economic operator relies on the capacities of other economic operator with regard to satisfying the criteria relating to economic and financial standing, a contracting authority may require that they be jointly liable for the execution of the contract.
5. Where an economic operator is a group of persons, it may rely on the capacities of participants in the group or of other economic operator.
6. In the cases provided for in this Article, a contracting authority also evaluates other economic operator whose capacities the economic operator relies on. Grounds for exclusion as well as selection criteria of other economic operator shall be subject to verification. Where there are grounds for exclusion or an economic operator concerned does not meet the selection criteria of an economic operator, a contracting authority will require the economic operator to replace it, in accordance with the rules determined by the order of the Chairperson of the Agency. In such case, a contracting authority is guided by Paragraph 2 of Article 20 of this Law.
7. A contracting authority may require in the terms of procurement that certain critical tasks be performed by the main economic operator alone.
8. Detailed procedures for using the capacities of other economic operators, also using the capacities of the participants of a group of persons by the group of persons, shall be determined by the order of the Chairperson of the Agency.

Article 64. Abnormally Low Tenders

1. Where tenders appear to be abnormally low, a contracting authority shall require tenderers to explain the adequacy of the pricing proposed in the tender. A contracting authority shall in advance determine in the terms of procurement in which cases the tender will be deemed as abnormally low and which document(s) shall be submitted to confirm adequacy of pricing.
2. Adequacy of pricing due to abnormally low price of tender may be justified by:
 - a) the economics of the manufacturing process, of the construction method or of the services provided;
 - b) the technical solutions chosen or any exceptionally favorable conditions available to the economic operator for the supply of goods or services or for the execution of the work;
 - c) the originality of the work, goods or services proposed by the tenderer;
 - d) the compliance of an economic operator with the applicable obligations in the fields of environmental, social and labor law;
 - e) the use of a subcontractor;
 - f) the possibility of the tenderer obtaining State aid.
3. A contracting authority shall evaluate the documentation proving adequacy of pricing. In case a tenderer fails to prove adequacy of pricing proposed in the tender, the tenderer shall be

excluded considering the circumstances referred to in Paragraph 2 of this Article. Where low price of tender is conditioned by obtaining State aid by the tenderer, a contracting authority shall exclude the tenderer only in case the tenderer is unable to prove, within a sufficient time limit fixed by the contracting authority, the lawfulness of receiving such aid.

4. Conditions when the tender is considered as abnormally low, also detailed procedures for proving adequacy of pricing shall be determined by the order of the Chairperson of the Agency.

Article 65. Termination of Public Procurement or Ending without Result

1. Public procurement where none of the applications/tenders were submitted, shall be deemed as public procurement with no positive result.

2. Public procurement in which all the candidates/tenderers were excluded or where a contracting authority failed to select the sufficient number of candidates, shall be deemed as public procurement with negative result.

3. Prior to awarding a procurement contract/framework agreement, a contracting authority may, at any time, terminate the course of public procurement if so necessary due to events unforeseeable by and not attributable to the contracting authority, also based on state and/or public interests of Georgia, which must be justified.

Chapter X. Conclusion of a Contract/Framework Agreement, its Modification and Performance

Article 66. Conclusion of a Contract or Framework Agreement

1. Contract/framework agreement shall be concluded in writing.
2. Written form of the procurement contract shall not be mandatory where contract is concluded as a result of a negotiated procedure without prior publication in any of the following cases:
 - a) by diplomatic representation of Georgia and its consulates abroad, by a branch, representation, subsidiary enterprise founded by a contracting authority abroad, by Defense Attaché, by the representatives abroad of Georgian Ministry of Defense, Ministry of Interior, State Security Service of Georgia, Intelligence Service of Georgia and Prosecutor's Office of Georgia in the cases provided for by a subordinate normative act;
 - b) through carrying out public procurement by internet subscription, with the purpose of posting information on social networks or having access to web pages and with the purpose of procuring software or license/permission;
 - c) when public procurement related to representation expenses is being carried out;
 - d) when procurement of laboratory services from a non-resident economic operator is performed solely in cases when the laboratory with appropriate accreditation is not available at the Georgian marketplace or such a laboratory is unable to provide laboratory services due to objective reasons.
3. In the cases provided for in Paragraph 2 of this Article, a procurement contract shall be replaced by the document serving as an evidence for conclusion of a contract. This document shall be determined by the order of the Chairperson of the Agency. Paragraph 9 of this Article shall apply to such a document.
4. A contract/framework agreement may be concluded in Georgian as well as in a foreign language. In case the contract/framework agreement is concluded in a foreign language, it shall, in compliance with the procedures established by the legislation of Georgia, be translated into Georgian. In case of any inconsistencies, original document shall prevail. It shall not be necessary to translate the contract/framework agreement in compliance with the procedures established by the legislation of Georgia in case it is concluded as a single document in Georgian and foreign languages. In the latter case, Georgian language version shall prevail should there be any inconsistencies.
5. A contract/ framework agreement shall be concluded with successful tenderer(s) according to the terms of procurement and tender(s) submitted by them, in compliance with the procedures and terms determined by the order of the Chairperson of the Agency. Where a procurement contract is awarded as a result of a negotiated procedure without prior publication, under the decision of the Government of Georgia, the terms other than the ones determined by Paragraph One of this Article may be defined for a specific procurement (contract/framework

agreement). A contract/framework agreement shall be concluded as a result of a negotiated procedure without prior publication in compliance with the agreement achieved between a contracting authority and an economic operator. Where a contract/framework agreement was concluded with the consent of the Agency as a result of a negotiated procedure without prior publication, it shall also be necessary to follow agreed terms with the Agency.

6. It shall be inadmissible to conclude a contract/framework agreement within the following time limits after invitation for conclusion of a contract/framework agreement or after publishing/uploading the decision on negotiated procedure without prior publication on the Electronic System:

- a) within following 10 days – in case estimated value of procurement is equal to or above the monetary thresholds established by the legal acts of the European Union;
- b) within following 5 days – in case estimated value of procurement is below the monetary thresholds established by the legal acts of the European Union.

7. Paragraph 6 of this Article shall not apply to the following cases when:

- a) a contract/framework agreement is concluded as a result of negotiated procedure without prior publication on the grounds provided for in Sub-Paragraphs ‘a’ and ‘c’ of Paragraph One of Article 33 of this Law. Also, where the value of a contract/framework agreement to be concluded as a result of negotiated procedure without prior publication is below the monetary thresholds established by the legal acts of the European Union;
- b) only one tenderer gained the right to conclude a contract/framework agreement and there is not any other candidate/tenderer who could appeal the decision/action of a contracting authority. This Sub-paragraph shall not be applied where, in the cases directly provided for in compliance with this Law and the order of the Chairperson of the Agency, based on the nature of a public procurement procedure and/or public procurement tool, information related to the personality and number of the participants of public procurement as well as to tenders is secret;
- c) a contract is awarded within the frames of a framework agreement or a dynamic purchasing system.

8. Terms of a contract/framework agreement shall be determined by the order of the Chairperson of the Agency. The Chairperson of the Agency shall be entitled to approve standard form(s) of a contract/framework agreement which might be reflected on the Electronic System under the procedures determined by the order of the Chairperson of the Agency.

9. A contracting authority shall be obliged to publish a contract/framework agreement, also the document defined in Paragraph 3 of this Article (including the document, containing the information defined by a subordinate normative act, verifying the payment of the value of the object of procurement) on the Electronic System in compliance with the procedures established by the order of the Chairperson of the Agency not later than 3 working days after concluding the contract/framework agreement. This Paragraph shall not apply to diplomatic representations of Georgia and its consulates abroad, as well as to a branch, representation, subsidiary enterprise founded by a contracting authority abroad, to Defense Attaché, to the representatives abroad of Georgian Ministry of Defense, Ministry of Interior, State Security Service of Georgia, Intelligence Service of Georgia and Prosecutor’s Office of Georgia that

shall be obliged to publish a contract/framework agreement, also the document, containing the information defined by a subordinate normative act, verifying the payment of the value of the object of procurement, on the Electronic System in compliance with the procedures established by the order of the Chairperson of the Agency not later than 10 working day after concluding the contract/framework agreement.

10. Where the object of procurement is oil product (fuel) the price of which, due to its specific character, depends on the variable price at the international Commodity Exchange and/or on the official exchange rate of the national currency, before concluding a contract/framework agreement provided for in this Article, an economic operator shall be obliged to submit to a contracting authority the unit price of the goods to be supplied, calculated in compliance with the procedures established by a subordinate normative act. This requirement shall not apply to the procurement of oil products (fuel) by diplomatic representations of Georgia and its consulates abroad, as well as by a branch, representation, subsidiary enterprise founded by a contracting authority abroad, by Defense Attaché, by the representatives abroad of Georgian Ministry of Defense, Ministry of Interior, State Security Service of Georgia, Intelligence Service of Georgia and Prosecutor's Office of Georgia.

Article 67. Modifications of a Contract or a Framework Agreement

1. Contracts/framework agreements may be modified without a new procurement procedure in any of the following cases:

a) for additional works, services or supplies by the original contractor that have become necessary where a change of original contractor:

a.a) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, installations or services procured under the initial procurement;

a.b) would cause significant inconvenience or substantial increase of costs for the contracting authority by not less than double amount;

b) where all of the following conditions are fulfilled:

b.a) the need for modification has been brought about by circumstances which a diligent contracting authority could not foresee and/or there are circumstances provided for in Article 398 of Civil Code of Georgia;

b.b) the modification does not alter the overall nature of the contract or the framework agreement in compliance with Paragraph 3 of this Article;

c) where a new contractor replaces the original contractor as a consequence of universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established provided that this change does not entail other substantial modifications;

d) where the modifications in contract/framework agreement, irrespective of their value, are not substantial in compliance with Paragraph 3 of this Article;

e) where the information with regard to making modifications to a contract/framework agreement, irrespective of their value, is explicitly defined in the terms of procurement and the modification is not substantial.

2. In the cases provided for in Sub-Paragraphs 'a' or 'b' of Paragraph One of this Article, it shall be inadmissible to increase the value of the contract/framework agreement with higher than 10%. This Paragraph shall not apply to the public procurement of oil products (fuel).

3. A modification of a contract/framework agreement shall be considered to be substantial where:

a) the modification introduces conditions which, had they been part of the initial procurement procedure, would have allowed for the admission of other economic operators or would not have caused exclusion/reduction of the number of economic operators participating in the procurement procedure;

b) the modification changes the economic balance of the contract/framework agreement in favor of an economic operator in a manner which was not provided for in the initial contract/framework agreement;

c) the modification extends or reduces the scope of the contract/framework agreement considerably;

d) the modification results in replacing the supplier in a manner other than those provided for in Sub-Paragraph 'c' of Paragraph One of this Article.

4. Where a contract/framework agreement requires modifications other than provided for in Paragraphs One and 2 of this Article, a contracting authority shall be obliged to perform new procurement procedures.

5. Any modifications of a contract/framework agreement require justification by a contracting authority. In case of modifications of a contract/framework agreement, responsibility for meeting the requirements of this Law shall fully rest with a contracting authority.

6. Modifications to a contract/framework agreement shall be made with the same method which was used for concluding a contract/framework agreement. This change shall be published on the Electronic System not later than 3 working days from conclusion.

7. Procedures and terms for modifying the value of a contract/framework agreement shall be defined by the order of the Chairperson of the Agency.

Article 68. Change/Supplement of the Staff, Subcontractors and Other Economic Operators Involved in Contract Implementation

1. A supplier shall be entitled to change the staff, subcontractor(s) defined in Paragraph One of Article 20 of this Law and other economic operator(s), whose capacities it relied on in compliance with Article 63 of this Law, as well as to add staff, subcontractors and other economic operator(s) in implementation of the contract without co-ordination with a contracting authority, except for the cases referred to in Paragraphs 2 and 4 of this Article.

2. After entering into the contract, the staff of the supplier, which has been involved thereby in implementation of the contract, regarding which a tenderer has provided information to the contracting authority and the conformity of the qualification of which with the requirements brought forward has been assessed by the contracting authority, as well as the subcontractor defined in Paragraph One of Article 20 of this Law, or other economic operator whose capacities it has relied on to certify that the qualification thereof conforms to the requirements specified in the terms of procurement, shall be changed/supplemented only with a written consent of the contracting authority, complying with the conditions provided for in Paragraph 3 of this Article.

3. It shall be inadmissible to change/supplement the staff, subcontractors or other economic operators referred to in Paragraph 2 of this Article if any of the following conditions exists:

a) the staff, subcontractor or other economic operator presented by the supplier whose capacities supplier relied on does not conform to those requirements specified in the terms of procurement which apply to the staff of the economic operator, subcontractors and other economic operators;

b) the subcontractor or other economic operator whose capacities the economic operator has relied on in the procurement procedure to certify that the qualification thereof conforms to the requirements specified in the terms of procurement, is changed and an offered subcontractor or other economic operator does not have the same qualification on which the supplier has referred to.

4. In compliance with this Article, there should be no grounds for exclusion, referred to in Article 58 of this Law, with regard to offered subcontractor and other economic operator.

5. A contracting authority shall take a decision to permit or refuse the change/supplementation of the staff, subcontractor or other economic operator involved in the procurement procedure in compliance with the procedures determined by the order of the Chairperson of the Agency.

Article 69. Supervision over the Implementation of the Procurement Contract

1. A contracting authority shall be obliged to perform supervision over the implementation of the procurement contract.

2. A contracting authority, in accordance with the procedures established by the legislation of Georgia, shall be entitled to obligate the employee of the contracting authority as well as the group of employees, or any other person to supervise the fulfillment of the terms of the contract.

3. The procedures for supervision of the fulfillment of the terms of the contract shall be defined by the order of the Chairperson of the Agency.
4. A contracting authority shall be obliged to publish information related to fulfillment/failure of fulfillment of a contract, on the Electronic System in compliance with the procedures determined by the order of the Chairperson of the Agency.

Article 70. Means to Secure the Fulfillment of Procurement Contract

1. In order to secure a contract, a contracting authority shall be entitled to establish a penalty fee and/or require a bank guarantee.
2. Requirement of a bank guarantee shall be mandatory if the value of contract is equal to or exceeds 200 000 GEL.
3. If the value of a contract amounts less than 200 000 GEL, requirement of a bank guarantee shall be permissible only in certain cases according to the peculiarity of the procurement contract, which shall be justified.
4. In case of a negotiated procedure without prior publication, under the decision of the government of Georgia and on the bases of the substantiated request from a contracting authority, an economic operator may be exempted from submitting a bank guarantee.
5. In case of centralized purchasing activities, commitment to request a bank guarantee, also where appropriate, its higher threshold shall be determined by the order of the Chairperson of the Agency.
6. An economic operator registered in the White List shall submit a bank guarantee in compliance with the procedures established by Sub-Paragraph 'b' of Paragraph 2 of Article 22 of this Law.
7. Detailed procedures for requesting and submitting a bank guarantee shall be defined by the order of the Chairperson of the Agency.

Article 71. Terms of Payment

1. Terms of payment shall be determined by the terms of procurement and by a contract/framework agreement.
2. In the case of an advance payment, the supplier shall be obliged to submit to the contracting authority a guarantee equal to the amount of the advance payment, except for the cases provided in this Article and the circumstances determined by the order of the Chairperson of the Agency.
3. In case of a negotiated procedure without prior publication, under the decision of the government of Georgia and on the bases of request from a contracting authority, an economic

operator may be exempted from submitting a guarantee equal to the amount of the advance payment.

4. An economic operator registered in the White List shall submit a bank guarantee in the half amount of the advance payment.

5. A supplier shall be obligated to use the amount received as an advance payment only for the performance of obligations related to the public procurement contract. It shall be responsible for its unreasonable expenses.

6. The procedure and conditions for requesting and submitting a bank guarantee equal to the amount of the advance payment shall be defined by the order of the Chairperson of the Agency.

Chapter XI. Procurement in the Fields of Defense and Security

Article 72. General Provisions Applied to Procurement in the Fields of Defense and Security

1. The rules of this Chapter shall apply to contracts awarded/to be awarded in the fields of defense and security for:

- a) the supply of military and dual-use goods (including any parts and/or components thereof);
- b) the works, goods and services related to the goods referred to in Sub-Paragraph 'a' of this Article for any and all elements of its life cycle;
- c) the works and/or services intended for military purposes or defense and security (related to the fields of defense and security).

2. The list of the production defined by Sub-Paragraph 'a' of Paragraph One of this Article shall be determined by the resolution of the government of Georgia.

3. When carrying out public procurement in the fields of defense and security, a contracting authority shall follow the rules and conditions provided for in this Law, unless this Chapter provides for different rules and conditions.

4. Based on unbiased criteria, when carrying out procurement in the fields of defense and security a contracting authority shall be entitled to follow either the procedures and conditions established for standard public procurement by this Law or govern itself by the rules and conditions of this Chapter or use the exceptions established by Article 73 of this Law. In case of applying the procedures and conditions established for standard public procurement, the rules and conditions of this Chapter shall not apply to public procurement. In case of applying exceptions provided for in Article 73 of this Law, a contracting authority shall be obliged to justify that its choice is not aimed at artificially avoiding application of this Law and that it is based on unbiased conditions.

5. Where goods, works and services related to the fields of defense and security are procured during state of emergency or war, this Law shall not apply to it.

6. Article 61 of this Law shall not apply to public procurements carried out in the fields of defense and security.

Article 73. Additional Exceptions

1. Except for the exceptions set forth by Articles 9 and 10 of this Law, this Law shall not also apply in the following cases:

- a) where application of this Law shall result in disclosure of information containing a state secret;

b) where a public procurement contract is aimed for the defense forces dislocated outside the territory of Georgia and due to operative necessity, they need to award such contracts with an economic operator operating on that territory;

c) in one or several following cases, where the government of Georgia awards public procurement contract with the government of other country and the contract relates to:

c.a) the supply of military or dual-use goods;

c.b) the works or services directly related to the defense or dual purpose production referred to in Sub-Paragraph 'c.a' of this Sub-Paragraph;

c.c) works or services aimed for special military purposes, also secret works and services.

2. In the cases provided for in Sub-Paragraph 'a' of Paragraph One of this Article, the procedures and conditions for carrying out secret public procurement shall be determined by the decree of the government of Georgia. In the cases provided for by this Paragraph, where possible, intention about carrying out secret public procurement containing general, not classified information about the secret public procurement, shall be published through the Electronic System. When establishing the procedures for secret public procurement, the government of Georgia shall govern itself by the procedures provided for in this Law and define the peculiarities of their application in secret public procurements.

Article 74. Participation of Economic Operators of a Third Country in Public Procurement

A decree of the Georgian government shall determine the list of the countries whose economic operators shall be entitled to participate in the procurements in the fields of defense and security as main economic operators independently or together with the economic operators registered in Georgia, also as subcontractors.

Article 75. Protection of Classified Information

1. If a procurement contract involves the information containing state secret, a contracting authority shall, in compliance with the legislation of Georgia, determine in the terms of procurement the requirements necessary for protecting such information.

2. In the cases defined by Paragraph One of this Article, an economic operator, also, where applicable – a subcontractor and other economic operator whose capacities the economic operator relies on in compliance with Article 63 of this Law, shall have access, defined by the legislation of Georgia, to the information containing state secret.

Article 76. Security of Supply of Object of Procurement

1. A contracting authority shall specify in the terms of procurement its requirements for security of supply of the object of procurement, such as:

a) certification and documentation demonstrating to the satisfaction of the contracting authority that the economic operator will be able to honor its obligations regarding the export, transfer and transit of goods associated with the contract (including any supporting documentation received from its country of residence);

b) the indication of any restriction on the contracting authority regarding disclosure, transfer or use of the goods or services and which would result from export control or security arrangements;

c) certification or documentation demonstrating that the organization of the economic operator's supply chain will allow it to comply with the requirements concerning security of supply of object of procurement set out in the terms of procurement, and a commitment to ensure that possible changes in its supply chain will not affect adversely compliance with these requirements;

d) a commitment from the economic operator to establish the capacity required to meet additional needs of the contracting authority as a result of a crisis, according to agreed terms and conditions;

e) any supporting documentation received from the economic operator's national authorities regarding the fulfilment of additional needs required by the contracting authority as a result of a crisis;

f) a commitment from the economic operator to carry out the maintenance, modernization or adaptation of the supplies covered by the contract;

g) a commitment from the economic operator to inform the contracting authority in due time of any change in its organization, supply chain or industrial strategy that may affect its obligations to that authority;

h) a commitment from the economic operator to provide the contracting authority, according to agreed terms and conditions, with all specific means necessary for the production of spare parts, components, assemblies and special testing equipment (including technical drawings, licenses and instructions for use) in the event that it is no longer able to provide these supplies.

2. For the purposes of this Article, following shall be considered to be a crisis: armed conflict and/or war, also situation when harmful event takes place in the country which clearly exceeds the volume of harmful events occurring in everyday life and substantially prejudices or restricts human life and health, or has substantial effect on the price of immovable or movable property, or requires provision of population with the articles of prime necessity. Crisis shall be deemed to exist also in the cases when such harmful events are considered to be inevitable.

Article 77. Additional Grounds for Exclusion

1. Except for the exclusion grounds established by Article 58 of this Law, a contracting authority shall exclude a candidate/tenderer from participation in a procurement procedure where there is information of authorized law-enforcement body/court that a candidate/tenderer or entity who is a member of its managerial body or supervisory board, procurator or the person who has the authority to represent the economic operator in the activities of its subsidiary enterprises, has been the subject of a conviction of committing the crime against State.
2. The grounds for exclusion provided for in Paragraph One of this Article shall be applied also to:
 - a) the member of an economic operator, if an economic operator is a group of persons;
 - b) the subcontractors in the cases provided for in Article 20 of this Law;
 - c) other economic operators whose capacities the economic operator relies on in compliance with Article 63 of this Law;
3. Procedures and conditions for requiring and receiving information from authorized law-enforcement body/court in the cases provided for in Paragraph One of this Article, shall be determined by the order of the Chairperson of the Agency. The Agency shall also have access to the referred information.

Article 78. Peculiarities Regarding Public Procurement Procedures

1. For the contracts awarded in the fields of defense and security a contracting authority shall use a restricted procedure, a competitive dialogue, a negotiated procedure with prior publication or a negotiated procedure without prior publication. A contracting authority shall be entitled to use an open procedure for award of such contracts only in cases where public procurement does not involve information containing state secret and all technical, legal and financial aspects of the contract are known in advance.
2. In addition to the grounds provided for in Article 33 of this Law, a contracting authority shall be entitled to apply a negotiated procedure without prior publication where contracts relate to the provision of air and maritime transport services for the defense forces of Georgia deployed or to be deployed abroad and the contracting authority has to procure such services from an economic operator that guarantees the validity of their tenders only for such short periods when the deadlines for getting acquainted with the terms of procurement and for submission of applications/tenders provided for in this Law cannot be complied with nor the deadlines reduced in compliance with Paragraph 4 of Article 54 of this Law.

Article 79. Subcontracting

1. A supplier shall be free to select its subcontractor for all subcontracts, without prejudice to the eligibility restrictions provided for in Article 20 of this Law.
2. A contracting authority shall ask the economic operator:
 - a) to indicate in its application/tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractor, as well as the subcontractor and the subject-matter of the subcontracts for which they are proposed;
 - b) to indicate any change occurring at the level of subcontractors during the execution of the contract.
3. A contracting authority shall be entitled to take into account in the terms of procurement the commitment from the economic operator to subcontract a share of the contract to third parties. In such cases, the contracting authority shall define a minimum and maximum percentage of the share to be subcontracted. The maximum percentage may not exceed total 30% of the value of the contract and/or of the commitments provided for in the procurement contract. Such a percentage range defined by this Paragraph shall be adequate. With this aim a contracting authority shall take into account the peculiarities of the object of procurement and respective market, including the level of competition in that market and the relevant technical capabilities.
4. A candidate/tenderer shall be obliged to specify in the application/tender part of the contract they intend to subcontract to fulfill the requirement.

Article 80. Peculiarities Regarding Review of Disputes

1. Public procurement in the fields of defense and security may be appealed in the Council or court in compliance with the established procedures. The appeal shall be examined in the Council in compliance with the procedures established by this Law taking into account the peculiarities of this Article.
2. Submission of an appeal regarding public procurement to the Council shall not result in automatic termination of a procurement procedure. Within three working days after deeming the appeal eligible, the Council shall take decision on the bases of the grounds in the appeal regarding termination of a procurement procedure or rejection of its termination.
3. In case of taking a decision regarding termination of a public procurement procedure in compliance with Paragraph 2 of this Article, a contracting authority shall be obliged not to take a decision or not to undertake any action within the time limits of examination of a complaint related to appealed public procurement procedures. In case of rejection of termination of a public procurement procedure, a contracting authority shall be entitled to continue a procurement procedure, however, it shall be restricted to award a contract before the Council takes decision.
4. Classified public procurement shall not be appealed in the Council. It may be appealed in court in compliance with the procedures established by the legislation of Georgia.

Chapter XII. Dispute Review Bodies and Review of Disputes

Article 81. Dispute Review Bodies

1. A dispute related to public procurement and selection process provided for by the Law of Georgia on Public-Private Partnership (hereinafter in this Chapter – Selection Process) may be reviewed by the Council or court.
2. This Chapter determines procedures to review public procurement and selection process related disputes by the Council.

Article 82. Right to Appeal a Decision/Action to the Council

1. An economic operator shall be entitled to appeal against the decision/action of a contracting authority related to carrying out public procurement to the Council in compliance with the procedures determined by this Law.
2. An economic operator shall have the right to appeal a contracting authority's decision/action related to negotiated procedure without prior publication to the Council only in case the value of public procurement is equal to or above the monetary thresholds established by the legal acts of the EU.
3. A person interested in participation in the selection process or a participant of the selection process shall have the right to appeal a decision/action determined by the rules of procedure of the council of the authorized body/selection commission provided for in the Law of Georgia on Public-Private Partnership (hereinafter - the authorized body/selection commission) to the Council in accordance with the procedures established herein.

Article 83. The Council

1. The council is an impartial and independent body established on the basis of the Law, tasked with fast, efficient and fair resolution of disputes.
2. The Council shall be separate from all bodies/public entities, independent in its activity and subject only to the Law. It shall be prohibited to influence the Council or the members of the Council in order to have an impact on the decision-making process.
3. The Council shall act in accordance with the Constitution of Georgia, international treaties and agreements of Georgia, this Law, the rules of procedure of the Council and other normative acts.
4. The rules of procedure of the Council shall be approved by the decree of the Government of Georgia.

5. No later than 01 March each year, the Chairperson of the Council shall provide the Parliament of Georgia, the government of Georgia and the Agency with the information on the activities during the reporting year; this information shall include statistical data and analysis, major trends, also, if required, appropriate improvement proposals for legal framework of public procurement. The aforementioned information shall be published on the website of the Council.

Article 84. Appointment and Termination of Authority of the Council Members

1. The Council shall be composed of 5 members appointed by the Prime Minister of Georgia for the term of 5 years. The same member can only be appointed twice to the Council.

2. As the Member of the Council may be appointed a citizen of Georgia with no criminal record, who has a higher education in law/economics with Master's or equivalent academic degree and at least 5 years of working experience in stated education fields. In addition, not less than half of the Council Members must have education in law as determined herein.

3. A Member of the Council may not:

- a) be employed in other public and/or private institutions;
- b) carry out other paid activities other than scientific, pedagogical, and/or creative activities;
- c) consult a contracting authority, an economic operator, a person interested in participation in the selection process or a participant of the selection process;
- d) be a member of a political party and/or participate in political activities.

4. In order to select the Council Members, the Prime Minister of Georgia shall establish a selection commission, which, among other members, should be consisted of mandatory participation of the chairpersons of the Parliamentary Sector Economy and Economic Policy Committee and the Parliamentary Budget and Finance Committee. Statute of the selection commission shall be determined by the legal act of the government of Georgia.

5. In order to select the Council Members in an open, transparent, and competitive manner, the selection commission shall announce a public competition (call) on the website, administered by the Legal Entity under Public Law - Civil Service Bureau. Any interested person shall have the right to participate in the contest. A candidate for the membership of the Council shall have not less than 10 days after announcing a competition for submission of an application.

6. After submission of applications, within not later than 20 days, the selection commission shall select double amount of candidates for vacant position(s) who meet the qualification requirements for the candidates established by this Law. The selection commission shall act according to the principles of objectivity and impartiality in the selection process. The selection commission shall make a decision with the majority of votes of the members attending the sitting. The assessment of the candidates must be based on their reputation, professional knowledge, activity and experience.

7. If the selection commission fails to select the candidates, it shall re-announce a vacancy within not later than 5 days in accordance with Paragraph 5 of this Article.

8. The Selection Commission shall present selected candidates to the Prime Minister of Georgia for appointment. Prime Minister of Georgia shall appoint the Council Member(s) within 10 days or refuse to appoint them. In case the Prime Minister refuses to appoint Council Member(s), the Selection Commission shall re-announce a competition within not later than 5 days in accordance with Paragraph 5 of this Article.

9. Upon appointment a Council Member shall immediately leave the incompatible position or terminate the incompatible activity defined under Paragraph 3 of this Article.

10. The authority of a Council Member shall be terminated by expiration of appointment period, unless he/she is reappointed to the position with continuity of term intact. It shall be inadmissible to terminate the authority of a Council Member before expiry, except for the following cases:

- a) submission of a letter of resignation;
- b) death;
- c) recognized as missing or deceased by a court;
- d) recognized by court as a person with limited legal capacity or acknowledged as a person receiving support, unless otherwise determined by a court decision;
- e) termination of Georgian citizenship;
- f) judgment of conviction entering into force;
- g) holding a position which is incompatible as determined by Paragraph 3 of this Article or conducting an incompatible activity defined by the same Paragraph;
- h) failing to perform allocated duties during over 4 months for the past 12 months and presence of a medical report confirming inability of the Council Member of performance of allocated duties.

11. The Authority of a Member of the Council shall be terminated before the appointed time:

- a) in the circumstance described by Sub-Paragraph 'a' of Paragraph 10 of this Article – from the moment the he/she submits his/her letter of resignation to the Chairperson of the Council and in case of the Chairperson of the Council - from the moment the Chairperson submits his/her letter of resignation to the Council;
- b) in the circumstances described by Sub-Paragraphs 'b'-'f' of Paragraph 10 of this Article - from the moment when the presence of relevant circumstances is established in accordance with the procedures set by the legislation of Georgia;

c) in the circumstances described by Sub-Paragraphs ‘g’ or ‘h’ of Paragraph 10 of this Article - from the moment the Prime Minister of Georgia issues legal act on termination of the authority of a Member of the Council.

12. The Chairperson of the Council shall be obliged to immediately notify the Prime Minister of Georgia on the termination or establishing the ground(s) for termination of the authority of a Member of the Council. In case the authority of the Chairperson of the Council is terminated or there are ground(s) for termination of his/her authority, the Prime Minister of Georgia shall be informed by the Deputy Chairperson.

13. If authority of a Member of the Council is terminated, he/she may appeal the decision in court in accordance with the procedures established by the legislation of Georgia.

14. The selection process of a Member of the Council shall start not earlier than 60 days and not later than 40 days before the expiration of the term of the respective Member of the Council, while in case of premature termination - not later than 10 days after the termination of his/her authority. A newly appointed Member of the Council shall start carrying out his/her official duties as soon as the term of the previous Member of the Council expires. If the authority of the previous Member of the Council is already terminated, the newly appointed Member of the Council shall start carrying out official duties immediately upon his/her appointment.

Article 85. The Chairperson of the Council and the Deputy Chairperson of the Council

1. The Council shall have the Chairperson. The Chairperson of the Council shall:

- a) convene, open, chair and conduct sessions of the Council;
- b) represent the Council in the relations with state bodies, other local and international organizations as well as with third parties;
- c) sign correspondence of the Council;
- d) carry out overall supervision of the Office of the Council;
- e) make recommendations to the Executive Director of the Legal Entity under Public Law – Competition Agency of Georgia (hereinafter – Competition Agency) with regard to incentives and disciplinary measures of the employees of the Office of the Council;
- f) exercise other powers in accordance with the legislation of Georgia, the rules of procedure of the Council and the statute of the Office of the Council.

2. The Chairperson of the Council shall have a Deputy. The Deputy Chairperson shall perform the duties of the Chairperson of the Council in his/her absence or termination of his/her authority. When both, the Chairperson and the Deputy Chairperson of the Council are absent, the duties of the Chairperson of the Council shall be performed by one of the Council Members upon the instructions of the Chairperson.

3. The Chairperson and the Deputy Chairperson of the Council shall be elected from the Council Members. At least 2 Members of the Council shall have the right to nominate candidates. The respective candidate shall be deemed elected if he/she is supported by at least half of the total number of the Members of the Council through a secret ballot. The same person can only be elected once as the Chairperson of the Council. Only the Members of the Council with a higher education in law, as it is stipulated in Paragraph 2 of Article 84 of this Law, may be elected on the position of the Chairperson and the Deputy Chairperson of the Council.
4. The Chairperson or the Deputy Chairperson of the Council shall be deemed elected for the term of his/her Council Membership. As soon as the Council Membership term expires, the Member of the Council concerned shall be terminated the authority of the Chairperson or the Deputy Chairperson respectively, regardless whether he/she is reappointed as a Member of the Council or not.
5. The authority of the Chairperson, the Deputy Chairperson of the Council may be terminated before expiry of the term on the grounds of his/her letter of resignation - immediately upon submission of the letter of resignation to the Council.
6. Elections of a new Chairperson, the Deputy Chairperson of the Council shall be held not later than 5 days before expiration of the term of acting Chairperson, the acting Deputy Chairperson, respectively; while in case of early termination of his/her authority, an election process shall take place not later than 5 days from the termination.

Article 86. Organizational and Financial Support of the Council's Activities

1. A Member of the Council shall receive remuneration. The salary of the Chairperson of the Council shall be set in equal amount to the salary of the Chairperson of the Regional (City) Court; the salary of the Deputy Chairperson of the Council shall be set in equal amount to the salary of the Chairperson of the Panel of Regional (City) Court, while the salary of other Member of the Council – in equal amount to the salary of a judge of the Regional (City) Court.
2. The Council shall be financed from the State Budget of Georgia, budgetary allocations of the Competition Agency to the extent that guarantees proper performance of its functions and its independence.
3. The Council shall have the Office staff to facilitate its activities. The Council foreseen by the Law of Georgia on Competition shall define the quantity and remuneration of the Office staff members. Based on the recommendation of the Executive Director of the Competition Agency, the Council foreseen by the Law of Georgia on Competition shall define the statute and structure of the Office. The Office of the Council is a structural unit of the Competition Agency.
4. The Office of the Council shall:
 - a) conduct internal procedures for preparation of the review of disputes;
 - b) organize the Council's sessions;

- c) draw up minutes of the Council's sessions;
 - d) handle correspondence and internal documentation of the Council;
 - e) exercise other functions in accordance with this Law, the rules of procedure of the Council and the statute of the Office of the Council.
5. The Office of the Council shall be accountable to the Chairperson of the Council / the Council. For lawful use of logistic resources of the Competition Agency, the Office of the Council shall also be accountable to the Executive Director of the Competition Agency.
 6. The Office of the Council shall be selected through competition in accordance with the procedures established by the legislation of Georgia. The members of the Council shall also comprise the Competition Committee set up for conduction of the competition.
 7. Disciplinary liability upon the employees of the Office of the Council shall be imposed in accordance with the procedures established by internal regulations of the Competition Agency. Imposing disciplinary liability upon an employee of the Office of the Council shall be possible only by the consent of the Chairperson of the Council.
 8. The Competition Agency shall provide the necessary logistic support to the Council and its Office to conduct their activities.

Article 87. Special Electronic Module Designated for the Council

1. In order for the Council to carry out its activities effectively and openly, a special electronic module designated for the Council (hereinafter - the Electronic Module) shall operate within the Electronic System.
2. Appeals made to the Council and enclosed documents, decisions of the Council in relation to appeals, other materials related to the review of the appeals, as well as other information defined by this Law and the rules of procedure of the Council shall be published on the Electronic Module.
3. The Council/the Office of the Council shall submit any notification/information in relation to the review of disputes via the Electronic Module, which shall be deemed delivered to the respective person.
4. The Council/ the Office of the Council shall be authorized to also use other means of communication (mail, email, phone, including SMS) to submit the notification/information defined in Paragraph 3 of this Article. Such notification/information shall be deemed as officially submitted notification.
5. The information on the Electronic Module shall be public except for the personal data, which is protected in accordance with the legislation of Georgia and not a subject for publication.
6. The Electronic Module shall be the part of the Electronic System . The Agency shall ensure its proper functioning. The Agency shall be obliged to ensure uninterrupted access of Members

of the Council/respective staff members of the Office of the Council to the Unified Electronic System of Public Procurement for the purpose of carrying out the duties stipulated in this Article. On the grounds of the request or consent of the Council, the Agency shall develop and introduce appropriate changes to the Electronic Module. The Council shall be obliged to seek an approval of the Agency for any draft of rules of procedure or draft amendments in the part the adoption of which shall lead to the requirement to change the Electronic System / Electronic Module, before submitting it to the Government.

Article 88. Appealing the Decision/Action to the Council

1. Except for the cases provided for in Paragraphs 2 and 3 of this Article, the decision/action of a contracting authority may be appealed within not later than 10 days after familiarizing with the relevant decision /after carrying out the relevant action.

2. A decision/action of a contracting authority shall not be appealed if the public procurement contract has already been awarded, except for appealing the decision to the Council related to awarding a public procurement contract as a result of a negotiated procedure without prior publication on the grounds provided for in Sub-Paragraphs 'a' or 'c' of Paragraph One of Article 33 of this Law, as well as except for appealing the relevant decision/action to the Council related to awarding a procurement contract within the frames of a dynamic purchasing system or as a result of a framework agreement.

3. Terms of procurement, contract notice and/or tender documentation may be appealed within the time limits established for familiarizing with them while call for submitting a tender may be appealed within the time limits set for submission of a tender.

4. Listed below shall have the right to appeal a decision/action of a contracting authority:

a) any economic operator - if the appeal relates to the decision/action regarding the terms of procurement, prior information notice, contract notice or procurement documentation;

b) a candidate – if the appeal relates to the decision/action taken/carried out from the moment of submission of applications through the stage of submission of tenders;

c) a tenderer – if the appeal relates to the decision/action taken/carried out from the stage of submission of tenders;

d) a participant of a framework agreement – if the procurement contract is awarded within the frames of a framework agreement;

e) a participant of a dynamic purchasing system – if the contract is awarded within the frames of a dynamic purchasing system;

f) an economic operator – if the appeal addresses the decision/action that inflicts direct and immediate (individual) damage to its legal rights or interests or illegally limits its rights.

5. An appeal shall be submitted to the Council electronically through the Electronic System. The form and procedure for submission of an appeal shall be determined in accordance with the rules of procedure of the Council.

6. Not later than the following 2 working days of submitting an appeal, the Council shall review the issue of its eligibility. The Council shall deem the appeal ineligible, if:

a) it is submitted by an unauthorized person;

b) the deadline for submitting an appeal has expired;

c) an appeal does not relate to a decision/action of a contracting authority/authorized body/selection commission;

d) a respective decision/action of a contracting authority/authorized body/selection commission is not subject to appeal in accordance with this Law;

e) there is no subject of dispute;

f) the Council is already reviewing a dispute between the same parties on the same subject and with the same grounds;

g) there is a decision of the Council on the dispute between the same parties on the same subject and with the same grounds;

h) the indicated issue is under the jurisdiction of a court;

i) a dispute between the same parties, on the same subject and with the same grounds is pending in court.

j) its content does not have a relevant selected form of an appeal defined by the rules of procedure of the Council.

k) a procurement contract has already been awarded by the time of reviewing the issue of its eligibility except for the cases when appeal of a decision/action is possible after awarding a procurement contract;

7. In case an appeal does not comply with the requirements set forth by this Law and the rules of procedure of the Council, but there are no grounds provided for in Paragraph 6 of this Article for deeming an appeal ineligible, the Council shall give the complainant one working day to specify the appeal. If the complainant does not specify the appeal, it will automatically be deemed ineligible on the Electronic System (which equals the decision of deeming the appeal ineligible). If the complainant submits a specified appeal, the Council shall review the eligibility of this appeal not later than one working day following filing thereof. If the complainant does not fully specify the appeal, the appeal shall be deemed ineligible.

8. The appeal shall be deemed eligible or ineligible by the Council in accordance with the decision, with the exception of the cases provided for in Paragraph 7 of this Article, when the appeal will automatically be deemed ineligible on the Electronic System (which equals the decision of deeming the appeal ineligible). The Council shall deem the appeal ineligible also

in case the grounds for ineligibility of an appeal are discovered after deeming the appeal eligible.

9. The information on finding the appeal eligible or ineligible shall be immediately published on the Electronic Module in accordance with the procedures established by the rules of procedure of the Council.

10. Except for the exceptions provided for by Article 80 of this Law, appealed public procurement/selection process procedures shall be terminated automatically immediately upon deeming the appeal eligible, except for the time limits for familiarizing with a contract notice and tender documentation, also time limits for submission of application/tender. After finding the appeal eligible, a contracting authority/ authorized body/selection commission shall be obliged not to take a decision or carry out an action within the timeframes established for reviewing an appeal related to appealed public procurement/selection process procedures. A contracting authority/ authorized body/selection commission shall also be obliged not to announce a tender on the same issue or terminate already announced repeated public procurement/selection process procedures (if any). A contracting authority shall be entitled to perform public procurement in compliance with the procedures established by this Law if there are grounds defined by Sub-Paragraphs 'a' or 'c' of Paragraph One of Article 33 of this Law. In the cases provided for in this Paragraph, public procurement/selection process procedures shall also be terminated for economic operators/ persons interested in participation in the selection process/participants of the selection process. Appealing the decision related to conduction a negotiated procedure without prior publication shall result in termination of a negotiated procedure without prior publication except for the cases when this procedure is performed on the grounds of Sub-Paragraphs 'a' or 'c' of Paragraph One of Article 33 of this Law. Appealing the relevant decision/action to the Council related to awarding a procurement contract within the frames of a dynamic purchasing system or as a result of a framework agreement shall not cause termination of public procurement procedures.

11. The complainant shall have the right to withdraw an appeal, in written, at any time before the Council takes a decision. In this case, the appeal shall not be reviewed. The information on withdrawal of the appeal by the complainant shall be published on the Electronic Module not later than the following working day in accordance with the procedures established under the rules of procedure of the Council.

Article 89. Fee for Filing an Appeal

1. A fee for filing an appeal shall be set to file an appeal to the Council. The amount of the fee shall be:

a) 2% of the estimated value of procurement in case of an appeal related to public procurement (except for the exceptions provided for in Paragraph 2 of this Article) and 2% of the value of procurement, but not less than 100 GEL and not more than 500 GEL - in case of a negotiated procedure without prior publication; In addition, if the public procurement is carried out by dividing it into lots, the estimated value of each lot shall be taken into account when calculating the amount of the fee for filing an appeal;

b) 0.15% of the estimated value of the public-private partnership project but not less than 22000 GEL and no more than 150 000 GEL in case of an appeal related to a public-private partnership project.

2. A fee for filing an appeal shall not be paid if the appeal relates to:

a) a decision/action in relation to the terms of procurement;

b) any other decision/action that does not fall under the cases stipulated by Sub-Paragraph 'a' of this Paragraph and is taken/performed prior to commencement of receiving applications/tenders;

c) a decision by which the decision provided for in Sub-Paragraphs 'a' or 'b' of this Paragraph was reviewed on the bases of the decision of the Council.

3. The fee for filing an appeal shall be refundable, unless the appeal is rejected.

4. If a complainant withdraws an appeal, the fee for filing an appeal shall be refunded:

a) in full – if the appeal is withdrawn prior to the Council meeting;

b) in half – if the appeal is withdrawn during or after the Council meeting.

5. The procedure for filing an appeal and payment of/refunding the fee shall be defined in accordance with the rules of procedure of the Council.

Article 90. Review of Appeals by the Council

1. The Council shall review an appeal and take a decision within 10 working days of deeming the appeal eligible.

2. If establishment of significant facts for the case is not possible within the timeframes defined under Paragraph One of this Article, the mentioned time may be extended for not more than additional 10 working days by the decision of the Council.

3. The Council shall review an appeal at an open meeting, except in cases defined by the legislation of Georgia. An oral hearing shall be held at a Council meeting during which the Council listens to the parties and interested persons (if any).

4. The Chairperson of the Council shall, at the recommendation of the Office of the Council, schedule the day and time of the review of an appeal at a Council meeting. This information shall be provided to the parties and interested persons (if any) through the Electronic Module. Absence of the parties and interested persons invited in accordance with the established procedure shall not interfere with the review of an appeal.

5. The Chairperson of the Council meeting shall open, conduct and close the meeting. The Chairperson of the Council shall chair the meeting of the Council. In the absence of the Chairperson of the Council from the meeting of the Council, Deputy Chairperson of the

Council shall perform his/her duties. In case both, the Chairperson of the Council and Deputy Chairperson of the Council are absent from the meeting of the Council, the duties of the Chairperson of the Council shall be performed by one of the Council Members upon the instructions of the Chairperson of the Council.

6. The meeting of the Council shall be deemed authorized if it is attended by at least one half of the full number of its members.

7. A Council member shall not be entitled to participate in reviewing or resolving an appeal in case of presence of grounds (circumstances) defined by Article 92 of the General Administrative Code of Georgia. In such case, a Council Member shall be obliged to seek self-recusal. Furthermore, in the presence of the grounds for recusal of a Council Member, parties, interested persons shall be entitled to submit a letter in writing on seeking recusal of the Council Member not later than completion of the Council meeting. Other members of the Council shall take a decision on the recusal of the Member of the Council without his/her presence with majority of votes. In case of a tie, the Member of the Council shall be deemed recused.

8. The meeting of the Council shall be documented in the minutes of the Council meeting, signed by the Chairperson of the meeting and the secretary of the Council meeting.

9. The procedure for the review of an appeal by the Council shall be defined in accordance with the rules of the procedure of the Council.

Article 91. Decision of the Council

1. The Council shall review an appeal and take a decision within the timeframes established by Paragraphs One or 2 of Article 90 of this Law.

2. With a view to taking a decision, a discussion shall be held after the meeting of the Council with the participation of the Council Members. A decision shall be made based on the majority of votes of attending Members of the Council. In case of a tie, the vote of the Chairperson of the meeting of the Council shall be decisive.

3. A Member of the Council shall have no right to abstain from voting. A Member of the Council, who does not agree with the taken decision, may provide a different opinion in writing, which shall be enclosed to this decision.

4. All Members of the Council, who are attending the meeting of the Council and participating in decision-making, including Member(s) of the Council with a different opinion, shall sign the decision of the Council.

5. If attending Member of the Council is absent during decision-making, this shall be indicated in the decision.

6. Members of the Council shall evaluate presented evidences based on their belief, which shall be based on their full, comprehensive and objective review.

7. The Council shall review an appeal based on the provisions indicated therein. While taking a decision, the Council shall be authorized to discuss the violations, which have taken place during making a decision/performing an action and which have not been indicated in the appeal.

8. Based on detailed analyses of the appeal and related circumstances, the Council shall be authorized to:

- a) fully accept the appeal;
- b) partially accept the appeal;
- c) reject the appeal.

9. In case of full or partial acceptance of an appeal, the Council shall be authorized to:

- a) point out the erroneous action to a contracting authority and require that the contracting authority perform procurement procedures in compliance with the legislation of Georgia;
- b) require that the contracting authority examine or annul taken decision;
- c) raise the issue of responsibility of a participant of procurement before respective bodies determined by the legislation of Georgia where the participant of procurement violates the requirements of law.

10. The decision of the Council shall be substantiated and include introduction, description, motivation and resolution parts.

11. The decision of the Council shall be published on the Electronic Module immediately upon taking, it shall be public and considered to be delivered to the party/parties and the interested person(s) (if any).

12. It shall be mandatory to execute the decision of the Council immediately. Failure to execute thereof shall lead to the liability defined by the law.

13. In case of public procurement, any interested person shall have the right to provide information on failure or delay of execution of the Council's decision to the Agency, and in case of the selection process - to LEPL Public-Private Partnership Agency.

14. The Council shall be authorized to raise an issue of liability of a participant of a public procurement/selection process or authorized body in front of the authorized bodies defined by the legislation of Georgia, if, in the process of the review of an appeal, it is discovered that the latter violated the requirements of the legislation of Georgia and committed a misconduct.

15. The Council shall be entitled to request a competent authority determined by the Georgian legislation to provide relevant information containing tax secrets or personal data (including information containing special categories of data) or any other information which is necessary to review an appeal and make a decision.

Article 92. Right to Appeal a Decision/Action to Court

1. An economic operator, a person interested in participation in selection process, participant of the selection process shall have the right to directly appeal a decision/action of a contracting authority/authorized body/selection commission, respectively, to court.
2. An interested person shall have the right to appeal the decision of the Council with regard to his/her complaint to court. Appealing this decision shall not result in its suspension.
3. If the Agency, as the body authorized to maintain and perform the requirements of this Law, deems that the Council made a substantially incorrect interpretation of the legislation governing public procurement, the Agency shall also have the right to appeal the decision of the Council to a court in accordance with the procedures established by the legislation of Georgia. In this case, the purpose of the appeal of the Agency shall be defining correct interpretation of the legislation governing public procurement, rather than reviewing and evaluating circumstances related to the specific case. Appealing the decision of the Council shall not result in its suspension.
4. An interested person shall have the right to appeal a decision/action of the Agency to a court. Appealing the decision of the Agency shall not result in its suspension if such a decision relates to maintaining the “Black List” or “White List” or an agreement of a contracting authority with the Agency on the decision regarding conduction of a negotiated procedure without prior publication.

Chapter XIII. Accountability and control

Article 93. Monitoring Conducted by the Agency

1. In order to conduct reporting on the procurement process and the progress of procurement contract, a contracting authority shall be obliged to submit the information/documentation defined by this Law and order of the Chairperson of the Agency to the Agency in accordance with the procedures established by this Law and the order of the Chairperson of the Agency.
2. If information/documentation related to the progress of a public procurement contract, as defined by this Law and the order of the Chairperson of the Agency, is subject to publication on the Electronic System, the publication of such information/documentation on the Electronic System by the contracting authority in accordance with the procedures established by this Law and the order of the Chairperson of the Agency, shall be deemed as submitted to the Agency.
3. Ministry of Finance of Georgia shall be obliged to deliver annually information to the Agency on factual funds allocated for the budgetary organizations and institutions, also on the amendment(s) made to it upon relevant request on the part of the Agency.
4. In order to carry out oversight of the legitimacy of the public procurement process, the Agency shall conduct monitoring of public procurement procedures and other activities of contracting authorities related to public procurement (except for classified public procurement) according to the following principles: openness, transparency and impartiality, proper fulfillment of established procedures and accountability, provision of open and effective competitiveness, creating opportunity for making rational and free choice.
5. At any stage of the ongoing public procurement procedure, as well as after its completion, the Agency shall be authorized to require contracting authorities, economic operators to provide any type of procurement related documentation / information (including information related to the implementation of procurement contract). Contracting authorities, economic operators have obligation to provide respective documentation/information to the Agency.
6. Accountability procedure for the contracting authorities shall be defined by the order of the Chairperson of the Agency.

Article 94. Inspection of the Public Procurement Performed by the State Audit Office of Georgia

1. State Audit Office examines public procurement process through inspection of a contracting authority in accordance with the procedures established by the legislation of Georgia.
2. A contracting authority shall be obliged to submit any information/documentation related to the public procurement process to the State Audit Office of Georgia upon request of the latter.

3. Upon request of the contracting authority, an economic operator shall be obliged to submit to it the public procurement related information/documentation which the contracting authority needs in order to fulfill the obligations provided for in Paragraph 2 of this Article.

Article 95. Submission of information to the Parliament of Georgia

Relevant agencies determined by the rules of procedure of the Parliament of Georgia shall submit detailed information on intended unclassified public procurement to the Parliament of Georgia, in accordance with the rules of procedure established by the Parliament of Georgia; it shall also submit, not less than once a year, a report on performed and ongoing unclassified activities related to public procurement.

Article 96. General Procedures for Imposing Administrative Liability

1. Administrative liabilities for breaching this Law, as well as the procedures for imposing administrative liabilities shall be determined by this Article and Administrative Offences Code of Georgia.

2. Time limits for imposing administrative penalty for committing administrative offences in the field of public procurement shall not exceed 6 months from the day of revealing the offence but not more than three years from the moment of committing the offence.

3. In case of minor administrative offence, a person authorized to draw up minutes of administrative offences shall be eligible not to draw up the minutes of administrative offence and to submit written memo to the offender. A person authorized to draw up minutes of administrative offences shall be obliged to draw up the minutes of administrative offence if the offender has committed the same offence within a year after submission of a written memo by the person authorized to draw up minutes of administrative offences on the basis of this Paragraph.

4. For the purposes of administrative offences in the field of public procurement, following shall be deemed as responsible persons:

a) a natural person that has taken / performed relevant decision / action;

b) the member of the collegial body that has supported taking / performance of the relevant decision / action - if the decision / action is taken / performed jointly.

Chapter XIV. Transitional and Final Provisions

Article 97. Void Normative Acts

The Law of Georgia of April 20, 2005 on State Procurement (Legislative Herald of Georgia, #22, 18.05.2005, Article 151) subordinate normative acts adopted/passed on the bases of the Law thereof shall be considered void from 01 January 2025. Aforementioned Law and normative acts adopted/passed on the bases of the Law thereof shall be valid within the frames of legal relations arising before 01 January 2025 until their completion, unless otherwise determined by this Law.

Article 98. Measures to be Implemented in Relation to the Entry into Force of the Law

1. From 01 January 2025, Public Procurement Agency shall be the name for Legal Entity under Public Law – State Procurement Agency. Before this date, the Government of Georgia shall ensure the approval of the statute of Legal Entity under Public Law – State Procurement Agency.

2. From 01 January 2025 public procurement-related Dispute Resolution Council shall be the name for the state procurement-related Dispute Resolution Council. Before this date, the Government of Georgia shall ensure the approval of the statute of the public procurement-related Dispute Resolution Council. Entry into force of this Law shall not result in premature termination of authority of the member(s) of the state procurement-related Dispute Resolution Council elected on the basis of the Law of Georgia on Public Procurement.

3. The Government of Georgia shall:

a) Before 01 January 2025:

a.a) adopt subordinate normative acts provided for in Paragraph 14 of Article 53, Paragraph 2 of Article 72, Paragraph 2 of Article 73 and Article 74 of this Law;

a.b) define by a legal act, the amount of the sum provided for in Paragraph 4 of Article 55 of this Law, as well as the procedures for paying and refunding the amount;

a.c) define by a legal act the authorized body/authorized bodies provided for in Sub-Paragraph 'b' of Paragraph 1 and Sub-Paragraph 'c' of Paragraph 3 of Article 10 of this Law till 01 January 2025.

b) establish a Legal Entity under Public Law – Central Purchasing Body as provided for in Paragraph 7 of Article 41 of this Law, approve its statute and appoint the head of the Body till 01 January 2027.

4. The Chairperson of the Legal Entity under Public Law - State Procurement Agency shall issue subordinate normative act(s) provided for in this Law and related to the Articles referred to in Paragraph 2 of Article 100 of this Law till 01 January 2025, whereas, till 01 January 2027 the Agency shall issue the subordinate normative act(s) provided for in this Law and related to the Articles referred to in Paragraph 4 of Article 100 of this Law. In addition, Legal Entity under Public Law - State Procurement Agency shall develop the Unified Electronic System of Public Procurement adapted to the requirements of this Law and subordinate normative acts adopted/passed on the bases of this Law till 01 January 2025.

5. Contracting authorities shall perform appropriate activities from 01 January 2027 in order to define, in their structure /staff list, an authorized structural unit or staff member performing the activities related to public procurement in accordance with Article 15 of this Law.

6. Starting from 01 January 2025 until entry into force of Paragraph 7 of Article 41 and Paragraph 4 of Article 55 of this Law, the Government of Georgia shall define the acting Central Purchasing Body, also the amount foreseen under Paragraph 4 of Article 55 of this Law, as well as the procedures for paying and refunding the fee.

Article 99. Procurements Carried out / Intended Prior to Entry into Force of this Law

1. This Law shall apply to the public procurements announced from 01 January 2025.
2. Public procurements announced before 01 January 2025 shall be performed and completed in accordance with the legislation applicable till 01 January 2025.
3. A contracting authority shall be obliged to submit to the System, not later than 01 November 2024, the annual plan drafted in compliance with the norms defined in Paragraph 2 of Article 100 of this Law. The annual plan shall reflect the public procurements intended to be announced from 01 January 2025 as well as the information on the public procurement(s) to be announced in November and December of 2024 on the basis of the Law of Georgia on State Procurement that are stipulated in the public procurement plan of 2025.

Article 100. Enactment of the Law

1. Articles 97-100 of this Law and this Article shall enter into force upon promulgation.
2. Article One, 14 and Articles 17-40, as well as Articles 2-14, also Paragraphs One-6, 8-9 of Article 41, Articles 42-54, Paragraph One-3, 5-6 of Article 55, and Articles 56-96 of this Law shall enter into force from 01 January 2025.
3. Article 15, Paragraphs 2-11 of Article 16, Paragraph 7 of Article 41 and Paragraph 4 of Article 55 of this Law shall enter into force from 01 January 2027.
4. Paragraphs One and 12 of Article 16 of this Law shall enter into Force from 01 January 2029.

*President of Georgia
Salome Zurbishvili*

*Law #2549-XI~~0~~-X~~0~~
27.02.2023*